

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JULES KIMMETT,)	
)	
Charging Party,	)	Case No. LA-CE-1059
	)	1073
v.	)	1138
	)	1141
LOS ANGELES COMMUNITY	)	1168
COLLEGE DISTRICT)	
)	
Respondent.)	
<hr/>		PERB Decision No. 167
JULES KIMMETT,)	
	)	June 24, 1981
Charging Party,	)	Case No. LA-CO-112
)	
v.)	
)	
AFT COLLEGE GUILD, LOCAL 1521,)	
AMERICAN FEDERATION OF)	
TEACHERS, AFL-CIO,)	
)	
Respondent.)	
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Appearances: Jules Kimmett, representing himself.

Before Gluck, Chairperson, Moore and Tovar, Members.

DECISION

Jules Kimmett excepts to the attached hearing officer dismissal without leave to amend of unfair practice charges filed by him. After considering the entire record in light of the exceptions, the Board affirms the hearing officer's conclusions of law and dismissal of the charges.¹

¹Not all of the instant unfair practice charges were covered by the complainant's public notice cases LA-PN-23 and

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that: the charges filed by Jules Kimmett against the Los Angeles Community College District in Cases Nos. LA-CE-1059, 1073, 1138, 1141, 1168 and LA-CO-112 are DISMISSED without leave to amend.

PER CURIAM

LA-PN-24 as asserted by the hearing officer. However, since the hearing officer correctly holds that public notice complaints cannot be filed as unfair practice charges, his error is not prejudicial.

PUBLIC EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA



JULES KIMMETT,)	
)	
Charging Party,	)	Unfair Practice Cases
)	
v.	)	LA-CE-1059
	)	LA-CE-1073
LOS ANGELES COMMUNITY COLLEGE)	LA-CE-1138
DISTRICT,)	LA-CE-1141
)	LA-CE-1168
Respondent.)	
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JULES KIMMETT,)	
)	Unfair Practice Case
Charging Party,)	
)	LA-CO-112
v.)	
)	
AFT COLLEGE GUILD, LOCAL 1521,)	NOTICE OF DISMISSAL
AMERICAN FEDERATION OF TEACHERS,)	<u>WITHOUT LEAVE TO AMEND</u>
AFL-CIO,)	(8/28/80)
)	
Respondent.)	
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PUBLIC EMPLOYMENT
RELATIONS BOARD
HEADQUARTERS
OFFICE

SEP 2 11 01 AM '80

PROCEDURAL HISTORY

Mr. Jules Kimmett (hereafter Charging Party) has filed five (5) unfair practice charges against the Los Angeles Community College District (hereafter District) on January 14, 1980, March 11, 1980, April 9, 1980, April 17, 1980 and July 1, 1980 alleging violations of section 3543.5(a), (b) and (c). Mr. Kimmett has also filed one unfair practice charge against the AFT College Guild, Local 1521, American Federation of Teachers, AFL-CIO (hereafter College Guild) on January 14, 1980 alleging violations of section 3543.6(a) and (b). The

above-mentioned charges were consolidated for processing since they involved the same issue: Whether the District and the College Guild violated section 3543.5(a), (b) and (c) and section 3543.6(a) and (b) respectively by curtailing Charging Party's opportunity to address the District's Board of Trustees at its public meetings in reprisal for Charging Party's exercise of public notice rights pursuant to section 3547.

An informal conference between the parties in unfair practice charges LA-CE-1059, LA-CE-1073, LA-CE-1138, LA-CE-1141 and LA-CO-112 held on May 2, 1980 failed to resolve the matters.

For the reasons discussed below, the above-captioned unfair practice charges are dismissed without leave to amend.

FINDINGS OF FACT

For purposes of this Notice of Dismissal Without Leave to Amend, it is assumed that the essential facts alleged in unfair practice charges LA-CE-1059, LA-CE-1073, LA-CE-1138, LA-CE-1141, LA-CE-1168 and LA-CO-112 are true. San Juan Unified School District (3/10/77) EERB Decision No. 12.

CONCLUSIONS OF LAW AND DISCUSSION

In essence, Charging Party alleges that the College Guild and the District have conspired to and are discriminating against and taking reprisals against him by curtailing his right to address the District's Board of Trustees at its public meetings because of his exercise of rights guaranteed by the Educational Employment Relations Act (hereafter EERA), to wit, section 3547 public notice rights.

While recognizing Charging Party's right as an employee to file unfair practice charges against his public school employer and union, it is concluded that it was not the intent of either the California State Legislature or the Public Employment Relations Board (hereafter PERB) to permit the filing of unfair practice charges over matters concerning public notice.

It is first noted that the alleged discrimination and reprisals concern Charging Party as a citizen vis-a-vis the public meetings of the District's Board of Trustees rather than Charging Party as an employee vis-a-vis his employer. No actions have been taken against Charging Party as an employee.

Secondly, the PERB itself has established a specific and detailed procedure for filing complaints regarding alleged violations of the public notice procedures of the EERA of which the Charging Party has availed himself.¹ To allow Charging Party to simultaneously pursue alleged violations of section 3547 as both unfair practice charges and public notice complaints would give Charging Party "two bites at the apple," open the door for possibly conflicting results and would be clearly contrary to the legislative intent of both the California State Legislature and the PERB itself.

¹Official notice is taken of the fact that Charging Party has filed the following public notice complaints which allege facts similar to the above-captioned matters: LA-PN-23 and LA-PN-24. PERB's regulations regarding the filing of public notice complaints are codified at PERB Regulations 37000-37100.

Therefore, it is concluded that alleged violations of the public notice procedures of the EERA are best remedied as public notice complaints rather than unfair practice charges. Accordingly, Charging Party's unfair practice charges are dismissed without leave to amend.

ORDER

Unfair practice charges LA-CE-1059, LA-CE-1073, LA-CE-1138, LA-CE-1141, LA-CE-1168 and LA-CO-112 are hereby dismissed without leave to amend.

This dismissal without leave to amend is made pursuant to PERB Regulation 32630(a). The Charging Party may obtain review of the dismissal by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice. (PERB Regulation 32630(b).) Such appeal must be actually received by the Executive Assistant to the Board before the close of business (5:00 p.m.) on September 17, 1980 in order to be timely filed. (PERB Regulation 32135.) Such appeal must be in writing, must be signed by the Charging Party or its agent, and must contain the facts and arguments upon which the appeal is based. (PERB Regulation 32630(b).) The appeal must be accompanied by proof of service upon all parties. (PERB Regulations 32135, 32142 and 32630(b).)

DATED: August 28, 1980

WILLIAM P. SMITH
Chief Administrative Law Judge

Kenneth A. Perea
Hearing Officer