

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



| | | |
|------------------------------------|---|-----------------------|
| TONY PETRICH. |) | |
| |) | |
| Charging Party. |) | Case No. LA-CE-2131 |
| |) | |
| v. |) | PERB Decision No. 522 |
| |) | |
| RIVERSIDE UNIFIED SCHOOL DISTRICT. |) | September 24, 1985 |
| |) | |
| Respondent. |) | |
| <hr/> | | |

Appearance: Tony Petrich, on his own behalf.

Before Hesse, Chairperson; Jaeger, Morgenstern, Burt and Porter, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by the Charging Party of the Board agent's dismissal, attached hereto, of his charge that the Riverside Unified School District violated section 3543.5(a), (b), (c) and (d) of the Educational Employment Relations Act (Government Code section 3540 et seq.).

We have reviewed the Board agent's dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-2131 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(213) 736-3127



May 16, 1985

Tony Petrich

Re: LA-CE-2131, Tony Petrich v. Riverside USD
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Petrich:

The above-referenced unfair practice charge filed on February 4, 1985 alleges that from 1976 to present the Riverside Unified School District has unilaterally "shaved" salary increases due classified employees pursuant to collective bargaining agreements by issuing erroneously calculated salary schedules- This conduct is alleged to violate Government Code section 3543.5(a), (b), (c) and (d).

I indicated to you in my attached letter dated May 7, 1985 that certain allegations contained in the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to May 15, 1985, they would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie based on the facts and reasons contained in my May 7, 1985 letter.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on June 5, 1985, or sent by telegraph or certified United States mail postmarked

not later than June 5, 1985 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself, (See section 32140 for the required contents and a sample form.) The documents will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for the position of each other party regarding the extension and shall be accompanied by proof of service of the request upon each party (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

Dennis Sullivan
General Counsel

Barbara T. Stuart
Regional Attorney

cc: Charles Field, Esq.

Attachment

BTS:djm

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES CALIFORNIA 90010
(213) 736-3127



May 7, 1985

Tony Petrich

Re: LA-CE-2131, Tony Petrich v. Riverside USD

Dear Mr. Petrich:

The above-referenced unfair practice charge filed on February 4, 1985 alleges that from 1976 to present the Riverside Unified School District has unilaterally "shaved" salary increases due classified employees pursuant to collective bargaining agreements by issuing erroneously calculated salary schedules. This conduct is alleged to violate Government Code section 3543.5(a), (b), (c) and (d).

Facts

Mr. Petrich is a gardener in the Riverside Unified School District and has been employed by the District for approximately 17 years. He is a member of the classified bargaining unit exclusively represented by the California School Employees Association, Chapter 506 (CSEA).

On April 25, 1977, the District and CSEA executed, a collective bargaining agreement for the years 1976-79. In the contract the District agreed to increase classified bargaining unit employees salaries six percent for the fiscal year 1976-77, six percent for the fiscal year 1977-78, and five percent for the fiscal year 1978-79. The contract contained a list of the classified bargaining unit classifications and a set of salary schedules for each fiscal year. The salary schedules were set forth in a standard range-step matrix with vertical differentials of approximately two and one-half percent for ranges 2 through 80 and horizontal differentials of five percent for each of five steps. Ranges 2 through 13 and 55 through 80 pertained to classifications not included in the bargaining unit. Range 14, step 1 pertained to the lowest-paid classification in the unit, Food Services I. The salary increases for 1976-77 were calculated based on the the salary schedule which had been in effect for the year 1975-76.

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The past practice regarding new salary schedule construction was to apply the negotiated percentage increase to a "base" range/step on the salary schedule and maintain the existing differentials throughout the remainder of the schedule. The practice before 1976-77 is uncertain, but at least beginning in 1976-77 the District's practice was to utilize the lowest range/step on the salary schedule (range 2, step 1) as the base to begin calculations rather than the lowest range/step included in the bargaining unit (range 14, step 1).

Additionally, the 1976-77 calculations were based upon the 1975-76 salary schedule which did not have full two and one-half percent or five percent differentials between the ranges and steps respectively.

Every year after 1976-77, pursuant to agreements and addendums covering the years 1977-78 through 1984-85, the District has continued to utilize the lowest range/step on the salary schedule rather than the lowest bargaining unit range/step as the base for determining salary increases.

The latest agreement, executed within the last six months, was dated October 15, 1984. The contract specified:

The salary schedule shall be established by raising the 1983-84 salary schedule by 1/4 of 1%. Each position shall then be moved up by two ranges (approximately 5%). This adjustment shall be effective July 1, 1984.

The Charging Party states that, as previously since 1976-77, the 1984-85 salary increase was calculated based on the lowest range/step on the salary schedule and not on the lowest bargaining unit classification range/step. Additionally, he asserts that there was no actual movement of any bargaining unit classification on the salary schedule; rather, the range numbers merely changed. Thus, the lowest bargaining unit classification, Food Services I, was moved from range 2 to range 4, so there are now three range/steps lower than the first bargaining unit classification rather than only one.

The Charging Party claims that the effect on salaries and derivative employer contributions such as retirement has been cumulative. He asserts that beginning with the lack of full horizontal and vertical differentials in the 1975-76 salary schedule, plus the salary "shaving" each year due to calculations being based on the lowest-paid range not in the bargaining unit, the employees have lost a total of many thousands of dollars in unpaid salary.

Mr. Petrich learned of the foregoing facts in January 1985 when he was researching salary schedules and reclassifications in connection with another unfair practice charge he had filed. While he always had access to the negotiated agreements and published salary schedules, he did not review the District's calculations until this date.

No Unilateral Change Proven

PERB has held that an unlawful unilateral action is a per se violation of section 3543.5(c). Stockton Unified School District (11/3/80) PERB Decision No. 143. Established policy may be embodied in the terms of a collective agreement, or where the contract is silent or ambiguous as to a policy it may be ascertained by examining past practice or bargaining history. Grant Joint Union High School District (2/26/82) PERB Decision No. 196; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; Rio Hondo Community College District (12/31/82) PERB Decision No. 279.

In the instant case, Mr. Petrich has alleged that a unilateral change occurred in 1977 pertaining to the calculation of the 1976-77 salary schedule, but has failed to provide any facts showing a different past practice before that date. Specifically, the charge implies that prior to the 1976-77 salary schedules, negotiated salary increases were calculated in a manner other than using the lowest classification on the salary schedule, but no facts indicate what procedure was in fact utilized. The charge also contains the conclusory allegation that past salary schedules had exact two and one-half percent vertical and five percent horizontal differentials, but no facts support this assertion.

Because no facts indicate that the District in fact unilaterally changed the method of calculating salary schedules beginning with the 1976-77 schedules, the charge fails to state a prima facie case and should be dismissed.

Charge Untimely Filed

Even if the charge stated facts showing an unlawful unilateral change, it should be dismissed because it was not timely filed. A charging party must allege and ultimately establish that the unfair practice occurred during the six-month period preceding the filing of the charge with PERB. EERA section 3541.5(a)(1). However, a charge may still be considered timely if the alleged violation is a "continuing violation" or the violation has been revived by subsequent unlawful conduct.

within the six-month period- San Dieguito Union High School District (2/25/82) PERB Decision No. 194.

In San Dieguito, the Board confronted an alleged timeliness bar to an alleged unilateral change of working conditions. The school district had instituted a new requirement that teachers remain on campus during their preparation period unless they were given permission to leave or sign out on a list provided for that purpose. The union did not file the charge until 18 months after the change, but alleged the charge was timely because each implementation of the unilaterally imposed sign-out requirement constituted a separate violation. The Board concluded that the charge was untimely. Although the original implementation of the sign-out policy was unlawful, no new change in the policy occurred during the six-month period. Therefore no actionable violation occurred.

The San Dieguito rationale was followed by the Board in El Dorado Union High School Faculty Association v. El Dorado Union High School District (4/23/84) PERB Decision No. 382. In that case the charge was not filed until more than six months after the school district unilaterally adopted and implemented a new teaching assignment policy. The Board held the violation occurred when the new policy was implemented and not each time teachers were required to work according to the policy.

Finally, although it is not precedential, because the facts are so similar to the instant case, reference is made to the decision of the Administrative Law Judge in American Federation of State, County and Municipal Employees v. Regents of the University of California (4/27/83) Decision No. HO-U-180-H, 7 PERC 14138 and 14169. In that case, the University unilaterally changed its method of calculating salary schedules which resulted in the narrowing of step differentials over the years to less than the previously established five percent increments. This produced a cumulative negative effect on salaries over the years. The charge was dismissed based on the precedent of San Dieguito because the unilateral change was made several years prior to the filing of the charge and consistently followed thereafter.

In the instant charge, Mr. Petrich alleges that in 1976-77 the District unilaterally and unlawfully began to "shave" the salary schedules in violation of the negotiated contract increases and that such conduct has persisted from 1976-77 to the present. Factually this case is not distinguishable from the three cases cited above. The unilateral change was made in 1977 and consistently followed thereafter by the District.

Thus, there was no unlawful conduct within the six-month statute of limitations period and the charge must be dismissed.

Constructive Notice

The six-month statute of limitations does not begin to run on an alleged unfair labor practice until the persons adversely affected are put on notice, actually or constructively, of the unlawful conduct. University of California (11/23/83) PERB Decision No. 359-H, Local Lodge 1424 v. NLRB (1960) 362 U.S. 411, 45 LRRM 3212, at footnote 19); NLRB v. Allied Products Corp. (6th Cir. 1980) 629 F.2d 1167, 105 LRRM 2563. This rule is pertinent to the instant case because Mr. Petrich states that he first became aware of the alleged violations in January 1985 when he was researching salary schedules and reclassifications in connection with another unfair practice charge he had filed.

The cases cited above reflect a workable objective standard for determining when the limitations period begins to run. Absent actual notice, the limitations period begins to run when the persons affected have constructive notice of the violation. They are aware of the events which manifest the change and should reasonably be aware of the significance of the events. Certainly, a rule should not be endorsed which would toll the limitations period where the charging party knew that certain events occurred but did not realize that these events constituted an unfair practice.

The Charging Party's situation in the instant case involves facts such that Mr. Petrich and CSEA knew or should have known the District's policy in constructing salary schedules at the times they were published. The negotiated agreement was available for all to see each year. Likewise, the salary schedules as constructed by the District were available for all to see. Mr. Petrich and CSEA merely had to read these documents and perform simple calculations to ascertain the District's method of determining salaries. Given these facts, it is clear that all interested parties had clear and unequivocal notice of all the facts constituting the alleged unilateral changes in 1976-77 and thereafter. There is no basis for tolling the statute of limitations until January 1985 when Mr. Petrich did actually discover the significance of the facts which he alleges constitute an unfair practice. Thus, even if a unilateral change were proven, the statute of limitations could not be tolled because all affected parties had constructive notice of the District's actions at the time they occurred.

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Opportunity to Amend

For the reasons stated above, the charge as presently written does not state a prima facie violation of EERA. If you feel that there are facts which would require a different conclusion, please amend the charge accordingly. An amended charge should be prepared on a standard PERB unfair practice charge form and clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you by May 15, 1985, I shall dismiss your charge. The dismissal will be in the form of this letter, addressed to both parties, with certain information concerning appeal rights added. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Barbara T. Stuart.
Regional Attorney

BTS:djm