

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES COMMUNITY COLLEGE DISTRICT,)

Employer,)

and)

AMERICAN FEDERATION OF TEACHERS COLLEGE)
GUILD, LOCAL 1521,)

Employee Organization,)

and)

SERVICE EMPLOYEES INTERNATIONAL UNION,)
LOCAL 99,)

Employee Organization,)

and)

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,)
CHAPTER 507,)

Employee Organization,)

and)

JULES KIMMETT,)

Charging Party, APPELLANT.)

Case No. LA-PN-1

PERB Order No. Ad-41

Administrative Appeal

July 14, 1978

Appearances: Jules Kimmett, in pro. per.

Before: Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

OPINION

This appeal¹ is from a determination by the Los Angeles regional director that a public notice complaint must be dismissed because it was untimely filed.

¹Charging Party requests oral argument. Since we find the record submitted in this case sufficient to permit us to render a decision, we deny the request.

FACTS

On December 6, 1977, Jules Kimmett (hereafter Charging Party) filed a complaint in the Los Angeles Regional Office alleging that certain conduct of the Los Angeles Community College District and exclusive representatives for employees of that District constituted a violation of the public notice provisions² of the Educational Employment Relations Act (hereafter EERA).³ Specifically, it was charged that meetings scheduled for presentation of proposals and for public response to the proposals were held at such an hour of the day that full public participation was impossible. The public meetings in question were held intermittently from June 29, 1977, to October 12, 1977, at 1:30 in the afternoon.

²Gov. Code sec. 3547 provides in pertinent part that:

(a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours. ...

³The Educational Employment Relations Act is codified at Gov. Code sec. 3540 et seq. All references are to the Government Code unless otherwise specified.

DISCUSSION

As noted above, Charging Party's complaint was not filed in the Los Angeles Regional Office until December 6, 1977, or 55 days after the last in the series of challenged public meetings. Thus, the conduct alleged to violate the public notice requirements occurred in its entirety more than 30 days prior to the date the complaint was filed.

Public Employment Relations Board (hereafter Board) rule 37010 provides that "[a] complaint alleging that an employer or an exclusive representative has failed to comply with [the public notice provisions of the Government Code]...shall be filed no later than thirty calendar days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered...."⁴ Charging Party contends on appeal, however, that when there is such a "deliberate attempt to emasculate and castrate public participation" as he alleges occurred here, that the timely filing requirements are rendered null and void. We do not agree.

In implementing the public notice provisions of the EERA, the Board has adopted rules and regulations that provide for expedited proceedings so that the right of the public to receive notice, learn the positions of its elected representatives, and to express its own views can be fully protected.⁵ The public notice provisions, however, were never intended to be read in a vacuum but must be considered in light of the entire EERA. The Legislature has determined that it is

⁴Cal. Admin. Code, tit. 8, sec. 37010.

⁵See Cal. Admin. Code, tit. 8, sec. 37000 et seq. (Public Notice Proceedings).

within the public interest to achieve improved employer-employee relations within public school systems. The EERA was enacted to promote this goal and reflects the Legislative judgment that the desired improvement in employer-employee relations can best be obtained through a process of collective negotiations culminating in final agreement and resulting in a mature and stable negotiating relationship. In one section of the EERA, the public notice section, the Legislature secured to the public the right to be informed and to express its view on the negotiating process. This public awareness and input was intended to further, not impede, the broad goals of the EERA.

Serious injury to educational employment relations would result if concerned or merely disgruntled citizens could utilize the public notice provisions of the EERA to bring delayed challenges to negotiations that had otherwise been satisfactorily completed. Moreover, there are compelling reasons to bar untimely public notice complaints even though the parties may not yet have reached agreement. While the Board has specifically provided in its rules and regulations that the pendency of a public notice complaint will not cause negotiations to cease,⁶ the filing of a complaint nonetheless has an unsettling effect on the negotiations in progress. This is so because should such a complaint be found to have merit, the status of any final agreement between the parties is uncertain and they must necessarily divert their attention from reaching agreement to defending against the charge. That the parties may ultimately be vindicated in their conduct

⁶See Cal. Admin. Code, tit. 8, sec. 37000.

does not save the negotiating process from harm, for the damage occurs when the unreasonably delayed complaint is filed. A citizen who seeks to file a complaint alleging a violation of the public notice provisions after the prescribed time has elapsed could thus thwart the very harmony between the employer and its employees sought to be promoted by the EERA. Accordingly, we conclude that such untimely complaints must be barred.

Charging Party in the instant case does not assert that he did not know of the events now complained of at such a time as to allow him to file a timely complaint. Nor does Charging Party assert any explanation as to the reason for his delay in filing. We therefore sustain the regional director's dismissal of the complaint.

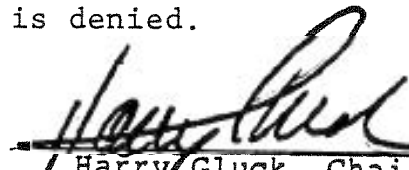
ORDER

The Public Employment Relations Board orders that:

(1) The regional director's dismissal of the complaint filed by Jules Kimmett against the Los Angeles Community College District, and American Federation of Teachers College Guild, Local 1521, Service Employees International Union, Local 99, and California School Employees Association, Chapter 507, is sustained.

(2) The request for oral argument is denied.


by: Jerliou Cossack Twoney, Member

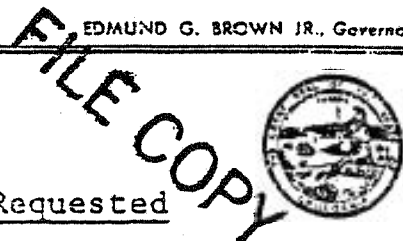

Harry Gluck, Chairman


Raymond J. Gonzales, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3550 Wilshire Boulevard, Suite 1708
Los Angeles, California 90010
(213) 736-3127

CERTIFIED MAIL
Return Receipt Requested



December 21, 1977

Mr. Jules Kimmett
1106-D West Olive Avenue
Burbank, CA 91506

Re: LA-PN-1

Dear Mr. Kimmett:

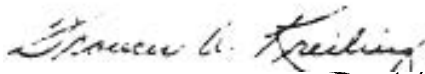
This letter will acknowledge receipt of the complaint you filed in this office on December 6, 1977 concerning the alleged violation of Article 8 Government Code Section 3547(a)(b)(c)(d)(e) by the Los Angeles Community College District and exclusive representatives for both certificated and classified employees of that District.

In accordance with our procedure, you met with my assistant, Janet Caraway on December 16, 1977. She reviewed your complaint with you and attempted to clarify the rules for filing such complaint, particularly in regard to the time limitation for filing.

Since all of the information contained in your complaint occurred in excess of thirty days prior to filing the complaint, I am herewith dismissing the complaint. A copy of this letter and your complaint are being sent to the parties named therein.

You have seven days from receipt of this letter in which to file written exceptions to the dismissal with the Board itself at 923 - 12th Street, Sacramento, CA 95814. Copies of such exceptions must be served on all parties and proof of service provided to the EERB. If no exceptions are filed, the dismissal shall become final at the end of seven days.

Very truly yours,


Frances A. Kreiling
Regional Director

FAK:an

cc: Los Angeles Community College District
AFT College Guild, Local 1521
SEIU, Local 99