STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LAUREEN THOMPSON, Charging Party, v. STOCKTON UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SA-CE-2933-E PERB Decision No. 2686 December 10, 2019

Appearances: Laureen Thompson, on her own behalf; Dannis Woliver Kelley by Marie A. Nakamura, Attorney, for Stockton Unified School District.

Before Shiners, Krantz, and Paulson, Members.

DECISION[1]

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal from a dismissal issued by PERB's Office of the General Counsel (OGC). Laureen Thompson's (Thompson) unfair practice charge, as amended, alleged that the Stockton Unified School District (District) violated the Educational Employment Relations Act (EERA)[2] by involuntarily transferring

[1] PERB Regulation 32320, subdivision (d) provides, in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 [Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." The Board has not designated the decision herein as precedential because it meets none of the criteria enumerated in the regulation. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

[2] EERA is codified at Government Code section 3540 et seq.

Thompson to a different school site in retaliation for her filing of complaints and grievances over, among other issues, out-of-class pay and reclassification. OGC dismissed the amended charge for failing to state a prima facie case of retaliation. Additionally, allegations that the District breached the applicable collective bargaining agreement and discriminated against Thompson based on race were dismissed for lack of jurisdiction. Thompson timely appealed OGC's dismissal.

Having reviewed the case file in its entirety and considered applicable precedent, we find no basis for granting Thompson's appeal. Furthermore, Thompson's appeal does not meet the requirements of PERB Regulation 32635, subdivision (a)(1).[3] We therefore affirm the dismissal of the amended unfair practice charge.

ORDER

The amended unfair practice charge in Case No. SA-CE-2933-E is DISMISSED WITHOUT LEAVE TO AMEND.

Members Krantz and Paulson joined in this Decision.

[3] PERB Regulation 32635, subdivision (a)(1) requires an appeal from a dismissal to: (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken; (2) Identify the page or part of the dismissal to which each appeal is taken; and (3) State the grounds for each issue stated.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-7242
Fax: (916) 327-6377

July 5, 2019

Laureen Thompson

Re: *Laureen Thompson v. Stockton Unified School District*
Unfair Practice Charge No. SA-CE-2933-E
DISMISSAL LETTER

Dear Ms. Thompson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 30, 2018, and amended on February 27, 2019. Laureen Thompson (Charging Party) alleges that the Stockton Unified School District (District or Respondent) violated section 3543.5(a) of the Educational Employment Relations Act (EERA or Act)[1] by transferring Charging Party involuntarily, in violation of the collective bargaining agreement (CBA) between the District and the California School Employees Association & its Chapter 821 (CSEA).

Charging Party was informed in the attached Warning Letter dated February 15, 2019, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, she should amend the charge. Charging Party was further advised that, unless she amended the charge to state a prima facie case or withdrew it on or before February 28, 2019, the charge would be dismissed. Charging Party filed an amended charge on February 27, 2019.

The amended charge alleges facts dating back to April 15, 2016. On that date, Charging Party received a list of new job duties. On April 18, 2016, Charging Party told Stockton High School Principal Maryann Santella (Santella) that she believed the new job duties were outside of her job description. Santella told Charging Party that she should attend a meeting the District had scheduled for the following month regarding reclassification. On May 16, 2016, Charging Party attended the reclassification meeting, and received an application to reclassify her position. She was told the District would not be accepting such applications until September 1, 2016.

Some time in September, Charging Party submitted an application requesting that her position be reclassified to a Student Data Technician. Santella signed off on the application. Another

[1] EERA is codified at Government Code section 3540 et seq., and may be found at www.perb.ca.gov.

employee, Stephanie Salcedo (Salcedo), simultaneously submitted an application to reclassify her position to High School Secretary. From January 5, 2017, to April 3, 2017, Charging Party was out on maternity leave. When she returned to work, she was told to perform the same duties she was performing at the time her leave began, and that the District had not yet decided whether to reclassify her position.

On April 11, 2017, Charging Party sent an electronic mail (e-mail) message to the CSEA president asking for advice on whether the District could legally continue to make her work out of class, and whether she should stop performing such duties. The CSEA president met with someone from the District's Human Resources Department on May 1, 2017, to discuss Charging Party's out of class work. On May 9, 2017, the CSEA president called Charging Party and told her that the District would be reclassifying her to a higher position, and that CSEA would be seeking back pay from the District for the time Charging Party was performing out of class work.

On May 10, 2017, Charging Party told Santella that she understood that she was going to be reclassified to a higher position. Santella responded with rage, pointing her finger at Charging Party and yelling, "Don't you start that shit like the other girl who left." Charging Party put up her hand with a "stop" signal gesture, and told Santella to calm down. Santella went on to state, "don't go by everything your union tells you because they lie[.] [A] lot of them are new and don't know what they are doing."

On May 19, 2017, Charging Party received an e-mail message from the District, approving her reclassification request. The District also sent a copy of the approval via e-mail message to Santella. When Santella read the e-mail message, Charging Party heard her yell, "Student Data Tech!"

On May 21, 2017, Salcedo told Charging Party that Santella told her (Salcedo), outside of Charging Party's presence, "now that you got your reclass to High School Secretary, now you gonna be my little [b]itch." On June 5, 2017, Santella told Charging Party in a loud, angry tone, "with your new title[,] I know what your new start date is[,] so make sure you're here on the right date." On an unspecified date, Charging Party was informed by the District's Human Resources Department that her start date in the reclassified position would be effective on July 1, 2017.

On an unspecified date on or after July 21, 2017, at the advice of CSEA, Charging Party asked Santella to sign off on her time sheets for all of the time she worked out of class, and to obtain Santella's signature on the time sheets, so she could receive back pay. Santella signed all of the time sheets, but also told Charging Party, "be careful with your union[.] [T]hey may be telling you to do something that might not be true."

On August 1, 2017, CSEA informed Charging Party that she and Salcedo needed to have Santella sign prior authorization forms to reclassify each of their positions. Charging Party and Salcedo asked Santella to do so, and Santella responded, "I'm not signing shit[.] This is not coming out of my budget." Santella had previously upgraded a position for a Hispanic employee by signing a "prior authorization," but refused to do the same for Charging Party.

Santella also looked at Salcedo, and said, "I feel sorry for you… and now I regret signing your time sheets."

On August 4, 2017, Charging Party met with a CSEA representative to discuss the compensation for having worked out of class. Santella learned about the meeting and "seem[ed] agitated" about it.

Santella rearranged the office on August 8, 2017. Charging Party first noticed the rearrangement when she arrived at work on August 14, 2017, and asked Salcedo why it had occurred. Salcedo responded, oddly, "[i]t's your new job description." Later that day, Salcedo gave Charging Party some paperwork and told her it was within her new job description. Charging Party perceived the statement as bullying.

On August 11, 2017, Santella sent an e-mail message to all staff, scheduling a recurrence of monthly meetings beginning August 15, 2017, "to discuss responsibility, professionalism, breaks and lunch breaks." For the previous year and a half, Charging Party had taken her lunch breaks late so that she could pick up her children from school. Believing that Santella's e-mail message was the "beginning signs of retaliation," Charging Party forwarded the e-mail message to a job steward.

The first monthly meeting took place as scheduled on August 15, 2017. Just before the meeting started, Charging Party was on a phone call, and Santella yelled, "Laureen, let's go! It's time for the meeting!" Santella was angry during the meeting. She apologized to Student Data Technician Kathy Davis (Davis) for moving her into the same office as Charging Party without notice, and explained that she needed both Student Data Technicians together "upfront." Santella did not apologize to Charging Party.

Later that day, Santella sent an e-mail message to Charging Party stating that she needed to change her lunch breaks to "match the whole week" per the CBA. She told Charging Party to "[h]ave a new lunch schedule by tomorrow." Charging Party asked Santella why she was asking her for a new schedule, and for more time to create one.

According to the amended charge, Santella engaged in "discrimination, bullying, coercing, harassments, hostile environment and violation[s]" throughout the 2017-2018 school year. Charging Party contends that Santella created a hostile work environment, fabricated contract language, acted aggressively toward her, coerced her personal information, and discriminated against her by refusing her request to adjust her lunch schedule but granted a similar request made by a Hispanic employee. Charging Party also asserts that Santella used profane and vulgar language toward her and made offensive comments and jokes about her in front of other employees.

In the amended charge, Charging Party also asserts that, on July 17, 2018, the District involuntarily transferred Charging Party from Stockton High School to Stagg High School. The amended charge alleges that on the morning of July 17, 2018, Stockton High School Principal Maryann Santella (Santella) arrived at work and "began angry aggression" toward Charging Party. According to the amended charge, Santella contacted District Labor Relations

Representative Claudia Moreno (Moreno), who called Charging Party by telephone, and told her to go home for the day and to go the District Office for a 12:00 p.m. meeting that day. Moreno also told Charging Party that she was being transferred to Stagg High School effective the following day, and that the transfer was not disciplinary. On July 18, 2018, Charging Party began working at Stagg High School.

Charging Party alleges that "[a] grievance was filed for this involuntary[,] capricious act." During an initial grievance meeting between CSEA and the District, Moreno stated that Charging Party had been transferred because Stagg High School needed some help with registration duties. During a subsequent grievance meeting between CSEA and the District, Moreno stated that Charging Party had been transferred because she had filed complaints with the District and Department of Fair Employment and Housing (DFEH) and PERB charges, which created a hostile work environment.

While not entirely clear, it appears that the amended charge also alleges the District did not comply with a CBA provision that requires that the District give written notice of a transfer.

Charging Party alleges that the position she was transferred to at Stagg High School should have been offered to Davis, who had more seniority and who had requested to be transferred after Santella called her a "dirty m[o]ther fucker."

After Charging Party was transferred to Stagg High School, Santella downgraded Charging Party's former position at Stockton High School to an Attendance Technician but did not staff the position until October 2018.

The amended charge alleges that the District involuntarily transferred her in retaliation for "the multiple complaints/grievance of hostile environment, discrimination, retaliation, harassments, bullying, coercion, attempt to sabotage my work, board policy violation, and CSEA 821 contract violation."

The Retaliation Allegation

The amended charge does not establish a prima facie case of retaliation. As stated in the February 15, 2019, Warning Letter, to demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*).)

Generally, seeking assistance or advice from an exclusive representative to resolve workplace disputes is considered protected activity. (*Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M.) Charging Party may have engaged in protected activity when she consulted CSEA on April 11, 2017, and August 4, 2017, about her concerns that she was working out of class and any resulting compensation. (*Ibid*.) However, Charging Party has not demonstrated that she suffered any adverse action. (*Novato, supra*, PERB Decision No. 210.)

Charging Party alleges she was involuntarily transferred to Stockton High School on July 17, 2018. However, Charging Party does not establish that a reasonable person would consider the transfer to be an adverse action. (*Alvord Unified School District* (2009) PERB Decision No. 2021.) For example, Charging Party does not allege that the transfer resulted in a loss in pay or benefits (*Newark Unified School District* (1991) PERB Decision No. 864), decreased prestige (*Antelope Valley Union High School District* (2019) PERB Decision No. 2631), a step down on the career ladder (*ibid*.), or less favorable working conditions (*Chico Unified School District* (2015) PERB Decision No. 2463). Thus, the charge fails to establish the requisite adverse action.

Charging Party has not demonstrated a nexus between the alleged protected activity and the alleged adverse action. (*Novato, supra*, PERB Decision No. 210.) At a bare minimum, a charging party must establish close temporal proximity between the two elements. (*North Sacramento School District* (1982) PERB Decision No. 264.) There is no "bright line" rule requiring a particular closeness in time between the protected activity and the retaliatory conduct. (*Regents of the University of California (UC Davis Medical Center)* (2013) PERB Decision No. 2314-H.) However, PERB has held that a span of one to two months sufficiently establishes temporal proximity. (*Calaveras County Water District* (2009) PERB Decision No. 2039-M.) On the other hand, PERB has held that temporal proximity is not established with periods spanning four months (*San Diego Unified School District* (1991) PERB Decision No. 885) and five months (*Los Angeles Unified School District* (1998) PERB Decision No. 1300). PERB has also held that a span of eight months does not show the requisite temporal proximity, where there were no escalating events during that span. (*Jurupa Unified School District* (2015 PERB Decision No. 2450.)

Here, even if Charging Party's contacts with CSEA on April 11, 2017, and August 4, 2017, about working out of class, were protected activity, those contacts occurred approximately 11 months and 14 months before the involuntary transfer on July 17, 2018. Thus, Charging Party fails to establish even a minimum temporal proximity between the events. (*North Sacramento School District, supra,* PERB Decision No. 264.)

Based on the above, the allegation that the District retaliated against Charging Party by involuntarily transferring her to Stagg High School is hereby dismissed.

<u>The Alleged CBA Violation Regarding Notice of Transfer</u>

EERA section 3541.5(b) states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

To the extent that Charging Party alleges that the District failed to comply with the notice provisions of the CBA, PERB does not have the authority to enforce the CBA. (Gov. Code, § 3541.5(b).) Moreover, Charging Party has not demonstrated that the District's alleged lack of

notice was an unfair practice under the EERA. Thus, any allegation that the District violated the CBA must be dismissed.

The Racial Discrimination Allegation

Although unclear, it appears the amended charge alleges that the District discriminated against Charging Party based on her race. PERB's jurisdiction is limited to resolving claims of unfair practices, as defined, which violate the collective bargaining statutes enforced by PERB. (See, e.g., *Los Angeles Unified School District* (1984) PERB Decision No. 448.) PERB lacks jurisdiction to enforce other statutory or constitutional schemes. (*State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2018-S.) For example, PERB lacks jurisdiction to enforce laws prohibiting discrimination on the basis of race. (*Alum Rock Union Elementary School District* (2005) PERB Decision No. 1748.) Thus, any allegations of racial discrimination are hereby dismissed.

Therefore, the charge is hereby dismissed based on the facts and reasons set forth herein and in the February 15, 2019, Warning Letter.

Right to Appeal

Pursuant to PERB Regulations,[2] Charging Party 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. (Cal. Code Regs., tit. 8, § 32635, subd. (a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-9425

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at www.perb.ca.gov.

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

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 and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, § 32132.)

Final Date

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

Sincerely,

J. FELIX DE LA TORRE
General Counsel

By _____
Keith B. LaMar
Regional Attorney

Attachment

cc: Craig Wells, Assistant Superintendent
Stockton Unified School District
Marie Nakamura, Attorney
Dannis Woliver Kelley

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-7242
Fax: (916) 327-6377

February 15, 2019

Laureen Thompson

Re: *Laureen Thompson v. Stockton Unified School District*
Unfair Practice Charge No. SA-CE-2933-E
WARNING LETTER

Dear Ms. Thompson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 30, 2018. Laureen Thompson (Charging Party) alleges that the Stockton Unified School District (District or Respondent) violated section 3543.5(a) of the Educational Employment Relations Act (EERA or Act)[1] by transferring Charging Party involuntarily, in violation of the collective bargaining agreement (CBA) between the District and the California School Employees Association & its Chapter 821 (CSEA).

FACTS AS ALLEGED

Before July 17, 2018, Charging Party was employed by the District as a Student Data Technician at Stockton High School, a classification over which CSEA is the exclusive representative. CSEA and the District are parties to a CBA that contains provisions regarding involuntary transfers of employees. Section 13.5.1 of the CBA provides:

> An involuntary transfer may be initiated by the District and shall be based exclusively on the work-related needs of the District and will not be for disciplinary or capricious reasons. A bargaining unit member shall not have his/her assigned hours reduced, or shift changed, as a result of the District-initiated transfer, but shall be constituted only by mutual agreement with the Association and concurrence of the bargaining unit member.

Section 13.5.2 of the CBA provides:

> In the event that circumstances require that a bargaining unit member be transferred on an involuntary basis, the bargaining

[1] EERA is codified at Government Code section 3540 et seq. PERB's regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

> unit member and the Association shall be informed of the reason(s) in writing prior to such action and shall be afforded an opportunity to meet with the Human Resources Department regarding the proposed transfer.

During the 2017-2018 school year, Charging Party received notice that she would continue to be assigned at Stockton High School during the next school year. Also during the 2017-2018 school year, Charging Party learned that Kathy Davis (Davis), another Student Data Technician at Stockton High School, asked Principal Maryann Santella (Santella) to transfer her to a different school site, but was denied.

On July 17, 2018, at 7:20 a.m., Charging Party arrived at her workplace after returning from summer break. Approximately 30 minutes later, Santella approached Charging Party and other employees "with attitude," "rudely clapped her hands," and yelled, "Hello. Is everyone ready? There's plenty of work Stephanie e-mailed that needs to be done. Let's go!" Later, Santella approached Charging Party at her workstation "with a frown on her face," and asked angrily, "What are you working on?!" Charging Party told Santella she was working on "the cums and records request." Santella left and walked to her office.

Approximately 30 minutes later, Charging Party received a telephone call from Claudia Moreno (Moreno), Director of Labor Relations for the District. Moreno asked Charging Party to report to her office for a meeting at noon that day, and informed her that the District intended to involuntarily transfer her to a different work location. Moreno added that the transfer was not disciplinary, and that a representative from CSEA would be present at the meeting. Charging Party stated she would review the CBA and contact CSEA.

Charging Party called CSEA representative Casey Thompson (Thompson) by telephone. Thompson told Charging Party that he was not aware of the transfer. Charging Party later received a telephone call from CSEA steward Donna Taves, who stated that she was also not aware of the transfer and postponed the meeting with Moreno.

Charging Party learned that the position to which she was being transferred had not been offered to Davis when she requested a transfer. Charging Party also alleges that, although another employee had less seniority than Charging Party, that employee was not transferred to the position.

On July 17, 2018, Charging Party filed a grievance alleging that the intended transfer by the District violated Sections 13.5.1 and 13.5.2 of the CBA. On the grievance form, Charging Party stated she was seeking to "[s]top the discrimination, harassment[,] & bullying," and to stop the District's violations of the CBA.

DISCUSSION

Charging Party's Burden

PERB Regulation 32615(a)(5) requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." In doing so, a charging party should allege with specificity the particular facts giving rise to a violation. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) The charging party may do this by alleging sufficient facts describing the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture*) (1994) PERB Decision No. 1071-S, citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Such allegations should focus on the elements of the prima facie case. Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid*.; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The "clear and concise statement of the facts and conduct alleged to constitute an unfair practice," as required by PERB Regulation 32615(a)(5), must be stated in the charge itself. Mere mention of the relevant facts in attached documents, without reference to those facts in the charge itself, is insufficient to satisfy this requirement. (*Sacramento City Teachers Association (Franz)* (2008) PERB Decision No. 1959; see also *Monrovia Unified School District* (1984) PERB Decision No. 460 [allegations of fact must be contained in the statement of the charge].)

Retaliation

To demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*).)

1. Adverse Action

In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

Although Charging Party alleges that the District informed her of its intent to transfer her to a new work location, she does not identify pertinent details, such as the new work location, the date of the transfer, or that the transfer actually occurred. Thus, the charge lacks the requisite clear and concise statement of the particular facts alleged to be an unfair practice. (*National Union of Healthcare Workers*, *supra*, PERB Decision No. 2249a-M.)

Moreover, even if Charging Party can demonstrate particular facts about the transfer, she has not established that the transfer was an adverse action. An involuntary transfer of an employee to a different work location may be considered an adverse action in some circumstances. For example, the employee may show that the transfer resulted in a loss of pay or benefits. (*Fall River Joint Unified School District* (1998) PERB Decision No. 1259.) Also, the employee may show that a reasonable person would consider the new location to be a "bad place to work." (*Los Angeles Community College District* (2011) PERB Decision No. 2219.) Charging Party has not demonstrated that she suffered a loss in pay or benefits, that a reasonable person would consider the new work location unfavorable, or any other relevant facts. Thus, the charge does not establish the requisite adverse action. (*Newark Unified School District*, *supra*, PERB Decision No. 864.)

2. Nexus

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation)* (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M; *Coast Community College District* (2003) PERB Decision No. 1560); (5) the employer's failure to offer the employee justification at the time it took action (*Oakland Unified School District* (2003) PERB Decision No. 1529) or the offering of exaggerated, vague, or ambiguous reasons (*McFarland Unified School District* (1990) PERB Decision No. 786); (6) employer animosity towards union activists (*Jurupa Community Services District* (2007) PERB Decision No. 1920-M; *Cupertino Union Elementary School District* (1986) PERB Decision No. 572); or (7) any other facts that might demonstrate the employer's unlawful motive (*North Sacramento School District*, *supra*, PERB Decision No. 264; *Novato*, *supra*, PERB Decision No. 210).

Charging Party alleges that she contacted a CSEA representative and filed a grievance regarding her belief that the District's proposed involuntary transfer violated the CBA. Generally, seeking assistance from the union regarding employment concerns is considered protected activity. (*Jurupa Unified School District* (2015) PERB Decision No. 2458.) Also, filing grievances is generally considered protected activity under EERA. (*Napa Valley Community College District* (2018) PERB Decision No. 2563.) However, to establish a nexus between protected activity and adverse action, the alleged protected activity must have occurred before the alleged adverse action. (*Berkeley Unified School District* (2004) PERB Decision No. 1702.) Here, Charging Party only alleges that she contacted the CSEA representative and filed her grievance ***after*** the District informed her that it intended to transfer her. Thus, the charge does not demonstrate that the District took the alleged adverse action ***because*** Charging Party engaged in any protected activity. (*Ibid*.)

For these reasons the charge, as presently written, does not state a prima facie case.[2] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the Respondent's representative and the original proof of service must be filed with PERB. If an amended charge or withdrawal is not filed on or before February 28, 2019,[3] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Keith B. LaMar
Regional Attorney

KBL

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[2] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

[3] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile or electronic mail. (PERB Regulation 32135.)