



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

DORION KEITH HILLIARD,

Charging Party,

v.

PASADENA AREA COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-6514-E

PERB Decision No. 2742

August 19, 2020

Appearances: Dorion Keith Hilliard, on his own behalf; Erickson Law Firm by Joshua Taylor, Attorney, for Pasadena Area Community College District.

Before Banks, Krantz, and Paulson, Members.

DECISION¹

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Charging Party Dorion Hilliard (Hilliard) from an Order Granting Respondent Pasadena Area Community College District's (District) Motion to Dismiss. The complaint alleged that the District violated the Educational Employment Relations Act (EERA)² when it instructed Hilliard to provide proof of his job

¹ Subdivision (d) of PERB Regulation 32320, as amended effective April 1, 2020, permits a majority of Board members issuing any decision or order to designate all or part of such decision or order as non-precedential. Based on all relevant circumstances, including the criteria set forth in Regulation 32320, subdivision (d), we designate the instant decision as non-precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

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

qualifications for the first time in four years of his employment with the District, and that in doing so the District interfered with Hilliard's protected rights. Prior to the scheduled formal hearing, the District filed with the administrative law judge (ALJ) a Motion to Dismiss and Motion for Sanctions that included additional factual allegations beyond those that the Office of the General Counsel (OGC) considered prior to issuing the complaint. Hilliard thereafter filed a response to the Motions, but he did not dispute any of the District's factual allegations. The ALJ concluded that neither the underlying charge nor the complaint stated a prima facie case of interference, and that even if they did, the District established based on the undisputed facts that it had a legitimate business reason for asking Hilliard to provide proof of his qualifications. Accordingly, the ALJ issued an order granting the Motion to Dismiss and denying the Motion for Sanctions (Order).

Based on our review of the entire case file, we find the Order did not err in any manner that would impact the outcome. We therefore deny the appeal and affirm the Order, subject to the brief discussion below.

DISCUSSION

The Board applies a de novo standard of review to an appeal of a dismissal without a hearing.³ (*Santa Ana Unified School District* (2017) PERB Decision

³ PERB Regulation 32635, subdivision (a), 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." Rather than stating the specific issues of procedure, fact, law, or rationale that are being appealed, Hilliard's appeal consists almost entirely of new charge allegations. Setting aside Hilliard's failure to make a showing of good cause for the Board to consider such new allegations (PERB Reg. 32635, subd. (b); *American Federation of State, County, and*

No. 2514, p. 37 (*Santa Ana*.) We treat the charging party's factual allegations as true and consider them in the light most favorable to the charging party. (*Hartnell Community College District* (2018) PERB Decision No. 2567, p. 6, internal citations omitted.) We rely on the respondent's responses only to the extent they do not conflict with charging party's allegations. (*City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2.) Where a motion to dismiss turns on matters outside the complaint, the moving party must demonstrate that no material facts are in dispute and that it is entitled to judgment as a matter of law. (*Santa Ana, supra*, PERB Decision No. 2514, pp. 27-28.) On the other hand, where a material factual dispute exists, a hearing is necessary to resolve the dispute before the matter may be properly dismissed. (*Id.* at p. 30; PERB Reg. 32207.)

We affirm but do not adopt the Order as the decision of the Board itself because we find that the ALJ's legal analysis of Hilliard's prima facie case was incomplete and potentially unclear. To state a prima facie case of interference, a charging party must show that an employer's conduct tends to or does result in some harm to employee rights under our statutes. (*Trustees of the California State University (Northridge)* PERB Decision No. 2687-H, p. 3.) Once a charging party has

Municipal Employees, Local 2620 (2012) PERB Decision No. 2286-S, p. 3), we find that Hilliard's principal problem on appeal is a jurisdictional one, as most of the new allegations arise from statutes that PERB does not have authority to enforce. (*State of California (Department of Personnel Administration)* PERB Decision No. 2018-S, p. 4 [PERB does not enforce other independent statutory schemes].) The balance of his appeal raises issues that were adequately addressed in the Order or would not impact the outcome, and therefore do not warrant further consideration. (*Cal Fire Local 2881 (Tobin)* (2018) PERB Decision No. 2580-S, p. 5; *City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

established its prima facie case, the burden then shifts to the employer. (*Ibid.*) If the harm to protected rights is slight and the employer offers justification based on operational necessity, the Board will balance the competing interests; if the harm to employee rights outweighs the asserted business justification, a violation will be found. (*Hartnell Community College District (2015) PERB Decision No. 2452, p. 24.*) Where the employer's conduct is inherently destructive of protected rights, the employer must prove that the interference was caused by circumstances beyond its control and that no alternative course of action was available. (*Ibid.*)

The Order states:

“Regardless of whether the District instructed Charging Party to provide proof of his job qualifications because he had requested attendance at the ‘programmers training’ and the District wished to verify that he met the requirements for that training, or whether the District so instructed him because it had ‘some question [as] to the accuracy of [his] employment application,’ without more, this instruction cannot constitute interference as a matter of law, *because it is an employer’s obvious prerogative to verify the job qualifications of its employees*, at least as long as there are no circumstances that would indicate that doing so tends to or actually does result in harm to employee rights. [Citation.] The complaint includes insufficient facts to make that determination.”

(Order, p. 22, emphasis added.)

Based on our reading of the Order, the excerpted portion of the ALJ's discussion appears to collapse the District's affirmative defense into an analysis of Hilliard's prima facie case. To the extent the District's proffered justifications for asking Hilliard for proof of his job qualifications were considered as part of whether the District's action tended to or resulted in slight harm to Hilliard's protected rights, that

was in error. It is only after the charging party demonstrates at least slight tendency to harm employee rights that an employer's asserted business justifications come into play.

Nonetheless, the outcome remains the same. This is a rare case in which, even though OGC found cause to issue a complaint, the respondent was subsequently able to allege sufficient undisputed facts to support summary dismissal without a hearing. The Order properly dismissed the complaint and underlying charge.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CE-6514-E are DISMISSED WITHOUT LEAVE TO AMEND.

Members Krantz and Paulson joined in this Decision.