STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 715, AFL-CIO,	)	
Charging Party,	)	Case No. SF-CE-990
v.	)	PERB Decision No. 572
CUPERTINO UNION ELEMENTARY SCHOOL DISTRICT,	)	May 9, 1986
Respondent.	)	

Appearance: Van Bourg, Weinberg, Roger & Rosenfeld by Vincent A. Harrington, Jr., for Service Employees International Union, Local 715, AFL-CIO.

Before Morgenstern, Porter and Craib, Members.

DECISION

MORGENSTERN, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Service Employees International Union, Local 715, AFL-CIO (SEIU or Charging Party) of a partial dismissal of an unfair practice charge filed against the Cupertino Union Elementary School District (District).

We have reviewed the dismissal issued by the Board's regional attorney and find, in accordance with the discussion that follows, that SEIU has presented factual allegations sufficient to support a prima facie case that a group of employees was selected for layoff because of participation in protected activities by members of that group.

DISCUSSION

PERB Regulation 32615[1] sets forth the required contents of an unfair practice charge and obligates the charging party to, inter alia, set forth in its charge "a clear and concise statement of the facts and conduct alleged to constitute an unfair practice." PERB Regulation 32630 authorizes dismissal and refusal to issue a complaint "ti]f the Board agent concludes that the charge or the evidence is insufficient to establish a prima facie case . . . ."

In the instant case, SEIU charges that the District discriminated against a group of employees because of their exercise of rights guaranteed by the Educational Employment Relations Act (EERA).[2] Specifically, the thrust of the charge is that management implemented a layoff that targeted the maintenance/trades department because of a high number of union activists in that department.

In Novato Unified School District (1982) PERB Decision No. 210, rev. den. (1/10/83) 1 Civ. No. A017764, the Board set forth those elements necessary to establish a charge of discrimination. Accordingly, we have examined the charge to determine whether Charging Party has included statements of fact

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[1]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

supporting allegations that the targeted group of employees engaged in protected activity, that the employer had actual or imputed knowledge of the protected activity, and that the employer's conduct was motivated by the protected activity.

The charge filed on January 11, 1985 states that those employees laid off

> . . . included one chief steward, four current and former negotiators, five current and former shop stewards, two chapter officers, eight current and former members of the joint Union/Management Personnel Committee, three members of the safety committee, and five members of the District-sponsored cadre committee. . . .

The charge also details certain events that occurred in 1982-83 involving Supervisor Gerald Burch and District Manager Leroy Munoz and grievances and employment discrimination complaints filed against them by employees, with the assistance of SEIU. The charge further specifies:

> The District, by and through its authorized agents and representatives Munoz and Burch, knew of the activism of the affected maintenance department employees, in that these employees acted as shop stewards in dealing with both Munoz and Burch, met with Burch and/or Munoz and other representatives of the District in connection with the meetings of the various committees with which the employees worked, and further, that the Union regularly and routinely adverted to the officer or steward status of these employees in communications and letters, flyers and the like which were regularly distributed within the School District.

In our view, the charge sufficiently establishes that the group of employees selected for layoff had engaged in numerous protected activities, and that the employer had knowledge thereof.

Finally, in order to satisfy Novato, the charge must contain sufficient allegations that link the layoff to the protected activity and that, if true, would support an inference of unlawful motivation. Charging Party makes such an allegation in its charge.

> But for the Union membership, affiliation, or activities of the maintenance department employees, they would not have been the subject of these lay offs, because there were various alternatives argued for, and presented to the District by the Union, all of which were effectively ignored by District representatives in favor of the Munoz plan, which had a direct and wholesale negative impact on the blue collar Union leadership.

Moreover, a letter incorporated into the charge, dated August 28, 1984, addressed to the District governing board from SEIU, refers to the proposed layoffs and states:

> However, our concern runs beyond the fact that we believe an alternative organization would work. It seems clear to us that the District's proposal is not based solely on organizational needs, but is being used to "punish" or retaliate against a number of workers who have, over the years, challenged Leroy Munoz, the department's manager. It seems far too coincidental to us that the effect of the proposed organization is to completely lay off, out the door, virtually every Facilities member of the Union/District Personnel Committee, and eliminates the Union's past President, 4 or 5 past and present Negotiators, the Chief Steward, and 2 to 3 current or former Shop Stewards, and the [sic] all but one member of the Facilities Cadre "Committee" (including the supervisor).
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> It would take many pages to detail all the possible reasons for such action on Mr. Munoz's part. Several of the more outstanding confrontations and differences

> of opinion are described in Attachment D. Suffice it to say here that there is a history of Unfair Labor Practice Charges against Mr. Munoz and his subordinates; ongoing complaints in Personnel Committee about clear errors in judgment; an EEOC suit; and a letter to this Board 18 months ago detailing areas where we believed Mr. Munoz and Mr. Belote had badly mismanaged summer scheduling and relationships with contractors. All these could well create a desire to retaliate against us when the opportunity presents itself.

Indeed, as SEIU suggests, there are many pages of documents attached to the charge itself detailing the possible motivational link between the protected activity and the layoff. Incidents beginning in 1982 characterize an antagonistic relationship between management and the employees and their representative. From our review of the allegations and the documents attached to the charge,[3] we find sufficient circumstantial evidence from which an inference can be drawn that there may be a link between past aggressive union activity and the decision to lay off the maintenance group. In so concluding, however, no final determination of these charges is made or inferred. The matter before the regional attorney and before the Board at this juncture is only the adequacy of Charging Party's prima facie case. The proving of the elements of the prima facie case, and the issue of whether the employer would have acted as it did

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[3]The allegations in a charge are presumed true for the purpose of reviewing a dismissal prior to hearing. San Juan Unified School District (1977) EERB Decision No. 12. (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board or EERB.)

but for the employees' union activities, are properly the subjects of an evidentiary proceeding before an administrative law judge.

In reaching this conclusion, we are mindful of the fact that the regional attorney's task of evaluating the charge would have been facilitated had SEIU named the individuals affected and supplied other requested information. However, in our view, the gravamen of SEIU's charge is that the layoff discriminatorily targeted a group of employees that included numerous union activists. Where an employer's decision to lay off a group of employees is unlawfully motivated by the union activism of some members of the group, the layoff is unlawful as to the entire group.[4]

In addition to the charge alleging discrimination against the maintenance group, we also find the facts set forth in the charge are sufficient to state a prima facie case that the employer interfered with the employees' rights to engage in protected activity and with the employee organization's rights as well.[5]

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[4]Thi[4]This conclusion is in accord with federal case law. See, e.g., REA Trucking Company, Inc. (1969) 176 NLRB 520 [72 LRRM 1449] enfd. (9th Cir. 1971) 439 F.2d 1065 [76 LRRM 3018]; Hedison Manufacturing Company (1980) 249 NLRB 791 [104 LRRM 1506]; and Howard Johnson Company (1974) 209 NLRB 1122 [86 LRRM 1148].

[5]Should Charging Party's theory change to one alleging retaliation or interference directed at specific individual employees, then Charging Party should move to amend its charge accordingly.

Thus, the complaint that will issue shall include an alleged violation of section 3543.5(a) and (b).[6] 6

One final note. Charging Party has treated this as a test case of the authority of the regional attorney. Some of the arguments made in support of the appeal stray from the mark. For example, no effort was made by the regional attorney to make policy determinations, as Charging Party suggests. Nor does the fact that the general counsel's office does not prosecute unfair practice charges undercut the agency's right, through investigation, to screen out nonmeritorious charges. While the public may not be paying Charging Party's attorney, it is paying for administrative law judges, Board members, Board counsel and facility and support staff involved in processing charges once complaints have issued. School district reimbursement for EERA-generated costs is another statewide public expense. In sum, the regional attorney has good reason to attempt to get as much information as possible, and charging parties jeopardize their cases by refusing to cooperate.

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[6]Section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to:
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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

All that aside, however, District animosity towards the employees of the maintenance/trades department, based on the extensive union activities of some employees of that department, is inferable from the facts alleged in the charge, and that alleged animosity may have been a factor in making the broad scale maintenance layoff decision. We do not believe that the information requested by the regional attorney in this instance was essential to reach a conclusion that a prima facie case of discriminatory layoff and/or interference involving the maintenance/trades department has been stated.

ORDER

Based on the foregoing, we REVERSE the regional attorney's partial dismissal of the charge and ORDER that a complaint issue and the case proceed to hearing under the direction of the chief administrative law judge.

Members Porter and Craib joined in this Decision.