

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



NANCY A. RIDLEY,)
)
Charging Party,) Case No. LA-CE-227-H
)
v.) PERB Decision No. 700-H
)
REGENTS OF THE UNIVERSITY OF)
CALIFORNIA,) September 27, 1988
)
Respondent.)
_____)

Appearances: B. Benedict Waters, for Nancy A. Ridley; Claudia Cate, Attorney for Regents of the University of California.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of a Board agent's dismissal, attached hereto, of her charge that the Regents of the University of California violated section 3571(a) of the Higher Education Employer-Employee Relations Act (codified at Gov. Code sec. 3560 et seq.). We have reviewed the dismissal and, finding it free from prejudicial error, we adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CE-227-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the Board

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



March 29, 1988

B. Benedict Waters
P.O. Box 191018
Los Angeles, California 90019

Re: LA-CE-227-H, Nancy A. Ridley v. Regents of the University of California, DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Waters:

The above-referenced unfair practice charge, filed on December 9, 1987, alleges that the Regents of the University of California (University) refused to process a grievance. This conduct is alleged to violate Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you in my attached letter dated March 22, 1988 that the above-referenced 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 the charge to state a prima facie case, or withdrew it prior to March 29, 1988, it would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my March 22, 1988 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.), or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. (See 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 to issue a complaint, any other party may file with the Board an original

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and five copies of a statement in opposition within twenty 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 document 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 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 (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.

Sincerely,

JOHN SPITTLER
Acting General Counsel

By 
DONN GINOZA
Regional Attorney

Attachment

cc: Claudia Cate

PUBLIC EMPLOYMENT RELATIONS BOARD



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March 22, 1988

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Re: LA-CE-227-H, Nancy A. Ridley v. Regents of the University of California

Dear Mr. Waters:

The above-referenced unfair practice charge, filed on December 9, 1987, alleges that the Regents of the University of California (University) refused to process a grievance. This conduct is alleged to violate Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation revealed the following facts. Charging Party is employed as a Communications and Records Assistant I at the University of California at Los Angeles. She is covered by the Memorandum of Understanding (MOU) negotiated between the American Federation of State, County and Municipal Employees (AFSCME) and the University for Unit 12 (Clerical and Allied Services).

On or about November 16, 1987, Charging Party filed a grievance against the University alleging sexual and racial harassment by her immediate supervisor, Paul Townsend. The official AFSCME grievance form requests information, including the employee's name, department, classification, work location, immediate supervisor, job title, statement of the grievance, including the applicable violation and adjustment required, the date of the grievance, the grievant's signature, and the grievant's representative, if any.

Charging Party's statement of the applicable violation of the MOU read as follows:

Article 4 - Sexual harassment. Paul Townsend, at the behest, and direction of Peter Blackman, has continuously harassed me since November 2, 1987. This harassment has been based partly upon my race associations, and on my being female. An addendum will be filed.

Charging Party's statement of the adjustment required read as follows: "An addendum will be filed."

The University, acting through Sandra J. Rich, Assistant Labor Relations Manager, acknowledged receipt of the grievance in a letter dated November 23, 1987. The letter read as follows:

I am in receipt of the attached grievance form which indicates that "an addendum will be filed." Please be advised that until such addendum is filed, no action will be taken by our office.

Charging Party never filed an addendum to the grievance. Charging Party alleges that she "is not obligated to file an addendum at any particular time in the grievance process, but retains, at all times, the discretion not to file an addendum -- at all." Charging Party contends that by refusing to proceed with the grievance, the University has interfered with the contractual benefit to present a grievance.

Article 6, section A.2. states in pertinent part:

. . . A grievance shall contain a clear and concise statement of the grievance by indicating the issue involved, the relief sought, the date the incident or violation took place and the specific section or sections of the Agreement involved.

Article 6, section H.1.a. provides in pertinent part:

. . . Any grievance which is not received within the time limits established by this Article and/or which does not comply with the procedures and requirements of this Article shall be considered waived and withdrawn by the employee and/or Union.

Based on the facts as stated above, the charge fails to state a prima facie violation of the NEERA for the reasons which follow.

Charging Party alleges that an unfair practice occurred because the MOU mandates that the University process a grievance and the University has interfered with this right by suspending the processing of the grievance pending receipt of the addendum. Charging Party cites the fact that the MOU contains no provision allowing the University to suspend the grievance under these circumstances.

The facts alleged fail to demonstrate that the University has breached the MOU. Article 6, section H.1.a. provides that a grievance not complying with the requirements prescribed by Article 6, including, a clear statement of the grievance and the relief sought, may be considered waived or withdrawn. When the Charging Party informed the University in the grievance form that she intended to file an addendum to amend both the violation section and the remedy section, the University did not repudiate the MOU by requesting the additional facts and remedial demands before proceeding.

However, assuming arguendo that a breach of MOU's provisions for the grievance procedure occurred, a breach alone is not sufficient. PERB "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." Government Code section 3563.2(b).

Therefore, the question is whether the University's conduct independently violated the NEERA. In order to state a prima facie violation alleging interference with rights guaranteed by the NEERA, the charging party must allege at least slight harm results from the employer's conduct. Consolidated Unified School District (1979) PERB Decision No. 89; Regents of the University of California (1983) PERB Decision No. 388-H. In Regents, PERB held that employer conduct in connection with the processing of grievances is unlawful "if the impact of it is to deprive employees of their statutory rights to effectively present their grievances." That case found that denying a grievant multiple representatives did not establish harm to guaranteed employee rights.

The facts in this case reveal that Charging Party filed the grievance and that the University returned it, indicating that it would not proceed until the "addendum" was filed. These facts alone fail to raise a reasonable inference that the University would have refused to process the grievance if Charging Party had provided the addendum. Charging Party took no other action upon receiving the letter, either in terms of providing an addendum or requesting the matter proceed on the basis that there was no new information to add at that time. As noted above, requesting the addendum was not unreasonable in view of the language of the MOU. Therefore the facts alleged fail to demonstrate that the University effectively interfered with Charging Party's right to present a grievance.

For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please

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amend the charge accordingly. 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 the charging party. 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 before March 29, 1988, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,



DOWN GINOZA
Regional Attorney