

conclusion, the Board noted that the Association, the only charging party with standing to allege a violation of section 3543.5(c), had not joined in the appeal. The dissent took the position that despite the fact the Association had not joined in the appeal, once an appeal is before the Board, the Board may examine all issues in the charge, de novo, to ascertain whether the allegations stated any prima facie violation of the Act. The dissent then proceeded to find that the unfair practice charge stated a prima facie violation of section 3543.5(c).

Taking its cue from the dissent, the Association now alleges it has an "interest in the determination of its section 3543.5(c) claim," and that it was "the intent and purpose of [the Association] to join in the appeal and seek a determination by PERB of its section 3543.5(c) violation charges." The Association argues that the Board's "mistaken belief that the Association had not joined in the appeal" constitutes an "extraordinary circumstance" and "prejudicial error of fact" justifying the Board's reconsideration of its decision pursuant to PERB Regulation 32410.²

²PERB Regulation 32410, states, in pertinent part, that:

Any party to a decision to the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact. . . .

An examination of the appeal itself, however, reveals that the Association, while it may have intended to appeal, did not do so. Nowhere in the appeal is the Association referred to as an appellant. The attorneys are identified as "attorneys for plaintiff" in the singular, and the caption identifies Jaeger as the only plaintiff. In fact, the appellant, Jaeger, is referred to as "plaintiff" in the singular throughout the appeal.

Nowhere in the introductory paragraph of the appeal is there any mention of the Association or its claim that the 3543.5(c) charge was erroneously dismissed. In fact, the introductory paragraph of the appeal states, in its entirety:

The plaintiff, DR. KATHRYN JAEGER, appeals the June 6, 1990, decision of the Public Employment Relations Board not to issue a complaint against defendant, ELK GROVE UNIFIED SCHOOL DISTRICT ("EGUSD") for violation of 3543.5 of the Government Code ("EERA"). The decision alleged that the plaintiff had not pled sufficient facts to constitute a prima facie case under the statute. The plaintiff disputes this contention and reiterates such facts as follows to demonstrate that as a result of her exercise of her rights under the EERA, the School District unilaterally, arbitrarily, and without justification reduced her step placement standing as a reprisal for her actions and, further, unilaterally discriminated against her by reducing her in step placement.

Thus, the appeal is premised solely on the theory that the District violated EERA section 3543.5(a) when it reduced Jaeger's step placement, thereby discriminating against her, as a reprisal for her engaging in protected activity. The references to the District's conduct vis-a-vis the Association, contained in the appeal, appear merely as background to Jaeger's claim.

The declaration filed by Robbe Henley (Henley), president of the Association for the year 1989-90, is insufficient to establish that the omission of the Association's name from the appeal was a mere procedural oversight. In the declaration, Henley merely states that the Association decided to appeal the decision to dismiss the section 3543.5(c) claim and that it was never the Association's intent or desire to abandon the section 3543.5(c) violation. Nowhere in the declaration does Henley indicate what steps were taken by the Association to effectuate an appeal, nor is there any evidence that the attorneys representing Jaeger were instructed to appeal the dismissal on behalf of both Jaeger and the Association.

As the Board finds the record insufficient to establish that the Association was a party to the appeal, the Board concludes that no extraordinary circumstances nor prejudicial errors of fact exist to justify reconsideration.

ORDER

The request for reconsideration is hereby DENIED.

Member Cunningham joined in this Decision.

Chairperson Hesse's dissent begins on page 5.

Hesse, Chairperson, dissenting: For the reasons stated in my dissent in Elk Grove Unified School District (1990) PERB Decision No. 856, I would grant Dr. Kathryn Jaeger (Jaeger) and the Elk Grove Psychologists and Social Workers Association's (Association) request for reconsideration. The amended unfair practice charge was filed jointly by Jaeger and the Association. Therefore, I find the allegations state a prima facie violation of section 3543.5(c) based on a unilateral change theory.