STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRANK BAKER, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. S-CE-1387 PERB Decision No. 875 May 14, 1991
LANCE BERNATH, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. S-CE-1388
WILLIAM BROWN, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. S-CE-1389
JOHN DARLING, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. S-CE-1390

ANNETTE DEGLOW, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1391
WILLIAM DIONISIO, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1392
DOUGLAS GARDNER, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1393
ALFRED J. GUETLING, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1394

ELENE HOLMES, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1395
DONALD KENT, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1396
BILL K. MONROE, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1397
RYAN POLSTRA, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1398

ROBERT PROAPS, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1399
MINA MAY ROBBINS, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1400
ELMER SANDERS, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1401
DEL WILSON, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. S-CE-1402

GLOYD ZELLER,	)	
Charging Party,	)	Case No. S-CE-1403
v.	)	
LOS RIOS COMMUNITY COLLEGE DISTRICT,	)	
Respondent.	)	

Appearances: Frank Baker, Lance Bernath, William Brown, John Darling, Annette Deglow, William Dionisio, Douglas Gardner, Alfred J. Guetling, Elene Holmes, Donald Kent, Bill K. Monroe, Ryan Polstra, Robert Proaps, Mina May Robbins, Elmer Sanders, Del Wilson, Gloyd Zeller, on their own behalf; Susanne M. Shelley, General Counsel for Los Rios Community College District.

Before Hesse, Chairperson, Shank and Carlyle, Members.

DECISION

HESSE, Chairperson: This case comes before the Public Employment Relations Board (Board) on appeal by Frank Baker, Lance Bernath, William Brown, John Darling, Annette Deglow, William Dionisio, Douglas Gardner, Alfred J. Guetling, Elene Holmes, Donald Kent, Bill K. Monroe, Ryan Polstra, Robert Proaps, Mina May Robbins, Elmer Sanders, Del Wilson and Gloyd Zeller (Charging Parties) of the dismissals of their separate charges alleging that the Los Rios Community College District (District) violated the Educational Employment Relations Act (EERA) section 3543.5(a)[1] by excluding them from eligibility

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:

for a 20 year longevity, 4 percent salary bonus step, when the District negotiated the current collective bargaining agreement with the Los Rios College Federation of Teachers/CFT/AFT (Federation).

The Charging Parties urge consolidation of their 17 separate charges in this single appeal. Because the allegations in the charges are identical, and the Charging Parties are similarly situated, the Board finds consolidation to be appropriate.[2] (See Chaffey Joint Union High School District (1988) PERB Decision No. 669.) Accordingly, this decision constitutes the Board's resolution of each of the charges listed above.

We have reviewed the dismissals and, finding them to be free of prejudicial error, adopt the factual summaries and the analyses as the decision of the Board itself. However, in the interest of efficiency, the warning and dismissal letters issued in each case will not be attached here, but relevant portions of these are summarized below.

> (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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

[2]We note also that the warning and dismissal letters issued in each case were substantially identical.

FACTUAL ALLEGATIONS

The Charging Parties are 17 regular part-time tenured instructors hired before November 8, 1967 (pre-67 instructors) by the District. The Federation is the exclusive bargaining representative for the certificated bargaining unit of which the Charging Parties are members. The District and Federation are parties to a collective bargaining agreement effective July 1, 1990 to July 30, 1993.

On or about December 5, 1990, each charging party filed an unfair practice charge. In their unfair practice charges, the Charging Parties allege that the Federation refused to represent their interests within the designated bargaining unit with regard to the salary provisions. The Charging Parties allege that the District and the Federation engaged in discriminatory acts towards the Charging Parties. During the 1985-86 school year, the District and Federation modified the regular salary schedule by adding a "Step 20" to the regular salary schedule which provided a 4 percent bonus. Charging Parties allege that the District's and Federation's position at that time was to exclude the pre-67 instructors from eligibility for this 4 percent bonus. In May 1990, Charging Parties allege they notified the Federation in writing of this highly discriminatory provision of the salary schedule which excluded the pre-67 instructors from the 4 percent bonus. Charging Parties allege they requested the Federation to take immediate action to correct this highly discriminatory provision of the salary schedule in the upcoming 1990-93

contract. As the District is the third largest in the State of California and has revenues in excess of $100 million, Charging Parties allege there is no rational basis for denying the 4 percent bonus to the Charging Parties.

Further, Charging Parties allege there is absolutely no justifiable reason for the Federation to support such discrimination against Charging Parties and the District should not have participated in such discrimination by including the inequitable salary provision in the collective bargaining agreement. Charging Parties allege the District's and Federation's negotiated salary provision in the 1990-93 collective bargaining agreement denies "equality to certificated employees without rational and honest reasoning." By entering into the new collective bargaining agreement, the District has participated in establishing a highly discriminatory salary provision. Charging Parties allege that the District's actions must be classified as arbitrary, capricious, discriminatory and without rational and honest judgment. Charging Parties assert this conduct constitutes an unfair practice in violation of EERA and requests the Board order the District and Federation to extend the 4 percent bonus to all pre-67 instructors with 20 years of employment with the District.

In response to receiving warning letters from the two Board agents, each charging party filed an amended unfair practice charge on or about January 24, 1991. In their amended unfair practice charges, Charging Parties included additional background

information. In 1977, as a result of the court decision in Deglow v. Board of Trustees (1977) 69 Cal.App.3d 459, tenure status was granted to approximately 33 pre-67 instructors. However, the District still maintained two separate salary structures; one for regular instructor and one for part-time evening and summer school instructors. Subsequently, in the 1980-81 academic year, the now tenured part-time instructors were placed on the regular instructors' salary schedule at step 1. The collective bargaining agreement in existence at that time between the District and Federation was amended to provide for step placement service credit for part-time instructors based on the completion of each 30 instructional formula hours.

In 1985, the District and Federation added a "Step 20" to the regular salary schedule, which provided a 4 percent longevity step bonus after "20 years of full time tenure-track service in [the District]." Because 15 of the *11* pre-67 instructors objected to their placement on the salary schedule by the District,[3] these instructors began "administrative type" proceedings to secure a correction of their placement on the salary schedule. In November 1988, one of the charging parties, Lance Bernath, was notified by the Federation that it would not proceed on his behalf in this action, as it believed his placement on the salary schedule did not constitute a contract

[3]Two of the pre-67 instructors, Annette Deglow and Donald Kent, were not placed at step 1 on the salary scheduled, but were placed on the maximum salary step. The Charging Parties state this discrepancy was, "primarily as a result of the Los Rios Teachers Association litigation."

violation. By letter dated December 4, 1989, the Federation notified each of the remaining charging parties that no cause existed for their action.

On December 6, 1989, subsequent to a presentation made to the Sacramento County Board of Education on behalf of the pre-67 instructors that urged the Board to take action for proper,salary-placement, the Federation reversed its previous position on this matter. The Federation indicated it would file a grievance against the District seeking proper salary placement for the pre-67 instructors. In March 1990, subsequent to negotiations, the District and Federation reached a settlement in this matter. Pursuant to the settlement, each pre-67 instructor was placed on the maximum step of their salary classification and was awarded three years of back salary, including interest.

By letter dated May 29, 1990, the Federation advised the pre-67 instructors that it would not attempt to include a provision in the current collective bargaining agreement for the 1990-93 period to correct the alleged inequity and discriminatory aspect of the 4 percent bonus for 20 years of service.

Charging Parties next allege that based upon past conduct by the Federation, it was appropriate to wait until the collective bargaining agreement was finally consummated before any time limitation period would begin to run. As the District and Federation could have corrected the contract provision at any-time prior to the contracts' execution on June 6, 1990, Charging Parties submit that June 6, 1990 is the earliest date which

should be applicable to the unfair practice charge. Charging Parties allege that the 4 percent bonus, which discriminates against Charging Parties:

> . . . appears to be the result of an invidious classification scheme, and without any apparent reasonable rational justification set forth by either the Federation or District, the provision should be set aside in regard to its application to the undersigned and other part-time tenured certificated instructors.

Charging Parties' Appeal

In their appeal, Charging Parties except to certain factual omissions by the Board agents. The Board agents are not required to include every factual allegation in their summaries. As the Board finds the Board agents' summaries are accurate, these alleged factual omissions are nonprejudicial and without merit.

As to the legal exceptions, Charging Parties assert that Novato Unified School District (1982) PERB Decision No. 210 is irrelevant. Charging Parties state they are uncertain as to what type of activity the Board agents are referring to when they indicated there was no evidence of protected activity.

After the District filed its Statement in Opposition to Charging Parties' Appeal of Dismissal, Charging Parties submitted additional and supplemental statements in opposition to the District's statement. As PERB Regulation 32635[4] only provides

[4]PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32635 states:

> (a) Within 20 days of the date of service of a dismissal, the charging party may appeal

for the filing of an appeal and a statement in opposition to an appeal, the Board did not consider Charging Parties' additional and supplemental statements in reaching its decision.

THE BOARD AGENTS' DISMISSALS

In analyzing the original and amended unfair practice charges, the Board agents properly cite to Novato School District, supra. PERB Decision No. 210, wherein the Board set forth the test for discrimination and retaliation. Specifically, the Board agents state:

> the dismissal to the Board itself. The original appeal and five copies shall be filed in writing with the Board itself in the headquarters office, and shall be signed by the charging party or its agent. Except as provided in section 32162, service and proof of service of the appeal on the respondent pursuant to section 32140 are required.
>
> The appeal shall:
>
> (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;
>
> (3) State the grounds for each issue stated.
>
> (b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.
>
> (c) If the charging party files a timely appeal of the refusal, any other party may file with the Board itself an original and five copies of a statement in opposition within 20 days following the date of service of the appeal. Service and proof of service of the statement pursuant to section 32140 are required.

> In Novato Unified School District (1982) PERB Decision No. 210, the Board set forth the test for discrimination and retaliation. In order to establish a prima facie case, the charging party must prove (1) the employee engaged in protected activity, (2) the employer had knowledge of such protected activity, (3) adverse action was taken against the employee as a result of such activity, and (4) that the employer's actions were based on an unlawful motive or "nexus." In the instant case, there are no facts which indicate that the employer was aware of any protected activity in which you were engaged. Further, there are no facts showing that the employer was motivated, in collective bargaining, by an unlawful motive. Accordingly, your charge must be dismissed.

As to the background information submitted in the amended unfair practice charges, the Board agents merely state that the background information fails to correct the deficiencies of the original unfair practice charges. Although the unfair practice charges assert that the District discriminated against Charging Parties by agreeing with the exclusive representative to a certain provision in the current collective bargaining agreement, Charging Parties have failed to present any facts which would establish that they engaged in protected activities. Furthermore, even assuming Charging Parties had engaged in protected activity, Charging Parties have failed to provide any information that the District had knowledge of protected activity, or that the District took its actions as a result of such activity. In addition, Charging Parties have not provided any facts to indicate that the District had an unlawful motive in agreeing to the salary provision in the collective bargaining

agreement. Accordingly, the Board agents properly dismissed the amended unfair practice charges.[5]

The Board agrees with the analysis and conclusions expressed by the Board agents concerning these charges. Accordingly, the unfair practice charges in Case Nos. S-CE-1387 through S-CE-1403 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shank and Carlyle joined in this Decision.

[5]The Board agents also note that the unfair practice charge forms mention EERA sections 3543.5, 3543.5(a) and 3543.6. In their warning letters, the Board agents informed the Charging Parties that any allegation of a section 3543.6 violation would need to be filed in a separate charge against the employee organization. With regard to the general reference to section 3543.5, the Board agents assumed the Charging Parties' discrimination allegations referred to a violation of section 3543.5(a).