

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ABDUL H. KASBATI,)
)
 Charging Party,) Case No. LA-CE-300-H
)
 v.) PERB Decision No. 926-H
)
 UNIVERSITY OF CALIFORNIA,) March 17, 1992
)
 Respondent.)
 _____)

Appearance: Abdul H. Kasbati, on his own behalf.

Before Camilli, Caffrey and Carlyle, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Abdul H. Kasbati of the Board agent's partial dismissal (attached hereto) of his charge that the University of California violated section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA).¹ We have reviewed the dismissal and, finding it to be free of prejudicial error,² adopt it as the decision of the Board itself.

¹HEERA is codified at Government Code section 3560 et seq. Section 3571 states, in pertinent part:

It shall be unlawful for the higher education employer to do any of the following:

(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.

²It is noted that the Board agent's reference to the Educational Employment Relations Act (EERA), on page one of the dismissal letter, should be to HEERA.

The Board hereby AFFIRMS the Board agent's partial dismissal in Case No. LA-CE-300-H.

Members Camilli and Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 7, 1992

Abdul H. Kasbati

Re: PARTIAL DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
Unfair Practice Charge No. LA-CE-300-H
Abdul H. Kasbati v. University of California

Dear Mr. Kasbati:

I indicated to you in my attached letter dated September 27, 1991, that certain allegations contained in the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to October 6, 1991, the allegations would be dismissed.

On October 7, 1991, you filed an amended charge. The amended charge does not, however, correct the deficiencies explained in my September 27 letter. Other than with respect to the alleged threat by Noelleen Gonzales in March 1991, the amended charge still does not clearly and concisely state facts and conduct constituting an EERA violation within the six-month limitation period. I am therefore dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my September 27 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Code of Regs., tit. 8, sec. 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 (California Code of Regs., tit. 8, sec. 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

Partial Dismissal
LA-CE-300-H
January 7, 1992
Page 2

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regs., tit. 8, sec. 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 California Code of Regs., tit. 8, sec. 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 (California Code of Regs., tit. 8, sec. 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 W. SPITTLER
General Counsel

By .

Thomas J. Allen
Regional Attorney

Attachment

cc: Sandra J. Rich
Leslie L. Van Houten

PUBLIC EMPLOYMENT RELATIONS BOARD



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



September 27, 1991

Abdul H. Kasbati

Re: PARTIAL WARNING LETTER, Unfair Practice Charge No.
LA-CE-300-H, Abdul H. Kasbati v. University of California

Dear Mr. Kasbati: _____

In the above-referenced charge, you allege that the University of California (University) has since 1989 committed a variety of unfair labor practices, in alleged violation of Government Code section 3571 of the Higher Education Employer-Employee Relations Act (HEERA). You have more specifically alleged that in March 1991 the University's agent Noelleen Gonzales threatened to retaliate against you because of your protected activity. Your charge was filed on August 7, 1991.

The allegations in your charge other than the alleged threat by Noelleen Gonzales do not state a prima facie case within the jurisdiction of the Public Employment Relations Board (PERB), for the reasons that follow.

Government Code section 3563.2(a) states in part that PERB "shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." Because your charge was filed on August 7, 1991, any alleged unfair practice occurring before February 7, 1991, is outside PERB's jurisdiction.

PERB Regulation 32615(a)(5) requires that an unfair practice charge set forth "[a] clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The only allegation in your charge that clearly identifies an alleged unfair practice as occurring on or after February 7, 1991, is the alleged threat by Noelleen Gonzales in March 1991. That alleged threat is therefore the only allegation in your charge that states a prima facie case within PERB's jurisdiction.

For these reasons, the allegations in your charge as presently written, other than the alleged threat by Noelleen Gonzales, do not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge

Partial Warning Letter
LA-CE-300-H
September 27, 1991
Page 2

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 must 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 October 6, 1991, I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney