

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR VALLEY FACULTY ASSOCIATION,)
)
Charging Party,) Case No. LA-CE-3582
)
v.) PERB Decision No. 1127
)
VICTOR VALLEY COMMUNITY COLLEGE) December 7, 1995
DISTRICT,)
)
Respondent.)
_____)

Appearance: California Teachers Association by Charles R. Gustafson, Attorney, for Victor Valley Faculty Association.

Before Caffrey, Chairman; Garcia and Johnson, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by the Victor Valley Faculty Association (Association) of a Board agent's dismissal (attached) of its unfair practice charge as untimely filed. The Association alleged in its unfair practice charge that the Victor Valley Community College District violated section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)¹ by terminating

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

Daniel A.D. Gossai for participating in protected activity.

The Board has reviewed the Board agent's warning and dismissal letters, the Association's appeal and the entire record in this case. The Board finds the warning and dismissal letters to be free of prejudicial error and, therefore, adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-3582 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Garcia joined in this Decision.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 660
Los Angeles, CA 90010-2334
(213) 736-3127



July 14, 1995

Charles R. Gustafson, Esq.
California Teachers Association
P. O. Box 2153
Santa Fe Springs, California 90670

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-3582, Victor Valley Faculty Association v.
Victor Valley Community College District

Dear Mr. Gustafson:

In the above-referenced charge, filed on June 30, 1995, the Victor Valley Faculty Association (Association) alleges that the Victor Valley Community College District (District) retaliated against employee Daniel A.D. Gossai (Gossai). This conduct is alleged to violate Government Code sections 3543.5(a) and (b) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated July 11, 1995, that the above-referenced charge did not state a prima facie case within PERB's jurisdiction. 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to July 19, 1995, the charge would be dismissed.

On July 14, 1995, you filed an amended charge. Although the amended charge alleges a number of events going back as far as October 1992, it does not allege any facts that would alter the primary conclusion of my July 11 letter: that the charge is untimely, and thus outside PERB's jurisdiction, under EERA section 3541.5(a)(1) and Los Angeles Unified School District (Mego) (1991) PERB Decision No. 894. I am therefore dismissing the charge. (Because the charge is outside PERB's jurisdiction, it is unnecessary to consider whether the amended charge would otherwise state a prima facie case.)

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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. 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

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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. 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 (3) 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. (Cal. Code of Regs., tit. 8, sec. 32132.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
THOMAS J. ALLEN
Regional Attorney

Attachment

cc: Ronald C. Ruud, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
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(213)736-3127



July 11, 1995

Charles R. Gustafson, Esq.
California Teachers Association
P. O. Box 2153
Santa Fe Springs, California 90670

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-3582,
Victor Valley Faculty Association v. Victor Valley Community
College District

Dear Mr. Gustafson:

In the above-referenced charge, filed on June 30, 1995, the Victor Valley Faculty Association (Association) alleges that the Victor Valley Community College District (District) retaliated against employee Daniel A.D. Gossai (Gossai). This conduct is alleged to violate Government Code sections 3543.5(a) and (b) of the Educational Employment Relations Act (EERA).

My investigation of the charge reveals the following relevant facts.

Gossai was an employee of the District in a unit for which the Association is the exclusive representative. During 1992 and 1993, Gossai filed eleven grievances against the District and conducted an investigation of the District's finances on the Association's behalf. On November 10, 1993, Gossai was placed on administrative leave. On January 18, 1994, Gossai was given notice that the District Governing Board had taken action to suspend him without pay and intended to dismiss him.

On November 24, 1993, the Association filed an unfair practice charge (No. LA-CE-3378), alleging that the District had retaliated against Gossai by placing him on administrative leave on November 10, 1993. The Association amended the charge on January 11, 1994, and September 24, 1994, but did not allege that the District had also retaliated against Gossai by acting to suspend and dismiss him, as indicated in the notice of January 18, 1994. On November 3, 1994, PERB issued a complaint alleging that the District had retaliated against Gossai only by placing him on administrative leave.

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On January 28, 1994, Gossai requested a hearing on the District's action to dismiss him. The matter was certified to the Office of Administrative Hearings (OAH) pursuant to Education Code section 87678. After a hearing, an OAH Administrative Law Judge ordered Gossai's dismissal, on March 10, 1995.

On April 12, 1995, the Association filed with PERB a third amended unfair practice charge and motion to amend the complaint, to add an allegation that the District retaliated against Gossai "by causing a dismissal decision to be issued by an Administrative Law Judge, dated March 10, 1995." On June 14, 1995, PERB Administrative Law Judge W. Jean Thomas issued an order denying the proposed amendment to the complaint, on the grounds that it was untimely.

On June 30, 1995, the Association filed the present charge. The charge alleges in relevant part that "[o]n or about March 10, 1995, the District took adverse action against Daniel A.D. Gossai by causing him to be terminated as an employee of the District, as reflected in a dismissal decision issued by an administrative law judge, dated March 10, 1995." The charge further alleges that the District took such action because of Gossai's grievances and Association activities, but it does not allege facts to support this conclusion.

Based on the facts stated above, the charge does not state a prima facie case within PERB's jurisdiction, for the reasons that follow.

EERA section 3541.5 (a)(1) states that PERB "shall not . . . [i]ssue 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." The only exception to this jurisdictional limit is that PERB "shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery."

In Los Angeles Unified School District (Mego) (1991) PERB Decision No. 894, PERB held that in a case of allegedly retaliatory discipline the six-month limitation began to run when the employee received notice of the recommended discipline. PERB also held that the limitation was not tolled while the employee appealed the recommended discipline to a personnel commission.

In the present case, Gossai received notice of the District's action to dismiss him on or about January 18, 1994. If the District's action was retaliatory, an unfair practice charge should have been filed within six months, by July 18, 1994. Gossai's appeal of the action by means other than the grievance

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machinery does not toll the six-month limitation. The Association's charge, filed on June 30, 1995, is thus untimely and outside PERB's jurisdiction.

Even if the charge were timely, it would not, as presently written, state a prima facie case of retaliation in violation of EERA section 3543.5(a). To demonstrate a violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other facts which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.) As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of EERA section 3543.5(a).

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

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amended charge or withdrawal from you before July 19, 1995, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney

TJA:wc