

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTORIA GARCIA,)
)
 Charging Party,) Case No. LA-CE-3813
)
 v.) PERB Decision No. 1228
)
 LITTLE LAKE SCHOOL DISTRICT,) November 13, 1997
)
 Respondent.)
 _____)

Appearances; Victoria Garcia, on her own behalf; Eric Bathen, Attorney, for Little Lake School District.

Before Johnson, Dyer, and Jackson, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Victoria Garcia's (Garcia) unfair practice charge. The charge alleges that the Little Lake School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ when it harassed and terminated Garcia.

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in relevant 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.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, Garcia's appeal and the District's response thereto. The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-3813 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Jackson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 9, 1997

Victoria Garcia

Re: Victoria Garcia v. Little Lake School District
Unfair Practice Charge No. LA-CE-3813
DISMISSAL/REFUSAL TO ISSUE A COMPLAINT

Dear Ms. Garcia:

In the above-referenced charge, filed June 27, 1997, you allege the Little Lake School District (District) violated the Educational Employment Relations Act (EERA or Act) § 3543.5. On June 27, 1997, I spoke with you regarding this charge. I indicated to you, in my attached letter dated June 30, 1997, 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to July 7, 1997, the charge would be dismissed.

On July 7, 1997, we spoke about several issues raised in the Warning Letter. On July 7, 1997, you provided additional information by facsimile.

During our July 7, 1997, conversation you alleged this charge was timely filed because you had sent a letter to PERB's Sacramento office on December 12, 1996. You also indicated that Deputy General Counsel, Robert Thompson, called you and explained how to file an unfair practice charge. On December 13, 1996, Thompson sent you a letter which acknowledges the receipt of your letter and states, in pertinent part:

If you feel that your claim falls within our jurisdiction, the proper way to involve PERB in this matter is to file an unfair practice charge with the regional attorney in the Los Angeles Regional Office.

Thompson's correspondence included the above-stated information: the telephone number and address of the Los Angeles office, copies of unfair practice charge forms, that PERB had a six month statute of limitations period, and an instructive pamphlet explaining how to file an unfair practice charge. You indicated that you received the forms in January 1997.

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On February 18, 1997, Thompson wrote you a second letter indicating the Sacramento office received one page of an unfair practice charge form by facsimile. Thompson's letter explained you could not file by facsimile, and stated, in pertinent part:

I must inform you that your charge has not been filed.

Thompson's letter quoted the California Code of Regulations section 32605, which states:

All documents . . . which are required to be "filed" by a party shall consist of an original document and two copies of the document.

Thompson's letter also explained PERB had a six month statute of limitations period.

The documents you provided by facsimile also included a July 6, 1997, letter addressed to me. That letter states, in part:

As you may find my letter Dec. 12 to PERB was mailed, though I did not get a reply until the end of January. The second letter of Jan. 31, demonstrate how the District -after weekly threats from November, Dec. and January that if I did not resign the District was placing me on their black lists. Called other districts, so they would refuse to even interview for any long term assignments.

Who: Mrs. de La "0" and the Dr. Madrid
What: to take away my yearly contract and use an "indecent" behavior. Demonstrate they can commit a crime and can get away with it, because the District protects them.
When: from Sept 15 to February 1997,

January 31, 1997, terminated my contract.
March: refuse to extend me a letter lost say I worked for them Sept. to Jan. 1997.
Where: in Los Angeles

How: Indecent or barbaric behavior Little Lake in conjunction with Little Lake Union can make a mockery of our workers. We target "one" specially a foreign born (although)

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that the population they're to serve as used them as "whipping boy" I don't believe you even treat an animal or beast that way. How they did: they replace me with someone younger did not have the credential or the language, but it was a mini battle between the Principal and the Superintendent's office to decide who would do the harm.

This will also serve as "nexus", although you told me you will denied my case.[sic]

The above-stated information does not correct the deficiencies noted in the June 30, 1997, warning letter for the reasons stated both in that letter and herein.

EERA § 3541.5(a)(1) provides the Public Employment Relations Board 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." It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

Although you provided information indicating you sent a letter to PERB in December 1996, you did not file a charge regarding the above-stated allegations until June 26, 1997. Your argument that your letter to PERB in December 1996, should stay the statute of limitations during the six months it took you to file this unfair practice charge is unpersuasive. On December 13, 1996, and February 18, 1997, Deputy General Counsel Thompson explained how to file a unfair practice charge with this agency. You also indicated you received the appropriate forms from Thompson in January 1997. Thompson warned you in both the December 13, 1996, and the February 18, 1997, letter that PERB has a six month statute of limitations period. Despite these letters, you did not file this charge until June 27, 1997. Those allegations of unfair practices within your knowledge on or before December 26, 1996, are therefore dismissed.¹

The charge also alleges the District forced you to resign effective January 31, 1997. Although that allegation is timely filed, the charge does not provide facts demonstrating a prima facie violation for the reasons that follow. As stated in the

¹Even if considered timely filed the charge failed to provide facts demonstrating a prima facie violation within the jurisdiction of PERB.

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Warning Letter, 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 employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210.)

During our June 27, 1997, conversation you indicated you engaged in protected activities in October and December 1996, by going to the union and filing complaints. You have not provided facts demonstrating the employer had knowledge of your exercise of your rights. Nor have you provided facts demonstrating the requisite nexus. Thus, the charge fails to provide facts demonstrating a prima facie violation within the jurisdiction of PERB and must be dismissed.

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

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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.)

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

Tammy L.Samsel
Regional Director

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 30, 1997

Victoria Garcia

Re: Victoria Garcia v. Little Lake School District
Unfair Practice Charge No. LA-CE-3813
WARNING LETTER

Dear Ms. Garcia:

In the above-referenced charge, filed June 27, 1997, you allege the Little Lake School District violated the Educational Employment Relations Act (EERA or Act) § 3543.5. On June 27, 1997, I spoke with you regarding this charge. My investigation revealed the following information.

Your charge states in its entirety:

In November Mrs. De La "O" called Sacramento have my waiver for my credential, denied. That is, this women used her administrative power to harm teacher. With the indecent consent of the building union rep. She (Mrs. De La "O") and Mrs. Brown Daily they practice barbarics acts against me. Example: had "zero" material in my class whereas her favorite had over-abundance of material, reading books.

Second, the computer assigned to my class was given to the office secretary. Mrs. De La "O" talked to me -- like if I was an illegal person. Although, everyone in the school knew of her obnoxious behavior. The greed of some educators was to pretend it was not happening or join her -- as a group of hungry lionesas, attacking a predator. This was worse than "by pass" case in N.Y. where 200 people pretend to ignore the scream of that lady that got stabbed 50 times.

Thirdly, why did I take so long because this woman Mrs. De La "O" threaten me daily that she was going to have my license taken away and she was going to accuse of improper acts. It was not but her behavior displayed on that campus. Mrs De La "O" is not latina or a minority -- but misuse her name to climb-up

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through the educ. system. Had to travel 3 times to Sacramento.

Fourthly, there will be extensive letters to the union because their own people took the easy way out. Terminate in January 1997. Mrs De La "0" with consent of the head of personnel hired someone less qualified.

Fifth, Mrs De La "0" was fired, though I was psychologically, mentally and professional harm. Want my job back in 97/98. Only one Board Member, Mrs. Trujillo assist me on moments of crisis.[sic]

During our conversation on June 27, 1997, I asked you specific questions regarding when the events referred to in the charge took place. I also asked you what protected activity of yours you believed motivated the District to take adverse action against you.¹ You responded that you had gone to your union in October 1996, and had filed complaints in December 1996. You indicated Principal De La 0, began harassing you in October 1996.

EERA § 3541.5(a)(1) provides the Public Employment Relations Board 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." It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

You filed this charge on June 26, 1997. The allegations that Mrs. De La "0" took adverse action against you in October 1996, occurred more than six months prior to the filing of this charge. Thus, these allegations are untimely filed and outside the jurisdiction of PERB.

You also allege the District terminated your employment in January 1997. Although that allegation appears timely filed, the charge does not provide facts demonstrating a prima facie violation for the reasons that follow.

¹During that conversation you asked me what a "protected activity" was, and what a "prima facie case" was. You agreed with my explanation, and indicated that Regional Attorney Marc Hurwitz had also explained these concepts to you in regard to previously filed unfair practice charges.

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A charging party should allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.) The charge fails to provide facts demonstrating the elements of a prima facie discrimination, as listed below.

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 employees 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

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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 July 7, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

Sincerely,

Tammy L. Samsel
Regional Director