

two unfavorable evaluations.

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 of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-3775 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 18, 1997

Victoria P. Garcia

Re: Victoria Garcia v. Sulphur Springs Union School District
Unfair Practice Charge No. LA-CE-3775
DISMISSAL/REFUSAL TO ISSUE COMPLAINT

Dear Ms. Garcia:

In this charge filed on March 19, 1997 against the Sulphur Springs Union School District (District), you allege that the District has acted unlawfully in violation of Government Code section 3543.5 of the Educational Employment Relations Act (EERA). You allege that "This Principal has decided to act in a prejudicial way and stop of me of continuing substituting in that District." (sic)

I indicated to you, in my attached letter dated July 10, 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 17, 1997, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my July 10, 1997 letter.

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

LA-CE-3775
Dismissal Letter
July 18, 1997
Page 2

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.)

Final Date

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

LA-CE-3775
Dismissal Letter
Page 3

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

MARC S. HURWITZ
Regional Attorney

Attachment

cc: Margaret A. Chidester, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 10, 1997

Victoria Garcia

Re: Victoria Garcia v. Sulphur Springs Union School District
Unfair Practice Charge No. LA-CE-3775
WARNING LETTER

Dear Ms. Garcia:

In this charge filed on March 19, 1997 against the Sulphur Springs Union School District (District), you allege that the District has acted unlawfully in violation of Government Code section Government Code section 3543.5 of the Educational Employment Relations Act (EERA). You allege that "This Principal has decided to act in a prejudicial way and stop of me of continuing substituting in that District." (sic)

My investigation revealed the following information. You worked as a Substitute Teacher for the District in or about February 1997. Your charge alleges the following six allegations:

Enclosed is a letter were (sic) all allegation (sic) are made up lies by the Principal, (emphasis in original.)

Second, principal appeared to be cooperative in front of me but practice indecent behavior (two faces deceitful) when he wrote this letter.

Third, I discuss the point of the key with the Assistant Principal, and shared my concerns and that I notice there was no key in the substitute folder. One of the students came back around (9:30 a.m.) and said the lady in the office said 'it is there' and that 'is the end of the discussion.' At lunch around 12:00 a.m. I formally said to the Principal 'the key is not there.' He insisted, 'were are not wrong' (sic) the key has to be there' in the substitute folder. Why do I bring the key issue, because these were pre-meditated acts of 'harm' and of course, the letter that follows support their malice acts: I was the irresponsible person. (emphasis in original.)

¹The letter you referred to was not enclosed with the charge.

Fourth, before I left at 3:45 I checked with the Principal and Assistant Principal, that everything was fine. The Principal had a chance of talking to me [illegible] Why 2 weeks latter (sic), plays the role of an under-covered (sic) investigator, to check about the letter of concern to the District and accused (sic) of his own errors.

Fifth, a defamation has been done in this case.

Sixth, how can I be expected to correct papers (subjective) essays ones with no outlines, or answer sheets and teach 36/34 sixth graders?

You also indicated on the front of your charge that you wrote a "plead letter to Superintendent" to address to the Board Members (See it described below).

By letter dated February 18, 1997 from Gayle Abril, Principal at Mitchell Community School, regarding your February 12, 1997 Substitute Evaluation for your assignment with Pam Hersh, you were advised that you received an overall rating of 'not acceptable'. You were advised to call to obtain feedback in order to avoid receiving additional unsatisfactory ratings, as three such ratings could result in your removal from the list of substitutes. You responded on March 25, 1997, indicating to Abril the following:

Thank you for your letter. First, I can not understand the non acceptable rating since the sub folder did not my portion of the rating (sic). Therefore, it's a capricious. punitive rating. Second, when I asked for the form and I quote your secr. said--'Yout (sic) school did not use the form.' (emphasis in original.) Third, I'm sure and confident this could be resolved. Are (sic) teachers have licenses to evaluate-anyway? How can you've a system gear to have one teacher against another one (sic).

By letter dated February 27, 1997 from Tom Garvey, Principal of Pinetree Community School, you were notified that for your work as a Substitute Teacher in Mrs. Scarcello's sixth grade classroom on February 13, 1997, you received an unsatisfactory evaluation. Garvey noted that you ignored specific instructions relating to the PAL (tutor). Regarding Math, instructions were not followed; plus you provided students extra worksheets which you xeroxed from the teacher's book. Regarding Reading, although your students were to read from the book for an examination, the reading wasn't completed. Regarding Art, the plan was not

followed. Regarding Creative Writing, Garvey indicated that:

you did not return the edited stories to the students. The teacher stated in the lesson plan that she would be coming to school to collect. This resulted in several students missing the deadline for the 'Young Author's Contest'. Apparently you used the writing time to teach the students Spanish words. In your defense, you asked if it was all right to review some Spanish words with the students. I gave you permission not knowing that you were using time that should have been devoted to writing.

You left a letter at the District Office [on or about February 13, 1997], which Garvey responded to in his February 27, 1997 letter. Garvey agreed with you that the teacher did not have a seating chart. Although the Substitute folder contained no lesson plans, Garvey located them on the teacher's table and gave them to you the first few minutes of the day.² Regarding the copy machine, as you arrived at school late,³ the administration did not have time to review with you as a new Substitute Teacher school procedures, or show you around the office, in or to familiarize you with the copy machines and restrooms. Garvey noted that this was the first time a key had been lost. Finally, Garvey thanked you for your idea to use yarn or a key holder for the classroom key, and was agreeable for you to call for an appointment if you wanted to discuss his letter.

By letter dated March 13, 1997, you wrote Superintendent Robert Nolet, Ed.D., a confidential letter and stated as follows:

I am addressing to you because I must be place in your next Board meeting (close doors) about the erroneous allegations by your Principal Mr. Garvey. (sic)

Before I left the school, I asked the secretary if I had to fill out an evaluation about how my day went. The secretary said we do not have that system here.

From letter dated February 27 from Mr. Garvey page 1. Math and Reading was followed. Creative writing is writing, it certainly does not include to correct the regular teacher's assignment. There are many reasons

²On April 23, 1997, you advised me, in part, that the lesson plans showed up 45 minutes after class began; and that Garvey writes up minorities to keep them out of his school.

³In April 1997, you advised me that your late arrival at Pinetree School was an honest mistake in that you first went to Mint Canyon Community School, the wrong location.

why essays all the way from elementary to college level are corrected by the regular teacher. (emphasis in original.)

Second page: the whole page is un-true. Keys were not given to me. I do not see why an Administrators (sic) uses substitutes to project his unsatisfaction of his job. (emphasis in original.)

Would be more than happy to contact you but I will be reporting this outline behavior to the proper State Agency.

I want to thank you in advance for taking the time to read my plead and if your principals want to place substitutes as they wish (preferential treatment-includes closing the door at minorities and other reasons), perhaps the Board need's (sic) to be aware of it.

Dr. Nolet wrote you on March 21, 1997 acknowledging receipt of your March 13, 1997 letter. He requested you set up a time to meet him regarding the issues you raised; and he wanted to work on scheduling a time for you to meet with the Trustees at a Board Meeting.

Based on the above information, the charge fails to state a prima facie case for the following reasons. A charging party must allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.) Your charge does not provide the necessary facts to demonstrate the elements of a prima facie discrimination case, as described 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).

More specifically, your charge does not clearly demonstrate that you engaged in protected activity prior to the alleged adverse actions in February 1997. Even if we assume there is protected activity, the charge does not clearly demonstrate that the adverse actions were taken because of the protected activity (nexus).

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 respondent⁴ 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 17, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3543.

Marc S. Hurwitz
Regional Attorney

⁴The District's counsel in this matter is Margaret A. Chidester, Esq. of Parker, Covert & Chidester in Tustin, California.