

denying his request for a salary increase.

The Board has reviewed the entire record in this case, including the Board agent's warning and dismissal letters, the unfair practice charge, Harris' appeal, and the University's response.² 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-490-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Jackson joined in this Decision.

applicant for employment or reemployment.

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

²We note that Harris submitted additional material after the filings were complete. PERB Regulation 32635(b) (PERB regs, are codified at Cal. Code of Regs., tit. 8, sec. 31001 et seq.), provides that:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

The documents Harris submitted indicate, among other things, that: (1) a departmental reorganization occurred effective August 1997; and (2) on October 1, 1997, Harris was given a layoff notice, which he asserts was a result of his reluctance to follow the reorganization schedule.

We find that good cause exists to consider these supplemental filings, since the information involves recent events and could not have been offered earlier. (Santa Clarita Community College District (1996) PERB Decision No. 1178; Regents of the University of California (1994) PERB Decision No. 1058-H.) Furthermore, it is relevant to the instant unfair practice charge. However, after considering these filings, we agree with the Board agent's conclusion that Harris has not stated a prima facie case.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 9, 1997

Cliff Fried, Vice-President
Union of Professional and Technical Employees
1015 Gayly Avenue, Suite 115
Los Angeles, California 93010

Re: William L. Harris v. Regents of the University of California
Unfair Practice Charge No. LA-CE-490-H
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Mr. Fried:

In the above-referenced charge William L. Harris alleges the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA or Act) §§ 3571 (a), (b) by discriminating against him in denying his request for a salary increase.¹ On May 27, 1997, I spoke with Harris regarding this charge. On May 29, 1997, I issued a warning letter. On May 30, 1997, Cliff Fried, filed a notice of appearance on Harris' behalf. On June 4, 1997, I received a letter from Harris which provided:

Your letter of May 29, 1997, was received last night. The contents of which indicates the lack of understanding of my situation. I am aware of the rules, if the rules have been applied consistently the difference between my salary and my fellow employees would be greatly reduced.

Neither your office or my employer mention the procedures used in the case of fellow employees Gene Cabico, Eimee Miura, and the use of (3) times same money, to validate equity/reclassification...and the department audit report, which reflect poor performance by the very employees who received the increases...you have copies.

If my employer followed personnel procedures I doubt I would have requested equity increase. I also doubt the department performance would be the same. The question of amend charge...I failed to see relationship between my case and the can-

¹The charge also cited HEERA §§ 3571(d) and 3565. However the charge did not allege any facts demonstrating the University dominated or interfered with the formation or administration of an employee organization.

LA-CE-490-H
Warning Letter
May 29, 1997
Page 2

information in your letter to me. No one in my department other than myself have undergone this procedure(s).

If you dismiss my charge, I will be back.

The May 29, 1997, Warning Letter indicated the charge failed to allege any facts indicating the Department's actions were unlawfully motivated. More specifically, the Warning Letter indicated the charge failed to allege facts demonstrating Harris engaged in any protected activity. The June 3, 1997 letter and its attachments do not correct the above-mentioned deficiencies. Thus, the charge fails to demonstrate a prima facie violation and must be dismissed.

The June 3, 1997 letter alleges the University failed to apply its rules consistently. As indicated in the May 29, 1997, Warning Letter, an employer's departure from procedures may be indicative of nexus between an employee's protected activity and an employer's adverse action. However, facts demonstrating the employee engaged in a protected activity are a prerequisite to establishing nexus. This charge fails to allege such facts and therefore the charge 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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number. 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 Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
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 Regs., tit. 8, sec. 32635(b).)

LA-CE-490-H
Warning Letter
May 29, 1997
Page 3

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 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 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

cc: James Odell

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 29, 1997

William L. Harris
3412 Rio Hato Court
Camarillo, CA 93010

Re: William L. Harris v. Regents of the University of California
Unfair Practice Charge No. LA-CE-490-H
WARNING LETTER

Dear Mr. Harris:

In the above-referenced charge you allege the Regents of the University of California (University) violated the Higher Education Employer-Employee Relations Act (HEERA or Act) §§ 3571 (a), (b) by discriminating against you by denying your request for a salary increase.¹ On May 27, 1997, I spoke with you regarding this charge. My investigation revealed the following information.

The University hired Harris as a Buyer III in the Materials Management Department of the UCLA Medical Center. The University subsequently reclassified the Buyer III positions to Buyer IV. In December 1995, Harris requested his department review his salary and provide him an equity increase.

On February 20, 1996, Harris' supervisor, Eimee Miura, informed Harris that his request had been reviewed, and denied. In March 1996, Harris filed a formal grievance protesting that decision. On May 3, 1996, Compensation Manager, Maure Gardner, concluded the original decision to deny Harris an equity increase was appropriate and that the University's policies had not been violated. On May 7, 1996, Employee Relations Manager, Jim Justiss, notified Harris of Gardner's decision. Harris requested the decision be reviewed by an Independent Party Reviewer. On August 3, 1996, Charles Maxey, Independent Party Reviewer, concluded the University violated two of its policies, but that Harris' requested increase was properly denied.

On February 27, 1997, Deputy Director, Helene Desruisseaux, adopted the Independent Party Reviewer's findings and in accordance with those findings, ordered Miura to evaluate Harris' performance. On February 28, 1997, Justiss informed Harris of

¹The charge also cited HEERA §§ 3571(d) and 3565. However the charge did not allege any facts demonstrating the University dominated or interfered with the formation or administration of an employee organization.

LA-CE-490-H
Warning Letter
May 29, 1997
Page 2

Desruisseaux's findings and notified Harris that the University considered the grievance closed.

The above-stated information does not factually demonstrate a prima facie violation of the HEERA for the reasons that follow.

To demonstrate a violation of HEERA section 3571(a), the charging party must show that: (1) the employee exercised rights under HEERA; (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 HEERA section 3571(a).

On March 27, 1997, I called and spoke to you regarding the above-referenced charge. I asked you why you believed the University denied the salary increase you requested. You indicated that the University was not following the proper policies and that the University was mismanaged. I explained the elements of a prima facie violation of the HEERA, and indicated it would be necessary to demonstrate the University was unlawfully motivated by your participation in a protected activity. This charge does not allege the University denied your request because of your participation in a protected activity. The charge fails to

LA-CE-490-H
Warning Letter
May 29, 1997
Page 3

demonstrate: you engaged in a protected activity, that the University had knowledge of your participation in a protected activity and a connection between the protected activity and the University's actions.²

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 amended charge or withdrawal from you before June 6, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

Sincerely,

Tammy L. Samsel
Regional Director

²This letter only refers to your rights under the HEERA and does not address your rights under other state or federal laws.