

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



NANCY LOUISE VINCELET,

Charging Party,

v.

LODI UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-2036-E

PERB Decision No. 1486

June 28, 2002

Appearance: Nancy Louise Vincelet, on her own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Nancy L. Vincelet (Vincelet) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the Lodi Unified School District (District) violated section 3543.5 of the Educational Employment Relations Act (EERA)<sup>1</sup> by denying Vincelet due process.

After reviewing the entire record and based upon the following discussion, we dismiss Vincelet's charge consistent with the following discussion.

FACTUAL SUMMARY

Vincelet filed the original unfair charge on June 8, 2001, and an amended charge on July 10, 2001. Therein, Vincelet provides the following information.

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<sup>1</sup> EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated all statutory references herein are to the Government Code.

Vincelet was employed with the District as a payroll assistant. For undisclosed reasons in June 2000, she was placed on leave from the District. Thereafter, Vincelet requested a hearing, which was set for December 8, 2000, before an administrative law judge (ALJ) from the Office of Administrative Hearings (OAH).

On November 17 and November 30, 2000, Vincelet sent two letters to the District in which she requested a list of witnesses and documents that she wanted the District to provide for the hearing. On November 28, 2000, the District sent a letter to Vincelet which provided the phone number and address of the OAH. Vincelet attempted to call the phone number at least twice prior to the December 8 hearing. On the basis of the response she received from the two calls, Vincelet decided that the number was incorrect.

At the hearing on December 8, Vincelet attempted to explain to the ALJ that the District had given her the wrong phone number for the OAH. However, the ALJ proceeded to hold the hearing with the witnesses present. Vincelet further alleges that the District's three witnesses were biased against her before they testified at the hearing and that the ALJ gave unwarranted credibility to the testimony of one of the District's witnesses.

On December 26, 2000, Vincelet received a letter from the District stating that the ALJ recommended to the District's Board of Education that her employment with the District be terminated. She was subsequently terminated.

In her appeal of the Board agent's dismissal, Vincelet presents new allegations that audio tapes of the December 8 hearing were altered by the District.

#### DISCUSSION

The Board finds that most of the conduct underlying the unfair practice charge occurred outside EERA's six-month statute of limitations and that the alleged conduct occurring within

the statutory period failed to state a prima facie case of violation of EERA. Vincelet alleges that the District provided her with the wrong phone number for the OAH, resulting in her inability to obtain witnesses for the December 8 hearing, which in turn affected the outcome of the hearing by denying her “due process.”

EERA section 3541.5(a)(1)<sup>2</sup> prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

Vincelet has not met the burden of demonstrating that her allegations regarding events occurring before December 8, 2000, were timely filed. Because the charge was filed on

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<sup>2</sup> EERA section 3541.5(a)(1) states, in pertinent part:

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:

(1) 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.

June 8, 2001, only alleged conduct of which she was aware on or after December 8 would meet the requisite statute of limitations. The District sent her the letter containing the disputed phone number on November 28, 2000. Vincelet determined prior to December 8 that the number was incorrect. Thus, she was aware prior to December 8 of the alleged conduct underlying the original charge.

As Vincelet did not meet her burden of establishing that the allegations occurring before December 8 were timely, that portion of the charge is dismissed as outside of the statute of limitations.

With regard to the December 8, 2000, hearing, Vincelet's allegations that the District's witnesses were biased and that the ALJ awarded unwarranted credibility to one of the witnesses do not establish interference with protected activity under EERA. Vincelet did not present any facts to support these allegations, nor did she explain why they are relevant to the charge that the District violated her rights to "due process" by giving her an incorrect phone number for OAH. While it is possible that she could argue that these allegations constitute an interference violation of EERA, she has not demonstrated such a violation.

The test for whether a respondent has interfered with the rights of employees under EERA<sup>3</sup> does not require that unlawful motive be established, only that at least slight harm to

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<sup>3</sup> Rights of public school employees are found in EERA section 3543, which provides, in pertinent part:

- (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. If the exclusive representative of a unit provides notification, as specified by subdivision (a) of Section 3546, public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the

employee rights results from the conduct. The charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S, citing Carlsbad Unified School District (1979) PERB Decision No. 89; Service Employees International Union, Local 99 (Kimmitt) (1979) PERB Decision No. 106.)

Vincelet provides no facts to demonstrate that the conduct of the District's witnesses during the December 8 hearing caused even slight harm to the rights guaranteed to her under EERA.

Finally, Vincelet newly alleges on appeal that the District altered the tape recorded testimony of witnesses and successfully encouraged a union witness to alter tape recorded testimony. PERB Regulation 32635<sup>4</sup> states, in pertinent part:

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

In South San Francisco Unified School District (1990) PERB Decision No. 830, the Board addressed this regulation and found:

The purpose of PERB Regulation 32635(b) is to require the charging party to present its allegations and supporting evidence to the Board agent in the first instance, so that the Board agent can fully investigate the charge prior to deciding whether to issue a complaint or dismiss the case.

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recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable.

<sup>4</sup> PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Vincelet has not shown good cause nor provided any rationale for presenting new allegations in her appeal. Thus, the new information shall not be considered in this appeal.

ORDER

The unfair practice charge in Case No. SA-CE-2036-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.