

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES
ASSOCIATION, LOCAL 1000, CSU DIVISION,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY (SACRAMENTO),

Respondent.

Case No. SA-CE-224-H

PERB Decision No. 1740-H

January 26, 2005

Appearance: California State Employees Association by Phillip S.O. Coonley, Labor Relations Representative, for California State Employees Association, Local 1000, CSU Division.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California State Employees Association, Local 1000, CSU Division (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. The unfair practice charge alleged that the Trustees of the California State University (Sacramento) (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by discriminating against Mark Christl (Christl) for engaging in protected activity.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters and CSEA's appeal. The

¹HEERA is codified at Government Code section 3560, et seq.

Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

DISCUSSION

The unfair practice charge filed by CSEA alleges that CSU unlawfully discriminated against Christl for his protected activities. 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 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.) It is undisputed that for purposes of establishing a prima facie case, CSEA has demonstrated that Christl participated in protected activities and that he subsequently suffered adverse actions. The sole issue before the Board is whether CSEA has established the required nexus.

CSEA argues that the adverse actions imposed upon Christl occurred close in time to his protected activities. Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (North Sacramento School District (1982) PERB Decision No. 264 (North Sacramento)), it is well-settled that timing alone is insufficient to establish nexus. (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 (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the

employee (Santa Clara Unified School District (1979) PERB Decision No. 104.); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S); (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; (6) employer animosity towards union activists (Cupertino Union Elementary School District) (1986) PERB Decision No. 572); or (7) any other facts which might demonstrate the employer's unlawful motive. (Novato; North Sacramento.)

CSEA argues nexus has been established by the fact that CSU departed from its established procedures and policies by failing to conduct a full and fair investigation before imposing discipline on Christl. CSEA has not established, however, that the letters issued by the Dean to Christl on December 15, 2003, and February 6, 2004, constituted "discipline". Although the warning and dismissal letters adopt CSEA's use of the term "letter of reprimand" when referring to the December 15 or February 6 letters, nothing in the record establishes that they were in fact letters of reprimand. In the December 5 letter, Christl was informed that the Dean had directed Christl's supervisor to warn him if he were to exhibit certain behaviors. The Dean referred to the February 6 letter as a "warning letter" and placed it in Christl's personnel file.

Even assuming, arguendo, that they were letters of reprimand, CSEA has not established that these letters were issued in violation of any policy. CSEA has neither established that a full and fair investigation must be conducted prior to imposing discipline, nor provided a copy of the alleged policy stating what type of investigation is required.

There is insufficient evidence to show that CSU departed from any established procedures and policies. The dismissal is therefore affirmed.

ORDER

The unfair practice charge in Case No. SA-CE-224-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8385
Fax: (916) 327-6377



October 4, 2004

Phillip Coonley, Labor Relations Representative
California State Employees Association
2159 New Hampshire Way
Sacramento, CA 95835

Re: California State Employees Association, Local 1000, CSU Division v. Trustees of the California State University (Sacramento)
Unfair Practice Charge No. SA-CE-224-H
DISMISSAL LETTER

Dear Mr. Coonley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 30, 2004. The California State Employees Association, Local 1000, CSU Division alleges that the Trustees of the California State University (Sacramento) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by discriminating against Mark Christl for engaging in protected activity.

I indicated in the attached letter dated September 17, 2004, 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 September 27, 2004, the charge would be dismissed. After a brief extension of time, an amended charge was timely filed on September 28, 2004.

Mr. Christl is employed as a Graphic Design Specialist at the CSUS campus. As amended, the charge alleges that in October 2003, the Graphics Center office, consisting of a shared office for Mr. Christl and Steven O'Donnell, was moved from the first floor to the second floor to allow the supervisor, Martha Velasco, to provide closer supervision. In October 2003, Ms. Velasco directed Mr. Christl to leave his office door open, greet and assist visitors and post his office hours. Mr. Christl did not agree with this directive and informed Ms. Velasco that he had sought the assistance of the Union with this matter.

On December 4, 2003, Ms. Velasco came to the office where Mr. Christl and Mr. O'Donnell were working and verbally reprimanded Mr. Christl for using Mr. O'Donnell's computer.

¹HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Mr. Christl explained that he needed to use some software that did not exist on his own computer.

On December 15, 2003, Mr. Christl received a letter of reprimand from the Dean of the College of Education, Michael Lewis. The letter of reprimand directed Mr. Christl to keep his office door open, greet and assist visitors and post his office hours. The letter also discussed Mr. Christl's responsibility to obtain prior approval of class schedule changes which affected his work hours. Finally, Dean Lewis addressed Mr. Christl's "interpersonal behaviors exhibited" during the December 4, 2003 meeting with Ms. Velasco and Mr. O'Donnell regarding computer use. The letter stated, in part:

It has been reported to me that your behaviors during this discussion suggested that you were about to lose control: barely controlled aggression, hostile body language, tensed arms, clenched teeth, for example. To be quite frank, those involved were frightened by your behavior and came away with a concern for their own safety. This is unacceptable in the workplace. In the future, I expect that you will allow yourself to be supervised without exhibiting angry, threatening behaviors-either verbal or non-verbal.

The letter of reprimand did not accuse Mr. Christl of violating the University's Violence in the Workplace policy.

Thereafter, Mr. Christl filed a grievance alleging that the University had violated the contract by the actions of Ms. Velasco and Dean Lewis.

On February 6, 2004, Mr. Christl received a second letter of reprimand from Dean Lewis covering several issues. The letter stated that Mr. Christl had challenged Ms. Velasco's authority in an e-mail that was "threatening and confrontive." Mr. Christl inappropriately monitored the work time of other staff and failed to communicate with staff over work issues. Dean Lewis again reminded Mr. Christl to keep his door open and greet and assist visitors to the office. Finally, the letter discussed Mr. Christl's work on a college website that was outside his specified duties.

On March 24, 2004, Dean Lewis issued a written Level II grievance response to Mr. Christl's grievance. Dean Lewis stated that the December 4, 2003 meeting arose after Ms. Velasco discovered that Mr. Christl was using Mr. O'Donnell's computer without his knowledge or permission. Dean Lewis described the December 4 meeting not as a reprimand but as "an informal joint discussion with her staff over sharing computers." Ms. Velasco directed both Mr. Christl and Mr. O'Donnell to check with each other before using the other person's computer.

Dean Lewis also defended the December 15, 2003 letter of reprimand and explained the reasoning behind the letter. He stated that Ms. Velasco had been "working with the Employee

Assistance Program (EAP) and Human Resources over Mr. Christl's behavior as long ago as November 2002." He also referenced two e-mail messages written by Mr. O'Donnell in support of his comments that Mr. Christl's behavior had worsened since he moved upstairs. Dean Lewis also wrote that other employees were also concerned about his behavior, stating, in part:

I also have verbal reports that Mr. Christl has made remarks to staff such as "Good thing I don't own a gun"; "Good thing the campus does not have a clock tower"; and "Hope I don't see (staff member's name) in the crosswalk on my way home from work." While it is reported that these remarks were not taken as actual threats, they add to the context of concern given Mr. Christl's other behaviors. As administrator over the College of Education, I must take the concerns of staff for workplace safety with the utmost seriousness. The description of Mr. Christl's behavior in my letter of December 15 is founded on the written report of two witnesses and fits with descriptions from other staff over time.

In July 2004, Mr. Christl "received his first evaluation containing negative marks." Prior to this evaluation, all of Mr. Christl's evaluations have been above average or excellent.

The charge alleges that Mr. Christl was professional and in control during the December 4 meeting, and the behaviors described in the December 15 letter of reprimand do not violate the Violence in the Workplace policy. The charge also alleges that the University relied on "three issues" to justify the December 15 letter of reprimand that were not previously brought to Mr. Christl's attention. These matters include: (1) Mr. O'Donnell's October 21, 2003 e-mail to Ms. Velasco describing tension between himself and Mr. Christl since the office was moved upstairs; (2) remarks reportedly made by Mr. Christl to other employees which "might be considered violations of the Violence in the Workplace policy."; and (3) that Ms. Velasco had utilized EAP and Human Resources concerning Mr. Christl's behavior as far back as November 2002.

As discussed in the attached letter, to demonstrate unlawful discriminatory conduct in 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 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Mr. Christl engaged in protected activity when he sought the assistance of the Union and a grievance was filed on his behalf. The University took adverse action against Mr. Christl when it issued him two letters of reprimand and a negative evaluation. However, there is no evidence of nexus alleged in the charge. The December 15 letter of reprimand did not accuse Mr. Christl of violating the Violence in the Workplace policy. Thus, the charge does not show

that the University departed from its policy by inappropriately applying the policy to Mr. Christl.

The charge also alleges that Dean Lewis' grievance response demonstrates that the University improperly relied on allegations of misconduct against Mr. Christl that were not previously brought to his attention. There is nothing in the statements in the grievance response which accuse Mr. Christl of wrongdoing. Even the remarks reported by coworkers were "not taken as actual threats" and, thus, were not alleged to violate the workplace violence policy. Accordingly, the charge does not demonstrate the required nexus and fails to state a prima facie case.

Right to Appeal

Pursuant to PERB Regulations,² 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Regulation 32635(b).)

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 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
General Counsel

By _____
Robin W. Wesley
Regional Attorney

Attachment

cc: Donna Selnick

PUBLIC EMPLOYMENT RELATIONS BOARD

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September 17, 2004

Phillip Coonley, Labor Relations Representative
California State Employees Association
2159 New Hampshire Way
Sacramento, CA 95835

Re: California State Employees Association, Local 1000, CSU Division v. Trustees of the California State University (Sacramento)
Unfair Practice Charge No. SA-CE-224-H
WARNING LETTER

Dear Mr. Coonley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 30, 2004. The California State Employees Association, Local 1000, CSU Division alleges that the Trustees of the California State University (Sacramento) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by discriminating against Mark Christl for engaging in protected activity.

The charge makes following factual allegations. Mark Christl has been employed by the University for seven years. He works as a Graphic Design Specialist at the CSUS campus. In October 2003, Mr. Christl's supervisor, Martha Velasco, told Mr. Christl and his officemate, Steven O'Donnell, that they must leave the door to their office open, greet visitors and post their office hours.

In an e-mail to Ms. Velasco dated November 4, 2003, Mr. Christl addressed concerns over requirements that he leave his office door open, greet visitors, post his work hours and be responsible for locking and unlocking the duplicating center. Mr. Christl advised Ms. Velasco that he had sought assistance from the union with these issues.

On December 4, 2003, Ms. Velasco verbally reprimanded Mr. Christl in front of Mr. O'Donnell. The charge does not describe the nature of the reprimand.

On December 15, 2003, Mr. Christl received a letter of reprimand from the Dean of the College of Education, Michael Lewis. Dean Lewis reminded Mr. Christl of Ms. Velasco's instruction and directed that he keep his door open, greet and assist visitors, and post his office hours. He also informed Mr. Christl of his responsibility to notify his supervisor prior to

¹HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

changing his previously approved class schedule due to the impact on his work hours. Finally, Dean Lewis addressed Mr. Christl's conduct during the December 4, 2003 meeting with Ms. Velasco stating, in part:

It has been reported to me that your behaviors during this discussion suggested that you were about to lose control: barely controlled aggression, hostile body language, tensed arms, clenched teeth, for example. To be quite frank, those involved were frightened by your behavior and came away with a concern for their own safety. This is unacceptable in the workplace. In the future, I expect that you will allow yourself to be supervised without exhibiting angry, threatening behaviors-either verbal or non-verbal.

The charge denies that Mr. Christl's conduct was angry or hostile.

On an unspecified date, a grievance involving Mr. Christl was filed, although the charge does not provide any information concerning the subject of the grievance.

On February 6, 2004, Mr. Christl received another letter of reprimand from Dean Lewis. The letter addressed Mr. Christl's interpersonal relations with his supervisor and other staff. Specifically, Dean Lewis commented on the tone of an e-mail that Mr. Christl sent to Ms. Velasco. In addition, he noted that Mr. Christl was inappropriately monitoring the work time of other staff and was not communicating with staff over work issues. Dean Lewis described a consequence of his refusal to communicate which resulted from his failure to consult with his supervisor and the IT manager before performing work on a College website.

The charge alleges that either the work rules or the facts describing a violation of the work rules are "vague and unsupported by facts."

Based on the facts stated above, the charge does not state a prima facie case.

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 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (North Sacramento School District (1982) PERB Decision No. 264), 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 (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (Santa Clara Unified School District (1979) PERB Decision No. 104.); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S; (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; (6) employer animosity towards union activists (Cupertino Union Elementary School District) (1986) PERB Decision No. 572.); or (7) any other facts which might demonstrate the employer's unlawful motive. (Novato; North Sacramento School District, supra, PERB Decision No. 264.)

Mr. Christl engaged in protected activity when he sought the assistance of the union and a grievance was filed on his behalf. Although the charge does not indicate when the grievance was filed. Adverse action was taken against Mr. Christl when he received two letters of reprimand. However, the charge does not provide evidence which demonstrates a connection or nexus between the protected activity and the letters of reprimand. The charge merely denies that Mr. Christl's conduct was hostile. The charge also contends that the work rules or the facts describing a violation of work rules are "vague and unsupported by facts." However, the directives to Mr. Christl are very specific. He was instructed to keep his office door open, greet and assist visitors, post work hours, notify his supervisor of changes to his class schedule and behave in a professional manner. There is no evidence that Mr. Christl was held to a different standard or that the work rules were so vague that he was unable to comply with them. Thus, the charge does not establish the required nexus and must be dismissed.

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 that 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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before September 27, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robin W. Wesley
Regional Attorney