STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ERIC ALAN CHEMELLO, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (HUMBOLDT), Respondent.	Case No. SA-CE-238-H PERB Decision No. 1866-H December 14, 2006

Appearance: Eric Alan Chemello, on his own behalf.

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Eric Alan Chemello (Chemello) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Trustees of the California State University (Humboldt) (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by "misclassifying" Chemello's position, "crossing collective bargaining unit lines", threatening him, laying him off for raising concerns regarding labor policy, refusing to meet and confer with Chemello after his layoff and replacing his position with personnel from a different bargaining unit.

On appeal, Chemello also raised new allegations that CSU violated portions of his collective bargaining agreement. Chemello cites no reason for raising these new allegations other than that "PERB has not interpreted Article 29.1 or 29.2 of my labor contract." PERB

[1]HEERA is codified at Government Code section 3560, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Regulation 32635(b)[2] provides that "[u]nless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." Chemello failed to show good cause for charging new allegations on appeal.

Even if the allegation that CSU violated Chemello's collective bargaining agreement had been raised previously, the allegation still would not be heard by PERB. HEERA section 3563.2(b) states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

In the instant charge, Chemello alleges that CSU failed to comply with the provisions of the collective bargaining agreement, but he failed to present facts demonstrating an unfair practice under the HEERA.

The Board has reviewed the entire record in this matter, including the original unfair practice charge, the first, second and third amended unfair practice charge, the position statements of CSU, the additional information provided by Chemello, the first and second warning letters, the dismissal letter and Chemello's appeal. The Board finds the Board agent's warning and dismissal letters to be without prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-238-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

STATE OF CALIFORNIA | ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377

August 14, 2006

Eric Alan Chemello

Re: Eric Alan Chemello v. Trustees of the California State University (Humboldt)
Unfair Practice Charge No. SA-CE-238-H
DISMISSAL LETTER

Dear Mr. Chemello:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 29, 2005. Eric Alan Chemello alleges that the Trustees of the California State University (Humboldt) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by "misclassifying" your position, "crossing collective bargaining unit lines", threatening you, laying you off for raising concerns regarding labor policy, refusing to meet and confer with you after your layoff, and replacing your position with personnel from a different bargaining unit.

You filed a first amended charge on October 3, 2005. On October 17, 2005, you were sent a warning letter (attached) indicating that your charge did not state a prima facie case. The warning letter stated that the charges were untimely filed, you did not have standing to pursue the alleged violation, and you had not provided sufficient information to support your allegations You filed a second amended charge on November 7, 2005.

On July 21, 2006, Robert Thompson, PERB General Counsel, discussed your charge with you by telephone and indicated to you that the only allegation that might possibly state a prima facie case involved the claim that the University refused to rehire you, subsequent to your layoff in August 2004, because of your HEERA-protected conduct. You provided additional information to Mr. Thompson in response to this telephone discussion.

However, by letter dated July 31, 2006, Mr. Thompson advised you that the above-referenced charge still 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 August 11, 2006, the charge would be dismissed.

[1]HEERA 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.

On August 9, 2006, you filed a third amended charge. The amended charge, in part, reiterates your belief that the University misclassified employees in the Grounds Department in 1999 and 2000, and further contends the University is attempting to "undo this gross labor violation by restructuring the dept. through attrition."

Your amended charge also reiterates the contention that the hiring of Clark Keeney as a Carpenter in January 2005 was a violation of your rights, because you had seniority, permanent status, classification and skill level in excess of that held by Mr. Keeney. Likewise, the amended charge alleges that the promotion of Belinda Tragesar from Laborer to Gardening Specialist in September 2005, and that the University's decision to not fill a Painter position in July 2005 that you interviewed for and were qualified to fill, violated your rights to be reemployed from layoff.

The third amended charge also alleges that two Carpenters and two Painters were hired in July 2006 to perform duties for which you are qualified. You contend with respect to these positions, and the others referenced above, that the contract guarantees you full rehire rights into any position for which you are qualified for a period of five years from your date of layoff. Thus, you contend that the University's refusal to rehire you is in reprisal for the protected activity alleged in the original charge and amendments, as well as for the filing of the instant unfair practice charge.

The contention that the contract between the University and the exclusive representative of the Skilled Crafts unit (Unit 6) guarantees you "full rehire rights" for the positions you describe is not persuasive for the reasons that follow. The current written agreement between State Employees Trades Council – United and the University provides, in Article 30, as follows regarding the right to re-employment following layoff:

> 30.27
>
> The names of laid off permanent employees shall be entered on a re- employment list by classification in order of seniority. An employee's name shall remain on the re-employment list until he/she returns to a position within the defined occupational series group in the same classification or lower classification held at the time of layoff and at the same timebase as previously held.
>
> In no case shall a name remain on the re-employment list for more than five (5) years.
>
> 30.28
>
> Position vacancies in the same or lower classifications in a defined occupational series group for which there are names of qualified individuals on the re-employment list as established in provision 29.27 above shall not be filled without first making an

> offer of re employment to those on the list. If an individual on the re-employment list declines two (2) such offers, he/she waives his/her re-employment rights. An individual on a re employment list may request inactive status for up to one (1) year.
>
> [Emphasis added.]

Prior to layoff in August 2004, you were employed as a Facilities Worker II, which is in Salary Group 2 under the Unit 6 contract. Carpenter I and Painter I are in Salary Group 3, which means that these positions were not in the same or a lower classification from that you held. Thus, your re-employment rights did not extend to these positions, even if you were qualified to perform the duties.

Therefore, I am dismissing the charge based on the facts and reasons set forth above, as well as those contained in the October 17, 2005 and July 31, 2006 letters.

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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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
(916) 322-8231
FAX: (916) 327-7960

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

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).)

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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also 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,

ROBIN WESLEY
Acting General Counsel

By _____
Les Chisholm
Regional Director

Attachments

cc: Darryl Hamm

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
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July 31, 2006

Eric Alan Chemello

Re: Eric Alan Chemello v. Trustees of the California State University (Humboldt)
Unfair Practice Charge No. SA-CE-238-H
2nd WARNING LETTER

Dear Mr. Chemello:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 29, 2005. Eric Alan Chemello alleges that the Trustees of the California State University (Humboldt) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by "misclassifying" your position, "crossing collective bargaining unit lines", threatening you, laying you off for raising concerns regarding labor policy, refusing to meet and confer with you after your layoff, and replacing your position with personnel from a different bargaining unit.

You filed a first amended charge on October 3, 2005. On October 17, 2005, you were sent a warning letter indicating that your charge did not state a prima facie case. The warning letter stated that the charges were untimely filed, you did not have standing to pursue the alleged violation, and you had not provided sufficient information to support your allegations You filed a second amended charge on November 7, 2005.

Investigation of the charge revealed the following information.

Prior to an August 2004 layoff, California State University Humboldt (CSUH) employed you as a "Facilities Worker II." The State Employees Trades Council United (SETC-U) represented you while employed as a Facility Worker II in Bargaining Unit 6. CSUH defines the Facility Worker II position in the following manner:

> Under general supervision, the Facilities Worker II independently performs a wider range of more complex semi-skilled and basic skilled facilities and system maintenance, repair and renovation work; however, the work of a Facilities Worker II does not require full journey-level skills..."

[1]HEERA 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.

On April 8, 2004, CSUH notified several Unit 6 members of future planned lay-offs. CSUH did not meet with SETC-U prior to the lay-off notices. SETC-U filed grievances on behalf of the affected employees and participated in impact negotiations in Long Beach, in a committee format, resulting in a Settlement Agreement, dated December 17, 2004. Following discussions between the Union and CSUH, all but two lay-offs were averted. Eric Chemello and Andrew Betts were set for lay-off in July 2004.

Fellow "Facility Worker II" Colin Livasy had less seniority points than you but was not laid off. CSUH rescinded Livasy's lay-off after a successful MOU, Article 29.8 challenge, based on his documented journey-level skill sets. You also wrote a letter to CSUH's President requesting you be passed over for lay-off because of your specialized skills and abilities, however, you were unsuccessful.

A copy of the December 2004 Settlement Agreement was discussed with all potential lay-off candidates by Craig West, SETC-U Executive Board Member in or around January 2005. Chemello and Andrew Betts were laid off in August 2004, but in accordance with the Settlement Agreement, you were granted a right of first refusal for general maintenance work at CSUH and placed on a re-hire list for five years.

Following the lay-offs, you applied for several positions at CSUH, but have not been rehired. The jobs you have applied for are either outside Bargaining Unit 6 or are higher classification positions and not included in the right of first refusal agreement. In January 2005, you applied for, but were not selected for an available Carpenter I position. CSUH re-hired Clark Keeney as a Carpenter I for the 30 day position. When laid off, Keeney was classified as a Facility Worker I, Temporary and was junior to you. In response to a SETC-U inquiry by Robert Herriot, SETC-U Bargaining Representative, CSUH responded that the position Keeney was rehired for required journey level expertise and Keeney met the necessary skill set.

On May 25, 2005, you filed a Level III grievance with the President of CSUH regarding the Keeney re-hire. On June 7, 2005, CSUH responded to the grievance and advised you had no standing to file because you were not currently employed by CSUH. You assert you are a Union Steward, and as such, have standing to file a grievance. You notified SETC-U of the grievance you had filed in or around June 2005. You then filed an Unfair Practice Charge regarding these matters with PERB on June 29, 2005. To this date, you have not been re-hired at CSUH.

You allege Craig West and CSUH representative, Tim Moxon, participated in private meetings, targeting your lay-off because of a letter you wrote, directed at the mismanagement of Plant Operations and the "unfairness of laying off productive people," published in the CSUH newspaper and because of a letter you wrote to management requesting a promotion. In a separate charge against SETC-U, you allege that after the lay-offs were decided, SETC-U refused to communicate with you and refused to pursue your lay-off grievance filed on December 17, 2004. You also claim neither the Union nor CSUH has kept you informed of any job openings at the CSUH campus.

As explained in the first warning letter, your charge does not state a prima facie case because the charges were untimely filed, you did not have standing to pursue the alleged violation, or you have not provided sufficient information to support your allegations.

During our conversation of July 21, 2006, I indicated to you that the only allegation that would possibly state a prima facie case involved the claim that the University refused to rehire you because of your conduct protected by HEERA. I asked you to provide specific information regarding the positions you had applied for and the circumstances that lead you to believe that the University's refusal to rehire you was based on a discriminatory motive.

On July 26, you provided some additional written information. In summary, the information repeated statements already made in your prior charges. With respect to the allegation of the University's discriminatory refusal to rehire, you raised the hiring of Clark Keeney as a Carpenter for a 30 day temporary appointment in January 2005.

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.)

Your charge did not provide information from which a reasonable person could find that the University did not hire you because of your protected conduct. It was not clear who was responsible for the hiring decision, whether that person was aware of your protected conduct,

and what factors connected the hiring decision with your protected conduct. Without this information, your charge fails to state a prima facie case and will be dismissed.

You also allege that you interviewed for a Painter position in July 2005 but were not hired because the University decided not to fill the position. Again, the charge does not provide sufficient information regarding the University's decision to state a prima facie case.

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 Third 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 August 11, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson
General Counsel

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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October 17, 2005

Eric Alan Chemello
1614 Ocean Drive
McKinleyville, CA 95519

Re: Eric Alan Chemello v. Trustees of the California State University (Humboldt)
Unfair Practice Charge No. SA-CE-238-H
WARNING LETTER

Dear Mr. Chemello:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 29, 2005, and your amended charge was filed on October 4, 2005. You allege that the Trustees of the California State University (Humboldt) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by "misclassifying" your position, "crossing collective bargaining unit lines", threatening you, laying you off for raising concerns regarding labor policy, refusing to meet and confer with you after your layoff, and replacing your position with personnel from a different bargaining unit. My investigation revealed the following information.

Prior to an August 2004 layoff, California State University Humboldt (CSUH) employed you as a "Facilities Worker II." The State Employees Trades Council United (SETC-U) represented you while employed as a Facility Worker II in Bargaining Unit 6. CSUH defines the Facility Worker II position in the following manner:

> Under general supervision, the Facilities Worker II independently performs a wider range of more complex semi-skilled and basic skilled facilities and system maintenance, repair and renovation work; however, the work of a Facilities Worker II does not require full journey-level skills..."

During a telephone conversation on October 4, 2005, you told me that sometime in 2000, during a campus-wide reorganization process, you had been verbally threatened by your supervisor, Wayne Hawkins (Hawkins), regarding statements you had made critical of proposed job classifications. He told you "this will not do, you are on probation and do not want to jeopardize that." You successfully completed probation. In February or March 2004,

[1]HEERA 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.

Hawkins made additional statements to the effect of "when you bring up the problem, you are the problem and layoffs are looming."

On April 8, 2004, CSUH notified several Unit 6 members of future planned lay-offs. CSUH did not meet with SETC-U prior to the lay-off notices. SETC-U filed grievances on behalf of the effected employees and participated in impact negotiations in Long Beach CA in a committee format, resulting in a Settlement Agreement, dated December 17, 2004. Following discussions between the Union and CSUH, all but two lay-offs were averted, Eric Chemello and Andrew Betts were set for lay-off in July 2004.

Fellow "Facility Worker II" Colin Livasy had less seniority points than you but was not laid off. CSUH rescinded Livasy's lay-off after a successful MOU, Article 29.8 challenge, based on his documented journey-level skill sets. You also wrote a letter to CSUH's President requesting you be passed over for lay-off because of your specialized skills and abilities, however, you were unsuccessful.

A copy of the December 2004 Settlement Agreement, was discussed with all potential lay-off candidates by Craig West, SETC-U Executive Board Member in or around January 2005. Chemello and Andrew Bets were laid off in August 2004, but in accordance with the Settlement Agreement, you were granted a right of first refusal for general maintenance work at CSUH and placed on a Re-hire list for five years.

Following the lay-offs, you applied for several positions at CSUH, but have not been rehired by CSUH. The jobs you have applied for are either outside Bargaining Unit 6 or are higher classification positions and not included in the right of first refusal agreement. In January 2005, you applied for, but were not selected for an available Carpenter I position. CSUH re-hired Clark Keeney as a Carpenter I for the 30 day position. When laid off, Keeney was classified as a Facility Worker I, Temporary and was junior to you. In response to a SETC-U inquiry by Robert Herriot, SETC-U Bargaining Representative, CSUH responded that the position Keeney was rehired for required journey level expertise and Keeney met the necessary skill set.

On May, 25, 2005, you filed a Level III grievance with the President of CSUH regarding the Keeney re-hire. On June 7, 2005, CSUH responded to the grievance and advised you had no standing to file because you were not currently employed by CSUH. You assert you are a Union Steward, and as such, have standing to file a grievance. You notified SETC-U of the grievance you had filed in or around June 2005. You then filed an Unfair Practice Charge regarding these matters with PERB on June 29, 2005. In their response, to the Unfair Practice Charge, SETC-U stated they had started working on the matter but had not been given sufficient time prior to his filing with PERB. To this date, you have not been re-hired at CSUH.

You allege Craig West and CSUH representative, Tim Moxon, participated in private meetings, targeting your lay-off because of a letter you wrote, directed at the mismanagement of Plant Operations and the "unfairness of laying off productive people," published in the

CSUH newspaper and because of a letter you wrote to management requesting a promotion. In a separate charge against SETC-U, you allege that after the lay-offs were decided, SETC-U refused to communicate with you and refused to pursue your lay-off grievance filed on December 17, 2004. You also claim neither the Union nor CSUH has kept you informed of any job openings at the CSUH campus.

The above-stated information fails to state a prima facie violation for the reasons that follow.

HEERA section 3563.2(a) 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 statute of limitations is an affirmative defense which has been raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party now bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

You assert the reorganization of the facilities' positions and specifically, the reclassification of the Facility Worker II position in 2000, created negative economic effects which eventually led to your layoff. Because you were aware of the reorganization in 2000, your allegation is well beyond the six month statute of limitations therefore PERB is prohibited from addressing the charge.

Both allegations of the 2000 threat you referred to in our October 4, 2005 telephone conversation and the 2004 threat regarding looming layoffs were untimely filed. Though the latter threat was closely followed by your April 2004 layoff notification, you received your first notice of the layoff in April 2004 and thus you became aware of the alleged adverse action. The statute of limitation began running. You submitted your PERB charge in June 2005, greater than the six months allowed. Therefore, these allegations are untimely.

In our conversations and correspondence, you theorize the University has violated the contract, implementing unilateral changes in the provisions regarding layoffs, re-hire procedures and the 2004 Layoff Impact Bargaining Agreement. You assert the University has employed someone outside of Bargaining Unit 6 to perform your former duties. Additionally, you charge the university has violated its 2004 Layoff Bargaining Impact Agreement by refusing to re-hire you for available positions outside Facility Worker II classification and has refused to meet and confer with you regarding your concerns. These allegations will be reviewed as unilateral change violations.

In determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain

criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

PERB has determined that individual employees do not have standing to assert unilateral change violations, (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) Therefore as an individual employee, you do not have standing to pursue these charges.

You argue your position as a union safety steward provides the necessary relationship to the union to file these charges. However, the SETC-U website lists Bob Herriot as the Job Steward at CSUH. You have been identified by the Union and in your submitted paperwork as a former "Safety Steward." Your position as Safety Steward ended when your lay-off became effective. The relevant portion of the Memorandum of Understanding identifying the job duties of a Safety Steward is listed below:

> Appendix D-2: The Safety Steward will function as the liaison to safety committee meetings, may facilitate the reporting of safety issues to the appropriate management person, as designated by each campus, to support management with safety issues in the plant, and to follow up on action items identified by the campus SETC Health & Safety Committee.

Because your May 25, 2005 grievance submission was not on behalf of the union, rather you filed it as an individual, for your individual needs, and the Union did not recognize you as the current Safety Steward nor grant you the requisite authority to file a grievance, you lacked standing for filing a grievance with CSUH and they were not compelled to proceed with the grievance.

Even if you had standing, you have not sufficiently demonstrated the Facility Worker II job duties are exclusive to Bargaining Unit 6. Rather, the job descriptions you have included indicate many of facility Worker II job duties were performed by other classifications, such as gardeners, maintenance workers, and painters.

You also charge the university unilaterally implemented new policy and deviated from the language of the December 2004 Layoff Impact Bargaining Agreement by not re-hiring you. The university made all open positions available for your interest and participated in interviews and application processes with you. You have provided no affirmative evidence on how the university deviated from the requirements outlined in the above Bargaining Agreement other than the fact you have not been re-employed or hired for various positions you have applied for over the past year.

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 Second 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 October 31, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristi Seargeant
Board Agent
KS