STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RANDLE BENTON, Charging Party, v. OAKLAND UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SF-CE-2586-E PERB Decision No. 1902 May 7, 2007

Appearance: Randle Benton, on his own behalf.

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Randle Benton (Benton) of the Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Oakland Unified School District violated the Educational Employment Relations Act (EERA)[1] by reprimanding him and reducing his position from a 100 percent position to an 80 percent position. Benton alleged that this conduct constituted a violation of EERA section 3543.7.

The Board has reviewed the entire record in this case, including but not limited to, the original and amended unfair practice charges, the warning and dismissal letters, and the appeal. Based upon this review, the Board affirms and adopts the Board agent's dismissal as the decision of the Board itself.

[1]EERA is codified at Government Code section 3540, et seq.

ORDER

The unfair practice charge in Case No. SF-CE-2586-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027

January 12, 2007

Randle Benton

Re: Randle Benton v. Oakland Unified School District
Unfair Practice Charge No. SF-CE-2586-E
DISMISSAL LETTER

Dear Mr. Benton:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 6, 2006. Randle Benton alleges that the Oakland Unified School District violated the Educational Employment Relations Act (EERA)[1] by reducing the number of hours Mr. Benton worked.

I indicated to you in my attached letter dated December 14, 2006, 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 December 21, 2006, the charge would be dismissed.

On December 20, 2006, I received a first amended charge. The first amended charge provides documentation for many of the allegations presented in the original charge. However, the amended charge does not address the deficiencies outlined in my December 14, 2006, letter. A summary of the relevant facts is as follows.[2]

On January 5, 2006, you received a Letter of Concern from Principal Steve Thomasberger regarding your interaction with other employees. More specifically, the Letter of Concern notes that you took an "overly aggressive and verbally abusive" tone with another District employee. Additionally, the letter notes your failure to attend mandatory District meetings. The letter further indicates you should attend these meetings in the future and be aware of your behavior towards others.

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[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] On January 3 and January 4, 2007, we exchanged a number of voice mail messages regarding the status of your charge.

On June 12, 2006, Outreach Coordinator Jackie Vu sent an electronic message to each of the Outreach Consultants. The message stated you would continue to be assigned to Allendale School, but that your position would be only a 75% position.

On June 20, 2006, you met with Principal Thomasberger. During this meeting, Principal Thomasberger gave you a Letter of Reprimand regarding your attendance and alleged unprofessional conduct during a meeting with Ms. Vu. Additionally, during this meeting, Principal Thomasberger provided you with your annual performance evaluation, which rated you as "unsatisfactory" in three (3) categories and "needs improvement" in five (5) other categories. The charge does not include a copy of either the Letter of Reprimand or the evaluation.

On July 31, 2006, Human Resource Analyst Bill Whyte sent you a letter indicating that your hours for the 2006-2007 school year would not be reduced to 75% time. Instead, you were to remain in your current position with no change in assignment.

At some unspecified time during the Fall of 2006, you were asked by Secretary Mary Crockett what day you would like off each week. Ms. Crockett indicated your position was an 80% time position. You allege that when you applied for the position it was listed as a full-time position. However, as of October 31, 2006, the posting for your position was listed as 80% time.

Based on the above stated facts, the charge as presently written, fails to state a prima facie violation of the EERA, for the reasons provided below.

I. Unilateral Change

It appears you are alleging the District violated the EERA by unilaterally reducing your work hours. However, individual employees do not have standing to allege 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.) As such, this allegation must be dismissed.

II. Discrimination

Although not specifically alleged, I will address the assertion of unlawful discrimination based upon protected activity. 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 (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.)

Herein, the facts fail to demonstrate that you engaged in any protected activity, and as such, any allegation of unlawful discrimination must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,[3] 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

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

Sacramento, CA 95814-4174
(916) 322-8231
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).)

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 _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: Kimberly Statham

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027

December 14, 2006

Randle Benton

Re: Randle Benton v. Oakland Unified School District
Unfair Practice Charge No. SF-CE-2586-E
WARNING LETTER

Dear Mr. Benton:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 6, 2006. Randle Benton alleges that the Oakland Unified School District violated the Educational Employment Relations Act (EERA)[1] by reducing the number of hours Mr. Benton worked.

Investigation of the charge revealed the following. You are employed by the Oakland Unified School District as an Outreach Consultant. As such, you are exclusively represented by SEIU Local 790.

On December 13, 2005, you telephoned Chen Kong regarding available grant money. Although not fully explained in the charge, it appears your position is funded through grant money and that your inquiry into the money available was based upon this fact. On January 6, 2006, you received a Letter of Concern from Principal Steve Thomasberger. Although a copy of the letter was not provided with the charge, you contend the letter indicated you acted unprofessionally when talking to Ms. Kong.

On June 12, 2006, Outreach Coordinator Jackie Vu sent an electronic message to each of the Outreach Consultants. Although a copy of this email was not provided with the charge, you indicate the message stated you would continue to be assigned to Allendale School, but that your position would be only a 75% position.

On June 20, 2006, you met with Principal Thomasberger. During this meeting, Principal Thomasberger gave you a Letter of Reprimand regarding your attendance and alleged unprofessional conduct during a meeting with Ms. Vu. Additionally, during this meeting, Principal Thomasberger provided you with your annual performance evaluation, which rated you as "unsatisfactory" in three (3) categories and "needs improvement" in five (5) other

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categories. The charge does not include a copy of either the Letter of Reprimand or the evaluation.

On July 31, 2006, Human Resource Analyst Bill Whyte sent you a letter indicating that your hours for the 2006-2007 school year would not be reduced to 75% time. Instead, you were to remain in your current position with no change in assignment.

At some unspecified time during the Fall of 2006, you were asked by Secretary Mary Crockett what day you would like off each week. Ms. Crockett indicated your position was an 80% time position. You allege that when you applied for the position it was listed as a full-time position. However, as of October 31, 2006, the posting for your position was listed as 80% time.

Based on the above stated facts, the charge as presently written, fails to state a prima facie violation of the EERA, for the reasons provided below.

I. Unilateral Change

It appears you are alleging the District violated the EERA by unilaterally reducing your work hours. However, individual employees do not have standing to allege 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.) As such, this allegation must be dismissed.

II. Discrimination

Although not specifically alleged, I will address the assertion of unlawful discrimination based upon protected activity. 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 (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.)

Herein, the facts fail to demonstrate that you engaged in any protected activity, and as such, any allegation of unlawful discrimination 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 December 21, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR