

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DIANE R. BONNER,

Charging Party,

v.

CHARTER OAK UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5251-E

PERB Decision No. 2159

January 27, 2011

Appearance: Diane R. Bonner, on her own behalf.

Before Dowdin Calvillo, Chair; McKeag and Miner, Members.

DECISION

MINER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Diane R. Bonner (Bonner) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Charter Oak Unified School District violated section 3543.5 of the Educational Employment Relations Act (EERA)¹ by forcing her into retirement in retaliation for protected activity. The Board agent determined that the charge was untimely filed and therefore dismissed the charge for failure to state a prima facie violation of EERA.

The Board has reviewed the dismissal and the record in light of Bonner's appeal and the relevant law. Based on this review, the Board finds the Board agent's warning and dismissal letters to be well-reasoned and a correct statement of the law, and therefore adopts them 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. LA-CE-5251-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chair Dowdin Calvillo and Member McKeag joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
 700 N. Central Ave., Suite 200
 Glendale, CA 91203-3219
 Telephone: (818) 551-2805
 Fax: (818) 551-2820



December 28, 2009

Diane R. Bonner
 ;
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Re: *Diane R. Bonner v. Charter Oak Unified School District*
 Unfair Practice Charge No. LA-CE-5251-E
DISMISSAL LETTER

Dear Ms. Bonner:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 17, 2008, and amended on April 10 and 21, 2009. Diane R. Bonner (Bonner or Charging Party) alleges that the Charter Oak Unified School District (District or Respondent) violated section 3543.5 of the Educational Employment Relations Act (EERA or Act)¹ by forcing her into retirement in retaliation for protected activity.

Charging Party was informed in the attached Warning Letter dated December 15, 2009, 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 that 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 30, 2009, the charge would be dismissed.

On December 23, 2009, you filed with PERB a letter stating: "I believe that the charge as filed states a prima facie case." In a telephone conversation on or about December 22, 2009, you informed me that you do not intend to further amend the charge. Therefore, the charge is hereby dismissed based on the facts and reasons set forth in the December 15, 2009 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations,² Charging Party 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

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

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

this dismissal. (Cal. Code Regs, tit. 8, § 32635, subd. (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. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (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 PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 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. (Cal. Code Regs, tit. 8, § 32135, subd. (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. (Cal. Code Regs, tit. 8, § 32132.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

TAMI R. BOGERT
General Counsel

By _____
Valerie Pike Racho
Regional Attorney

Attachment

cc: Margaret A. Chidester, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
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Telephone: (818) 551-2805
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December 15, 2009

Diane R. Bonner

Re: *Diane R. Bonner v. Charter Oak Unified School District*
Unfair Practice Charge No. LA-CE-5251-E
WARNING LETTER

Dear Ms. Bonner:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on September 17, 2008, and amended on April 10 and 21, 2009. Diane R. Bonner (Bonner or Charging Party) alleges that the Charter Oak Unified School District (District or Respondent) violated section 3543.5 of the Educational Employment Relations Act (EERA or Act)¹ by forcing her into retirement in retaliation for protected activity.

Background

The charge, as amended, provides the following relevant information.² Bonner worked as a teacher in the District until her retirement in June 2007.³ On or around December 5, 2006, a special-needs student, "K.S.," was enrolled in the District and spent instructional time in Bonner's classroom.⁴

On December 8, 2006, Royal Oak Intermediate School Principal Scott Wollam (Wollam) met briefly with Bonner and Union representative Jennifer Gutmann (Gutmann) to discuss

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

² On October 19, 2009, PERB received written materials from the Charging Party that were not accompanied by proof of service on the Respondent. Materials not served on a respondent will not be considered by PERB and are not a part of the official record of the unfair practice charge. (*Service Employees International Union, Local 790 (Fanene)* (2003) PERB Decision No. 1513.)

³ The date of Bonner's retirement was supplied by the District.

⁴ It is unclear from the information in the charge whether Bonner was K.S.' primary teacher.

complaints made against Bonner by district employees and K.S.' nurse, some 28 or 29 complaints in all.⁵ It was established on this date that this meeting would be reconvened on December 11, 2006 because Gutmann had a prior commitment.

On December 11, 2006, Bonner and Gutmann met with Wollam and Assistant Principal Laura May. A memorandum (memo) memorializing the meeting was given to Bonner after the meeting. The memo recounted incidents involving six staff members, which Bonner notes is a significant reduction from the 28-29 complaints reported by Wollam on December 8. The complaints involved Bonner's interactions with staff members, K.S., and other students. The memo generally advised Bonner to behave in a professional manner with staff and students and acknowledged that Bonner wanted to be able to discuss the complaints against her with the individuals who had lodged the complaints. Wollam agreed to arrange meetings with complainants who were willing to participate.

A series of e-mail communications attached to the charge indicate that although the scheduling of meetings between Bonner and the complaining staff members was attempted, such meetings did not actually take place. E-mail communication from Wollam to Assistant Superintendent Gloria Cortez (Cortez) in mid-December 2006 states Wollam's concerns that Bonner would engage in retaliation against staff who had complained about her, and recounted other incidents occurring after the December 11 meeting between Bonner, staff and K.S.

On December 18, 2006, an e-mail message from Cortez to Wollam discusses enrollment and staffing issues for the upcoming semester and notes a plan agreed upon with the District Board of Education that Wollam would reduce his staff by "2 FTE."⁶

On January 18, 2007, Wollam sent Cortez a memorandum summarizing interactions involving Wollam, Bonner and staff on that date and on January 17. Bonner met with Wollam on January 17 to complain about the unprofessional conduct of some staff members, and to discuss K.S.' upcoming IEP (Individualized Education Plan) meeting. On January 18, a teacher complained about Bonner to Wollam and mentioned possible harassment charges. Wollam stated in this memorandum:

In my opinion her [Bonner's] conduct with students, parents and employees is putting the District in a precarious position especially since we are dealing with special education students.

On February 2, 2007, Bonner was served with a Notice of Unprofessional Conduct and Unsatisfactory Performance, which relied on the incidents discussed in the December 11, 2006

⁵ Prior to the meeting, Wollam informed Bonner that she could be accompanied at the meeting by a representative from the union, if Bonner so desired.

⁶ Based on other information in the charge, it is assumed that "2 FTE" means two full-time employees.

meeting and those recounted in the January 18, 2007 memo from Wollam to Cortez, as well as earlier incidents going back as far as 2005. The Notice was placed in Bonner's personnel file and noted that, if she did not correct her behavior, the District could seek her dismissal.

The amended charges filed in April 2009 provide numerous statements by Bonner's fellow employees, including teachers, school psychologists, nurses, and instructional assistants, that discount the information presented by the District in Bonner's Notice of Unprofessional Conduct. These employees reportedly had personal knowledge of the events listed as grounds for discipline by their presence at these various events. These employees many times note that they were never contacted by the District during the District's investigation of Bonner's alleged misconduct. The employee statements provided by Bonner demonstrate the employees' beliefs that Bonner at no time acted in the unprofessional manner as accused by the District.⁷

Bonner alleges that the actions taken against her by the District were motivated by the District's need to reduce staff, and not by her alleged misconduct, as evidenced by the December 18, 2006 e-mail communication from Cortez to Wollam referencing enrollment figures and the need to reduce staff by two full-time employees.⁸

For the reasons to follow, the information in the charge does not demonstrate a prima facie violation of EERA.

Discussion: Statute of Limitations⁹

EERA section 3541.5(a)(1) 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.) A 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.)

⁷ The amended charges also included several newsletters and newspaper articles either authored by or referencing Bonner, as well as a 2004-2005 performance evaluation and several letters of recommendation regarding Bonner.

⁸ Bonner states that she did not learn of this e-mail communication until March 2008, after her testimony before the California Commission for Teacher Credentialing.

⁹ Although the underlying theory of Bonner's charge is retaliation, this document addresses only the threshold issue of whether the charge was timely filed. If an amended charge is filed that corrects the deficiency explained below, a subsequent PERB document will address the retaliation allegations of the charge.

The conduct underlying this charge occurred, at the latest, in February 2007 when Bonner was served with the Notice of Unprofessional Conduct. The charge was not filed until September 2008, more than 19 months after the conduct that Bonner alleges was a violation of the Act. This is well beyond the six-month period for filing an unfair practice charge under EERA, and therefore the charge is untimely.

Bonner states that in March 2008, information provided by the District confirmed her “long-held suspicions” about the District being motivated by a need to reduce staff rather than to help her improve professionally when it issued the Notice of Unprofessional Conduct. However, even if Bonner’s theory of the District’s motivation is assumed correct, the statute of limitations begins to run when a charging party discovers the conduct that constitutes the alleged unfair practice, not when a charging party discovers the legal significance of that conduct. (*Trustees of the California State University* (2009) PERB Decision No. 2038-H; *Compton Unified School District* (2009) PERB Decision No. 2016; emphasis supplied.) Similarly, although Bonner asserts that she was unaware of PERB’s existence until June 2008, lack of knowledge about PERB and the laws it enforces does not toll the six-months limitations period. (*Orange Unified Education Association, CTA (Rossmann, et al.)* (1999) PERB Decision No. 1307; *Val Verde Teachers Association, CTA/NEA (Twyman)* (1998) PERB Decision No. 1257.) Therefore, the charge was not timely filed and must be dismissed.¹⁰

For these reasons the charge, as presently written, does not state a prima facie case.¹¹ If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before December 30, 2009,¹²

¹⁰ It is noted that the charge would still not be timely filed if, based on a theory of constructive discharge, the conduct giving rise to the unfair practice charge is considered the date of Bonner’s retirement at the end of June 2007.

¹¹ In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make “a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing.” (*Ibid.*)

¹² A document is “filed” on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)

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PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Valerie Pike Racho
Regional Attorney

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