STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JEFFEREY L. NORMAN, ET AL., Charging Parties, v. RIVERSIDE COUNTY OFFICE OF EDUCATION, ET AL., Respondents.	Case No. LA-CE-6214-E PERB Decision No. 2565 June 6, 2018

Appearances: Jefferey L. Norman, on his own behalf and for the Master Grievance Group/The Anonymous Know Nothings; Adams Silva & McNally by Kerrie McNally, Attorney, for Jurupa Unified School District; Atkinson, Andelson, Loya, Ruud & Romo by Mark W. Thompson, Attorney, for Riverside County Office of Education.

Before Banks, Winslow, and Shiners, Members.

DECISION[1]

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Jefferey L. Norman (Norman) and the Master Grievance Group/ Anonymous Know Nothings (collectively, Charging Parties) from the dismissal (attached) of their unfair practice charge by PERB's Office of the General Counsel. The charge, as amended, alleged that the Riverside County Office of Education (COE), the Jurupa Unified School District (District), and the California Department of Education (Department)

[1] PERB Regulation 32320, subdivision (d), provides, in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 [Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, this decision has not been designated as precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

(collectively, Respondents) violated the Educational Employment Relations Act (EERA)[2] and the Ralph C. Dills Act (Dills Act).[3]

The Board has reviewed the case file in its entirety and has fully considered the relevant issues and contentions on appeal. Based on this review, the Board finds the warning and dismissal letters accurately describe the allegations included in the unfair practice charge, as amended. The warning and dismissal letters are well reasoned and in accordance with applicable law. We therefore deny the appeal and adopt the warning and dismissal letters as the decision of the Board itself, as supplemented by the discussion below.

BACKGROUND

The original charge was filed on February 24, 2017 against the COE and the Department. On February 27, 2017, an amended charge was filed omitting the Department as a respondent. The charge, as amended, discussed the District's termination of Norman's employment, as well as the COE's failure to investigate an anonymous complaint submitted by Charging Parties on February 7, 2017, under the Uniform Complaint Procedure set forth in California Code of Regulations, title 5, section 4600 et seq.[4]

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[2] EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory referenced are to the Government Code.

[3] The Dills Act is codified at section 3512 et seq.

[4] The anonymous complaint and related materials were attached to the original charge. A cover letter to the complaint refers to a Master Grievance/Uniform Complaint filed with Respondents on June 19, 2010, and cites the Board's discussion of that document in *Jurupa Unified School District* (2012) PERB Decision No. 2283. The letter continues:

> We are now attempting as the same group who no longer are public employees to file this case as private citizens. We speak on behalf of teachers filing a uniform complaint as private citizens. We were retaliated against for Whistle blowing [*sic*]

On April 20, 2017, the Office of the General Counsel issued Charging Parties a warning letter. The warning letter observed that the charge failed to include a "clear and concise statement" of the alleged unfair practice, as required by PERB Regulation 32615, subdivision (a)(5), but nevertheless explained that the allegations concerning Norman's termination, which was finalized in January 2013, were untimely, and that the allegations regarding the Uniform Complaint Procedure were not within PERB's jurisdiction.

On May 11, 2017, Charging Parties filed an amended charge, which named the Department and the District as additional respondents. Charging Parties alleged that Respondents operate as a "joint employer," and that the failure to investigate the anonymous complaint constituted retaliation against Charging Parties in violation of EERA and the Dills Act, as well as interference with their protected rights under those statutes.

On July 7, 2017, the Office of the General Counsel dismissed the charge on the grounds that: (1) Charging Parties were not employees or an employee organization under EERA or the Dills Act, and therefore lacked standing to file an unfair practice charge; (2) the charge failed to state a prima facie case of retaliation, because the failure to investigate the anonymous complaint was not an adverse action; and (3) the charge failed to state a prima facie case of interference, because Charging Parties were not employees or an employee organization.

> and reporting the outright fraud and corruption among other violations of our former employer Jurupa Unified School District.

The letter goes on to discuss the Board's decisions in *Jurupa Unified School District* (2013) PERB Decision No. 2309 and *Jurupa Unified School District* (2015) PERB Decision No. 2458, and then quotes extensively from the findings of a California State Auditor's report on the Uniform Complaint Procedure and from the Riverside County District Attorney's Office website.

A Uniform Complaint Form submitted with the original charge states that the date of the "alleged violation occurrence" was prior to June 19, 2010.

APPEAL

In their appeal, Charging Parties generally challenge the Office of the General Counsel's conclusion that they failed to state a prima facie case. With respect to their standing to file an unfair practice charge, they claim that the Master Grievance Group/Anonymous Know Nothings is an employee organization, because Norman, the group's "chairperson":

> has represented many of the group's former employees in their 'employment relations' with the employer many times in the filing of PERB's Unfair Practice Charges (UPC's) against [the District]'s administration, imparticularly [*sic*] Ermine Nelson. Norman assisted Ms. Nelson in filing several unfair practice charges against [the District] between 2012 and 2013.

The appeal also includes a declaration signed by Nelson stating that she is a current employee of the District and a member of the Master Grievance Group/Anonymous Know Nothings.

The District and the COE filed oppositions to the appeal.[5] Both argue that Charging Parties have failed to comply with the requirements for the substance of an appeal, have improperly included new information on appeal, and that the Office of the General Counsel properly dismissed the charge. The COE also requests an award of its attorneys' fees.

DISCUSSION

Adequacy of the Appeal

The COE and the District object that Charging Parties have failed to comply with the requirements of PERB Regulation 32635, subdivision (a), that an appeal "(1) [s]tate the specific issues of procedure, fact, law or rationale to which the appeal is taken; (2) [i]dentify the page or part of the dismissal to which each appeal is taken; [and] (3) [s]tate the grounds for each issue stated." We reject this contention.

[5] The Department did not file an opposition to the appeal.

The appeal substantially complies with our regulations. It quotes five conclusions from the dismissal letter, including the page number on which each appears, and then states the grounds for disputing each conclusion. Although we determine below that those grounds are unavailing, the appeal includes enough information to place the Board and the Respondents "on notice of the issues raised on appeal." (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H, p. 6.) Therefore, the appeal satisfies the requirements of the regulation.

Standing

In general, an unfair practice charge may be filed only by an employee, an employee organization, or an employer. (PERB Regulation 32602, subd. (b); see also EERA § 3541.5, subd. (a) ["Any employee, employee organization, or employer shall have the right to file an unfair practice charge"].)[6] A charge that fails to allege facts establishing that the charging party falls into one of these three categories must be dismissed. (*Teachers Association of Long Beach (Filinuk, et al.)* (1999) PERB Decision No. 1312, adopting warning letter at p. 3.)

Charging Parties do not assert that Norman is an employee as defined by section 3540.1, subdivision (j), or that he is an applicant for employment as defined by section 3543.5, subdivision (a), as interpreted in *Monterey Peninsula Unified School District* (2017) PERB Decision No. 2530. Therefore, the only possible basis for standing is their claim that the Master Grievance Group/Anonymous Know Nothings is an employee organization.

[6] Members of the public may file a charge alleging a violation of Dills Act section 3523 or EERA section 3547, which require public notice of initial negotiating proposals, or EERA section 3547.5 which requires public notice of tentative agreement provisions. None of these provisions is at issue here.

Charging Parties' claim in this regard relies on new information that was not included in the unfair practice charge. But Charging Parties did not receive a warning letter advising them that they lacked standing to file an unfair practice charge. PERB Regulation 32620, subdivision (d), requires the Board agent to "advise the charging party in writing of any deficiencies in the charge in a warning letter . . . prior to dismissal of any allegations contained in the charge." Charging Parties were thus deprived of an opportunity to amend their charge to allege facts demonstrating that the Master Grievance Group/Anonymous Know Nothings is an employee organization. Ordinarily in these circumstances, we would remand the case to the Office of the General Counsel with directions to permit the charging party to amend the charge. However, remand is not warranted here, because, as we conclude below, the charge fails to state a prima facie case.[7]

Prima Facie Case

Charging Parties' appeal challenges the dismissal letter's rejection of the allegations in the May 11, 2017 amended charge that Respondents retaliated against them and interfered with their rights under EERA and the Dills Act. We agree with the Office of the General Counsel that these allegations do not state a prima facie case.

As noted, the Office of the General Counsel dismissed the retaliation allegation because it determined that the failure to investigate the anonymous complaint was not an adverse action under PERB case law. As explained in its dismissal letter, the test for whether an action is sufficiently adverse is "not whether the employee found the employer's action to be adverse,

[7] Because we are not deciding whether the Master Grievance Group/Anonymous Know Nothings is an employee organization, we need not decide whether Charging Parties have established good cause for presenting new allegations or evidence on appeal, as required by PERB Regulation 32635, subdivision (b).

but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment." (*Newark Unified School District* (1991) PERB Decision No. 864, pp. 11-12.) The harm alleged must be "actual and not merely speculative." (*City & County of San Francisco* (2004) PERB Decision No. 1664-M, p. 12.)

In their appeal, Charging Parties claim that the failure to investigate the anonymous complaint was an adverse action because federal law requires the Department to investigate anonymous complaints. The failure to comply with such a requirement, assuming it exists,[8] would not have an adverse impact on any Charging Party's employment. The complaint was a list of general concerns about the District based on findings by PERB and the California State Auditor. The prospect that an investigation into these concerns (or lack thereof) would have had any impact on anyone's employment is fundamentally speculative.

As further support for their argument that the failure to investigate the complaint was an adverse action, Charging Parties also cite *City of Livermore* (2017) PERB Decision No. 2525-M. Their reliance on that case is misplaced. It arose under the Meyers-Milias-Brown Act (MMBA)[9] and concerned an employer's duty to reasonably apply its rules and regulations concerning employee representation petitions. Charging Parties quote our conclusion that "once the City chose to process the petition, PERB may properly find liability and order that the City do so in a manner consistent with the provisions, policies and purposes of the MMBA, including the rights of public employees 'to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on

[8] Charging Parties cite a section of the United States Department of Education's Regulations, 34 C.F.R § 106.8, for this proposition. That section specifically concerns complaints regarding discrimination on the basis of sex, but the anonymous complaint filed by Charging Parties was not such a complaint.

[9] The MMBA is codified at section 3500 et seq.

all matters of employer-employee relations.'" (*Id.* at p. 15.) That conclusion has nothing to do with whether the failure to investigate Charging Parties' anonymous complaint was an adverse action. Therefore, we agree with the Office of the General Counsel that the charge failed to allege an adverse action, and thus failed to state a prima facie case of retaliation.

Turning to the interference allegation, Charging Parties claim that their appeal demonstrates "that we are an employee organization and that our rights have been violated under EERA, Dills Act, NLRB, [*sic*] and the California Labor Code § 1102.5, 'The California Whistleblowing Protection Act.'"

Putting aside the "employee organization" issue, we note that the Board has jurisdiction over EERA and the Dills Act but, as the Office of the General Counsel explained, not over the Labor Code. We also do not have jurisdiction over the National Labor Relations Act (NLRA), which is enforced by the National Labor Relations Board.

As for interference with rights under our statutes, the appeal elsewhere asserts that EERA "is being compromised" by the role of employee organizations as exclusive representatives, that union dues are being deducted from employee paychecks without authorization, and that this conduct would constitute violations of the NLRA under several theories. However, these general assertions do not describe violations of EERA, which expressly authorizes a system of exclusive representation (see, e.g., §§ 3540.1, subd. (e), 3543.3, 3544, 3544.1, 3544.9), as well as the deduction of "fair share service fees" in an amount that "shall not exceed the dues that are payable by members of the employee organization" (EERA § 3546, subd. (a)). Thus, Charging Parties' allegations cannot state a prima facie violation of EERA.

The appeal also claims that the District did not comply with a cease-and-desist order in *Jurupa Unified School District*, *supra*, PERB Decision No. 2458, and that neither that case nor *Jurupa Unified School District*, *supra*, PERB Decision No. 2309 resulted in a reprimand, notice of misconduct, or termination of the administrators involved. However, concerns about compliance with a final Board decision may only be raised by a party to the case. (EERA § 3542, subd. (d).) Neither Norman nor the Master Grievance Group/Anonymous Know Nothings was a party to either of those cases. In any event, Charging Parties' assertions are too general to describe violations of our statutes.

Having rejected Charging Parties' arguments, we affirm the Office of the General Counsel's dismissal of the charge for failure to state a prima facie case.

Request to Expedite

In the dismissal letter, the Office of the General Counsel denied as moot Charging Parties' June 16, 2017 request to expedite processing of the unfair practice charge. Charging Parties claim they received an e-mail message on June 27, 2017, from the Board agent assigned to their charge, which they believe confirms that they have an "expedited case" that "is in fact still valid and has not been dismissed or denied as moot." However, given that the same Board agent issued the Office of the General Counsel's dismissal letter on July 7, 2017, we conclude that the request to expedite was denied as moot. More importantly, in light of our disposition of this case, we find no conceivable error in denying Charging Parties' request to expedite.

Request for Sanctions

The COE requests an award of its attorneys' fees incurred in responding to the charge and the appeal. The Board applies a two-prong test to determine if an award of sanctions in the

form of attorneys' fees is warranted. The charge or defense must be both: (1) without arguable merit; *and* (2) pursued in bad faith. (*Jurupa Unified School District*, *supra,* PERB Decision No. 2458, p. 9.) "Bad faith" is a subjective standard, and may be demonstrated by conduct that is dilatory, vexatious, or otherwise an abuse of process. (*Ibid.*)

The COE argues that Charging Parties' appeal "is the very definition of bad faith" because "PERB has already clearly explained the reasons that [the] charge is totally devoid of merit" and Charging Parties have not cured the defects despite multiple opportunities. While we agree that the charge and the appeal are altogether without merit, we disagree that appealing from the dismissal of such a charge necessarily demonstrates bad faith. To conclude otherwise would effectively merge the two prongs of the test for sanctions. Therefore, we deny the COE's request for sanctions.

ORDER

The unfair practice charge in Case No. LA-CE-6214-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Banks and Shiners joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8385
Fax: (916) 327-6377

July 7, 2017

Jefferey L. Norman

Re: *Jefferey L. Norman, et al. v. Riverside County Office of Education, et al.*
Unfair Practice Charge No. LA-CE-6214-E
DISMISSAL LETTER

Dear Mr. Norman:

The above-referenced unfair practice charge was initially filed with the Public Employment Relations Board (PERB or Board) on February 24, 2017.[1] In that first iteration of the charge, Jefferey Norman and the "Master Grievance Group/AnonymousKnowNothings" (Norman or, collectively, Charging Parties) alleged that the Riverside County Office of Education (RCOE) violated sections 3543(a), and 3543.5(a) through (c) of the Educational Employment Relations Act (EERA or Act)[2] by: (1) terminating Norman's employment based on his protected activity; (2) failing to provide Charging Parties with "derogatory material"; (3) exhibiting bias and animosity to Charging Parties because of protected activity; (4) failing to process a Master Grievance/Uniform Complaint anonymously; (5) failing to investigate "very serious violations of EERA, Education Code, and other external laws"; and (6) producing "cursory investigations not signed under penalty of perjury."

Charging Parties were informed in the attached Warning Letter dated April 20, that the above-referenced charge did not state a prima facie case. Charging Parties were advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, an amended charge should be filed.

On May 11, Charging Parties filed an amended charge containing additional allegations in a document entitled "Warning Letter Response," and named two new Respondents, Jurupa Unified School District (JUSD) and the California Department of Education

[1] All further dates occur in 2017 unless otherwise stated.

[2] EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

(CDE) (collectively, with RCOE, referred to as Respondents). The amended charge also alleged violations of the Dills Act,[3] specifically sections 3513, subdivisions (c) and (j),[4] and 3519, subdivisions (a) through (d).[5] On June 2, JUSD filed a position statement responding to the amended charge; on June 7, CDE filed its position statement; and on June 9, RCOE filed its supplemental position statement. On June 16, following receipt of these statements, Charging Parties filed a response.[6]

Having reviewed the additional allegations and supporting evidence, it has been determined that the amended charge should be dismissed for failure to state a prima facie case, as explained below.

Discussion

In the April 20 Warning Letter, Charging Parties were advised to comply with PERB Regulation 32615(a)(5), which requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The amended charge and response to Respondents' respective position statements fail to meet this fundamental pleading standard. On the contrary, rather than clarifying the allegations, the amended charge only further obscures the unfair practice theories with new, disorganized allegations. These new allegations center on the theory that Respondents operate as a joint employer, i.e., the charge asserts that RCOE's failure to investigate a February 2017 uniform complaint amounted to an adverse action for which JUSD and CDE must also be held responsible. The amended charge also seems to allege that Respondents are "dominating and interfering" with National Education Association-Jurupa, the union representing certificated staff at JUSD. The remainder of the amended charge consists largely of various legal citations regarding the standards for establishing retaliation/discrimination and interference under EERA. None of these allegations or legal citations cure the pleading defects identified in the Warning Letter,

[3] The Dills Act is codified at Government Code section 3512 et seq.

[4] Section 3513 contains the glossary of definitions under the Dills Act. In relevant part, subdivision (c) defines "State Employee" as "any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education." Subdivision (j) defines "'State Employer' or 'employer' for the purposes of bargaining or meeting and conferring in good faith, [as] the Governor or his or her designated representatives."

[5] Section 3519 defines unlawful actions by the State of California as an employer.

[6] In their June 16 response, Charging Parties requested that PERB's Office of the General Counsel expedite the investigation of this case. In light of the fact that the amended charge is being dismissed, that request is denied as moot.

i.e., the amended charge does not contain a clear and concise statement of allegations that would, if proven, establish a violation of the Dills Act or EERA.

Additionally, the amended charge fails to state a prima facie case, because the Charging Parties evidently do not have standing under the Dills Act or EERA to file or pursue unfair practice charges against the Respondents. Under subdivision (a) of sections 3514.5 (Dills Act) and 3541.5 (EERA), only an "employee, employee organization, or employer shall have the right to file an unfair practice charge." [I]n order for a person to have standing to file an unfair practice charge [as an employee], that person must have been an employee at the time the unfair practice occurred." (*California Union of Safety Employees (Trevisanut)* (1993) PERB Decision No. 1029-S (emphasis added).) In order for an employee organization to have standing to file an unfair practice charge, it must meet the definition of an "employee organization" under subdivision (a) of section 3513, or subdivision (d) of section 3540.1: "'Employee organization' means an organization that includes employees of [the state or a public school employer] and that has as one of its primary purposes representing those employees in their relations with [that employer]." Because the amended charge does not contain facts sufficient to establish that the Charging Parties were employees of the Respondents at the time of the alleged unfair practices (whatever those might be),[7] or a bona fide employee organization,[8] it fails to establish Charging Parties' standing to file or pursue an unfair practice charge.

The amended charge also fails to state a prima facie case for discrimination or retaliation under the Dills Act or EERA. To demonstrate that an employer discriminated or retaliated against an employee, the charging party must show that: (1) the employee exercised protected rights; (2) the employer had knowledge of the

[7] Indeed, in their respective positions statements, RCOE and CDE make it clear that Norman, the only person named in either the charge or amended charge, was never an employee of theirs. Additionally, JUSD presented facts showing that it terminated Norman's employment on April 2, 2012, which was upheld by the Commission on Professional Competence in January 2013. In their response to Respondents' position statements, Charging Parties' did not challenge these facts or otherwise demonstrate that Norman was an employee under EERA at the time of the alleged unfair practices.

[8] In the amended charge, Charging Parties seem to imply that the filing of an anonymous uniform complaint with RCOE is sufficient to establish the so-called Master Grievance Group/AnonymousKnowNothings' status as an "employee organization." However, since the amended charge does not state that the Master Grievance Group/ AnonymousKnowNothings includes employees of a public school/state employer, nor that it represents any such employees in their employment relations with that employer, it fails to satisfy the definition of an "employee organization" under the Dills Act and EERA. (See *Redwoods Community College District* (1987) PERB Decision No. 650.)

exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*).)

In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

Here, the amended charge contains no factual allegations that amount to an adverse action within the six-month period preceding the filing of the original charge.[9] Although Charging Parties contend that "no investigation [of a uniform complaint] by administration is an adverse action to the interest[s] of the employee," (amended charge, p. 10, capitalization and emphasis omitted), no case supports that contention. RCOE's failure to investigate the February uniform complaint simply had no impact on Charging Parties' employment, because Norman is not employed by RCOE or any other Respondent, and the Master Grievance Group/AnonymousKnowNothings does not demonstrably represent any of Respondents' employees.

Similarly, the allegations of interference fail because, although both the Dills Act and EERA prohibit employers from interfering with the rights of employees and their employee organizations, the amended charge contains no facts establishing that Charging Parties are employees or constitute a bona fide employee organization.

For these reasons, as well as those stated in the April 20 Warning Letter, the amended charge fails to state a prima facie case of a violation of the Dills Act or EERA, and accordingly must be dismissed.

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[9] To the extent Charging Parties' theories rely on JUSD's 2012 termination of Norman, those allegations are clearly time-barred and were, in any event, previously litigated and decided. (*Jurupa Unified School District* (2015) PERB Decision No. 2450 [dismissing complaint alleging retaliatory termination of Norman].)

Right to Appeal

Pursuant to PERB Regulations, 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 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.)

Final Date

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

Sincerely,

By _____
Wendi L. Ross
Deputy General Counsel

Attachment

cc: Mark W. Thompson, Amy Bisson Holloway, Kerrie McNally

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 322-8387
Fax: (916) 327-6377

April 20, 2017

Jefferey L. Norman

Re: *Jefferey L. Norman, et al. v. Riverside County Office of Education*
Unfair Practice Charge No. LA-CE-6214-E
WARNING LETTER

Dear Mr. Norman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 24, 2017. The Jefferey L. Norman, et al. (Norman or Charging Party) alleges that the Riverside County Office of Education (RCOE or Respondent) violated sections 3543(a), and 3543.5(a) through (c) of the Educational Employment Relations Act (EERA or Act)[1] by (1) terminating Charging Party's employment based on his protected activity, (2) failing to provide Charging Party with "derogatory material," (3) exhibiting bias and animosity to Charging Party because of his protected activity, (4) failing to process a Master Grievance/Uniform Complaint anonymously,[2] (5) failing to investigate "very serious violations of EERA, Education Code, and other external laws," and (6) producing "cursory investigations not signed under penalty of perjury."

Facts

It is difficult to identify the salient facts in this matter because the charge consists of over 500 pages of exhibits containing miscellaneous correspondence (some dating back to 2010), government audits or reports, complaints by the AnonymousKnowNothings to various law enforcement agencies, and the many citations to Norman's efforts to overturn the Jurupa Unified School District's decision to terminate his teaching position in 2013.[3] From what can

[1] EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

[2] The charge alleges that Jurupa Unified School District and the California Department of Education also failed to process complaints anonymously, but those entities are not named as Respondents.

[3] Many of the facts surrounding Norman's termination are recounted in *Jurupa Unified School District* (2015) PERB Decision No. 2450. In brief, Norman taught for the Jurupa USD for about a decade before the District moved to terminate him in February 2012, which was finalized in January 2013. Subsequently, Norman filed an unfair practice charge alleging

be gleaned from the mass of documents, it appears Charging Party is challenging the Respondent's dismissal of a Uniform Complaint on February 10, 2017. According to the charge and accompanying Request for Injunctive Relief, RCOE performed only a perfunctory investigation of the Uniform Complaint and did not respond to the substantive allegations. On this basis, the charge claims that RCOE violated EERA and he seeks reinstatement and a make-whole award.

Respondent's Position

RCOE contends that all allegations concerning Norman's dismissal from Jurupa Unified School District are time-barred, since the termination occurred more than six-months prior to the filing of the charge. Additionally, RCOE contends that PERB has no jurisdiction to investigate allegations surrounding its compliance with the Uniform Complaint process. Finally, RCOE maintains that it never employed Norman and therefore cannot be ordered to reinstate him as requested by the charge.

Discussion

PERB Regulation 32615(a)(5) requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." In doing so, a charging party should allege with specificity the particular facts giving rise to a violation. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) The charging party may do this by alleging sufficient facts describing the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture*) (1994) PERB Decision No. 1071-S (*Dept. of Food and Agriculture*), citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Such allegations should focus on the elements of the prima facie case. Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

A "[c]lear and concise statement of the facts and conduct alleged to constitute an unfair practice," as required by PERB Regulation 32615(a)(5), must be stated in the charge itself. Mere mention of the relevant facts in attached documents, without reference to those facts in the charge itself, is insufficient to satisfy this requirement. (*Sacramento City Teachers Association (Franz)* (2008) PERB Decision No. 1959; see also *Monrovia Unified School District* (1984) PERB Decision No. 460 [allegations of fact must be contained in the statement of the charge].)

The charging party's burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months

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retaliatory termination based and his prior protected activities of filing a "master grievance" and other unfair practice charges. Although Norman was able to establish a prima facie case for retaliation under *Novato Unified School District* (1982) PERB Decision No. 210, the Board agreed with the ALJ and concluded that the District demonstrated that it would have terminated Norman anyway because of misconduct. Norman's complaint was dismissed.

prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited 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. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072; Gov. Code § 3541.5(a)(1).) 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.)

Here, the charge fails to provide a clear and concise statement of the alleged unfair practice. Most of the events surrounding the termination of Charging Party's employment occurred long before the six-month period preceding the filing of the charge and are therefore time-barred. (Gov. Code § 3541.5(a)(1).) Moreover, the significance of the hundreds of pages of accompanying exhibits are not properly explained in the statement of the charge. As a result, it is not generally possible to identify all possible theories of the charge, let alone investigate them. Any amended charge must clearly lay out the facts that would support a complaint for an unfair practice; simply attaching exhibits or appending arguments in footnotes is insufficient to satisfy the Charging Party's burden.

Turning to the one apparent allegation against the Respondent, the charge alleges that RCOE failed to perform a proper investigation of a Uniform Complaint. The uniform complaint procedure is promulgated pursuant to the Education Code. (See Cal. Code Regs., tit.5, §§ 4600-4687.) However, PERB's jurisdiction is limited to resolving claims of unfair practices, as defined, which violate the collective bargaining statutes enforced by PERB, e.g., EERA. (See, e.g., *Los Angeles Unified School District* (1984) PERB Decision No. 448.) PERB lacks jurisdiction to enforce other statutory or constitutional schemes. (*State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2018-S.) For example, PERB lacks jurisdiction to enforce laws prohibiting discrimination on the basis of race. (*Alum Rock Union Elementary School District* (2005) PERB Decision No. 1748.) PERB has no jurisdiction to enforce the Penal Code (*State of California (Department of Corrections)* (2003) PERB Decision No. 1559-Sa), Labor Code (*State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 2018-S), Education Code (*Fremont Unified School District* (1997) PERB Decision No. 1240), other provisions of the Government Code (*Ventura County Community College District* (1996) PERB Decision No. 1167), or Federal law (*ibid.*). Claims covered under Workers' Compensation law or the Americans with Disabilities Act (ADA) are also not within PERB's jurisdiction. (*Salinas City Elementary School District* (1996) PERB Decision No. 1131.) Similarly, PERB does not have jurisdiction to enforce the Whistleblower Protection Reporting Act (*Union of American Physicians & Dentists (Menaster)* (2007) PERB Decision No. 1918-S) or the First Amendment (*Los Angeles Unified School District* (2009) PERB Decision No. 2011.) PERB is also not empowered to enforce laws governing sexual harassment or defamation. (*Union of American Physicians & Dentists (Menaster)*, *supra*, PERB Decision No. 1918-S.) Charges that an employer violated legal schemes other than EERA must be dismissed. (*Ibid.*)

For these reasons the charge, as presently written, does not state a prima facie case.[4] 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 May 1, 2017,[5] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Brendan P. White
Regional Attorney

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[4] 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.*)

[5] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile or electronic mail. (PERB Regulation 32135.)