STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

COALITION OF ASSOCIATIONS AND UNIONS OF STATE EMPLOYEES, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF REAL ESTATE), Respondent.	**Case No. S-CE-87-S** PERB Decision No, 287-S February 24, 1983

Appearances; Steven Allen for Coalition of Associations and Unions of State Employees; Barbara T. Stuart, Attorney for State of California (Department of Real Estate).

Before Gluck, Chairperson; Tovar and Burt, Members.

DECISION

GLUCK, Chairperson: The Coalition of Associations and Unions of State Employees (CAUSE) excepts to the refusal of a hearing officer to issue a complaint on its charge that the California Department of Real Estate (Department) violated subsection 3519(a) of the State Employer-Employee Relations Act (SEERA)[1] by making unfavorable comments in a third-level

[1]SEERA is codified as Government Code section 3512 et seq. All further statutory references are to the Government Code unless otherwise noted.

Subsection 3519(a) provides:

It shall be unlawful for the state to:

grievance response. The charge states that Stephen Potter grieved the Department's refusal to pay him $7.00 in incidental travel expenses and that the Department, when granting the grievance, made the following remarks which violated the Act:

> Although payment will be granted based on precedence [sic] that was set by other departments, I totally concur with Mr. Liberator's judgment, and I do feel that the payment of such nebulous expenses strains ethical trust relationships that are established between employee and employer.
>
> I have seen a preponderance of examples where I felt that individuals were being victimized by government red tape and regulations, but you have established the distinction of demonstrating, at least to my knowledge, a first for an individual to victimize a government agency by using government regulations.

The hearing officer dismissed the charge with leave to amend, finding that it does not allege that the employee was engaged in any protected right under SEERA and that, while the above remarks were offensive, SEERA does not protect employees from such comments unless they rise to the level of an unlawful threat of reprisal or discrimination. CAUSE filed a timely amendment to its charge, claiming that the employee was engaged in the protected activity of filing a grievance and that the

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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

comments made in the grievance response amounted to a threat of reprisal which "has the clear and major potential of having a chilling effect" on the employee's right to file grievances. With no explanation, the chief administrative law judge dismissed the amended charge without leave to amend.

DISCUSSION

In deciding whether the charge states a prima facie case requiring a hearing on the merits, we must deem the "essential facts alleged in the charge are true." San Juan Unified School District (3/10/77) EERB Decision No. 12.[2]

The present charge raises only two material facts: an employee filed a grievance and, in its response, the Department made the quoted remarks. CAUSE contends that these facts, alone, constitute a prima facie case of interference or reprisal.

In a charge of interference, a prima facie violation is established by alleging facts showing

> a connection [nexus] between the employer's act and the exercise of employee rights . . . [and] the employer's action tended to harm or did harm employee rights.

State of California (California Department of Corrections) (5/5/80) PERB Decision No. 127-S; Carlsbad Unified School District (1/30/79) PERB Decision No. 89. Where the charge is

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[2]Prior to January 1, 1978, the Public Employment Relations Board was known as the Educational Employment Relations Board.

one of reprisal, it must state that the employee was engaged in protected activity and such activity was a motivating factor in the employer's conduct. State of California (Department of Developmental Services) (7/28/82) PERB Decision No. 228-S; Novato Unified School District (4/30/82) PERB Decision No. 210.

Under either charge, CAUSE has failed to state a prima facie case. On its face, the charge indicates that the Department's comment was a reaction to what it considered to be the picayune nature of the grievance rather than to the employee's exercise of his right to present it. Further, since the grievance was granted, we do not find that the response, standing alone, had a tendency to chill and interfere with the employee's right to file grievances in the future. Accordingly, we dismiss the charge without leave to amend.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that the charges filed by the Coalition of Associations and Unions of State Employees be DISMISSED without leave to amend.

Members Tovar and Burt joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

COALITION OF ASSOCIATIONS AND UNIONS OF STATE EMPLOYEES (CAUSE), Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF REAL ESTATE), Respondent.	Case No. S-CE-87-S NOTICE OF REFUSAL TO ISSUE COMPLAINT AND DISMISSAL OF CHARGE WITHOUT LEAVE TO AMEND

NOTICE IS HEREBY GIVEN that no complaint will be issued on the above-captioned unfair practice charge and it is dismissed without leave to amend.

This charge alleged that an employee of the Department of Real Estate had an expense claim denied and filed a grievance on which he prevailed at the third step. The offensive words used in granting the grievance were found not to state a prima facie charge.

Charging party was given until November 19, 1981, to either amend the charge or appeal to the Board itself. On November 19, 1981, charging party filed an amendment to charge which contained no new factual allegations but, rather, made legal arguments on why the charge states a prima facie charge.

The charge is dismissed without leave to amend for failing to state a prima facie violation.

Charging party may obtain review of this refusal to issue complaint and dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of the Notice (section 32630(b)). Such appeal must be actually received by the executive assistant to the Board before the close of business (5:00 p.m.) on December 14, 1981, in order to be timely filed. Such appeal must be in writing, must be signed by the charging party or its agent, and must contain the facts and arguments upon which the appeal is based (section 32630(b)). The appeal must be accompanied by proof of service upon all parties (sections 32135, 32142 and 32630(b)).

DATED: November 23, 1981

WILLIAM P. SMITH
Chief Administrative Law Judge

By
Sharrel J. Wyatt
Hearing Officer