

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION and its ANDERSON)
UNION HIGH SCHOOL CHAPTER 382,) Case No. S-CE-939
)
Charging Party,) PERB Decision No. 584
)
v.) August 29, 1986
)
ANDERSON UNION HIGH SCHOOL DISTRICT,)
)
~~Respondent.~~)

Appearances: Burton E. Gray for California School Employees Association and its Anderson Union High School Chapter 382; William L. Odell for Anderson Union High School District.

Before Morgenstern, Porter and Craib, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board on appeal by the charging party of the Board agent's dismissal, attached hereto, of its charge alleging that the Anderson Union High School District violated section 3543.5(a) and (b) of the Educational Employment Relations Act (Act) (Gov. Code section 3540 et seq.).

While the charge contained nine separate allegations, the charging party appeals the dismissal of only four (those labeled a, c, f, and i in the attached letter of dismissal).

We have reviewed the dismissal of these four allegations and, finding it free from prejudicial error, adopt it as the

Decision of the Board itself, in that the allegations fail to state prima facie violations of the Act.

ORDER

The unfair practice charge in Case No. S-CE-939 is DISMISSED WITHOUT LEAVE TO AMEND.

Members Morgenstern and Porter joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 3223088



February 28. 1986

Mr. Brian Caldeira. Field Director
California School Employees Association
5301 Madison Ave.. Ste. 102
Sacramento, CA 95841

Re: CSEA #382 v. Anderson Union High School District
Case No. S-CE-939. Refusal to Issue Complaint

Dear Mr. Caldeira:

You have filed a charge against the Anderson Union High School District (District) alleging that the Respondent has engaged in "interference with CSEA's officers . . ." and has threatened and imposed reprisals against them. The charge sets forth some nine separate instances of conduct involving three CSEA officers: Lorraine Long, the Chapter President. Judy Thissell. Chapter Vice-President, and Eugene Vasquez. a member of CSEA's bargaining team.¹

In a letter dated February 20. 1986, a copy of which is attached hereto as Exhibit No. 1. I advised you that, as presented, the charge did not present a prima facie case of an EERA violation and that unless you withdrew or amended the charge, I would dismiss it. I have not received an amendment or a withdrawal, and for the reasons set forth in my letter of February 20. 1986. I am therefore dismissing the charge.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8. part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

¹Mr. Vasquez is erroneously named as "Mr. Jose" in this charge.

Mr. Brian Caldeira, Field Director
February 28, 1986
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Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on March 20, 1986, or sent by telegraph or certified United States mail postmarked not later than March 20, 1986 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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 (section 32132).

Mr. Brian Caldeira. Field Director
February 28, 1986
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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.

Very truly yours.

JEFFREY SLOAN
Acting General Counsel

By
Jorge Leon
Staff, Attorney

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PUBLIC EMPLOYMENT RELATIONS BOARD

HEADQUARTERS OFFICE
1031 18TH STREET
SACRAMENTO, CALIFORNIA 95814
(916) 322-3088



February 20, 1986

Mr. Brian Caldeira, Field Director
California School Employees Association
5301 Madison Ave., Ste. 102
Sacramento, CA 95841

Re: CSEA #382 v. Anderson Union High School District
Case No. S-CE-939

Dear Mr. Caldeira:

You have filed a charge against the Anderson Union High School District (District) alleging that the Respondent has engaged in "interference with CSEA's officers . . ." and has threatened and imposed reprisals against them. The charge sets forth some nine separate instances of conduct involving three CSEA officers: Lorraine Long, the Chapter President, Judy Thissell, Chapter Vice-President, and Eugene Vasquez, a member of CSEA's bargaining team.¹

Set forth below, following each verbatim allegation, is the information revealed in the investigation of this matter.

- a) On or about March 18, 1985, during a school board meeting CSEA Chapter President Lorraine Long was intimidated, harassed and humiliated by the Superintendent and Board regarding CSEA's initial contract proposal. The Board and Superintendent referred [sic] that Ms. Long had failed to add input [sic] from unit members in the proposal and in general coerced Ms. Long as a direct result of her submission of the bargaining proposal.

Ms. Long is in her second year as President of the local chapter of CSEA. At a school board meeting the evening of March 18, two Board members commented after she had presented CSEA's proposal for a 20 percent salary increase. Mr. Hamblin, according to Charging Party, stated, "We don't want any more Mickey Mouse proposals." Mr. Peterson asked whether CSEA had conferred with its membership before making the proposal, and suggested that Ms. Long "Go back and get a worthwhile

¹Mr. Vasquez is erroneously named as "Mr. Jose" in this charge.

proposal." Charging Party has not provided information regarding what Superintendent Lietaker may have said on this occasion.

- b) Since that time. Ms. Long has been required to report her whereabouts at all times. She is the only unit member required to do so. Obviously, this is clear interference as a direct result of her status and actions as a union officer.

Sometime in April or May 1985, according to Ms. Long, she heard Verda Snyder, then the principal's secretary, and formerly Superintendent Lietaker's secretary, ask "Why is she coming in late?" concerning Ms. Long's late arrival at school one day when returning from jury duty. According to Ms. Long, her supervisor has not, at any time, actually communicated to her that she is required to report her whereabouts.

- c) Judy Thissell, Chapter Vice-president and a bargaining unit member, is a bus driver. Ms. Thissell is not permitted to use the Bus Drivers Lounge. She is the only bus driver required to pump her own gas and her supervisor has told other male employees not to be seen alone with her.

Furthermore. Ms. Thissell was singled out at a bus drivers orientation meeting when the supervisor looked at her and said, "Some people wear tight jeans and low cut blouses." All of those actions occurred after Ms. Thissell became Chapter Vice-president and a member of the negotiating committee.

Mr. Gregory Filek, Transportation Supervisor, is Ms. Thissell's supervisor. The Respondent submitted a declaration under penalty of perjury signed by Mr. Filek in which he indicates that he was not aware that Ms. Thissell was an officer or a negotiating team member for CSEA until September 26, 1986. when he was so informed by the superintendent. This was two weeks after the filing of the instant charge.

- d) Sometime after March 18. 1985. President Lorraine Long received a verbal threat from Superintendent J. D. Lietaker. This threat was based upon President Long having represented an employee who filed a grievance. A threat such as this coming as a direct

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result of representing an employee in a grievance is out right [sic] interference.

In March 1983 a cafeteria employee was laid off. Ms. Long represented her in a grievance which followed the layoff. On approximately April 25. 1983, according to Ms. Long, she was seated at a lounge drinking hot chocolate with another District employee, when Mr. Lietaker came over to them and said to Long, "Well, I'm going to teach Lorraine Long a lesson. You need to be taught a lesson." No other information has been provided by Charging Party regarding this incident.

- e) As further harassment and coercion of Ms. Long, Superintendent Lietaker continually tries to speak with her, one on one, about union business when Ms. Long has made it clear that she will speak to him on union business only if another union person is present. Superintendent Lietaker threatened President Long as a direct result of her exercising her rights as a union officer.

Between December 1984 and February 1985, Ms. Long represented Mary Martin, a District media technician, in a salary dispute with the district. Sometime during that period of time. Ms. Long and another CSEA representative. Ms. Pat Parker attempted to speak to Mr. Lietaker about the matter. Mr. Lietaker stated that he would speak with Long, but that he did not want Parker in on the meeting. According to Long, this is the only occasion when Mr. Lietaker has insisted on a one-on-one conversation.

- f) On or about August 29, 1985, President Long requested the presence of CSEA Field Representative Joan Grace at an employee orientation meeting at which the Superintendent and other supervisors were going to discuss various items including contract policy issues affecting the working conditions of unit members.

Ms. Long also had a reasonable expectation based upon past history that Superintendent Lietaker would again single her out for harassment and threats.

When Superintendent Lietaker observed that Field Representative Grace was to attend the meeting, he threatened to have her physically removed from the

school site. He also refused to allow her attendance at the employee orientation meeting. Such action constitutes interference and coercion as a direct result of the exercise of rights guaranteed under the act.

On August 29, 1985, Joan Grace, a CSEA staff member, was asked by Ms. Long to attend an employee orientation meeting. According to Charging Party the request was based on Ms. Long's fear that Mr. Lietaker was going to "yell at her again." Ms. Long does not recall whether CSEA Staff have ever before been permitted to attend employee orientation meetings. When Mr. Lietaker saw Ms. Grace, he went over to her and asked her to leave. According to Ms. Long, the employees did not observe any exchange between Lietaker and Grace. Ms. Long herself did not know of the refusal to permit Grace to attend until after the meeting.

- g) President Long consistently gets notes sent to her during her work time to immediately go to the Superintendent's office on a CSEA matter. This has a very unnerving affect [sic] on President Long and Mr. Lietaker knows it. This action constitutes harassment on coercion [sic].

According to Ms. Long, her supervisor, Mr. Charles Bonani sent her notes in September and October of 1984, when she had first become president of the CSEA local chapter. No other information has been provided regarding this allegation.

- h) Superintendent Lietaker has taken all of those actions subsequent to Ms. Long's refusal to agree to not utilize the services of CSEA staff. Such correlation to her use of union staff over the objections of the Superintendent and his campaigns of intimidation, humiliation and harassment has a chilling effect on the future exercise of rights by President Long. In fact, Ms. Long is considering not running for CSEA office next year only because she does not want to be harassed by Superintendent Lietaker.

The facts presented by Charging Party regarding allegations "a" - "g" cumulatively relate to this allegation. No separate information has been provided bearing on this allegation.

- i) On or about August 26, 1985, Mr. Jose, a member of CSEA's negotiating committee was ordered to a meeting in the District Superintendent's office. He was ordered to produce verification of one sick leave day. Never before has the District taken such an action against an employee. This action constitutes interference and taking reprisals against Mr. Jose as a result of his being a member of the bargaining committee.

"Mr. Jose" is actually Eugene Vasquez. a 12-year employee of the District, according to Charging Party. Mr. Vasquez was one of five CSEA Bargaining Committee members. Their last meeting with the District prior to this incident occurred on June 26, 1985. No other information concerning the incident, has been provided by the Charging Party. However, the District has indicated that Mr. Vasquez failed to report his absence on August 9 in advance, as required by section 11.3.6 of the parties' contract.² Because of his failure to do so. the District requested verification.

Analysis

To establish a prima facie case of a reprisal, the charging party must demonstrate that (1) the employee participated in protected conduct; (2) the employer had knowledge of such participation; (3) the employer took action adverse to the employee's interests; (4) there exists some "nexus" showing

²The parties' collective bargaining agreement provides as follows, in pertinent part:

- 11.3.5 The District may require a doctor's verification following any absence due to illness or injury as a condition of payment of sick leave. The employee shall provide such verification upon the request of the District following any absence exceeding ten (10) work days.
- 11.3.6 Except in the event of an emergency, employees shall notify their immediate supervisor or designate as far in advance as possible of taking any sick leave.

that the employer would not have so acted "but for" the protected conduct. The final element can be shown by, among other things, some evidence of disparate treatment; departure by the employer from established procedures and standards; cursory investigation of alleged misconduct prior to the imposition of discipline; or inconsistent or contradictory justifications. Novato Unified School District (1982) PERB Decision No. 210; North Sacramento Unified School District (1982) PERB Decision No. 264.

To establish a prima facie case of interference, the charging Party must demonstrate that the employer has engaged in conduct which tends to or does result in some harm to employee rights. Where harm to employee rights is slight and the employer offers justification based on operational necessity, the competing interests are balanced. Carlsbad Union School District (1979) PERB Decision No. 89.

The above requirements are applied to each allegation stated in the charge below in the same order in which the facts were set forth above. Charging Party does not specify which incident is to be considered as reprisal and which is to be considered interference. Where appropriate, both theories are applied to each incident.

a) Comments made at March 18, 1985 school board meeting

This allegation does not appear to be a reprisal. Analyzed as an interference, the comments made by Hamblin and Peterson do not appear to constitute conduct which would tend to harm employee rights. Ms. Long stated her proposal on salaries to the board, and the comments from the board would not seem to have any effect on her exercise of rights. The comments may more appropriately be characterized as a typical union-management exchange in the context of discussion of bargaining proposals. As such, they carry no element of threat or coercion. Rio Hondo Community College District (1982) PERB Decision No. 272. For this reason, allegation "a" does not present a prima facie case of an EERA violation.

b) Requirement that Ms. Long report her whereabouts

This allegation is not supported by the information provided by Ms. Long. Charging Party has not demonstrated that she is

being required by the District to report her whereabouts. For this reason, allegation "b" does not present a prima facie case of an EERA violation.

c). Mr. Filek's comments concerning Ms. Thissell

The investigation revealed that Mr. Filek did not know that Ms. Thissell was an officer in CSEA or a member of its negotiating team until after the charge was filed. Because of this, the charges that (1) she is not permitted to use the drivers lounge, (2) that she is the only driver required to pump her own gas, (3) Filek's comments on (presumably) her tight jeans and low cut blouses do not constitute a prima facie case of a reprisal. There is no evidence of employer knowledge of protected activity or of a nexus. As to the allegation that Filek told other male employees not to be seen alone with her, Charging Party has not explained when this statement occurred; who heard it; or the context of the statement. Furthermore, the fact that these events occurred after Ms. Thissell became an officer in CSEA is not determinative. The PERB has held that evidence of timing alone is insufficient to establish a prima facie case of reprisal. Moreland Elementary School District (1982) PERB Decision No. 227. For these reasons, allegation "c" does not state a prima facie case of an EERA violation either as a reprisal or interference.

d) Lietaker's threat to Long

This event occurred in April 1983 - more than two years prior to the filing of the charge. EERA section 3541.5(a) prohibits the issuance of a complaint based on an incident which precedes the filing of the charge by more than six months. For that reason, allegation "d" does not constitute a prima facie case of an EERA violation.

e) Lietaker's insistence on meeting alone with Long

The Charging Party has presented information only about a single instance when Mr. Lietaker indicated to Ms. Long that he would meet only with her, to the exclusion of Pat Parker. This single instance does not constitute "continual" conduct as Charging Party alleges. Furthermore, the single instance occurred, according to Ms. Long, sometime between December 1984 and February 1985. The instant charge was filed on

September 16. 1985. Conduct occurring prior to March 16. 1985 is time-barred. Saddleback Unified School District (1985) PERB Decision No. 558. For these reasons, allegation "e" does not constitute a prima facie case of an EERA violation.

f). Exclusion of CSEA staff member Joan Grace from meeting

EERA section 3543.5(b) prohibits employer conduct which denies employee organizations rights guaranteed to them. Charging Party has not explained Ms. Grace's right to participate in or to attend the August meeting. Typically, employee orientation meetings are an opportunity for management to address the staff, and are not generally opportunities for the employees' exclusive representative to engage in discourse with management. Charging Party has not demonstrated that the employer's conduct in this instance has deprived it of an opportunity to later discuss any issues which it desired to raise with management. Nor does it demonstrate any other right of the CSEA upon which the exclusion from the meeting infringes. For these reasons, allegation "f" does not constitute a prima facie case of an EERA violation.

g) Lietaker's harassment of Long by sending notes.

The only instance of conduct which seems to support this allegation occurred in September and October 1984 - more than six months before the filing of the instant charge. For this reason, allegation "g" does not constitute a prima facie case of an EERA violation.

h) Lietaker's insistence that Long not use CSEA staff services; harassment

Each instance of harassment, intimidation, threats, etc. alleged by Charging Party has been analyzed separately herein. Those instances do not support a general allegation that Lietaker has engaged in conduct intended to discourage Long from either participating in CSEA activities, or using CSEA staff services.

i) Interference/reprisal of Eugene Vasquez.

Charging Party has failed to demonstrate a nexus between Mr. Vasquez' participation on the negotiating committee and the requirement that he verify the one-day sick leave. According

Mr. Brian Caldeira, Field Director
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to the District. Mr. Vasquez failed to call his supervisor the morning of his absence as required in section 11.3.6 of the contract. Section 11.3.5 authorizes the District to require verification of illness. In light of Mr. Vasquez's failure to **abide by** the notification procedures, the District's action does not appear to be disparate conduct. For these reasons, **allegation "i"** does not constitute a prima facie case of **an EERA** violation.

For the reasons explained herein, charge number S-CE-939.. as **presently** written, does not state a prima facie case. If **you feel that there are** any factual inaccuracies in this letter or any additional facts which would correct the deficiencies **explained** above, please amend the charge accordingly. 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 be served on the respondent and the **original** proof of service must be filed with PERB. If I **do not receive** an amended charge or withdrawal from you before **February 27, 1986**, I shall dismiss your charge. If you have **any** questions on how to proceed, please call me at (916) 323-8015.

Sincerely yours.

Jorge Leon
Staff Attorney

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