STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ROBERT RAY BRADLEY, Charging Party, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. LA-CE-2386 PERB Decision No. 617 March 27, 1987

Appearances; Robert Ray Bradley, on his own behalf; Mary L. Dowell, Attorney, for Los Angeles Community College District.

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by charging party of the Board agent's partial dismissal, attached hereto, of his charge alleging that the respondent violated the Educational Employment Relations Act (EERA) sections 3543.5(a) and (c).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.[1]

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[1]Member Porter would affirm also on the basis that an individual does not have standing to file a charge alleging a violation of EERA section 3543.5(c). (See Riverside Unified School District (1986) PERB Decision No. 571 dissenting opinion.)

ORDER

The partial dismissal of the unfair practice charge in Case No. LA-CE-2386 is hereby AFFIRMED.

By the BOARD.

PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
103) 18th Street
Sacramento, CA 95814-4174
(916) 322-3088

December 24, 1986

Mr. Robert Ray Bradley

RE: Robert Bradley v. Los Angeles Community College District, Case No. LA-CE-2386 Second Amended Charge

Dear Mr. Bradley:

You have filed a Second Amended Charge against Respondent Los Angeles Community College District (LACCD) alleging that it has violated the Educational Employment Relations Act (EERA) by: (1) refusing to abide by the terms of a settlement reached on a grievance which you filed; (2) releasing confidential information which you had provided in connection with another grievance which you had filed; and (3) withholding from you, as agent of the exclusive representative, pertinent information regarding the involuntary reassignment of an instructor and refusing to follow contract procedures regarding involuntary transfers.

In a letter dated December 11, 1986 (copy attached), I advised you that the allegations contained in the charge did not constitute a prima facie case of a violation of the EERA. 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 accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to December 19, 1986, it would be dismissed. On December 19, this office received an amendment to the charge presenting new information and arguments regarding the three allegations. The Second Amendment is considered below.

1. Refusal to Abide By Terms of Settlement.

The charge alleges that College President David Wolf agreed to return the Business Data Processing I class, formerly taught by the Business Administration Department, which you chair, to that department, instead of the Computer Science Department, to which the department the class was recently moved. My letter of December 11 explains that the allegation does not state a prima facie case because Wolf's memo to you of September 9, 1985 did not constitute an "agreement".

The Second Amendment argues that Wolf's memo does constitute an agreement to bring the class back to Business Administration Department. You assert as follows:

> The wording of Dr. Wolf's letter is such that a reasonable person would understand that he was agreeing that Business Data Processing 1 could be offered in the future by the Business Administration department. I followed the proper procedures to reinstate the BDP-1 class. After a very careful analysis, the campus curriculum committee determined that this course did not conflict with any other course offered on campus and the members of the committee gave their unanimous approval for reinstatement of the Business Data Processing 1 course to be offered by the Business Administration department.
>
> I followed Dr. Wolf's directions for reinstating BDP-1 to be offered by the Business Administration Department. It constitutes an unfair labor practice for him to give me directions concerning the reinstatement of the class and then refuse to abide by his agreement to let me teach that class in the Business Administration department. (italics in original.)

Wolf's memo is quoted in my letter of December 11, 1986. As stated in that letter, Wolf's memo merely suggests that you present your request to the curriculum committee. The memo does not contain Wolf's agreement to actually approve the transfer of the class back to your department, nor does it contain his agreement to later give his approval to an affirmative recommendation by the curriculum committee. The amended charge contains no further evidence of Wolf's "agreement." Even if the memo from Wolf could be construed to be an agreement, PERB is without authority to enforce such agreements between parties (Clovis Unified School District

(1986) PERB Decision No. 597), and cannot issue a complaint unless the conduct also amounts to a change in policy having a generalized effect or continuing impact upon the terms and conditions of employment of the bargaining unit members (Grant Joint Union High School District (1982) PERB Decision No. 196). The charge does not present information supporting an inference that the District's action constitutes a change in policy. For the reasons stated above and in my letter of December 11, 1986, this allegation does not present a prima facie case of an EERA violation and it will be dismissed.

2. Release of Confidential Information.

The Second Amended Charge contains sufficient information regarding this allegation to demonstrate a prima facie case of an EERA violation, and a complaint will issue regarding this allegation.

3. Withholding of Information and Refusal to Follow Procedures Regarding Involuntary Transfers.

My letter of December 11 advised you that this allegation of the the charge did not present a prima facie case of an EERA violation because it did not contain evidence of the District's failure to provide requested information. The Second Amendment provides detailed assertions arguing that Professor Cohen's involuntary transfer to your department constitutes violations of three separate contract provisions:

Article 17.A.2 provides:

> All faculty members shall be assigned to departments except those assigned as Instructors Special Assignment, Consulting Instructors and College Nurse..

Article 35.C.3 provides:

> An involuntary reassignment shall be made by the College President or his/her designee only after meeting and conferring with the faculty member, the faculty member's current

> Department Chair, and the faculty member's proposed new Department Chair. Prior to this meeting, the College President or his/her designee shall provide to the parties the reasons for the reassignment and the reasons for the selection of the new assignment.

Article 35.C.3 provides:

> In all instances except 1.c. above in which a reassignment is required, reassignment shall be in reverse discipline seniority.

The Article 17.A.2 violation.

The charge asserts that Cohen's transfer violated Article 17.A.2 in that it was done "in such a manner that Ms. Cohen was not assigned to any department." To be considered "assigned" to a department, an instructor must be assigned to teach three or more classes within a discipline. Ms. Cohen was assigned to teach only two, and therefore, she is not technically "assigned to your department. In addition to her work with the Business Administration Department, she also teaches courses in the Psychology Department. During the investigation of the Second Amendment, you stated that the harm or effect upon you, as chair of the Business Administration Department is that Sylvia Cohen is a known "problem," and for that reason, you did not wish to have her in the department. Also, you pointed out that because she is not "assigned" to your department, you are unable to evaluate her performance under applicable provisions of the contract. Ms. Cohen did not file a grievance regarding the transfer.

As stated in my letter of December 11, this allegation may be analyzed as a unilateral change case. However, in order to present a prima facie case, the charging party must demonstrate that the departure from procedures amounts to a change in policy having a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. Grant, supra. The charge does not indicate that the action in failing to "assign" Cohen amounts to a change in policy.

Even if the Grant test were met, however, the PERB has held in a case involving a charge filed by an employee and not by the exclusive representative itself, that if the employee is entirely unaffected by complained-of employer conduct, that employee does not have standing to bring a charge challenging the conduct. Petrich v. Riverside Unified School District (1986) PERB Decision No. 562a. The Second Amended Charge does not demonstrate any harm or effect upon you. While you assert that you consider Cohen to be a "problem," you have not presented specific information about how her assignment to teach classes in your department affects your wages, hours, or conditions of employment. Nor does the charge explain how your inability to evaluate her affects your wages, hours, or conditions of employment. South San Francisco Unified School District (1980) PERB Decision No. 112.

The Article 35.C.4 violation.

The charge alleges that the District violated this provision by transferring Cohen in other than reverse discipline seniority order. According to the charge, there were other instructors in her department with less seniority. Again, the Second Amended Charge does not present facts which show that this action amounts to a change in policy. Grant, supra. Moreover, there are no facts in the Second Amended Charge, and none have been raised during the investigation, which demonstrate how Cohen's transfer out of order affects your wages, hours, or conditions of employment. Thus, you do not appear to have standing to file the charge asserting a violation of this provision through the District's transfer of Cohen to your department. Riverside, supra.

The Article 35.C.3 violation.

The Second Amended Charge alleges that the District violated this provision when it asserted to you, following Cohen's reassignment, that she was being given Business Administration classes to teach partly because her former department, Office Administration was overstaffed. You assert that quite the opposite was true at the time—that Office Administration was actually understaffed, and for that reason, Cohen should have been kept in that department. Once again, the Second Amended

Charge does not demonstrate a change in policy by the District's action. Grant, supra. And, it fails to set forth any impact upon your wages, hours, or working conditions. Therefore, you do not have standing to bring the charge. Riverside, supra.

The allegation that the District's assignment of Cohen to your department may also be analyzed as a discrimination action based on your past filing of grievances with the District. To demonstrate a violation of EERA section 3543.5(a) the charging party must show that: (1) the employee exercised rights under the 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; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.

Although timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it is not, without more, sufficient to demonstrate a violation of the EERA. 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, (2) the employer's departure from established procedures and standards when dealing with the employee, (3) the employer's inconsistent or contradictory justifications for its actions, (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, or (6) any other facts which might demonstrate the employer's unlawful motive. Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.

The Second Amended Charge sets forth information regarding the filing of grievances and the employer's knowledge of your

grievances is clear. However, there are no facts which link your exercise of protected rights to the District's transfer of Cohen to your department.

For the reasons stated herein and in my letter of December 11, 1986, the allegations concerning the District's actions in refusing to abide by the terms of a "settlement" and in withholding information and refusing to follow procedures, do not state a prima facie case of an EERA violation and are hereby dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked not later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. (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 copies of a statement in opposition within twenty 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 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).

Final Date

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

Sincerely,

JEFFREY SLOAN
General Counsel

By _____
Jorge A. Leon
Staff Attorney

Attachment

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PUBLIC EMPLOYMENT RELATIONS BOARD
Headquarters Office
1031 18th Street
Sacramento, California-95814
(916) 322-3088

December 11, 1986

Mr. Robert Ray Bradley

RE: Robert Bradley v. Los Angeles Community College District, Case No, LA-CE-2386

Dear Mr. Bradley:

You have filed a charge against Respondent Los Angeles Community College District (LACCD) alleging that it has violated the Educational Employment Relations Act (EERA) by: (1) refusing to abide by the terms of a settlement reached on a grievance which you filed; (2) releasing confidential information which you had provided in connection with another grievance which you had filed; and (3) withholding from you, as agent of the bargaining agent, pertinent information regarding the involuntary reassignment of an instructor and refusing to follow contract procedures regarding involuntary transfers.

My investigation has disclosed the following information. You are employed at Pierce College within the District and are currently Chairman of the Business Administration Department. You are a member of the bargaining unit which is represented by the American Federation of Teachers College Guild, Local 1521 (AFT).

(1) Refusal to Abide By Terms of Settlement.

In May, 1985 you filed a grievance over the District's decision to transfer Business Data Processing I classes formerly taught in your department to the Computer Science Department. On September 9, 1985 College President David Wolf sent you a memo which states, in part:

> Since, at this date, it is not possible to even consider the remedy sought in your grievance, I am suggesting that an appropriate solution involve the pursuit of a different remedy. You indicated an interest in seeking a situation whereby Business Data Processing I could be, once again, taught in the Business Administration Department.

> A process exists at the college for securing reinstatement of a course. It would appear appropriate that this process be exercised so that this course might be offered at some point in the future. The appropriate resolution of this grievance at this time would appear to be found in the initiation of this process.
>
> If this course of action is agreeable to you, then I suspect we have achieved an amiable solution to the grievance filed on May 24, 1985.

On November 22, 1985, Wolf sent Jean Louks, Vice President of Academic Affairs a memo on the subject which states, in part:

> I have reviewed the subject request and have some specific questions as to why we would want to teach the identical courses in two different instructional departments. Until I understand why this would be a desirable action to take, I cannot approve this request.

(2) Release of Confidential Information.

On September 25, 1985, you sent a letter addressed to Eloise Crippens, campus AFT Representative, to President Wolf regarding the reassignment of Sylvia Cohen to your department. That letter contained information about the Office Administration Department's practices in using student workers and teaching aides. You apparently wished for the information to be kept confidential, but did not mark the letter as such. The President asked Vice President Louks to look into the issues raised in your letter, and gave her a copy. Louks apparently raised the issues with members of the Office Administration Department, and on February 25, 1986, six members of that department sent a letter to President Wolf, responding to "Continual harassment of Office Administration Department by Bob Bradley." That letter contained several quotes taken from your letter of September to Crippens.

The collective bargaining agreement in effect between the parties contains detailed provisions regarding grievances at Article 28. Subpart B of the article lists nine separate "Rights and Responsibilities," none of which concern whether or not information received in connection with a grievance would be kept confidential.

In a memo dated April 4, 1986 to Wolf, you request that, "[a]ny correspondence relating to personal grievances filed by me should remain confidential."

3. Withholding of Information and Refusal to Follow Procedures Regarding Involuntary Transfers.

Sylvia Cohen was transferred involuntarily in the Spring of 1985 from the Office Administration Department to your department. You opposed this action and filed a grievance in May, 1985. That grievance was processed through but not including binding arbitration because AFT determined not to seek arbitration of the grievance. The District's response to the grievance was that Cohen had been transferred to your department because there was room there and Office Administration was "overstaffed." In January, 1986, you filed a second grievance relating to her transfer asserting that Office Administration was not overstaffed, that your department was not understaffed, as asserted by the District, and that the District had violated the collective bargaining agreement in two ways: it failed to reassign in "reverse disciplinary seniority," as provided in Article 35.C.4 of the agreement and it failed to notify AFT, in response to the first grievance, that Cohen, at the time of her transfer to your department, was not being assigned to a specific department. You assert that the District failed to disclose the information which led to your filing of the second grievance.

ANALYSIS

(1) Refusal to Abide by Terms of Settlement

A violation of EERA section 3543.5(c) may exist where the Charging Party has presented an allegation that the employer

has unilaterally changed a policy concerning a matter within scope without providing Charging Party an opportunity to negotiate the change. Walnut Valley Unified School District (1981) PERB Decision No. 160. You assert that the District has refused to abide by its agreement reached on September 9, 1986. The "agreement" is assertedly contained in Wolf's memo of that date. However, that memo merely suggests that you refer to the curriculum committee, your request that Business Data Processing I be taught in your department. Nowhere in the memo does Wolf make any committment to approve a request to bring the class back to the Business Administration department. Absent evidence of an agreement, the charge does not present a prima facie case of a failure by the District to abide by an agreement.

(2) Release of Confidential Information

You assert that Wolf's release to the Office Administration staff of a copy of your letter of September 25, 1985, constituted a release of confidential information. The charge does not specify which provision of the EERA this would violate. Nonetheless, the allegation may be cognizable as an interference with your right to file grievances. However, the basis for your expectation of confidentiality has not been set forth in the charge nor in the investigation. The collective bargaining agreement provides no such expectation. The document itself does not indicate that it should have been kept confidential. Finally, the memo in which you advised Wolf that information relating to personal grievances should be kept confidential is dated April, 1986—after the release of your September letter. For these reasons, the allegation the release of the letter violates the EERA does not state a prima facie case.

(3) Withholding of Information and Refusal to Follow Procedures Regarding Involuntary Transfers.

The charge alleges that the District's failure to provide "vital" information and to follow procedures constitutes a violation of the EERA, section 3543.5(c). An employer is under an obligation to provide necessary and relevant information in

connection with the processing of grievances. Stockton Unified School District (1980) PERB Decision No. 143. However, an advance request must be made for such information, and no such request was made in this case. Under these circumstances, the allegation that the employer violated the EERA by not disclosing information does not present a prima facie case.

If you feel that there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one explained above, please amend the charge accordingly. This 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 December 19, 1986, I shall dismiss your charge without leave to amend. If you have any questions on how to proceed, please call me at (916) 323-8015.

Sincerely,

Jorge A. Leon
Staff Attorney

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