STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

EL DORADO COUNTY TEACHERS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. S-CE-1252
v.	)	PERB Decision No. 788
EL DORADO COUNTY OFFICE OF EDUCATION,	)	January 17, 1990
Respondent.	)	

Appearances: California Teachers Association by Ramon E. Romero, Attorney, for El Dorado County Teachers Association, CTA/NEA; Girard and Griffin by Allen R. Vinson, Attorney, for El Dorado County Office of Education.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the El Dorado County Teachers Association, CTA/NEA (Association) of a Board agent's partial dismissal of its charge that the El Dorado County Office of Education (County) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] by discriminating

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5(a) states:

> It shall be unlawful for a public school employer to:
>
> (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.

against Ray Hancock (Hancock). The Board agent concluded that the allegations in the third amended charge did not state a prima facie case because the facts did not provide sufficient evidence of a nexus between Hancock's union activity and the purported adverse action.

We have reviewed the entire record in this case, and affirm the partial dismissal of the Board agent for the reasons set forth below.

FACTUAL SUMMARY

Hancock was a teacher at the El Dorado County Juvenile Hall from the 1977-78 school year through the 1986-87 school year. Hancock was involuntarily transferred to a new community school for the 1987-88 school year, but was then granted a leave of absence for that year.

In January of 1987, Hancock and others participated in a protest of working conditions. In May of 1987, the Association filed unfair practice charge No. S-CE-1100 alleging retaliation against Hancock and another individual for engaging in protected activities. On March 17 through March 25 of 1988, Hancock testified at the hearing concerning that charge. On October 3, 1988, PERB Hearing Officer Decision No. HO-U-372 was issued. In the charge presently before the Board, the Association alleges that during the litigation of Charge No. S-CE-1100 through to the time the charge in the present case was filed, the County has continued to engage in a practice of interference and discrimination against Hancock because of protected activity.

Before Hancock received his 1987-88 school year assignment, he requested a leave of absence for that school year for health purposes. He asked, however, for a personal necessity leave under section 13.10 of the collective bargaining agreement (CBA).[2] Deputy Superintendent Wally Newberry, by letter dated

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[2]Article 13.10 states:

> 13.10.1. Upon written request by the employee, the Employer may grant an employee an unpaid leave of absence for personal reasons for a period of time not to exceed one (1) year.
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> 13.10.2. An employee must request such leave no later than April 1 or November 1 preceding the term it is desired that the leave become effective.
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> 13.10.3. The employee may continue all fringe benefit programs at his/her own expense.
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> 13.10.4. Employees employed as replacements for employees on personal leave shall be notified at the time they are hired that their employment is on a temporary basis due to such leave of absence.
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> 13.10.5. The number of employees on leave during any one (1) semester or year shall not exceed two (2) employees at any one (1) time.
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> 13.10.6. With approval of the Superintendent and the County Board of Education, certificated employees shall be granted a leave of absence without interruption of health and dental benefit payments by the County Office under certain circumstances. Criteria which can influence the decision include, but may not be limited to:
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> a) the program needs can be adequately met during the period of absence. b) the County Office realizes a financial benefit from the transaction. c) the reason for the requested leave is acceptable to the Superintendent and

August 17, 1987, denied Hancock's request on the basis that he missed the April 1 deadline for submittal of personal necessity leave, the office had no information regarding any health condition of Hancock, and that he had basically abandoned the position to which he had been assigned and was not in contact with the County regarding that position. Shortly thereafter, Hancock sent a letter to Superintendent Ken Lowery (Lowery), responding to the denial of his leave, and enclosing a note from Dr. Robert L. Macy.[3] In early September 1987, Hancock received a letter from Lowery stating he had decided, in the interests of educational need, to grant Hancock's leave request as an unpaid leave of absence for the 1987-88 school year under section 13.10 of the CBA.

While on leave, Hancock was employed as a substitute teacher at the Preston Industrial School, which is part of the California Youth Authority. In February 1988, Hancock notified the County that he would be returning to his teaching assignment for the 1988-89 school year. At the end of March 1988, after having testified in the formal hearing in Unfair Practice Charge No. S-CE-1100, Hancock requested a leave of absence for the

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the Board.

[3]That note is alleged to have stated:

> Raymond Hancock has debile hypertension which is being exacerbated by the apparent stress of his teaching position. If a less stressful environment could be assigned or a leave of absence were permitted as he is recuperating, it would improve his blood pressure.

1988-89 school year from Lowery. By letter dated April 21, 1988, Lowery stated he was inclined to recommend approval of Hancock's leave request in the interest of the office, although, under usual circumstances, he considered one year of leave to be the maximum allowable. Lowery requested that Hancock undergo a physical examination by a County-selected physician (Dr. Dale Coco) to verify his medical condition. By October 4, 1988, Dr. Coco had performed a physical examination of Hancock and confirmed that the condition still existed. In the first part of November 1988, Hancock was called to a meeting by Lowery. At this meeting, Lowery told Hancock that his substitute teaching during his leave of absence was illegal. Lowery requested that Hancock sign a document. Hancock refused to sign the document because he thought the document constituted charges against him and because it included a resignation. A few days later, Lowery telephoned Hancock and threatened that if Hancock did not resign his employment with the County, Lowery would seek revocation of his teaching credential. On November 11, 1988, Hancock resigned from his employment with the County.

DISCUSSION

For the purposes of determining whether a charge states a prima facie case of a violation of the EERA, all essential facts alleged must be assumed as true. (Klamath-Trinity Jt. Unified School District (1988) PERB Decision No. 717, p. 3, citing

San Juan Unified School District (1977) EERB Decision No. 12.)[4] Not only must the charging party allege that the employee was engaged in protected activity and that the employer had knowledge of such activity, but also that the employer's conduct was motivated by that participation. (Novato Unified School District (1982) PERB Decision No. 210, p. 6.)

In the present case, the allegations indicate that Hancock engaged in protected activity, and that the County had knowledge of such. The issue in this case is whether a sufficient nexus between the protected activity and the adverse action has been stated. In Novato Unified School District, supra, at p. 6, the Board held that "knowledge along with other factors may support the inference of unlawful motive." (Id. at pages 6 and 7.) Among the factors considered is the timing of the employer's conduct in relation to the employee's performance of protected activity. The protected activity allegedly engaged in by Hancock was: (1) his acts of protest in January of 1987; (2) his testimony in a hearing concerning a charge against the County in March of 1988; and (3) his requests for leaves of absence in August 1987 and March 1988. Although Hancock was not told that he was denied a leave of absence, in November 1988, he was told that it was illegal for him to substitute teach during his leave of absence the prior year, and was requested to sign a document which he believed to be charges against him and his resignation.

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

The protests in January 1987 took place 22 months prior to the adverse act, the testimony given in March 1988 was approximately 7 to 8 months prior to the adverse act, and the requests for leaves of absence were 15 and 7 to 8 months prior to the adverse act.

The Association argues that, with regard to the testimony given by Hancock in March 1988, the pertinent date to be considered is October 3, 1988, when the final decision was issued. However, the substance of the testimony given by Hancock did not result in a finding adverse to the County. That argument is therefore rejected. In addition, after Hancock gave his testimony at the end of March 1988, he requested a leave of absence for the second consecutive year. The County initially responded that it was inclined to grant that request, although, as a rule, a leave of absence for personal reasons is not to exceed the maximum of one year. In this case, however, due to educational or office need, the County stated it would consider the request. It was not until the fall of 1988 that any adverse action was taken against Hancock. Based upon the above, we find that the timing between Hancock's protected activities and the adverse action taken by the County does not raise an inference of unlawful motive on the part of the County.

Furthermore, even if the timing element was stronger, other factors must be considered to support an inference of unlawful motive. (Moreland Elementary School District (1982) PERB Decision No. 227, at p. 13.) The Board has stated:

> . . . The timing of the employer's conduct in relation to the employee's performance of protected activity, the employer's disparate treatment of employees engaged in such activity, its departure from established procedures and standards when dealing with such employees, and the employer's inconsistent or contradictory justifications for its actions are facts which may support the inference of unlawful motive. . . . (Novato Unified School District, supra, PERB Decision No. 210, at p. 7.)

Here, the Association has failed to adequately allege any of these additional factors.

Because the Association's charge fails to allege facts sufficient to give rise to an inference of unlawful motive, we find that there is insufficient evidence of nexus, and that this portion of the charge was properly dismissed.

ORDER

Based upon the entire record in this case, and consistent with the discussion above, it is hereby ORDERED that the appeal of the Board agent's partial dismissal of Unfair Practice Charge No. S-CE-1252 is DISMISSED WITH PREJUDICE.

Chairperson Hesse and Member Craib joined in this Decision.