STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 660, AFL-CIO,	)	
Charging Party,	)	Case No. LA-CE-2933
v.	)	PERB Decision No. 851
LOS ANGELES COUNTY OFFICE OF EDUCATION,	)	November 14, 1990
Respondent.	)	

Appearances: Jack L. Roberts, Staff Director, for Service Employees International Union, Local 660, AFL-CIO; Whitmore, Kay & Stevens by Janice E. Johnson, Attorney, for Los Angeles County Office of Education.

Before Hesse, Chairperson; Shank and Cunningham, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Service Employees International Union, Local 660, AFL-CIO (SEIU) of a Board agent's dismissal of its unfair practice charge. In its charge, SEIU alleged that the Los Angeles County Office of Education (LACOE) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] by discriminating/retaliating against Shelby Maynard (Maynard), an SEIU member and job steward, for having filed a grievance. Maynard alleged that within one week of receiving an answer to her grievance regarding her performance evaluation, LACOE removed her duties related to LACOE's Adaptive Physical Education (APE)

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

program. Those duties, she alleged, had occupied at least 50 percent of her day for several years. The Board agent, after investigating the allegation, dismissed the charge for failure to state a prima facie case.

For the reasons stated herein, the Board agent's dismissal of the charge is reversed.

To demonstrate a violation of EERA section 3543.5(a)[2] the charging party must allege facts which, if proven, would establish: (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 employee 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.)

SEIU alleges that Maynard filed a grievance concerning the contents of a performance evaluation. Pursuant to the Board's decision in North Sacramento School District (1982) PERB Decision

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[2]Section 3543.5(a) states:

> It shall be unlawful for a public school employer to do any of the following:
>
> (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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

No. 264, filing a grievance is considered a protected activity under EERA. Therefore, the first prong of the above test is satisfied. There is also no dispute that the LACOE knew about Maynard's grievance as the LACOE affirmatively declares that fact in its appeal requesting that the Board dismiss the charge. The critical issue here is whether SEIU alleged facts to support its allegation that the LACOE transferred duties from Maynard because of the exercise of those rights.

Direct proof of unlawful motivation is very often difficult to establish and, thus, may be established by circumstantial evidence inferred from the record as a whole. Although the timing of the employer's adverse action in close proximity to the employee's protected conduct is an important factor; it is not, standing alone, sufficient to prove unlawful intent. (Moreland Elementary School District (1982) PERB Decision No. 227.) Additional facts that may be examined from which to infer an unlawful intent include: (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 the action, or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other justification which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra. PERB

Decision No. 210; North Sacramento School District, supra, (1982) PERB Decision No. 264.)

In this case, SEIU relies on the timing of the adverse action as one indicia of unlawful intent. Thus, SEIU alleges that approximately one week after Maynard's grievance was denied at Level II, Maynard's APE program duties were transferred from her and assigned to another employee. Additionally, SEIU contends that Maynard was offered no justification for the transfer of these duties at the time the transfer occurred. In its second amended charge, SEIU alleged that:

> Much later after Ms. Maynard's job duties were changed it was decided this action was taken as a result of a Division reorganization, and that other employees were also affected. . . .

Thus, Maynard alleged she engaged in protected activity, that the employer had knowledge of that protected activity, and that the LACOE transferred her duties because of that protected activity. Furthermore, Maynard has alleged facts from which unlawful intent could be inferred, including: (1) the proximity in time between Maynard's filing of the grievance and the LACOE's transfer of duties; and, (2) the LACOE's failure to give Maynard justification for the transfer at the time it occurred. We find these allegations minimally sufficient to establish a prima facie case.

The Board agent's dismissal is, therefore, REVERSED and the charge is REMANDED to the General Counsel for issuance of a

complaint based upon the alleged violation of section 3543.5(a) of the EERA as stated in unfair practice charge Case No. LA-CE-2933.[3]

By the Board[4]

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[3]LACOE's response to SEIU's appeal of the Board agent's dismissal was originally rejected as untimely filed. In its appeal of the determination rejecting the filing, the LACOE contends that although the proof of service attached to the appeal indicated the appeal was personally served, the director of employee relations, in fact, received the appeal by regular mail on June 20, 1990. The same day, the Office of Employee Relations faxed the document to the LACOE's attorney which was designated on a PERB Notice of Appearance form as the LACOE's official representative in this matter. SEIU has not disputed the LACOE's contentions in this regard. In light of these facts, we have accepted the LACOE's response which was received July 10, 1990.

[4]Members Craib and Camilli did not participate in this Decision.