

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LETICIA GONZALEZ,)
)
 Charging Party,) Case No. S-CE-1447
)
 v.) PERB Decision No. 936
)
 LINDSAY UNIFIED SCHOOL DISTRICT,) May 22, 1992
)
 Respondent.)
 _____)

Appearances: Leticia Gonzalez, on her own behalf; Lozano, Smith, Smith, Woliver & Behrens by Ellen M. Jahn, Attorney, for Lindsay Unified School District.

Before Hesse, Chairperson; Camilli and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Leticia Gonzalez (Gonzalez) of a PERB Board agent's dismissal (attached hereto) of her unfair practice charge. In her charge, Gonzalez alleged that the Lindsay Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ by refusing to rehire her after she advocated for bilingual education issues.

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

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.

The Board has reviewed the Board agent's warning and dismissal letters, and finding them to be free of prejudicial error, adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CE-1447 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Camilli joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



February 10, 1992

Leticia Gonzalez

Re: Leticia Gonzalez v. Lindsay Unified School District
Unfair Practice Charge Case No. S-CE-1447
DISMISSAL LETTER

Dear Ms. Gonzalez:

On August 30, 1991, you filed a charge that the Lindsay Unified School District (District) violated Government Code section 3543.5(a) (the EERA). Specifically, you allege that the District retaliated against you by refusing to rehire you because you advocated for and raised issues concerning Limited English Proficient (LEP) students and the Bilingual Education Program at Jefferson Elementary School.

I indicated to you in my attached letter dated October 4, 1991, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that 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 October 15, 1991, the charge would be dismissed. You requested additional time to file an amended charge. We agreed to an extension of time until October 21, 1991. On October 21, 1991, you filed your first amended charge. In addition, you also submitted numerous unorganized notes and exhibits (totalling 154 pages) in support of your amended charge.

Your amended charge alleges the following new facts, which I have summarized:

1. You discussed your concern of discrimination against the teachers and the Bilingual Program with the School's Bilingual Resource Teacher, Irene Rosales. Ms. Rosales admitted to knowing about the problems but discouraged you from pursuing the matter. You suggested to her that you seek the assistance of the Lindsay Teachers' Union and she responded that the Union was not Pro-Bilingual. In addition, Pat Baker, the School's English Resource Teacher, also warned you not to speak out on concerns. Ms Baker

informed you that the District had ways of dealing with teachers who do.

2. On or about October 24, 1990, you confronted Melissa Lucas, Grade Level 2 representative about not being informed of the changes in the schedule. Ms. Lucas responded that she assumed someone would tell you.

3. On or about January 24, 1991 you met with Principal Mike McQuary and Second Grade Level Representative Lucas in order to resolve the problems of your being excluded from being informed of grade level events and having the opportunity to give input on decisions. During the meeting you offered suggestions to insure communication with grade level and between teachers and the Principal.

4. After this meeting you again confronted Principal McQuary and pointed out that the communications problems still continued and you were still being excluded from decision making.

5. On February 19, 1991, Principal McQuary held a meeting, which you were informed had been cancelled, and met with only the White, English only grade 2 teachers to discuss the integration period.

6. On February 19, 1991, you contacted Rita Henry, Bilingual Resource Teacher of Washington School about your concerns of problems of communication, exclusion, discrimination at Jefferson School and the discourteous behavior of ten White teachers. Ms. Henry responded that she was aware of the problems and how Ms. Lucas and the other (white) teachers ran things. She also discouraged you from pursuing the matter.

7. On February 28, 1991, during a school wide staff meeting you objected to the exclusion of Bilingual teachers from staff meetings and from having input in policy decisions affecting language minority students, when white, English only teachers were offered such opportunities.

8. Immediately after the school staff meeting of February 28, 1991, Principal McQuary approached you and requested that you arrange a meeting with him to settle the matter.

9. On March 1, 1991, Principal McQuary informed you that the District had directed him to not rehire you for employment for the 1991-92 school year. McQuary informed you at this time that you were not being rehired because of the budget crisis. Later in the day you again asked McQuary his reason for not rehiring you and he responded that he had heard that you were not getting along with other teachers and refused to discuss the issue with you further.

Based on the allegations set forth above and the reasons contained in this letter and my letter of October 4, 1991, I find that you have failed to state a prima facie violation that the District violated EERA section 3543.5(a).

In order to state a prime facie case a Charging Party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge. (San Dieguito Union High School District (1982) PERB Decision No. 194.) Government Code section 3514.5(a) states in relevant part:

Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, . . .

Your charge was filed with PERB on August 30, 1991, which means that any alleged unfair practice should have occurred during the six-month statutory period which began on February 26, 1991. The allegations contained in paragraphs 1-6 above describe conduct by the District which occurred prior to February 26, 1991. This is beyond the six-month statute of limitations, therefore, those allegations contained in your charge must be dismissed.

The allegations contained in paragraphs 7-8 appear to allege that the District violated EERA section 3543.5(a) by refusing to rehire you. To demonstrate a violation of EERA section 3543.5(a), you 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.)

Your amended charge fails to demonstrate that the District's refusal to rehire you was because of your exercise of rights protected by the EERA. Accordingly, your charge fails to state a prima facie violation of section 3543.5(a) and I am dismissing your charge based on the facts and reasons contained in this letter and my letter of October 4, 1991.

I have also considered the notes and exhibits you submitted in support of your amended charge. This material was not organized and I was unable to determine what connection, if any, this material had in reference to your charge. PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615) requires that your charge contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice. Your notes and exhibits fail to meet this standard, therefore, the allegations, if any, contained in them are also 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 Code of Regs., tit. 8, sec. 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 no later than the last date set for filing (California Code of Regs., tit. 8, sec. 32135). Code of Civil Procedure section 1013 shall apply. 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 (California Code of Regs., tit. 8, sec. 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 California Code of Regs., tit. 8, sec. 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

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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 (California Code of Regs., tit. 8, sec. 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,

JOHN W. SPITTLER
General Counsel

By .

Michael E. Gash
Regional Attorney

Attachment

cc: Ellen M. Jahn
Lozano, Smith, Smith, Woliver & Behrens
2444 Main St., Suite 26,0
Fresno CA 93721

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



October 4, 1991

Leticia Gonzalez

Re: Leticia Gonzalez v. Lindsay Unified School District
Unfair Practice Charge No. S-CE-1447
WARNING LETTER

Dear Ms. Gonzalez:

On August 30, 1991, you filed a charge that the Lindsay Unified School District (District) violated Government Code section 3543.5(a) (the EERA). Specifically, you allege that the District refused to rehire you because you advocated for and raised issues concerning Limited English Proficient (LEP) students and the Bilingual Education Program at Jefferson Elementary School. My investigation revealed the following facts.

In about December 1990, Charging Party confronted Principal, Mike McQuary, about not being informed about the new School publishing center. McQuary admitted to Charging Party that he had selected those employees who would be informed.

Throughout the 1990-91 school year Charging Party was not informed of grade level events, or was given notice at the last minute which prevented Charging Party from participating in the events. Charging Party was excluded from the staff planning of such events.

On or about February 28, 1991, during the grade 2 staff meeting, Charging Party objected to the exclusion of Bilingual teachers from staff meetings and from having input in policy decisions affecting language minority students.

On or about March 1, 1991, during a meeting with the Principal and the School union representative, Harry Schein, the Principal informed Charging Party that her contract was not going to be renewed for the 1991-92 school year.

Charging Party contends District Superintendent, Ena Soflin, stated in a newspaper article dated March 6, 1991, that the emergency credentialed Bilingual teachers may be rehired. Charging Party was the only regularly credentialed Bilingual teacher who was laid off.

The Principal stated in Charging Party's final evaluation, which Charging Party first examined on May 31, 1991, that Charging Party would not be rehired for the 1991-92 school year because she did not get along with her grade level teachers, their Representative, and her administrative superiors.

Based on the allegations set forth above, I do not find that you have established a prima facie violation of section 3543.5(a) of the EERA.

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 the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. 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. As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of section 3543.5(a).

For these reasons, the charge as presently written does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that 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 must 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 October 15, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Michael E. Gash
Regional Attorney

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