STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANNETTE M. DEGLOW, Charging Party, v. LOS RIOS COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case No. S-CE-1592 PERB Decision No. 1048 June 1, 1994

Appearances: Annette M. Deglow, on her own behalf; Susanne M. Shelley, General Counsel, for Los Rios Community College District.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Annette M. Deglow (Deglow) of a Board agent's dismissal (attached hereto) of her unfair practice charge. In her charge, Deglow alleged that the Los Rios Community College District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] by engaging in acts of reprisal and discrimination against her because of her

[1]EERA 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.

exercise of protected rights.

The Board has reviewed the Board agent's warning and dismissal letters, Deglow's appeal, the District's response and the entire record in this case.[2,3] The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CE-1592 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Carlyle joined in this Decision.

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[2]The Board declined to consider Deglow's supplemental brief, and the District's opposition to it, which were filed after the filing deadline.

[3]Member Carlyle did not consider Deglow's supplemental brief for the reason that it did not contain newly discovered evidence, newly discovered law, nor an explanation of why her brief should be reviewed by the Board, as delineated in Vallejo Education Association, CTA/NEA (1993) PERB Decision No. 1015. Accordingly, there was no need for him to consider the District's opposition.

STATE OF CALIFORNIA PETE WILSON, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramanto Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198

February 18, 1994

Annette M. Deglow

Re: NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
Annette M. Deglow v. Los Rios Community College District
Unfair Practice Charge No. S-CE-1592 (Second Amended)

Dear Ms. Deglow:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 10, 1994. On January 21, 1994 you were advised that your charge would be dismissed unless it was withdrawn or amended before January 31, 1994 to correct the deficiencies identified by my January 21, 1994 letter (attached). Your subsequent request for an extension of time in which to amend the charge was approved, and on February 2, 1994, you filed a First Amended Charge. A Second Amended Charge was filed on February 16, 1994.

As amended, your charge alleges that the Los Rios Community College District (Employer or LRCCD) has engaged in acts of reprisal and discrimination against yourself because of your exercise of rights guaranteed under the Educational Employment Relations Act (EERA),[1] in violation of Government Code section 3543.5, subsections (a), (b) and (d), and thus "contributes to and encourages the violation" of sections 3543.6 and 3544.9 by the Los Rios College Federation of Teachers, CFT/AFT (Federation).[2]

[1]EERA is codified at Government Code section 3540 et seq.

Government Code sections 3543.6 and 3544.9 relate exclusively to duties and obligations of employee organizations, not public school employers, and the alleged violations of sections 3543.6 and 3544.9 will not be addressed herein. Notice is taken that a separate charge has been filed against the Federation (Unfair Practice Charge No. S-CO-314), and that matter is still under investigation.

The relevant facts underlying the instant charge are as follows.[3] Annette Deglow is a part time instructor employed by the Employer within the certificated bargaining unit represented by the Federation. The Employer and Federation are parties to a collective bargaining agreement which is effective through June 30, 1996. The agreement includes a provision which requires the establishment of seniority numbers and a Certificated Employment Register for all employees in the unit.[4] On January 11, 1993, Deglow and other employees filed grievances alleging violations of this provision. Deglow's grievance alleges that her current seniority date, as reflected on the Certificated Employment Register, does not accurately "reflect [her] relative date of employment consistent with past policies and procedures utilized for others in [her] 'position'."

Deglow's Employment Status and Hire Date

As a part time instructor hired before November 8, 1967, Deglow was classified as a regular (permanent) employee by the Employer as a result of litigation filed, and won, by Deglow in the mid-1970's.[5] In February 1978, Deglow was advised by the Employer that her hire date would be accepted as September 11, 1962,[6] but the Employer deferred the question of her proper placement on the Certificated Employment Register. On November 15, 1980, Deglow filed a grievance seeking placement on the Certificated Employment Register. On December 12, 1981, Deglow was placed on the Register but with her date of hire listed as September 11, 1964. On February 1, 1982, Deglow filed a grievance seeking correction of the hire date shown on the Register, citing the

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[3]The facts alleged by Deglow are, for purposes of this analysis, assumed to be true. (San Juan Unified School District (1977) EERB Decision No. 12; prior to January 1, 1978, PERB was known as the Educational Employment Relations Board, or EERB.)

[4]This provision references requirements of state law, including Education Code sections 87415 and 87416.

[3]Deglow was represented in the litigation by legal counsel provided by the California Teachers Association (CTA). Deglow is a member of the Los Rios Teachers Association (Association), a CTA affiliate. The Federation has been the certified bargaining representative for the unit since November 28, 1977, but the Association competed for representation rights in elections conducted in 1977, 1981 and 1987.

"The hire date is based on Deglow's starting date with the Sacramento City Unified School District, which preceded establishment of the LRCCD; her actual starting date was September 7, 1962.

established practice of the Employer in crediting other employees with a hire date based on their initial date of hire by the Sacramento City Unified School District. That grievance, according to Deglow, is still pending. Deglow has made repeated subsequent efforts to have her hire date corrected, including filing the January 11, 1993 grievance.

July 1993 Conduct

On July 20, 1993, Michael Lowman, a part time instructor for the Employer, Mary Jones, the Employer's Director of Personnel, and Robert Perrone, the Federation's Executive Director met for a grievance hearing concerning a separate matter involving Lowman.[7] According to Lowman, the following exchange took place between Jones and Perrone at that meeting:

> Jones: "And also I had to deal with Deglow today too, so I'm not in a very good mood."
>
> Perrone: "Oh right, Deglow, I can understand why you wouldn't be in a very good mood."
>
> Jones: "Yeh, she's filing a grievance because she says nobody likes her and you know what? It's true, nobody does."
>
> Jones and Perrone: Laughter.
>
> Perrone: "Oh I've dealt with Deglow. I know what you're faced with."
>
> Jones and Perrone: Laughter.

Discussion

Deglow asserts, in short, that the District's departure from established procedure by its incorrect placement of her on the Certificated Employment Register is an act of reprisal and discrimination which violates Government Code section 3543.5(a). As discussed above, the alleged incorrect placement was first made known to Deglow in 1981 and grieved by her in 1982.

The EERA, at section 3541.5(a) limits PERB's jurisdiction over claims of unfair practices by prohibiting PERB from issuing 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." Here, the issue of Deglow's hire date has been

[7]Lowman is not a grievant concerning the seniority number issue.

actively contested by Deglow for a period of over 10 years.[8] The Employer's continued refusal to correct the hire date is not "active conduct" which revives the timeliness of the charge. (UCLA Labor Relations Division (1989) PERB Decision No. 735-H; see also San Francisco Classroom Teachers Association. CTA/NEA (Chestangue) (1985) PERB Decision No. 544 and San Mateo County Community College District (1993) PERB Decision No. 1030.) Even evidence of contemporaneous conduct which is indicative of an animus on the part of the Employer toward Deglow[9] cannot revive a charge based on conduct which occurred in 1981. (Ibid.; also, Palm Springs Unified School District (1991) PERB Decision No. 888.)

The only conduct by the Employer alleged here which falls within the six months statute of limitations concerns Jones' remarks about Deglow in July 1993. That singular allegation does not, as explained more fully in my January 21, 1994 letter, constitute prima facie evidence of a violation of EERA section 3543.5(a).

Conclusion

Therefore, I am dismissing the charge based on the facts and reasons set forth above, as well as those contained in my January 21, 1994 letter.

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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

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[8]The grievance procedure under which Deglow has contested this matter does not provide for binding arbitration and, thus, tolling of the six-months statute of limitations as provided for at Government Code section 3541.5(a)(2) is inapplicable. ~~Unified School District~~ (1983) PERB Decision No. 350; *cf.* ~~Regents of the University of California~~ (1990) PERB Decision No. 826-H.)

[9]As proof of unlawful motive, Deglow points to the disparaging remarks made by Jones during the July 1993 meeting of Jones, Perrone and Lowman.

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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. 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 (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. (Cal. 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,

ROBERT THOMPSON
Deputy General Counsel

By _____
Les Chisholm
Regional Director

Attachment

cc: Suzanne Shelley

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198

January 21, 1994

Annette M. Deglow

Re: WARNING LETTER
Annette M. Deglow v. Los Rios Community College District
Unfair Practice Charge No. S-CE-1592

Dear Ms. Deglow:

The above-referenced unfair practice charge, filed with the Public Employment Relations Board (PERB or Board) on January 10, 1994, alleges that the Los Rios Community College District (Employer) conspired with the Los Rios Federation of Teachers (Federation) to deny to Annette Deglow "and others similarly situated[1] rights guaranteed under the [Educational Employment Relations Act][2] to have grievances processed by the union and have denied Deglow the right to the duty of fair representation resulting in violations incorporated in [Government Code] sections 3543.5 a,b,d and 3543.6 a,b and 3544.9." Notice is taken that an identical charge has been filed against the Federation (Unfair Practice Charge No. S-CO-314). Since Government Code sections 3543.6 and 3544.9 relate exclusively to duties and obligations of employee organizations -- not public school employers, the alleged violations of sections 3543.6 and 3544.9 will not be addressed herein.

The relevant facts underlying the instant charge are as follows. Deglow, Michael Lowman and Alfred Guetling are part time instructors employed by the Employer within the bargaining unit represented by the Federation. Mary T. Jones is the Employer's Director of Personnel. Robert Perrone is the Federation's Executive Director. The Employer and Federation are parties to a collective bargaining agreement which is effective through June 30, 1996. The agreement includes a provision for a longevity bonus of four percent for employees with twenty years of service with the Employer, and requires the establishment of seniority numbers of all employees in the unit. On December 18, 1992,

[1]As Deglow is the only named charging party, only Deglow is treated as a charging party for purposes of analysis of the charge. (California Union of Safety Employees (Trevisanut. et al.) (1993) PERB Decision No. 1029-S.)

[2]The Educational Employment Relations Act (EERA) is codified at Government Code section 3540 et seq.

Deglow and other employees filed grievances, with the Federation's assistance, alleging violations of the longevity bonus provision. These grievances were still pending at the time of the filing of the instant charge.

On July 20, 1993, Lowman, Jones and Perrone met for a grievance hearing concerning a separate matter involving Lowman. According to Lowman, the following exchange took place between Jones and Perrone at that meeting:

> Jones: "And also I had to deal with Deglow today too, so I'm not in a very good mood."
>
> Perrone: "Oh right, Deglow, I can understand why you wouldn't be in a very good mood."
>
> Jones: "Yeh, she's filing a grievance because she says nobody likes her and you know what? It's true, nobody does."
>
> Jones and Perrone: Laughter.
>
> Perrone: "Oh I've dealt with Deglow. I know what you're faced with."
>
> Jones and Perrone: Laughter.

On December 11, 1993, Deglow, Guetling and Ryan Polstra (on behalf of 16 grievants) sent a letter to the Federation's president. The letter, relying on its face upon information provided by Deglow concerning the substance of meetings Deglow had had with Perrone, expresses concern that the Federation might be acting in bad faith vis-a-vis resolution of the longevity bonus grievances, and requests a meeting with the president. A response to that letter was sent by Perrone on December 20, 1993. In his letter, Perrone asserts that Deglow had provided inaccurate information, and contends that the Federation is acting in good faith. Perrone's letter indicates that the Federation president would not agree to meet with the grievants as a group.

Discussion

To demonstrate a violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under 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 (Novato); 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.)

While the instant charge does establish that Deglow has engaged in protected activity (by filing grievances) and that the employer had knowledge of such activity, the charge does not allege any conduct which would demonstrate that the employer "imposed or threatened to impose reprisals" against Deglow. The only conduct attributable to the Employer in this case involved the conversation between Jones and Perrone in which Jones made disparaging comments about Deglow.

Prima facie evidence of some adverse action is required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 688; Newark Unified School District (1991) PERB Decision No. 864 (Newark); State of California (Department of Parks and Recreation) (1994) PERB Decision No. 1031-S.) In determining whether prima facie evidence of an adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. *(Id)* In Newark, the Board further explained that

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. (Emphasis added; footnote omitted.)

The instant allegation does not meet the standard established under Novato, and Palo Verde Unified School District, supra, and Newark. The charge does not allege facts to establish how (using an objective test) the action of the Employer in making disparaging remarks about Deglow in the presence of another employee caused harm or had "impact on the employee's employment." However understandable Deglow's subjective reaction to this incident, the facts alleged here do not bring the conduct within the ambit of a violation of EERA and the allegation must be dismissed.

The charge also fails to establish that the Employer's conduct, even if not retaliatory, had the effect of interference with Deglow's exercise of protected rights under EERA.

> In an unfair practice case involving an allegation of interference, a violation will be found where the employer's acts interfere or tend to interfere with the exercise of protected rights and the employer is unable to justify the actions by proving operational necessity.
>
> Statements made by an employer are to be viewed in their overall context (i.e., in light of surrounding circumstances) to determine if they have a coercive meaning. (Los Angeles Unified School District (1988) PERB Decision No. 659; emphasis added; footnotes and citations omitted.)

The allegations here are free of any statements or conduct which has, on its face, "coercive meaning."

Conclusion

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 additional facts which would correct the deficiencies explained above, please amend the charge. 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 January 31, 1994. I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, ext. 359.

Sincerely,

Les Chisholm
Regional Director