STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 715, AFL-CIO,	)	
Charging Party,	)	Case No. SF-CE-1752
v.	)	PERB Decision No. 1113
WEST VALLEY-MISSION COMMUNITY COLLEGE DISTRICT,	)	August 31, 1995
Respondent.	)	

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Vincent A. Harrington, Jr., Attorney, for Service Employees International Union, Local 715, AFL-CIO; Sharon M. Keyworth, Attorney, for West Valley-Mission Community College District.

Before Garcia, Johnson and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on an appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by the Service Employees International Union, Local 715, AFL-CIO (SEIU). In its charge, SEIU alleged that the West Valley-Mission Community College District (District) violated section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)[1] when it

[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

retaliated against two SEIU officers by laying them off.

The Board has reviewed the entire record in this case, including the warning and dismissal letters, the unfair practice charge, SEIU's appeal and the District's response thereto. 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. SF-CE-1752 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Garcia and Johnson joined in this Decision.

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guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350

June 26, 1995

Vincent A. Harrington, Jr.
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, California 94612

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Service Employees International Union, Local 715, AFL-CIO v. West Valley-Mission Community College District
Unfair Practice Charge No. SF-CE-1752

Dear Mr. Harrington:

The above-referenced unfair practice charge, filed on December 28, 1994, alleges that the West Valley-Mission Community College District (District) retaliated against two officers of the Service Employees International Union, Local 715, AFL-CIO (SEIU) by laying them off. This conduct is alleged to violate Government Code sections 3543.5(a) and (b) of the Educational Employment Relations Act (EERA).

I indicated to you, in my attached letter dated June 16, 1995, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to June 23, 1995, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my June 16, 1995 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:

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

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DONN GINOZA

Regional Attorney

Attachment

cc: Sharon M. Keyworth

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415)557-1350

June 16, 1995

Vincent A. Harrington, Jr.
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, California 94612

Re: **WARNING LETTER**
Service Employees International Union, Local 715. AFL-CIO v. West Valley-Mission Community College District
Unfair Practice Charge No. SF-CE-1752

Dear Mr. Harrington:

The above-referenced unfair practice charge, filed on December 28, 1994, alleges that the West Valley-Mission Community College District (District) retaliated against two officers of the Service Employees International Union, Local 715, AFL-CIO (SEIU) by laying them off. This conduct is alleged to violate Government Code sections 3543.5(a) and (b) of the Educational Employment Relations Act (EERA).

Investigation of the charge revealed the following. SEIU is the exclusive representative of a bargaining unit composed of classified employees in the District. Alex Wright and Bill Langford were laid off from employment by the District effective July 1, 1994. Prior to that time, Wright was active on behalf of SEIU and acted in the capacity of Chief Steward within the bargaining unit. Langford was also active in SEIU, serving as a steward and as a member of the Safety Committee under the collective bargaining agreement. Both were employed in the classification of Maintenance/Carpenter.

The District was contemplating reductions in force as early as February 1994. SEIU and the District were involved in negotiations beginning in February to ameliorate or avoid these reductions in force. During the negotiations, SEIU was provided with a list of the proposed layoffs and reductions in hours, which included the positions of Wright and Langford. When the list of positions proposed to be reduced was presented to the District governing board on March 17, 1994 for their approval, SEIU was again provided with notice of the proposed elimination of the two Maintenance/Carpenter positions. The governing board voted to adopt the list of proposed reductions as a basis for formal notice to SEIU and other involved unions so as to expedite resolution of any potential issues. On April 6, Wright and Langford each submitted letters of voluntary resignation in order to receive the District's retirement incentive package. Later, on May 19, 1994, the governing board passed a formal layoff

resolution, which again included the two Maintenance/Carpenter positions. The resolution stated that the layoffs were to be effective July 1, 1994. Negotiations over the effects of the layoff and ways to ameliorate the reductions in force continued through June 1994.

SEIU asserts that positions were "deleted from, or changes were made to, the layoff list up through June." It further asserts that it was "not until the close of business on June 30, 1994, that the final decisions on layoffs and reductions in force were actually made."

Although others in the Maintenance Department had their hours reduced, Wright and Langford were the only two employees laid off.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation for the reasons that follow.

Government Code section 3541.5(a) states that PERB "shall not . . . 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."

PERB has held that the six month period commences to run when the charging party knew or should have known of the conduct giving rise to the alleged unfair practice. (Regents of the University of California (1983) PERB Dec. No. 359-H.) In determining whether to issue a complaint, the undersigned is required to accept the charging party's allegations as being true. (San Juan Unified School District (1977) PERB Dec. No. 12).

The charge was filed on December 28, 1994. Therefore, the charge would be timely if SEIU knew or should have known of the layoffs of the two Maintenance/Carpenter positions on or after June 28, 1994, but not before. SEIU acknowledges that it was aware of the District's announced intention to layoff the two employees as early as March 1994. However, SEIU claims that because the parties were negotiating over the reductions in force and because during the time up to and including June 30, 1994, the District was removing positions from the layoff list, the limitations period did not begin to run until the close of business on June 30, 1994. This contention must be rejected.

PERB has held that a charging party must file a charge when it has actual or constructive notice of a clear intent to implement the action which constitutes the basis for the unfair practice, provided that nothing subsequent to that date evinces a wavering

of that intent. The charging party may not rest on its rights until actual implementation occurs. (Regents of the University of California (1990) PERB Dec. No. 826-H.)

SEIU's contention would appear to rely on the claim that because the District was removing names from the layoff list through the month of June, the District evinced a wavering of the intent to proceed with the layoffs of Wright and Langford. This argument fails because there is no evidence that the District ever indicated the possibility that it was reconsidering the layoffs of the positions held by Wright and Langford. The fact that the District removed some positions from the list does not indicate a wavering of intent as to every position on the list. SEIU's argument can only prevail if the District evinced a wavering of the intent to proceed with the governing board's layoff resolution in its entirety. But there is no such evidence. Therefore, SEIU knew or should have known of the layoffs of Wright and Langford prior to June 28, 1994 and the charge is not timely filed.

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 **June 23, 1995.** I shall dismiss your charge. If you have any questions, please call me at (415) 557-1350.

Sincerely,

DONN GINOZA
Regional Attorney