

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BONNIE DEHLER,)
)
 Charging Party,) Case No. SF-CE-432-H
)
 v.) PERB Decision No. 1148-H
)
 REGENTS OF THE UNIVERSITY OF) April 12, 1996
 CALIFORNIA,)
)
 Respondent.)
 _____)

Appearance: Bonnie Dehler, on her own behalf.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by Bonnie Dehler (Dehler). In her charge, Dehler alleged that the Regents of the University of California violated section 3571 of the Higher Education Employer-Employee Relations Act (HEERA)¹ by:

¹HEERA is codified at Government Code section 3560 et seq. Section 3571 states, in pertinent part:

It shall be unlawful for the higher education 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.

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

(1) failing to properly maintain her payroll and personnel records; (2) improperly closing a grievance; and (3) failing to provide information.

The Board has reviewed the entire record in this case, including Dehler's original and amended unfair practice charge, the warning and dismissal letters and Dehler's appeal. 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-432-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



January 11, 1996

Bonnie Dehler

Re: Unfair Practice Charge No. SF-CE-432-H, Bonnie Dehler v.
Regents of the University of California
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT_____

Dear Ms. Dehler:

You filed the above-referenced charge on October 11, 1995. The charge alleges the University of California (University) violated HEERA section 3571(a), (b), (c) and (d) by: (1) Failing to properly maintain the payroll and personnel records; (2) improperly closing a grievance; and (3) failing to provide information.

I indicated to you, in my attached letter dated December 15, 1995, that the above-referenced charge did not state a prima facie violation of HEERA. 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 December 29, 1995, the charge would be dismissed. On December 21, 1995, I granted your request to extend your deadline to January 8, 1996.

On January 8, 1996 you filed an amended charge. Although the amended charge provides additional facts, it does not allege any facts which would alter the primary conclusions of the December 15 letter. For this reason, and as explained more fully below, your charge is dismissed.

First, the allegation that the University mismanaged your payroll records is untimely under HEERA § 3563.2(a). As explained in the December 15 letter, an alleged unfair practice which occurred or which you reasonably should have had knowledge of before April 11, 1995 is time barred. The amended charge does not present additional facts regarding this allegation, but merely concludes the allegations in the original charge should not be time barred because the alleged misconduct has not been corrected. The statute of limitations period began running when you learned of the University's alleged unfair practice, and therefore that part of your charge is dismissed as untimely.

Second, the allegation that the University retaliated against you by closing your grievance is not factually supported. The December 15 letter, explained the original charge failed to provide facts demonstrating the University improperly closed your grievance. The amended charge reiterates the allegations of the original charge, and alleges the University should have contacted you before proceeding when Eberhart transferred responsibility for your grievance to Popyack. As I indicated to you in the December 15 letter, my examination of the collective bargaining agreement did not reveal any provision requiring the University to contact you in the event your union representative transferred responsibility for your grievance to another union representative. The amended charge does not establish the University acted contrary to the parties' collective bargaining agreement. Thus, with regard to this allegation the charge is dismissed.

Third, the allegation that the University failed to provide information to you does not present facts demonstrating a prima facie violation of HEERA. The amended charge disputes the December 15 letter's characterization of your requests for information as "individual employee requests," because the requests were made as a part of your grievance. However regardless of the characterization, the University's obligation under HEERA § 3570 extends only to the exclusive representative, and not to an individual employee. As explained in the December 15 letter, whether another statute imposes a duty on the University to provide you with the requested information is beyond the scope of this letter, and not within the jurisdiction of the Public Employment Relation Board. Accordingly, with regard to this allegation the charge is 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. (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

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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
Tammy L. Samsel
Regional Attorney

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



December 15, 1995

Bonnie Dehler

Re: Unfair Practice Charge No. SF-CE-432-H, Bonnie Dehler v.
Regents of the University of California
WARNING LETTER

Dear Ms. Dehler:

You filed this charge on October 11, 1995. The charge alleges the University of California (University) violated HEERA section 3571(a), (b), (c) and (d) by: (1) Failing to properly maintain the payroll and personnel records; (2) improperly closing a grievance; and (3) failing to provide information. My investigation revealed the information summarized below.

The University employs Bonnie Dehler as an administrative assistant I at the University of California Press (Press). The American Federation of State, County and Municipal Employees (AFSCME) represents Dehler. On May 10, 1993, Dehler filed a grievance alleging fraud and mismanagement of her payroll and personnel records. In connection with that grievance, Dehler made various requests for information throughout 1993, and 1994. Dehler alleges the University failed to properly respond to these requests.

AFSCME's Bob Dietrich represented Dehler until September of 1994. AFSCME's Howard Eberhart represented Dehler until sometime in 1995, when he informed the University that AFSCME's George Popyack would be handling Dehler's case. On March 30, 1995, Patricia Donnelly, of the University's Employee and Labor Relations Representative Personnel Services, wrote to George Popyack and indicated that Dehler's grievance was resolved based on the Step 1 response. The letter explained,

Enclosed is a copy of my most recent correspondence to Mr. Eberhart indicating that the settlement I had proposed would be withdrawn after March 10, 1995, and that the grievance would resume with a Step 2 meeting to be scheduled no later than March 27, 1995. I contacted your office on March 22, 1995, because I had not heard from you or Mr. Eberhart about scheduling a Step 2 meeting.

I spoke to your assistant and reiterated the March 27, 1995 Step 2 deadline. She assured me that either she or you would get back to me by March 27, 1995. As of the day of this letter I have yet to hear from her or you. Therefore, Ms. Dehler's grievance is resolved based on the Step 2 response.

On April 11, 1995, Dehler objected to the resolution of her grievance. Dehler alleged the University was not authorized to contact Popyack without a written letter designating him as her representative. Dehler argued when changing her representative on a previous occasion the University required a written confirmation of the change.¹

As an initial matter, under HEERA section 3563.2(a) the board may not issue a complaint based on an alleged unfair practice occurring more than six months prior to the filing of the charge. Dehler filed this charge on October 11, 1995. Thus, any alleged unfair practice which occurred or which Dehler reasonably should have had knowledge of before April 11, 1995, is time barred.² Therefore the allegation regarding the University's mismanagement of Dehler's payroll and personnel records is dismissed.³

Dehler contends she learned for the first time on April 11, 1995, that the University considered her grievance resolved. Dehler also contends she learned on April 17, 1995, that the University did not comply with her latest document request. Therefore, the issues within the six-month statute of limitations period include: (1) the closing of Dehler's grievance, and (2) the failure of the University to comply with Dehler's latest information request.

The allegation regarding the closing of the grievance is the theory of discrimination. The charge alleges the University discriminated against Dehler by improperly closing her grievance. To demonstrate a violation of HEERA section 3571(a), the charging

¹On November 14, 1994 the University requested written confirmation of the change of representatives from Bob Dietrich to Howard Eberhart.

²The charge provides information covering a time period from 19 84 to the present.

³Even if this allegation was not time barred, it does not present a prima facie discrimination violation under the test described below.

party must show that: (1) the employee exercised rights under HEERA; (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.)

This charge fails to present any facts demonstrating the closing of Dehler's grievance was a retaliatory act. Article 6, Section H.2.c. of the parties collective bargaining agreement requires the University to schedule and convene a Step 2 meeting within 15 calendar days of receipt of the Step 2 appeal. Dehler's grievance was held in abeyance at Step 2 until March 10, 1995. On February 28, 1995, Donnelly wrote to Eberhart requesting Eberhart accept or reject a proposed settlement agreement. That letter indicated if Eberhart, "chose to reject the proposal or to not respond by March 10, the Step 2 meeting will be reconvened within 15 days, or by March 27, 1995." As Donnelly's March 30, 1995, letter indicates, the March 27, 1995, deadline was not met. After examining this timeline, it appears the University followed the parties' CBA when resolving Dehler's grievance at Step 1.

Dehler contends even if the March 27, deadline was appropriate, the University should have contacted Eberhart instead of Popyack. Dehler alleges the University should not have allowed Eberhart to hand over the handling of Dehler's grievance to Popyack without written confirmation from Dehler. My examination of the parties'

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CBA did not reveal any provision requiring such written authorization from Dehler. For these reasons, as presently written, this charge does not state a prima facie violation of HEERA section 3571(a).

The charge further alleges the University violated HEERA by refusing to adequately respond to Dehler's requests for information. HEERA § 3570 imposes a duty upon employers to meet and confer with its employees' exclusive representatives. With that statutory obligation is the duty on the part of the employer to supply information to the employee organization. (See California Faculty Association (1987) PERB Decision No. 613-H.) Under HEERA, the employer's duty to provide information does not extend to individual employee requests such as Dehler's.⁴ Accordingly, this charge does not present a prima facie violation of HEERA.

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 DECEMBER 29, 1995, I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney

⁴This letter addresses only the University's obligations under HEERA, and does not address statutory rights or obligations imposed by the California Public Records Act, or the Freedom of Information Act.