STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

COLLEGE OF THE CANYONS FACULTY ASSOCIATION,	)	
Charging Party,	)	Case No. LA-CE-3674
v.	)	PERB Decision No. 1178
SANTA CLARITA COMMUNITY COLLEGE DISTRICT,	)	December 4, 1996
Respondent.	)	

Appearances: California Teachers Association by Charles R. Gustafson, Attorney, for College of the Canyons Faculty Association; Liebert, Cassidy & Frierson by Mary L. Dowell, Attorney, for Santa Clarita Community College District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of the College of the Canyons Faculty Association's (Association) unfair practice charge. As amended, the charge alleged that the Santa Clarita Community College District (District) violated section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA)[1] when it

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in relevant 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

discriminated against a unit member.

The Board has reviewed the entire record in this case, including the Association's original and amended unfair practice charge, the warning and dismissal letters, the Association's appeal and the District's response thereto.[2] The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-3674 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

> 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.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[2]Attached as Exhibit A to the Association's appeal is an October 5, 1995 document entitled Special Grant Request for Foundation Funds. This document was not part of the record before the Board agent. Because the Association has failed to provide good cause that this evidence could not have been presented during the Board agent's investigation, the Board has not considered Exhibit A in rendering this decision. (PERB regs. are codified at Cal. Code Regs., tit.8, sec. 31001 et seq; see PERB Reg. sec. 32635(b).)

PUBLIC EMPLOYMENT RELATIONS BOARD

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

September 13, 1996

Charles R. Gustafson, Esq.
College of the Canyons FA/
California Teachers Association
Post Office Box 2153
Santa Fe Springs, California 90670

Re: Unfair Practice Charge No. LA-CE-3674
College of the Canyons Faculty Association v. Santa Clarita Community College District
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT

Dear Mr. Gustafson:

In the above-referenced charge the College of the Canyons Faculty Association (Association) alleges the Santa Clarita Community College District (District) violated the Educational Employment Relations Act (EERA or Act) sections 3543.5(a), (b), and (c) by discriminating against Jack D. Compton.

In sum the charge alleges Compton engaged in a protected activity on December 13, 1995, when Compton initiated the grievance process. The charge alleges the District committed the following adverse actions: (a) between October 8, and October 20, 1995, the District rescinded approval for Compton's trip, and refused to pay Compton's salary and travel expenses; and (b) on February 7, 1996, the District placed a letter regarding Compton's failure to follow procedures in Compton's personnel file.

I indicated to you, in my attached letter dated July 29, 1996, 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. On August 19, 1996, you filed your first amended charge.

In the first amended charge you added the following allegations, as summarized below: (a) Compton had commenced the first steps of the contractual grievance procedure; (b) the District placed the negative letter in Compton's file without any attempt to contact Compton or to investigate the allegations made in that letter; and (c) the District engaged in disparate treatment of Compton.

The above-stated information fails to establish a prima facie violation. Therefore, I am dismissing the charge based on the facts and reasons stated below and those contained in my July 29, 1996, letter.

As previously stated in the July 29, 1996, Warning Letter, the District's conduct in October predates the alleged protected activity by Compton, and those allegations are dismissed accordingly. The District's conduct in February, following Compton's alleged protected activity in December, is discussed below.

In the Warning Letter I explained that the charge did not factually support the allegation that Compton had engaged in any protected activity because it did not appear that Compton had actually filed a grievance. Accordingly, the original charge failed to establish a requisite element of finding a prima facie discrimination violation under EERA. In the first amended charge you admit Compton did not formally file a written grievance, but allege Compton "commenced the first steps of the contractual grievance procedure" by having a Level I meeting with the Assistant Superintendent on December 13, 1995. Although that act is a protected activity and fulfills the first element of Novato, the charge still does not state a prima facie case because the charge does not factually support a finding of nexus.

To support a finding of nexus you allege the District, "had not made any attempt to contact Mr. Compton or to investigate the allegations made in the letter,. . . prior to its issuance." You further allege the District denied Compton his travel rights for reasons which have not prevented other unit members from traveling.

The above-stated allegations, however, are inconsistent with the facts in the charge. Doran investigated whether Compton's absence was authorized. Doran sent a memorandum to Compton on December 13, 1995, regarding his investigation and requested that Compton make an appointment to speak with him. The charge also indicates that any further investigation may have been unnecessary because Compton never challenged the District's conduct by filing a grievance, despite the fact that the District's Board of Trustees granted him an extension after he had missed the filing deadline.[1]

With regard to your allegation that the District denied Compton's travel rights but allowed other unit members to travel, the charge fails to provide factual support. The charge did not provide any facts pertaining to any other employee or any other

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[1]The deadline for Compton to file a written grievance was on January 22, 1996. On February 7, 1996, the District Board of Trustees waived their timeliness defense and granted Compton until February 13, 1996, to file a written grievance. Compton did not file a grievance.

travel claims. Accordingly, the charge did not establish that the District engaged in any disparate treatment of Compton.

Moreover, Compton admits he failed to follow the proper procedures in a memorandum to Dr. Dianne G. Van Hook.[2] Compton's statements suggest the District's actions were not motivated by Compton's involvement in any protected activity, but because Compton failed to follow the proper procedures.

For the above-stated reasons and those reasons explained in the July 29, 1996, Warning Letter I am dismissing this charge.

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.

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[2]That memorandum is dated "2-2-96," but is titled, "Response to memo hand to me at our meeting on March 7, 1996.

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

July 29, 1996

Charles R. Gustafson, Esq.
California Teachers Association
College of the Canyons Faculty Association
Post Office Box 2153
Santa Fe Springs, California 90670

Re: Unfair Practice Charge No. LA-CE-3674
College of the Canyons Faculty Association v. Santa Clarita Community College District
WARNING LETTER

Dear Mr. Gustafson:

In the above-referenced charge the College of the Canyons Faculty Association (Association) alleges the Santa Clarita Community College District (District) violated the Educational Employment Relations Act (EERA or Act) sections 3543.5(a), (b), and (c) by discriminating against Jack D. Compton. My investigation revealed the following information.

On September 22, 1995, Compton filed paperwork with the District to receive approval for a trip to France. The District alleged Compton failed to submit all of the required documents, but Compton allegedly received approval for the trip from an unnamed administrator.

The District later reneged its approval for Compton's trip, and refused to pay Compton's salary and travel expenses. You allege Compton filed a grievance over the District's refusal to pay his salary and travel expenses. You further allege the District denied this grievance.

On February 7, 1996, the District placed a document in Compton's personnel file which discussed Compton's "failure to comply with District procedures."

The above-stated facts fail to establish a prima facie violation of the EERA for the reason that follow. 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; 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 EERA section 3543.5(a).

The charge's only allegation of protected activity was Compton's alleged filing of a grievance. The charge fails to allege Compton engaged in any protected activities prior to the District's action to rescind approval for Compton's trip or the District's refusal to pay Compton's salary and travel expenses. Accordingly, the timing of the District's acts prior to the Compton's alleged filing of a grievance do not support a finding of nexus. (See Kern County Office of Education (1987) PERB Decision No. 630.)

Although the District's act of placing a letter in Compton's personnel file followed Compton's alleged filing of a grievance, that allegation also fails to establish a prima facie violation. The charge does not allege when Compton filed the grievance, nor does the charge include any documents supporting the allegation that Compton filed a grievance. In fact, your Exhibit A to the charge indicates Compton failed to file a timely grievance. It further indicates the Board of Trustees extended Compton's deadline to file a grievance, but Compton still did not file a

grievance. Therefore the charge fails to establish the first element of a EERA section 3543.5(a) violation.

Even assuming Compton did file a grievance, it is your burden to establish the requisite nexus between that act and the District's alleged adverse action. Without the date of the grievance filing it is impossible to determine whether timing is a factor in this charge. The charge fails to factually support any of the factors indicative of nexus.

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 August 8, 1996, I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney