

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGE V. MRVICHIN,)	
)	
Charging Party,)	Case No. LA-CE-3790
)	
v.)	PERB Decision No. 1222
)	
LOS ANGELES COMMUNITY COLLEGE)	October 1, 1997
DISTRICT,)	
)	
Respondent.)	
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Appearance: George V. Mrvichin, on his own behalf.
Before Johnson, Dyer and Amador, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by George V. Mrvichin (Mrvichin) to a Board agent's dismissal (attached) of his unfair practice charge. Mrvichin alleges that the Los Angeles Community College District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ by: (1) interfering

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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

with his grievance; and (2) discriminating against him for engaging in protected activity when it processed his grievance.

The Board has reviewed the entire record in this case, including the Board agent's warning and dismissal letters, the original and amended unfair practice charge, and Mrvichin'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. LA-CE-3790 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador join in this decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



June 27, 1997

George V. Mrvichin

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**

George V. Mrvichin v. Los Angeles Community College District
Unfair Practice Charge No. LA-CE-3790

Dear Mr. Mrvichin:

The above-referenced unfair practice charge, filed May 6, 1997, alleges the Los Angeles Community College District (District) interfered with the processing of your grievance. This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated June 5, 1997, 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 13, 1997, the charge would be dismissed. On June 16, 1997, I received a first amended charge in this matter.

The amended charge reiterates the original allegations and adds the following theory. You assert the District not only interfered with your grievance, but also discriminated against you in the processing of your grievance. With the exception of the following, the amended charge does not provide any additional facts regarding these allegations.

On April 10, 1997, Ms. Maria Elena Martinez, Vice President of Academic Affairs, and the supervisor charged with Level I and II responsibility over your grievance, informed you during an oral conversation that Ms. Files was not authorized to receive your grievances. You assert such a conversation amounted to harassment on the District's part.

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Based on the facts stated in both the original and amended charges, the charge fails to state a prima facie violation of the EERA, for the reasons stated below.

Charging Party asserts the District's actions amounts to unlawful discrimination. 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 amended charge asserts the requisite nexus is demonstrated by the District's action. Specifically, you allege the District failed to conform to the established grievance procedure, preformed a cursory investigation into your grievance, and demonstrated disparate treatment towards you. In support of these contentions, you note the District failed to provide you with a copy of its Notice of Appearance, failed to provide you a written Level II response, and denied your grievance at Levels I and II, without the proper authority. I will address each of the allegations in turn.

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The amended charge asserts that although the District provided you with a copy of its initial response in this matter, it failed to provide you with a copy of a Notice of Appearance. You contend such a failure demonstrates nexus. However, the District's failure to provide you with a Notice of Appearance, well after you contend the adverse action occurred, is not relevant in demonstrating nexus.¹

The amended charge also contends the District violated its grievance procedures in denying your grievance at Levels I and II. Specifically, you assert that as the grievance procedure does not provide for the denial of a grievance, the District is without authority to deny grievances at any level. You do not provide any support for this contention, nor is any support found in the grievance procedures themselves. Article 22 of the Agreement between the District and the Federation contains the parties grievance machinery. Facts provided by the Charging Party demonstrate the District followed the grievance procedure in denying the grievance at Levels I and II. Although the grievance procedure does not use the word "deny" in its language, Levels I and II authorize the respective administrators to issue a written "decision" on the merits of the grievance. Such language does not require the District to agree with each grievance filed, but merely issue a decision on the merits.

Charging Party also asserts that Ms. M.E. Martinez's failure to provide a written response at Level II demonstrates the requisite nexus. However, this contention is also unsupported by the facts provided. Article 22, Section E(2) provides as follows:

Failure by a supervisor or management employee to respond to the employee's grievance within the specific time limits shall permit the grievant to proceed to the next step unless mutual agreement to extend the time has been reached.

As the Agreement allows Charging Party to continue to pursue the grievance, Ms. Martinez's failure provide a written response does not jeopardize or interfere with Charging Party's rights under the Agreement or under the EERA. Indeed, it seems the District and the Federation foresaw instances where response would not be possible or appropriate, and provided for such occasions in the

¹ Examination of the case file demonstrates the District also failed to serve a Notice of Appearance on PERB. The District's initial response, does however, designate Herbert Spillman as the District's representative in this matter.

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agreement. Moreover, Charging Party fails to demonstrate why such action should be considered discriminatory in this instance. As such, this contention fails to demonstrate the requisite nexus.

Charging Party also asserts the District conducted a cursory investigation into his grievance. However, as the charge presents no facts demonstrating a cursory investigation, the allegation fails to support a finding of nexus. Indeed, the parties grievance machinery provides only five (5) days for a Level I and an additional five (5) days for a Level II response. As such, the District's quick response and/or failure to respond does not demonstrate a discriminatory motivation on the District's part.

Finally, Charging Party asserts that on April 14, 1997, he was informed by Federation Chapter Chair, Barbara Brice, that the District was attempting to interfere with his grievance. This same allegation was asserted in Charging Party's original charge. My letter dated June 5, 1997, requested Charging Party provide specifics regarding this allegation. The amended charge simply reiterates the original allegation without elaboration. Therefore, for the reasons stated in my June 5, 1997, letter, this allegation fails to support a finding of nexus or interference.

To demonstrate a prima facie case of interference, the charging party must show the respondent's conduct tends to or does result in some harm to the employees rights granted under the EERA.

(Carlsbad Unified School District (1979) PERB Decision No. 89.)

In the instant charge, you allege the District interfered with your April 10, 1997, grievance, however you fail to explain how the District interfered with your grievance. Mere denial of your grievance at Level I or II is insufficient to demonstrate interference or a threat of reprisal. As stated in my June 5, 1997, letter, an allegation of interference must demonstrate the District took some action which harmed or tended to harm your protected rights. Again, the charge is devoid of any such information and, as such, 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

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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.)

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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
Kristin L. Rosi
Regional Attorney

Attachment

cc: Herbert Spillman

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



June 5, 1997

George V. Mrvichin

Re: **WARNING LETTER**

George V. Mrvichin v. Los Angeles Community College District
Unfair Practice Charge No. LA-CE-3790

Dear Mr. Mrvichin:

The above-referenced unfair practice charge, filed May 6, 1997, alleges the Los Angeles Community College District (District) interfered with the processing of your grievance. This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. You are employed by the District as an Athletic Trainer at East Los Angeles Community College. You are exclusively represented by the American Federation of Teachers, College Staff Guild, Local 1521 (AFT or Federation).

On April 10, 1997, you filed a grievance with Renee Martinez, Dean of Academic Affairs. The grievance charged that the District violated the Agreement between the Federation and the District by rejecting your "Request For State Equipment." On April 14, 1997, Ms. Renee Martinez informed you that Step 1 of the grievance process required the grievance be presented to the immediate supervisor with authority to adjust the problem. You were further informed that the Step 1 response would come from Maria Elena Martinez, Vice President of Academic Affairs.

The charge further asserts that on April 14, 1997, Barbara Brice, Federation Chapter Chair at East Los Angeles College, informed you that Maria Elena Martinez had interfered with your grievance. The charge does not provide any further elaboration regarding Ms. Brice's statement, nor does the charge present a declaration from Ms. Brice regarding this conversation. The charge continues in alleging that Ms. M.E. Martinez acted outside her authority, although again further details are omitted.

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On April 21, 1997, Ms. M.E. Martinez denied your grievance at Step 1. The charge does not demonstrate whether you appealed this denial to Step 2.

Based on the above stated facts, the charge as presently written fails to demonstrate a prima facie violation of the EERA for the reasons stated below.

To demonstrate a prima facie case of interference, the charging party must show the respondent's conduct tends to or does result in some harm to the employees rights granted under the EERA. (Carlsbad Unified School District (1979) PERB Decision No. 89.) In the instant charge, you allege the District interfered with your April 10, 1997, grievance, however you fail to explain how the District interfered with your grievance. Mere denial of your grievance at Step 1 is insufficient to demonstrate interference or a threat of reprisal. If you intend to allege an interference violation, you must demonstrate the District took some action which harmed or tended to harm your protected rights. Again, the charge is devoid of any such information.

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 13, 1997. I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney