

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTORIA GARCIA,)
)
 Charging Party,) Case No. LA-CE-3766
)
 v.) PERB Decision No. 1230
)
 CENTINELA VALLEY UNION HIGH SCHOOL) November 13, 1997
 DISTRICT,)
)
 Respondent.)
 _____)

Appearances: Victoria Garcia, on her own behalf; Atkinson, Andelson, Loya, Ruud & Romo by Steven J. Andelson, Attorney, for Centinela Valley Union High School District.

Before Johnson, Dyer, and Jackson, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Victoria Garcia's (Garcia) unfair practice charge. Garcia's charge alleges that the Centinela Valley Union High School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ when it failed to

¹EERA 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 guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

hire Garcia and gave her an apparently unfavorable evaluation.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, Garcia'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.

ORDER

The unfair practice charge in Case No. LA-CE-3766 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Jackson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 23, 1997

Victoria P. Garcia

Re: Victoria P. Garcia v. Centinela Valley Union High School
District
Unfair Practice Charge No. LA-CE-3766
DISMISSAL AND REFUSAL TO ISSUE COMPLAINT LETTER

Dear Ms. Garcia:

In this charge filed February 24, 1997, you allege that the Centinela Valley Union High School District (Centinela Valley or District) acted unlawfully and violated Government Code section 3543.5 of the Educational Employment Relations Act (EERA). Your charge alleges that "The Assistant Sup. has decided to act in a prejudicial way. She only acts on letters and uses her position to demonstrate what a 'predetor' (sic) is all about. She has no business on giving references (sic)." Also, you believe the District has made improper accusations against you.

I indicated to you, in my attached letter dated July 15, 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 July 22, 1997, 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 July 15 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,

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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.)

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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
MARC S. HURWITZ
Regional Attorney

Attachment

cc: Steven Andelson, Esq

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 15, 1997

Victoria P. Garcia

Re: Victoria P. Garcia v. Centinela Valley Union High School
District. Unfair Practice Charge No. LA-CE-3766
WARNING LETTER

Dear Ms. Garcia:

In this charge filed February 24, 1997, you allege that the Centinela Valley Union High School District (Centinela Valley or District) acted unlawfully and violated Government Code section 3543.5 of the Educational Employment Relations Act (EERA). Your charge alleges that "The Assistant Sup. has decided to act in a prejudicial way. She only Acts on letters and uses her position to demonstrate what a 'predetor' (sic) is all about. She has no business on giving refences (sic)." Also, you believe the District has made improper accusations against you.

Your charge goes on to state:

First, when in July in 1994, when I went or drove to Lawndale, I applied for a substitute position. The district did not contact me and the lady in personnel said, my appl. will not be processed because I did not have a regular credential.

Second, this District has the highest number of teachers on waivers. That is, Mrs. Daniels (sic) is one of the Administrators that mis-use (our tax-moneies) (sic) to hire non-college Spanish persons to do aide work. That's to assist teachers who do not posses (sic) the Spanish language. Thirdly, not only has she instituted a backward system, were (sic) ill prepared person go to the high school classes, but uses aides as double jeopardy to spy on the regular instructors and harrassed (sic) teachers.

Thirdly, Mrs. Daniels (sic) claims to be ill since 1989, 91, 92, 93, 94 and so on, but when it comes to hurt people she's fine.

Fourth, I did not work under Mrs. Daniels (sic), therefore, She has no business, touching my files, or to give or write negative references, with malice disposition.

Fifth, everytime had requested to see Mrs. Daniels (sic), she says she's too, too, too busy, though she made time to threaten and deny me the right to contact any Board Member of Centinela.

By your letter dated January 29, 1997 (the letter indicates 1996, probably in error) to J. Darlene Daniel, Asst. Superintendent, Office of Human Resources at the District, you stated:

Today, I called at 10:30 a.m. and was informed that you had given orders that I will not be placed on the substitute list. I would like to set a time Tuesday and Wednesday to meet with you.

Secondly, why my evaluation or form of reference was not mail (sic) to me. LAUSD has written to me indicating it was an unsatisfactory evaluation.

Could I please hear from please (sic) since I'm on my way to Sacramento to file a complain (sic) .

By your letter to Dr. John L. Rindone, Interim Superintendent, dated January 29, 1997 (the letter indicates 1996, probably in error) you stated:

My name is Victoria Garcia. In 1990-1991 worked at Hawthorne.

Need your assistance on the following on the following:

- a) To get an appointment to see Darlene Daniels (sic) because I must know whether Ms. Daniels (sic) is issuing the wrong information to my prospective employers.
- b) Whether Ms. Daniels (sic) [the letter ends here].

Daniel responded by letter to you dated February 4, 1997 as follows:

I am writing you in response to your letter dated January 29, 1997. In reviewing your personnel file, there have been negative evaluations submitted to your file. Due to the negative evaluations based on your recent¹ job performance, the District has removed your name from the District's sub list. Therefore, the District will no longer call you for subbing

¹According to the District, you worked for the District during the 1990-91 and 1993-94 school years.

assignments. Secondly, I received a form letter from LAUSD [Los Angeles Unified School District] requesting me to complete and return to them the job performance evaluation on your performance with CVUHSD. The job performance evaluation is meant to be confidential between employers and is not to be shared with the employee.

In addition, I received a phone call yesterday from Board Member, Mario Chiappe concerning your telephone calls to his home. He has requested to the Superintendent's office, as well as my office, that he not receive calls from applicants who are seeking employment with Centinela Valley Union High School District. Maybe you are not aware that the Bylaws of the Board do not govern individual Board Members to be involved with the employment of any employees (i.e., Certificated, Classified, Substitutes and/or Consultants). Should you have questions concerning this matter, please contact me at (310) 970-7705.

During the 1990/91 school year, you worked at Hawthorne High School as a first year probationary teacher. You were non-reelected before June 1991. The first semester you were a Spanish Teacher. The second semester, you taught English as a second language (ESL). In July or August 1996, you applied for a substitute teaching job with the District. You believe that in December 1996, you wrote to the District asking for a chance to substitute. You indicated that "Doors were closed in August 1996." You also visited the District in person in December 1996.

According to the District, you also substituted for one to two days at Lloyd High School during the 1993-94 school year, where there was some problem noted by the District, involving your conduct in or about May 1993. I note that you deny working for the District during the 1993-94 school year. At this stage, your allegations are being taken as true. According to the District, you listed Daniel as a reference for your application in or about 1996 to work at LAUSD. LAUSD sent Daniel an evaluation form. This form was to be for employer use only and was confidential. The District contends Daniel truthfully answered the questions on the form and sent it back to LAUSD (reflecting your work history with Centinela Valley as not satisfactory).

Based on the above information, the charge fails to state a prima facie violation for the following reasons. EERA section 3541.5(a)(1) provides that the Board 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." It is your burden, as the charging party to demonstrate that the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

Therefore, all allegations of unlawful conduct occurring prior to August 24, 1996, are untimely and will be dismissed. In addition, you provided no specific dates for unlawful conduct by the District occurring in or about August 1996, or later on involving your application at LAUSD. Without this information, it cannot be determined whether conduct by the District involving these matters is timely.

A charging party must allege the "who, what, when, where and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S. Your charge does not provide the necessary facts to demonstrate the elements of a prima facie discrimination case, as described below.

EERA section 3541.5(a) provides that "Any employee, employee organization, or employer shall have the right to file an unfair practice charge." At EERA section 3543.5(a) where unlawful retaliation is described, I note that the term "employee" includes an applicant for employment or reemployment.

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).

More specifically, your charge does not clearly demonstrate that you engaged in protected activity prior to the alleged adverse actions, once you became an applicant for reemployment in 1996-97. Also, it does not appear that the alleged adverse actions, including the District's February 1997 admonition for you not to contact Board Members regarding employment, were unlawfully motivated. The matter of your contacting the Board Member is governed by the Bylaws of the District. Thus, the charge does not clearly demonstrate that the adverse actions were taken because of any protected activity (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 respondent² and the original proof of service must be filed with PERB. . If I do not receive an amended charge or withdrawal from you before July 22, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3543.

Sincerely,

Marc S. Hurwitz
Regional Attorney

²The District's counsel in this matter is Steven J. Andelson, Esq. of Atkinson, Andelson, Loya, Ruud & Romo, in Cerritos, California.