

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DAVID JOHN SANCHEZ,)
)
 Charging Party,) Case No. LA-CE-4006
)
 v.) PERB Decision No. 1325
)
 LOS ANGELES COMMUNITY COLLEGE)
 DISTRICT,) April 13, 1999
)
 Respondent.)
 _____)

Appearance: David John Sanchez, on his own behalf.
Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of David Sanchez' (Sanchez) unfair practice charge. Sanchez' charge alleged that the Los Angeles Community College District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ when it terminated his employment in retaliation for his protected activities.

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.

The Board has reviewed the entire record in this case, including the unfair practice charge, the Board agent's warning and dismissal letters, and Sanchez' appeal. 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-4006 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 21, 1999

David Sanchez Ph.D.

RE: David John Sanchez v. Los Angeles Community College
District
Unfair Practice Charge No. LA-CE-4006
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Dr. Sanchez:

In the above-referenced charge you allege the Los Angeles Community College District violated the Educational Employment Relations Act (EERA or Act) § 3543.5 (a) and (b) by retaliating against you for your participation in protected activities.

I indicated to you, in my attached letter dated January 13, 1999, 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 January 20, 1999, that 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 January 13, 1999, 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

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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

TAMMY L. SAMSEL
Regional Director

Attachment

cc: Herbert C. Spillman

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 13, 1999

David Sanchez Ph.D.

RE: David John Sanchez v. Los Angeles Community College
District
Unfair Practice Charge No. LA-CE-4006
WARNING LETTER

Dear Dr. Sanchez:

In the above-referenced charge you allege the Los Angeles Community College District violated the Educational Employment Relations Act (EERA or Act) § 3543.5(a) and (b) by retaliating against you for your participation in protected activities. My investigation revealed the following information.

On August 4, 1998, Dean of Academic Affairs David Morin dismissed you from your teaching position at the East Los Angeles College. Your charge alleges the District took this action because of your union and political activities. The charge provides, in pertinent part:

Terminated for my union and political activities. The Chicano Studies Department was distributing anti-David Sanchez literature on campus to turn students and faculty against me. (La Verdad Newspaper) Also the East Los Angeles Campus News was writing articles against David Sanchez to as a form of charactor assasination. The Department Chair for Chicano Studies wrote an article against David Sanchez in the student newspaper. (E.L.A. College Campus News. This resulting from the fact that David Sanchez is active in the Teachers Union and is active in civil rights group known as the -Brown Berets.* [sic]

Terminated for retaliation and filing of past grievances. David Sanchez had questioned the Chicano Studies Dept. as to why were hourly staff being hired after the start of the semester thus giving more working hours to full-time instructors. This causing the Department to retaliate against David Sanchez.

The charge alleges the above-referenced protected activities motivated the District to retaliate against you. You allege that the connection between your protected activities and the adverse action taken against you is demonstrated by the District's failure to follow proper evaluation procedures, and a newspaper article written by the Department Chair against you. More specifically, the charge states:

This department was using information received from students instead of talking to David Sanchez. The evaluation was based on a ten-minute observation of teachers performance in the classroom. Total bias to academic freedom. All teachers do not teach the same. Chicano Studies instructors are not qualified to evaluate a Ph.D. instructor since evaluators had a lesser academic degree. Evaluation was judged upon retaliation, [sic]

The above-stated information fails to state a prima facie violation of the EERA for the reasons 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.)

Although the charge alleges you engaged in protected activities the charge fails to indicate when you engaged in these activities. Without this information the charge fails to establish any temporal proximity between your protected activities and the adverse action. A charging party must allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.)

My investigation revealed that you filed only one grievance at the East Los Angeles College. You filed that grievance in 1995. The several year lapse in time between the filing of that grievance and the alleged retaliation does not support a finding of nexus. Nor does the charge provide other facts indicative of nexus.

The charge alleges the Department Chair wrote an article which demonstrates his or her bias against you. The charge did not include any newspaper article. My investigation revealed only one newspaper article about you. The East Los Angeles Campus News included an article entitled, "Instructor selling textbooks in class violates policy." However, that article was not written by the Department Chair, but by a student Laurette Espinoza. Nor did that article refer to your involvement in protected activities. Thus, the charge fails to provide facts demonstrating the Department Chair's bias motivated the District to dismiss you.

The charge similarly fails to demonstrate that the District failed to follow proper evaluation procedures by allowing evaluators with "lessor degrees" to evaluate you. The charge does not provide, and my investigation did not reveal that the District is required to use Ph.D. level individuals to evaluate an instructor with a Ph.D. Thus, the charge does not provide facts demonstrating the District departed from established procedures.

For the above-stated reasons, the charge fails to state a prima facie violation of the EERA. 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

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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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before January 20, 1999, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

TAMMY SAMSEL
Regional Director