

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PAULETTE JACKSON,)
)
Charging Party,) Case No. LA-CE-3851
)
v.) PERB Decision No. 1338
)
LOS ANGELES UNIFIED SCHOOL DISTRICT,) July 23, 1999
)
Respondent.)
_____)

Appearance; Paulette Jackson, on her own behalf.
Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Paulette Jackson (Jackson) to a Board administrative law judge's (ALJ) proposed decision (attached). The ALJ dismissed the charge and complaint, which alleged that the Los Angeles Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ by terminating Jackson's employment because

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides:

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.

she exercised protected activities.

The Board has reviewed the entire record, including the proposed decision and Jackson's exceptions. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge and complaint in Case No. LA-CE-3851 are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

PAULETTE JACKSON,)	
)	Unfair Practice
Charging Party,)	Case No. LA-CE-3851
)	
v.)	
)	
LOS ANGELES UNIFIED SCHOOL)	PROPOSED DECISION
DISTRICT,)	(3/10/99)
)	
Respondent.)	

Appearances: Paulette Jackson, on her own behalf; Belinda D. Stith, Staff Counsel, for Los Angeles Unified School District.

Before James W. Tamm, Administrative Law Judge.

PROCEDURAL HISTORY

On October 7, 1997, Paulette Jackson filed this unfair practice charge against the Los Angeles Unified School District (District). On November 25, 1997, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that the District violated section 543.5(a) of the Educational Employment Relations Act (EERA or Act)¹ by terminating Jackson's employment because she

¹EERA is codified at Government Code section 3540 et seq. EERA section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to:

- (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.

exercised protected activities.² The District answered the complaint on December 16, 1997, admitting the jurisdictional facts but denying any violation of the Act.

A settlement conference was conducted, but the matter remained unresolved. A prehearing conference was held June 26, 1998. A formal hearing was held November 12 and 13, 1998.³ Transcripts were waived, briefs were filed and the matter was submitted for decision on January 8, 1999.

FINDINGS OF FACT

For several years prior to the 1997-98 school year, Jackson had been employed by the District as a day-to-day substitute. During a portion of that time she had worked as a substitute at John Burroughs Middle School for the Resource Specialist Program (RSP). In June 1997, the Burroughs principal, Dr. Earl Barner, offered Jackson a position as a substitute teacher, filling a newly created seventh grade RSP position, beginning in September at the start of the new school year.

Jackson's seventh grade class was considered a start-up class, i.e., newly created. Jackson had heard from other teachers that there were funds allocated for expenses associated

²The complaint also alleges that the District violated Government Code section 3543.5(b) by denying Jackson the right to represent other unit members. Jackson offered no evidence regarding this allegation and did not discuss the issue in her brief. I consider the issue to be abandoned and therefore it is not discussed further in this decision.

³At the request of charging party, the original June 1998 hearing date was continued because she was unable to serve subpoenas. A second request on similar grounds was denied.

with start-up classes. Without clarifying her understanding or obtaining any prior approval, Jackson spent approximately \$300 of her own money for supplies, believing that she would be reimbursed.

Prior to the start of the 1997-98 school year, Principal Barner was replaced as principal by Fonna Bishop. At the start of the school year, Jackson went to Bishop and requested among other things, that she be reimbursed for the \$300 of expenses. Bishop explained that she would look into it, and would try to get the funds reimbursed, but she was not optimistic that Jackson would be reimbursed. The District's long established practice required prior approval for reimbursable cash expenditures by teachers. Prior approval is required because the District has many sources for various supplies and may actually have the necessary supplies without any extra expenditures. For example, Jackson apparently purchased some books for her classroom without ever checking the school's textbook supply office. Other supplies can be more efficiently purchased directly by the school or the District office.

Jackson became upset that she might not be reimbursed and wrote a letter to Bishop and other District office personnel complaining about not being reimbursed.⁴ Jackson followed up on the letter by speaking again to Bishop. During the conversation, Jackson complained to Bishop that she was unhappy about not

⁴There is no evidence that these other individuals played any role in any personnel decisions affecting Jackson.

getting reimbursed and that she was an experienced teacher who could work in many other places. Bishop pointed out that because Jackson was a substitute, she certainly had a great deal of flexibility to work elsewhere if she wasn't happy at Burroughs Middle School. Bishop told Jackson that if she wanted to be released from her commitment at Burroughs Middle School, Bishop would approve her release.

Jackson testified that the exchange was hostile, however, Bishop disputed that testimony. Based on witness credibility, I credit Bishop's version and find that while Jackson may have been hostile towards Bishop, Bishop exhibited no hostility towards Jackson. Jackson also testified that she had been rebuffed by the assistant principal at the school when she sought to obtain keys to the school's elevator.

Right from the start of the school year, Bishop had been seeking to fill the vacant RSP position, which was temporarily filled by Jackson as a substitute. Bishop was seeking to hire a permanent, fully credentialed RSP teacher who had experience in testing procedures. Jackson was allowed to substitute in the RSP position based upon a special education emergency waiver credential obtained by the District. Jackson did not, however, have the testing experience sought by Bishop.

On September 23, Bishop interviewed Mary Patterson, a teacher whose position at another District school was being eliminated due to low enrollment. Patterson was a fully credentialed RSP teacher with extensive experience in testing

procedures in over 20 years with the District. Patterson was exactly what Bishop was looking for and she accepted the job when it was offered to her at the end of the interview.

Patterson's starting date was, however, delayed by Bishop so that Jackson could benefit from an increase in pay provided to substitutes on assignments longer than 21 days. Once substitutes work 21 days in the same position, the pay increase is retroactive to the start of the assignment. Bishop knew that Jackson was close to being in the position for 21 days, so in order to provide Jackson with an increase in pay, Bishop delayed Patterson's starting date until after Jackson had worked the full 21 days. Patterson was placed into a District substitute pool until Jackson had qualified for the increased pay. Jackson was notified that her assignment would end as soon as she had qualified for the higher pay rate. Jackson would then return to the substitute pool as a day-to-day substitute and Patterson would take over the class.

After Jackson had been given notice of the end of her assignment and after she had packed up her classroom and said goodbye to the children, but prior to the time that Patterson actually started work, Patterson changed her mind and accepted a more attractive teaching position at a different school within the District.

Bishop decided not to rehire Jackson as a substitute since she had already said goodbye to the students and cleaned out the classroom. Bishop felt that it would be disruptive to the

special education students to bring Jackson back to the classroom once again, only to have her leave again in a short period as soon as a permanent replacement could be found. More importantly, however, Bishop was becoming even more concerned that a large testing backlog was building up and she needed someone who had experience in testing procedures, even if it was a different substitute.⁵

Jackson was returned to the day-to-day substitute pool and continued to receive other assignments from the District. Jackson was eventually hired within the District in a full-time, permanent position under another emergency credential. She was not terminated from the District.

Bishop eventually hired a fully credentialed RSP teacher for the vacant position.

ISSUE

Did the District violate the Act by replacing Jackson with a permanent employee?⁶

DISCUSSION AND CONCLUSIONS

In order to prove a prima facie violation, charging party must prove: (1) that she engaged in protected activity; (2) that

⁵The testing backlog was building up because there were two substitutes in RSP positions at the school without any testing expertise.

⁶The underlying unfair practice charge and complaint in this case alleges that Jackson was terminated from her employment by the District. The evidence is undisputed, however, that she was not terminated from employment. She was simply placed back into the substitute pool until such time as she was offered a permanent position. She is currently a full-time teacher in a permanent position.

Bishop had knowledge of her protected activity; (3) that Bishop took adverse action against her; and (4) that Bishop took the adverse action against her because she had engaged in that protected activity. (Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979); PERB Decision No. 89; State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S.)

Once the charging party has done that, the burden then shifts to the respondent to prove that it would have taken the same action regardless of any protected activity. If, however, the charging party has not proven a prima facie case, the burden does not shift to the respondent, and it is under no obligation to put forth any evidence.

In this case, Jackson engaged in protected activity by complaining to her principal and other District personnel about the District's reimbursement policy regarding her cash expenditures. Bishop clearly had knowledge of this protected activity.

Setting aside the issue of whether Bishop took any adverse action against Jackson by filling the position with a permanent employee. Jackson's case fails because she has not proven that any action taken, adverse or otherwise, was because she had engaged in protected activity.

Jackson argues that she was replaced because she complained about not getting reimbursed for her expenses at the start of the school year. The evidence, however, supports a contrary finding.

Jackson had not followed District policy about reimbursement for expenses. Bishop explained that she would do what she could for Jackson, but it was unlikely she would get reimbursed. There was no credible evidence that Bishop harbored any hostility over Jackson's efforts to get reimbursed.

Right from the start of the school year, Bishop had wanted to fill Jackson's substitute position with a permanent, fully credentialed, RSP teacher who had strong testing skills. Once a permanent RSP teacher (Patterson) was hired, Bishop even delayed the transition date in order to qualify Jackson for higher long-term substitute pay. This does not reflect the behavior of someone wishing to retaliate.

Bishop also had a logical explanation for not bringing Jackson back when the position once again became open. She felt that since Jackson had already packed up her classroom materials and said goodbye to all the students, it would be disruptive to the students to bring Jackson back again only to have her leave again in a short period of time. There is also no evidence of disparate treatment by Bishop and no evidence of inconsistent or shifting justifications offered for Bishop's actions.

Jackson has failed to prove that any action taken regarding her was motivated by her protected activities. For this reason, this complaint must be dismissed.

CONCLUSION AND ORDER

Paulette Jackson engaged in protected activities which was known to the Los Angeles Unified School District. Principal

Fonna Bishop's action to replace Jackson with a permanent fully-credentialed Resource Specialist Program teacher with testing experience was not motivated by Jackson's protected activity. Therefore, the complaint and underlying unfair practice charge in Case No. LA-CE-3851, Paulette Jackson v. Los Angeles Unified School District, is hereby dismissed.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a request for an extension of time to file exceptions or a statement of exceptions with the Board itself. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

FAX: (916) 327-7960

This Proposed Decision was issued without the production of a written transcript of the formal hearing. If a transcript of the hearing is needed for filing exceptions, a request for an extension of time to file exceptions must be filed with the Board itself (Cal. Code Regs., tit. 8, sec. 32132). The request for an extension of time must be accompanied by a completed transcript order form (attached hereto). (The same shall apply to any response to exceptions.)

In accordance with PERB regulations, the statement of exceptions must be filed with the Board itself within 20 days of service of this Decision or upon service of the transcript at the

headquarters office in Sacramento. The statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on

a party or filed with the Board itself. (See Cal. Code Regs.,
tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

James W. Tamm
Administrative Law Judge