**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| GRACIELA RAMIREZ,<br><br>Charging Party,<br><br>v.<br><br>GOLDEN PLAINS UNIFIED SCHOOL DISTRICT,<br><br>Respondent. | Case No. SA-CE-2050-E<br><br>PERB Decision No. 1489<br><br>July 8, 2002 |

Appearances: Graciela Ramirez, on her own behalf; Lozano Smith by Tina R. Hunt, Attorney, for Golden Plains Unified School District.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Graciela Ramirez (Ramirez) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the Golden Plains Unified School District (District) failed to reelect her under the procedures of Education Code section 44929.21[1] for

[1]Education Code section 44929.21 provides, in pertinent part:

> (b) Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year be classified as and become a permanent employee of the district.
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reasons which violated the Educational Employment Relations Act (EERA).[2] Ramirez alleged that the District discriminated against her soon after she sought assistance from her union representative and chose to reelect a similarly-situated employee, and that this conduct constituted a violation of EERA section 3543.5(a).[3] After reviewing the entire record in this matter, the Board holds that Ramirez stated a prima facie violation of EERA section 3543.5(a) and remands the case to the Office of the General Counsel for issuance of a complaint.

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> The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.
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> This subdivision shall apply only to probationary employees whose probationary period commenced during the 1983-84 fiscal year or any fiscal year thereafter.

[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[3]Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
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> (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.

## BACKGROUND

Ramirez is a probationary teacher with the District and is a member of the Golden Plains Teachers Association, CTA (Association), the exclusive representative for the District's certified employees. Ramirez alleges that, at a February 13, 2001[4] District Board of Trustees (board) meeting, the board heard complaints from parents regarding Ramirez's performance as a teacher. Ramirez contends that the way the complaints were handled violated the collective bargaining agreement (CBA) between the District and the Association. Soon after, Ramirez contacted her Association representative and informed her supervisor that she had made this contact. On or around March 7, the Association representative contacted her supervisor to request information regarding the board proceedings on February 13, but the supervisor did not respond. On or around March 14, Ramirez received a notice of non-reelection by the District. She alleges that up to this point, her evaluations showed her performance to be satisfactory.

On or around March 20, Ramirez filed a grievance about the circumstances surrounding her non-reelection. The grievance alleged that the District did not notify her of the complaint and did not provide her with an opportunity to exercise her rights regarding the complaint in violation of maintenance of standards provisions of the CBA.[5] On or around April 4, the District denied her grievance. She appealed to the next level on April 11. On or around April 24, the District denied her grievance. The District did not meet with her regarding the grievance until after the third level; however, there is no information in the charge as to whether she or the Association requested such meetings.

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[4]All dates refer to the year 2001.

[5]In reviewing the CBA, it appears that Ramirez may actually be referring to Article XX, Public Charges, which addresses the handling of complaints against teachers and allows for the Superintendent to render a final decision in the matter.

According to Ramirez, the CBA does not allow for binding arbitration of this issue.[6] She alleges that she was the only probationary teacher to exercise her rights under the CBA and thus, the only probationary teacher whose employment was not renewed during both that year and the previous school year. She also stated that, unlike she, no other employees had threatened the District to have the Association represent them. On the contrary, she asserts that parents had also complained about another first-year employee who did not protest to the Association; that employee was reelected for employment the following school year.

In her unfair practice charge, Ramirez asks that PERB order the District to reelect her and thus provide her with permanent status.

In the dismissal, the Board agent stated that the charge failed to state a prima facie case under the test set forth in Novato Unified School District (1982) PERB Decision No. 210 (Novato) in that it did not show sufficient nexus between the protected conduct and the District's adverse action except for the temporal proximity of the events. The Board agent concluded that the only factors showing a nexus were Ramirez's contact with the Association after the February 13 hearing and then notification of her supervisor. The Board agent further found that the District's failure to comply with the CBA did not demonstrate nexus because it occurred before Ramirez's non-reelection. In response to Ramirez's claim that her supervisor did not respond to the Association representative's inquiries, the Board agent observed that individual employees do not have standing to allege that the employer failed to provide the "necessary and relevant" information to the Association required to discharge its duty of fair representation. (Oxnard School District (Gorcey and Tripp) (1988) PERB Decision No. 667.)

[6]See footnote 5, above.

The Board agent also said that, at the February District board meeting, the board heard a petition from several parents complaining about Ramirez's performance and seeking her dismissal. In response to Ramirez's claims that she was treated differently from another probationary teacher who received parent complaints, the Board agent found that the complaints about the other probationary teacher described that teacher's assignments as too easy. The Board agent determined that the complaints against Ramirez were more serious than those against the other teacher.[7] The Board agent also found that there was insufficient nexus in the District's failure to inform Ramirez of the reason for her dismissal because, under the law, a school district is not required to inform a probationary employee of its reasons for dismissal. (Grimsley v. Board of Trustees (1987) 189 Cal. App.3d 1440, 1443-1444 [235 Cal.Rptr. 85] (Grimsley) (interpreting former Education Code, sec. 44882, the language of which is now contained in sec. 44929.21).)

On appeal, Ramirez asserts that sufficient nexus exists between her protected activities and the notice of non-reelection to state a prima facie case. First, the District treated the two probationary teachers who received complaints from parents differently. Only Ramirez talked to the Association about the complaint. Also, the District policy does not distinguish between the handling of serious versus non-serious complaints. Second, the timing of the letter of non-reelection occurred shortly after Ramirez talked to the Association and the Association representative contacted the District.

[7]Other than the Board agent's dismissal, there is nothing in the record describing the nature of the complaints against either Ramirez or the other probationary teacher. Furthermore, there is nothing in the record describing the substance of the complaints against Ramirez.

In response to Ramirez's appeal, the District requests that PERB dismiss the appeal. Generally, the District asserts that the appeal fails to meet the technical requirements for appeals in PERB Regulation 32635.[8]

DISCUSSION

For the reasons which follow, the Board finds that Ramirez has stated a prima facie violation of EERA section 3543.5(a).

To determine whether a charge alleges a prima facie case, the Board must assume that the essential facts alleged in the charge are true. (San Juan Unified School District (1977) EERB Decision No. 12.[9]) It is not the function of the Board agent to judge the merits of the charging party's dispute. (Saddleback Community College District (1984) PERB Decision No. 433; Lake Tahoe Unified School District (1993) PERB Decision No. 994.) Disputed facts or conflicting theories of law should be resolved in other proceedings after a complaint has been issued. (Eastside Union School District (1984) PERB Decision No. 466, pp. 6-7.) In this case, where appropriate to deciding this matter, issues such as assessing the relative severity of the undisclosed complaint against Ramirez, comparing the complaints against the two probationary teachers with the subsequent actions taken by the District against each teacher, and evaluating the District's application of Article XX of the CBA to each teacher, should be left to the Board's hearing process.

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

[8]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[9]Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

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

Ramirez exercised protected rights by complaining to the Association about the District's failure to follow the procedure in the CBA for parent complaints about teachers and by the Association contacting the District on her behalf. The District had knowledge of Ramirez's protected conduct both because she informed her supervisor of her complaint to the Association and because the Association representative contacted her supervisor requesting information regarding the February District board meeting.

Evidence of adverse action is also required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 689.) It is clear that by non-election of her employment, the employer took adverse action against Ramirez.

The key question becomes whether there is a sufficient nexus between Ramirez's protected activity and the adverse action taken by the District. For the reasons which follow, the Board concludes that a sufficient nexus exists. Ramirez complained to the Association and informed her supervisor of that complaint. Shortly afterward, the Association contacted her supervisor. Within a couple of weeks, Ramirez received the notice of non-reelection from the District.[10]

[10]Under Education Code section 44929.21, the District is required to give notice of non-reelection by March 15 of the previous year during the teacher's second year of employment. Therefore, the District had to take this action in order to terminate Ramirez's employment by that date, if for lawful reasons.

The timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (North Sacramento School District (1982) PERB Decision No. 264 (North Sacramento)), but 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 (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (Santa Clara Unified School District (1979) PERB Decision No. 104); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S); (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; (6) employer animosity towards union activists (Cupertino Union Elementary School District (1986) PERB Decision No. 572); or (7) any other facts which might demonstrate the employer's unlawful motive. (Novato; North Sacramento.)

The District refused to provide either Ramirez or her Association reasons for its failure to renew her employment. As a rule, the District is not required to provide a reason for her non-reelection as a probationary employee. (Grimsley, at 1443-1444.) However, although PERB may not review the sufficiency of the reason for denying reelection, the District is still subject to the scrutiny of PERB when such denial is alleged to result from retaliation for exercise of a protected right. (McFarland Unified School District v. Public Employment Relations Board (1991) 228 Cal. App. 3d 166, 169 [11 Cal.Rptr.2d 405] (McFarland).)

Looking at the facts alleged by Ramirez, the District treated Ramirez differently from the only other probationary teacher receiving parent complaints; the District did not renew Ramirez's employment for the following school year but chose to reelect the other teacher. Ramirez had contacted her Association representative but the other teacher did not. Only Ramirez, and not the other teacher, told her supervisor that she contacted the Association. The Association representative called the supervisor for information only on Ramirez's behalf, and not for the other teacher. The supervisor did not return the Association representative's call.[11]

Therefore, Ramirez has stated a prima facie case, based on allegations of proximity in time between her protected activities and the adverse action taken by the District, and of the District's disparate treatment of her in comparison with the other probationary teacher who received parent complaints.[12] Under these circumstances, the Board finds it appropriate to remand this case to the Board agent for issuance of a complaint.

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[11]Although the Board agent correctly states that individual employees lack standing to allege that the employer failed to provide the "necessary and relevant" information to the union required to discharge its duty of fair representation (Oxnard School District (Gorcey and Tripp) (1988) PERB Decision No. 667), the District's lack of responsiveness could also be evidence of a general anti-union animus. (See McFarland Unified School District (1990) PERB Decision No. 786, at pp. 40-41.)

[12]The alleged violation of the CBA (the procedure for addressing parent complaints against teachers) occurred before Ramirez's protected activity and so does not, on its own, provide a basis for nexus; however, such violation may provide evidence of general anti-union animus. (See McFarland, cited above.)

## ORDER

The unfair practice charge in Case No. SA-CE-2050-E is hereby REMANDED to the Office of the General Counsel with instructions to issue a complaint in this matter.

Members Baker and Neima joined in this Decision.