STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CHAROLETTE CORNELIUS, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	Case No. LA-CE-699-H PERB Decision No. 1697 - H September 30, 2004

Appearances: Charolette Cornelius on her own behalf; Elisabeth Sheh Walter, University Counsel, for Trustees of the California State University.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Charolette Cornelius (Cornelius) of a Board agent's dismissal (attached) of her unfair practice charge. The unfair practice charge alleged that the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by discriminatorily refusing to provide her training opportunities, failing to reclassify her, denying her merit raises, refusing to allow her to use the title of Executive Assistant, transferring her duties to a white woman, terminating her and refusing to hire her. Cornelius alleged that this conduct constituted a violation of HEERA section 3571.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the amended charges, the December 6 letter, CSU's responses, the warning and dismissal letters, Cornelius' appeal and CSU's response. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

[1]HEERA is codified at Government Code section 3560, et seq.

ORDER

The unfair practice charge in Case No. LA-CE-699-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neima joined in this Decision.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
Fax:(916)327-6377

December 10, 2002

Charolette Cornelius

Re: Charolette Cornelius v. Trustees of the California State University
Unfair Practice Charge No. LA-CE-699-H, Second Amended Charge
DISMISSAL LETTER

Dear Ms. Cornelius:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 22, 2002 and amended on October 8, 2002 and October, 22, 2002. Ms. Cornelius alleges that the Trustees of the California State University violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by discriminatorily refusing to provide her training opportunities, failing to reclassify her, denying her merit raises, refusing to allow her to use the title of Executive Assistant, transferring her duties to a white woman, terminating her and refusing to hire her.

I indicated to you in my attached warning letter dated October 15, 2002, 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 October 25, 2002, the charge would be dismissed.

On October 22, 2002 you filed a second amended charge. After telephone discussions, I informed you that I did not find a prima facie case. You indicated that you were going to withdraw the charge. Instead, on December 6, 2002, you provided a four page letter indicating that you still felt that I should issue a complaint. As this letter was served on the respondent, it will become part of the official file. For convenience I will summarize its contents here.

In my warning letter I indicated that it was not clear that either Mr. Davis nor individuals in the human resources department were aware of your protected activity of requesting participation in CSEA's steward training. You clarified this issue in your second amended charge and your December 6 letter by stating that both Mr. Davis and the human resources department had approved your release time to attend the steward's training.

[1]HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations maybe found on the Internet at www.perb.ca.gov.

In addition, my warning letter stated that your charge did not present sufficient factual support for a finding of nexus. During our discussions and in your December 6 letter you stated that nexus is demonstrated by the following information: Mr. Davis' statement in his February 22 e-mail that we will talk about this [the steward's training] on Monday; Mr. Davis' statements during the February 25 meeting that Ms. Cornelius would not have to be concerned about going to union training because she wouldn't be on the job anymore and that Ms. Cornelius should pack her things and leave today and not wait until March 15, 2002.

Finally the December 6 letter indicates that Mr. Davis and the human resources department treated Ms. Cornelius disparately with regard to such things as training, employment applications, reclassification and merit raise denial, assignment of work duties to white woman, and denial of the use of executive assistant title.

I find that this information does not demonstrate a nexus between the protected activity of Ms. Cornelius, registration for CSEA steward training, and the termination by Mr. Davis or the refusal by the human resources department to hire her in July 2002.

The fact that Mr. Davis mentioned the steward's training in his e-mail of February 22 does not indicate that he was intending to terminate Ms. Cornelius because of her involvement with CSEA. Rather, you had sent Mr. Davis an e-mail on February 22, 2002 which read:

> Jeff,
>
> This is to remind you that the CSEA Release Time Request form from Dale West must be turned in if not already.
>
> Also, for my mileage claim and staff development courses, I need to know your decision.
>
> Thanks,

And he responded:

> I already approved your release time and sent a copy to HR.
>
> We'll talk about this Monday morning.

I read this exchange to mean that the release time for the steward's training had been approved and forwarded to human resources and that Mr. Davis intended to talk with Ms. Cornelius on Monday about the staff development courses and the related mileage claims. And, the meeting on Monday did revolve around the two staff development seminars and Mr. Davis previous decision not to pay for these seminars. In his February 25, 2002 letter to Ms. Cornelius, he stated:

> On February 19, you gave me a series of authorizations for payment for many items. Upon reviewing them, I noticed requests to pay for both seminars that I told you I would not approve, along with requesting reimbursement for your mileage to attend them. The total cost of the seminars and your mileage is $547.40. When I told you that I was holding these authorizations pending a decision on how to handle them, you told me that your job required your attendance at both seminars. In fact, it does not.
>
> First, you deliberately defied my express direction in attending the two seminars. Second, you deceived me by not telling me where you were on those days. On December 19, I was informed by our student assistant that you were out on sick leave that day. However, a review of your time sheet indicates that you were here working on that day. These facts contradict each other, and neither is correct. Since you were at the seminar, you clearly were not sick, and you were clearly not at work either. I was informed by our student assistant on February 1 that you would be out of the office all day, without specifying the reason. Third, by submitting both the seminar invoices and procurement card report for my signature, you were asking the WRI to pay for these seminars and tapes. •
>
> My action in response to your actions is to end your temporary appointment as of March 15, 2002.

Mr. Davis' other statements during the February 25 meeting did not indicate that he was intending to terminate Ms. Cornelius because of her desire to participate in the CSEA steward training. Rather, they appear to be Mr. Davis' observations about the impact of her termination with regard to the steward training. In addition, your allegation that Mr. Davis' statements forced you to leave on February 25 appear to be inconsistent with the e-mail you sent Twillea on February 28, 2002 in which you indicate, "As of Monday, February 25, 2002 I resigned my position as ASC-1 from the Water Resources Institute."

The other factors urged by Ms. Cornelius to support a finding of nexus: the denial of the merit salary adjustment, the denial of the use of the executive assistant title, and the assignment of work duties to a white woman were all done prior to Ms. Cornelius' involvement in protected conduct. Thus, they do not establish a nexus between the protected conduct and the adverse act of termination. Therefore, I am dismissing this allegation based on the facts and reasons contained in this letter and my October 15, 2002 letter.

The second amended charge and December 6, 2002 letter do not address the findings in the warning letter that CSU's refusal to hire Ms. Cornelius in July was not motivated by her

protected activity or that the remaining allegations are untimely. These allegations are dismissed based on the discussion in the warning letter.

Right to Appeal

Pursuant to PERB Regulations,[2] 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Regulation 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 Regulation 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. A document filed by

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

facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 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
General Counsel

By
Robert Thompson
General Counsel

Attachment

cc: Elisabeth Sheh Walter
Office of the General Counsel

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
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October 15, 2002

Charolette Cornelius

Re: ChaRolette Cornelius v. Trustees of the California State University
Unfair Practice Charge No. LA-CE-699-H, 1st Amended Charge
WARNING LETTER

Dear Ms. Cornelius:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 22, 2002 and amended on October 8, 2002. Ms. Cornelius alleges that the Trustees of the California State University violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by discriminatorily refusing to provide her training opportunities, failing to reclassify her, denying her merit raises, refusing to allow her to use the title of Executive Assistant, transferring her duties to a white woman, terminating her and refusing to hire her.

ChaRolette Cornelius began working for California State University, San Bernardino in May 2000 as a ninety-day hire. She was given an additional ninety-day position, a one year temporary appointment, and finally received a one year temporary appointment which was scheduled to end in August 2002. She was employed as an Administrative Support Coordinator I working as an assistant to the Director of the Water Resources Institute, Jeff Davis and supervising four students.

On August 7, 2001, Mr. Davis sent a memorandum to Lillian Fernandez in Human Resources regarding the reappointment of Ms. Cornelius. The memorandum states in pertinent part:

> At this time, there's no recommendation for salary increase due to the absence of the current CSEA contract. However, upon adoption of the CSEA contract, it is my intent to award Charla with the salary increase commensurate with her performance evaluation. I will communicate this information to you upon successful implementation of a new contract.[2]

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[1] HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] A new CSEA contract was adopted in April 2002.

In November 2001 Ms. Cornelius asked Mr. Davis if the department would pay for her to attend training sessions entitled "Leadership and Team Building" and "Personnel Legal Issues". Mr. Davis denied these requests orally because the student employees were not her employees. He later added that he was not trying to "hold her down". Ms. Cornelius asked Mr. Davis to submit his rejection of the training requests in writing to CSEA because it was required by the union contract.[3] He stated that because she was a temporary employee, she had no rights. Ms. Cornelius did not file a grievance over this matter.

When she didn't receive a written denial of the training requests, Ms. Cornelius decided that she would use her own time to attend the seminars because the courses were job-related and continuing education approved. Seven days prior to each seminar date (December 19, 2001 and February 1, 2002) she made verbal requests to take the day off for personal reasons and was granted the time off by the Director. She told Mr. Davis that she would be using compensatory time off and vacation time for December 19 and her personal holiday for February 1.[4]

When she returned to work on December 20, Mr. Davis requested her time sheet, which she provided. She had already signed the sheet but had not yet marked in the leave time for December 19. Mr. Davis indicated he would complete it for her and turn it in.

On January 30, 2002 Ms. Cornelius requested a reclassification of her position due to increased responsibilities and the need for her salary to match that received by an Administrative Support Coordinator II. A reclassification interview with Mr. Davis was scheduled for March 19, 2002.

On February 7, 2002, Ms. Cornelius gave Mr. Davis a procurement card for his signature which indicated that Ms. Cornelius had spent $100 for cassette tapes related to human resources law. Mr. Davis questioned her about the fees and she stated that she needed the

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[3] CSEA and the University had a memorandum of understanding effective from July 1st 1999 to June 30, 2001. Article 22 of the MOU reads in pertinent part:

> Article 22.9 Employees or the Union may prepare and present training proposals for bargaining unit employees. Such proposals may be submitted to the Human Resources Office.
> Article 22.10 The appropriate administrator(s) shall consider any training proposal(s).
> Article 22.11 Upon request of the Union, the appropriate administrator(s) shall meet with the Union and a reasonable number of affected employees to discuss the training proposals. Such a meeting shall be held at a time and place mutually agreeable to the appropriate administrator and the Union.
> Article 22.12 The appropriate administrator shall respond in writing to the union regarding the training proposal.

[4] The University asserts that on December 19, 2001, Mr. Davis was informed by one of your student assistants that you would be out sick that day.

tapes to perform her job. Because Mr. Davis was meeting with a faculty member at that time, he signed the reports so as not to disrupt the meeting.

On February 19, 2002 Ms. Cornelius gave Mr. Davis a series of authorizations for payments of several items. Upon review Mr. Davis notice that these requests included payment of $547.40 for both seminars is as well as mileage for Ms. Cornelius to attend. When Mr. Davis questioned these authorizations, Ms. Cornelius indicated that her job required attendance at both seminars.

On February 25, 2002, Mr. Davis held a meeting with Ms. Cornelius and issued her a letter terminating her appointment on March 15, 2002. The letter stated that in response to her requests to attend the seminars he contacted the sponsoring organizations and human resources and learned that the target audience for the seminars was middle managers. Because her job did not require understanding personnel law, he did not approve her requests. He then explained how she sought to have the university pay for the cost of the seminars and her mileage, how her time sheet indicated she had been working on December 19 when her student assistant claimed that she had been sick, hi response to these actions, Mr. Davis ended Ms. Cornelius' temporary appointment as of March 15, 2002. Ms. Cornelius resigned her position on February 25, 2002.

Ms. Cornelius was scheduled to take job steward training from CSEA on February 27 and 28, 2002.

In June 2002, Ms. Cornelius was not hired for an Administrative Support Coordinator II position. During Ms. Cornelius' June 11th interview for the position, Ms. Fernandez from Human Resources stated that the position would not be filled for a while. Two weeks later she spoke with Amy in Human Resources and was told that the position had been filled during an interview on June 11.

Use of the Title Executive Assistant

Ms. Cornelius sought to use the title of Executive Assistant in both her correspondence and e-mail. She was listed on the Institute Web site as Secretary/Receptionist. On December 18, 2001, she sent an e-mail to Gilbert Savedra, the Web master asking to change her title to Executive Assistant. On the same day, Mr. Davis wrote her an e-mail stating that ".. .we previously had that title on the Web site and William made me change it, because apparently we have no such title on campus. Sorry." On February 8, 2002, Mr. Davis explained in an e-mail that:

> At my meeting yesterday with William he told me explicitly that you are not to use term "Executive Assistant." No one in IRT has this title and he does not want anyone using it. He was quite

> definite about it. You have it on your email signature. Please remove it. Thanks.[5]

Ms. Cornelius explained that Laurel Lilienthal used the title Executive Assistant to the Provost and that Vanessa Kragenbrink used the title Executive Assistant to the Vice President, Information and Technology.

Assignment of Work to a White Woman

On February 19, 2002 Ms. Cornelius received facility use forms from the Student Union for space reservations on April 2nd and 4th for Federal Government Recruiting Day. The event was sponsored by the Water Resources Institute but reservations had been made by Vanessa Kragenbrink. Ms. Cornelius asked Mr. Davis if the Water Resources Institute was a sponsor why she had not been previously informed of the event. Mr. Davis responded 10 minutes later by e-mail that the event had originally been planned by William and Vanessa and only recently was the Institute brought in as a sponsor. He apologized for not informing her about it on the previous Friday.

Based on these facts the charge does not state a prima facie violation of the HEERA for the reasons that follow.

Ms. Cornelius asserts that the University discriminatorily refused to provide her training opportunities, failed to reclassify her, denied her merit raises, refused to allow her to use the title of Executive Assistant, transferred her duties to a white woman, terminated her and refused to hire her in violation of HEERA section 3571(a).

To demonstrate a violation of HEERA section 3571(a), the charging party must show that: (1) the employee exercised rights under HEERA; (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 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Although 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), 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

[5] William is William Aguilar, Vice President of the IRT Division.

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 School District, supra. PERB Decision No. 264.)

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.) In determining whether such evidence is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Ibid.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. [Newark Unified School District (1991) PERB Decision No. 864; emphasis added; footnote omitted.]

Before deciding whether the facts presented by the charge meet this test, it must be determined that the allegations are timely filed.

HEERA section 3563.2(a) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

This charge was filed on August 22, 2002. Therefore only events that occurred after February 22, 2002 can be considered timely filed. Thus, the University's refusal to provide training opportunities which occurred in November 2001, the denial of merit raises on either August 7, 2001 or an unspecified later date, the refusal to allow the use of the title of Executive Assistant on December 18, 2001 and February 8, 2002, and the transferring of duties to a white woman that occurred prior to February 19, 2001[6] are all outside the statute of limitations period and must be dismissed as untimely.

[6] The transfer of Ms. Cornelius' duties to a white woman has been the subject of a complaint with the Equal Employment Opportunity Commission and was resolved. Ms. Cornelius believes however that the University is not following through on their obligation under the settlement.

The only remaining allegations are the University's termination of Ms. Cornelius on February 25, 2002 and its refusal to rehire her in June 2002. The only activity engaged in by Ms. Cornelius that is protected by HEERA appears to be the scheduling of participation in CSEA job steward training to be held on February 27 and 28. However, knowledge of this activity by the employer's agent is also required before a prima facie case is stated. It is not clear that Mr. Davis was aware of this activity on February 25 when he gave you the letter of termination. And there is no information that the individuals in Human Resources who did not hire you for the Administrative Support Coordinator II were aware of this activity.

Finally, there are no facts alleged which support a finding of nexus between the protected activity and the adverse acts taken by the University. Without such information, a complaint alleging discrimination can not be issued.

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 that 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 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 October 25, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson
General Counsel