



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 302,

Charging Party,

v.

FAIRFIELD-SUISUN UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2369-E

PERB Decision No. 1734

January 12, 2005

Appearances: California School Employees Association by David J. Dolloff, Attorney, for California School Employees Association & its Chapter 302; School and College Legal Services of California by Joseph C. Kinkade, Attorney, for Fairfield-Suisun Unified School District.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California School Employees Association & its Chapter 302 (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. The unfair practice charge alleged that the Fairfield-Suisun Unified School District (District) violated the Educational Employment Relations Act (EERA)¹ by discriminating against Mildred J. Salgadoe (Salgadoe) for her protected activities and by unilaterally changing its policy and practice with regard to layoffs.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters, CSEA's appeal and the

¹EERA is codified at Government Code section 3540, et seq.

District's response. As discussed below, the Board partially adopts the dismissal but remands the remainder of the charge to the Office of the General Counsel for further investigation consistent with this decision.

DISCUSSION

Discrimination

The Board agent dismissed CSEA's discrimination allegation on the ground that Salgadoe's request for reclassification was not protected activity under EERA. It is important to note that CSEA does not allege the District's reclassification procedures were part of the memorandum of understanding (MOU) or could otherwise be considered part of the grievance process. As presented, Salgadoe's request for reclassification was solely, for purposes of EERA, an attempt at self-representation. Recently, in Woodland Joint Unified School District (2004) PERB Decision No. 1722, the Board was required to find that self-representation is no longer protected under EERA due to legislative amendments to EERA section 3543. Thus, the Board agent's holding that Salgadoe's request for reclassification was unprotected must be affirmed.

In its appeal, CSEA notes for the first time that Salgadoe did participate in other protected activities after filing her reclassification request. Specifically, Salgadoe requested union representation during a meeting and requested union assistance in dealing with her supervisor's attempt to modify Salgadoe's job description. These activities are clearly protected. However, there is no evidence that these protected activities motivated the District's alleged adverse actions against Salgadoe. For example, Salgadoe's request for union representation was granted and there is no evidence the District harbored any ill feelings over the request. Similarly, CSEA was successful in negotiating a mutually agreeable job

description for Salgadoe which was adopted by the District's Board of Trustees. Thus, the Board agent's dismissal of Salgadoe's discrimination charge must be sustained.

Unilateral Change

Next, the charge also alleges that the District refused to negotiate in good faith. Specifically, CSEA alleges that the District committed an unlawful unilateral change by deviating from the MOU provisions governing layoffs. Section 17.4 of the MOU provides that layoffs are to occur in reverse order of seniority, so that employees with less seniority are laid off before those with more. Where there are two employees with equal seniority, the MOU requires that seniority be assigned by lot. According to CSEA, Salgadoe had been employed with the District for 22 years. The only other employee in the special education transcriber classification was Barbara Pauly (Pauly), whom CSEA alleges had been employed with the District only 12 years. Thus, CSEA asserts that the District violated the MOU by selecting Salgadoe instead of Pauly for layoff.

The District counters that the seniority to be used in deciding layoffs is seniority within the classification targeted for layoff, not overall seniority. Thus, while Salgadoe had more total seniority with the District than Pauly, the District argues that she had less seniority than Pauly within the targeted classification. In making this argument, the District appears to acknowledge that Pauly was placed within the targeted classification at approximately the same time as Salgadoe. However, the District asserts that Pauly's prior classification of brailist was the predecessor to her current classification, and thus, Pauly's service as a brailist must be considered in determining seniority for layoff. CSEA disputes the District's assertions and argues that there never was a classification entitled brailist, as evidenced by the MOU.

Based on the record as it stands, it cannot be determined whether CSEA has stated a prima facie case. It is unclear whether there even was a classification of braillist and, if so, whether the parties had a policy or practice governing whether Pauly's service as a braillist could be considered in determining layoff seniority. Further, even assuming a contract violation, it is unclear as to whether the contractual violation was a one-time event or whether it constituted a change in policy and/or practice. As neither the warning nor dismissal letters addressed the unilateral change allegation, the Board finds it appropriate to remand the remainder of the charge to the Office of the General Counsel for further investigation of these issues and others necessary to establish a prima facie case.

ORDER

The Board partially adopts the Board agent's dismissal in Case No. SF-CE-2369-E and REMANDS the remainder of the charge to the Office of the General Counsel for further investigation consistent with this Decision.

Chairman Duncan and Member Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027



September 23, 2004

Tim Taggart, Sr. Labor Relations Representative
California School Employees Association
2345 Stanwell Circle
Concord, CA 94520

Re: California School Employees Association & its Chapter 302 v. Fairfield-Suisun Unified School District
Unfair Practice Charge No. SF-CE-2369-E
DISMISSAL LETTER

Dear Mr. Taggart:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 17, 2003. The California School Employees Association & its Chapter 302 alleges that the Fairfield-Suisun Unified School District violated the Educational Employment Relations Act (EERA) by engaging in a pattern of discriminatory behavior against Mildred J. Salgadoe in response to her protected activities.

I indicated to you in my attached letter dated June 8, 2004, 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 June 21, 2004, the charge would be dismissed. I subsequently granted you an extension to July 31, 2004, to file an amended charge.

On July 23, 2004, you filed an amended charge. In my June 8, 2004, letter, I stated that, contrary to the assertion in the charge, requesting and receiving a reclassification does not qualify as a protected activity under the definition set forth in Government Code section 3543. The amended charge again asserts that participation in the District's reclassification policy constitutes protected activity. This assertion is without merit. For this reason and the other reasons stated in the attached warning letter, this charge is hereby dismissed.

Right to Appeal

Pursuant to PERB Regulations,¹ 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

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (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 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



Jerilyn Gelt
Labor Relations Specialist

Attachment

cc: Joseph C. Kinkade

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
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June 8, 2004

Keith Pace, Field Director
California School Employees Association
2345 Stanwell Circle
Concord, CA 94520

Re: California School Employees Association & its Chapter 302 v. Fairfield-Suisun Unified School District
Unfair Practice Charge No. SF-CE-2369-E
WARNING LETTER

Dear Mr. Pace:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 17, 2003. The California School Employees Association & its Chapter 302 alleges that the Fairfield-Suisun Unified School District violated the Educational Employment Relations Act (EERA)¹ by engaging in a pattern of discriminatory behavior against Mildred J. Salgadoe in response to her protected activities.

Ms. Salgadoe is currently employed in the classification of Instructional Assistant, Special Education, II. Sometime prior to June, 2002, Ms. Salgadoe submitted a request for reclassification which was processed by the CSEA/District Reclassification Committee. On or about June 7, 2002, the Committee recommended that her position be reclassified to Special Education Transcriber for the Blind and Visually Impaired Level II. The panel also approved that she be placed at level III upon completion of the necessary requirements.

On or about September 27, 2002, the District formally notified Ms. Salgadoe that her reclassification had been approved and was effective retroactive to July 1, 2002. Sometime thereafter her supervisor, Linda Donnelly, who was allegedly unhappy with Salgadoe's reclassification, attempted to modify her new job description and entitle it "Braille Transcriber". CSEA objected, and subsequently reached agreement with the District on a new job description entitled Special Education Transcriber for the Blind and Visually Impaired Levels I – III, which was adopted on or about February 10, 2003.

On March 3, 2003, Ms. Salgadoe was contacted by the Human Resources Department and requested to make an appointment to discuss her position. She was informed that Ms. Donnelly and Director of Human Resources Richard Christensen would be in attendance. Ms. Salgadoe contacted CSEA and asked for representation at the meeting.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

The meeting was held on March 11, 2003, and Ms. Salgadoe was represented by a CSEA Labor Relations Representative and the chapter president. According to the charge, Mr. Christensen stated that there was an "air of turmoil" surrounding Ms. Salgadoe and admonished her for contacting the Fiscal Services Department regarding the status of her job description. He also stated that he was reviewing disciplinary guidelines vis-à-vis an inappropriate remark Ms. Salgadoe had made to a student. Ms. Donnelly and Mr. Christensen also questioned Ms. Salgadoe regarding her job duties and proposed that she be returned to her previous position. The District claims that the meeting was for the sole purpose of discussing the impending graduation of the sole student to whom Ms. Salgadoe was assigned and her future options.

On or about April 1, 2003, according to the charge, the District placed another less senior and unqualified employee, Barbara Pauly, at Level III of the same class as Ms. Salgadoe. This had the effect of exposing S to layoff as the only employee in Level II. The District disputes this assertion, stating that Ms. Pauly had acquired the necessary requirements for the position, while S had not.

On or about April 30, 2003, Ms. Salgadoe received an evaluation from the Vice Principal of Special Education (a friend of Ms. Donnelly's) which was complimentary about her work with the student assigned to her, but criticized her for not always being easy to locate. Ms. Salgadoe disputed this, and complained about the evaluation to her principal, who stated he would evaluate her in the future.

On or about June 19, 2003, the District notified Ms. Salgadoe that she would be laid off from her reclassified position due to lack of work and funds. The layoff notice identified her position incorrectly as a Braille Transcriber II. On or about July 20, 2003, Ms. Salgadoe was laid off from her reclassified position. The District asserts that the layoff was due to the graduation of Ms. Salgadoe's student, and notes that she was rehired into her previous classification.

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 (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

June 8, 2004

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

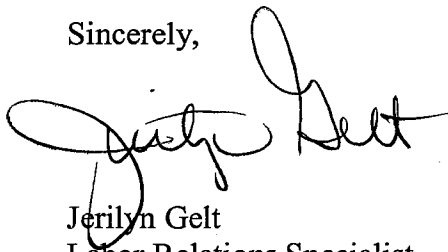
The charge specifically alleges that the protected activity in which Ms. Salgadoe engaged was her request for and subsequent reclassification to the new position of Special Education Transcriber for the Blind and Visually Impaired Level II and automatic promotion to Level III upon completion of the necessary requirements. However, protected activities as defined in Government Code Section 3543 include the "right to form, join and participate in the activities of employee organizations . . ." and to "present grievances to his or her employer, and have such grievances adjusted . . ." Requesting and receiving a reclassification does not qualify as a protected activity under this definition.

Further, even if it were a protected activity, there is no evidence to show a nexus between Ms. Salgadoe's request and her eventual layoff from her new position. Rather, it appears that she was laid off because the student to whom she was assigned had graduated, and no new visually impaired student was available.

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 June 21, 2004, I shall dismiss your charge.

If you have any questions, please call me at the above telephone number.

Sincerely,



Jerilyn Gelt
Labor Relations Specialist