

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTORIA AGUILERA,

Charging Party,

v.

ALUM ROCK UNION ELEMENTARY SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2444-E

PERB Decision No. 1748

February 7, 2005

Appearances: Moses M. Sarinana for Victoria Aguilera; Burke, Williams & Sorensen by Darren C. Kameya, Attorney, for Alum Rock Union Elementary 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 Victoria Aguilera (Aguilera) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Alum Rock Union Elementary School District (District) violated the Educational Employment Relations Act (EERA)¹ by breaching the involuntary transfer provision of the collective bargaining agreement (CBA) and/or by involuntarily transferring Aguilera because of her race, age, and disability.

The Board has reviewed the entire record in this matter, including the original unfair practice charge, the warning and dismissal letters, Aguilera's appeal and the District's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

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

DISCUSSION

The essence of Aguilera's original unfair practice charge was that the District committed an unlawful unilateral change by violating the CBA provision governing involuntary transfers. As the Board agent explained in the warning letter, only the exclusive representative, and not an individual as Aguilera, has standing to bring such allegations.

(Oxnard School District (Gorcey and Tripp) (1988) PERB Decision No. 667.)

On appeal, Aguilera shifts the focus of her charge to allege that the District's involuntary transfer was based on her race, age, and/or disability. This argument must be rejected as Aguilera has not shown good cause for asserting new allegations on appeal. (PERB Reg. 32635(b).)² Even if her new allegations were considered, they would still be rejected as PERB does not have jurisdiction over claims of race, age, and disability discrimination.

(California School Employees Association, Chapter 245 (Waymire) (2001) PERB Decision No. 1448.)

ORDER

The unfair practice charge in Case No. SF-CE-2444-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027



October 27, 2004

Moses Sarinana, Representative
P.O. Box 443
Galt, CA 95632

Re: Victoria Aguilera v. Alum Rock Union Elementary School District
Unfair Practice Charge No. SF-CE-2444-E
DISMISSAL LETTER

Dear Mr. Sarinana:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 13, 2004. Victoria Aguilera alleges that the Alum Rock Union Elementary School District violated the Educational Employment Relations Act (EERA)¹ by breaching the involuntary transfer provisions of the collective bargaining agreement.

I indicated to you in my attached letter dated October 18, 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 October 25, 2004, 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 October 18, 2004 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.

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.

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

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.)

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October 27, 2004
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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

Kristin L. Rosi
Regional Attorney

Attachment

cc: Darren Kameya

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
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October 18, 2004

Victoria Aguilera
294 Tradewinds Avenue
San Jose, CA 95723

Re: Victoria Aguilera v. Alum Rock Union Elementary School District
Unfair Practice Charge No. SF-CE-2444-E
WARNING LETTER

Dear Ms. Aguilera:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 13, 2004. Victoria Aguilera alleges that the Alum Rock Union Elementary School District violated the Educational Employment Relations Act (EERA)¹ by breaching the involuntary transfer provisions of the collective bargaining agreement.

Investigation of the charge revealed the following. Ms. Aguilera is employed by the District as a certificated employee. As such, she is exclusively represented by the Alum Rock Education Association. The Association and District are parties to a collective bargaining agreement that expired on June 30, 2003. With regard to involuntary transfers, Article XIV provides as follows:

14.3.1.4 Rights

Employees who have been involuntarily transferred due to declining enrollment, reduction in services or changes in credential requirements mandated by law, shall not again be declared excess for four (4) years from the date of excess and shall have the right to exercise one of the following three options:

A. The employee shall have the first right to an open continuing position at his/her original school or unit.

B. Within one (1) year of the date of excess, the employee shall have first right to any open continuing position for which he/she is credentialed, provided that no other transferred employee is entitled to the option above....

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.

In June 2004, due to school closure, Ms. Aguilera was placed on the District's "excess" list for elementary school teachers. At this time, Ms. Aguilera was informed that she would be receiving a list of available position from which to chose her 2004-2005 school year assignment.

On June 29, 2004, Ms. Aguilera visited the District Office to pick up a list of available elementary school positions. At this time, Ms. Aguilera was informed that she had been placed at Linda Vista School as there were no other positions available. Ms. Aguilera visited Linda Vista School and was apparently pleased with the assignment.

During summer vacation, the Principal of Linda Vista School began calling Ms. Aguilera regarding school site meetings and trainings. Ms. Aguilera claims such telephone calls were harassing and unnecessary. Ms. Aguilera further asserts she became stressed by such calls and was forced to seek medical assistance.

In August 2004, Ms. Aguilera fell and injured both arms. As such, she has been unable to return to work.

Based on the above stated facts, the charge as presently written fails to state a prima facie violation of the EERA, for the reasons provided below.

Charging Party contends the District violated the collective bargaining agreement by transferring her to Linda Vista School. Such allegations are frequently reviewed as unilateral changes under the EERA. However, individual employees do not have standing to allege unilateral change violations, (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections') (1993) PERB Decision No. 972-S.) As Charging Party lacks standing to allege violations of the Agreement, this charge must be dismissed.

Even assuming Charging Party had standing to allege such a violation, the charge still fails to demonstrate a prima facie violation of the EERA. In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Herein, the charge fails to present facts demonstrating the District violated Article XIV by transferring Ms. Aguilera to Linda Vista. In order to state a prima facie case, Charging Party must demonstrate the District transferred a less senior employee into an elementary school

position for which Ms. Aguilera was qualified. As such facts are not provided, the charge fails to demonstrate a 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 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, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR