STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 347, Charging Party, v. KLAMATH-TRINITY JOINT UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SF-CE-2397-E PERB Decision No. 1778 October 6, 2005

Appearances: California School Employees Association by Madalyn J. Frazzini, Attorney, for California School Employees Association & its Chapter 347; Kronick, Moskovitz, Tiedemann & Girard by Roman J. Muñoz, Attorney, for Klamath-Trinity Joint 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 347 (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleges that the Klamath-Trinity Joint Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by discriminating against the Chapter President, Terry Tyner (Tyner), when it eliminated her position, unilaterally transferring duties from one job classification to other classifications, and failing or refusing to provide requested information.

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

The Board has reviewed the entire record in this matter, including the original and amended charge, the District's response, the warning and dismissal letters, CSEA's appeal and the District's opposition to the appeal. 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.

DISCUSSION

The unfair practice charge filed by CSEA alleges that the District unlawfully discriminated against Tyner for engaging in protected activities when it eliminated the Associated Student Body/Educational Data Analyst (ASB/EDA) position and transferred duties from the eliminated position to other classifications.

It is undisputed that for purposes of establishing a prima facie case, CSEA has demonstrated that Tyner participated in protected activities by serving as the chapter president, participating on the bargaining committee and assisting in resolving grievances as the job steward. CSEA represented Tyner in matters involving her own working conditions. The decision to eliminate the ASB/EDA position and to lay off Tyner was adverse to her interests. The issue before the Board is whether CSEA has established the required nexus.

Contrary to CSEA's assertion that the District failed to justify the reason for eliminating the ASB/EDA position, the District school board adopted a resolution on March 9, 2004, to abolish the classification due to a "lack of funds and/or lack of work," a phrase that mirrors the layoff provisions of section 45308 of the Education Code, which provides, in part:

> Classified employees shall be subject to layoff for lack of work or lack of funds.

We concur with the findings of the Board agent that there is insufficient evidence to show that the District departed from any established procedures and policies in eliminating the

ASB/EDA position. Thus, the charge does not provide sufficient evidence of the required nexus and does not state a prima facie case of discrimination.

The unfair practice charge filed by CSEA next alleges that the District unilaterally transferred the duties of the ASB/EDA position to other job classifications without providing CSEA with notice and an opportunity to bargain.

PERB Regulation 32615(a)(5)[2] requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, CSEA's burden includes alleging the "who, what, when, where and how" of an unfair practice, (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

CSEA alleges that the District transferred duties that were performed exclusively by the ASB/EDA classification to other classifications, without providing CSEA notice and the opportunity to meet and negotiate. In its amended charge, CSEA listed seven duties that had been transferred from the ASB/EDA classification and were continually being performed by other classifications. Since CSEA did not identify the classifications to which the duties had been transferred, we cannot determine whether or not these other classifications are existing or newly created classifications, within or outside of the existing bargaining unit. (See Rialto Unified School District (1982) PERB Decision No. 209; Mount San Antonio Community College District (1983) PERB Decision No. 334.) It is unclear from the record whether or not these seven duties were previously performed exclusively by the ASB/EDA classification

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

employee in that they had never been performed by employees in the other classifications prior to the creation of the ASB/EDA position. (See Eureka City School District (1985) PERB Decision No. 481.) Neither did CSEA present any evidence to show that the transferred duties were not overlapping between the ASB/EDA and the other classifications to which the transfers were made; or that the duties were not even remotely encompassed in the job description of these other classifications. (See Rio Hondo Community College District (1982) PERB Decision No. 279; Desert Sands Unified School District (2001) PERB Decision No. 1468.) In the absence of such relevant allegation or information, CSEA failed to establish a prima facie case that the District had the obligation to meet and negotiate its decision to transfer duties from the abolished ASB/EDA classification to other classifications.

The District was obligated to and indeed had participated in negotiations over the effects of the decision to eliminate the ASB/EDA classification. Where an exclusive representative "receives actual notice of the decision, the effects of which it believes to be negotiable, the employer's 'failure to give formal notice is of no legal import.'" (Sylvan Union Elementary School District (1992) PERB Decision No. 919, p. 11, citing Regents of the University of California (1987) PERB Decision No. 640-H.)

The facts show that Tyner, as the chapter president, had at least two conversations with Assistant Superintendent for Business Services, Laura Lee George, beginning November 2003, in which she was alerted to the possible elimination of the ASB/EDA position and her displacement rights. She received actual notice of the District's proposed decision to eliminate the classification on February 26, 2004, before the District adopted the resolution on March 9, 2004, and implemented the decision to eliminate the ASB/EDA classification on July 1, 2004. CSEA had ample time to request negotiations over the effects of the decision before the

implementation of the position elimination and layoff. In fact, CSEA alleges in its charge that the parties are participating in negotiations over the effects of the decision to eliminate the ASB/EDA classification. Accordingly, the charge has not stated sufficient facts to establish a prima facie case of unlawful unilateral change in policy.

The unfair practice charge filed by CSEA finally alleges that the District failed or refused to provide requested information when it refused to identify the specific purpose of the March 12, 2004 interview.[3]

An exclusive representative is entitled to all information that is necessary and relevant to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143.) No violation will be found if the employer responds and the union does not reassert or clarify its request. (Oakland Unified School District (1983) PERB Decision No. 367.)

Tyner and her union representatives were informed at the beginning of the interview that the District was seeking information on the process for the collecting and accounting of associated student body funds. There is no indication that CSEA requested further clarification at that time, or sought to reschedule the interview. Absent any evidence demonstrating that CSEA notified the District the information was incomplete or that it needed further clarification, the allegation that the District failed or refused to provide requested information does not state a prima facie case.

[3]CSEA did not address this allegation in its appeal.

ORDER

The unfair practice charge in Case No. SF-CE-2397-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor
PUBLIC EMPLOYMENT RELATIONS BOARD
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax:(510)622-1027

November 22, 2004

David R. Young, Labor Relations Representative
California School Employees Association
2345 Stanwell Circle
Concord, CA 94520

Re: California School Employees Association & its Chapter 347 v. Klamath-Trinity Joint Unified School District
Unfair Practice Charge No. SF-CE-2397-E
DISMISSAL LETTER

Dear Mr. Young:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 7, 2004, and amended on September 8, 2004.[1] The California School Employees Association & its Chapter 347 alleges that the Klamath-Trinity Joint Unified School District violated the Educational Employment Relations Act (EERA)[2] by discriminating against CSEA President Terry Tyner.

I indicated to you in my attached letter dated October 20, 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. A second amended charge was filed on November 12, 2004.

The second amended charge adds the allegation that the District transferred duties previously performed by Tyner in her classification of ASB/EDA to other bargaining unit members without first notifying and negotiating with CSEA. PERB has held that there is no obligation to notify or negotiate with an exclusive representative over duties transferred within the unit unless those duties are not reasonably comprehended within the scope of the bargaining unit employees' responsibilities. (Rio Hondo Community College District (1982) PERB Decision No. 279.) There is no allegation here that the ASB/EDA duties assigned to other bargaining unit members are not reasonably included within their jobs.

The warning letter expressly stated that without specific evidence of Tyner's recent participation in protected activities the charge did not state a prima facie case. Nonetheless, no such evidence is submitted in the second amended charge. The charge reiterates that there was an angry exchange between Tyner and George on August 27, 2004, but this took place two

[1] The warning letter erroneously omitted mention of the first amended charge.

[2] 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.

months after Tyner's position was eliminated. Further, there is no evidence that the District has based any of its employment decisions on protected activity.

Subsequent to the issuance of the warning letter, it was called to my attention that you did not receive a copy of the District's response to the charge. A copy was faxed to you which erroneously omitted the exhibits filed with this office. You urge that this charge not be dismissed "based on unsubstantiated information derived from improperly processed documents." The reasons for dismissing this charge are not based on statements in the District's response, but because the amended charge fails to demonstrate a nexus between the District's elimination of Tyner's position and her protected activities.

Right to Appeal

Pursuant to PERB Regulations,[3] 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. (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).)

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

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: Roman J. Munoz

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor
PUBLIC EMPLOYMENT RELATIONS BOARD

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October 20, 2004

David R. Young, Labor Relations Representative
California School Employees Association
2345 Stanwell Circle
Concord, CA 94520

Re: California School Employees Association & its Chapter 347 v. Klamath-Trinity Joint Unified School District
Unfair Practice Charge No. SF-CE-2397-E
WARNING LETTER

Dear Mr. Young:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 7, 2004. The California School Employees Association & its Chapter 347 alleges that the Klamath-Trinity Joint Unified School District violated the Educational Employment Relations Act (EERA)[1] by discriminating against CSEA President Terry Tyner.

Tyner has served as Chapter President, chairperson of the negotiating team and job steward during the past five years. She has been personally involved in almost all of CSEA's representational activities involving bargaining unit members during that time.

Tyner served for several years in the position of secretary/high school prior to the summer of 2002. At that time, she was hired into a newly created position of ASB/Educational Data Analyst. The supervisor for this position is Assistant Superintendent for Business Services Laura Lee George. The salary for this position is $2.70-$2.88 higher than that of her previous position.

The ASB/Educational Data Analyst position was eliminated effective June 30, 2004. The charge alleges that the position was eliminated based largely on the fact that Tyner was the incumbent, rather than for any legitimate reason. The charge asserts that a history of prejudicial District treatment of Tyner supports this allegation.

The first instance of prejudicial District treatment occurred in October 2001, when a document was discovered in Tyner's personnel file. It was prepared by her supervisor at the high school and documented her absences from work, particularly those relating to union business. CSEA requested that the document be removed from the file.

[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 next incident occurred in December 2002, when George requested that Tyner keep a detailed daily log of her activities. CSEA requested that George "cease and desist" from requiring Tyner to keep the log, alleging that the District appeared to be interfering with, restraining and coercing Tyner as a result of her participation in union activities.

On January 24, 2003, George responded to CSEA's letter, denying any bias. George asserted that the log had been discussed with Tyner as a means of addressing her concerns that she might be unable to handle the responsibilities her new position required. George also stated that such logs aided her in justifying the new positions.

On March 3, 2004, George sent Tyner a memo regarding a telephone conversation they had on February 26, 2004. The memo disputes Tyner's recollection regarding when/if George informed her that her position would be eliminated; admonishes Tyner for failing to report to her on her activities, and called into question "your honesty, integrity, and ethical behavior." The charge alleges that George's memo misrepresented facts, essentially blamed Tyner for the elimination of her position, and threatened disciplinary action. No such action was taken.

Sometime prior to March 12, 2004, George sent Tyner a letter requiring that she attend an interview on that date, and stating that she had the right to bring a representative with her. Both Tyner and CSEA asked Respondent to inform them of the purpose of the meeting, but received no response. However, at the beginning of the interview, District counsel informed Tyner that its purpose was to review the accounting practices related to the Associated Student Body fund at Hoopa High School while she was a secretary there. The charge alleges that the interview was hostile and unpleasant. Charging Party also states that it assumes that the interview was to gather evidence either for disciplinary purposes or to deny Tyner her contractual bumping rights. Tyner has not been disciplined, and she was bumped into her previous position.

On August 27, 2004, George engaged in a conversation with Tyner at a mandatory meeting of District secretaries. The charge alleges that George was hostile toward Tyner, yelling and shouting responses to her questions.

Respondent asserts that the elimination of Tyner's ASB/Educational Data Analyst position was due to lack of funding. Respondent states that in 2002-2003, it received a substantial increase in Impact Aid Program funding, from almost $1.6 million to almost $2.4 million. With this money, it created four new positions, a school psychologist, an Indian Education Director, a reading specialist and Tyner's position. In 2004, this funding was dramatically reduced, resulting in a loss of $673,066. Consequently, Respondent eliminated three of the four positions, including Tyner's, and reduced one position by .6 FTE. Due to budgetary concerns, other positions were eliminated in the certificated unit and reduced in the classified unit.

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 (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.)

Evidence of adverse action is also required to support a claim of discrimination or reprisal under the Novato standard. (Tab 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.]

This charge is deficient for several reasons. First, there is no specific evidence of Tyner's recent participation in protected activities. The general statement regarding her ongoing participation in union activities is not sufficient to demonstrate that the discrimination, if any, is due to a specific incident or activity.

Several incidents have been set forth to demonstrate Respondent's hostility toward Tyner. The earliest of these took place in 2001 and 2002. Even if these incidents demonstrated animus, they are so remote in timing as to be immaterial to this charge. The next occurrence involved a March 3, 2004, memo from George to Tyner critical of her job performance and questioning

her ethics. Finally, Tyner was called to an interview on March 12, 2004, with George and Respondent's counsel regarding a financial irregularity in an account she oversaw while in her previous position. She was told prior to the meeting that she had the right to bring a representative with her. She has not been disciplined as a result of either the March 2003 memo or interview.

It does not appear that Tyner's position was eliminated in a discriminatory manner. Of the four positions created with the infusion of money to the District, three were eliminated and one was reduced when that funding dried up. That Tyner's classified position was the only classified position eliminated does not reflect animus toward her. Simply put, it was the only classified position created with the new funding; therefore, it stands to reason that it would be the only eliminated.

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 November 1, 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

JAG