STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

NANCY A. RIDLEY, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Case No. LA-CE-223-H PERB Decision No. 699-H September 27, 1988

Appearances: B. Benedict Waters, for Nancy A. Ridley; Claudia Cate, Attorney for Regents of the University of California.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of a Board agent's dismissal, attached hereto, of her charge that the Regents of the University of California violated section 3571(a) of the Higher Education Employer-Employee Relations Act (codified at Gov. Code sec. 3560 et seq.). We have reviewed the dismissal and, finding it free from prejudicial error, we adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CE-223-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the Board

PUBLIC EMPLOYMENT RELATIONS BOARD
Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

March 29, 1988

B. Benedict Waters

19

Re: LA-CE-223-H, Nancy A. Ridley v. Regents of the University of California, DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Waters:

The above-referenced unfair practice charge, filed on October 29, 1987, alleges that the Regents of the University of California (University) interfered with Charging Party's access to the grievance procedure by failing to cooperate in the scheduling of the Step 1 meeting and attempting to control the attendance of witnesses at the meeting. This conduct is alleged to violate Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA). I indicated to you in my attached letter dated March 22, 1988, 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 accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to March 29, 1988, it would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing the charge based on the facts and reasons contained in my March 22, 1988 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.), or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. Code of Civil Procedure section 1013 shall apply. (See section 32135.) The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 calendar days following the date of service of the appeal (section 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 section 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.

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 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 (section 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,

JOHN SPITTLER
Acting General Counsel

By _____
DONN GINOZA
Regional Attorney

Attachment

cc: Claudia Cate

STATE OF CALIFORNIA

GEORGE DEUKMEJIAN, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

March 22, 1988

B. Benedict Waters

019

Re: LA-CE-223-H, Nancy A. Ridley v. Regents of the University of California

Dear Mr. Waters:

The above-referenced unfair practice charge, filed on October 29, 1987, alleges that the Regents of the University of California (University) interfered with Charging Party's access to the grievance procedure by failing to cooperate in the scheduling of the Step 1 meeting and attempting to control the attendance of witnesses at the meeting. This conduct is alleged to violate Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA).

My investigation revealed the following facts. On October 5, 1987, Charging Party filed a grievance against the University alleging a violation of Article 4 of the Memorandum of Understanding (MOU) negotiated between the University and the American Federation of State, County and Municipal Employees. Article 4 prohibits discrimination in employment. The grievance concerned improper conduct in the processing of Charging Party's vacation request.

Article 4, section E.1.a. provides that a grievance, such as the one filed by Ridley, which alleges only a violation of Article 4, requires a meeting at Step 1 of the grievance procedure, as outlined in Article 6 of the MOU. Article 4, section E.1.a. further provides that the appropriate employer representative is to respond in writing at Step 1 according to the procedure set forth in Article 6, section H.1.b. Article 4, sections E.1.b. and E.1.c. provide that a grievance alleging only a violation of Article 4 may be appealed to Step 2 of the grievance procedure but may not be appealed to Step 3, or elevated to arbitration.

Article 6, section H.1.b. states, in pertinent part, as follows:

> . . . Within fifteen (15) calendar days after receipt of the grievance a response will be issued, in writing, to the employee and the employee's representative. If the University's written response is not issued within these time limits or if the grievance

> is not resolved at Step 1 of the Grievance Procedure, the grievance may be appealed to Step 2.

By letter dated October 12, 1987, Sandra J. Rich, Assistant Labor Relations Manager for the University, notified Charging Party that it was scheduling the Step 1 meeting for October 15, 1987 from 9:00 a.m. and requested a confirmation by contacting the office of William Cormier, who was designated to conduct the meeting. The letter was received by Charging Party on October 13, 1987. On the same day, Charging Party telephoned Cormier's office to request an alternate time as the proposed time would not have permitted her sufficient time to make arrangements for the attendance of her representative and desired witnesses. Cormier was not in the office and consequently Ridley discussed the matter with Cormier's receptionist/secretary.

Ridley suggested October 19 as an alternate date and then contacted her representative for his approval of the time. Having received her representative's approval, Ridley telephoned Cormier's receptionist/secretary attempting to confirm the October 19 date. The charge does indicate the content of the secretary's response to the proposed rescheduling, however, it does allege that an agreement was reached, that it is the common practice of mid-level managerial personnel to have their calendars maintained by secretaries, and that at no time did the secretary involved deny she had authority to reschedule the meeting.

On October 14 Ridley typed and hand-delivered by messenger a letter addressed to Cormier confirming the October 19 date. By two letters of the same date and pursuant to the provisions of Article 6, section F.2., Ridley notified the supervisors of employees whose attendance as witnesses she sought at the Step 1 meeting.

Article 6, section F.2. provides in pertinent part as follows:

> A grievant and/or Union representative may request the availability of bargaining unit employee witnesses for such grievance meetings. The availability of bargaining unit employee witnesses shall be determined by their immmediate supervisor(s) on the basis of operational needs, and such

> requests shall not be denied unreasonably. . . Grievants and the Union agree that every effort shall be made to avoid the presentation of repetitive witnesses and that the absence of any or all witnesses shall not require the meeting to be recessed or postponed.

On October 17, 1987, Ridley received notice in the form of a letter dated October 15, 1987 from Cormier notifying Ridley that her letter of October 14 was incorrect in stating that the rescheduled Step 1 meeting had been confirmed for October 19. He denied that anyone in the office could have confirmed such a time because he had been scheduled to be off-campus on the 19th, 20, and 21st. Cormier offered October 22 as his next available date. The letter further requests a waiver of the written response due date. The last sentence of the letter states: "Also, please be advised that I will decide which employees need to be interviewed to ascertain the facts of the matter." Charging Party contends that this statement announces that the University "has sole discretion to control, restrict and/or prohibit the presentation of oral information by the grievant during the grievance process." (See paragraph 15 of the charge.)

Ridley received the letter and responded with a hand-delivered letter on October 19 asserting that the meeting in fact had been arranged for the 19th and that she would be present at that time.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the HEERA for the reasons that follow.

Charging Party asserts that where a grievance meeting is mandatory under the MOU, the failure to provide reasonable advance notice, "ipso facto" constitutes an unfair labor practice. (See paragraph 30 of charge.) Alternatively, the charge alleges that the University's failure to give sufficient notice caused harm because it prevented Charging Party from obtaining the witnesses she desired and affording adequate notice to her representative. Charging Party also claims that the University cannot refuse to attend a grievance meeting mandated by the MOU because its preferred representative is not available. Charging Party argues that interference with the

grievance procedure results from insistence on a particular representative where that insistence is an excuse for not meeting within the time limits required by the MOU. In summary, Charging Party contends that the University's conduct described above interferes with access to the grievance process.

These allegations fail to state a prima facie violation. First, the terms for a grievance procedure are established by the employer and exclusive representative through negotiations. Anaheim School District (1983) PERB Decision No. 364. HEERA does not establish minimal requirements for a grievance procedure, but only establishes the right effectively to present grievances to the employer. Regents of the University of California (1983) PERB Decision No. 308-H. Accordingly, PERB has no authority to determine that two days notice is "ipso facto" an unfair practice.

Second, in order to state a prima facie violation alleging interference with rights guaranteed by the HEERA, the charging party must allege at least slight harm results from the employer's conduct. Carlsbad Unified School District (1979) PERB Decision No. 89; Regents of the University of California, supra. In Regents, PERB held that employer conduct in connection with the processing of grievances is unlawful "if the impact of it is to deprive employees of their statutory rights to effectively present their grievances." That case found that denying a grievant multiple representatives did not establish harm to guaranteed employee rights. Assuming that lack of notice may impact on the right effectively to present a grievance, Charging Party has failed to allege facts to demonstrate interference with that right resulted.

Charging Party contends that the lack of notice prevented her from obtaining witnesses and giving her representative sufficient advance notice. However, the facts only indicate that Charging Party was not prepared to meet with her witnesses and representative on October 15, the first date, scheduled by the University, and that the University was not prepared to meet with its representative on October 19, the second date, scheduled by Charging Party. They also indicate that the University was willing to meet on a third date, but Charging Party was unwilling to wait until that time. Therefore the facts alleged do not demonstrate that the University disposed of her grievance without hearing the witnesses or allowing the representative to participate. It is also apparent that two days notice was only a problem for Charging Party as to the first meeting. Charging Party's real complaint is that the Step 1 meeting was not held within 15 days of the filing of the grievance.

But the University's failure to meet within 15 days is at best a contract violation absent a showing that Charging Party was denied the right effectively to present her grievance. Unless a contract violation is also an unfair practice, the matter is not remediable through the unfair practice procedures. Government Code section 3563.2(b). Charging Party has failed to allege facts which demonstrate that a delay of several days in meeting at Step 1 and producing a written response interfered with her right effectively to present her grievance. Indeed, the MOU's language expressly provides that the grievant is entitled to proceed to Step 2 if the written response is not issued in 15 days. (Article 6, section H.1.b.)

Similarly, the claim that the University may not choose which representative attends the Step 1 meeting and may not cite the lack of a representative as an excuse for delaying the meeting is premised on the contention that the Step 1 meeting must be held within 15 days and that the University was solely responsible for the time limit not being met. As noted above, under the facts alleged, this is at best a contract violation.

Finally, Cormier's statement that he would decide what witnesses "needed" to be interviewed, even coupled with the other events, does not raise a reasonable inference that Charging Party would have been prevented from presenting any or all of the witnesses she desired or presenting evidence of her position by other means in either the Step 1 or Step 2 meetings.

For these reasons, the charge as presently written does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 29, 1988, I shall dismiss the above-described allegation from your charge. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

DONN GINOZA
Regional Attorney