

22 PERC ¶ 29068

VAL VERDE UNIFIED SCHOOL DISTRICT

California Public Employment Relations Board

Carolyn Twyman, Charging Party, v. Val Verde Unified School District, Respondent.

Docket No. LA-CE-3879

Order No. 1256

March 24, 1998

Before Johnson, Amador and Jackson, Members

Discrimination -- Transfer -- Untimely Charge -- 71.13 Time for filing unfair-practice charge was not tolled by employee's ignorance of PERB and laws it administers.

APPEARANCE:

Carolyn Twyman, on her own behalf.

Decision

AMADOR, Member:

This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Carolyn Twyman's (Twyman) unfair practice charge. Twyman's charge alleges that the Val Verde Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ when it attempted to transfer Twyman from a counselling to a teaching position.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, and Twyman's appeal.² The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

Order

The unfair practice charge in Case No. LA-CE-3879 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Jackson joined in this Decision.

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.5 provides, in relevant part:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

² The District filed its response to Twyman's appeal outside of the filing deadline. The District contends that it has demonstrated good cause for its failure to file in a timely manner. Because of our disposition of this case, however, we find it unnecessary to rule on the District's request to excuse its late filing.E

Dismissal and Refusal to Issue a Complaint

In this charge filed on December 4, 1997 (certified mail), you allege that the Val Verde Unified School District (Val Verde or District) retaliated against you (a Counselor) in violation of Government Code section 3543.5 of the Educational Employment Relations Act (EERA). You also allege violations of Labor Code 1102 (coercing or influencing political activities of employees), and the Fair Employment and Housing Act [Government Code sections 12920, 12940(h)(3)(C) and 12945].¹

I indicated to you, in my attached letter dated December 16, 1997 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 December 23, 1997, 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 December 16, 1997 letter.

1 PERB does not have authority to enforce this statute. Therefore, these alleged violations will not be discussed in this letter.E

Warning Letter

In this charge filed on December 4, 1997 (certified mail), you allege that the Val Verde Unified School District (Val Verde or District) retaliated against you (a Counselor) in violation of Government Code section 3543.5 of the Educational Employment Relations Act (EERA). You also allege violations of Labor Code 1102 (coercing or influencing political activities of employees), and the Fair Employment and Housing Act [Government Code sections 12920, 12940(h)(3)(C) and 12945].¹

My investigation and the charge revealed the following information. From 1992 until 1995, you served as a site representative, an Executive Board Member, and on the Negotiating Team for the Val Verde Teachers Association (VVTA). In 1995, while you were pregnant, you were informed by the District that you would be transferred into a teaching position. Specifically, in May 1995, your Principal at Rancho Verde High School, Rob Nichols, advised you that he was not planning to have counselors at the high school next year. You advised Gary Trout, President of the VVTA, and other members of the Executive Board. But no action was taken. On or about June 1, 1995, you spoke to Tony Leon of the California Teachers Association (CTA) about this matter, and he advised you to contact the Department of Fair Employment and Housing (DFEH). He did not suggest that you contact the Public Employment Relations Board (PERB), nor did he file a grievance on your behalf. You filed a complaint at the DFEH in June 1995. In August 1995, you sought a one year leave of absence from the District, and took another counseling position at Lake Elsinore High School District (Lake Elsinore) during the 1995-96 school year.

In April 1996, you filed a second complaint with the DFEH, in part, for being displaced out of your position as a counselor. In July 1996, you filed another complaint because the District did not give you your job when it was your intention to return to your position. Your attorney, Suzy C. Moore, by letter to the District dated May 29, 1996, demanded, in order to avoid litigation, your reinstatement to your position as a Counselor, and elimination of negative materials from your file. In August 1996, you were informed by the District that you were placed at Vista Verde Middle School as a teacher in the on campus detention/suspension room.

In 1996, you kept Gary Trout advised about your situation. Trout did not think there was anything the union could do and in fact, the union took no action. In September 1996, (while you were still with Lake Elsinore), you requested another leave of absence from Val Verde, but your request was denied. You contacted Tony Leon of CTA. You feared the District could go after your credential if you did not resign from Val Verde. Mr. Leon recommended that you resign; and in

September 1996, you did resign. In September 1996, you were aware that Val Verde kept two male counselors in their positions and had hired (you believe into your position) a new counselor, Mrs. Block, the wife of the new middle school principal.

You obtained a new attorney in 1996, Steven Morris. Having received one or more right to sue letters from DFEH, a lawsuit was filed against Val Verde in 1996 involving, among other things, sexual harassment, pregnancy and sex discrimination, and retaliation for union activities. By the letter dated November 20, 1997 to Lois Tinson, President, California Teachers Association in Burlingame, California, you expressed, in part, your dissatisfaction with the Val Verde Teachers Association, and indicated that the union did not fulfill its duty of fair representation.

You advised me on December 11, 1997 that the issue of retaliation for union activity was deleted from your lawsuit (as you had not previously filed a charge at PERB). You did not learn about PERB until September 1997.

Based on the above, the charge fails to state a prima facie case within PERB's jurisdiction. EERA section 3541.5 (a)(1) provides that the Board shall not, "Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." It is your burden, as the charging party to demonstrate that the charge has been timely filed. (See *Tehachapi Unified School District* (1993) PERB Decision No. 1024.)

Your lack of knowledge about PERB or the laws we enforce will not affect the running of the 6 months statute of limitations. See *Fairfield-Suisun Unified School District* (1985) PERB Decision No. 547, where the Board held that the 6 month period runs from the time the "adverse actions" were discovered, not from the date of the discovery of the legal significance of that conduct.

Therefore, the allegations of unlawful conduct by the District which all occurred prior to June 4, 1997, are untimely and will be dismissed.

1 PERB does not have authority to enforce this statute. Therefore, these alleged violations will not be discussed in this letter.E
