STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PAULA J. SELIGA, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-3946 PERB Decision No. 1300 November 24, 1998

Appearance: Paula J. Seliga, on her own behalf.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of Paula J. Seliga's (Seliga) unfair practice charge. Seliga's charge alleged that the Los Angeles Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] when it transferred her from Bertrand School to Hazeltine School in retaliation for her protected

[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.

activities.

The Board has reviewed the entire record in this case, including the unfair practice charge and amendments thereto, the warning and dismissal letters, and Seliga's appeal. 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-3946 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

September 16, 1998

Paula J. Seliga

Re: Paula J. Seliga v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-3946
DISMISSAL LETTER, Second Amended Charge

Dear Ms. Seliga:

In the above-referenced charge, Paula Seliga (Seliga) alleges the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA) § 3543.5(a) by involuntarily transferring her to another school because she engaged in protected activities. On or about June 24, 1998, I asked Seliga several questions regarding her charges. On July 23, 1998, Seliga filed a first amended charge.[1]

On September 2, 1998, I issued a Warning Letter indicating the original and first amended charges failed to state a prima facie discrimination violation because the charges lacked nexus. More specifically, the warning letter noted: (1) the adverse action did not occur close in time to any protected activity; (2) the facts did not demonstrate the District departed from established procedures; and (3) the facts did not demonstrate the District shifted its justification for transferring Seliga. On September 9, 1998, Seliga filed a second amended charge. The second amended charge did not correct the above-stated deficiencies for the reasons stated below.

The Warning Letter indicated the District's alleged adverse action occurred 6 months after Seliga reported the District to the Department of Education. The second amended charge indicates the District's adverse action occurred 5 months, not 6 months after she reported the District. Taking the Charging Party's facts as true, the second amended charge still fails to establish the adverse action followed close in time to Seliga's report to the Department of Education.

The Warning Letter also indicated it did not appear the District's adverse action occurred close in time to Seliga's other alleged protected activities, filing grievances and her actions as a member of the United Teachers of Los Angeles (UTLA)

[1]The first amended charge did not add new allegations, but merely restated the information provided in the original charge.

House of Representatives. The second amended charge did not provide any information indicating that these activities were close in time to the District's adverse action.

The Warning Letter further indicated that even if close in time, the original and first amended charges did not demonstrate any other factors indicative of a nexus between Seliga's protected activities and the alleged adverse action. The original and first amended charges alleged the District departed from established procedures by failing to provide her with a copy of an April 28, 1998 letter within 30 days of its receipt by the District.[2] The Warning Letter indicated the District attempted to meet with Seliga twice within the 30-day time period, on May 18, and May 26, but that Seliga refused to meet with the District on those dates. In the second amended charge Seliga acknowledges the District attempted to meet with her *on* these dates, but alleges she was not available for these meetings due to calendar conflicts, "evasive agendas," and Dr. Leidner's failure to set a particular time for the first meeting. These allegations do not correct the deficiency noted in the Warning Letter. The facts demonstrate the District attempted, at least twice, to meet Seliga within the 30 days following its receipt of the April 28, 1998 letter.[3] The District's failure to provide Seliga with the April 28, 1998 letter, does not demonstrate an unlawful motivation given that Seliga's own failure to attend either of the scheduled meetings was a contributing factor. Moreover, the exact language of the CBA section setting the 30-day time limit for providing the letter indicates, in pertinent part:

> Except in compelling circumstances, the employee shall be furnished a copy within 30 days of the District's receipt of the document. [Article X, Section 9.0(a) emphasis added.]

The parties' CBA comprehends that the 30-day time limit may be extended in compelling circumstances. Thus, it appears the District did not depart from established procedures.

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[2]The second amended charge indicates that Seliga received the letter after the 30 days had elapsed, but did not provide a specific date.

[3]My investigation revealed only 2 specific dates scheduled by the District, however there may have been more. A June 2, 1998, letter from Dr. Deborah Leidner indicated that the District attempted to meet on 3 occasions with Seliga.

In support of nexus, the original charge also indicated there had been a "shift in justification." The Warning Letter indicated that during my conversation with Seliga on or about, June 24, 1998, Seliga indicated the District's justification for her transfer had always been "disharmonious" behavior. The second amended charge again alleges a "shift in justification." However, the charge does not provide any facts supporting this allegation.

The second amended charge also alleges the District failed to conduct an investigation into the allegations about Seliga in the April 28, 1998 letter. Article X, Section 9.0(a) of the 1995-1998 Collective Bargaining Agreement (CBA) between the District and UTLA indicates that if the District receives a document critical of an employee from a member of the public, the District is required to first investigate the matter before retaining the document or placing it an employees personnel file. Article X, Section 9.0(b) of the CBA indicates that if the document is not from a member of the public, but from District personnel, the investigation required by Section 9.0(a) may not be necessary or appropriate. The April 28, 1998, document in question in this charge was from District personnel. Therefore, the District did not depart from procedures if it did not conduct an investigation.

The second amended charge fails to state a prima facie violation and is dismissed.

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. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
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 (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, sec. 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 Cal. Code Regs., tit. 8, sec. 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 (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. (Cal. Code Regs., tit. 8, sec. 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
Deputy General Counsel

Tammy L. Samsel
Regional Director

Attachment

cc: Shirley Woo

PUBLIC EMPLOYMENT RELATIONS BOARD

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

September 2, 1998

Paula J. Seliga

Re: Paula J. Seliga v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-3946
WARNING LETTER

Dear Ms. Seliga:

In the above-referenced charge, Paula Seliga (Seliga) alleges the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA) § 3543.5(a) by involuntarily transferring her to another school because she engaged in protected activities. On or about June 24, 1998, I asked Seliga several questions regarding her charges. On July 23, 199 8, Seliga filed a first amended charge.[1] My investigation revealed the following information.

Paula Seliga was a bilingual teacher for the District at the Bertrand School. Seliga alleges she reported the District's misuse of Title I funds to the California Department of Education in January of 1998. Seliga alleges she has participated in activities for the United Teachers of Los Angeles (UTLA) during the 1997-1998 school year by being a member of its House of Representatives. Seliga further alleges she filed several grievances during the 1997-1998 school year.

On April 28, 1998, several District employees wrote to Cluster Administrator, Deborah Leidner and requested that Seliga not be allowed to return to the Bertrand School.

Article X, Section 9.0(b) of the 1995-1998 collective bargaining agreement between the District and UTLA indicates that if the District receives a letter from a District employee critical of the performance of another District employee, the District must supply a copy of the letter to the employee in question within 30 days. Seliga alleges the District did not provide her with a copy of the April 28, 1998 letter to Leidner.

On or about June 2, 1998, Leidner, notified Seliga that she had been transferred to the Hazeltine School. Leidner's June 2, 1998, letter indicated Seliga was being transferred due to her,

[1]The first amended charge did not add new allegations, but merely restated the information provided in the original charge.

"inharmonious relationships with both the staff and principal at Bertrand Elementary School . . ."

The above-stated information fails to state a prima facie violation for the reasons that follow.

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; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, 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; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (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; or (6) any other facts which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.)

Although Seliga participated in protected activities, the original and first amended charges fail to demonstrate the requisite nexus. The charges do not indicate the timing of Seliga's protected activities were close in time to the alleged adverse action. The District transferred Seliga six months after she reported the school to the Department of Education. The charges do not provide more specific information regarding the timing of Seliga's grievances or any actions she may have taken as a member of UTLA's House of Representatives.

Even if close in time, the original and first amended charges do not demonstrate any other factors indicative of a nexus between Seliga's protected activities and the alleged adverse action. In

support of nexus, Seliga alleges the District departed from established procedures. More specifically, Seliga alleges the District failed to provide her with a copy of the April 28, 1998, letter within 30 days of its receipt. However, my investigation indicates the District attempted to meet with Seliga and provide the letter on May 18, and May 26. Seliga refused to attend those meetings.

In support of nexus, the original charge also indicated there had been a "shift in justification." However, during my conversation with Seliga on or about, June 24, 1998, Seliga indicated the District's justification for her transfer had always been "disharmonious" behavior. Thus, the charge fails to demonstrate the requisite nexus and must be dismissed.

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 which would correct the deficiencies explained above, please amend the charge. The second amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled Second 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 September 9. 1998, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Tammy L. Samsel
Regional Director