STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

COALITION OF UNIVERSITY EMPLOYEES, Charging Party,	)	Case No. LA-CE-522-H
v.	)	PERB Decision No. 1314-H
REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	February 1, 1999

Appearances: Scott Miller for Coalition of University Employees; Doug Kierbel, Labor Relations Specialist, for Regents of the University of California.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of the Coalition of University Employees' (CUE) unfair practice charge. As amended, the charge alleges that the Regents of the University of California (University) violated section 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA)[1] when it withheld information from and

[1]HEERA is codified at Government Code section 3560 et seq. Section 3571 provides, in relevant part:

> It shall be unlawful for the higher education 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

medically separated Marita Enescu in retaliation for her protected activities and when it unnecessarily delayed the provision of information necessary and relevant to CUE'S representational activities.

The Board has reviewed the entire record in this case, including the unfair practice charge and amendments thereto, the warning and dismissal letters, CUE'S appeal, and the University's response thereto. The Board finds that the warning and dismissal letters are free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-522-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

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applicant for employment or] reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415)439-6940

October 8, 1998

Scott Miller
Coalition of University Employees
724 S. Sycamore Avenue, Suite 201
Los Angeles, CA 90036

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**
Coalition of University Employees v. The Regents of the University of California
Unfair Practice Charge No. LA-CE-522-H; Second Amended Charge[1]

Dear Mr. Miller:

The above-referenced unfair practice charge, filed May 28, 1998, and amended July 10, 1998, alleges the Regents of the University of California (University) refused to provide information to the exclusive representative and discriminated against employee Marita Enescu. The Coalition of University Employees (CUE) alleges this conduct violates Government Code section 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA or Act).

I indicated to you, in my attached letter dated July 22, 1998, 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 July 29, 1998, the charge would be dismissed. I later extended this deadline to August 19, 1998.

On August 17, 1998, I received a second amended charge. The second amended charge includes a twenty-one (21) page narrative and nearly 100 additional pages of exhibits, many of which are correspondence between the parties. A summary of the allegations in the second amended charge, and its exhibits follows.

[1] The Second Amended Charge, filed August 17, 1998, was mistakenly titled "First Amended Charge."

In the first amended charge, Charging Party alleged the University refused to provide CUE with information regarding the layoff of employee Marita Enescu and further discriminated against Ms. Enescu by requiring her to sign a form allowing the University to release her medical records to CUE. In my July 22, 1998, letter, I informed Charging Party that facts provided failed to demonstrate the University refused to provide information and discriminated against Ms. Enescu. The second amended charge attempts to address those deficiencies noted in my July 22, 1998, letter. Additionally, the second amended charge alleges Ms. Enescu has been medically separated from the University because of her protected activities.

I. Request for Information

On May 6, 1998, Marita Enescu, an Administrative Assistant II, at the UCLA School of Dentistry, requested a copy of her personnel file be made available to CUE representative Scott Miller. On May 14, 1998, Mr. Miller signed and dated a copy of Ms. Enescu's written request, signifying that he had received a sealed copy of Ms. Enescu's personnel file.

Upon opening the packet of information, which was approximately an inch and one-half thick, Mr. Miller determined that it did not contain a complete copy of Ms. Enescu's personnel file. Charging Party does not explain how such a determination was made or what documents were missing. Mr. Miller then telephoned the School of Dentistry's Human Resources Office to obtain what he believed was the remainder of Ms. Enescu's file. During Mr. Miller's conversation with Minette Ozuna, an employee in the Human Resources Department, Ms. Ozuna stated that there were documents in Ms. Enescu's personnel file that were not included in the packet.- Ms. Ozuna then asked Mr. Miller to specify which documents he believed were not included in the packet. Mr. Miller responded that he did not need to specify which documents he wanted. Ms. Ozuna indicated that Human Resources Officer, Susan Fisher would respond to his inquiry. To date, Ms. Fisher has not responded to Mr. Miller's inquiry.

On May 15, 1998, Mr. Miller faxed a letter to Ms. Fisher, which stated in pertinent part:

> As you know, Article 17 of the UC/AFSCME agreement, which currently sets the terms and conditions of employment for employees in the Clerical Bargaining Unit, entitles employees and their representatives to one copy of their entire personnel file.

> As I indicated to your staff, the personnel file of Marita Enescu which I received yesterday appears to be incomplete. I would appreciate it if you would review your records and provide me with all material that was not included. Also, please consider this letter an ongoing request for any information not currently in Ms. Enescu's file as it becomes available.

On May 19, 1998, Ms. Fisher responded to Mr. Miller's request stating that some medical information was not released to Mr. Miller, as Ms. Enescu had not signed a release for this information. Under state and federal law, the release of medical information requires specific authorization from the real party in interest.

On May 27, 1998, Ms. Enescu sent the University an authorization letter, which authorized release of her medical records to Mr. Miller. On May 28, 1998, Mr. Miller sent a letter to Ms. Fisher regarding the remainder of Ms. Enescu's personnel file. Mr. Miller further stated that if Ms. Fisher was refusing to release certain documents from Ms. Enescu's file, that the University provide a list of what documents were not being disclosed.

On or about June 1, 1998, Ms. Fisher rescinded Ms. Enescu's layoff notice. On June 12, 1998, Ms. Fisher provided Mr. Miller with the remainder of Ms. Enescu's personnel file, including Ms. Enescu's medical information.

In the second amended charge, Charging Party contends the University's unlawful motive is demonstrated by the fact that when Mr. Miller received the additional information on June 12, 1998, non-medical information was included in the packet. Charging Party contends, thus, that the University deliberately withheld information, in violation of Government Code sections 3571(a), (b) and (c). However, Charging Party's contention is still misplaced.

In Stockton Unified School District (1980) PERB Decision No. 143, PERB relied on federal precedent to conclude that an exclusive representative has a right to all information that is necessary and relevant to the discharge of its duty to represent employees. The employer is obligated to provide this information within a reasonable time period. (Compton Community College District (1990) PERB Decision No. 790.) Reasonable promptness depends upon the circumstances of the charge. (See also, Colonial Press, Inc. (1973) 204 NLRB No. 126.) In Colonial Press, supra, the NLRB found that the employers two month delay in providing the union with a list of all employees was unreasonable given the

circumstances. However, in United Engines, Inc. (1973) 222 NLRB 50, 91, the NLRB found that an employer did not violate the NLRA when it provided most of the information requested within a month of the request and two weeks before bargaining was supposed to start.

In the instant charge, Charging Party asserts the University failed to promptly provide the information requested. Facts provided demonstrate, however, that Charging Party received most of the information in Ms. Enescu's personnel file within six working days of the request. Charging Party does not provide any facts demonstrating this six day "turn around" violates the HEERA. Additionally, upon receiving authorization from Ms. Enescu to release her medical information, the University provided the remainder of the information within ten working days. Thus, all of the information requested was provided within at most 10 working days of each request. Further, CUE fails to demonstrate why waiting 10 working days to receive the information is unreasonable. Indeed, Charging Party requested the information in conjunction with a grievance they intended to file over Ms. Enescu's layoff notice. On or about June l, 1998, the University rescinded the layoff notice. As such, it seems CUE was not harmed or prejudiced in any way by waiting 10 days to receive the information. (See, Partee Flooring Mill (1954) 107 NLRB 1177 (15-day delay not unreasonable.) Moreover, most of the information requested by Mr. Miller, and necessary for the grievance, was received in less that seven working days. As such, the allegation fails to state a prima facie case and must be dismissed.

II. Discrimination

The first amended charge alleged Ms. Enescu was retaliated against when the University requested she sign a medical release form, allowing the University to release her medical records to CUE. Although Charging Party does not provide any additional facts regarding this allegation, this Regional Attorney has had several conversations with Mr. Miller regarding this allegation and thus will reiterate the deficiencies in this contention.

To demonstrate a violation of HEERA section 3571(a), the charging party must show that: (1} the employee exercised rights under HEERA; (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.)

Ms. Enescu exercised protected rights by requesting a copy of her personnel file on May 6, 1998.[2] Charging Party contends the University failed to release the information to Mr. Miller and required Ms. Enescu to specifically authorize release of medical information, because Ms. Enescu exercised her right to receive the information. It is unclear whether any adverse action occurred in the instant charge as Ms. Enescu's representative received the information in a timely manner. Further, even assuming the above stated actions constitute "adverse action," facts provided do not demonstrate the amount of time it took to receive the information was elongated based on Ms. Enescu's request through her union representative. As such, the allegation fails to state a prima facie case.

III. Medical Separation

Article 25 of the AFSCME/University contract, which serves as the parties status quo, states the following with regard to Medical Separation.

> A. When the University determines that an employee is unable to perform satisfactorily essential assigned functions due to a disability or other medical condition, that employee may be medically separated. . . . If a non-probationary career employee who is on an appropriate leave of absence related to a medical condition has a specific return to work date established by a health practitioner licensed by the state in which he/she practices and such return to work date is within 180 days of the beginning of the leave of absence, the non-career employee shall not, during the period between the beginning of the leave of absence and the initially established return to work date (a maximum of 180 days) be medically separated.
>
> C. Written notice of intent to medically separate shall be given to the employee

[2] Charging Party also contends Ms. Enescu engaged in protected activity several years ago when the unit was represented by AFSCME. However, these protected activities are remote in time to the alleged "adverse action" herein, and thus do not satisfy the nexus requirement of timing.

> either by delivery of the notice to the employee in person, or by Proof Of Service. The notice shall:
>
> 1. inform the employee of the action intended, the reason for the action and the effective date of the action, and
>
> 2. inform the employee of the right to respond and to whom to respond within ten calendar days from the date of issuance of such notice of intent in accordance with instructions given by the University in the written notice sent to the employee.
>
> D. After review of the employee's timely response, if any, the University shall notify the employee of any action to be taken. An effective date of separation shall be at least ten calendar days from the date of issuance of notice of intention to separate (pursuant to Section C, above) or timely receipt of the employee's response, if any, whichever is later.

On December 10, 1997, Ms Enescu went out on an indefinite medical leave.[3] While there is some disagreement between Charging Party and the University as to how the leave is classified for benefit purposes, such disagreement is not relevant to the allegation herein.. On December 18, 1997, Staff Relations Officer, Paula Ross, provided written notice to Ms. Enescu of her leave status and further requested Ms. Enescu contact the University regarding whether she chose to use Family Medical Leave for her condition.

On December 19, 1997, Ms. Enescu telephoned Ms. Ross and discussed with Ms. Ross her benefit rights and obligations while on medical leave. Additionally, Ms. Ross provided Ms. Enescu with information regarding a potential Workman's Compensation claim. On. December 23, 1997, Ms. Ross provided written confirmation of her conversation with Ms. Enescu and enclosed with this letter an pamphlet regarding Ms. Enescu's rights and responsibilities.

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[3] Apparently Ms. Enescu suffered a stroke and thus a return date was uncertain, pending her recovery.

Ms. Enescu did not return to work during January, February or March of 1998. On March 17, 1998, Ms. Enescu spoke with Ms. Ross about a return date. At that time, Ms. Enescu indicated she would be able to return to work on May 1, 1998.

On April 14, 1998, Ms. Enescu was informed that she was being laid off pursuant to Article 13 of the AFSCME contract. On May 5, 1998, Mr. Miller filed a grievance regarding this layoff. Additionally, Mr. Miller filed this charge and additional unfair practice charges regarding Ms. Enescu. Ms. Enescu did not return to work on May 1, 1998. Ms. Enescu did not contact Ms. Ross about her failure to return to work, nor did Ms. Enescu provide any information from her physician regarding a return to work date.

On May 26, 1998, the University rescinded Ms. Enescu's layoff notice, as she had not returned to work, and therefore could not be afforded layoff rights under the contract. On July 14, 1998, after Ms. Enescu had used more than 180 days of medical leave, the University provided Ms. Enescu with written notice of its intent to medically separate her from her employment. The University further noted that the medical separation was a business necessity, although the contract does not state the University must provide a reasons for its action.

On July 16, 1998, Ms. Enescu provided the University with a letter from her doctor, dated the same day, stating that Ms. Enescu might be able to return to work on September l, 1998.[4] On that same day, Ms. Enescu spoke with Susan Fisher, Human Resources Officer, regarding benefit eligibility and retirement benefits.

On July 17, 1998, Mr. Miller faxed a letter to Tina Simmons, Employee Relations Officer, requesting further information about the medical separation and an explanation as to why Ms. Enescu was being separated. On that same day, Ms. Simmons faxed Mr. Miller a response stating the University was separating Ms. Enescu pursuant to Article 25 of the contract.

On July 20, 1998, Ms. Enescu, Mr. Miller and University representatives Ms. Fisher and Ms. Simmons, met to discuss the medical separation, pursuant to Article 25 (C). During this meeting, Mr. Miller suggested the University rescind the medical separation and instead allow Ms. Enescu to exhaust her accrued leave or apply for early retirement. Mr. Miller also claims that during this meeting, Ms. Simmons stated that if Ms. Enescu

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[4] Later information provided by Ms. Enescu demonstrates her physician pushed back this date until November 1, 1998.

returned to her job she would be laid off as the job was being eliminated. The University agreed to consider Mr. Miller's alternatives.

On August 10, 1998, the University informed Ms. Enescu that she would be medically separated effective August 14, 1998. The University further stated that it had considered Mr. Miller's alternatives, but was not willing to rescind its medical separation. The University further provided Ms. Enescu with information on how to appeal the medical separation decision.

Charging Party contends the medical separation was undertaken in retaliation for Ms. Enescu's protected activities. As noted in Section II, above, Ms. Enescu engaged in protected activity by filing a grievance over her layoff and by allowing herself to be the subject of two unfair practice charges. The University was aware of this activity and Ms. Enescu was medically separated by the University effective August 14, 1998. However, Charging Party fails to demonstrate the requisite nexus.

Charging Party contends that in addition to the timing of the adverse action, the University provided shifting justifications for its action and disparately treated Ms. Enescu. With regard to the shifting justifications, Charging Party contends Ms. Simmons stated during the July 20, 1998, meeting that even if Ms. Enescu were to return to work, she would be laid off as the division was being reorganized. Charging Party contends that this reasoning differs from the University's "business necessity" reason provided in Ms. Enescu's notice letter. However, it is unclear how "business necessity" and lack of a job differ in substance. The University had made clear, by Ms. Enescu's initial layoff notice, that they intended to eliminate the position. The elimination of a position does not seem contrary to an explanation of business necessity, but instead seems to further clarify the meaning of "business necessity."

Additionally, Charging Party contends Ms. Enescu was disparately treated. As evidence of this disparate treatment, Charging Party argues as follows. Article 25 states that after 180 days of medical leave, the University may medically separate an employee. Charging Party argues thus that because the University has discretion to medically separate employees, its decision to medically separate Ms. Enescu is disparate treatment. This contention, however, does not demonstrate disparate treatment. Charging Party does not provide facts demonstrating that other employees, who could be medically separated and whose positions are being eliminated, were not medically separated. Such facts would demonstrate disparate treatment. The University's lawful use of the policy does not satisfy the nexus requirement.

Finally, Charging Party argues the University failed to consider Ms. Enescu's eventual ability to return to work in considering the medical separation. Charging Party points to the physician's letter, dated after the medical separation notice, as evidence that Ms. Enescu could perform her job duties in the future. However, Ms. Enescu failed to communicate with the University regarding her condition, and that she was not able to return to work for more than six months. The University's decision to medically separate Ms. Enescu came four months after Ms. Enescu had last contacted the University and more than 2 months after she had indicated she would return to work. As such, the University's decision was based on the information it possessed at the time of its decision. Ms. Enescu's doctor's letter came after the fact, and the University could not possibly have known about Ms. Enescu's condition. As such, Charging Party's contention that Ms. Enescu was medically separated because of her protected activities is dismissed as the charge fails to demonstrate the requisite nexus.

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 of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. 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 (20) calendar days following the date of service of the appeal. " (Cal. Code of 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 of 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 of 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

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Leslie Van Houten, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

July 22, 1998

Scott Miller
Coalition of University Employees
724 S. Sycamore Avenue, Suite 201
Los Angeles, CA 90036

Re: **WARNING LETTER**
Coalition of University Employees v. The Regents of the University of California
Unfair Practice Charge No. LA-CE-522-H; First Amended Charge

Dear Mr. Miller:

The above-referenced unfair practice charge, filed May 28, 1998, and amended July 10, 1998, alleges the Regents of the University of California (University) refused to provide information to the exclusive representative and discriminated against employee Marita Enescu. The Coalition of University Employees (CUE) alleges this conduct violates Government Code section 3571(a) and (b) of the Higher Education Employer-Employee Relations Act (HEERA or Act).

Investigation of the charge revealed the following. Prior to November 5, 1997, the University's clerical employees were represented by the American Federation of State, County and Municipal Employees (AFSCME). The University and AFSCME were parties to a collective bargaining agreement (Agreement) which expires on June 30, 1998.

Article 17 of the Agreement, entitled "Personnel Files", states in pertinent part:

> A. An employee shall, upon written request to the University, have the opportunity to review his/her personnel file(s) within a reasonable time in the presence of a representative of the University. At the time of such request the supervisor, to the extent he/she is aware of the location(s) of such files, shall inform the employee of the location(s) of the file(s).
>
> D. Records protected by recognized legal privilege and records excepted from

> disclosure by law may be withheld from the employee and/or the employee's representative. Neither an employee nor his/her representative shall be entitled to review confidential pre-employment information or confidential information relating to transfers and promotions of the employee out of his/her bargaining unit, nor shall the employee or his/her representative be entitled to review documents related to internal University labor relations or personnel policy or Agreement applications.

On November 21, 1997, CUE was certified as the clerical employees' exclusive representative. The terms and conditions of the AFSCME Agreement provide the terms and conditions for members of the clerical bargaining unit, until a new agreement is reached between the University and CUE.

On May 6, 1998, Marita Enescu, an Administrative Assistant II, at the UCLA School of Dentistry, requested a copy of her personnel file be made available to CUE representative Scott Miller. On May 14, 1998, Mr. Miller signed and dated a copy of Ms. Enescu's written request, signifying that he had received a sealed copy of Ms. Enescu's personnel file.

Upon opening the packet of information, which was approximately an inch and one-half thick, Mr. Miller determined that it did not contain a complete copy of Ms. Enescu's personnel file. Charging Party does not explain how such a determination was made or what documents were missing. Mr. Miller then telephoned the School of Dentistry's Human Resources Office to obtain what he believed was the remainder of Ms. Enescu's file. During Mr. Miller's conversation with Minette Ozuna, an employee in the Human Resources Department, Ms. Ozuna stated that there were documents in Ms. Enescu's personnel file that were not included in the packet. Ms. Ozuna then asked Mr. Miller to specify which documents he believed were not included in the packet. Mr. Miller responded that he did not need to specify which documents he wanted. Ms. Ozuna indicated that Human Resources Officer, Susan Fisher would respond to his inquiry. To date, Ms. Fisher has not, responded to Mr, Miller's inquiry.

On May 15, 1998, Mr. Miller faxed a letter to Ms. Fisher, which stated in pertinent part:

> As you know, Article 17 of the UC/AFSCME agreement, which currently sets the terms and conditions of employment for employees in the Clerical Bargaining Unit, entitles employees

> and their representatives to one copy of their entire personnel file.
>
> As I indicated to your staff, the personnel file of Marita Enescu which I received yesterday appears to be incomplete. I would appreciate it if you would review your records and provide me with all material that was not included. Also, please consider this letter an ongoing request for any information not currently in Ms. Enescu's file as it becomes available.

On May 19, 1998, Ms. Fisher responded to Mr. Miller's request stating that some medical information was not released to Mr. Miller, as Ms. Enescu had not signed a release for this information. Under state and federal law, the release of medical information requires specific authorization from the real party in interest.

On May 27, 1998, Ms. Enescu sent the University an authorization letter, which authorized release of her medical records to Mr. Miller. On May 28, 1998, Mr. Miller sent a letter to Ms. Fisher regarding the remainder of Ms. Enescu's personnel file. Mr. Miller further stated that if Ms. Fisher was refusing to release certain documents from Ms. Enescu's file, that the University provide a list of what documents were not being disclosed.

On or about June 1, 1998, Ms. Fisher rescinded Ms. Enescu's layoff notice. On June 12, 1998, Ms. Fisher provided Mr. Miller with the remainder of Ms. Enescu's personnel file, including Ms. Enescu's medical information.

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

Charging Party contends that the University has failed to provide information to the exclusive representative and has retaliated against Ms. Enescu. However, neither allegation states a prima facie case.

I. Request for Information

In Stockton Unified School District (1980) PERB Decision No. 143, PERB relied on federal precedent to conclude that an exclusive representative has a right to all information that is necessary and relevant to the discharge of its duty to represent employees. The employer is obligated to provide this information within a reasonable time period. (Compton Community College District

(1990) PERB Decision No. 790.) Reasonable promptness depends upon the circumstances of the charge. (See also, Colonial Press. Inc. (1973) 204 NLRB No. 126.) For example, in Colonial Press. supra. the NLRB found that the employers two month delay in providing the union with a list of all employees was unreasonable given the circumstances. However, in United Engines. Inc. (1973) 222 NLRB 50, 91, the NLRB found that an employer did not violate the NLRA when it provided most of the information requested within a month of the request and two weeks before bargaining was supposed to start.

In the instant charge, Mr. Miller asserts the University failed to promptly provide the information he requested. Facts provided demonstrate, however, that Mr. Miller received most of the information in Ms. Enescu's personnel file within six working days of his request. Upon receiving authorization from Ms. Enescu to release her medical information, the University provided the remainder of the information ten working days later. Thus, all of the information requested was provided within at most 10 working days of each request. Further, CUE fails to demonstrate why waiting 10 working days to receive the information is unreasonable. Mr. Miller requested the information in conjunction with a grievance he intended to file over Ms. Enescu's layoff notice. On or about June 1, 1998, the University rescinded the layoff notice. As such, it seems CUE was not harmed or prejudiced in any way by waiting 10 days to receive the information. (See, Partee Flooring Mill (1954) 107 NLRB 1177 (15-day delay not unreasonable.) Moreover, most of the information requested by Mr. Miller, and necessary for the grievance, was received in less that seven working days. As such, the allegation fails to state a prima facie case.

II. Discrimination

Charging Party alleges the University discriminated against Ms. Enescu by failing to provide Ms. Enescu's representative with the requested information and by requiring Ms. Enescu to file a medical release form.

To demonstrate a violation of HEERA section 3571(a), the charging party must show that: (1) the employee exercised rights under HEERA; (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.)

Ms. Enescu exercised protected rights by requesting a copy of her personnel file on May 6, 1998. Charging Party contends the University failed to release the information to Mr. Miller and required Ms. Enescu to specifically authorize release of medical information, because Ms. Enescu exercised her right to receive the information. It is unclear whether any adverse action occurred in the instant charge as Ms. Enescu's representative received the information in a timely manner. Further, even assuming the above stated actions constitute "adverse action," facts provided do not demonstrate the amount of time it took to receive the information was elongated based on Ms. Enescu's request through her union representative. As such, the allegation fails to state a prima facie case.

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 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 July 29. 1998. I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney