

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARILEE L. DE LAUER,

Charging Party,

v.

SONOMA VALLEY UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. SF-CE-2268-E

PERB Decision No. 1522

May 13, 2003

Appearance: Marilee L. DeLauer, on her own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Marilee L. DeLauer (DeLauer) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Sonoma Valley Unified School District (SVUSD) violated Educational Employment Relations Act (EERA)¹ section 3543.5(a)² by retaliating against DeLauer for protected activity when it failed to respond promptly to her

¹ EERA is codified at Government Code section 3540 et seq.

² EERA section 3543.5 provides, in pertinent 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.

requests for workers' compensation forms. DeLauer's charge also reported incidents of behavior by SVUSD employees she found objectionable. The charge alleged generally that the SVUSD had retaliated for DeLauer's protected activity of filing PERB charges.

In documents submitted to the Board agent after issuance of a warning letter, DeLauer described incidents involving district employees outside the workplace which she felt were harassing and derogatory. She also asserted that there were deliberate errors in her payroll records.

Shortly after filing the charge in the instant case, DeLauer filed a charge against the California School Employees Association (CSEA) wherein she alleged that CSEA violated its duty of fair representation by failing to help her obtain a leave of absence from SVUSD or assist her in returning to her full-time position after resigning and taking a vacation.³ DeLauer had previously filed charges against the Santa Rosa Junior College District, where she was a student.⁴ She had not previously filed any charges against the SVUSD. The Board agent found that DeLauer's filing of the previous unfair practice charges constituted protected activity under EERA. The Board agent nevertheless dismissed the charge in the instant case on grounds that DeLauer failed to show that SVUSD's alleged conduct constituted "adverse action" or that it was undertaken because of DeLauer's protected activity, both of which are essential to establishing a prima facie case of discrimination for protected activity. (See Novato Unified School District (1982) PERB Decision No. 210.)

³ Case No. SF-CO-608-E; California State Employees Association (DeLauer) (2003) PERB Decision No. 1523.

⁴ See Case No. SF-CE-2258-E, dismissal affirmed in Santa Rosa Junior College (2003) PERB Decision No. 1511; Case No. SF-CO-609-E, dismissed April 26, 2002, no appeal filed.

DE LAUER'S APPEAL

On appeal, DeLauer objects to district representations (of unspecified origin) that she failed to return completed versions of workers' compensation forms provided to her. The Board notes that assertions by the SVUSD personnel regarding the workers' compensation forms would be immaterial to resolution of this case. The Board finds that nothing in DeLauer's submission on appeal cures the defects identified by the Board agent or indicates the Board agent's analysis was erroneous.

DeLauer also submits new, detailed allegations regarding interpersonal incidents with SVUSD personnel and court proceedings she brought against them; describes disputes and conversations regarding her payroll records and compensation; questions the intent behind various actions, statements, and tones used by SVUSD personnel; speculates regarding the party responsible and motivation for suspected tampering with her computer; alleges disparate treatment regarding permission to "ride along" on other drivers' bus routes; and objects to derogatory comments she says were made about her by SVUSD personnel.

PERB Regulation 32635(b)⁵ provides: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." DeLauer has failed to demonstrate good cause to allow presentation of her additional allegations and documents on appeal because none of those materials contain information that she could not have obtained, through reasonable diligence, prior to issuance of the Board agent's dismissal letter. Accordingly, the Board has not considered any new allegations in resolving DeLauer's appeal.

⁵ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Having reviewed the charge and attached documents, supplemental documents submitted to the Board agent, the warning and dismissal letters, and DeLauer's appeal, the Board finds that the warning and dismissal letters are free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-2268-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2519
Telephone: (510) 622-1023
Fax: (510) 622-1027



August 23, 2002

Marilee De Lauer

Re: Marilee De Lauer v. Sonoma Valley Unified School District
Unfair Practice Charge No. SF-CE-2268-E
DISMISSAL LETTER

Dear Ms. De Lauer:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 11, 2002. Marilee De Lauer alleges that the Sonoma Valley Unified School District violated the Educational Employment Relations Act (EERA)¹ by retaliating against her for her participation in protected activities.

I indicated to you in my attached letter dated August 14, 2002, 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 August 21, 2002, the charge would be dismissed. On August 16, 2002, I left you a voicemail message indicating that the office's address had changed.

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 August 14, 2002, letter.

I did receive a voicemail message from you on August 23, 2002 requesting the telephone number of the appeals' office. I returned your call and left that number for you. I also received the attached two-page facsimile from you. It alleges employees of the Copy Store and More are only pretending to fax your documents and indicates Mrs. Braconi, a "third party – Sonoma Valley Unified School District," humiliated you at a Super Bowl party at her home. The information provided does not correct the deficiencies noted in the warning letter. Thus, the charge must be dismissed.

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.

Right to Appeal

Pursuant to PERB Regulations,² 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 or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than 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).)

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).)

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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
Tammy Samset
Regional Attorney

Attachment

cc: Noel J. Shumway

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612
Telephone: (510) 622-1023
Fax: (510) 622-1027



August 14, 2002

Marilee De Lauer

Re: Marilee De Lauer v. Sonoma Valley Unified School District
Unfair Practice Charge No. SF-CE-2268-E
WARNING LETTER

Dear Ms. De Lauer:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 11, 2002. Marilee De Lauer alleges that the Sonoma Valley Unified School District violated the Educational Employment Relations Act (EERA)¹ by retaliating against her for her participation in protected activities. My investigation revealed the following information.

The District employed De Lauer as a permanent full-time bus driver until she resigned. The resignation followed the District's rejection of De Lauer's request for a leave of absence to take a trip to Italy. When De Lauer returned from her trip, the District hired her as a substitute bus driver, but did not return her to her former permanent position. De Lauer filed unfair practice charges against: (a) her exclusive representative, the California School Employees Association; (b) the Santa Rosa Junior College District, where De Lauer is a student; and (c) against the All Faculty Association which represents the faculty at the Santa Rosa Junior College District.² The charge filed against CSEA alleged, in part, that CSEA violated its duty of fair representation by failing to help her obtain her former position. My investigation did not reveal any previous charge filed by De Lauer against the Sonoma Valley Unified School District.

At the end of February or beginning of March 2002, De Lauer requested a worker's compensation claim form from the District. De Lauer apparently did not receive the form at that time. De Lauer later learned that her injury was caused by driving and in April 2002 asked Driver Trainer/Safety Instructor John Hill for a worker compensation form.

On June 7, 2002, De Lauer requested another form from Hill because the one that he had provided to her had been partially completed by another employee. Hill balked at De Lauer's request explaining that he had already given her a form, but agreed to look for another form.

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.

² See unfair practice charges SF-CE-2258-E, SF-CO-608-E, SF-CO-609-E, and SF-CO-613-E.

Hill later told De Lauer she would have to contact her supervisor, Lynn Torizilli to obtain another form. Torizilli refused to give De Lauer a form because De Lauer had not completed an incident report.

On June 10, 2002, De Lauer spoke with the District's Human Resources Administrative Assistant who completed the requisite form and mailed it to De Lauer for her signature. De Lauer has not yet returned the form.

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 (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. (Palo 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.]

De Lauer engaged in protected activity by filing unfair practice charges. However, none of the charges filed by De Lauer were against the Sonoma Valley Unified School District. The charge does not provide facts demonstrating that the District sought to retaliate against De Lauer for her filing of charges against entities other than itself. Additionally, the charge fails to demonstrate the District took adverse action against her. The District provided the requested form to her in April 2002 and then again in June 2002. Even if the charge demonstrated the District took adverse action against De Lauer, the charge does not demonstrate any of the nexus factors. Thus, the charge 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 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 August 21, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney