

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



COALITION OF UNIVERSITY EMPLOYEES,  
LOCAL 6,

Charging Party,

v.

REGENTS OF THE UNIVERSITY OF  
CALIFORNIA,

Respondent.

Case No. SF-CE-786-H

PERB Decision No. 1843-H

May 18, 2006

Appearance: Terrence Ryan, Representative, for Coalition of University Employees, Local 6.  
Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Coalition of University Employees, Local 6 (CUE) of a Board agent's dismissal (attached) of an unfair practice charge. The unfair practice charge alleged that the Regents of the University of California (UC) violated the Higher Education Employer-Employee Relations Act (HEERA)<sup>1</sup> by interfering with Joy Sian's right to union representation in a meeting with her supervisor and failing to timely schedule a subsequent meeting. The unfair practice charge also alleged that UC discriminated against Lakisha Ledward by issuing a "Performance Improvement Notice" and docking her pay. CUE alleged that this conduct constituted a violation of HEERA section 3571.

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<sup>1</sup>HEERA is codified at Government Code section 3560, et seq.

The Board has reviewed the unfair practice charge, the amended unfair practice charge and attached documents, the warning and dismissal letters and CUE's appeal of the dismissal. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

On appeal, CUE presents new charge allegations and new supporting evidence that was not previously presented. PERB Regulation 32635(b)<sup>2</sup> precludes a charging party from raising new allegations or new supporting evidence on appeal without good cause. CUE has failed to demonstrate good cause for the presentation of new allegations and/or supporting evidence on appeal, and nothing in the documents filed related to the appeal indicates there is good cause.

ORDER

The unfair practice charge in Case No. SF-CE-786-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag joined in this Decision.

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<sup>2</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

## PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514  
Telephone: (510) 622-1022  
Fax: (510) 622-1027



March 2, 2006

Terrence Ryan, Union Representative  
Coalition of University Employees, Local 6  
1659 Divisadero St., #2  
San Francisco, CA 94115-3009

Re: Coalition of University Employees v. Regents of the University of California  
Unfair Practice Charge No. SF-CE-786-H; First Amended Charge  
**DISMISSAL LETTER**

Dear Mr. Ryan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 15, 2005. The Coalition of University Employees alleges that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)<sup>1</sup> by interfering with the rights of bargaining unit employees Joy Sian and Lakisha Ledward.

I indicated to you in my attached letter dated February 9, 2006, 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 February 16, 2006, the charge would be dismissed. I later extended this deadline to February 28, 2006.

On February 23, 2006, Charging Party filed a first amended charge. A summary of the facts provided in the original and amended charges are as follows.

On December 2, 2005, Ms. Sian was called into a meeting with acting supervisor Sharon Coleman. Apparently the meeting was called to respond to a patient complaint about Ms. Sian. On that same date, CUE representative Terry Ryan contacted Director Kris Twining to schedule a meeting with Ms. Twining regarding bargaining unit employee Joy Sian. It is unclear whether Mr. Ryan spoke with Ms. Twining or whether he simply left Ms. Twining a message.

In early December 2005, bargaining unit member Lakisha Ledward received a "Performance Improvement Notice" regarding her work conduct. A copy of this notice was not provided with either the amended or original charge. Performance Notices are not considered

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<sup>1</sup>HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at [www.perb.ca.gov](http://www.perb.ca.gov).

"discipline" under the parties collective bargaining agreement, although they may be grieved by the employee or union. Charging Party contends Ms. Ledward is a "union contact" and has filed previous grievances against the University. However, the Charging Party does not provide any specific facts regarding Ms. Ledward's protected activity or the previous grievance, despite my request for such information in the warning letter. On that same day, Ms. Ledward's pay was allegedly "docked" by her supervisor Susan Beaualien as Ms. Ledward left work without authorization to pick up a cake for an office party. The charge indicates Ms. Ledward has had other work performance problems, but did not provide any information regarding these issues.

On December 9, 2005, CUE filed a grievance on behalf of Ms. Ledward and Ms. Sian. On February 7, 2006, the parties met for a level II meeting.

Based on the facts provided in the original and amended charges, the charge still fails to state a prima facie violation of the HEERA, for the reasons provided below.

Although not clear, it appears Charging Party is contending the University discriminated against Ms. Ledward and interfered with Ms. Sian's HEERA rights. Each allegation will be taken in turn.

#### **I. Discrimination against Ms. Ledward**

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 (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.)

Herein, Charging Party contends Ms. Ledward engaged in protected activity by serving as a "union contact" and by filing a grievance against her supervisor. In my February 9, 2006, letter, I informed Charging Party that PERB case law requires a charging party to provide the specifics regarding a charge. However, despite my letter, Charging Party fails to describe Ms. Ledward's protected activity. It is not clear what is meant by "union contact" nor does the charge indicate when Ms. Ledward filed her previous grievance. Moreover, even assuming Charging Party can demonstrate Ms. Ledward engaged in protected activity, the charge still fails to demonstrate the requisite nexus. As it is unclear when Ms. Ledward engaged in her protected activity, the charge does not demonstrate the alleged retaliation was in close temporal proximity to the protected activity. Additionally, the charge is devoid of any other nexus factors. As such, this allegation must be dismissed.

Charging Party also contends Ms. Ledward's pay was unlawfully docked when she left work to pick up a cake for an office party.<sup>2</sup> However, it is not clear why such an action would be unlawful, as the charge does not indicate Ms. Ledward received permission to leave the worksite during office hours. As such, this allegation also fails to state a prima facie case.

• **II. Interference with Ms. Sian's rights**

It appears Charging Party is alleging the University violated Ms. Sian's rights by not allowing her union representation. An employee required to attend an investigatory interview with the employer is entitled to union representation where the employee has a reasonable basis to believe discipline may result from the meeting. PERB adopted the Weingarten<sup>3</sup> rule in Rio Hondo Community College District (1982) PERB Decision No. 260. In order to establish a violation of this right, the charging party must demonstrate: (a) the employee requested representation, (b) for an investigatory meeting, (c) which the employee reasonably believed might result in disciplinary action; and (d) the employer denied the request. (See Redwoods Community College District v. Public Employment Relations Board (1984) 159 Cal.App.3d 617.; Fremont Union High School District (1983) PERB Decision No. 301.)

In Rio Hondo Community College District (1982) PERB Decision No. 260, the Board cited with approval Baton Rouge Water Works Company (1979) 246 NLRB 995, which provided:

the right to representation applies to a disciplinary interview,  
whether labeled as investigatory or not, so long as the interview

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<sup>2</sup> The University contends Ms. Ledward's pay was not docked, and that confirmation of this claim was provided to CUE during the February 7, 2006, grievance meeting.

<sup>3</sup> In National Labor Relations Board v. Weingarten (1975) 420 U.S. 251 (Weingarten), the Court granted employees the right to representation during disciplinary interviews.

in question is not merely for the purpose of informing the employee that he or she is being disciplined.

In approving the Weingarten rule, the U.S. Supreme Court noted with approval that the National Labor Relations Board would not apply it to "such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques." (Weingarten, quoting Quality Manufacturing Co. (1972) 195 NLRB 197, 199 [79 LRRM 1269, 1271].)

Herein, while it appears Ms. Sian met with her acting supervisor on December 2, 2005, the charge does not allege Ms. Sian requested union representation and was denied such representation. Instead, it appears the union is alleging the University failed to schedule a second meeting with Ms. Sian and her union representative until February 2006. Even assuming such facts are true, the allegation does not demonstrate interference with Ms. Sian's rights. As such, this allegation must also be dismissed.

#### Right to Appeal

Pursuant to PERB Regulations,<sup>4</sup> 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. (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

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<sup>4</sup> PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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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).)

#### 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  
Kristin L. Rosi  
Regional Attorney

Attachment

cc: Therese Leone  
Steve Weglarz

## PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514  
Telephone: (510) 622-1022  
Fax: (510) 622-1027



February 9, 2006

Terrence Ryan, Union Representative  
Coalition of University Employees, Local 6  
1659 Divisadero St., #2  
San Francisco, CA 94115-3009

Re: Coalition of University Employees v. Regents of the University of California  
Unfair Practice Charge No. SF-CE-786-H  
**WARNING LETTER**

Dear Mr. Ryan:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 15, 2005. The Coalition of University Employees alleges that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act (HEERA)<sup>1</sup> by interfering with the rights of bargaining unit employees Joy Sian and Lakisha Ledward.

Investigation of the charge revealed the following. CUE is the exclusive bargaining representative for the University's Clerical employees. The University and CUE are parties to a collective bargaining agreement that expired on September 30, 2004. The parties are currently negotiating for a successor agreement. Ms. Sian and Ms. Ledward are employed as clerical staff at the University's San Francisco campus.

On some unspecified date, CUE representative Terry Ryan contacted Director Kris Twining to schedule a meeting with Ms. Twining regarding bargaining unit employee Joy Sian. It is unclear whether Mr. Ryan spoke with Ms. Twining or whether he simply left Ms. Twining a message. Shortly after Mr. Ryan contacted Ms. Twining, Ms. Sian was called into a meeting with unnamed supervisors.

On some unspecified date, bargaining unit member Lakisha Ledward received a "Performance Improvement Notice" regarding her work conduct. A copy of this notice was not provided with the charge. On that same day, Ms. Ledward's pay was "docked" by her supervisor Susan Beaualien as Ms. Ledward left work without authorization to pick up a cake for an office party. The charge indicates Ms. Ledward has had other work performance problems, but did not provide any information regarding these issues.

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<sup>1</sup>HEERA is codified at Government Code section 3560 et seq. The text of the HEERA and the Board's Regulations may be found on the Internet at [www.perb.ca.gov](http://www.perb.ca.gov).



On December 8, 2005, Ms. Twining sent an electronic mail message to UCSF Labor Relations Director Judy Frates. The message indicates that Ms. Twining met with Ms. Sian and that Ms. Sian did not request union representation and did not object to the meeting. The charge does not indicate whether Ms. Sian requested union representation during the meeting and what response she received.

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

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

Herein, the charge is devoid of any relevant dates and fails to provide information pertaining to each of its allegations. With regard to Ms. Ledward, the charge provides only the information stated above and does not explain what University conduct allegedly violates the HEERA. With regard to Ms. Sian, the charge merely indicates that on some date a meeting was held. It is not clear whether Ms. Sian requested union representation at this meeting. Without such information, it is impossible for PERB to determine whether a violation has occurred.

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 February 16, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi  
Regional Attorney

KLR