

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANGELA M. ESTACIO,

Charging Party,

v.

MODESTO CITY SCHOOL DISTRICT,

Respondent.

Case No. SA-CE-2291-E

PERB Decision No. 1873

December 29, 2006

Appearances: Angela M. Estacio, on her own behalf; Atkinson, Andelson, Loya, Ruud & Romo by Roman J. Munoz, Attorney, for Modesto City School District.

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (Board) on appeal by Angela M. Estacio (Estacio) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that Modesto City School District (District) violated the Educational Employment Relations Act (EERA)¹ section 3543.5(a) and (b). The Board agent dismissed the instant charge because it was filed outside the six-month statute of limitations under EERA.

The Board has reviewed the entire record in this case, including, but not limited to, the unfair practice charge, the amended unfair practice charge, the District's position statement, the warning and dismissal letters, Estacio's appeal letter, and the District's opposition to the appeal. Based on this review, the Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. SA-CE-2291-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377



July 25, 2005

Angela M. Estacio

Re: Angela M. Estacio v. Modesto City School District
Unfair Practice Charge No. SA-CE-2291-E
DISMISSAL LETTER

Dear Ms. Estacio:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 9, 2005. Angela M. Estacio alleges that the Modesto City School District violated the Educational Employment Relations Act (EERA)¹ by discriminating against Ms. Estacio by terminating her.

On June 24, 2005, General Counsel Robert Thompson indicated to you in the attached letter 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 6, 2005, the charge would be dismissed. Your request for an extension of time was granted and a First Amended Charge was filed on July 14, 2005.

Discussion

In his June 24, 2005 letter, Mr. Thompson concluded that your charge was filed outside the six months statute of limitations under EERA, and thus was untimely. Mr. Thompson further concluded that, even if timely, the charge failed to allege a prima facie discrimination violation.

The First Amended Charge focuses primarily on an attempt to establish the necessary elements of a discrimination violation. With respect to the statute of limitations problem, the amended charge includes the following:

While Modesto City Schools contends that Mrs. Estacio filed late, she was unable because of her union. CSEA had filed with PERB and refused to work with her to present a proper case.

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.

Mrs. Estacio understood that she could not file until CSEA had withdrawn from representing her.

The Board has long held that lack of knowledge about PERB, the laws it enforces, and a charging party's rights under those laws does not toll the statute of limitations period. (Val Verde Unified School District (1998) PERB Decision No. 1256; Val Verde Teachers Association, CTA/NEA (Twyman) (1998) PERB Decision No. 1257; State of California (Department of Corrections) (1999) PERB Decision No. 1366-S; Trustees of the California State University (1999) PERB Decision No. 1367-H.) It is not a charging party's knowledge of the law or his/her rights that starts the statute of limitations period; rather, it is knowledge of the complained-of conduct. (Orange Unified Education Association, CTA (Rossmann, et al.) (1999) PERB Decision No. 1307.)

Thus, even assuming arguendo that the allegations added by the First Amended Charge cure the deficiencies regarding the discrimination violation, the charge is still untimely and PERB is prohibited under EERA section 3541.5(a)(1) from issuing a complaint.

Therefore, I am dismissing the charge based on the facts and reasons set forth above as well as those contained in the June 24, 2005 letter.

Right to Appeal

Pursuant to PERB 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. (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

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 _____
Les Chisholm
Regional Director

Attachment

cc: Roman J. Muñoz

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
Fax: (916) 327-6377



June 24, 2005

Angela M. Estacio

Re: Angela M. Estacio v. Modesto City School District
Unfair Practice Charge No. SA-CE-2291-E
WARNING LETTER

Dear Ms. Estacio:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 9, 2005. Angela M. Estacio alleges that the Modesto City School District violated the Educational Employment Relations Act (EERA)¹ by discriminating against Ms. Estacio by terminating her.

Ms. Estacio was terminated on April 6, 2004 after having worked as a District bus driver for approximately seven years.² In April 2001, Ms. Estacio was reprimanded for unsafe backing of her bus which caused an accident with another school bus. In October 2001, she was suspended for two days without pay for unspecified misconduct. In April 2002, she received a written reprimand regarding an incident during which she refused to perform duties assigned to her.

On June 24, 2003, Ms. Estacio filed a grievance against her supervisors Alice Quayle, Supervisor of Transportation and Kathryn Powell, Dispatch Supervisor alleging harassment, unfair treatment and a violation of the agreement provision regarding assignment of summer routes. The grievance asserted that assignment of the new route was vindictive on the two supervisors' parts and punishment for Ms. Estacio's earlier questions regarding the route assignments.

On July 16, 2003, Becky Meredith, Director of Planning and Research, met with Linda Norman, CSEA Labor Relations Representative, and Ms. Estacio. Mrs. Meredith requested more time to research the issue and Ms. Norman agreed. On July 21, they met again with

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 Some of the information contained in this letter was obtained during the investigation of CSEA v. Modesto City School District, unfair practice charge number SA-CE-2248-E and Angela Estacio and Juan Martinez v. California School Employees Association, unfair practice charge number SA-CO-503-E.

Alice Quayle, Supervisor of Transportation. Management asserted that Ms. Estacio was a bad employee but did not address why an assignment was given to Bonnie Mellor, CSEA job steward, an employee with less seniority than Ms. Estacio. After the July 16 meeting, Mrs. Meredith and Ms. Quayle began soliciting statements from employees that Ms. Estacio was a threat. Employees who would benefit monetarily or through favoritism submitted such statements.

On July 22, 2003, Mrs. Meredith denied the grievance. Ms. Meredith asserted that "I can find no basis, other than the Department's need to efficiently accommodate student transportation, that stops were added to summer route #66." As to Ms. Estacio's allegation that she was working fewer hours than lower seniority drivers who were given routes which she could have accepted, Ms. Meredith replied that "your supervisors attempted to accommodate your concerns by assigning you summer route #66 after you voiced your displeasure at driving route #9."

On August 15, Mr. Mello, Associate Superintendent for Personnel Services, denied the grievance.

The District school buses are equipped with cameras and VCRs to record conduct on the buses. After some problems, the District limited access to the recorded tapes to certain employees. Ms. Estacio was given a time limit in which to observe a video tape from her bus. No one else had a time limit. On August 15, 2003, Ms. Estacio asked her husband, a mechanic, to remove a videotape from a bus without authorization from a supervisor as required by written policy. When confronted, she admitted that she had tapes improperly removed several times prior.

On August 15, 2003, she completed her pre-driving inspection without reporting any damages to her bus. However later that day the bus had a 12 inch dent in its side. Katie Powell, Dispatcher/Supervisor, directed Ms. Estacio to fill out an accident report. Despite several requests to her to provide a written statement regarding the damage as required by district policy, she took more than 25 days to provide such a statement.

On August 20, 2003, Mr. Mello ended a meeting with Ms. Meredith, Ms. Estacio, and Ms. Norman after Ms. Estacio continued efforts to discuss her grievance in spite of Mr. Mello advising her that the purpose of the meeting was not to discuss her grievance but rather to address the other drivers' perceptions of Ms. Estacio's displays of anger. Mr. Mello would not accept a package of witness statements refuting management's theory that Ms. Estacio was a threat to other employees.

On August 27, 2003, CSEA requested the grievance be advanced to Step III, arbitration, but indicated that CSEA would not represent Ms. Estacio in the arbitration. On September 8, Mr. Mello wrote to CSEA stating that the District would not proceed to arbitration unless and until it received notification that CSEA would represent Ms. Estacio in the arbitration. The District did not receive a response.

On September 2, 2003, Ms. Estacio reported 1/4 hour of overtime which she did not work. Between September 2 and September 18, 2003, Ms. Estacio reported 10 occasions of overtime although she had been told previously not to work overtime. On September 5, 2003, Ms. Quayle rode along with Ms. Estacio during her morning route. Her need to work overtime to complete her bus route was inconsistent with the time required by substitute drivers to complete her route. On September 18, 2003, Ms. Powell accompanied Ms. Estacio on her bus route and noted that she drove well under safe posted speed limits and made unnecessary stops. Although the morning and afternoon routes ran late, only one change was suggested. However, it was never incorporated into the route.

Ms. Estacio was placed on paid administrative leave on September 19, 2003. The District memorandum stated that there were concerns that needed to be investigated such as her failures to drive in a safe manner, report an accident, comply with Transportation guidelines, work in a cooperative manner with other employees, her unprofessional conduct directed at District employees and threatening and/or taking retaliatory action against the other employees. The letter advised her that she was to be available at home and that she was not to contact anyone at work during the work day.

After being directed to immediately leave District property and go directly home, Ms. Estacio went to the break room, filled out required paperwork, went to the mechanic shop, went to her bus and then left school property.

On September 23, 2003, Ms. Estacio contacted Ms. Powell advising her that she was going to visit her sister in the hospital and that she could be reached by cell phone. Ms. Meredith asked for verification from her sister's physician that would explain the necessity of Ms. Estacio visiting the hospital. Ms. Estacio did not respond to the request, nor did she respond to two subsequent letters. Ms. Norman advised Ms. Estacio that she did not have to be confined to her home during the administrative leave. On October 14, 2003, CSEA representative Linda Norman, acting on behalf of Ms. Estacio, sent a letter to the District refusing to provide the information and disputing the District's right to even ask for this information. The District never received an explanation.

Mr. Mello via letter of November 10 advised Ms. Estacio that he would recommend to the Modesto City School's Board of Education that she be dismissed as a classified employee from the District. On November 19, 2003, Ms. Estacio was notified that the Board had received the recommendation that she be dismissed.

In February 2004, after an evidentiary hearing before Administrative Law Judge Leonard Scott, a proposed decision was issued which sustained the termination of Ms. Estacio and denied her appeal of the same. All the witnesses who testified on behalf of the District received special treatment or monetary compensation. The findings were that Ms. Estacio was involved in a number of instances which subjected her to discipline: she removed a videotape from the bus which she operated without the required authorization from her supervisor, she failed to report damage to her bus which must have occurred while the bus was in her possession, and when her supervisor, Kathryn Powell directed her to make a statement, Ms.

Estacio failed and refused to provide the required written statement in a timely manner. Ms. Estacio also falsely claimed overtime hours which she had not earned, without the pre-approval required. On April 6, 2004, the District Board of Trustees adopted ALJ Scott's decision and terminated Ms. Estacio.

On June 25, 2004, the California School Employees Association filed an unfair practice charge alleging the Ms. Estacio had been unlawfully terminated.³ The charge was amended on November 12, 2004. On November 29, 2004 the undersigned issued a dismissal letter in that case. CSEA did not appeal the dismissal. On December 17, 2004, PERB denied Ms. Estacio's attempts to file an appeal or request an extension of time.

This charge was filed on February 9, 2005. On March 9, 2005, the District responded to the charge arguing that the charge was untimely.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The statute of limitations is an affirmative defense which has been raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party now bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

This charge was filed on February 9, 2005 more than 10 months following the date of termination. Although PERB recognizes the doctrine of equitable tolling,⁴ it applies only when a party has extended the filing period by using a bilaterally agreed-upon dispute resolution procedure. There is no evidence in this case that such a procedure was used to challenge Ms. Estacio's termination. Thus, the charge is untimely and must be dismissed.

Even if the charge were timely filed, it fails to state a prima facie case of discrimination.

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.)

³ Unfair practice charge number SA-CE-2248-E.

⁴ Long Beach Community College District (2003) PERB Decision No. 1564.

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.)

Although Ms. Estacio engaged in protected activity known to the District and the District imposed an adverse action, there is no information that the termination was caused by Ms. Estacio's protected conduct.

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 July 6, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson
General Counsel