STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ROY ALBERT SCHULZ,	)	
	)	
Charging Party,	)	Case No. LA-CE-4008
	)	
v.	)	PERB Decision No. 1331
	)	
PASADENA UNIFIED SCHOOL DISTRICT,	)	May 13, 1999
	)	
Respondent.	)	
	)	

Appearances: Roy Albert Schulz, on his own behalf; Parker, Covert & Chidester by Cathie L. Fields, Attorney, for Pasadena Unified School District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Roy Albert Schulz (Schulz) of a Board agent's dismissal (attached) of his unfair practice charge. In his charge, Schulz alleged that the Pasadena Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] by

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[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, 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.

discriminating against him for his participation in protected activities.

The Board has reviewed the entire record in this case, including the unfair practice charge, the Board agent's warning and dismissal letters, Schulz's appeal and the District's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-4008 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

March 16, 1999

Roy Albert Schulz
20 South Grand Oaks Avenue #4
Pasadena, CA 91107

Re: Roy Albert Schulz v. Pasadena Unified School District
Unfair Practice Charge No. LA-CE-4008
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Mr. Schulz:

I indicated to you, in my attached letter dated March 5, 1999, 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 March 12, 1999, the charge would be dismissed.

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 March 4, 1999 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, 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. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 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 Cal. Code Regs., tit.8, sec. 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. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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 (2 0) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By Tammy Samsel
Tammy L. Samsel
Regional Director

Attachment

cc: Cathie L. Fields

PUBLIC EMPLOYMENT RELATIONS BOARD

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

March 5, 1999

Roy Albert Schulz
2 0 South Grand Oaks Avenue #4
Pasadena, CA 91107

Re: Roy Albert Schulz v. Pasadena Unified School District
Unfair Practice Charge No. LA-CE-4008
WARNING LETTER

Dear Mr. Schulz:

In the above-referenced charge Roy Albert Schulz alleges the Pasadena Unified School District (PUSD or District) violated the Educational Employment Relations Act (EERA or Act) § 3543.5(a) by discriminating against him for his participation in protected activities. My investigation revealed the following information.

Schulz was a substitute teacher within the District. Schulz also served as the President of the Pasadena Area Substitute Teachers Association (PASTA). PASTA is a non-exclusive representative seeking exclusive representative status. On March 16, 1998, Schulz represented PASTA in formal discussions with the District regarding substitute assignment procedures. Schulz also addressed the Board of Education regarding similar issues.

On April 22, 1998, Schulz was a substitute for Sharon Nicholls' class. Upon her return, the students reported that Schulz had used racially derogatory language when describing the students. On April 27, 1998, Nicholls wrote to Principal Susan Ballantyne reporting the incident. On April 27, 1998, Ballantyne forwarded the letter to Assistant Superintendent, Marietta Palmer, and requested Schulz not be assigned to substitute at the Marshall School. On May 6, 1998, Principal Richard Boccia filed an incident report against Schulz when a student and a witness alleged Schulz had kicked the student.

On May 13, 1998, and May 26, 1998, Schulz and his representative Warren Fletcher met with Palmer. Palmer asked Schulz to respond to the above-cited reports. Schulz refused to respond to the reports and requested copies of the students' statements. Palmer refused to provide the students' statements and requested that Schulz respond to the statements of the adults. Schulz refused. On May 27, 1998, Schulz filed a written response to the allegations without the benefit of seeing the students' statements.

On May 27, 1998, Palmer removed Schulz from its substitute teacher list and sent him a letter discontinuing his service with the District.

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

To demonstrate a violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other facts which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.)

In the instant charge Schulz engaged in protected activities when he served as the President of PASTA. On March 16, 1998, Schulz represented PASTA in formal discussions with the District. The District acknowledges it had actual knowledge of Schulz' protected activities. Schulz' termination on May 27, 1998, is close in time to his protected activities as the PASTA President. However, timing alone is insufficient. (Moreland Elementary School District, supra.)

In addition to timing, the charge makes three arguments in support of nexus: (1) the District departed from established procedures by failing to allow him to see the students'

statements; (2) the District departed from established procedures by failing to give him a copy of a substantiated child abuse report; and (3) the District gave him vague and ambiguous reasons for his termination. Each of these arguments is addressed separately below.

The charge alleges that the District departed from procedures by refusing to allow Schulz to view the children's statements. The charge alleges the District departed from PUSD Board Policy 4112.6 which gives employees the right to inspect and respond to materials in their personnel files. However, the charge fails to provide facts indicating there are any documents in Schulz' personnel file which Schulz has not been given permission to view. The charge does not provide facts indicating the students' statements are in Schulz' personnel file. Moreover, the District provided the written statements of the teacher and the principals. Thus, the charge does not factually demonstrate the District departed from established procedures.

The charge also alleges the District departed from established procedures by failing to provide Schulz with a copy of a child abuse report. The charge indicates that PUSD Administrative Regulation 5141.4 requires compliance with the law regarding the reporting of suspected child abuse. The charge alleges:

> The Child Abuse and Neglect Reporting Act requires that suspected abuse by a school employee be investigated by a child protective agency. Penal Code Section 11165.14, part of that Act, requires that the child protective agency determine whether the report of child abuse is "substantiated," and that a substantiated report of child abuse be available for employee review and response under the provisions of the Education Code Section 44031. If the allegation is substantiated, PUSD violated its own policy and state law by refusing to make the report available to Schulz. If the allegation is not substantiated, Schulz was terminated based on a child abuse report that was "unfounded" or "unsubstantiated" as those terms are defined in the Penal Code.

The above-stated argument does not factually demonstrate the requisite nexus. The charge indicates the District departed from procedures by failing to provide Schulz with a copy of a substantiated child abuse report, but fails to provide facts indicating a substantiated child abuse report exists. Since the charge does not factually demonstrate a substantiated child abuse

report exists, it does not appear the District departed from established procedures when it failed to provide Schulz with a copy of the report.

To the extent that the charge is alleging that the District departed from established procedures because there was not a report substantiating that Schulz kicked the student, it is also without merit. The lack of a substantiated child abuse report is not indicative of nexus. The District did not justify Schulz' termination on his alleged kicking of a student, but on Schulz' refusal to answer questions regarding two complaints against him. Thus, whether the students' complaints were true is not at issue. The lack of a substantiated child abuse report does not demonstrate that the District's actions were retaliatory. Thus, this allegation fails to support a finding of nexus.

The final allegation in support of nexus, is that the District justified Schulz' termination with vague and ambiguous reasons. However, both the May 26, 1998 and June 3, 1998, letters to Schulz' representative, Fletcher provide specific reasons for Schulz' termination. The May 26, 1998, letter provides, in pertinent part:

> During the meeting of May 13, 1998, and again on May 26, Mr. Schulz refused to provide a response to the inquiry by stating that he wanted copies of the students' statements. On each occasion, I presented him with the statements of the principals and of the teacher. He was asked to respond to the statements of the adults.
>
> . . . . . .
>
> I believe that Mr. Schulz's refusal to respond is an act of insubordination designed to circumvent the District's obligation and responsibility to conduct an investigation into allegations of wrongdoing. In addition, the District provided Mr. Schulz with three opportunities to respond: verbally during the May 13, 1998, meeting; verbally during the May 26, 1998, meeting; and in written form during the interim.

The June 3, 1998, letter indicates in pertinent part:

> Mr. Schulz demonstrated absolute insubordination by refusing to respond to

> employer inquiries related to the performance of his duties.

The above-quoted letters provide specific reasons for the District's action. The charge does not factually demonstrate that the District provided vague and ambiguous reasons for its action. Thus, the charge fails to demonstrate the requisite nexus and must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The 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 March 14, 1999, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

TAMMY L. SAMSEL
Regional Director