

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ELIZABETH I. BADDOUR,)	
)	
Charging Party,)	Case No. LA-CE-1986
)	
v.)	PERB Decision No. 631
)	
SAN DIEGO UNIFIED SCHOOL DISTRICT,)	August 18, 1987
)	
Respondent.)	

Appearances: Phin & de la Flor by George L. de la Flor, for Elizabeth I. Baddour; Jose A. Gonzales, Assistant General Counsel, for San Diego Unified School District.

Before Hesse, Chairperson; Shank and Cordoba, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the San Diego Unified School District (Respondent or District) to the proposed decision of the PERB administrative law judge (ALJ). The ALJ found that the District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ when it terminated Elizabeth I. Baddour (Charging Party) from

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 provides, in pertinent part, as follows:

It shall be unlawful for a public school

the position of school bus driver by denying her representation at three evaluation sessions and by dismissing her in reprisal for her participation in protected activities.

The ALJ summarily disposed of the District's preliminary motion to dismiss that was based upon the doctrine of collateral estoppel. We are remanding this case for further hearing on that issue for reasons which follow.

FACTS

On August 4, 1983, Charging Party was served with a notice of intention to dismiss her from the district, together with a copy of the charges in support thereof. Charging Party requested a hearing to contest the dismissal charges. The hearing, which lasted fourteen days, commenced on September 27, 1983, and concluded on November 5, 1983. Charging Party was represented by counsel at that hearing. On November 7, 1983, the hearing officer issued his decision upholding Charging Party's termination.

On May 17, 1984, Charging Party filed an unfair practice charge with the Public Employment Relations Board. A complaint

employer to:

(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.

issued and a hearing, consisting of eleven days, was conducted before the ALJ between November 27, 1984, and January 2, 1985.

At the inception of the hearing, the District moved to dismiss the unfair practice charge on the ground that the Charging Party was collaterally estopped from relitigating the issue of whether or not she was denied representation and dismissed in reprisal for participating in protected activities. Respondent argued that, in the hearing held before the civil service commission for the District and under the Merit System Rules (Respondent's Exhibit Q), the very issues now being litigated before PERB were raised as affirmative defenses and fully litigated, and the findings and decision of the hearing officer (Respondent's Exhibit E) were conclusive.- The

²The "Findings and Decision of the Hearing in the Matter of Dismissal of Ms. Elizabeth Baddour from Employment with the San Diego Unified School District" were, in pertinent part, as follows:

10. The allegation that a conspiracy was in place to "get rid" of the Employee was not supported by credible evidence. Rather, the District was acting in a reasonable manner of preparing documentation consistent within due process prior to exercising discretion to discharge the Employee.

11. Harassment of the Employee was not proven. The circumstances brought out by the Employee related to supervisory practices which were reasonable but not to the liking of the Employee.

12. The allegation of retaliation by the District against the Employee was not

District's motion based on collateral estoppel was denied at that time, but the District renewed the motion at the end of Charging Party's presentation and it was again denied. The District, inter alia, excepted to the ALJ's summary dismissal of its motion.³

DISCUSSION

In State of California (Department of Developmental Services) (1987) PERB Decision No. 619-S, the Board held the

proven. Evidence of prior complaints by the Employee was not linked to the substances of the dismissal of the Employee.

13. Allegations of unequal treatment or being singled out were not proven because fact patterns presented were not similar to those in this instance.

.

15. Due process was afforded the Employee throughout the Employee's work history. The Employee sought to define Collective Bargaining provisions and Merit System Rules in a manner convenient to the Employee for the purpose of justifying the Employee's conduct of failure to follow reasonable rules.

16. The Employee's claim that the District was exercising this dismissal action due to the Employee's exercise of personal rights was without merit. The Employee sought to exercise personal rights and such exercise became wrongful when such exercise interfered with the rights of fellow employees and the District's authority.

³The District also excepted to the ALJ's proposed decision on its merits. For the reasons which are explained below, we need not address those exceptions.

Charging Party was collaterally estopped from relitigating the issue of reprisal against a state employee for union activity where the issue had been raised and the parties had a full opportunity to litigate the issue in a disciplinary hearing before the State Personnel Board. The seminal precedent upon which the Board relied in State of California (Department of Developmental Services), supra, is People v. Sims (1982) 32 Cal.3d 468, 477 [186 Cal.Rptr. 77]. In Sims, the California Supreme Court held that the theory of collateral estoppel barred the people of the State of California from proceeding with criminal proceedings for alleged welfare fraud because in a hearing before the State Department of Social Services involving the same issue the defendant in Sims was exonerated of any wrongdoing:

In State of California (Department of Developmental Services), supra, Decision No. 619-S, the Board, by adopting the proposed decision of the ALJ, said:

Collateral estoppel traditionally has barred relitigation of an issue if (1) the issue is identical to one necessarily decided at a previous proceeding; "(2) the previous [proceeding] resulted in a final judgment on the merits; and (3) the party against whom collateral estoppel is asserted was a party or in privity with a party at the prior [proceeding]" People v. Sims, supra, 32 Cal.3d at p. 484" (citations omitted).

For cases involving the collateral estoppel effect of administrative decisions, the California Supreme Court in People v. Sims, supra, adopted the standards formulated by the United States Supreme Court in United

States v. Utah Constr. & Min. Co. (1966) 384 U.S. 394 [16 L.Ed.2d 642, 86 S.Ct. 1545]. There, the United States Supreme Court stated: "When an administrative agency is acting in a judicial capacity and resolved disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate, the courts have not hesitated to enforce repose." (Id., at p. 422.) Thus, collateral estoppel effect will be granted to an administrative decision made by an agency (1) acting in a judicial capacity, (2) to resolve properly raised disputed issues of fact where (3) the parties had a full opportunity to litigate those issues. (Id., at pp. 14-15.)

In Kern County Office of Education (1987) PERB Decision No. 630, though decided on other grounds, the Board reaffirmed the applicability of the doctrine of collateral estoppel. Kern involved a local school district where, as here, a hearing was held and a decision rendered by a personnel commission before a charge of a violation under EERA was filed with PERB:

We find the District's preliminary motion made on the first day of hearing before PERB to have been sufficient to raise the issue of collateral estoppel to the ALJ. We note that the ALJ's findings of fact and conclusions of law fail to mention the findings and decision of the San Diego Civil Service Commission.

Based on the above analysis, we hold that the ALJ was bound to consider the San Diego Civil Service Commission's prior determination on the issue of Charging Party's claimed denial of the right to representation and separation based on reprisal to determine what, if any, effect collateral estoppel would

have on this proceeding before PERB. Since we have concluded that the ALJ was bound to give due consideration to the San Diego Civil Service Commission's prior finding, we need not address the remaining issues raised in the District's exceptions.

CONCLUSION

We conclude that, with regard to the issue of collateral estoppel, the ALJ did not provide the parties an opportunity to make a complete presentation to determine if all elements of collateral estoppel, consistent with this opinion, were present so that an informed ruling could be made.

ORDER

Based upon the foregoing findings of fact and conclusions of law, this case is remanded for further hearing on the issue of the applicability of collateral estoppel to this proceeding.

Chairperson Hesse and Member Cordoba joined in this Decision.