

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGETTE BRADLEY, )  
 )  
 Charging Party, ) Case No. LA-CE-130-H  
 )  
 v. ) PERB Decision No. 641-H  
 )  
 CALIFORNIA STATE UNIVERSITY, ) December 11, 1987  
 LONG BEACH, )  
 )  
 Respondent. )  
 \_\_\_\_\_ )

Appearances: Georgette Bradley, on her own behalf.  
Before Hesse, Chairperson; Porter and Cordoba, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board on exceptions filed by Georgette Bradley, charging party, to the attached proposed decision dismissing each of several allegations that the California State University at Long Beach, respondent, violated section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA)<sup>1</sup> by denying her an annual merit salary adjustment, issuing a negative performance evaluation, refusing to provide job accommodations for certain physical limitations, and placing her on involuntary disability leave.

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<sup>1</sup>HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

We find charging party's exceptions to be without merit and adopt the administrative law judge's (ALJ) findings of fact and conclusions of law as our own. However, we find it necessary to briefly comment on the ALJ's findings with respect to charging party's protected activity.

#### DISCUSSION

The ALJ concluded that charging party demonstrated participation in protected activity by virtue of her filing grievances and her request for and attendance at specific meetings with union representatives. In addition, the ALJ found that certain correspondence authored by charging party contained the name of a union representative among those provided a "carbon copy." In his view, this evidence presented a "likelihood" that charging party would seek union assistance, thereby further demonstrating protected activity.

We affirm the ALJ's conclusion insofar as charging party's grievances and specific request for union assistance and attendance at meetings with a union representative sufficiently established involvement in protected activity. However, we do not find that merely including a union representative's name among those provided a copy of correspondence ipso facto constitutes protected conduct or, without more, establishes an intent to solicit union assistance. Whether such conduct may be characterized as protected activity depends entirely upon the context in which it occurs and must be resolved on a case-by-case basis.

ORDER

Based upon the entire record in this case, the unfair practice charge in Case No. LA-CE-130-H is hereby DISMISSED.

Member Cordoba joined in this Decision.

PORTER, Member, concurring: I concur in the dismissal of the unfair practice charge.

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGETTE BRADLEY, )  
 )  
Charging Party, ) Case No. LA-CE-130-H  
 )  
v. )  
 )  
CALIFORNIA STATE UNIVERSITY ) PROPOSED DECISION  
(LONG BEACH), ) (8/06/86)  
 )  
Respondent. )  
\_\_\_\_\_ )

Appearances: Anthony Wayne and Georgette Bradley, for the Charging Party; William B. Haughton for California State University (Long Beach).

Before: Martin Fassler, Administrative Law Judge

INTRODUCTION AND PROCEDURAL HISTORY

Georgette Bradley worked at the Long Beach campus of California State University (University or CSU) for several years, as a "re-entry admissions co-ordinator," recruiting and advising potential students who were older than typical college students. Bradley alleges here that two of her supervisors discriminated against her in several ways because she was associated with and assisted by a union, United Professors of California (UPC), and because she filed grievances pursuant to the UPC's contract with the University. Among the actions which Bradley challenges on this basis are the denial of a merit salary increase and imposition of an involuntary disability leave.

Bradley's charge was filed May 9, 1985. A complaint was issued July 9, 1985, alleging that four of the respondent's

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This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

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actions were discriminatory, and therefore unlawful within the meaning of Government Code Section 3571(a).<sup>1</sup> The four allegedly unlawful actions were:

1. In or about August, 1984, respondent denied Bradley an annual merit salary adjustment.

2. In or about March, 1985, respondent rated Bradley "Needs Improvement" in an evaluation prepared by Bradley's supervisor.

3. At unstated times from 1984 until the time of the issuance of the complaint, the respondent had refused and failed to revise Bradley's job description to accommodate certain physical limitations suffered by Bradley.

4. In May, 1985, the respondent had placed Bradley on an involuntary disability leave.

Respondent filed a timely answer admitting certain factual allegations and denying others and denying that it had acted

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<sup>1</sup>Government Code Section 3571 states that it is unlawful for a higher education 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.

Section 3571 is part of the Higher Education Employer-Employee Relations Act (HEERA), which is codified at Government Code Sections 3560 et. seq. All references hereafter are to Government Code sections, unless otherwise stated.

unlawfully in any way. These will be considered in detail as appropriate in the Findings of Fact portion of this Proposed Decision.

After several unsuccessful efforts to settle the dispute, a hearing was held in Long Beach on March 4, 5, 6, and 12, 1986. The case was submitted on June 23, when each of the parties submitted a post-hearing brief.

#### FINDINGS OF FACT

##### A. The Administrative Setting

Glendon Drake is the Long Beach campus vice president for academic affairs. Chuck LePard is assistant vice president for academic affairs, also known as assistant vice president for student academic services. He oversees the work of four different offices: the Center for Continuing Education for Women (CCEW); the Office of School Relations; and two other offices not relevant here.

The director of the CCEW throughout the relevant time period was Marilyn Gottschall. The Office of School Relations is directed by Mary Crandall. Two assistant directors work under Crandall and for a time Bradley was also assigned to Crandall's office.

Bradley was classified by the University as a student affairs assistant I (SAA I). This is the lowest-ranking (in pay and responsibility) of a four-step chain which includes

student affairs assistant II, III, and IV.<sup>2</sup> Bradley was the only SAA I working under LePard's general supervision. Prior to the events at issue here, Bradley had received three annual merit pay increases during the time she worked at CSU. At the time of the events here, she was at the second-highest step on the SAA I pay scale. She had never been denied an annual pay increase, prior to the events at issue here.

B. Bradley's Re-Assignments

For several years prior to 1982, Bradley worked as a re-entry counselor/advisor or co-ordinator in a counseling center at the University's Long Beach campus (CSULB). Her job included efforts to publicize the campus's services to potential "re-entry" students, and to advise prospective and newly enrolled students about the programs available on campus. The publicity or "outreach" work included telephone calls, distribution of written material, and attending and organizing meetings known as "workshops." (Transcript, Vol. II, pages 2-7)<sup>3</sup>

In July, 1982, Bradley and her "re-entry" work were

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<sup>2</sup>The collective bargaining agreement between UPC and the University indicates that the University also has positions known as supervising students affairs assistant II, III and IV, and student affairs officer III, IV, and V, all of these positions being higher paid than student affairs assistant I.

<sup>3</sup>Hereafter, references to the hearing transcript will take the form "TR:\_\_\_\_,\_\_\_\_, with the volume number indicated by a Roman number, and the page number indicated by an Arabic number.

re-assigned to the Center for Continuing Education for Women. Bradley was given the title associate director of CCEW, and was apparently given certain responsibilities in addition to her re-entry work, although these were not described during the hearing.<sup>4</sup>

Bradley was apparently dissatisfied with some of the work assigned to her within the CCEW, and made efforts to have her assignment changed. Professor Donna Boutell, a history teacher and a steward for UPC, met with Bradley, LePard and Gottschall once and perhaps twice during the summer of 1983 in an effort to assist Bradley in this quest.<sup>5</sup> (TR: IV, 120-121) That same summer, Raphael Hanson, then president of UPC, also joined Bradley for a meeting with LePard and Gottschall, at which the subject was Bradley's duties at CCEW.<sup>6</sup>

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<sup>4</sup>A letter sent to Bradley in July, 1983, informs Bradley of the change of title of her position, and refers to elimination of the additional responsibilities, although these are not spelled out. (Respondent's Exhibit 9.) Hereafter Respondent's exhibits will be referred to as RX\_\_\_\_, with the number inserted after the abbreviation RX. Charging party exhibits will be referred as CPX\_\_\_\_\_.

<sup>5</sup>United Professors of California, despite its title, is the union which represents employees in the "Academic Support" unit--employees who are not faculty members. UPC was certified by PERB as the exclusive representative of these employees on May 21, 1982, Case Number LA-HR-4, in an election conducted in April and early May of that year.

<sup>6</sup>Bradley at first testified this took place during the summer of 1984, but a few minutes later testified it was either 1983 or 1984, probably 1983. (TR: IV, 121-123). I find Hanson's meeting with Gottschall and LePard took place in the

In July, 1983, LePard sent Bradley a letter changing her assignment. Bradley's title was changed from associate director of CCEW to re-entry admissions co-ordinator. Her position description was revised to reduce her obligation to work on CCEW programs other than re-entry co-ordination. The letter read, in part:

In response to your desire for more autonomy and for greater freedom in developing adult re-entry programs and services . . . I have increased your responsibilities in the area of adult re-entry . . . .

The letter also noted that Bradley was required to report to the CCEW director, Marilyn Gottschall, on a daily basis, but that LePard and Gottschall would be "jointly involved in the setting of over-all goals and objectives for re-entry activities, and she and I jointly will monitor your performances in carrying out the responsibilities of your position." The letter referred to a formal job description, which was attached. The job description is described in detail on pages 8-9 below.

On January 6, 1984, Bradley wrote to LePard asking for a temporary relocation of her office. Bradley noted that it was useful for her work to continue beyond 5:00 p.m., since

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summer of 1983. By the summer of 1984, Bradley was working for Crandall, not for Gottschall, so a meeting would not have included Gottschall.

prospective students often wanted to make appointments after that time. CCEW's other staff generally did not work beyond that hour. Thus, during the winter months, she was alone in the center after dark, a condition which she believed to be unsafe for herself. In addition, it was difficult for prospective students to locate her office after 5:00 p.m.

In her request, Bradley referred to sections 31.6, 31.7 and 32.2 of the agreement between UPC and the University.<sup>7</sup> Bradley indicated, by the usual "cc" at the bottom of the letter, that a copy of the letter was being sent to Ray DeLeon, UPC president.

On March 2, 1984 Vice President Drake (LePard's immediate supervisor) sent a memo to Bradley, LePard, Gottschall and Crandall, informing them that the Adult Re-Entry program was to be transferred from the Center for the Continuing Education for Women to the Office of School Relations, effective April 1, 1984. Bradley's immediate supervisor there was to be Mary Crandall. Her formal University position was to remain the same -- student affairs assistant I -- and her working

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<sup>7</sup>Section 31.6 of the collective bargaining agreement has to do with employee requests for elimination of unhealthy and unsafe working conditions. Section 31.7 provides that an employee may ask for a temporary relocation when he or she believes in good faith the present assignment of work presents a clear danger to his or her health or safety. Sections 32.1 and 32.2, similarly, have to do with employee suggestions for maintenance and improvement of a professional work environment.

assignment would also continue to be the same: Bradley would continue to be re-entry admissions coordinator. Drake's memorandum included this comment:

As you know, the comprehensive program we are in the process of developing for returning adult students will include a significant community outreach function.

A job description was attached to Drake's memorandum. The two page document lists four major areas of work, and assigns to each of them a "per cent of year's time." The first of these four areas, to which was allocated 40 per cent of Bradley's time, involved "outreach activities aimed at returning adult students, re-entry students and non-traditional students" The description noted:

Specific duties may include:

Visits to off-campus agencies and community colleges, participation in job fairs, and participation in community women's organizations, etc.

Organizing or assisting in the organization of on-campus activities for prematriculated returning adult students or non-traditional students.

Participation in on-campus activities which make the programs and services of the School Relations Office known to the University community such as meetings with academic departments, student services, clubs and organizations, etc.

The second general area listed, to which was allocated 20 per cent, called for Bradley to:

Assist in the planning and implementing of information and referral services for prospective and matriculated returning adult students.

The third general area, to which 20 per cent of Bradley's time was allotted, was:

Assist in the planning and implementation of on-campus programs which address issues of concern to campus and community returning adult students . . .

The fourth general area, to which the final 20 per cent of the year was assigned, included participation on University committees relating to adult re-entry; representing the School Relations office and the University in professional organizations and at off-campus programs as assigned by the director; and assistance in preparation of written materials to be distributed by the Office of School Relations.

C. Bradley's Effort to Improve Her Working Conditions, and to Re-Define Her Job.

On March 12, 1984 Bradley sent a memorandum to Drake asking a series of questions about the operation of the adult re-entry program in its new administrative setting. Specifically she asked about the autonomy to be granted to the Re-Entry Services Program, clerical support to be provided, office space, and hours of operation beyond 5:00 p.m. and Saturdays. A copy of Bradley's memo was sent to UPC President DeLeon, and to LePard, Crandall and others.

Two days later, LePard replied to Bradley, in a pointed memorandum which had three themes: (1) LePard and Crandall

would determine space and budget allocations for Bradley's program, and would provide her with the information after the decisions were made; (2) Bradley's March 12 memorandum seriously overstated, in LePard's opinion, the degree of autonomy that Bradley had enjoyed at the CCEW. LePard referred to his July, 1983 memorandum to Bradley, which stated clearly she was to work co-operatively with Gottschall, director of the CCEW, and that Bradley was to continue to report to Gottschall. (3) as of April 1, Crandall was the administrator responsible for adult re-entry programming, and responsible for overseeing Bradley's work.<sup>8</sup>

Bradley sent LePard a memorandum two weeks later in which Bradley (1) acknowledged that the adult re-entry program would be under the "administrative overview" of the Office of School Relations; (2) indicated her dismay that she was not consulted about the remodeling of offices that was to take place to accommodate her in the Office of School Relations; (3) asked for a series of physical arrangements which she thought were necessary to allow her to do her work; (4) asked for an increase in clerical assistance; (5) asserted her belief that she, rather than Crandall, had responsibility for determining the program efforts of the adult re-entry program; (6) asked for a meeting with LePard about this last subject, at which

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<sup>8</sup>LePard's memorandum is Charging Party Exhibit 6.

Bradley would be accompanied by a union representative, Ray De Leon.

Bradley, De Leon and LePard met on March 26. Very little testimony was offered about the meeting. Apparently, there was a discussion of Bradley's work responsibilities within the Office of School Relations.

On March 29, LePard sent Bradley another short memorandum, indicating that he was still "in the process of arranging for office space for you." Until final arrangements could be made, Bradley was to remain in the CCEW offices, and to receive clerical support there. However, as of April 1, she was to begin reporting to Mary Crandall, director of the Office of School Relations.

This sequence of events came to a temporary halt at about this time, because Bradley became ill. She was absent from work from early April until June 28.

#### D. LePard's March, 1984 Evaluation

On March 22, toward the end of this sequence of changes and memoranda, LePard gave Bradley a formal written evaluation. It consisted of a standard format on which Bradley was rated on four aspects of work, and a six-page narrative by LePard, spelling out in some detail his evaluation and criticism of Bradley's work. On the short form, LePard indicated that Bradley's work "Needed Improvement" in "technical abilities," "productivity," and "quality of work." He noted that her work

"Meets Requirements" in the area of "Timelines."<sup>9</sup>

The long narrative section of the evaluation included a number of complimentary comments, but was overwhelmingly critical in the over-all analysis of Bradley's work. The positive comments included these: Bradley had a good understanding of adult students' needs; was charming with the students and prospective students she counseled; had a good grasp of university resources; had a considerable commitment to her work, high energy and good ideas.

However, LePard also said that Bradley resented having her immediate supervisor (Gottschall) take any interest in or make any suggestions about adult re-entry work, which Bradley tended to see as exclusively her own; she continued to complain about her work location, budget, clerical support or the lack of it; and exchanged many memoranda with Gottschall which included examples of pettiness and hostility on Bradley's part.

LePard wrote that Bradley fell short of his standard of competence with respect to her ability to work with other branches of the University whose concerns were similar to her own, and that she was unable or unwilling to coordinate her work with that of other offices, or to view it in connection with other activities of the University. Finally, he said

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<sup>9</sup>The form had four possible ratings for each rating category: Outstanding, Exceeds Requirements, Meets Requirements, and Needs Improvement.

Bradley had been late in sending him materials related to planning, or had sent him no materials at all.

Bradley replied with a four-page memorandum of her own. She described LePard's evaluation as "biased" and "capricious," saying it was "written to put the blame on me" for troubles at the CCEW. Bradley blamed Gottschall for ignoring Bradley's requests for improvements in cleanliness at the CCEW and clerical support. She attributed the same conduct to an unnamed clerical worker at CCEW and said Gottschall and the clerical worker supported each other against Bradley. Generally, Bradley said, the CCEW staff treated Bradley's adult re-entry program as competition, rather than as a University program which deserved assistance and cooperation.

Bradley insisted that she worked well with other people, and named several other offices of the University with which she had worked cooperatively at various times.

Bradley acknowledged her filing of materials needed improvement, and said she would improve upon it. She said her weekly reports were typed by herself, late at night, thus admitting, implicitly, they may have been poorly organized. She insisted her writing skills were satisfactory.

Finally, Bradley wrote that she believed she was being used as a pawn (she did not say by whom, or in what conflict). And, she wrote,

[By]the mental pressure put on me and by the attitude which prevails, I am prevented from

having normal working conditions, or given equal opportunity for advancement.

Nowhere in this reply did Bradley state or suggest that the poor evaluation was a form of retaliation for her association with UPC, or her use of UPC representatives to assist her at various times.

E. Bradley's Return to Work Under Crandall's Supervision

When Bradley returned to work on June 28, her working conditions had not improved, from her perspective. In a memorandum sent that day to Mary Crandall she wrote:

On my return to work today, June 28, I was informed by Marilyn Gottschall that I was not to receive clerical support at the CCEW during my remaining time working at the center. That includes keeping the re-entry appointment book, typing, filing, ordering material, xeroxing, etc. . . . I was told, I was there as a guest. . . .

I would appreciate your letting me know by writing, how I can conduct my working activities under these circumstances . . . .

Crandall replied to Bradley on July 2. The memorandum made four main points:

1. Clerical assistance for Crandall's office was very limited; for that reason, all the professionals in the office make their own appointments (rather than relying on assistance of clerical workers to maintain their calendars). Bradley should do the same.

2. Until the physical revamping of Crandall's suite of offices was finished, Bradley would remain in the CCEW, and

would remain a guest there. Crandall's secretarial staff would do the typing and copying needed by Bradley, once Bradley left a request for that service in the proper place in Crandall's office area.

3. All budget decisions including decisions about supplies would be made by Crandall.

4. Crandall asked Bradley not to indulge in repeated requests for progress in solving problems which appeared to be unsolvable in the short term:

I am sensing that you may need and expect a great deal of my time in terms of problems you continue to perceive -- which may in fact merely be situations we all must live with. Please be advised that I simply do not have the time to spend rehashing situations, or even dealing with them on the spur of the moment.

This was not the only note of impatience in Crandall's memorandum. It also included this:

Since we have long dealt with tight clerical resources in this office, we have all learned to operate fairly independently. That is the reason I directed you (per my memo of April 6) to begin to make your own appointments, as I and my staff do. You continue to respond that this is not "convenient" for you, but I regret that this is not the issue.

Bradley's next memorandum to Crandall about working conditions was dated August 28, 1984. It concerned not clerical assistance, but unsatisfactory physical surroundings in the CCEW: It included this:

The CCEW has two cats living in the center with open cat food, litter box, flees, etc.

A pungent smell permeates the center at all times. My talking to Marilyn Gottschall and my informing you of the situation several months ago brought no change. My relocation to another location is imperative.

Copies were sent to LePard, De Leon and to a "D.Hunt, Environmental, Health and Safety Officer."

There is no evidence about the response this memorandum elicited, from Crandall, LePard, De Leon or Hunt.

Meanwhile, an "Enrollment Management Coordinating Committee" of the University, a committee which included LePard, sent to Crandall an August 3 memorandum which identified the kinds of people whom the University was most interested in recruiting as part of its adult re-entry program. The memorandum included these passages:

1. We are in agreement that, at least initially, outreach efforts should be focused on community college transfers over the age of 25 . . . .
2. Outreach strategy: Would you please submit to us, by September 15, an expanded plan or strategy for outreach to the identified population on which we will focus--community college students over the age of 25. You should be as specific as possible and include information on the number and location of off-campus visits, the kinds of presentations that will be made at such locations. . . . In short, your plan should give the University a fairly well-developed idea of how you plan to identify and recruit returning adult students who are presently in community colleges.

Thus, by early August, Crandall had specific instructions about the principal group to whom the adult re-entry work would be oriented, and specific requests for plans to carry out the work of recruiting new students from this focus group.

On September 7, 1984, Crandall, Bradley, De Leon and Jennifer Reeves, of the University's personnel office, met to discuss Bradley's job description; the relationship between Bradley and Crandall, as her supervisor; and the relationship between the adult re-entry program and the other functions carried out by the School Relations Office. No testimony was offered about this meeting. However, it is referred to in a memorandum from Crandall to Bradley, dated September 20, 1984.

In the memorandum Crandall made three points: (1) Bradley's job description would remain the same as it had been for slightly more than a year, except that it would be changed slightly to reflect the re-assignment of the adult re-entry function to the Office of School Relations, rather than the CCEW; (2) Crandall would determine Bradley's work priorities, based on the final plan to be adopted in the near future by the enrollment management committee; and (3) the adult re-entry program would retain recognition as a function different in some ways than the other functions performed by the School Relations Office.

F. Crandall's Difficulties Supervising Bradley

Crandall testified at some length about the problems she encountered in her efforts to supervise Bradley's work during the 11-months (July, 1984 through May, 1985) that Bradley worked for Crandall. Crandall's testimony included very little regarding the dates of various events; and, with regard to some incidents, only some of the documents exchanged by the two are

in evidence. However, Crandall's testimony describes certain repeated difficulties which Bradley presented for her supervisor during the 11-month period. Summarized, the problems, from Crandall's perspective, were the following:

1. Bradley complained frequently about her working conditions. These complaints began while Bradley was working out of the CCEW, although under Crandall's formal supervision, and continued after Bradley's office was relocated within the suite or section assigned to Crandall's Office of School Relations. From Crandall's point of view, the complaints were often about matters which were beyond the University's control, or beyond Crandall's control, i.e., unorthodox and perhaps unclean working conditions in the CCEW, the delay in construction of Bradley's new office, insufficient clerical support for the number of professionals assigned to the Office of School Relations.<sup>10</sup>

2. Bradley was unwilling to accept Crandall's directives about the nature of the work Bradley was to do, and was generally unwilling to accept the fact that Crandall, rather than Bradley herself, defined the work to be done by Bradley. In particular, Bradley resisted making regular visits to community colleges from which the Long Beach university campus might attract "re-entry" students. Bradley continued to argue

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<sup>10</sup>Crandall's testimony about this subject appears at TR: II, 75-77, 121-122.

and send memoranda about the appropriateness of assigning this work to her, long after Crandall (and LePard) made it clear to Bradley that arranging and making these visits were important parts of her job.<sup>11</sup>

3. Bradley was unable or unwilling to provide to Crandall plans for the work she was to do, or reports about the work she had accomplished. Generally, Bradley was unable or unwilling to meet Crandall's standards for planning ahead.<sup>12</sup>

4. Bradley was resistant to, and resentful of, editing of her writing, editing which Crandall believed was necessary.<sup>13</sup>

I have some hesitation about crediting this testimony fully. As noted, much of it lacks detail regarding dates and other surrounding circumstances. In addition, there is some

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<sup>11</sup>Crandall's testimony about this subject is at TR: II, 75-77, 79, 99, 117-118, 137-138. This last reference includes Crandall's testimony about Bradley's difficulty finding a student driver. After Crandall insisted that Bradley begin visiting community colleges in a regular way, Bradley told Crandall that she did not have a driver's license because of a depth perception problem. Bradley then authorized Crandall to hire a student driver, who would be approved by the University police department to drive a University vehicle, and whose salary would be paid by the University. The driver would drive Bradley on her occasional visits (once a week, roughly) to community college campuses. According to Crandall, six weeks after Crandall authorized Bradley to find and hire a driver, Bradley had not completed the task. Crandall took on the task herself and hired a student.

<sup>12</sup>Crandall's testimony about this subject is at TR: II, 104, 125, 146.

<sup>13</sup>Crandall's testimony about this subject is at TR: II, 109, 126-127.

reason to believe that Crandall over-reacted to some of Bradley's errors.<sup>14</sup> Nevertheless, I credit Crandall's testimony insofar as it describes general patterns of conduct by Bradley. I do so for the following reasons.

First, Crandall's demeanor while testifying supports the conclusion that Crandall was testifying candidly. Crandall appeared to take her administrative duties quite seriously. She recalled quite well particular incidents in which Bradley had violated procedural/administrative norms and standards of conduct. These were incidents in which Bradley had failed to submit to Crandall plans for implementing policies established or passed down by Crandall, or reports of progress, or reports on completion of assigned tasks. If Crandall was angry at Bradley in 1984-85, or during the hearing, it appeared to be for these reasons.

Second, Bradley did not contradict any of the testimony given by Crandall. She did not deny any of the shortcomings or

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<sup>14</sup>In January and February, 1985, Crandall sent memos to Bradley accusing her of "insubordination," warning her that she might be disciplined for continued conduct of the same kind. The insubordination apparently consisted of Bradley's persevering in writing to Crandall memoranda in which Bradley sought, in various ways, to have herself excused from the necessity of visiting community college campuses; and others in which Bradley defended aspects of her work which Crandall had criticized. "Insubordination" may be an overly harsh characterization of such conduct.

particular failures attributed to her by Crandall.<sup>15</sup>

Bradley's only testimony which may reflect on the substance of her disputes with Crandall was: (1) very general testimony to the effect that Crandall gave her instructions to do different tasks than she was accustomed to doing previously as adult re-entry coordinator (TR: II, 28-30); and (2) very general and vague testimony about inadequate typing and other clerical assistance provided under Crandall's direction (TR: II, 35-37).

Third, documents in evidence corroborate Crandall's general description of Bradley's conduct. For example, it is true, as Crandall testified, that Bradley persevered, for many months after the decision was made, trying to persuade Crandall to assign to another employee the tasks of visiting community colleges. It is also true that Bradley's response to Crandall's criticism of Bradley's work was to blame other workers, or to attribute missed deadlines and other shortcomings to inadequate clerical assistance, or to other employees' failure.

From the documents in evidence, it appears that Bradley was

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<sup>15</sup>Bradley testified twice during the hearing: once before and once after Crandall's lengthy testimony about the difficulties she had supervising Bradley. Crandall's testimony is at TR: II, 66 et. seq. Bradley's later testimony is at TR: IV, 119 et. seq. During Bradley's second appearance as a witness, she testified exclusively about occasions on which one or another union representative assisted her or acted on her behalf during conflicts with Gottschall, LePard, or Crandall. She testified only incidentally about the substance of any particular difference she had with Crandall.

unwilling to accept the fact that higher-level employees, including Crandall, had the right and obligation to define the work which Bradley was to do. It is also true, as Crandall testified, that Bradley on occasion responded to Crandall's criticism of Bradley's work with criticism of Crandall's work as a supervisor.

Fourth, there is evidence that at various times Crandall tried to assist Bradley, rather than to obstruct her. When Bradley was unable to provide Crandall with an estimate of how much money she would need for attendance at professional conferences, and for travel to these, Crandall assigned to her \$200 for the year, more than she assigned to others under her supervision. When Bradley proved unable to locate a driver to assist her, Crandall posted a notice, interviewed applicants and arranged for Bradley to have a driver.

These efforts by Crandall to assist Bradley undermine the inference which Bradley urges, that Crandall was uniformly antagonistic to Bradley.

G. Crandall's Denial of Bradley's Merit Salary Adjustment

The collective bargaining agreement between the University and UPC which covered the "Academic Support" unit for September, 1983 through June, 1985 included a salary schedule with five steps for employees in Bradley's position -- Student Affairs Assistant I. Article 23, "Salary," included a series of provisions about merit salary adjustments (MSA's). These

sections provided, in part: "Movement between steps in the salary range shall be based on merit and effective performance." The usual requirement for movement from one step to a higher step, according to section 23.6, was 12 months of service at the lower step. Pay increases were decided by each employee's immediate supervisor. The contract specifically provided that a denial of an MSA was not subject to the contract's grievance procedure, although an employee denied a raise could arrange a meeting with a representative of the president of the campus for the purpose of "reviewing" the denial.

Surprisingly, the contract did not require that an employee be informed in writing when a supervisor denied a merit salary increase. This procedural quirk was eliminated in 1985, when UPC and the University signed an addendum to the collective bargaining agreement.<sup>16</sup>

Sometime in late August or early September, 1984, Crandall was called by somebody working in the University's personnel office, probably Oscar Robinson. Crandall was asked whether

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<sup>16</sup>In the contract supplement, the MSA provisions were changed to provide that

Upon determination by the appropriate administrator, the adjustment shall be authorized or denied in writing . . . The employee shall be provided with a copy of the written authorization or denial. (New language emphasized).

Bradley, who was then due for a merit salary adjustment, was to receive one. Crandall, "the appropriate administrator" under the contract, advised the personnel office not to give Bradley a merit salary adjustment.

According to Crandall she was not asked to send anything in writing to the personnel department at that time, and she did not. Nor did she inform Bradley, either in writing or verbally, that her MSA had been denied. Crandall testified she assumed Bradley would realize she was denied an MSA when her pay check reflected a steady pay level, rather than a raise.

On November 28, 1984, Oscar H. Robinson of the Personnel Services Department sent to the University payroll office a memorandum which stated:

Please withhold the merit salary adjustment due for Georgette Bradley . . . on August 31, 1984 for the September pay period. Documentation on file in the Office of Staff Personnel.<sup>17</sup>

Bradley testified she did not learn of the denial of the pay raise until December, 1984, when Ray De Leon, a union representative assisting Bradley, came across it in her personnel file.

Why did Crandall instruct Robinson to withhold Bradley's pay raise?

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<sup>17</sup>Neither party called Oscar Robinson to testify. Thus there is no explanation of how a November memorandum was to act as instructions for preparation of a September pay check. Further, neither party presented any "documentation" from the Office of Staff Personnel.

Crandall testified she based her decision in large part on LePard's evaluation of Bradley in March, 1984, since that evaluation covered approximately half the year since Bradley's previous merit salary adjustment (in September, 1983). LePard's evaluation, as has been noted, was strongly negative. In addition to the LePard evaluation, Crandall testified, she took into account her experience with Bradley since she was reassigned to Crandall's office in April, 1984:

Ms. Bradley, even in the four months she was out of the office, was somewhat of a problem. She had frequent demands, memos, letters, concerns, before she was even at work. When she came into work, she was extremely problematic in that she presented an awful lot of complaints about situation over which the University had very little control at the time. And that was the physical situation in the CCEW.

My own office was under construction to accommodate Ms. Bradley for about six weeks. And because it was extremely messy . . . I could not immediately move her in. The construction had to be completed.

I was trying to work with her on an agenda for adult re-entry, and a plan for the coming year. And she responded to most of my concerns by telling me, well, this is what I always, or this is what I have done. She seemed to be very afraid of the thought that she might have to do outreach. But I explained that 40 per cent of her job description was outreach . . . the vice president had instructed that . . . he wanted to see an expansion of our outreach efforts toward adults.

We were trying to come up with a plan, and I was trying to give some beginning assignments to Ms. Bradley. And most of the meetings that we had along these lines became rather argumentative. I found that she did not take direction well, and was extremely emotional, and

had a lot of problems with following through  
. . . handling details. (TR: II, 77-78).

Why didn't Crandall inform Bradley of the withholding of the merit salary adjustment in August or September, when the deed was accomplished? This was Crandall's explanation:

I felt that Ms. Bradley had been apprised of her performance through the March performance evaluation; that she would be immediately aware of the MSA denial by it not being there. The other reason, which is a more personal . . . is that we were hassling so much about every single thing . . . I guess I was just dreading another big scene if I said, you didn't get an MSA. I was hoping that in this case I could delay it by her coming to me when she didn't see the money there. (TR: II, 165)

H. Crandall's November, 1984 Evaluation of Bradley

In mid-November 1984, after Bradley had been working for Crandall for close to five months, Crandall wrote her first evaluation of Bradley.<sup>18</sup> It was similar to LePard's in form -- check-off ratings in six aspects of work, accompanied by a four-and-a-half page narrative. The evaluation was almost entirely negative. Crandall rated Bradley as "Needs Improvement" in five categories (technical abilities, productivity, timeliness, quality of work and initiative. She rated Bradley "Meets Requirements" in "Job Attitude." A seventh category, "Interpersonal Relationships," was broken into three sub-categories: with immediate supervisor, within

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<sup>18</sup>This evaluation was not cited in the complaint as an instance of unlawfully motivated adverse action.

department, outside department. Crandall reported that Bradley needed improvement in the first two of these, and met requirements in the third. Crandall's over-all evaluation was that Bradley "Needs Improvement."

The narrative had three major sections. In the first, Crandall analyzed Bradley's performance under Crandall's direction, focusing on various "outreach-related assignments" which Crandall had given her since her transfer to Crandall's supervision. Crandall's comments were highly critical.

Typical were these comments:

On April 6 I sent you a memo asking you to define the adult re-entry student population and asking you nine additional questions regarding background information on these students. You never responded to my memo . . . .

On July 23 I directed, "Please also complete your compilation of data on the contact cards, and discard all except last year's cards." . . . To date, despite my instructions, statistical information to guide us in targeting audiences or designing programs for adult students does not exist.

You were instructed to develop an intake card for the purpose of acquiring and maintaining data relevant to the adult re-entry student . . . You did not work effectively with clerical and support staff assigned to assist you in this project, nor did you pay close enough attention to detail in the production of the card. As a result, the card has not been useful in acquiring the data I have requested you to develop. . . .

The Enrollment Management group directed us to focus our energies on the community colleges this fall. Therefore, our re-entry plan directs you to make at least two visits per semester to reach high feeder community colleges in the area

for the purpose of contacting prospective students.

I am pleased by your initial contacts with counselors in the community colleges. However, I have developed several serious concerns.

First, you claim that visits to community colleges are not good ways to make contact with students. . . .

Second, I asked that you report numbers of contacts (both in and out of office) to me each week. You responded in a note that you prefer to give me one number at the end of the semester. I asked you to follow up (data again) to see how many of these students apply for admission and that you assist them throughout the application process. You told me I was being "too narrow." . . .

The second part of the narrative had to do with, as Crandall put it, "the issue of your interpersonal behavior." This section, as the first, was highly critical. Among Crandall's comments were these:

You have failed to establish a positive working relationship with me and with others in the office. You offer a plethora of complaints and allegations and exhibit behaviour marked by wide mood swings. . . .

You have failed to follow directions. My instructions to you are often ignored, challenged or modified without my approval. I spend an inordinate amount of time clarifying these instructions, and I have no confidence that you will follow them.

You have failed to follow office protocol and procedures, and often you devote extensive time to petty issues . . . You made a major issue over a typing table I obtained for you that you say is "old" and "does not look esthetic." You complain that your office is "so small and crowded" although it is the same size as mine. You exhibit repeated lapses of memory regarding instructions to our clerical staff, placement of work to be done, and use of appropriate "work requested" forms . . . .

Crandall ended the evaluation by telling Bradley that she wanted to see measurable progress toward several goals within the next three months. Crandall wanted less complaining, greater acceptance of decisions made by Crandall about program direction and implementation, detailed follow-up reports to Crandall about contacts made with potential "re-entry" students, and specific plans by mid-December and by mid-January for designated programs to take place during the spring semester.

Two weeks later, Bradley submitted a five-page rejoinder to Crandall's evaluation. In this document, Bradley denied that she had been inefficient or ineffective. She responded to each of the major criticisms which Crandall had made of her work, pointing out in several cases that the reason for delays in completing tasks was inefficiency in typing or duplicating, for which Crandall and her secretarial staff were responsible. These delays, Bradley said, were a result of staff turn-over, shortage of clerical assistance, and confusion caused by the reconstruction of Crandall's offices. With regard to certain criticisms, Bradley asserted that she had never been assigned to do the work which Crandall now criticized her for not doing.

Bradley wrote that she had made a number of worthwhile contacts with community college personnel. She asserted that "having tried several techniques," the methods of contacting community college students preferred by Crandall were, in fact,

not effective. While no "big project has to date been formalized with the community colleges, several ideas have been discussed." Bradley also asserted that publicity material about adult re-entry programs had not yet been printed, and for this Bradley was not responsible. Generally, Bradley accused Crandall of not wanting the adult re-entry program to operate successfully, and of not wanting Bradley to be assigned to her office.

Bradley wrote that on those occasions when she made suggestions to change the adult re-entry program or to adopt tactics different than those preferred by Crandall, she was doing so not as insubordination, "but in the spirit of taking my coordination responsibilities seriously . . ."

As to Crandall's request (made in the November 19 evaluation letter) that Bradley have a particular written assignment completed by January 7 (an information flyer on a senior citizen program) Bradley said in her December 5 reply that she could not possibly complete it because she would be too busy with other work before that.

Bradley sent a copy of her memorandum to Ray De Leon of UPC, and also stated in her memorandum that "I contacted Ray De Leon, UPC President and I informed him of the mental anguish you are creating for me."

Bradley offered no testimony about any of the substantive criticisms made by Crandall in the evaluation.

## I. The Exchange of Memoranda Continues

On December 20, 1984, Crandall sent a five-point memorandum to Bradley which identified a number of differences between the two women regarding Bradley's work. First, Crandall rejected Bradley's request for an extension of time in which to finish a project -- a draft of a fee waiver application form for adult re-entry students. Crandall said she was unpersuaded that Bradley was too busy, because Bradley's weekly reports did not indicate the number of appointments each week with prospective students.

Second, Crandall informed Bradley that the second draft of a press release was still unclear, and unsuitable for distribution. Crandall told Bradley to drop that project -- it was not one assigned by Crandall -- and turn to other assignments, which had been assigned by Crandall.

Crandall re-assigned a third flyer to another staff workers taking it away from Bradley.

Crandall asked Bradley for an explanation of her professional travel plans, and indicated a willingness to pay for attendance at a San Diego conference with University funds, "if the overall cost is reasonable."

Crandall was unsatisfied with Bradley's process of program planning and evaluation. The evaluation form which Bradley had drafted for a spring orientation program for adult re-entry students "elicits nothing useful because of its focus on

feelings and vagueness." (A copy of the draft, with Crandall's corrections, is in evidence, attached to the memorandum).

As to the program evaluation form, Crandall had noted a number of shortcomings in the one-page form. Among the examples were these: Bradley's draft included a question: "Did you like the atmosphere of the orientation provided for you, the mature student?" Crandall's editing note was: "What does this mean? Room? People? Program?"

Bradley's draft also included a question, "Do you feel that the information provided in this orientation was helpful?" and asked the student to answer only yes or no. Crandall's comment was: "In what ways? (List possible ways)."

Also, Crandall questioned the usefulness generally of certain questions Bradley had included on the form, including: "Do you feel a bit apprehensive entering the University? If so, indicate why."

The battle between Bradley and Crandall, using memoranda as ammunition, continued in January and February. On January 2, Bradley wrote a two-page memorandum to Crandall, responding to each point made in Crandall's December 20 memorandum. On January 4, Bradley sent to Crandall a memorandum about travel to conferences, some of which were for Bradley's professional development, some of which were useful for the "outreach" work which Bradley was to do, and some of which, according to Bradley, were useful for both purposes. She asked Crandall to

allot more than \$200.00 for travel so that she (Bradley) could attend four or five conferences (the memorandum is unclear on this point).

On January 16, Crandall sent to Bradley a memorandum entitled "Insubordinate Behavior." In it Crandall cited the January 2 and 4 memoranda, and a short memoranda dated January 9 in which Bradley had commented on an evaluation form as it had been approved by Crandall. Crandall's note included the following comments:

As you you will recall, in my performance evaluation dated November 19, 1984, goals 1 and 2, I admonished you to adhere to my directives and indicated to you that failure to do so would be considered insubordination (see pages 4 and 5 of the performance evaluation). I further directed you to confine your suggestions, comments and questions to your reports or to our meetings. To this end, I have been available to you on a regular basis.

This continued activity of substituting your judgment for mine and criticizing the decisions of your supervisor takes valuable office time and detracts from the completion of your assignments, thereby limiting your work productivity.

I am hereby reprimanding you for your insubordinate behavior and further indicating that such continued behavior may serve as grounds for appropriate disciplinary action.

Sometime in mid-February, Bradley sent to Crandall a three-page report on work done from February 4 through February 15. Roughly half of the memorandum was taken up with an airing of Bradley's dissatisfaction with various aspects of her work arrangements, and advocacy of program and procedural

changes. Bradley wrote that she had insufficient clerical assistance and needed more; that the re-entry program should be broader, and should include counseling and "support services" for recently enrolled adult students; and that the responsibility for recruiting students from community colleges should be removed from Bradley's shoulders. She had never done this work in the past Bradley said, and it was proving to be very stressful for her, partially because of transportation problems.

Finally, Bradley noted that she needed more written material about re-entry and adult learners. She was dismayed that none of the students assigned to the School Relations office could do library research for her. She asked Crandall for help in this area.

On February 28, Crandall sent to Bradley another memorandum on the subject of "Insubordinate Behavior." Her short memorandum included these comments:

I consider your comments in the February 4-15, 1985, report relative to your assignment in School Relations and your unwillingness to continue to undertake community college outreach visits to be insubordinate. I have previously made myself clear on both issues.

I am hereby reprimanding you for your insubordinate behavior and further indicating that such continued behaviour may serve as grounds for appropriate disciplinary action.

J. Crandall's March 1985 Evaluation of Bradley

On March 5, 1985, Crandall gave Bradley another very negative evaluation. Again, the evaluation consisted of a form

in which ratings on various aspects of work were indicated by check-marks, and a more detailed narrative. On the form evaluation, Crandall rated Bradley "Needs Improvement" over-all, and gave her the same rating in seven specific categories. Bradley was rated "Meets Requirements" in only two sub-categories, having to do with her work with co-workers within her department, and with University employees in other departments. The areas in which Bradley was rated "Needs Improvement" were Technical Abilities, Productivity, Timeliness, Quality of Work, Initiative and Job Attitude, and her relationship with her immediate supervisor, Crandall.

The narrative analyzed the seven areas in which Crandall had asked Bradley to make improvement in the last performance evaluation, dated November 19. Crandall reported seeing very little improvement in these areas. The only bright spots, according to Crandall, were these: the adult re-entry orientation program was rated successful by those attending. However, Crandall immediately noted, "Your planning was inadequate, failing to make timely inquiry into food service and creating confusion within the office. You also failed to develop an adequate evaluation tool."

The only other positive note in the document was this: "I have seen an attempt on your part to work more cooperatively with the staff, and you are meeting with me weekly."

But the negative comments far outweighed the positive

remarks. Among the critical statements were these:

You were asked to cease writing notes and memos through which you presented frequent complaints and demands. . . . Regrettably, you continue to send me memos and reports complaining about one issue or another and making demands on me and or on office staff. . . .

I have received and continue to receive memos and reports which challenge my decisions and instructions. . . . I consider insubordinate your comments in your February 4-15 report relative to your assignment . . . and your unwillingness to continue to undertake community college visits. . . .

I have not received plans for spring semester follow-up of your contacts. You have planned one program ("Empower Yourself Through Self-Examination"). . . . While such programs . . . may be beneficial, they are at present not part of any consistent well-thought out approach to contacts you have made to date. A well-designed plan would move contacts closer to application and admission in an orderly progression. . . .

You were unable to provide me with a draft for a senior citizen fee waiver flyer by January 7. . . . The draft you submitted (Jan. 22) was sufficiently organized and contained the basic necessary information. However, it was poorly written. . . . To date, I have not received your new draft. . . .

Regrettably, your writing skills continue to be inadequate for the production of off-campus materials. . . .

Bradley responded to the criticism point by point in a two-and-a-half page memorandum dated March 18. In addition, the first paragraph of that memorandum asserted that the critical evaluation was issued:

To maintain the Re-Entry program as a "token program" or perhaps to eradicate it piece by

piece in order that its functions might be redistributed to other programs in the division.

. . . As I have maintained a strong unyielding advocacy for a strong Re-Entry program for our University, I feel that at the base of the unfair treatment and unfair evaluations I have received at both the CCEW and in School Relations (both agencies reporting to Chuck LePard) is a structural university problem.

There was no assertion in this memorandum that hostility to the UPC, or to Bradley's use of the UPC, was an underlying motivation for the negative comments by Crandall.

Bradley offered no testimony about any of the criticisms made by Crandall in the evaluation.

K. Bradley's Grievance Concerning the Denial of the Merit Salary Adjustment.

Sometime in March 1985, Bradley, with the assistance of De Leon of UPC filed a grievance against the University for the denial of the 1984 merits salary adjustment. That spring, De Leon and Bradley met with several different administrators, among them Crandall and several people from the University personnel or labor relations staff, about the grievance. The union pursued the grievance to the highest level called for in the contract (four steps, or meetings with administrators) short of arbitration.<sup>19</sup>

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<sup>19</sup>The formal grievance, Charging Party Exhibit 12 an exhibit in evidence is dated April 19, but it is clear from other evidence (e.g. Charging Party Exhibit 38) that an informal meeting took place in late March.

L. Bradley's Request for Reduced Work Load  
for Medical Reasons.

In late March 1985, Bradley submitted to the University's personnel office <sup>20</sup> a brief letter from Dr. Jerry Floro, regarding evidence that Bradley was suffering from heart disease, and Floro's recommendation regarding limitation on the work to be assigned to her. The letter said, in pertinent part: (1) Bradley had been under observation at the heart clinic where Floro worked, for chest pains. (2) Various test results pointed to a conclusion of coronary artery disease. (3) Floro recommended that "she avoid any activities involving strenuous physical exertion or high emotional stress."

On March 26, after presenting this doctor's note, Bradley sent to Mary-Ann Walsh of the University's personnel department a memorandum asking for a redefinition of her job, and a transfer to a position in which she would not be required to report to either LePard or to Crandall. Her note included the following:

Following our meeting of yesterday afternoon regarding my health condition, I would like to request that the following modifications be considered in my position of Re-Entry Admissions Coordinator.

1) That I not be requested to carry on Outreach functions, except for occasional local community visits, and that my duties be more of a sedentary nature (Advising re-entry students,

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<sup>20</sup>Apparently, Bradley had initially offered this letter to Crandall, who told her to bring it to the personnel office.

preparing on campus programs, working with alternative admissions). . . . This type of activities already constitutes a large part of my work and is more suitable for my health condition.

2) That I not have to report administratively to Mary Crandall/Chuck Lepard's division for the coordinating of my re-entry duties, but that I be given a different line of reporting, in an other division where I would not be subjected to undue high levels of situational stress, and where I could work under more normal conditions. (emphasis in original).

On April 9, Bradley sent to Noel Grogan of the Office of Staff Relations a brief note asking for a response to her March 25 and 26 requests. Up through April 9, Bradley wrote,

It is my understanding that no one has contacted my physician nor has any action been taken on this matter. Since this causes me a great deal of concern, I am requesting your assistance in this matter so that appropriate adjustments to my working conditions can be implemented.

On April 19, Bradley again wrote to Grogan (who in this memorandum was identified as assistant vice president, Staff Personnel Services). In this memorandum, Bradley asked for an opportunity to "discuss with personnel the modifications I have requested in my job description . . . following my physician's recommendation."

On May 7, 1985, LePard placed Bradley on disability leave because she was, in his opinion, "unable to perform the duties and responsibilities of [her] position and no work exists for [her] in the School Relations Office." He advised her that before she would be permitted to return to work she would have to provide to the University a written statement by her

physician that no physical impediment stood in the way of her carrying out the work assigned to her, and she would have to have that physician's conclusion confirmed by the University physician, a Dr. James Morse. LePard's letter includes the following:

It is my understanding from the Personnel Office that the restrictions placed on your work by your physician have not been lifted upon your return to work. These restrictions stipulate that you not travel, that you not lift anything over 15 lbs., and that you avoid stress.

After a careful review of the duties and responsibilities of the position of Adult Re-entry Admissions Coordinator, as described in your position description, and after review of the mission of the School Relations Office vis-a-vis adult re-entry as determined by the University, I have come to the conclusion that you are unable to perform the duties and responsibilities of your position and that no work exists for you in the School Relations Office. I am hereby directing that you not return to work until such time as you are able to perform the duties and responsibilities of your position without medical restriction. Your ability to perform your duties without restriction must be verified in writing by your physician and approved by Dr. James Morse before you resume your duties.

If you believe the restrictions placed on your return to work are not permanent, you should provide additional documentation from your physician indicating the probable duration of the restrictions.

There is no evidence in the record regarding the 15-pound lifting restriction or the no-travel restriction which LePard referred to in his memorandum. There was reference during the hearing to another doctor's note (from a Dr. McKenzie), but neither side submitted a document from a Dr. McKenzie.

(TR:III, 21-22).

LePard acknowledged during the hearing that he did not

consider, prior to May 7, revising Bradley's position so that she was responsible only for that portion of her work (at least 60 per cent) which did not require travelling or carrying more than 15 pounds. (TR: III, 36, 45-46).

#### DISCUSSION AND ANALYSIS

The charging party here argues that the four adverse actions at issue (the denial of the merit salary adjustment, the bad evaluation in March 1985, the refusal to alter Bradley's work assignment to take account of her health problems, and the imposition of a disability leave) were all forms of retaliation against her, because of her association with UPC, and her use of UPC representatives to assist her at various points.

In California State University (Sacramento) (1982) PERB Decision No. 211-H, the Board set out the analytical framework by which it would decide cases of alleged retaliation or discrimination brought under the HEERA. To prevail, the charging party must provide evidence to establish that the employee who was allegedly the victim of discrimination or retaliation was engaged in activity protected by the HEERA, and that the employer knew of this activity.

Next, the charging party must provide evidence from which an inference may be drawn that the protected conduct was a "motivating factor" in the employer's decision to engage in the challenged actions. A variety of factors may support an

inference of this kind, among them: the timing of an employer's conduct in relation to the employee's involvement in protected activity; the employer's disparate treatment of employees engaged in such activity, the employer's departure from standard procedures, statements of hostility to the union made by supervisors or managers, or an employer's inconsistent or contradictory justifications for its action.

Once the charging party has made a prima facie showing sufficient to support the inference that the exercise of employee rights granted by the HEERA was a motivating factor for the employer's allegedly illegal conduct, the burden shifts to the employer to prove that its action(s) would have been the same even in the absence of the employee's protected activity. That analysis will be applied here.

A. Bradley's Protected Activities

There is no doubt that Bradley participated in protected activity. As early as the summer of 1983, Bradley arranged to have the assistance of various UPC representatives in a number of meetings with LePard and with Crandall. Bradley indicated, in a number of her memoranda to LePard and to Crandall, that she was sending copies of her correspondence to the UPC president Ray De Leon. This reference to the union, and to the likelihood that Bradley would seek its assistance, is in itself protected activity. In March 1985, she filed a grievance pursuant to the UPC-University contract. All of these are

HEERA-protected activities.<sup>21</sup>

There is no doubt that the University, through Crandall and LePard, knew of the protected activity. Each was informed of this by the "cc" reference on memoranda, and each learned of Bradley's association with UPC during meetings at which UPC representatives were present.<sup>22</sup>

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<sup>21</sup>California State University (Sacramento) (1982) PERB Decision No. 211-H. Under the Rodda Act, Government Code sections 3540 et. seq., a public school employee has the right to be represented by an employee organization in all aspects of employer-employee relations, including informal, non-negotiated dispute resolution procedures (Rio Hondo Community College District (1982) PERB Decision No. 272), and meetings with supervisors which do not fit into any conventional category (Redwoods Community College District) (1983) PERB Decision No. 293, affirmed, 159 Cal.App.3d 617). The relevant language of HEERA section 3565 is the same as the relevant language of Rodda Act section 3543:

Higher education employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

By advising the University that she was sending to a UPC officer a copy of her memoranda concerning a dispute about working conditions or performance levels, Bradley was indicating a desire to solicit the union's assistance in the dispute. That effort must be viewed as protected activity, regardless of whether it is part of a formal grievance procedure defined by contract.

<sup>22</sup>LePard's testimony on this point was less than candid. At first, he testified that he assumed Ray De Leon, UPC president, was present at a meeting with Bradley and LePard out of friendship with Bradley (TR: IV, 38). LePard acknowledged he knew at the time that De Leon was a UPC officer (TR: IV, 79). Eventually, LePard admitted during cross-examination that he did not know if De Leon was a friend of Bradley. (TR: IV, 44, 47). LePard's initial testimony on this point must be

Finally, while some of the union-affiliated activity took place after the allegedly discriminatory activity, much of it took place before the first of those actions, the denial of the merit salary adjustment in the late summer of 1984.

B. Was there evidence that the University acted out of unlawful motivation?

1. The Actions by Crandall -- Denial of the Merit Salary Adjustment and the Negative Evaluation

Were any of Crandall's adverse actions motivated by antagonism toward the UPC, or toward Bradley's association with UPC?

There is no evidence from which it would be easy to draw that inference. That is, there is no evidence that Crandall made comments hostile to the UPC, or to unionism generally.<sup>23</sup> Nor is there any evidence of disparate treatment of Bradley by Crandall.<sup>24</sup> While Crandall's actions

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viewed as a transparent, and unsuccessful effort to deny or minimize the extent to which the UPC assisted Bradley during her long-running dispute with LePard and Crandall.

<sup>23</sup>Bradley stated in her closing argument and argued in her brief that Crandall had made comments to her which might be viewed as antagonistic to unionism. However, neither Bradley nor any other witness testified about such remarks. Thus, there is no basis for a finding that such remarks were made.

<sup>24</sup>Bradley argues that she was deprived of clerical and other assistance by Crandall at various times. However, there is no evidence that other professional staff working under Crandall's supervision were treated better or differently. In fact, the evidence suggests that there was a general shortage of clerical assistance in Crandall's department, which presented a problem for each of the professional staff in the department.

with respect to the MSA denial seem somewhat unorthodox, there is no evidence which would establish the standard internal operating procedures regarding MSA's, pursuant to the collective bargaining agreement, and thus no evidence that Crandall or the University departed from standard procedures.

Another circumstance which is sometimes examined to determine whether hostility to a union motivated an employer--the timing of events-- does not lead to a clearcut conclusion here. The first of the two actions by Crandall which are challenged here -- denial of the MSA in late summer, 1984-- may have preceded Crandall's first meeting with Bradley and De Leon, which took place September 7. Crandall's testimony was that she informed the personnel office of the decision to deny the MSA in late August or early September. Neither party introduced more precise evidence.

In the absence of evidence of outright hostility to UPC, or of disparate treatment, or of suspicious timing, there remains the possibility that the extensive criticisms made by Crandall of Bradley are false or highly exaggerated, and thus carry their own indicia that some other (unlawful) motive led to the actions. But there is no credible evidence that the numerous criticisms are generally invalid.

The evidence concerning Bradley's work for Crandall over a period of roughly nine months (July, 1984 until April, 1985) consists mostly of memoranda between the two women, along with

the two written evaluations prepared by Crandall, and Bradley's responses to these. The only testimony about Bradley's work during that period was from Crandall. That testimony was described on pages 17-19 above, and I credited it, despite some reason to view it with caution. Bradley never testified about the substance of any of her disputes with Crandall (with the exception of a few incidental remarks).

Quite possibly Bradley, who was not represented by counsel, believed that the submission as evidence of her memoranda replying to Crandall's criticisms and evaluations was sufficient to present her view of events. That is not the case, however. The documents are hearsay evidence, as they are not statements made during the hearing, under oath and subject to cross-examination. Under PERB Regulations (PERB Regulation 32176) such hearsay evidence is not sufficient for a factual finding unless it is corroborated by non-hearsay evidence.

The correctness of that rule is evident here: a fact-finder presented only with two significantly different written accounts of complex events is almost always unable to make a finding that one account is accurate while the other is not. In this case, credible testimony supports one version of events (Crandall's) while there is no testimony supporting the other version. Thus, there is no evidence that Crandall's criticisms of Bradley's work were contrived, or were a subterfuge for a

desire to be rid of a union activist or supporter.<sup>25</sup>

2. The Actions by LePard --Placing Bradley on Disability Leave, and Refusing to Make Accommodations in Her Job Assignment

There is some slight evidence that LePard was antagonistic to the UPC, or to Bradley's use of UPC representatives. As noted above, LePard made some effort to conceal the extent to which he was aware of Bradley's UPC affiliation. LePard suggested during his testimony that when UPC President De Leon accompanied Bradley to a meeting with LePard, De Leon's presence had nothing to do with the UPC, an unlikely conclusion in the circumstances.

Implausible testimony by a supervisor concerning his lack of knowledge of an employee's union affiliation may suggest a desire to conceal that supervisor's hostility to the union. I hesitate to draw a conclusion of that kind based on this single testimonial incident itself. However, even if it were to be found that LePard was hostile to the UPC, I would not conclude that his actions with respect to Bradley violated HEERA section 3571(a). The reason is that the evidence as a whole is sufficient to support a conclusion that LePard would have taken the same actions against Bradley even if Bradley had

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<sup>25</sup>This is not to say that I find each of Crandall's criticisms to be accurate; because of the lack of corroborating detail concerning many of the events, there is inadequate evidence on which to base findings about these.

not had the assistance of the UPC at various times during her dealings with LePard.

Some explanation of LePard's reaction to Bradley's request for job-restructuring is required. Bradley's March 1985 request for job re-structuring was, at least in part, quite reasonable. Her request to eliminate the aspect of her job which required off-campus travel was not unreasonable. Bradley's job required some travel, but not very much. The job description indicated that 40 per cent of Bradley's time was to be devoted to various forms of outreach, including visits to community college campuses. But Crandall required only 14 days of travel per semester (two visits per semester to each of seven community colleges). That represented less than 20 per cent of Bradley's time (assuming approximately 80 work days during each four-month semester).

Thus, when Bradley asked for re-structuring of her job so she would not have to travel, one immediate thought is that Bradley's position could be reduced to an 80 per cent position, and the college-visitation work assigned to a new or different employee. LePard never proposed this to Bradley, and testified that he never considered the possibility. He had no explanation of why he did not consider such an arrangement.

These circumstances suggest that LePard had something other than accommodation to physical disability in mind in May 1985,

when he placed Bradley on full-time disability leave.<sup>26</sup>

It is my conclusion that LePard placed Bradley on disability leave, against her wishes, and thereby refused her request for a less physically demanding job because: (1) Lepard was convinced, rightly or wrongly, that Bradley was a poor worker, would not improve with time, and would continue to require more supervisory time than she was worth; and (2) LePard viewed Bradley's disclosure of physical limitations as a very convenient opportunity to bring about her departure from the department.

To be sure, LePard did not testify to this explanation. As noted, he had no explanation at all of why he did not consider reducing Bradley's work to a part-time employment, and relieving her of the travel component of her work. To the extent that LePard's testimony suggests an explanation, it was

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<sup>26</sup>Neither party placed in evidence any University regulations concerning alteration of job assignment to take account of physical disability. The collective bargaining agreement includes no reference to the subject. Sections of the Government Code which prohibit employment discrimination against physically handicapped individuals do not refer to any obligation on the part of an employer to adjust job requirements to take account of an individual employee's disability. (Government Code, section 12940). Regulations adopted by the Fair Employment and Housing (Cal. Administrative Code, Title 2, Section 7293.9) require "reasonable accommodation" to be made for physical handicaps of individual employees. Neither party has referred to these regulations at any time during the course of the hearing or in the post-hearing briefing. In any event, it would be the responsibility of the Fair Employment and Housing commission, not the PERB, to enforce these regulations.

that Bradley simply could not do her job, in view of the limitations placed on her by her physicians. But that explanation is not satisfactory, for a number of reasons. First, the University did not place in evidence the physician's note which LePard supposedly relied on. There is in evidence no doctor's letter asserting that Bradley cannot travel or lift more than fifteen pounds, although those limitations are referred to in LePard's disability letter to Bradley.

Second, as noted, the lifting and travel restrictions have nothing to do with at least 80 per cent of Bradley's job. It is possible that the need for elimination or reduction of stress on the job (referred to in Dr. Floro's letter) might have eliminated the possibility that Bradley could have done any part of her job, but this is a complicated question which LePard never explored or explained during the hearing.

Third, LePard's explanations on this point must be viewed with some skepticism because of a lack of candor in his testimony. In testifying about the travel-limitation issue, LePard consistently exaggerated the portion of Bradley's job which required travel, and which Bradley wanted to eliminate. LePard on several occasions described the travel portion of her job as representing 40 per cent of the total, while it is clear from the job description that travel is only a portion of the outreach function, which, as a whole, required 40 per cent of her time.

For all these reasons, it is concluded that LePard's reference, in his May 7 letter, to Bradley's physical disability as the reason for removing her from the work force (at least temporarily) was pretextual, and that he was in fact motivated by another reason.

Bradley argues that the most likely explanation for LePard's action adverse to her is hostility to UPC and to Bradley because of her association with the union. I conclude that the evidence is not persuasive in this regard.

First, it must be noted that LePard took several actions helpful to Bradley even after Bradley had used two UPC representatives to assist her in meetings with LePard. In the summer of 1983, professor Boutell and professor Hanson both met with LePard on behalf of Bradley, trying to arrange changes in Bradley's work assignments and responsibilities. Following those meetings, LePard did as Bradley wished: he redefined her responsibilities so Gottschall had less to do with supervising her work, and so that Bradley had less work to do in the CCEW, other than her adult re-entry work.

And, roughly eight months later, Vice-President Drake, presumably at LePard's recommendation, arranged another change sought by Bradley, moving her out of the CCEW altogether. These circumstances make it difficult to draw an inference that Bradley's association with UPC was the reason for the adverse actions taken against her later in 1984 and 1985.

Second, LePard had sufficient reason to conclude that Bradley was not a useful employee in his department despite her experience of several years doing a similar kind of work. A University committee (which included LePard) had decided that the school's efforts at recruiting students older than typical college students (that is, those 25 years old or older) would emphasize recruiting students attending community colleges. Bradley had not done this work in the past; did not want to do it for personal reasons; urged Crandall at every opportunity not to do it; did not do it efficiently; and, eventually, presented several reasons why it was impossible for her to do (she could not drive to the schools because of the absence of a driver's license; she was unable to find a suitable driver; the driver found for her was unsuitable; public transportation was unsuitable; and, finally, it was physically too difficult for her to do).

That was just one problem which Bradley presented, from LePard's perspective.

Throughout the period about which there is evidence, Bradley sought the freedom to operate her adult re-entry program with little or no supervision from others in the University. She asked LePard to revise the relationship between her and Gottschall, so that she could operate freely of Gottschall. LePard agreed to that. Eight months later, Drake transferred her out of Gottschall's area entirely. Bradley

immediately began asserting a right to programmatic control of the adult re-entry program. She and LePard exchanged memoranda about this, and the UPC president attended a meeting at Bradley's request, at which this was the subject.

Bradley and Crandall had a number of differences about the proper approach to the adult re-entry program. Crandall wanted to see formal, step-by-step plans and programs, and analytical, statistical reports on results. Bradley differed with Crandall about the value of these, was slow to prepare them, and did not prepare them to Crandall's liking.

Bradley constantly sought Crandall's agreement that community college recruitment was unneeded, or low priority; Crandall explained, in turn, that these were the marching orders given to Crandall, and thence to Bradley. Crandall was not about to undo them during the first year they were in effect.

All of these factors made Bradley a problem employee, in the eyes of LePard (and Crandall). The problems which Bradley presented (in LePard's eyes) had nothing to do with her association with the UPC. In my view, these work-related problems were the factors which led LePard to decide that Bradley's disclosure of her physical problems, and her asserted need to avoid stress, travel, and lifting, provided the welcome opportunity to remove a troublesome employee. I cannot say with certainty that LePard was correct in his belief that

Bradley was an undesirable employee. But I conclude that it is more likely these beliefs of LePard rather than any union-linked hostility were motives for his actions.

#### CONCLUSIONS

Bradley took part in protected activities from various times in 1983 until 1985. These protected activities were known to both supervisors, LePard and Crandall. There is no evidence that Crandall had any hostility to the UPC or to Bradley on account of these protected activities. There is some evidence that LePard was hostile to the UPC, or to Bradley's involvement with the union.

At the same time that Bradley was taking part in protected activities, she was also involved in a series of conflicts with Crandall and LePard about the primary objective of the adult re-entry program; about who had the authority to determine the primary objective of the program and the methods to be used to achieve them; and about Bradley's efficiency in achieving these goals and using these methods. At certain times during this protracted conflict (its origins can be traced to 1983, when Bradley arranged some measure of autonomy while nominally supervised by Gottschall), Bradley sought the assistance of the UPC.

The evidence supports the conclusion that LePard and Bradley would have taken the adverse actions challenged in this case even if Bradley had not invoked the assistance of the

UPC. The evidence supports the conclusion that LePard and Crandall took the steps they took because of (1) their dissatisfaction with Bradley's work; and (2) their desire to conduct the adult re-entry program in a way determined by their own judgments and preferences; and (3) their dissatisfaction with Bradley's resistance to accepting directions and criticism from the supervisors designated by the University to oversee the program and Bradley's work.

PROPOSED ORDER

The complaint in this case is hereby dismissed.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on August 26, 1986, unless a party files a timely statement of exceptions. In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board at its headquarters office in Sacramento before the close of business (5:00 p.m.) on August 26, 1986, or sent by telegraph or certified or Express United States mail, postmarked not later than the last day for filing in order to be timely filed. See California

Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305.

Dated: August 6, 1986

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MARTIN FASSLER  
Administrative Law Judge