**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| ELISA MARIA LEPTICH, | ) | |
| | ) | |
| Charging Party, | ) | Case No. SF-CE-1725 |
| | ) | |
| y. | ) | PERB Decision No. 1081 |
| | ) | |
| SAN FRANCISCO COMMUNITY COLLEGE DISTRICT, | ) | January 12, 1995 |
| | ) | |
| Respondent. | ) | |
| | ) | |

Appearance: Elisa Maria Leptich, on her own behalf.

Before Blair, Chair; Carlyle and Johnson, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Elisa Maria Leptich (Leptich) of a Board agent's dismissal (attached hereto) of her unfair practice charge. In her charge, Leptich alleged that the San Francisco Community College District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)[1] when it terminated her employment.

The Board has reviewed the warning and dismissal letters,

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

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

Leptich's unfair practice charge[2], and the entire record in this case. The Board finds the Board agent's warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CE-1725 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Johnson joined in this Decision.

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[2]Leptich claims on appeal that she timely filed an amendment to her charge. Leptich was granted an extension until August 26, 1994 to amend her charge. However, the amended charge was not received by the Board until September 19, 1994. PERB Regulation 32136 (Cal. Code Regs., tit. 8, sec. 17) states, in part:

> A late filling may be excused in the discretion of the Board for good cause only.

Since no good cause was demonstrated for this delay, the Board declines to consider Leptich's amended charge and, accordingly, we deny her "request for remandment" and the return of this matter to the regional office for further review.

Leptich also claims that a filing on this matter with the National Labor Relations Board (NLRB) constitutes a filing with this body, thus making her amended charge timely filed. The Board has found no NLRB or Board authority to support such a position. Accordingly, the Board also rejects this argument.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198

September 1, 1994

Elisa Maria Leptich, Ph.D.

Re: NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
Elisa Maria Leptich v. San Francisco Community College District: Unfair Practice Charge No. SF-CE-1725

Dear Dr. Leptich:

I indicated to you, in my attached letter dated August 2, 1994, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to August 12, 1994, the charge would be dismissed. Your subsequent request for an extension of time to respond was approved, and the deadline was extended to August 26, 1994.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my August 2, 1994 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar

days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 32635(b).)

Service

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

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code of Regs., tit. 8, sec. 32132.)

Final Date

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

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By _____
Les Chisholm
Regional Director

Attachment

cc: Jeffrey Sloan

STATE OF CALIFORNIA PETE WILSON, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198

August 2, 1994

Elisa Maria Leptich, Ph.D.

Re: WARNING LETTER
Elisa Maria Leptich v. San Francisco Community College District; Unfair Practice Charge No. SF-CE-1725

Dear Ms. Leptich:

The above-referenced charge, filed with the Public Employment Relations Board (PERB or Board) on July 12, 1994, alleges that San Francisco Community College District (SFCCD)[1] terminated your employment and otherwise took reprisals against you in violation of Government Code sections 3543 and 3543.5(a).[2]

The facts pertinent to an analysis of this charge are as follows. You were employed by the SFCCD for some 20 years but classified as a part-time, temporary teacher without tenure. Your position was included in a bargaining unit for which AFT is the exclusive representative. For the five-years preceding the Spring 1992 semester your assignment was in the Recreation Center for the Handicapped. While so employed, you had initiated grievances and filed other complaints alleging illegal practices by the department. In December 1991 you filed a complaint with the SFCCD Affirmative Action Office alleging discrimination based on handicap, physical or mental disability. On January 7, 1992, AFT filed a grievance protesting your reassignment to a different program and alleging that the reassignment constituted reprisal in violation of the written agreement between SFCCD and AFT. That grievance was denied by SFCCD.

Following the Spring 1992 semester, you were not given an assignment for the Fall 1992 semester and were, in effect, terminated by SFCCD. AFT filed three additional appeals or

[1]Also known as City College of San Francisco.

[2]An identical charge (SF-CO-472) has been filed against AFT Local 2121 (AFT). Alleged violations of Government Code section 3543.6 are properly analyzed in that case rather than the instant charge. In addition, the facts alleged do not warrant analysis under the Higher Education Employer-Employee Relations Act (Government Code section 3560 et seq.) or the Ralph C. Dills Act (Government Code section 3512 et seq.) as no party to either case is under the jurisdiction of those provisions.

grievances on your behalf regarding both personnel file issues and the termination itself, and you filed one "no reprisal" grievance yourself. Under the written agreement, only the "no reprisal" grievance over your termination could be taken to binding arbitration by AFT.

SFCCD denied all grievances and appeals.[3] By letter dated September 1, 1993, and with a two-plus pages explanation attached, AFT advised you of a recommendation being made to its executive board to not pursue the termination or "no reprisal" grievance to arbitration.[4] The executive board approved the recommendation on September 14, 1993 and you were so advised.

You currently have pending before the Unemployment Insurance Appeals Board and Workers' Compensation Appeals Board (WCAB) matters pertaining to your former employment with SFCCD. A WCAB judge issued an order in February 1994 that the defendant in that action produce a complete copy of your personnel file and other information.

Discussion

The Educational Employment Relations Act (EERA) specifies as a jurisdictional matter at Government Code section 3541.5(a)(1) that PERB shall not issue a complaint concerning "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge."

Your employment with the SFCCD was terminated in the Fall of 1992 and grieved by AFT in November 1992. The grievance procedure was exhausted with AFT's decision in September 1993 not to pursue the grievance to arbitration. Thus, even allowing tolling of all time prior to September 14, 1993,[5] any unfair practice charge over the termination itself or AFT's discharge of its duty to represent you concerning the termination, would have had to be

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[3]Copies of the SFCCD responses were provided to you by AFT.

[4]Earlier, an AFT attorney had written to you regarding an assessment of the likelihood, or lack thereof, of prevailing in an appeal such as yours.

[5]EERA section 3541.5(a)(2) provides that the six-month limitation is tolled "during the time it took the charging party to exhaust the grievance machinery," referring specifically to any grievance machinery included in an agreement between a public school employer and exclusive representative.

filed no later than March 1994. As noted, this charge was not filed until another four months had passed. The charge must therefore be dismissed as untimely.

Summary

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before August 12. 1993. I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, ext. 359.

Sincerely,

Les Chisholm
Regional Director

**PROOF OF SERVICE BY MAIL**
**C C P . 1013a**

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board 1031 18th Street, Sacramento, California, 95814-4174. I am readily familiar with the ordinary practice of the business in collecting, processing and depositing correspondence in the United States Postal Service and that the correspondence will be deposited the same day with postage thereon fully prepaid.

On January 12, 1995, I served the attached PERB Decision No. 1081, San Francisco Community College District. Case No. SF-CE-1725 on the parties listed below by placing a true copy thereof enclosed in a sealed envelope for collection and mailing in the United States Postal Service following ordinary business practices at Sacramento, California addressed as follows:

Jeffrey Sloan, Attorney
Liebert, Cassidy & Frierson
49 Stevenson Street, Suite 1050
San Francisco, CA 94105-2909

Elisa Maria Leptich
324 Kittyhawk Road, #207
Alameda, CA 94501.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on January 12, 1995, at Sacramento, California.

Teresa M. Stewart
(Type or print name)

Teresa M. Stewart
(Signature)