

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JENA ANNE SUMMER,)
)
 Charging Party,) Case No. LA-CE-3708
)
 v.) PERB Decision No. 1192
)
 LOS ANGELES UNIFIED SCHOOL)
 DISTRICT,) April 9, 1997
)
 Respondent.)
 _____)

Appearances: Jena Anne Summer, on her own behalf; Rochelle J. Montgomery, Attorney, for Los Angeles Unified School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Jena Anne Summer (Summer) of a Board agent's dismissal (attached) of her unfair practice charge. In the charge, Summer alleged that the Los Angeles Unified School District (District) violated section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)¹ by retaliating against her because of her exercise of

¹EERA 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.

protected rights.

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

The unfair practice charge in Case No. LA-CE-3708 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



December 11, 1996

Jean Anne Summer

Re: Jean Anne Summer v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-3708
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Ms. Summer:

In the above-referenced unfair practice charge, filed August 9, 1996, you allege the Los Angeles Unified School District (District) violated Educational Employment Relations Act (EERA or Act) section 3543.5(a) and (b).

On October 7, 1996, I issued a warning letter explaining the original charge failed to demonstrate a prima facie violation within the jurisdiction of PERB. On October 15, 1996, you filed an amended charge. The amended charge alleges the District:

- (a) failed to offer reasons for its inappropriate actions,
- (b) "did not adhere to the grievance process ending in binding arbitration,"
- (c) conducted a cursory investigation,
- (d) offered inconsistent and contrary justifications for its actions, and
- (e) transferred you from teaching the 5th grade to the first grade in a disparate manner.

The amended charge fails to state a prima facie violation within the jurisdiction of PERB for the reasons that follow.

To demonstrate a violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210.)

As stated in my October 7, 1996 letter, the only alleged adverse action within the statute of limitations period was the District's failure to reinstate you to your position on March 20, 1996. The charge fails to factually demonstrate the requisite nexus between your protected activity and the District's failure

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to reinstate you to your position. As previously explained in the warning letter, the settlement agreement to your grievance did not require the District to reinstate you. The substantive part of the agreement simply provides:

The District agrees to rescind the Final Evaluation Report dated April 24, 1995, with an overall rating of Below Standard Performance.

UTLA and the grievant agree to withdraw the above-captioned grievance.

The charge did not provide facts indicating the District failed to adhere to the grievance process ending in binding arbitration. Instead the charge indicates your grievance did not go to binding arbitration because the parties settled the grievance on March 20, 1996.

The charge does not factually support your allegation that the District failed to offer reasons for its actions. The settlement agreement indicates the District offered the settlement to avoid litigation. The charge similarly fails to factually support the charge's conclusions that the District conducted a cursory investigation, and offered inconsistent and contrary justifications for its actions.

The amended charge also alleges the District transferred you in a disparate manner. As a separate adverse action this allegation is time-barred.¹ Nor does this allegation factually support the District's failure to reinstate you was unlawfully motivated. The charge does not include facts demonstrating how or in what manner your transfer was disparate. Thus for the above-stated reasons and the reasons contained in the warning letter, the above-referenced charge is dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing

¹The appropriate six month period is between February 9, 1996 and August 9, 1996. The charge indicates the District elected not to rehire you on June 13, 1995. Therefore the alleged transfer must have occurred prior to that date and is outside of the appropriate statute of limitations.

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an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number. 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 Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
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 Regs., tit. 8, sec. 32635(b).)

Service

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

Extension of Time

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

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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

Tammy L. Samsel
Regional Director

Attachment

cc: Rochelle J. Montgomery

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127



October 7, 1996

Jean Anne Summer

Re: Jean Anne Summer v. Los Angeles Unified School District
Unfair Practice Charge No. LA-CE-3708
WARNING LETTER

Dear Ms. Summer:

In the above-referenced unfair practice charge, filed August 9, 1996, you allege the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA or Act) section 3543.5(a) and (b). My investigation revealed the following information.

You allege the District violated the EERA by the following actions: (1) on March 20, 1995, the District refused to allow you a union representative during a disciplinary meeting, (2) on March 23, 1995, the District suspended you, (3) on April 26, 1995, the District issued a Below Standards evaluation, (4) on June 13, 1995, the District notified you of your non-reelection, and (5) on March 20, 1996, the District failed to reinstate you to your job.

The above-stated facts fail to state a prima facie violation of the EERA for the reasons that follow. EERA § 3541.5(a) provides the Board shall not:

Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

In the instant charge, the appropriate six month period is between February 9, 1996 and August 9, 1996. Thus the District's actions on March 20, 1995, March 23, 1995, April 26, 1995, and June 13, 1995, do not fall within the jurisdiction of PERB. The only event arguably falling within the six months immediately preceding this charge is the District's failure to make job reinstatement part of the settlement of your grievance on March 20, 1996.

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To demonstrate a violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (19 79) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other facts which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.) As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of EERA section 3543.5(a).

Your charge alleges the District agreed to rescind the negative evaluation, "but did not issue another which reflects Meet Standards Performance nor was J. Summer reinstated in her teaching job." It does not appear from the settlement agreement dated March 20, 1996, that the District agreed to issue an improved evaluation or reinstate you to your position. Nor does the charge factually support the District's action was motivated by your participation in protected activities.

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

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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 October 15, 1996. I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Regional Attorney