STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS OAKDALE ELEMENTARY CHAPTER 685,	
Charging Party,	Case No. SA-CE-1703
v.	PERB Decision No. 1246
OAKDALE UNION ELEMENTARY SCHOOL DISTRICT,	January 28, 1998
Respondent.	

Appearances: California School Employees Association by Burton Gray, Labor Relations Representative, for California School Employees Association and its Oakdale Elementary Chapter 685; Stroup & de Goede by Daniel G. Stevenson, Attorney, for Oakdale Union Elementary School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Oakdale Union Elementary School District (District) to a Board administrative law judge's (ALJ) proposed decision. In his proposed decision, the ALJ held that the District violated section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)[1] when it disciplined Denise Bianchi (Bianchi) for

---

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

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals

reporting alleged safety violations to a third party and for allegedly harassing a co-worker and discussing union business during work hours.

The Board has reviewed the entire record in this case, including the proposed decision, the hearing transcript, the District's exceptions and the California School Employees Association and its Oakdale Elementary Chapter 685's (Association) response thereto. For the reasons that follow, the Board finds that the District's actions violated section 3543.5(a) and (b) of the EERA.

PROCEDURAL HISTORY

On November 6, 1995, the Association filed an unfair practice charge in Case No. SA-CE-1703. The District responded to the charge on December 4, 1995. On January 16, 1996, the PERB Office of the General Counsel issued a complaint on the charge. The complaint alleged that the District violated EERA section 3543.5(a) and (b) when it took adverse action against Bianchi because of her exercise of EERA-protected rights. The District answered the complaint on February 5, 1996.

The ALJ held a formal hearing on June 26, 1996 and issued

---

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.

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

his proposed decision on October 31, 1996. The District filed exceptions to that proposed decision on November 12, 1996. The Association responded to those exceptions on November 25, 1996.

FACTS

The District is a public school employer within the meaning of EERA section 3540.1(k). The Association is an employee organization and the exclusive representative of an appropriate unit of employees within the meaning of EERA section 3540.l(d) and (e). Bianchi is an employee within the meaning of EERA section 3540.1(j).[2]

---

[2]Section 3540.1 provides, in relevant part:

> As used in this chapter:
>
> (d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.
>
> (e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.
>
> (j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.
>
> (k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

The District and the Association are parties to a collective bargaining agreement (CBA). The CBA contains a grievance procedure which does not include binding arbitration. Article XII of the CBA covers employee safety. Article XII provides, in relevant part:

> 12.1.1 The District will make a reasonable effort to provide for each employee's safety.
>
> 12.1.2 Any employee who observes a working condition deemed unsafe to employees shall report such condition to his/her immediate supervisor. The immediate supervisor will consider such report promptly.
>
> 12.1.6 No employees shall be in any way discriminated against as a result of reporting any unsafe conditions.

The District has employed Bianchi for approximately 20 years. During the time period covered by the charge, Bianchi held the position of Secretary I in the office of the Principal at Oakdale Junior High School (OJHS). Bianchi was the Association chapter president for the 1994 and 1995 calendar years.

During the 1995 calendar year, OJHS Principal Kenneth Meil (Meil) held periodic administrative/staff meetings. Meil, OJHS Assistant Principal Richard Jones, Sharon Lemons (Lemons), Carolyn Wright (Wright), and Association President Bianchi attended these meetings. These meetings were informally structured and were used to discuss current work items or items of general interest or concern. Bianchi and other staff also

used these meetings to report safety concerns to Meil.

Safety Memoranda

On April 13, 1995, Bianchi was working at the counter in the Principal's office when a safety inspector from the District's worker's compensation insurance carrier (safety inspector) approached. The inspector informed Bianchi that he was there to look for unsafe conditions at OJHS. Bianchi informed the inspector that she was aware of a number of unsafe conditions at the school. After extracting a promise of anonymity, Bianchi provided a list of those conditions to the inspector. Bianchi testified that she requested anonymity because she feared reprisal. The list contained the following items:

1. Doors should have glass inserts to view people coming out as we often have "near miss" accidents.

2. Storage room needs to be checked as there are:

   a. inadequate shelves

   b. items stacked above cupboards that are often opened

   c. HEAVY ITEMS get stacked in front of cupboards and must be shuffled around before cabinets can be opened.

3. Corners on desk too sharp. Constantly bruising knees on the drawers.

4. Inadequate computer protection: Glare screens, wrist guards, etc.

5. Inadequate work space - too much on desks, no storage . . . causes accidents.

6. Water in nurse's office is draining outside. (Not in covered sewage) Blood products can be washed directly outside of building.

7. Students must vomit in a trash can (while other students are present), as there are no bathrooms in the nurse's/business office. Students in cramped quarters must be exposed to the uncovered vomit and virus contained in the trash.

8. Carpet is constantly snagging where portables join. (Heels get caught on it and it causes tripping.)

On May 10, 1995, Meil sent Bianchi a memorandum regarding the anonymous list. The memorandum read as follows:

> I am in receipt of a list provided by you for the CRSIG safety inspector. I believe you [sic] actions are inappropriate in providing the information to the safety inspector without first appraising [sic] me of the situation and specific violations.
>
> In the future, concerns about safety issues on this campus should be brought to my attention immediately.
>
> This memo will be placed in your personnel file. You have ten days if you wish to respond.

Bianchi responded to Meil's memorandum on May 12, 1995. Bianchi's memo stated, in part:

> You have been told verbally many times of safety issues regarding this school site including the drainage of blood and vomit onto the outside lawn area. This has been discussed with others present. The safety issues were also brought up years ago with Mr. Cook when he was principal and communicated our concerns to Dr. Kennedy, per Mr. Cook at the time of installation of the nurse's sink.
>
> The other issues listed have been discussed

with you as well, verbally.

Bianchi also filed a grievance over Meil's memorandum. In the first level response to Bianchi's grievance, Meil agreed to remove the memorandum from Bianchi's personnel file. Nonetheless, Meil gave Bianchi a second memorandum, also dated May 10, 1995, which stated:

> I am in receipt of a list provided by you for the CRSIG safety inspector. In the future, concerns about safety issues on this campus should be brought to my attention immediately.

On May 19, 1995, Bianchi appealed her grievance to the second level. Bianchi expressed relief that the District had agreed to remove the original memorandum from her personnel file, but indicated that the new memorandum was unacceptable because it "could be implied . . . that I have not followed [D]istrict procedure in reporting safety issues when, in fact, I have." On May 31, 1995, Meil responded to Bianchi's grievance appeal by informing her that the second May 10, 1995 memorandum had been destroyed.

At the hearing, Bianchi and Lemons testified, without contradiction, that all of the safety concerns on Bianchi's April 13 list had been discussed during administrative/staff meetings. Meil was present during these discussions.[3]

Letter of Reprimand

On January 3, 1994, Wright joined the office staff at 0JHS.

---

[3]In fact, under cross examination, Meil conceded that the safety conditions included on the list had been mentioned during administrative/staff meetings.

Wright had been a part-time District employee for the past sixteen (16) years. She had known Bianchi for eleven (11) or twelve (12) of those years. Bianchi had recommended Wright for the position at OJHS.

On January 6, 1994, Wright filled out a "Notice of Intent," stating that she did not wish to join the Association. Bianchi received a copy of this form in her capacity as Association president.

A few days prior to May 24, 1995, Wright spoke to Meil and expressed a concern that she was being harassed by Bianchi. Meil asked Wright to put her concerns in writing. Wright did so in a May 24, 1995 letter to Meil. Wright indicated that Bianchi's behavior:

> . . . has been ongoing from the time I was first hired and Denise received notification that I did not join the Union. She told me that she was disappointed that I didn't want to join the Union and began to explain what the Union was all about.

Wright contended that Bianchi then:

> . . . began to instruct me on what she felt were the requirements of my job. And if I failed to comply with her instructions, she would become angry. Denise then began to tell me that I was hired in large part as a result of her letter of recommendation and that she had input as to what kind of evaluation I would receive. She also said that her input would be considered as to whether or not I would be retained as a permanent employee after my probationary period was over.

Wright also complained that Bianchi told her that she would be required to do the textbook inventory at the end of the school

year.[4] Wright's letter indicated that she did not believe that she could complete the textbook inventory in addition to the rest of her year-end duties. Wright complained that Bianchi had threatened to file a grievance against her if she failed to perform the textbook inventory.

Wright also indicated that Bianchi intimidated her by questioning her work assignments. For example, Bianchi would ask Wright what project she was working on and whether the assignment was on time. Wright believed that these incidents, plus her refusal to join the Association, caused Bianchi to maintain a file on her. Wright felt that the purpose of that file was "to place my job in jeopardy." It was for these reasons that Wright indicated she brought the matter to Meil's attention, even though there was no specific action which occurred on or immediately prior to her conversation with Meil. Wright testified that she was unhappy about Bianchi's instructions regarding office etiquette. Wright felt that Bianchi's tone was authoritarian and confrontational and that Bianchi assumed a de facto supervisory role and became angry when Wright did not acquiesce to that status.

In addition, Wright testified that she spoke to both Michael Branham (Branham), District personnel director, and his secretary, Kellie Fulton, about the extent to which Bianchi would have input into Wright's evaluation and the question of whether

---

[4]A1though Bianchi had performed the year-end inventory in past years, Wright's job description listed it as one of her duties.

Wright successfully passed her probationary period. Branham assured Wright that such decisions would be made by the District and that Bianchi was not a party to that procedure.

Wright also called Branham regarding the meaning of a recently implemented agency fee provision. During this conversation, Wright expressed concerns about Bianchi harassing her regarding the choice of paying Association dues or a service fee.[5]

On May 26, 1995, Meil summoned Bianchi to a meeting in his office. Meil informed Bianchi that she could bring an Association representative. Bianchi and her representative, Lisa Lucero, attended the meeting, at which time Meil read the following letter:

> It has been brought to my attention by Carole Wright that she feels harassed and intimidated by you for the following reasons:
>
> 1. You have mentioned to her on more than one occasion while on district time, that Carole's union dues need to be paid and the process for payment.
>
> 2. When Carole has been given permission by administration to go to the district office, you made her feel uncomfortable by asking why she is going and what reports she is providing the district.
>
> 3. During the past year, you have told Carole [that] you would play a part in her evaluation because you wrote her a letter of recommendation.

---

[5]The CBA required Wright to pay: (1) the Association's membership fee; (2) a service agency fee; or (3) a charitable contribution. Wright chose to contribute to a non-profit organization.

> 4. Carole feels intimated [sic] by your comments about the textbook inventory.
>
> 5. Carole feels harassed by your statements that you are going to keep a log of her telephone calls, and the time she goes to and returns from lunch.
>
> Carole states that she feels uncomfortable, intimidated, and harassed by your remarks, comments and implied threats.
>
> <u>You are directed to cease harassing, threatening and intimidating Carole Wright at work.</u>
>
> A copy of this memo will be placed in your personnel file. You may respond in writing within ten days. [Emphasis in original.]

After reading the letter of reprimand, Meil terminated the meeting without further discussion. Meil did not reference Wright's May 24 letter or provide Bianchi a copy thereof.

At the hearing, Meil testified that he did not discuss Wright's letter with Bianchi before issuing the letter of reprimand because:

> . . . At the time I didn't discuss it with her because I felt she was using District time to do Union business and so that was a primary function in terms of that, that's what I gleaned out of that, so I didn't discuss it with her.

When asked how he knew Wright's allegations were true, Meil responded:

> In terms of reading that, in terms of discussion, that was one of the things when she started orally talking to me about before she wrote this.

After a discussion between the ALJ and the parties' attorneys, Meil was given another opportunity to answer the

question. He stated:

> Because I felt I needed to get a response in writing to that allegation.

On June 5, 1995, Bianchi responded, in writing, to Meil's letter. Her opening paragraphs stated:

> I was quite shocked, and surprised, to be informed by your letter of May 26, 1995, that Carol Wright feels harassed and intimidated by me. However, what I find even more remarkable is your stated conclusions that I have, in fact, harassed, threatened, and intimidated another employee.
>
> Your letter clearly indicates that you have determined I am guilty of the stated offenses without conducting any investigation, or attempting to obtain my version of the facts. It appears that any requirement of due process has been tossed aside.
>
> I am particularly concerned with the fact that the referenced memo is being placed in my personnel file. I can see no other reason for such, except as the initiation of disciplinary action under Articles XXII and IX of the Classified Contract. Placement in my personnel file and the 10 day response time clearly indicate your subversive purpose.
>
> I have no recollection in my years of service with the School District and The Union wherein this procedure was employed. Had this sort of complaint been brought to your attention regarding any other employee, the issues would have been addressed in a less formal, and less accusatorial manner. I am dumbfounded as to why you did not simply call me in to your office to notify me of Carol's "feelings."

Bianchi then offered her rebuttal to each of Wright's allegations, denying that she had harassed or intimidated Wright. Bianchi objected that Meil had apparently concluded that Wright's accusations were true even though he had not conducted any

investigation or asked Bianchi her version of the events.

At the hearing, Bianchi testified that she spoke to Wright on only one occasion about joining the Association, and purposefully avoided the subject after that because Wright became so upset. According to Bianchi, this discussion occurred shortly after she received Wright's January 6, 1994, Notice of Intent. Bianchi testified that she advised Wright to contact Branham regarding the alternatives to Association membership.

Bianchi received performance evaluations in May of 1994, 1995, and 1996. The 1994 and 1995 evaluations were prepared and signed by Meil. The 1994 evaluation reflected all ratings of "Meets Expectations," the highest possible rating, with a positive comment about Bianchi's bookkeeping and organizational skills. The 1995 evaluation was signed by Meil on May 15, 1995, during the time Meil was sending Bianchi memos concerning her report of safety concerns to the safety inspector. The evaluation reflected all ratings of "Meets Expectations," with the following comment: "Care should be taken around equipment and objects to avoid injury." Bianchi responded: "I feel my injuries are caused because the office isn't safe. Storage etc. isn't provided and lots of times people run into others because of the cramped spaces." Bianchi signed the evaluation on May 24, 1995, just two days before the meeting with Meil concerning the alleged harassment of Wright. The 1996 evaluation again reflected all ratings of "Meets Expectations" with the following comment included: "Doing excellent work, keep it up."

ALJ'S DECISION

The ALJ found that the District issued the two May 10, 1995 memoranda and the May 26, 1995 letter of reprimand to Bianchi in retaliation for her protected activities. Accordingly, the ALJ found that the District's conduct violated EERA section 3543.5(a). The ALJ found that both reprisal violations also interfered with the Association's right to represent its members in violation of EERA section 3543.5(b).

DISTRICT'S APPEAL

The District filed eight exceptions to the proposed decision. These exceptions essentially challenge two aspects of the ALJ's decision. First, the District contends that there was insufficient evidence to demonstrate that Meil had an unlawful motive when he disciplined Bianchi for reporting safety issues. Second, the District argues that Meil had a factual basis for issuing the letter of reprimand and that this factual basis precludes a finding of unlawful motive.

ASSOCIATION'S RESPONSE

The Association responded to each of the District's exceptions, arguing that the proposed decision is supported by the facts and the law.

DISCUSSION

As the ALJ noted, it is unlawful for the District to discriminate against an employee because of that employee's exercise of protected activity. (EERA sec. 3543.5(a).) In order to establish a prima facie case for a discrimination violation,

the charging party must prove that he or she engaged in an activity protected by the EERA; that the employer had knowledge of that activity; and that the employer took adverse action against the charging party because of that protected activity. (Scotts Valley Union Elementary School District (1994) PERB Decision No. 1052 at p. 2 (Scotts Valley); Novato Unified School District (1982) PERB Decision No. 210 at p. 6 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89 at p. 11.)

Because motivation is a state of mind which may be known only to the actor, direct proof of unlawful motivation is rarely possible. (See, e.g., Novato at p. 6.) Accordingly, the Board recognizes the following circumstantial indications of unlawful motivation: (1) proximity in time between the participation in protected activity and the adverse action; (2) disparate treatment of the affected employee; (3) departure from established procedures and standards; (4) inconsistent or contradictory justifications for the employer's actions; and (5) inadequate investigation. (Id. at p. 7; Baldwin Park Unified School District (1982) PERB Decision No. 221 at p. 16.) If a charging party can demonstrate the existence of more than one of these factors, the Board will infer that the employee's protected activity motivated the employer's conduct. (Ibid.) The employer may, of course, rebut this inference through evidence showing that it would have taken the complained of action(s) despite the employee's protected activity. (Healdsburg Union High School District (1997) PERB Decision No. 1185, proposed dec. at p. 47;

Scotts Valley at pp. 4-5.)

Letter of Reprimand

Taking last things first, we find that the District issued the May 26, 1995 letter of reprimand for discriminatory reasons. As the ALJ found, Bianchi was engaged in ample protected activities, including her presidency of the Association and her filing of a grievance challenging the May 10, 1995 memoranda. (Chula Vista Elementary School District (1997) PERB Decision No. 1232 at p. 4 (representing members of employee organization is protected activity); Los Angeles Community College District (1995) PERB Decision No. 1091 at p. 11 (filing grievances and participating in employee organizational activities is protected activity).) It is uncontested that the District knew of these protected activities. Accordingly, we turn our attention to the issue of motive.

As the ALJ found, Meil issued the letter of reprimand at the same time that Bianchi was pursuing her grievance over the May 10, 1995 memoranda. In addition, we agree with the ALJ's finding that Meil based the letter of reprimand solely on Wright's version of the events in question, without interviewing Bianchi or any other member of the office staff. Taken together, we find that Meil's failure to complete a thorough investigation, coupled with the timing of the letter of reprimand, is sufficient to support an inference of unlawful motive. Because the District failed to present evidence demonstrating that it would have issued the letter of reprimand despite Bianchi's protected

activity, we concur in the ALJ's holding that the District violated EERA section 3543.5(a) and (b) when it issued the May 26, 1995 letter of reprimand.[6]

Safety Complaint

We also concur with the ALJ's finding that the District issued the May 10, 1995 memoranda in retaliation for Bianchi's protected activities. We take this opportunity, however, to address an issue of first impression.

The Board has long held that an employee's pursuit of a safety-related complaint through his or her union is protected by the EERA. (Regents of the University of California (1983) PERB Decision No. 319-H at p. 15, fn. 6.) Likewise, EERA protects employees' right to report safety concerns to their employer. (Los Angeles Unified School District (1995) PERB Decision No. 1129, proposed dec. at p. 8; Pleasant Valley School District (1988) PERB Decision No. 708 at p. 15 (noting that EERA section 3543 protects employee's right to represent him/herself in employment relations with the employer).)[7] The Board has never

---

[6]On appeal, the District contends that the letter of reprimand was proper because Bianchi later admitted that she had discussed Association business during work hours on one occasion. The District's argument is unpersuasive. The mere fact that some of the allegations in the letter of reprimand were later shown to be accurate does not excuse Meil's failure to perform an adequate investigation. The District has failed to rebut the inference of unlawful motivation.

[7]EERA section 3543 provides, in relevant part:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of

specifically ruled, however, on the issue of whether EERA protects the right of an individual employee to subsequently report safety concerns to a third party.

As noted above, the CBA between the Association and the District provides that employees shall report unsafe working conditions to their immediate supervisor. Association president Bianchi complied with the CBA by consistently reporting safety issues, including those ultimately delivered to the safety inspector, during administrative/staff meetings held by Meil and his predecessor. Thereafter, when approached by the safety inspector, Bianchi provided a list of safety issues which had not yet been resolved to her satisfaction.

Based on the totality of the circumstances in this case, we find that Bianchi's report to the safety inspector was consistent with the parties' CBA and was an extension of her attempts to resolve these issues through the Association and the District. Accordingly, we find that Bianchi's report to the safety inspector constituted participation in the activities of an employee organization within the meaning of EERA section 3543.[8]

> representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer.

[8]We note that this result is consistent with National Labor Relations Board (NLRB) precedent protecting employee complaints to employers, as well as to third parties, when those complaints are a logical continuation of group activity. (Transport

Since the District took adverse action against Bianchi in direct response to this protected activity, the District's action violated EERA section 3543.5(a) and (b).

CONCLUSION

The Board finds that Bianchi's conduct in reporting safety-issues to the District's worker's compensation insurance investigator was protected and that the District violated EERA section 3543.5(a) when it disciplined Bianchi for that conduct. The Board also affirms the ALJ's finding that the District violated EERA section 3543.5(a) when it issued the May 26, 1995 letter of reprimand to Bianchi because of her protected conduct. The District's conduct also denied the Association its right to represent its members in violation of EERA section 3543.5(b).

America. Inc. (1996) 320 NLRB 882, 888 [153 LRRM 1048] (noting that individual complaint protected as continuation of group complaints made during staff meetings); Salisbury Hotel (1987) 283 NLRB 685, 687 [125 LRRM 1020] (holding that individual's report to Department of Labor protected because it was logical extension of group complaints); Consumers Power Co. (1986) 282 NLRB 130, 131-132 [123 LRRM 1305] (finding that individual employee's complaint was concerted and therefore protected because it was continuation of employee discussions during staff meetings); cf. Meyers Industries. (1984) 268 NLRB 493, 497 [115 LRRM 1025] (finding individual's action lacked protection because it was undertaken alone and for sole benefit of the employee).) Although the language of the EERA is not identical to that of the National labor Relations Act (NLRA), the Board may look to the NLRB's construction of various provisions of the NLRA for guidance in interpreting similar sections of the various public employment relations statutes. (See, e.g., McPherson v. Public Employment Relations Bd. (1987) 189 Cal.App.3d 293, 311 (holding that, despite differences in statutory language, PERB was not justified in departing from NLRB precedent establishing parameters of protected conduct); Modesto City Schools (1983) PERB Decision No. 291 at pp. 61-62.)

ORDER

Based upon the findings of fact, conclusions of law, and the entire record in this case, it is found that the Oakdale Union Elementary School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a) and (b).

Pursuant to section 3541.5(c) of the EERA, it is hereby ORDERED that the District, its administrators, and representatives shall:

A. CEASE AND DESIST FROM:

1. Issuing sequential memoranda to Denise Bianchi (Bianchi) regarding her preparation and transmittal of a list of unsafe working conditions at her work site to the District's worker's compensation insurance carrier (safety inspector);

2. Issuing a letter of reprimand to Bianchi regarding allegations made by Carolyn Wright (Wright); and

3. Denying the California School Employees Association and its Oakdale Elementary Chapter 685 the right to represent its unit members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE EERA:

1. Destroy all copies in District files of the two sequential memoranda, dated May 10, 1995, issued by Principal Kenneth Meil (Meil) to Bianchi regarding a list of unsafe working conditions.

2. Destroy all copies of a letter of reprimand issued by Meil to Bianchi on May 26, 1995, regarding allegations made by Wright.

3. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to classified employees are customarily placed, copies of the Notice attached hereto as an Appendix. The notice must be signed by an authorized agent of the District, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, altered, defaced or covered by any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director in accordance with the director's instructions. All reports to the director shall be concurrently served on the charging party herein.

All other aspects of the charge and complaint are DISMISSED.

Member Johnson joined in this Decision.

Chairman Caffrey's concurrence and dissent begins on page 22.

CAFFREY, Chairman, concurring and dissenting: I dissent from the finding that the Oakdale Union Elementary School District (District) violated section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA) when it issued two memoranda dated May 10, 1995, to Denise Bianchi (Bianchi) concerning her report of safety concerns to a party outside of the employment relationship. I concur in the finding that the District violated EERA section 3543.5(a) and (b) when it issued a disciplinary letter dated May 26, 1995, to Bianchi for allegedly harassing and intimidating employee Carolyn J. Wright (Wright).

DISCUSSION

In order to establish that an employer has engaged in unlawful reprisal or discrimination in violation of EERA section 3543.5, the charging party must demonstrate that the employee engaged in protected activity; the employer was aware of that activity; the employer took action adverse to the employee; and the employer's conduct was motivated by the employee's protected conduct. (Novato Unified School District (1982) PERB Decision No. 210 (Novato).) The California School Employees Association and its Oakdale Elementary Chapter 685 (Association) alleges that the District engaged in unlawful reprisal against Association President Bianchi when it issued two memoranda dated May 10, 1995, to her concerning her report of safety concerns to an outside party; and when it issued a disciplinary letter to her on May 26, 1995, alleging that she had harassed and intimidated another employee.

Safety Report

The record in this case reveals that Bianchi and other employees complained about safety concerns on several occasions during administrative/staff meetings conducted by school principal Kenneth Meil (Meil). Dissatisfied with the District's response, Bianchi on April 13, 1995, presented a list of safety concerns to an inspector employed by the District's workers' compensation insurance carrier who happened to be at the school where Bianchi worked. In doing so, Bianchi requested and received a promise of anonymity from the inspector. Nonetheless, Meil became aware that Bianchi had given the list to the inspector. As a result, he sent her a May 10, 1995, memorandum reprimanding her for providing the list without first notifying him of the concerns. Bianchi filed a grievance and Meil subsequently replaced that memorandum with another, also dated May 10, 1995, advising Bianchi to bring future safety concerns to his attention immediately. The Association alleges that the Meil memoranda constitute unlawful reprisal against Bianchi for her exercise of protected conduct.

Applying the Novato test to these circumstances, it is clear that the District took adverse action against Bianchi in the form of the two May 10 memoranda. It is equally clear that the conduct was motivated by, and a direct result of, Bianchi's action of giving the list of safety complaints to the inspector without providing a copy to Meil. There is no assertion in the record that the adverse action was motivated by the fact that

Bianchi raised safety concerns at administrative/staff meetings, or that it was motivated by Bianchi's role as Association President. The District took adverse action against Bianchi because she reported her safety concerns to an outside party, an insurance company inspector, and did not notify the District. The question, therefore, is whether the EERA gives Bianchi the protected right to make a safety complaint to a party outside of the employer-employee relationship.

As the majority notes, the Board has never specifically addressed itself to this question, but has concluded that EERA protects an employee's right to report safety concerns to the employer. (Pleasant Valley School District (1988) PERB Decision No. 708; Los Angeles Unified School District (1992) PERB Decision No. 957; Los Angeles Unified School District (1995) PERB Decision No. 1129.) In considering Bianchi's actions, the majority concludes that her providing the list of safety concerns to the inspector:

> . . . was an extension of her attempts to resolve these issues through the Association and the District. Accordingly, we find that Bianchi's report to the safety inspector constituted participation in the activities of an employee organization within the meaning of EERA section 3543. [Footnote omitted.]

I disagree with this conclusion.

EERA section 3543 provides public school employees with the right to be represented "on all matters of employer-employee relations," the fundamental purpose of EERA. It is axiomatic that the representational rights and obligations conferred on

parties under EERA arise within the employer-employee relationship. There is no provision of EERA which mandates that EERA protections and representational rights extend to employees pursuing issues relating to terms and conditions of employment outside of that relationship. In my view, extending these EERA rights beyond the employer-employee relationship is a policy the Board should consider only when it is clearly necessary to support the bargaining and dispute resolution process between the parties, which EERA seeks to promote.

In this case, it is inappropriate to extend EERA protection to conduct outside of the employment relationship. The record includes only sketchy information regarding the safety concerns raised by Bianchi and ultimately given to the inspector by her. Among the listed concerns were inadequate shelving, heavy items in the front of cupboards, sharp desk corners and a snagging carpet, somewhat common office conditions which may or may not pose serious safety hazards. Other concerns - improper drainage from the school nurse's office - raise more significant issues, but the record does not provide enough information to form an accurate impression of the nature and scope of these problems. It is also unclear what action, if any, the District has taken to address these concerns. In order to consider extending EERA protection to an employee's pursuit of safety concerns outside of the employment relationship, there must be a showing that those concerns are objectively valid and serious, not merely serious in the subjective view of the employee.

Additionally, it appears that Bianchi acted on impulse and alone when she presented the list of safety concerns to the insurance inspector. There is no indication that Bianchi planned her actions in advance, acted on behalf of any other employee, or, for that matter, that any other employee was even aware of her actions. I do not believe that the participation in the activities of an employee organization described in EERA section 3543 is intended to encompass any unplanned report of safety concerns to an entity outside of the employment relationship by an employee acting alone and not on behalf of other employees.

For these reasons I conclude that Bianchi's report of safety concerns to a third party insurance inspector outside of the employment relationship did not constitute EERA-protected participation in the activities of an employee organization. Since Bianchi's conduct was not protected by EERA, the District did not violate EERA section 3543.5(a) and (b) when it responded to that conduct by issuing Bianchi the two memoranda dated May 10, 1995.[1]

I must comment briefly on the National Labor Relations Board (NLRB) cases cited by the majority at footnote 8 above. Looking beyond the obvious, significant differences between the relevant

---

[1]I want to make it clear that my view relates only to protection of Bianchi's conduct under EERA. It is possible that a report of safety concerns to an appropriate agency outside of the employment relationship may be protected under some other statutory framework, such as the California Occupational Safety and Health Act, but that framework is outside of PERB's purview.

language of EERA and the National Labor Relations Act (NLRA), I do not believe that the cases lend support to the majority's position. Two of the cited cases involve no conduct outside of the employer-employee relationship and, therefore, are immediately distinguishable from the case at bar. (Consumers Power Co. (1986) 282 NLRB 130, 131-132 [123 LRRM 1305]; Transport America. Inc. (1996) 320 NLRB 882, 888 [153 LRRM 1048].) In a third case, the NLRB specifically found that an employee's safety-related contact with an agency outside of the employment relationship was not protected by the NLRA. (Meyers Industries. Inc. (1984) 268 NLRB 493, 497 [115 LRRM 1025].) In a case in which the NLRB found an employee's contact with the United States Department of Labor to be protected by the NLRA, the employee took the information obtained in the contact to the employer to pursue discussion of the employee's concerns. Additionally, in taking adverse action against the employee, the employer made statements indicating that it considered the employee's actions to be union activity. (Salsbury Hotel (1987) 283 NLRB 685, 687 [125 LRRM 1020].) There can be little question after reviewing these cases that Bianchi's report of safety concerns outside of the employment relationship would not be considered protected under the NLRB standard.

Letter of Reprimand

The record reveals that a few days prior to May 24, 1995, Wright spoke to Meil and expressed concern that she was being harassed by Bianchi. Meil asked Wright to put her concerns in

writing, which she did in a May 24, 1995, letter to Meil. Meil asked Bianchi to attend a meeting on May 26, 1995, at which he presented Bianchi with a letter of reprimand for harassing and intimidating Wright. Meil terminated the meeting without discussion, did not reference Wright's letter of May 24 to him, and did not provide a copy of that letter to Bianchi. The Association alleges that the Meil letter of reprimand constitutes unlawful reprisal against Bianchi for her exercise of protected conduct.

Applying the Novato test to these circumstances, it is clear that the District took adverse action against Bianchi in the form of the May 26 letter of reprimand. Unlike the safety report issue discussed above which did not involve protected conduct, it is clear with regard to this allegation that Bianchi did engage in protected activity. The specific protected activity was Bianchi's filing of grievances relating to the May 10, 1995, memoranda she received concerning her report of safety concerns to the insurance inspector.

On May 12, 1995, Bianchi responded to the first May 10 memorandum and informed Meil that she was filing a grievance regarding his "letter and harassment due to reporting a safety concern." Meil responded to the grievance on May 14 indicating that the original May 10 memorandum had been destroyed. However, he gave Bianchi a replacement memorandum, also dated May 10, prompting Bianchi to file a grievance appeal on May 19 challenging the second May 10 memorandum. Bianchi's pursuit of

grievances concerning the May 10 memoranda she received as a result of the safety report to the insurance inspector clearly was protected conduct. (North Sacramento School District (1982) PERB Decision No. 264.)

Since the District was obviously aware of Bianchi's protected activity, the question is whether the District's action in giving Bianchi the May 26 letter of reprimand was motivated by her filing of grievances.

Direct proof of unlawful motivation is not often present. The Board reviews the record as a whole to determine if the inference of unlawful motive should be drawn. Factors that may support such an inference are the timing of the employer's adverse action in relation to the employee's protected conduct; disparate treatment of employees engaged in protected activities; the employer's departure from established procedures; the employer's inconsistent or shifting justification for the conduct; and the employer's failure to investigate charges of improper activity before imposing a penalty against an employee engaged in protected conduct. (Novato; Riverside Unified School District (1987) PERB Decision No. 639.)

The record contains ample evidence from which to conclude that the District's May 26 letter of reprimand to Bianchi was motivated by her protected conduct.

First, the evidence relating to the timing factor is compelling. Within a period of seven days from May 12 to May 19, Bianchi grieved the original May 10 letter from Meil concerning

the safety report; Meil responded by destroying that memorandum and replacing it with another dated May 10; and Bianchi responded that the second memorandum was also unacceptable and filed a grievance appeal. At approximately the same time, Wright complained to Meil about Bianchi harassing her. It was at this point, as Meil faced the prospects of Bianchi's continued, successful pursuit of grievances relating to his May 10 memoranda, that he sent the May 26 letter of reprimand to Bianchi based on Wright's complaint.

Second, Meil conducted no investigation or review of Wright's complaints about Bianchi, did not provide Bianchi with a copy of Wright's complaint memorandum, and offered Bianchi no opportunity to respond to the complaint before deciding to present her with the May 26 written reprimand.

Third, in his testimony, Meil offered inconsistent, shifting explanations for his handling of the Wright complaint and issuance of the May 26 letter of reprimand to Bianchi.

I infer from the close temporal proximity of the employee's protected conduct and the employer's adverse action, from the employer's failure to investigate the charge of misconduct before imposing adverse action, and from the employer's inconsistent explanations of his conduct, that the May 26, 1995, letter of reprimand Meil sent to Bianchi was motivated by Bianchi's protected filing and pursuit of grievances. Therefore, the District violated EERA section 3543.5(a) and (b) when it issued the May 26, 1995, letter of reprimand to Bianchi.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An agency of the State of California

After a hearing in Unfair Practice Case No. SA-CE-1703, California School Employees Association and its Oakdale Elementary Chapter 685 v. Oakdale Union Elementary School District, in which all parties had the right to participate, it has been found that the Oakdale Union Elementary School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a) and (b).

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Issuing sequential memoranda to Denise Bianchi (Bianchi) regarding her preparation and transmittal of a list of unsafe working conditions at her work site to the District's worker's compensation insurance carrier (safety inspector);

2. Issuing a letter of reprimand to Bianchi regarding allegations made by Carolyn Wright (Wright); and

3. Denying the California School Employees Association and its Oakdale Elementary Chapter 685 the right to represent its unit members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE EERA:

1. Destroy all copies in District files of the two sequential memoranda, dated May 10, 1995, issued by Principal Kenneth Meil (Meil) to Bianchi regarding a list of unsafe working conditions.

2. Destroy all copies of a letter of reprimand issued by Meil to Bianchi on May 26, 1995, regarding allegations made by Wright.

Dated:_____ OAKDALE UNION ELEMENTARY SCHOOL DISTRICT

By:_____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.