

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



KATHERINE MARY PATTERSON,	)	
	)	
Charging Party,	)	Case No. SF-CE-1956
	)	
v.	)	PERB Decision No. 1253
	)	
SAN FRANCISCO UNIFIED SCHOOL	)	March 20, 1998
DISTRICT,	)	
	)	
Respondent.	)	
<hr/>		

Appearances: Katherine Mary Patterson on her own behalf; Miller, Brown & Dannis by Claudia Madrigal, Attorney, for San Francisco Unified School District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Katherine Mary Patterson's (Patterson) unfair practice charge. As amended, the charge alleges that the San Francisco Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)<sup>1</sup>

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<sup>1</sup>EERA is codified at Government Code section 3540 et seq. 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 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.

when it discriminated against Patterson because of her exercise of rights guaranteed by the EERA.

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

ORDER

The unfair practice charge in Case No. SF-CE-1956 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

## PUBLIC EMPLOYMENT RELATIONS BOARD San Francisco Regional Office



177 Post Street, 9th Floor  
San Francisco, CA 94108-4737  
(415) 439-6940



January 14, 1998

Katherine Mary Patterson

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**  
Katherine Mary Patterson v. San Francisco Unified School  
District  
Unfair Practice Charge No. SF-CE-1956

Dear Ms. Patterson:

The above-referenced unfair practice charge, filed September 3, 1997, alleges the San Francisco Unified School District (District) discriminated against you because of your protected activities. This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated September 24, 1997, 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 September 30, 1997, the charge would be dismissed.

On September 29, 1997, I spoke with you regarding this charge and informed you of the steps necessary in stating a prima facie case. Specifically, I addressed the issue of nexus with you, and extended your deadline for filing an amended charge until October 6, 1997. On October 6, 1997, I received a first amended charge, which included nearly 100 pages of attachments and facts. A summary of the facts stated in the amended charge is as follows.

The amended charge chronicles a variety of incidents dating back to early 1995. For example, Charging Party states that in November of 1995, two fellow committee members filed a grievance and police report against Charging Party. Although Charging Party states attachments provided explain the situation, Charging Party does not provide any background regarding this confrontation as the exhibits are not attached to the charge.

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Additionally, Charging Party states that she filed a grievance in December, 1995, although it is unclear against whom the grievance was filed. In January, 1996, your union, SEIU, suggested your grievance should not be discussed at open meetings, and should be kept confidential. On February 6, 1996, you relayed this information to Principal Corsiglia. Principal Corsiglia stated this directive should be placed in writing.

On February 14, 1996, you allege Principal Corsiglia unfairly accused you of being paid for coordinating a magic show. You allege Principal Corsiglia's attitude was unprofessional. In March, 1996, you and Mr. Edwards had some sort of altercation, which the charge does not explain. On March 22, 1996, you discussed the incident with Principal Corsiglia, who advised you to drop the matter. Unsatisfied with this response, you contacted Assistant Human Resources Director, Cynthia LeBlanc, who advised you to speak with Principal Corsiglia again. Prior to leaving work that day, you provided Principal Corsiglia with a written account of the incident.

On March 26, 1996, you attempted to give Principal Corsiglia a corrected copy of this account. Principal Corsiglia became upset, but eventually took the new copy. After calling a meeting to discuss the incident, Principal Corsiglia apparently decided to transfer Charging Party to the counselling office, a move Charging Party states was a demotion.

On April 8, 1996, Charging Party, SEIU representative Pattie Tamura, and Principal Corsiglia met to discuss the transfer. Ms. Tamura stated her belief that the transfer constituted a demotion, and was in violation of the contract. Ms. Tamura also discussed, during this meeting, a mistake in Charging Party's timesheet. In April 1996, Charging Party filed a grievance regarding the transfer.

On May 28, 1996, Charging Party received a Performance Evaluation in which her overall performance was rated "Unacceptable." On June 14, 1996, Principal Corsiglia refused to meet with you regarding the performance evaluation, stating he had already discussed the matter with SEIU. On June 18, 1997, Principal Corsiglia informed you that banking duties were no longer your responsibility.

On November 22, 1996, Assistant Principal, Ms. Cameron, allegedly verbally disciplined you for being late from your break. On January 22, 1997, Charging Party met with Human Resources Director, Elaine Lee, regarding your April 1996, grievance.

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On March 24, 1997, Principal Corsiglia received a letter from Theodora Manty, a teacher at Roosevelt Middle School. The letter stated that Charging Party had interfered with the scheduling of substitutes by calling the Director of the Substitute Office and seeking authorization for a full days pay for a teaching substitute. On March 28, 1997, Principal Corsiglia sent a memorandum to all classified staff regarding the proper procedures for handling substitutes. The memorandum did not mention the incident regarding Charging Party. On this same date, Ms. Manty sent Principal Corsiglia a memorandum explaining her accusations were in error.

On April 18, 1997, Charging Party received a written reprimand from Assistant Principal Cameron. This reprimand concerned two incidents on April 16, 1997 and April 18, 1997, in which Charging Party allegedly took unauthorized and extended breaks. On April 25, 1997, you responded to this reprimand. On May 9, 1997, you received the District's standard letter informing you that there is reasonable likelihood of your returning to work for the 1997-98 school year.

On May 13, 1997, you received a Performance Evaluation from Ms. Cameron, which rated your overall performance as "Development Needed." On May 17, 1997, you provided a rebuttal to your performance evaluation.

On August 5, 1997, Ms. Lee informed you that your position at Roosevelt Middle School had been eliminated and that because of your bumping rights, you were now to report to the Athletic Department. On August 8, 1997, you sent a letter to Ms. Lee asserting your belief that "bumping rights" allowed you to select your new position from a list of all 1446 Secretaries with less seniority than yourself. On August 25, 1997, you sent a second letter to Ms. Lee reiterating your belief that contract violations had occurred with respect to your bumping rights.

Civil Service Commission Rules for the City and County of San Francisco state in pertinent part:

21.13.2: Layoff shall be treated separately under each appointing officer except that permanent and probationary employees in classes and listed in Article VII of this Rule, may displace other permanent and probationary employees in the same class with less seniority in any department and except as otherwise provided below:

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1) An appointee with five or more years of seniority in a class, immediately prior to layoff in that class, shall have the right to displace an appointee with less than five years of seniority in that class in any department. In that event, layoff shall be by inverse order of seniority in the class in the City and County service. The appointee shall then be subject to serving a new probationary period.

Article 33, Section C, of the collective bargaining agreement (Agreement) between the City of San Francisco and SEIU states the following with regard to layoffs:

Layoff of employees shall be by inverse order of seniority in a classification City-wide. The Five (5) year rule for City-wide bumping rights shall no longer apply.

Based on the facts provided in the original and amended charges, the charge fails to state a prima facie case of retaliation and is therefore dismissed.

Government Code section 3541.5(a)(1) prohibits the Board from issuing 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. As the charge was filed on September 3, 1997, all allegations of discriminatory conduct prior to March 3, 1997, are outside PERB's jurisdiction.

Charging Party alleges that she was transferred to the Athletic Department in retaliation for her protected activities. In my letter dated September 24, 1997, I informed Charging Party that the charge did not demonstrate the requisite nexus necessary to state a prima facie case. That is, the charge does not demonstrate the necessary connection between Charging Party's transfer to a new position and her protected activities. This deficiency was also discussed with Charging Party in telephone conversations on September 29, 1997, and November 13, 1997. In both telephone conversations, Charging Party stated the requisite nexus is demonstrated by the District's failure to allow Charging Party to bump any less senior employee she chooses, in violation of the Civil Service Commission rules above. However, Charging Party's contention is unpersuasive and thus the charge is dismissed.

As noted above, the Civil Service Commission rules allow more senior employees in jeopardy of being laid off from their

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positions, to bump an employee in the same class with less seniority. As Rule 21.13.2, Subsection (1) states, in that event, layoffs will then be by inverse order of seniority; meaning the least senior employee in the class will be laid off and the more senior employee will be assigned to that position. Facts and documents provided by Charging Party fail to demonstrate Charging Party is entitled to bump any less senior employee she chooses. Moreover, Charging Party fails to provide any facts demonstrating other employees have been allowed to bump any employee they so choose. As the charge fails to demonstrate any other factors of nexus, including timing, I am dismissing the charge based on the facts and reasons contained herein and in my September 24, 1997, letter.

Even assuming the District did not follow the exact procedures in allowing you to "bump" any less senior person you so chose, facts presented still fail to demonstrate your layoff was in retaliation for protected activity. As noted in my September 24, 1997, letter, protected activities noted in your charge are far remote in temporal proximity to the adverse action complained of. Moreover, the charge fails to demonstrate disparate treatment, a cursory investigation or decision, or any other facts which might demonstrate the District's unlawful motive. (See, Chula Vista Elementary School District (1997) PERB Decision No. 1232.) As such, the 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 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

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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  
Kristin L. Rosi  
Regional Attorney

Attachment

cc: Claudia Madrigal, Esq.

## PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office  
177 Post Street, 9th Floor  
San Francisco, CA 94108-4737  
(415) 439-6940



September 24, 1997

Katherine Mary Patterson

Re: **WARNING LETTER**

Katherine Mary Patterson v. San Francisco Unified School District  
Unfair Practice Charge No. SF-CE-1956

Dear Ms. Patterson:

The above-referenced unfair practice charge, filed September 3, 1997, alleges the San Francisco Unified School District (District) discriminated against you because of your protected activities. This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. You are currently employed as a Secretary II by the District, and are exclusively represented by the Service Employees International Union (SEIU). SEIU and the District are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1997. Although the parties grievance procedure provides for the binding arbitration of grievances, the Agreement does not include language prohibiting the conduct alleged herein. Therefore, deferral is inappropriate.

In April, 1996, you filed a grievance against Roosevelt Middle School Principal, Charles Corsiglin. Although the charge fails to specify the conduct alleged in the grievance, the charge does state the grievance concerned actions taken in 1995. To date, the grievance remains pending. On August 5, 1997, you received notice from the District that your Secretary II position at Roosevelt Middle School was being eliminated. You allege the District took such action in retaliation for the filing of your grievance.

On September 19, 1997, I spoke with you regarding this charge and your related charge against SEIU. During this conversation, I explained PERB's procedural process and the requirements necessary to state a prima facie case.

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Based on the above stated facts, the charge as presently written, fails to state a prima facie case of retaliation for the reasons stated below.

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 (1979) PERB Decision No. 89; Department of Developmental Services (19 82) 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 (19 82) PERB Decision No. 264.).

The charge fails to demonstrate any factors indicative of nexus. The charge does not demonstrate the District's action was in close temporal proximity to the adverse action, and fails to demonstrate the District provided inconsistent or contrary justifications for the elimination of your position. As such, the charge fails to state a prima facie case.

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

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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 September 30, 1997, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi  
Regional Attorney