

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ALEXANDER P. VELLANOWETH,)
)
 Charging Party,) Case No. SA-CE-1909
)
 v.) PERB Decision No. 1356
)
 SACRAMENTO CITY UNIFIED SCHOOL) October 7, 1999
 DISTRICT,)
)
 Respondent.)
 _____)

Appearances: Alexander P. Vellanoweth, on his own behalf;
Atkinson, Andelson, Loya, Ruud & Romo by James S. Yarnell,
Attorney, for Sacramento City Unified School District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public
Employment Relations Board (Board) on appeal by Alexander P.
Vellanoweth (Vellanoweth) of a Board agent's dismissal (attached)
of his unfair practice charge. In the charge, Vellanoweth
alleged that the Sacramento City Unified School District
(District) retaliated against him for his exercise of protected
conduct and violated section 3543.5(a) of the Educational
Employment Relations Act (EERA)¹ when it failed to hire him as a

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

summer school coordinator or summer school principal.

The Board has reviewed the entire record in this case, including Vellanoweth's original and amended unfair practice charge, the Board agent's warning and dismissal letters, Vellanoweth'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.

ORDER

The unfair practice charge in Case No. SA-CE-1909 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.

guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 30, 1999

Alexander P. Vellanoweth

Re: DISMISSAL LETTER
Alexander -P. Vellanoweth v. Sacramento City Unified School
District
Unfair Practice Charge No. SA-CE-1909

Dear Mr. Vellanoweth:

On June 24, 1999, you filed the above-referenced unfair practice charge in which you allege that the Sacramento City Unified School District (District) violated section 3543.5 (a) of the Educational Employment Relations Act (EERA) when it retaliated against you in February, 1999, by failing to hire you as either Middle School Summer Coordinator or Summer School Principal. Your charge asserts that the District failed to hire you for these extra assignments as a result of your having engaged in earlier protected conduct including the filing of an unfair practice charge. (PERB Case No. SA-CE-1831).

You describe your protected conduct as:

- (1) Speaking at a District Board meeting on May 12, 1997. You assert you objected to the reorganization of the District and the downsizing of the bilingual department.
- (2) Filing grievances in 1997 and 1998 through your exclusive representative, the Sacramento City Teachers Association (SCTA), as a result of the District's personnel practices.
- (3) Filing and processing of the above-referenced PERB unfair practice charge No. SA-CE-1831. This charge resulted in a settlement in September 1998 which you assert placed you as a resource teacher at Oak Ridge Elementary School with the commitment that the District would not impose any further retaliation.

I indicated to you, in my attached letter dated July 20, 1999, 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 July 30, 1999, the charge would be dismissed.

On July 29, 1999, you filed an amended charge which attempts to perfect the deficiencies as spelled out in my July 20 letter. First, you attempt to demonstrate nexus by providing a list of summer school management positions from 1998 which lists 35 management positions. You contend that of the 35 named individuals from the 1998 list, 13 were rehired for summer school 1999. (7 of the 28 1998 summer school principals were rehired as summer school principals for 1999.)

Next, to demonstrate that the persons making decisions as to summer employment had knowledge of your protected activity, you have provided a September 21, 1998 letter from Lorraine Emery, Director of Certificated Personnel for the District, addressed to you and copied to the Superintendent, Associate Superintendents and Directors. You assert that this letter despite its benign contents, served as a poison pill that has tainted you as a troublemaker and thus, caused the summer school selection committee to bypass you.

This additional information does not perfect the deficiencies of the charge and therefore I am dismissing the charge based on the facts and reasons contained in my July 20, 1999, letter.¹

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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

••••• to the extent you contend that your speaking at a public meeting and filing grievances was your organizational activity, your charge may also be deferrable under the provisions of Article 18.1 of the written agreement between the District and SCTA and PERB precedent. See Lake Elsinore School District (1987) PERB Decision No. 646.

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A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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

By
Roger Smith
Board Agent

Attachment

cc: James Scot Yarnell

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 20, 1999

Alexander P. Vellanoweth

Re: WARNING LETTER
Alexander P. Vellanoweth v. Sacramento City Unified School
District
Unfair Practice Charge No. SA-CE-1909

Dear Mr. Vellanoweth:

On June 24, 1999, you filed the above-referenced unfair practice charge in which you allege that the Sacramento City Unified School District (District) violated section 3543.5 (a) of the Educational Employment Relations Act (EERA) when it retaliated against you in February, 1999, by failing to hire you as either Middle School Summer Coordinator or Summer School Principal. Your charge asserts that the District failed to hire you for these extra assignments as a result of your having engaged in earlier protected conduct including the filing of an unfair practice charge. (PERB Case No. SA-CE-1831).

You describe your protected conduct as:

- (1) Speaking at a District Board meeting on May 12, 1997. You assert you objected to the reorganization of the District and the downsizing of the bilingual department.
- (2) Filing grievances in 1997 and 1998 through your exclusive representative, the Sacramento City Teachers Association, as a result of the District's personnel practices.
- (3) Filing and processing of the above-referenced PERB unfair practice charge No. SA-CE-1831. This charge resulted in a settlement in September 1998 which you assert placed you as a resource teacher at Oak Ridge Elementary School with the commitment that the District would not impose any further retaliation.

Your charge contends that in December 1998, you applied for Middle School Coordinator and Elementary Summer School Principal. You assert that you served as Middle School Coordinator for the District in 1995 and that you were hired as a Summer School Principal for the years 1996-1999 at Earl Warren, John Bidwell and Ethel I. Baker elementary schools. You provided evidence that your previous summer work was praiseworthy.

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You state that you believe that but for your having filed the earlier PERB charge, the filing of grievances, and speaking out about the reorganization of the District, the District would have hired you again as either a summer school coordinator or principal.

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 (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

You have provided no facts to demonstrate that the persons making decisions regarding summer employment had any knowledge of your earlier protected conduct, thus, failing to demonstrate employer knowledge. You indicate that the District's personnel administrator, Don Giusti, was present at this year's interviews, but hadn't been present at interviews in the past when you scored higher in your evaluations. Yet, you point out that Giusti was not an evaluator, but rather, he served as a facilitator.

The timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, but 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.)

You have not demonstrated any "nexus" between your being denied the summer employment and your protected conduct. You indicate

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in your charge that you did not score well in the interview and evaluation process.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before July 30, 1999, I shall dismiss your charge. If you have any questions, please call me at (916) 327-8387.

Roger Smith
Board Agent