STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

VIVIENNE SCHMID,	)	
Charging Party,	)	Case No. SF-CE-540-H
v.	)	PERB Decision No. 1367-H
TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY,	)	December 17, 1999
Respondent.	)	

Appearance: Cessaly D. Hutchinson for Vivienne Schmid.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION AND ORDER

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Vivienne Schmid (Schmid) to a Board agent's dismissal (attached) of the unfair practice charge. The charge alleged that the Trustees of the California State University violated section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA)[1] because

[1]HEERA is codified at Government Code section 3560 et seq. Section 3571 provides, in pertinent part, that:

> It shall be unlawful for the higher education 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.

Schmid represented other employees in actions to enforce rights under their collective bargaining agreement.

The Board agent found that the charge did not state a prima facie case because of untimeliness.

The Board has reviewed the entire record including the unfair practice charge, the warning and dismissal letters and Schmid's appeal. The Board finds that the warning and dismissal letters are free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CE-540-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer 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

October 6, 1999

Cessaly Hutchinson
1687 Thousand Oaks Blvd.
Berkeley, California 94707-1553

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Vivienne Schmid v. Trustees of the California State University
Unfair Practice Charge No. SF-CE-540-H

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on August 24, 1999, alleges that the Trustees of the California State University retaliated against Vivienne Schmid because she represented other employees in actions to enforce rights under their collective bargaining agreement. This conduct is alleged to violate Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA).

I indicated to you, in my attached letter dated September 27, 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 October 5, 1999, the charge would be dismissed.

Charging Party requested that certain additional factual information be noted. Vivienne Schmid discovered after she retired that her former supervisor, Staton Johnston, had been prosecuted for criminal fraud on his job at San Jose State University. However, this fact is not shown to have any bearing on the finding in this case that the charge was not timely filed.

Charging Party also expands on the allegation that she was not aware of the existence of the HEERA or the Public Employment Relations Board by providing more details about her state of knowledge (or lack thereof). Further, Charging Party questions whether knowledge of the Dills Act provisions can be imputed to her so as to render the charge untimely. The dismissal of the charge due to lack of timeliness is not based on imputing knowledge of the Dills Act to Charging Party. Rather it is based on the construction of the statute of limitations provisions of the Dills Act that results in the conclusion that a charging party's lack of knowledge is not an excuse to a late filing.

Based on the facts and reasons stated above as well as those set forth in the September 27, 1999 letter, I am dismissing the charge.

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.)

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.)

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 _____
DONN GINOZA
Regional Attorney

Attachment

cc: Donald A. Newman

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1 77 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

September 27, 1999

Cessaly Hutchinson
168 7 Thousand Oaks Blvd.
Berkeley, California 94707-1553

Re: **WARNING LETTER**
Vivienne Schmid v. Trustees of the California State University
Unfair Practice Charge No. SF-CE-540-H

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on August 24, 1999, alleges that the Trustees of the California State University retaliated against Vivienne Schmid because she represented other employees in actions to enforce rights under their collective bargaining agreement. This conduct is alleged to violate Government Code section 3571(a) of the Higher Education Employer-Employee Relations Act (HEERA).

Investigation of the charge revealed the following. Vivienne Schmid was employed as an accounting technician with the University in 1982 when took a forced retirement on disability. She alleges that she had been continually harassed by her former supervisor. In order to distance herself from this supervisor she even took a demotion in pay. However, he later became her supervisor again. Without providing any other details, Schmid alleges that the supervisor's conduct was in retaliation for her protected activities, which included representing other employees under her for the purpose of enforcing rights under their collective bargaining agreement.

In seeking to explain why she waited seventeen years after the events in question to file the instant unfair practice charge, Schmid states that she did not learn of the existence of the Public Employment Relations Board (PERB) until the week before she filed. Schmid also contends that she was laboring under an incorrect assumption that her representational activity was not protected because she was not aware of the passage of the HEERA.

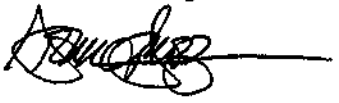
Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the HEERA for the reasons that follow.

An unfair practice must be filed with PERB within six months of its occurrence. (Gov. Code, sec. 3563.2(a).) PERB has held that the six-month period commences once the charging party knows, or

should have known, of the conduct underlying the charge. (Fairfield-Suisun Unified School District (1985) PERB Decision No. 547; Regents of the University of California (1983) PERB Decision No. 359-H.) This statute of limitations is jurisdictional. The charging party's lack of knowledge of PERB, the statutes enforced by PERB, or charging party's rights under those statutes does not excuse a late filing. (Orange Unified Education Association (Rossman) (1999) PERB Decision No. 1307; California State University, San Diego (1989) PERB Decision No. 718-H.) PERB has held that a charging party's belated discovery of the legal significance of the conduct underlying the charge also does not excuse an otherwise untimely filing. (UCLA Labor Relations Division (1989) PERB Decision No. 735-H.) The instant charge was not filed within six months of the date Charging Party knew or should have known of the conduct underlying the charge and is therefore untimely.

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 **October 5, 1999**, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,



DONN GINOZA
Regional Attorney