

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SAM POOLSAWAT, )  
 )  
 Charging Party, ) Case No. LA-CE-4069  
 )  
 v. ) PERB Decision No. 1377  
 )  
 LOS ANGELES COMMUNITY )  
 COLLEGE DISTRICT, ) February 28, 2000  
 )  
 Respondent. )  
 \_\_\_\_\_ )

Appearance: Thomas W. Gillen, Attorney, for Sam Poolsawat.  
Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Sam Poolsawat (Poolsawat) of a Board agent's dismissal (attached) of his unfair practice charge. In his charge, Poolsawat alleged that the Los Angeles Community College District violated section 3543.5(a) of the Educational Employment Relations Act (EERA)<sup>1</sup> by discriminating against him for engaging in protected activities.

<sup>1</sup>EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, and Poolsawat's appeal. 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. LA-CE-4069 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



November 3, 1999

Ken Hagan  
Law Offices of Thomas W. Gillen  
2501 E. Chapman Avenue, Suite 100  
Fullerton, CA 92831

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**  
Sam Poolsawat v. Los Angeles Community College District  
Unfair Practice Charge No. LA-CE-4069; First Amended Charge

Dear Mr. Hagan & Mr. Poolsawat:<sup>1</sup>

The above-referenced unfair practice charge, filed May 25, 1999, alleges the Los Angeles Community College District (District) discriminated against you because of your protected activity. You allege this conduct violates Government Code section 3543.5 of the Educational Employment Relations Act (EERA or Act).

I indicated to you, in my attached letter dated September 22, 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 September 29, 1999, the charge would be dismissed.

On September 27, 1999, Charging Party's representative telephoned me and requested an extension to file an amended charge. I extended the deadline until October 6, 1999. On October 6, 1999, Charging Party's representative requested a second extension. In response, I extended the deadline until October 13, 1999.

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<sup>1</sup> Charging Party is the authorized representative until a Notice of Appearance is filed with this office. To date, no Notice of Appearance has been filed. However, after issuance of the Warning Letter on September 22, 1999, Mr. Hagan telephoned this office on several occasions, stating he was Mr. Poolsawat's representative. On October 20, 1999, Mr. Hagan stated, in response to my inquiry, that he was the designated representative in this matter. For this reason, the Warning Letter was served on both individuals.

On October 18, 1999, I received a first amended charge from Mr. Poolsawat.<sup>2</sup> While reviewing the charge, I noticed Charging Party failed to serve the amended charge on the Respondent as required by PERB Regulation 32140 and as stated in my September 22, 1999, letter. On October 20, 1999, I telephoned Charging Party's representative Mr. Hagan regarding this problem. Mr. Hagan stated the amended charge would be served on Respondent and a proper proof of service would be provided to this office. On October 22, 1999, Charging Party served the amended charge on the District.

The amended charge presents three issues also raised in the original charge: (1) Discrimination in overload credit; (2) Discrimination regarding conference attendance in May 1998; and (3) Discrimination by Dean Herman Bacchus regarding conference reimbursement in September 1998.<sup>3</sup> However, as demonstrated below, each of the allegations is time barred, and thus must be dismissed.

#### **I. Overload Claim**

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. In the case of discrimination such as that alleged herein, the statute of limitations begins to run when charging party discovered the disparate treatment. (Peralta Community College District (1998) PERB Decision No. 1281.) Facts

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<sup>2</sup> PERB Regulation 32135 states in relevant part:

All documents shall be considered "filed" when actually received by the appropriate PERB office before the close of business on the last day set for filing or when mailed by certified . . . mail, as shown on the postal receipt . . . not later than the last day set for filing and addressed to the proper PERB office.

Charging Party sent the amended charge certified mail on October 14, 1999, one day after the last day set for filing.

<sup>3</sup> The amended charge does not address the only timely allegation considered in my September 22, 1999, letter; that is, the allegation that the District discriminated against Charging Party by denying his tort claim. Therefore, that allegation is dismissed for the reasons I provided in my September 22, 1999, letter.

provided below demonstrate Charging Party was aware of the disparate treatment, and thus this allegation is untimely.

The original charge contends that from 1980 through 1984, Charging Party had a workload overload for which he was not compensated. From 1990 to the present, Charging Party has been attempting to resolve this matter. My September 22, 1999, letter, indicated this allegation was time barred as the adverse action took place in the 1980's. The amended charge contends Charging Party did not become aware that he was being disparately treated until April 1999,<sup>4</sup> thus making the allegations timely. More specifically, Charging Party alleges in paragraph 10:

**At no time** prior to the December 1998-April 1999 period, did the Charging Party have any reason to believe that his colleagues had been paid for their past class assignments which they have carried as hourly overload since 1970's. (emphasis in original)

However, facts presented by Charging Party, himself, demonstrate the above-quoted statement is false, and further demonstrate Charging Party knew as early as 1992, that fellow employees had been paid for their hourly overloads.<sup>5</sup>

On January 29, 1992, Charging Party wrote a letter to union president Gwen Hill. In this letter, Charging Party discusses the settlement offer made by the District regarding the overload claim, and further explains his reasons for not agreeing to the settlement. Specifically, Charging Party contends that he should not be required to sign a general release in accepting the settlement and further states:

Six other biology instructors in my department received backpay recently. They

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<sup>4</sup> The amended charge actually alleges in paragraph 9, that Charging Party became aware of the disparate treatment in April 1998. However, it is assumed that Charging Party is alleging knowledge in April 1999.

<sup>5</sup> In Temple City Unified School District (1990) PERB Decision No. 843, the Board stated that a Regional Attorney may not resolve disputes of material facts between a Charging Party and a Respondent. However, the factual dispute presented herein is not the type of factual dispute discussed in Temple City. Herein, Charging Party provided documents that demonstrate his allegations are false. This type of dispute may be resolved by a Board Agent in the investigation of a charge.

received their paychecks without signing a release form of the type which I was required to sign.

Additionally, on December 17, 1997, Charging Party wrote another letter to the union; this time to then-union president Karl Friedlander. Regarding his overload backpay claim, Charging Party stated:

B. Unpaid Teaching Overload Assignment (a separate issue from MBRS). Due to my involvement with ELAC MBRS, the College and the College District also have refused to pay for my past unpaid teaching overload. Several faculty members in my department had received their unpaid overload several years ago. (emphasis added)

Indeed, this letter even demonstrates Charging Party belief that he was disparately treated for his involvement with the Minority program and his whistle-blowing activity regarding that program.

Thus, despite the amended charge's declarations, facts presented demonstrate Charging Party knew fellow employees were paid for their overload assignments in 1992. Charging Party makes no attempt to explain the contradiction raised by the two documents he provided. As such, they must be credited and the allegation is dismissed as time barred.

## **II. May 1998 Conference Attendance**

On May 4, 1998, Charging Party filed a request to attend a conference at the Massachusetts Institute of Technology, in June 1998. Charging Party was scheduled to teach during the summer session. On May 26, 1998, Charging Party's request was denied as the District stated it was unable to accommodate summer conference requests. Shortly after this denial, Charging Party filed a grievance alleging disparate treatment. Specifically, in August 1998, Charging Party stated to District administrators that other employees were allowed to attend graduations and conferences during the summer session.

As stated above, and in my September 22, 1999, letter, the statute of limitations requires charges be filed within six months of the conduct giving rise to the unfair practice. Since Charging Party knew in the summer of 1998 that he was denied conference attendance and potentially discriminated against, the allegation is time barred and thus must be dismissed.

### **III. Conference Reimbursement for July 1998**

From July 12 through July 16, 1999, Charging Party attended a conference in Atlanta, Georgia. In August 1998, Charging Party filed a request for reimbursement with the proper District office. On September 9, 1998, the request for reimbursement was denied by Dean Herman Bacchus.

On September 15, 1998, Charging Party filed a grievance over the District's failure to reimburse him. The grievance alleged disparate treatment and discrimination. On September 16, 1998, the District admitted it made a mistake in denying the reimbursement and requested Charging Party refile his request for payment.

It is unclear whether Charging Party refiled his request. However, such a fact is immaterial, give that this allegation is also time barred as Charging Party knew in September 1998 of the adverse action and alleged disparate treatment. As such, this allegation is also dismissed as untimely.

#### 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.)

Dismissal Letter  
LA-CE-4069  
Page 6

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.)

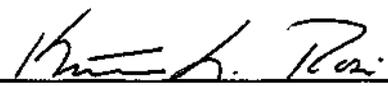
Dismissal Letter  
LA-CE-4069  
Page 7

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: LACCD

## PUBLIC EMPLOYMENT RELATIONS BOARD



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



September 22, 1999

Law Offices of Thomas W. Gillen  
2501 E. Chapman Avenue, Suite 100  
Fullerton, CA 92831

Re: **WARNING LETTER**  
Sam Poolsawat v. Los Angeles Community College District  
Unfair Practice Charge No. LA-CE-4069

Dear Mr. Gillen:<sup>1</sup>

The above-referenced unfair practice charge, filed May 25, 1999, alleges the Los Angeles Community College District (District) discriminated against you because of your protected activity. You allege this conduct violates Government Code section 3543.5 of the Educational Employment Relations Act (EERA or Act).

Investigation of the charge revealed the following. You are currently employed by the District as a Life Sciences Instructor at East Los Angeles Community College (ELAC). As an Instructor, you are exclusively represented by the American Federation of Teachers, College Guild, Local 1591 (Federation). The District and Federation are parties to a collective bargaining agreement (Agreement) which expires on November 7, 1999.

The charge states in its entirety:

Disparate treatment related to the way the Charging Party administered minority programs as set out in Charging Party's claim for damages dated October 12, 1998 and November 30, 1998, copies attached.

In addition to the brief statement above, Charging Party attached nearly 100 pages of additional materials. The relevance of these materials is unclear as many documents are incomplete letters or duplicates of the same exhibit, and lack any explanation. As the importance of these documents is unclear, I will simply summarize their detail herein.

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<sup>1</sup> Although Sam Poolsawat is the Charging Party, the charge form indicates the charge was filed by the Law Offices of Thomas Gillen. Therefore, I am assuming Mr. Gillen is Charging Party's representative.

It appears that in 1980 through 1984, Charging Party had a work overload for which he was not compensated. Additionally, in 1983 and 1984, Charging Party complained about release time he was not receiving. In 1990, Charging Party filed a grievance over this overload and the release time issue. It further appears the Federation represented Charging Party during the grievance procedure, although Charging Party failed to provide a copy of the grievance with the charge.

On March 6, 1990, the Federation and District met to discuss Charging Party's grievance. During this meeting, the Federation and District agreed to a settlement agreement which would pay Charging Party \$10,652 for the overload he accumulated from 1980 to 1990.

In September 1990, the grievance settlement was presented to Charging Party as a formal settlement agreement, containing standard waiver language. Charging Party refused to sign the settlement agreement, as he disagreed with the waiver language. The Federation informed Charging Party that it would not represent him further on this matter if he refused to sign the settlement.

On September 26, 1990, Charging Party sent a letter to District administrators stating his grievance was really over the release time and not the overload assignment. Moreover, Charging Party reiterated his belief that he was entitled to overload pay without having to sign the settlement agreement.

On January 29, 1992, Charging Party sent a letter to the Federation regarding his overload/release time grievance, despite the Federation's refusal to represent him further. The Federation did not respond to this letter. On March 10, 1992, Charging Party sent another letter to the Federation regarding his grievance. This letter, however, requested the Federation turn over their grievance file to Charging Party's attorney, who would be representing Charging Party in this matter. It appears the Federation did not respond to this letter either.<sup>2</sup>

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<sup>2</sup> It appears, however, that Charging Party's representation by an independent attorney may be contrary to Article 22, Section D(1), which states in relevant part:

At all grievance meetings under this Article, the grievant shall be entitled to be accompanied and/or represented by an AFT representative(s). A grievant shall also be entitled to represent himself/herself (but may not be represented by any other person other than an AFT representative) up to and including Step Three of the Grievance Procedure.

On June 17, 1992, Charging Party sent another letter to the union regarding his grievance. The Federation failed to respond. On June 24, 1992, Charging Party's attorney sent a letter to the Federation inquiring as to whether the Federation would be taking the grievance to arbitration. It is unclear why Charging Party or his attorney believed the Federation might take the grievance to arbitration as the Federation had stated its refusal to pursue the grievance further in 1990, and the timelines under the agreement had clearly elapsed.

On February 22, 1993, Charging Party sent a letter to the Federation inquiring as to why the Federation had not contacted his attorney. The Federation did not respond. Documents provided detail a May 26, 1994, letter Charging Party sent to the District Vice President of Academic Affairs, Maria Elena Martinez. In this letter, Charging Party requests Ms. Martinez look into the grievance, and respond to Charging Party. A response from Ms. Martinez is not included in the documents provided.

On December 4, 1996, Charging Party sent another letter to Ms. Martinez regarding the grievance. On March 3, 1997, Charging Party sent yet another letter to Ms. Martinez. It is unclear what, if any, response Charging Party received from Ms. Martinez.

On May 14, 1997, Charging Party sent a letter to Federation representative Consuelo Rey, asking for assistance in reviving the grievance. On May 19, 1997, Consuelo Rey sent a letter to Charging Party stating in relevant part:

As we discussed on the telephone, the choice to resolve the MBRS grievance re: backpay which is approximately four (4) years old now, has always been at your own discretion. The District made you an offer which you refused to sign. If you wish to activate this offer and sign the District's conditions on your case, you need to contact Mary Mundell at the AFT office . . . It may very well have exceed the statute of limitations and be in the dead file. Whatever the case, it is no longer in my jurisdiction.

On July 14, 1997, District representative Herb Spillman sent an email message to another District representative regarding Charging Party's grievance. The email states in relevant part:

I received the documents you sent to me re Sam Poolsawat's claim for backpay. As I

suspected, he appears to be pursuing the same issues he was in 1990-1991.

Mr. Poolsawat grieved for back pay. He rejected a settlement offer (which I believe the union supported). He then petitioned for a writ of mandate in superior court. His petition was denied. The District spent alot (sic) of time and money on this matter. As far as we are concerned, the case is closed.

In early December 1997, Charging Party filed a second grievance regarding his overload assignment and MBRS release time. It appears the grievance raises the same issues raised in 1990.

On December 17, 1997, Charging Party sent another letter to the Federation regarding his grievance.<sup>3</sup> In early January 1998, the grievance was denied at Step I. On January 16, 1998, the grievance was denied at Step II. In their denial, the District stated the grievance was untimely, as it related to matters in from the mid-1980's. Additionally, the District stated the matter was closed as Charging Party failed to pursue the 1989 grievance to arbitration after it was denied at Step Three.

Article 22, Section E, states the following with regard to time limits:

1. Failure of the grievant(s) to act on any grievance within the prescribed time limits unless mutual agreement to extend the time has been reached, shall conclude the grievance.

Article 22, Section F(4) states the following with regard to arbitration requests:

- a. If the grievance is not resolved at Step Three, the grievant, subject to the approval of AFT, may file a written request to the Office of Employer-Employee Relations for a hearing. The grievant shall have ten (10) days from receipt of the decision in Step Three to file said request.

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<sup>3</sup> Charging Party provides only the first page of this letter.

On January 26, 1998, Charging Party sent a letter to the Federation providing pertinent facts he believed the Federation should know prior to elevating the grievance to Step Three.

On May 4, 1998, Charging Party filed a request to attend a conference during June 1998. Charging Party was scheduled to teach during the summer session.<sup>4</sup> On May 26, 1998, Charging Party's request was denied as the District was unable to accommodate summer conference requests.

On August 26, 1998, the Federation refused to take Charging Party's May 6, 1998, grievance to arbitration. The Federation further informed Charging Party that he could appeal the decision to the Federation's board.

On September- 9, 1998, Charging Party filed a second request to attend a conference. This request was also denied by the District. On September 15, 1998, Charging Party filed a grievance over the September 9, 1998, refusal. On September 16, 1998, at Step I, the District admitted it made a mistake in denying the request and requested Charging Party refile his request for conference attendance. It is unclear whether Charging Party refilled his request. On September 28, 1998, the District denied the grievance at Step II, for the same reasons provided at Step I.

On October 12, 1998, Charging Party filed a claim against the District under the Tort Claims Act, Government Code section 900 et seq.<sup>5</sup> The claim reiterates the above stated issues, with most of the allegations dating back more than five (5) years. Indeed, many of the allegations relate to actions occurring in the mid-1980's.

On November 23, 1998, Charging Party requested the Federation's Grievance Review Committee reconsider its refusal to take the May 6, 1998, grievance to arbitration. Additionally, Charging Party requested the Federation take the September 15, 1998, grievance to arbitration.

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<sup>4</sup> It appears that on May 6, 1998, Charging Party filed another grievance. However, as the charge fails to provide copies of any of the grievances, it is unclear what allegations were contained in this grievance.

<sup>5</sup> Government Code 900 et seq. allows individuals to file a claim for injury against public entities.

On November 25, 1998, the Federation refused to take the May 6, 1998, and September 15, 1998, grievances to arbitration. As such, the grievances were closed.

Also on November 25, 1998, the District returned Charging Party's tort claim stating the claim was untimely, as the allegations referred to conduct occurring more than six months prior to filing of the claim.<sup>6</sup> Additionally, the District stated the claim failed to raise issues that are cognizable under the Tort Claims Act.<sup>7</sup> The District further informed Charging Party of his right to seek leave to file a late claim.<sup>8</sup>

On November 30, 1998, Charging Party requested leave to file a late claim with the District. On January 14, 1999, the District

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<sup>6</sup> Government Code section 911.1 states in relevant part:

A claim relating to a cause of action for death or for injury to person or to personal property . . . shall be presented . . . not later than six months after the accrual of the cause of action.

<sup>7</sup> Government Code section 905 states the following with regard to allowable claims:

There shall be presented in accordance with Chapter 1 . . . and Chapter 2 . . . of this part all claims for money and damages against local public entities except:

\* \* \* \* \*

(c) Claims by public employees for fees, salaries, wages, mileage or other expenses and allowances.

<sup>8</sup> Government Code section 911.4 states the following with regard to late filing:

(a) When a claim that is required by Section 911.2 to be presented not later than six months after the accrual of the cause of action is not presented within such time, a written application may be made to the public entity for leave to present such claim.

(b) The application shall be presented to the public entity . . . within a reasonable time not to exceed one year after the accrual of the cause of action . . .

denied Charging Party's request for leave, stating Charging Party failed to provide any facts demonstrating his failure to file was due to mistake, inadvertence, surprise or excusable neglect.

On April 12, April 15 and April 20, 1999, Charging Party sent letters to the District providing more allegations regarding his tort claim. It appears the District did not respond to these allegations as it considered the matter closed.

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

As noted above, Charging Party fails to allege a specific violation of the EERA. As such, I will assume Charging Party intends to allege the District discriminated against him because of his protected activity. However, much of the facts provided pertain to conduct occurring several years ago, and as such are time barred.

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. The instant charge was filed on May 25, 1999. As such, all allegations regarding conduct taking place prior to November 25, 1998, are untimely and must be dismissed.<sup>9</sup>

Based on the facts provided, Charging Party could allege the District denied his request for leave to file a late tort claim based on his alleged protected activity.

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.)

Charging Party's filing his 1990 grievance regarding the work overload and MBRS release time, and the May 1998 and September

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<sup>9</sup> There are no facts indicating the allegations should be tolled.

1998, grievances regarding conference attendance are protected activities. The employer had knowledge of this protected activity, and Charging Party's November 30, 1998, request for leave to file a late tort claim was denied, demonstrating an adverse action. However, facts presented fail to demonstrate the requisite nexus, and as such, the allegation fails to state a prima facie case.

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present:

(1) the employer's disparate treatment of the employee; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other facts which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.) As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of EERA section 3543.5(a).

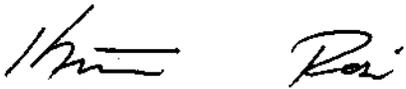
In the instant charge, the District denied Charging Party's request because Charging Party failed to explain why the allegations should be considered for late filing. It does not appear Charging Party met the requirements of Government Code section 911.6, which require that the failure must be because of mistake, inadvertence, surprise, or excusable mistake. Moreover, Government Code section 911.4 requires the late claim be filed no more than one year after the cause of action. In Charging Party's case, most of the allegations occurred more than five (5) years prior to the filing of the claim. As it appears the District followed the provisions of Government Code section 900 et seq., the allegation fails to state a prima facie violation of the EERA.

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

Warning Letter  
LA-CE-4069  
Page 9

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 September 29, 1999, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Handwritten signature of Kristin L. Rosi in cursive script.

Kristin L. Rosi  
Regional Attorney