

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

SHARON D. FERREIRA,

Charging Party,

v.

SACRAMENTO CITY UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. SA-CE-2077-E

PERB Decision No. 1502

November 1, 2002

Appearance: Sharon D. Ferreira, on her own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case comes before the Public Employment Relations (PERB or Board) on appeal by Sharon D. Ferreira (Ferreira) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Sacramento City Unified School District (District) violated the Educational Employment Relations Act (EERA).¹ Ferreira did not identify a specific section of EERA violated by the alleged conduct, but the Board agent treated her charge as a contention that the District discriminated against her for protected activity in violation of Section 3543.5(a).

The Board agent dismissed Ferreira's charge as untimely and for failure to state a prima facie case.

¹EERA is codified at Government Code section 3540 et seq.

FERREIRA'S APPEAL

On appeal, Ferreira restates the allegations rejected by the Board agent as untimely and for failure to state a prima facie case. Ferreira submits voluminous additional documentation related to various performance evaluations of which she complained in her charge and attached documents, all of which took place well outside the statutory limitations period.

PERB Regulation 32635(b)² provides, "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." Ferreira has failed to show good cause for acceptance of the additional documents on appeal, as they simply add detail to alleged incidents rejected by the Board agent as untimely and there is no indication that the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge.

Having reviewed the charge and attached documents, the amended charge and attached documents, the warning and dismissal letters, and Ferreira's appeal, the Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-2077-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

² PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Dismissal Letter

April 23, 2003

Sharon D. Ferreira
P O Box 191152
Sacramento, CA 95819

Re: Sharon D. Ferreira v. Sacramento City Unified School District
Unfair Practice Charge No. SA-CE-2077-E
DISMISSAL LETTER

Dear Ms. Ferreira:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 28, 2002. In your charge, you allege that the Sacramento City Unified School District (District) violated the Educational Employment Relations Act (EERA).¹ Though the charge does not explicitly state a legal theory, it appears from the information included in the charge as well as in our telephone conversation of February 25, 2002, that you are alleging the District discriminated against you in violation of Government Code section 3543.5(a).

I indicated to you in my attached letter dated March 1, 2002, 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 March 11, 2002, the charge would be dismissed.

In my March 1, 2002 letter, I noted that the only conduct alleged to have occurred during the six months prior to the filing of the charge involved a conversation with a representative of the Sacramento City Teachers Association (SCTA), your obtaining a copy of the March 2001 settlement of your earlier grievance, and events pertaining to your unemployment claim. I further noted that none of this information includes facts that would establish conduct by the District that constitutes discriminatory or retaliatory actions against you because of your earlier protected activity. Thus, my letter concluded that the charge must be dismissed as untimely filed and because it does not state a prima facie violation of the EERA.

Your First Amended Charge was filed on March 11, 2002. However, the amended charge does not cure the deficiencies in your charge that were discussed in my March 1, 2002 letter. The amended charge, in addition to presenting information in a more legible format, adds additional detail concerning evaluations that you received and considered unfair and without a basis, and that you challenged through grievances with the assistance of the SCTA. The events

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

surrounding the evaluations all transpired during the period from 1991 through 1998. Thus, the charge, even as amended, fails to allege any facts occurring during the six months prior to the filing of the charge except those already considered in my earlier letter. The charge, even as amended, fails to allege sufficient facts within the six months period prior to the filing of the charge to establish a prima facie case that the District retaliated against you for protected activity in violation of EERA section 3543.5(a).²

Therefore, I am dismissing the charge based on the facts and reasons discussed above as well as those contained in my March 1, 2002 letter.

Right to Appeal

Pursuant to PERB Regulations,³ 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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

² In fact, the charge does not allege sufficient facts from any time period to establish a prima facie case of discrimination under the standards described in my earlier letter.

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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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. (Regulation 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 Regulation 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. (Regulation 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. (Regulation 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
General Counsel

By _____
Les Chisholm
Regional Director

Attachment

cc: Allen R. Vinson

Warning Letter

April 23, 2003

Sharon D. Ferreira
P O Box 191152
Sacramento, CA 95819

Re: Sharon D. Ferreira v. Sacramento City Unified School District
Unfair Practice Charge No. SA-CE-2077-E
WARNING LETTER

Dear Ms. Ferreira:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 28, 2002. In your charge, you allege that the Sacramento City Unified School District (District) violated the Educational Employment Relations Act (EERA).¹ Though the charge does not explicitly state a legal theory, it appears from the information included in the charge as well as in our telephone conversation of February 25, 2002, that you are alleging the District has discriminated against you in violation of Government Code section 3543.5(a).

As I indicated to you in our February 25 telephone conversation, the statement of your charge is difficult to read and does not present a clear and concise statement of the facts giving rise to the filing of the charge. My understanding is that you have been employed as a substitute teacher by the District since at least 1991, and your position was included in the bargaining unit represented by the Sacramento City Teachers Association (SCTA). Your dispute with the District also dates back to 1991, and you earlier filed a least one grievance, in 1998. That grievance was submitted to arbitration by SCTA in June 1999, but the grievance was settled by SCTA and the District in March 2001. However, SCTA did not provide you with a copy of the settlement agreement until October 2001.

Pursuant to the settlement agreement, the parties agreed to seal an evaluation of you by Helen Ingram, that you would not substitute at Tahoe Elementary School, and that you would be barred, due to evaluation concerns, from substituting at eight other schools.

The charge includes references to meetings and telephone conversations you had with representatives of both SCTA and the District over issues with your employment in April, June and October 2001. The charge also indicates that you filed for unemployment in mid-October 2001, and references a meeting with an unemployment appeals judge held in December 2001.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Discussion

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.) Your charge, as previously noted, fails to present the required "clear and concise statement" of the "who, what, when, where and how" of an unfair practice and is subject to dismissal for this reason.

Further, EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.) Here, the only conduct alleged to have occurred during the six months prior to the filing of the charge involves a conversation with a SCTA representative, your obtaining a copy of the March 2001 settlement of your earlier grievance, and events pertaining to your unemployment claim.

None of this information includes facts that would establish conduct by the District that constitutes discriminatory or retaliatory actions against you because of your earlier 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 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.) Your charge fails to allege sufficient facts to satisfy the required elements of a discrimination violation. Thus, the charge must be dismissed as untimely filed and because it does not state a prima facie violation of the EERA.

Conclusion

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 that 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

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amended charge or withdrawal from you before March 11, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Regional Director