

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

ANNETTE (BARUDONI) DEGLOW,

Charging Party,

v.

LOS RIOS COMMUNITY COLLEGE DISTRICT,

Respondent.

Case No. SA-CE-2037-E

PERB Decision No. 1631

May 18, 2004

Appearance: Langenkamp & Curtis by Carolyn Langenkamp, Attorney, for Annette (Barudoni) Deglow.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Annette (Barudoni) Deglow (Deglow) to the proposed decision (attached) issued December 22, 2003, by the administrative law judge (ALJ).

The Board has reviewed the entire record in this case, including the proposed decision and Deglow's exceptions.¹ The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

¹A letter of support for Deglow was submitted by a third party. The Board will treat this as a request to submit an informational brief pursuant to PERB Regulation 32210. (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq.) However, the Board finds that the record and brief in this matter adequately present the issues and positions of the parties. Accordingly, the request to submit an informational brief is denied.

ORDER

The unfair practice charge in Case No. SA-CE-2037-E is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

PROCEDURAL HISTORY

On June 22, 2001, Deglow filed an unfair practice charge (UPC) with the Public Employment Relations Board (PERB or Board) against the District. The charge alleged various violations of the Educational Employment Relations Act (EERA or Act).¹

On August 2, 2001, the general counsel of PERB, after an investigation of the charge, issued a complaint alleging violations of subdivision (a) of section 3543.5.²

On September 6, 2001, the District answered the complaint denying all material allegations and propounding various affirmative defenses. On January 30, 2002, the charging party filed a first amended UPC. On August 22, 2002, a second amended UPC was filed.

An informal conference was held on September 7, 2001, in an unsuccessful attempt to reach a voluntary settlement. Six days of formal hearing were held before the undersigned on September 17, 18 and 19, October 29, 30 and 31, 2002. During the formal hearing a motion to amend the complaint was made by the charging party. After a discussion of the matter between the parties, the motion was granted and on the last day of hearing, October 31, 2002, an amended complaint was approved and signed by the undersigned. At the conclusion of the

¹ All section references, unless otherwise noted, are to the Government Code. The EERA is codified at section 3540 et seq.

² Subdivision (a) of section 3543.5 states:

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.

hearing transcripts were prepared and briefs were filed. The case was submitted for a proposed decision on December 1, 2003.

FINDINGS OF FACT

Jurisdiction

The parties stipulated, and it is therefore found, that the charging party is a public school employee and the respondent is a public school employer, within the meaning of the Act.

Background

On July 1, 1965, as a result of a general population election, the Los Rios Junior College District assumed the operation of the American River College (ARC) and SCC. ARC, at that time, was an independent operating junior/community college district. Sacramento Junior/City College, however, had been a part of the Sacramento City Unified School District (SCUSD) since 1916. Through this merger Deglow became an employee of the new district, which was renamed Los Rios Community College District in 1970.³

Deglow began her part-time evening employment at SCC as a mathematics instructor in 1964. At the time she was also a full-time mathematics teacher at a SCUSD middle school during the regular school day.

Deglow's CTA Advocacy

There is no doubt that Deglow engaged in protected activities. When SCC was first established Deglow advocated an affiliation with the California Teachers Association (CTA), as opposed to the California Federation of Teachers (CFT). After CFT became the District's faculty representative, Deglow adopted an adversarial role with the local CFT chapter, the

³ Administrative notice is taken of public information in PERB's files.

Los Rios College Federation of Teachers (LRCFT). Although she had every right to do so, this role did not endear her to some of her colleagues.

Pre-1965 Instructor Tenure Conflict

Deglow, along with a number of other pre-1965 part-time instructors, engaged in a series of protracted and partially successful battles with the District over various employment rights. On December 22, 1992, they received a Third District Court of Appeal decision retroactively granting them tenure at their respective part-time levels.

Library Demolition Conflict

In the early 1990's the District decided to raze the existing SCC library and build a new media center on the site. The issue created a protracted conflict with heightened sensitivities among the District and local civic groups. The latter insisted the existing building had historical and architectural significance. Law suits were filed in an attempt to prevent the building's demolition. On March 25, 1996, the Third District Court of Appeal issued a decision upholding the District's decision to demolish its library. Deglow was identified on page fifteen of that decision as "the leading faculty opponent of demolition."

Discrimination Complaint Filed with Chancellor's office

In January 1993, Deglow filed an "Unlawful Discrimination" complaint with the California Community College Chancellor's office alleging a lack of District support for the continuation of her disability accommodation program, as approved and implemented during the fall semester of 1992. (See p. 10 et seq. for a description of Deglow's disability.)

Physical Disability Discrimination Complaint in Superior Court

On May 8, 2000, after a grievance to prevent her reassignment from Geometry to Algebra proved unsuccessful, Deglow sued the District for damages, naming as individual defendants SCC employees, Suzanne Chock Hunt (Hunt), Linda Wock, Dr. Alice Murillo

(Dr. Murillo), Ronald Hatton (Hatton), Lori Maloney (Maloney), William Silvia, and Herschel Smith. Her Superior Court suit alleged retaliatory employment discrimination with regard to her physical disability. The suit included many of the same allegations contained in the instant unfair practice charge.

Employment Based Legal Actions

Deglow's conflicts were not restricted to the District and its employees. They also included the faculty's exclusive representative, the LRCFT. In one action, Deglow was instrumental in requiring the LRCFT to repay almost \$47,000 to the District. This repayment was based on her allegation the District inappropriately subsidized the LRCFT.

From 1977 to the present Deglow has filed at least 63 grievances, 25 PERB UPCs against LRCFT, 8 UPCs against the District, 4 complaints with the Department of Fair Employment and Housing (DFEH) against the District, and has been either directly or indirectly involved in an undetermined number of Superior Court lawsuits, in addition to the physical disability discrimination suit described, supra. Most of these actions were filed after 1989.

On three separate occasions, the District has petitioned PERB to require Deglow to pay its attorneys' costs with regard to various actions she has brought against it, citing an excessive number of charges filed by her as justification for such requests.

Classroom Abilities

From the time of her initial hiring to 1977, Deglow taught whatever classroom assignments were given to her. However, in 1977 she was told that henceforth she would be limited to Algebra and Geometry. From 1977 to 1991 Deglow taught Beginning and Intermediate Algebra exclusively. In the fall of 1991 she began teaching Geometry. She

continued with Geometry exclusively until 1998. She did not teach at all in the fall of 1998 and has been teaching Algebra exclusively since that time.

A number of academicians testified and/or submitted declarations in Deglow's behalf with regard to her classroom skills. Among these witnesses were (1) Ann Schafer, Ph.D. (Dr. Schafer), a licensed clinical psychologist; (2) Thomas J. Adams, Ph.D. (Dr. Adams) professor Emeritus of Economics and Business, who taught at SCC from 1965 to 1999; (3) Clyde E. Kidd (Kidd), SCUSD administrator and teacher from 1959 to 1992; (4) Christoph Hulbe (Hulbe), SCC astronomy and geology instructor since 1969; (5) Earl W. Boynton (Boynton), SCUSD physics and chemistry teacher from 1968 to 1996; (6) SCC instructor Donald B. Kent (Kent), a pre-1964 instructor; (7) Elmer (John) Sander, ARC instructor with 40 years teaching experience; and another pre-1964 instructor; (8) Dr. Wang Ng, a SCC electronic instructor, (9) Melvin Duval, SCC electronic instructor, and (10) Lance Bernath, an ARC mathematics instructor with 36 years District experience. They all testified and/or submitted declarations, from various points of reference, that Deglow's classroom materials and/or teaching abilities were exemplary.

Dr. Schafer

Dr. Schafer is a reading and learning disabilities specialist. She has been SCC's Learning Specialist Program Coordinator for the past 15 years. Her career has focused on learning strategies and the development of various methods of learning effectively. She specializes in both teaching teachers and teaching students. She uses a (Meyers-Briggs) system of grading various SCC instructors on eight separate and distinct instructional categories. When she conducts an instructor observation she rates each category separately. If an instructor's presentation is low in any of the eight categories, she brings these areas to

his/her attention and they collectively develop an approach to expand the instruction into that area.

Deglow came to her in the spring of 2000 to obtain assistance to better address her students' needs. Dr. Schafer formally observed Deglow's Algebra classroom one time in 2000, but has informally stopped in several other times. She said that Deglow's has "a very smooth delivery, very high-quality delivery, and one that I thought most of the students that were struggling could learn from." She concluded that Deglow was not deficient in any of the eight categories described above.

One validation of the methods that Dr. Schafer observed was Deglow's high student retention rate.⁴ She believes this an excellent barometer of how well the instructor is doing in the classroom.

Dr. Schafer looks at a teacher's skills from various perspectives, i.e., the special needs student, teacher's style, and the general student teaching style. Dr. Schafer believes that Deglow addresses the subject matter effectively to all types of students. Although she only observed Deglow's Algebra class, she believes that teachers' styles are pretty consistent, but admits there are some differences between subjects. Dr. Schafer reviewed Deglow's Geometry materials and study guides and determined that they provided the same types of learning modalities that she (Dr. Schafer) saw manifested in her Algebra lectures.

She believes that Deglow is "as good or better, and probably better than most of the teachers I've observed teaching math at City College."

She is not a social acquaintance of Deglow.

⁴ A student retention rate refers to the percentage of an instructor's incoming students that actually remain throughout the term and complete the course with a passing grade.

Dr. Adams

Dr. Adams, who has a doctorate in Educational Marketing, a combination of educational and marketing theory, retired from the District in 1999. He compared Deglow's Geometry materials with the textbook and the objectives of the course. He found her work to be of superb quality. He noted that her materials acknowledge the short attention span of today's students. She used various methods to reach them, i.e., motor activity, kinetic activity, logic, visual plus lectures and slides. He states that her material "flowed beautifully." He has never taught math, nor has he ever visited her classroom.

He acknowledges a personal social relationship between himself and his wife and Deglow and her husband. However, he prides himself on being a professional and does not believe their friendship has anything to do with his opinion of her educational abilities.

Kidd

Kidd has a B.A. and master's degree in school administration as well as a total of 40 years as a teacher and a school administrator at the K-12 level. He reviewed Deglow's Geometry textbook and curriculum description, as well as her course materials, i.e., visual, quizzes, tests, etc. He believes that her materials reflected good teaching strategies. He has never been in her classroom.

He characterizes his relationship with Deglow as friendly, consisting of no more than talking to her on the phone a number of times and chatting if they see each other at a local coffee shop. He first met Deglow and her husband when he was the principal of a school attended by their children.

Hulbe

Christoph Hulbe, who has a B.A. in geology and a M.S. in mineralogy from Penn State, has been a SCC physics instructor since 1969. He has occasionally taught math; and had an

assignment as SCC's media director at one time. He has been a colleague of Deglow's for a long time. He recently took a Power Point class with her.

He reviewed Deglow's slides, workbook and Power Point Algebra presentation. He believed they were of a very high quality and were very thorough, setting forth a step-by-step process. No step was so big a student could not follow. He noted she uses writing, observation, and hearing in her presentation. He has never visited Deglow's classroom.

Boynton

Boynton has a Bachelor of Science in chemical engineering. He was a senior development engineer at Aerojet. He taught math, chemistry, and physics at Hiram Johnson and Rio Americano high schools in Sacramento for twenty-eight years. He looked at SCC's curriculum document and compared it to the Geometry materials Deglow was using, i.e., overhead transparencies, outlines, student handouts, plus other materials, binders, folders and boxes available to her students if they needed additional help. He said, "I have never seen as extensive material as Ms. Deglow had for her class." He said he was amazed.

He was surprised by the lack of substance or depth in SCC's curriculum document, i.e., two pages in length. He did not visit her classroom.

Dean Haro

In addition to the above, a letter, written by Dean Richard T. Haro (Dean Haro), was entered into evidence.

Dean Haro was the dean of SCC's mathematics/science/engineering division from 1983 to 1992. In a May 21, 1998, letter (to be described and quoted at length, infra, on pp. 14-16) he made the following comments regarding Deglow's instructional capabilities:

During my tenure as Dean . . . my observation of her classroom instruction was that she was always organized and maintained an excellent learning environment for her students. She was very effective in her use of instructional aids in her classroom

presentation and always sensitive to her students needs. Of significance is the fact that student, faculty and administrative evaluations of Mrs. Deglow's instruction conducted prior to my evaluations as Dean . . . reflect the same basic observations.

Deglow's Physical Disability

In December of 1981 Deglow learned that she had developed vocal nodules. In order to combat them she participated in a year of voice therapy and began to use a wireless microphone in the classroom. She filed a workers' compensation claim and eventually received a partial disability award. As a part of that award the District was directed to make reasonable accommodation for her disability. By 1984 the nodules had dissolved and although they have never returned, she has incurred a number of inflammations that placed her on the edge of reoccurrences.

Her disability accommodation plan consists of a classroom voice amplification system along with the use of visual aids that permit her to speak less, thereby putting less pressure on her voice. In addition, the District agreed to modify her class schedule to permit her to have a 10- to 15-minute "no-voice" break in each class session.

In 1992 the Workers' Compensation Appeals Board issued its finding and award requiring an accommodation program for Deglow. The accommodation program she has developed, which has been in operation since the fall 1991 semester, included 1,200 thirty-five millimeter slides, 300 overhead transparencies, and 7 workbooks which encompassed a total of 375 pages. She estimates that she spent 800 to 900 hours developing these materials.

On March 1, 1993, Mary Jones (Jones), the District personnel services director and ADA compliance officer, wrote:

Ms. Deglow has requested an accommodation for her documented worker's compensation disability. The accommodation requested is the teaching of a class using materials designed to provide vocal relief. She stated that she

has already prepared materials in geometry which fully provide her the accommodation that she perceives is necessary. ¶ . . . it should not be difficult to meet her request for accommodation. . . .

Dean Haro also confirmed that Deglow and the District had entered into an agreement by which she “. . . could continue to teach the course [Geometry] in the evenings so long as the program continued to facilitate her disability.”

After extensive investigation by her doctors and speech therapists, it was determined that teaching Geometry would cause less stress on her voice than Algebra.

Retention of the Geometry assignment, along with the materials she developed in conjunction with this class, is important because it is an integral part of Deglow’s voice accommodation program. The District was aware of and has acknowledged this since at least 1991.

In 1998, her physician put the District on an additional notice of her need for an accommodation program when he stated, “Failure to allow this accommodation could result in re-development of vocal nodules and possible permanent vocal disability.”

Allegations of Hostility

From the early 1980s through the present time Deglow has been the recipient of various negative comments from both peers and members of the administration over her various grievances, lawsuits, and PERB UPCs. Some of these incidents are set forth below.

Meredith

On December 12, 1992, SCC mathematics Instructor Rodney Meredith (Meridith), in front of mathematics department peers in a common area, immediately before a mathematics department meeting, aggressively told Deglow that she should resign because of her disability-required special accommodation(s). He continued with a statement that everyone in the math department shared his feeling of hostility toward her.

On January 13, 1993, as Deglow was reaching into her campus mail-box, he loudly said, “How many people have you sued today? Have you sued anyone today.”

Duff

On February 22, 1995, Charles Duff (Duff), who at the time was the math department chair, wrote a letter to Deglow which began “Bullshit letters like the one you sent to me dated February 20, 1995, with a copies [sic] to the dean and Curriculum Committee, mostly annoy me.” He completed the substantive part of his letter with, “If you have complaints or concerns about our mathematics program that you feel compelled to write to someone about, please address your letters to someone else and send me the carbon copy.”

Shelley

The District’s former general counsel, Sue Shelley (Shelley),⁵ retired from the District on March 6, 1993. Steve Buckman (Buckman) began his District general counsel duties on July 11, 1994.

The extent to which Shelley is still involved in Deglow’s employment relations was made clear in a February 18, 1997, letter from Jones to LRCFT. The letter was an attempt, by Jones to explain a delay in responding to a grievance filed by Deglow. Jones told LRCFT that the District needed more time to review the materials presented by Deglow in support of her grievance. She continued, stating that in order to effect such a review Jones and Buckman were going to have to meet with Shelley before they could share any proposed settlement with LRCFT. Contact with Shelley was necessary, she wrote, because, although she “has been retired for several years, she [Shelley] remains the sole resource for information regarding

⁵ Prior to becoming the District’s general counsel, Shelley was a SCC math instructor and an antagonistic colleague of Deglow.

Ms. Deglow’s series of actions against the district. As a result, the District staff must continue to rely on her expertise.” Shelley has been openly hostile to Deglow for many years.

Hatton

On May 16, 1993, Deglow wrote a letter to the District’s Board of Trustees and the LRCFT president. The letter concerned how part-time instructors were being treated with regard to flex time. She received a reaction to her letter from fellow mathematics instructor and sometime department chair,⁶ Hatton, a long-time office mate of Meridith. Although he was not copied on the face of the letter, he obviously received a copy. He sent it back to Deglow with the following statement written in capitol letters with a bold marker pen across the front of his copy of her letter: “THIS IS A WASTE OF PAPER! TAKE ME OFF YOUR MAILING LIST. HATTON”

In addition, after Deglow challenged her 1997 performance review report (Hatton was a member of the review team), Hatton wrote a letter to Hunt, SCC's dean of instruction. In this letter he states,

I am outranged [sic], ABSOLUTELY OUTRAGED!!, by the charges leveled in Ms. Deglow's Challenge

Vrechek and Maloney

On February 22, 1995, SCC mathematics instructors, Jean Vrechek (Vrechek) and Maloney, wrote to Dr. Murillo in response to a recent Deglow memo. Most of the instructors’ letter discussed the parties’ different views of what actually occurred at a Geometry curriculum faculty meeting that the authors attended with Deglow. The last paragraph of the letter states:

A year and a half ago, Annette was the lone dissenter in approving the Math 52 course outline when it came up for vote in

⁶ In the District the terms “department spokesperson” and “department chair” are synonymous. The person holding either of these titles acts as liaison between the faculty and the college administration. For purposes of clarity the term “chair” will be used throughout this proposed decision to reference this position.

the department. Now, once again, Annette has gone on record as not supporting the current course outline. We believe that an instructor who has repeatedly and publically [sic] disagreed with the approved course outline should not be assigned to teach that course. We suggest that she be assigned to a course that agrees with her philosophy.

In 1993 and 1994 Vrechek was an appointed member of Deglow's performance review team. In 1997 and 1998 Maloney was an appointed member of Deglow's performance review team.

LRCFT's publications

This hostility towards Deglow was also evident in the LRCFT's publication which is distributed to all District academic staff five times a year. She is negatively referenced 25 times in its December 1994 edition, 28 times in its April 1995 edition, and 39 times in its September 1995 edition. All of these references related to either her UPCs or other protected activities.

Verification of Systematic Hostility

Dean Haro

Dean Haro was the dean of SCC's mathematics/science/engineering division from 1983 to 1992. In a May 21, 1998, letter to Gregory S. Baker, District assistant director of personnel services, Dean Haro set forth his assessment of the negativity directed toward Deglow by various members of the SCC faculty and administration. In his letter he also documented the extent of the harassment directed toward Deglow while he was the dean of SCC's science/math/engineering division:

During my first semester as Division Dean (the Summer 1983 semester), Mrs. Deglow was assigned to teach a daily-morning Algebra class in place of her traditional two night a week Algebra class. The assignment was made and approved by Charles Nadler, the Campus Dean of Instruction, prior to my assignment and without the endorsement of the Math Department members. I was advised that the assignment was temporary and intended to

provide Mrs. Deglow time to recover from vocal cord nodules. During the semester, Mrs. Deglow and her accommodations program were under constant fire. The level of harassment was so extensive that Mrs. Deglow developed an intestinal disorder that resulted in a work related injury and subsequent award from the Workers' Compensation Appeals Board.

In the Fall 1984, Mrs. Deglow returned to the evening instructional program. The constant need to harass her within the work place diminished some but there were still . . . never ending inquires by Union members, Mathematics Department instructors and District administrators looking to find any infraction of the rules by Mrs. Deglow that could be used to discredit her or make it difficult for her to satisfy her instructional obligations.

.....

In the Spring of 1991, Mrs. Deglow asked if it would be possible for her to move from teaching Algebra to teaching Geometry. Mrs. Deglow explained that her voice therapist felt that such a move might mitigate her voice disability. Mrs. Deglow, shared with me that she had initially been hired in 1962 to teach Geometry A review of Deglow's records document university training in the instruction of Geometry, study of Geometry instruction through the Stanford School Mathematics Study Group and the National Science Foundation. Mrs. Deglow proposed that she develop for her use a voice accommodations program through the CSUS speech and hearing program for the instruction of Elementary-Plane Geometry. The agreement also included the condition that if she was able to develop a program that effectively reduced her vocal stress, she could continue to teach the course in the evenings as long as the program continued to facilitate her disability. Mrs. Deglow, myself and the campus administration agreed that if successful, the program would facilitate both Mrs. Deglow and the college. For as long as I had been on the SCC campus, staffing the evening Geometry class had been difficult. At times the course was not scheduled in the evening because there was no qualified instructor willing to teach the course in the evening. . . .

I agreed to the proposal and assigned Mrs. Deglow to teach Plane Geometry in the Fall 1991. Mrs. Deglow prepared and submitted a formal request for reasonable accommodation for her disability to the President of the College. . . . The accommodations program was approved and implemented in the Fall 1991 semester.

.....

On August 26, 1992 the Workers' Compensation Appeals Board ruled in favor of Mrs. Deglow and . . . added documentation that Mrs. Deglow had a right to reasonable accommodation. The word traveled throughout the campus fast and the members of the Mathematics Department began demanding that I suspend Deglow accommodations program and return her to her Math 51 Algebra because her assignment to geometry had not been approved by the mathematics faculty. The Department even demanded that I start a rotation plan for the evening geometry class. This was the first time, to my knowledge, that a class in the evening had ever been considered for a rotation plan.

The issue was finally settled by Mary Jones the ADA Compliance Officer. . . . Jones advised that since there were multiple sections of geometry at SCC, it should not be difficult to meet Mrs. Deglow's request for accommodation.

.....

In my opinion, it is an understatement to say that Mrs. Deglow has been the subject of harassment, retaliation, and intimidation within the workplace because of her need for reasonable accommodation of her work related disability. The efforts by the faculty and administration to foster and promote a hostile work environment for Mrs. Deglow and to interfere with the performance of her duties are well documented, I can personally attest to the fact that Mrs. Deglow was the subject of constant harassment during the time that I served as Dean of the Science/Math/Engineering Division. It is my understanding from others that the conditions became worse, not better, after I transferred to CRC in Spring 1993. All reports indicate that there has been a constant effort on the part of individuals within the department and administrators to harass Mrs. Deglow and to foster hostility within her work place and to derail through any means her accommodations plan.

Kent

Kent agreed with Dean Haro's assessment of the hostility directed at Deglow at SCC.

Dr. Adams

Dr. Adams insists that a "small, cohesive group of dedicated oligarchs and their sympathizers with the overt consent of the administration" are attempting to terminate Deglow's college employment.

Absence of Rebuttal

The only rebuttals proffered by the District to any of the above-described allegations of hostility were (1) Hatton's comment that he thought Deglow might believe he was biased against her through guilt by association as he was aware of her problems with other members of the department and because he was an office mate of Meridith for over ten years, and (2) Deglow's assertion that, when discussing her objections to Hatton and Maloney as members of her review team, Maloney interjected a comment that "that was in the past, and it should stay in the past."

District's First Attempt to Reassign Deglow

On November 3, 1992, Deglow was advised she would no longer be teaching Geometry, but would instead be assigned an Algebra class, beginning with the spring semester 1993. At that time she would be required, effective January 19, 1993, to develop and implement a new instructional plan for Algebra to replace her Geometry plan.

Deglow filed a grievance to retain her Geometry assignment. Shortly after the grievance was denied, she filed a disability discrimination complaint with the DFEH. In its response to this complaint the District admitted that it was aware that the Geometry class accommodation was designed to provide voice relief. The District also conceded that it would not be difficult to meet her request to continue to provide her with Geometry assignments. In a March 1, 1993, letter from Jones, the District stated that "[a]t this time it appears that we can continue to meet her request for accommodation by scheduling Ms. Deglow to teach Geometry."

On August 13, 1993, DFEH confirmed that the District had agreed to continue Deglow's Geometry assignment as a reasonable accommodation for her voice disability.

District's Second Attempt to Reassign Deglow from Geometry to Algebra

On March 17, 1998, PERB issued a complaint against the District with regard to Deglow's latest UPC against the District. In this charge she alleged that she was denied access to her fellow employees' mailboxes. Two days later, on March 19, 1998, Dr. Murillo⁷ changed Deglow's assignment from Geometry to Algebra to become effective with the fall 1998 semester.

On March 25, 1998, one of Deglow's speech pathologists, wrote a letter to the District stating that if her assignment was changed she would need to be given time and resources to prepare the same materials for Algebra she had developed for Geometry. Otherwise, the letter went on, her voice would be jeopardized.

On September 5, 1998, another of Deglow's speech pathologists, in a letter to the District, reinforced the need for her to be given sufficient time to transition from Geometry to Algebra. This pathologist concluded that Geometry had "less vocal demand" than Algebra, but failed to support this statement with any evidence.

The District declined to permit Deglow to retain her Geometry assignment and directed her to begin her Algebra classes. She eventually requested and received a medical leave for the fall 1998 semester.

Cervantes' DFEH Letter

Deglow complained to DFEH about her assignment to Algebra. On April 14, 2000, Lily Cervantes (Cervantes), District interim director of employee relations, wrote to the DFEH to explain why the District was opposing Deglow's complaint.

⁷ Dr. Murillo was SCC's Dean of Science, Math and Engineering from 1993 to 2001, and in that position operated as Deglow's first or second level supervisor.

Cervantes' two and two-thirds page letter cites four reasons why Deglow's complaint should not be honored; i.e., (1) Deglow cited no new facts to support her claim, (2) the assignment to Algebra was not retaliatory, (3) there is no empirical evidence that Deglow's disability precludes her from teaching Algebra, and (4) the District did not fail in its duty to provide her with an environment to succeed when it assigned her to teach Algebra.

The reference to the term "not retaliatory," as set forth in reason (2), supra, concerns the 1993 and 1994 evaluations.

Deglow believes that when she learned Cervantes failed to tell DFEH the 1993 review was voided due to "department and college" error, it was the first time she became aware that her reassignment and the cessation of her voice breaks were in retaliation for her protected activities. She contends that the first time she saw this letter was when it was received by her attorney as a result of a subpoena served pursuant to this case on January 2, 2001. However, on page of two of Cervantes' letter she described the 1993 and 1994 evaluations, as follows:

The Review Team marked Ms. Deglow as "Needs Improvement" in three areas and "Meets Standards" only in one area. For the period of 8/94 to 12/94, the Review Team expanded the rating factors to a total of seventeen. Ms. Deglow was ranked "Satisfactory" in all areas. [Emphasis added.]

Cervantes also cites a 1997 performance review with negative ratings in support of Deglow's reassignment. She then buttresses the negativity of this review with a statement that a "newly formed Tenure Faculty Review Team" evaluated her (Deglow) in 1998 and again rated her as "Needs Improvement." In fact, there was no newly formed tenured faculty review team. The spring 1998 review team was comprised of the exact same three members as the 1997 performance review team.

Deglow Performance Reviews

Until 1993 Deglow's performance reviews included no unsatisfactory ratings. To the contrary, they contained many laudatory comments about both her teaching and organizational skills. She has consistently received extremely positive student evaluations, which are a part of the formal performance process. In addition, she has high student retention rates.

A peer performance review team's structure is mandated by state law and the CBA. Each performance review team consists of an administrator or supervisor plus two faculty member peers. The CBA permits the evaluatee to peremptorily challenge one member of the proposed team.

Following is a discussion of the various performance reviews received by Deglow. Generally each discussion contains an identification of the team's membership, the results, Deglow's rebuttal(s), and the substance of her eventual grievance objecting to the team's ratings.

1993

Performance Review Team Membership

Deglow's 1993 performance review team consisted of Dr. Murillo and SCC mathematics instructors Vrechek and Randy Rosenberger (Rosenberger).

Dr. Murillo was Deglow's dean at the time and Vrechek⁸ was a SCC tenured math instructor who has been employed full-time by the District since 1985. She has taught

⁸ Vrechek originally requested that she be allowed to teach the evening section of Geometry in the fall of 1992 or spring of 1993. This course would have facilitated family, babysitting and car pool schedules for her. Although initially scheduled for this course, it was later assigned to Deglow as a part of her voice accommodation plan. Vrechek was eventually given this night class in 1998, after Deglow was involuntarily assigned to Algebra classes exclusively.

Geometry sporadically since 1977. There was no evidence proffered regarding Rosenberger, other than he is a SCC math instructor.

Review Results

In the performance review team's report Deglow was marked "Needs Improvement" in two of three substantive ratings, as well as in the "Overall Evaluation" rating. In the "Professional Responsibilities" category it was suggested, inter alia, that she did not cover the entire course syllabus. In the "Professional Relationships" category she was marked down due to two perceived failings, i.e., (1) insufficient face to face open communication with colleagues, and (2) a failure to work through proper channels to resolve issues.

Deglow Rebuttal

In September 1993 all SCC math instructors received a transmittal describing the course outline for each of the department's courses. Deglow read, signed and returned the transmittal. In November she was evaluated and marked down for not including three chapters that had not been included as mandatory subjects in the September transmittal. Deglow had been told of the three chapters by Dean Murillo, but she was also told that the students would not be held responsible for these chapters until the fall of 1994. Deglow included them in the scope of her instruction, but did not test the students on this material, due to the dean's instructions.

Grievance

Deglow filed a grievance with regard to the performance review results. During the grievance process, the District administration admitted that the "Needs Improvement" ratings were the result of department and college administrative error.

Dr. Murillo, in a May 5, 1994, letter, specifically stated "we agreed to void" the 1993 review and that there would be another performance review conducted in 1994 which would

replace this voided review. (Emphasis added.) The “we” referred to Dr. Murillo, on behalf of the District, LRCFT, and Deglow. As a part of the grievance settlement, the District insisted that the original performance review report would remain on file, but would not be “used in any disciplinary process,” either at that time or in the future.

The LRCFT stated, in letter to Deglow, dated January 3, 1995, that the District agreed, in writing, not to use the original review report in any disciplinary process and it (LRCFT) explained to Deglow that “the District has agreed, in writing, not to use the original evaluation in any disciplinary process.” In addition, LRCFT wrote “we cannot think of any manner in which the District might use the evaluation against you.”

Although LRCFT’s letter, along with Dr. Murillo’s May 5 agreement to void the review, were admitted into evidence, the District’s written agreement regarding the 1993 grievance was not located. However, the District neither disavowed its responsibility for Dr. Murrillo’s “void” statement, nor did it dispute LRCFT’s conclusion. However, it insisted Cervantes' 2000 letter to DFEH, justifying Deglow’s reassignment, in part, on the 1993 negative review report, was not improper. It explained that as neither the instant proceeding, nor Deglow’s complaint to DFEH are "disciplinary” processes,⁹ its use of the 1993 review to justify Deglow's reassignment was not prohibited.

1994

At the time of Deglow’s 1994 performance review SCC was using a new form that included ratings in seventeen objective categories, rather than the three rather vague catchall categories previously employed. The same three persons comprised the 1994 performance

⁹ The District states that its disciplinary processes include only (1) letters of reprimand, (2) demotions, (3) loss of pay, and (4) termination.

review team that acted as the 1993 team. The new review report contained satisfactory ratings in all seventeen categories.

1996

During the fall semester 1996 Deglow was informed that (1) she would be given a performance review later that semester, and (2) Maloney and Hatton would be her peer review team members. On September 23, 1996, Deglow put mathematics chair, Charles Duff (Duff) on notice that she was unable to accept either Maloney or Hatton as they were both biased against her. Therefore, she continued, she requested permission to do a self-evaluation, which is permitted by the CBA. On September 24 Duff directed her to submit her self-evaluation request to the Academic Senate. On September 29 Deglow wrote the Senate. On October 1, 1996, Dr. Murillo told Deglow that she was not due for a performance review until the fall 1997 semester. Therefore, the earlier information was incorrect and there would be no review that semester.

1997

A thorough analysis of this performance review, and its resultant report, is crucial to the resolution of this case, as the District cites it as its primary justification for reassigning Deglow from Geometry to Algebra.

Performance Review Team Membership

Deglow's 1997 evaluation team consisted of Dr. Murillo, plus the two SCC instructors she had previously complained about, i.e., Maloney and Hatton. At the team's initial meeting, Deglow quotes Maloney as saying that any antagonism on her part was "in the past."

Maloney has a master's degree in teaching mathematics from University of California, Davis, and for fourteen years has been a full-time mathematics teacher at SCC. She has taught Geometry ten or twelve times. She is not aware of any objections Deglow had to her

participation on the 1997 performance review team. She states that she knows nothing about PERB or any UPC charges filed by Deglow. She was Deglow's office partner for the first year or two she (Maloney) was employed at SCC.

Hatton has been a mathematics teacher at SCC since 1981 (7 years at the high school level prior to that time.) He was asked by Murillo to find two review team members, but no one was willing to serve. He contends this reluctance was due to their disinterest in being sued by Deglow. Due to this general reluctance by others to serve, he agreed to become a member of her review team.

Prior to the first meeting of the review team, Hatton thought Deglow would object to his membership, but he contends that she said she was comfortable with the team's composition. Deglow disagrees, stating that at this meeting she reiterated her previous objections to the team's membership.

Hatton based his belief Deglow would object to his team membership because he knew of her problems and friction with other members of the department. In addition, he was an office mate of Meridith from 1981 to his retirement in 1992. He believed she would view him as guilty by association.

Hatton is aware of Deglow's various grievances and PERB actions from LRCFT publications. His attitude toward Deglow was made clear when he proclaimed, with obvious pride, ". . . I have been teaching for almost 30 years, I've never filed a grievance. I don't know anybody that has filed a grievance, let alone any kind of a PERB action."

Review Results

The performance review report rated Deglow as "Needs Improvement" in seven of the seventeen categories, as well as in the "Overall" category. These seven categories, followed by the review team's supporting text and Deglow's rebuttal, are as follows:

1. [Category No. 1] Maintains current knowledge of field in performance of assignment.

Text: The presentation does not reflect the depth of geometry that is the math department's standard for the course. Concepts need to [be] utilized to reflect the use of critical thinking in applications development as recommended in the Mathematics Framework. (Versus definitions and fill ins)

Maloney said Deglow only skims over the top of things, and does not get into the depth that Geometry usually requires. She believes that Deglow has a confused concept of what parts of Geometry are important, and that she displays a lack of passion for the material. Maloney believes Deglow concentrates on lecture too much and has insufficient student interaction. In addition, she stated, Deglow taught the course out of order.

Dr. Murillo believes there was no "critical thinking" kinds of questions posed to the students to assess whether they were effectively learning the material and were able to apply it.

Rebuttal: The objective depth of instruction is governed by SCC's curriculum/course outline and its catalog. Deglow insists her syllabus and semester plan cover all phases of the materials set forth in these documents.

In addition, Deglow contends her student reviews, which are a part of the formal performance review process have been very positive. The only empirical evidence proffered of these reviews concerns years 1972, 1974 and 1983. In 1972 Deglow received a 3.71 "all round teaching" score; in 1974 she received an "all round teaching" score of 3.74. Both of these scores were on a 4.0 scale, with 4.0 being the best score possible. In 1983 she received a 1.31 overall rating on a 5.0 scale with 1.0 being the best score possible.

Deglow was especially confused over this "lack of depth" criticism as her classroom presentation had not changed in either content or style since her positive 1994 performance review. A review in which Dr. Murillo was a review team member.

2. [Category No. 2] Communicates subject matter clearly, correctly, and efficiently.

Text: Since the presentation is purely lecture, limited opportunity for two way communication exists and hence the effectiveness of the lecture is not assessed.

Rebuttal: Deglow cites her high student retention rate in support of her contention that she communicated clearly, correctly and efficiently. Her 1994-2000 Geometry retention rate of 64 percent is higher than any other math teacher and well above the SCC average of 50 percent. By way of comparison, Maloney's Geometry retention rate is 39 percent; Vrechek's rate is 57 percent; and Rosenberg's rate is 41 percent. Although Hatton has not taught Geometry since 1994, his retention rate in trigonometry, his primary subject, is 41 percent.

In addition to her lectures Deglow provides a half-hour lab time prior to each class. This enabled her students to interact with each other as well as Deglow. The reviewers did not attend these lab meetings, therefore, they gave her no credit for either this extra student contact time or for the opportunity it presented for her to interact with her students.

Sur-rebuttal: Dr. Murillo disputes Deglow's reliance on her retention rate. She admits that retention rates are compiled each semester by SCC, however, they are intended to be used only as a management tool to help the faculty. – These rates are not shared with either the department chairs or the faculty. Dr. Murillo uses them only if an instructor's retention rate drastically drops from one semester to another or if an individual instructor's rate was drastically different than his/her peers.

3. [Category No. 3] Adheres to the approved course outline and department standards.

Text: It is recommended that the textbook order of the topics be adhered to. This is especially essential when the appropriate depth for the topics is presented.

Rebuttal: The comments of the academicians that testified in her behalf all assert that her syllabus and course materials adhered to the approved course outline. With regard to department standards, Deglow asked each of the review team members to provide her with greater specificity concerning their complaints. She did not receive these materials until late in the spring semester 1998, long after her reassignment had become final.

SCC's approved Geometry textbook, on page xi in the preface, second paragraph, says three chapters, 8, 9 and 10, "provide enrichment" and "are sufficiently independent so that any of them can be used separately."¹⁰

In addition, in September 2000 SCC Math Department Chair David Blackwell (Blackwell) endorsed the practice of instructors rearranging the order of the chapters in the Algebra textbook.

Deglow did not fail to include all required subjects. She merely rearranged the chapters to help the students grasp the material. She contends that because Geometry is so different than Algebra many students are scared off by the first few chapters in the textbook. The last three chapters provide an easier transition into Geometry and permit the student to build a level of confidence in the new subject. She attributes the retention of three to four extra students a semester to this chapter rearrangement.

For a period of 12 of 16 weeks Deglow sat in on Maloney's Geometry class to observe how she incorporated the subject chapters into the curriculum.

After this observation Deglow understood that her style of instruction is significantly different than Maloney's. She does not contend that Maloney's teaching style is better or worse, just different from hers. For example, Deglow tries to center her instruction around the

¹⁰ When asked if this comment from the textbook's author had any effect on her opinion that Deglow was remiss in rearranging the order of instruction, Maloney replied that it did not.

entire class, she tries to reach everyone in the room. Maloney centers her instruction around the high end of the course and the students that are going to go on to higher mathematics at four-year institutions.

While Deglow collects homework and does everything she can to monitor students and encourage them to do the homework, Maloney leaves it up to them to do their homework on their own. Deglow presents 85 to 95 percent of the proofs and corollaries. She also presents all of the axioms and postulates and works a large number of problems in class. Maloney, in contrast, works a selective number of proofs and would frequently work with longer, more difficult proofs. Deglow preferred a lot of shorter, less complicated proofs, so as to permit the average student to follow the logic and gradually build up to the more complicated problems.

Deglow would organize every aspect of her lecture and general presentation in advance. Deglow observed that when Maloney “would do a proof, she would kind of talk about it a little bit, make a change, then she’d say, now, I’m going to change my mind and she’d do something else.” Deglow observed “That’s fine for a very good student, but it’s very difficult for a student who is not really math oriented, it’s very confusing for them.”

After sitting in Maloney’s class for an extended period of time, Deglow observed “that the struggling student, those that were not really strong, dropped out of the class very, very early in the course. The class went from 35 to 37 student down to probably 18 to 20 in less than three weeks.”

Deglow sees herself as much more organized. Once she comes into the classroom she starts the class at exactly the correct time. Once she starts her lecture, the students have a workbook that she has prepared and provided. She coordinates the workbook with the lecture and the transparencies. The students are working constantly from the moment they come in

until the moment they leave. Everyone in the room is watching Deglow, the transparencies, and moving through the workbook at the same time. It is a coordinated learning session.

Deglow also noted that Maloney is very casual, much more friendly, with a lot of dialogue and communication with the students. Deglow, on the other hand, is very business-like. She reassures her student that everything she says while in that classroom is important – there is no extraneous chit chat. Everyone is there to work. Maloney’s style was a little more loose, designed more for a university student rather than a community college student. Deglow feels very strongly that she can reach all students and that Geometry has something to offer for everyone, university-bound students as well as those not planning to go beyond a two year degree, or even the student that takes an occasional course.

In addition, Deglow contends SCC’s catalog description is internally inconsistent with flawed time allowances and sequences of instruction. Deglow pointed out these problems in a letter to Mathematics Chair Duff on February 20, 1995. Duff responded by calling her letter “Bullshit” (See further description of this incident on p. 12.) The repetitive use of the subjective term “lack of depth” to support each negative rating lends support to an inference that the review team expanded one perceived deficiency to support negative ratings in a number of unrelated categories.

4. [Category No. 4] Adjusts methodologies for students/clientele with special needs and different learning styles.

Text: Only the lecture mode was evident. Introduce other styles to support different learning needs.

Rebuttal: Deglow makes two very persuasive rebuttal arguments to this rating, the first of which is the testimony of Dr. Schafer, who has been SCC’s learning specialist program coordinator for fifteen years. Dr. Schafer specializes in “special needs” and “different learning styles.” She believes Deglow was a teacher that “most of the students that were struggling

could learn from.” She also believes that Deglow is “as good or better, . . . than most of the teachers [she] has observed teaching math at City College.”

The second concerns the difference between the teaching style of Deglow and Maloney. Of the three members of Deglow’s performance review team, only one of them has any recent experience in teaching Geometry. Therefore, it is logical to assume that the often repeated phrase, “lack of depth” came from Maloney. Given the differences between the two instructors’ styles, it is not difficult to understand why they would have vastly different approaches to teaching this subject. However, when Dr. Schafer’s informed opinion is added to the analysis of which instructor’s approach best “adjusts methodologies for students/clientele with special needs and different learning styles,” it seems clear that this negative rating has insufficient validity.

5. [Category No. 6] Demonstrates evidence of careful preparation in area of assignment.

Text: The organizational component of preparedness is evident, but the lecture lacked the appropriate depth.

Rebuttal: The review team’s rating and accompanying text are incongruous. The category is exclusively devoted to “careful preparation.” The team’s response admits “preparedness is evident,” but lowers Deglow’s rating due to a perceived “lack of depth.” Preparedness and depth are two entirely different components of teaching. This rating, in particular, supports a finding the team attempted to take a single perceived negative attribute and artificially apply it to an unrelated category in order to support a negative rating.

6. [Category No. 13] Demonstrates evidence of participation in professional growth and development activities.

Text: There is no evidence of professional development in the field of math/geometry. Given the lack of depth in the course presentation, professional development in this area is recommended.

Rebuttal: Flex day programs are designed exclusively for professional development activities. The District dictates an instructor flex obligation of 2.4 hours per semester. Deglow has met or surpassed this level every year since flex day was initiated in 1990. This participation was reported and verified in documents submitted to both SCC and the District.

Once again the review team is attempting to use its perceived “lack of depth” criticism to support a negative rating in an unrelated category.

7. [Category No. 14] Works cooperatively and effectively with others.

Text: Verbal conversations with staff members are not always consistent with your written documentation that summarizes the conversations. . . .

Rebuttal: Deglow believes this low rating was not the result of teaching deficiencies, but rather were due to objections to her propensity for engaging in protected activities. The hostility directed at Deglow was well documented and insufficiently rebutted. Working cooperatively and efficiently does not mean an instructor must follow the majority and refrain from expressing unpopular opinions. Deglow’s opinions were credited.

In February 1993, Deglow received a letter from the director of the SCC’s Staff Resource Center, Barbara Davis-Lyman, commending her on a “terrific job” and her “endless energy, persistence and commitment” in the design and implementation of a system that enabled students to voice mail their part-time instructors.

Overall Recommendation: The review team’s overall recommendation was that Deglow be assigned to Math 51, 220 or 200 because students were being hurt in their progression through SCC’s mathematics courses. The team contended the students needed to have a more challenging instructor and that Deglow’s lack of depth would be more appropriate for Algebra. There were only five sections of Geometry, but forty sections of Algebra. Therefore, the team believed that Deglow had too much of an impact on the entire group of

students' future progress. Dr. Murillo contends the team recommended Algebra because Deglow said she had successfully taught it in the past.

Post Review Meeting

Deglow states the post-review team meeting took less than 20 minutes and that most of that time was spent on the physical aspects of her classroom. The team members said it was too dark, only one light was on in the room, and that the images being projected on the wall (not a screen) were blurry. The team also criticized her for not moving throughout the room during her presentation. There were no comments about her presentation lacking depth. In fact, there was little or no opportunity for Deglow to enter into any sort of discussion with the team members, they merely expressed their comments and the meeting ended.

The decision to conduct an additional performance review in one year was primarily that of Dr. Murillo. She contends the reason for this additional review was to see if the team's recommendations resulted in any improvements in Deglow's teaching style.

When the 1997 performance review report was completed it was too late to reassign her from Geometry to Algebra for the spring semester 1998.

Deglow Assertion of Compliance

Deglow contends that she complied with all changes requested by the fall 1997 evaluation report. She was directed to teach the course materials in the order outlined in the textbook – and she modified her instructional presentation plan to do so. In addition, she was encouraged to participate in professional development activities – she attended a City Lights presentation on “The Geometry of Art.” This event was one the mathematics department had encouraged its instructors to attend.

Grievance

Deglow filed a series of grievances over the fall 1997 performance review report, asking for greater specificity regarding the basis for the negative aspects of this evaluation.

Deglow complained the performance review team failed to give her any supporting documentation for their ratings, especially for the rather subjective conclusion of “lack of depth.” This failure to provide such documentation deprived her of an opportunity to improve the alleged deficiencies.

She asked for this information at least three times. She did not receive the actual requested documentation until the end of the spring semester 1998, two and one-half months after she was told she would be reassigned from Geometry to Algebra.

Her appeal included approximately 1,000 pages. These are same materials she gave to her academic witnesses, such as Dr. Schafer, Dr. Adams, et al.

On March 19, 1998, Dr. Murillo told Deglow she would be involuntarily reassigned from Geometry to Algebra. Dr. Murillo contends, however, that a final decision had not been made at that time with regard to whether Deglow would teach Algebra or Geometry in the fall of 1998 and that the Algebra assignment was merely a "placeholder." On March 22, 1998, Deglow requested written confirmation of her teaching assignment for the fall 1998 semester. On March 30 Dr. Murillo wrote, “Annette, your Fall ’98 teaching assignment is Math 51 [Algebra].” There was no reference to it being a placeholder assignment. Dr. Murillo also stated that Deglow’s Geometry class had not been assigned to anyone else pending the final decision on Deglow’s spring 1998 performance review.

Spring 1998

Authority for Additional Review

CBA section 8.7.1 states tenured faculty shall receive a performance review every three years. On March 19, 1998, Deglow was told she would be required to undergo a new review, on the same day she was told she would be teaching Algebra instead of Geometry. The spring 1998 performance review was out of sequence as it was conducted less than four months after her fall 1997 review.

CBA section 8.9 provides for “Special Reviews.” Deglow alleges that the college can not justify the spring 1998 review because the CBA specifically prohibits special reviews in areas that involve academic freedom, and Deglow contends the purpose of this review was to punish her for her views on various District employee issues.

However, CBA section 8.7.1 permits more frequent reviews, if they are a part of a performance review team’s recommendations. In this case, Deglow’s 1997 committee recommended a review one year later to determine if she modified her teaching style in conformance with their recommendations. Jones states that SCC often does a second review the next semester after an initial performance review report includes “needs improvement” ratings.

Review Report

Maloney says there was very little improvement from fall 1997. The committee insisted that it could still see problems with lack of depth, critical thinking and problem solving teaching. Hatton continued to be concerned about Deglow's failure to adequately solicit student responses. This report superficially did not support a finding that it was an independent review of her teaching in 1998. It was little more than a rubber stamp of the 1997 review.

The review team's report is dated May 28, 1998, over two months after Deglow was notified that she would be teaching Algebra in the fall semester of 1998.

Eventual Disposition of Deglow's Assignments

After two semesters of Math 51 (Algebra), Deglow's assignment was changed to Math 51A and 51B¹¹ each for 9 weeks. Deglow did not perceive this change in assignment as being an independent "negative," but rather just one more attempt by her enemies to put her in a disadvantageous position.

Dr. Murillo explains that Math 51 is only 5 semester units; Math 51A and 51B are a total of six semester units. Deglow's tenure is for 6 hours (40 percent of 15 semester units.) The proper number of semester units has to be maintained over a two-year period. Therefore, if Deglow taught all Math 51 classes she would only have 20 semester units (4x5) over this two year period, whereas her tenure level requires a total of 24 units over this same period. Therefore, in one semester she would have to have an additional Math 51A or 51B (three more units) to reach a total of 23 for the two-year period. It was more efficient to give her a steady diet of Math 51A and 51B each semester at 6 units each.

Elimination of the "No Voice " and Vocal Rest Period

In Geometry Deglow was given 25 minutes of voice rest/lab time per class session. At first she was given this same 25 minutes in her Algebra assignments. Later, in the fall 2001, the District eliminated this rest time. Deglow tried to insert a few minutes of voice rest in the middle of the class and then extend the class by fifteen minutes. She gave the students the option of remaining for the extended period of time. However, the students that remained were

¹¹ Math 51A and B covers the same material as Math 51, but includes 17.5 to 18.0 extra class hours per semester.

late for their next class and another instructor subsequently complained because nine of his students were consistently late to class.

In both the charge and the complaint the “no voice” and “vocal rest period” cessation were separate issues. However, the evidence proffered in support of them was overlapping. Deglow’s contention seems to be that when teaching Geometry she was given a paid one-half hour lab before each lecture period. A few semesters after she began teaching Algebra, this lab period was terminated.

Deglow was informed on April 29, 1999, by means of her fall schedule, that her class hours would be from 6:30 p.m. to 8:55 p.m. On September 12, 1999, she wrote Dr. Murillo requesting a revised copy of this schedule, stating that it was in error, as it did not include “the additional 10 minutes of lecture/break time that you approved on or about August 10, 1999.” Shortly thereafter, on that same date, Dr. Murillo responded in writing that the “lab portion . . . was not officially approved for Math 51.”

Additional Allegations of Harassment

Textbook Substitution

Dr. Murillo directed Deglow to select a textbook for her spring 1999 Algebra Math 51 class. In October 1998 Deglow ordered the Wright/New, Introductory Algebra textbook in preparation for spring semester 1999 classes. On October 19, 1998, Dr. Murillo approved and forwarded Deglow’s order to the campus bookstore. In December, Dr. Murillo changed the textbook for Deglow’s class to Martin-Gay’s Beginning Algebra. Deglow asserts that she was not notified of the textbook change and that she did not learn of the new textbook until the first day of class in January 1999.

Dr. Murillo says that the form she uses to change textbooks is in triplicate. One copy is sent to the campus bookstore, one copy to division office records and one copy to the

appropriate faculty member via his/her mail-box. Dr. Murillo did not notify the off-campus book exchange, only the campus book store. On the first day of class 1/3 of the students had the old text; 1/3 had the new text; and 1/3 had no text.

This failure to learn of the textbook change effectively prevented Deglow from using the audio-visual materials she had produced prior to the first day of class. Deglow spent approximately 100 hours developing materials for the previous textbook. This failure to learn of the textbook change also required Deglow to work for an extended period of time during the first part of the spring semester to replace the now obsolete teaching aids she had previously prepared. Dr. Murillo's only defense was that, although she admits she signed a form changing Deglow's textbook, she would not have done so unless it was in response to a request from Deglow or there was some SCC or District directive to do. There was no evidence proffered regarding the presence of either of these alternatives.

Refusal to Grant Computer Access

Although Deglow continued to explore all available legal remedies to reverse her reassignment, once it became effective, she began to prepare the audio-visual materials necessary to teach Algebra.

Michael Colozzi (Colozzi) is a SCC instructional assistant, who is employed as a graphic artist for the computer technology-academic computing department. He has been employed by the District for 30 years. He has known Deglow since 1975, and is aware of her PERB actions and her grievances regarding the use of the equipment under his control. He started helping Deglow in the production of her slides and transparencies in 1979, using a Kodalith process. Eventually the manufacturer stopped producing the necessary developer so the process became obsolete. He told Deglow about the unavailability of Kodalith and suggested various alternative computer applications.

Colozzi characterized his relationship with Deglow as historically friendly and professional until their personal views on the issue of razing the old library divided them. However, he insists he has maintained a professional attitude toward her after the library replacement issue was settled.

On several occasions Deglow requested access to SCC computers with Power Point software capability. She had obtained Power Point training through her worker's compensation claim. Much of the computer equipment was available to all faculty members, but the more expensive and advanced equipment was housed in a room that was not accessible to the general faculty. Deglow was told that until she could demonstrate proficiency in using all of the equipment in this higher end computer room, she would continue to be denied access to it. She had slides that could easily have been turned into a computerized Power Point presentation if she had access to the Learning Center's scanner. She made three requests for this scanner, all to no avail.

Kirk Wiecking (Weicking) has been SCC's distance educator coordinator for the past 18 months. Previously he was the dean of SCC's Learning Resources Center. He learned of Deglow's PERB UPCs through the LRCFT newsletters. The new Learning Resource Center (library + tutoring + media productions) opened in August 1998.

A multi-media design team (MMDT) of five faculty members plus Terry Hajek (Hajek), SCC's media resources supervisor, was in charge of this "higher end" room. Initially, accessibility was limited to whomever could prove proficiency to this group. Later it was limited to members of the MMDT.

Wiecking acknowledges that Deglow, in late 1998, requested access to this "higher end" room, but she did so only a few days before school was to close for the holidays. He denied her access due to the limited amount of time before the close of the room/building for

the holidays. However, he insists he could have arranged other avenues of access, but her request came too late for these other avenues to be implemented. He contends she did not call back until late February. On February 29 Wiecking responded to Deglow's second request. He insists his response was somewhat delayed because he could not e-mail her and her FAX was always busy. He discussed the possibility of her joining the MMDT, after completing a specified training course. However, one requirement of that course is the designing of a WEB page. Deglow believed she did not have time for the additional chore of designing a WEB page, therefore, did not attend the course.

Although Weicking and Deglow were not close, he believes that she had a friendly relationship with a number of his staff members, Sean, Lori, Andrea, and Nancy Olander.

Denial of Leave

Deglow requested a series of leaves to enable her to prepare the same type of teaching materials for Algebra she had prepared for Geometry.

The District records show that Deglow requested various types of paid leaves during the 1990's. These requests are:

1. In the spring semester of 1993 Deglow requested a Type E leave –retraining. This type of leave was usually used to enable the District to facilitate a move of a faculty member from a diminishing academic area to a developing one. Deglow was not moving from one academic area to another, therefore this request was denied.

2. In the fall semester of 1993 Deglow requested a Type B leave – professional development. This type of leave is usually just a partial leave, i.e., in lieu of three or six units for a semester or two. It is primarily used in the area of curriculum development to enable an instructor to develop new materials or a new approach to old materials, anything that would benefit SCC's instruction. Deglow was not requesting the leave to work on curriculum

development, she was attempting to develop materials that would enable her to teach a new course within the confines of her vocal disability. Therefore, this request was denied.

3. In the fall of 1998 Deglow was given a nine week leave to enable her to prepare materials to teach Algebra. In lieu of teaching after the leave expired, she requested and was granted a medical leave for the rest of the semester.

Deglow was requesting a Type B leave at a full-time level, rather than her 40 percent tenure level. She believed this extra time was necessary for her to create and refine the same materials for Algebra that she had previously developed for Geometry. She also believed that as the District improperly assigned her to Algebra, rather than Geometry, it should pay for the time necessary for her to develop the same teaching materials for Algebra that she had previously developed for Geometry.

The District denied her request for a Type B leave, stating that such a full-time leave would have automatically increased her tenure level from 40 percent to a 100 percent level, a modification the District was unwilling to sanction.

Compacted Class¹² and Excessive Students Enrollment

Dr. Murillo says SCC schedules compact courses to accommodate two groups of students. One group, for their own scheduling reasons, want to start in mid-semester. The other group has experienced trouble in a particular class at the start of a semester and wants to begin the class over.

Generally students enroll in August for all courses, including the compacted classes. The enrollment of a compacted class continues up to the first day of the class. However, when the late starting compacted classes reach the maximum number of 40, the mathematics

¹² A compacted class is taught over a nine-week period, instead of the usual 18 weeks. The class meets for twice the number of hours per week of a regular class. Both classes cover the same quantum of material.

department raises the maximum limit from 40 to 80 students. As soon as enrollment nears 80 the students are divided and a second class is created. This permits the college to take advantage of additional enrollment.

In the fall of 1998 Deglow was originally assigned to the compacted course because of an arrangement she made with the District to have time off at the beginning of the semester to permit her additional preparation time to teach Algebra.

When Deglow was originally assigned to a compacted section of Algebra it had an enrollment of 74 students. However, Dr. Murillo anticipated the class would be divided between two instructors prior to the first day of class. As this is a fairly common occurrence, Deglow must have been aware of this practice, or could have learned of it with a minimum of effort. The issue became moot when Deglow went on medical leave for the entire semester.

Failure to Provide Requested Drop-Screens

In February 1999 Deglow twice requested Dr. Murillo's assistance to have two drop-screens installed in her classroom. She had previously been projecting her slides onto a "white" board, which created some distortion. This distortion was the source of one of the negative comments she received in her fall 1997 performance reviews.

Dr. Murillo responded by stating that she did not understand the need for the requested equipment, even though she was a member of the review team that complained about the distortion on Deglow's slides.

Eventually, the screens were approved, ordered, delivered and installed. Hajek's installation was routine, but there were difficulties in installing them the way she wanted.

Purchase of Transparencies

When Deglow requested blank transparencies from Dr. Murillo for her Algebra class, she was directed to submit her request to Jones. Deglow contacted Jones and requested the

materials be purchased and delivered to her. Jones told Deglow to contact Colozzi for the materials. He did not have any in stock, so he said he would order them. He ordered three boxes from Minnesota Western (MW). He believes that after the order was placed, MW got a call from Deglow, asking them to deliver the order to her home. This belief is supported by the fact the MW invoice lists Deglow's home address as the delivery location.

This upset Colozzi, because he cannot authorize payment to MW until he receives physical delivery of the merchandise. When the boxes were delivered to Deglow, she kept one box (her originally agreed-upon share) and immediately took the other two to Colozzi. Once he received the boxes, he was satisfied that all requirements had been met, MW was paid, and the matter was completed. There was no evidence that Dr. Murillo was not eventually satisfied that the transparencies were a valid business expense.

However, Deglow insists Dr. Murillo accused her of violating the chain-of-command by placing the order herself, rather than going through proper channels. Deglow contends that even after she provided the invoice to Dr. Murillo that clearly shows the transparencies were ordered by Colozzi, she (Dr. Murillo) continued to accuse her of making a personal purchase with District funds. However, the only documentation of this interchange consists of copies of the invoice with Dr. Murillo's cursive notes telling Deglow that this purchase had not been approved by her and that Deglow should either pay for them herself or cancel the order. In other words, the documentation suggests that, although there was an initial dispute over the validity of SCC paying for the transparencies, it was eventually resolved, Deglow received her materials, and SCC paid for them. This documentation does not confirm a continuing objection to this transaction by Dr. Murillo, much less a continuing Dr. Murillo accusation of Deglow wrongdoing.

Deglow's Requested Remedy

Deglow is asking to be paid on a full-time basis for approximately one year, as she asserts that she worked full-time to overcome the allegedly unlawfully motivated obstacles placed in front of her. She also cites a CBA provision in the past that entitled faculty members that did exceptional things in the community to receive horizontal advancement on the salary schedule.

She cites (1) her actions resulting in numerous faculty members obtaining tenure and (2) the District receiving \$47,000 from LRCFT, in support of her contention she has done "exceptional things." She cites both of these occurrences as justification for her request for this schedule advancement.

ISSUE

1. Did the District, when it (1) changed Deglow's teaching assignment from Algebra to Geometry, or (2) eliminated (a) a "no voice" period and (b) a 10- to 15-minute vocal rest period, for each hour of lecture, discriminate against her because of her protected activities, thereby violating subdivision (a) of section 3543.5?

2. Are these charges barred by provisions of the Act that prohibit PERB from issuing a complaint based on behavior that occurred more than six months prior to the filing of the charge?

CONCLUSIONS OF LAW

ISSUE NO. 1

In Novato Unified School District (1982) PERB Decision No. 210 (Novato), the Board set forth the test for retaliation or discrimination in light of the National Labor Relations Board (NLRB) decision in Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169] enforced in

part (1st Cir. 1981) 662 F. 2d 899 [108 LRRM 2513]. Under Novato, unlawful motivation must be proven in order to find a violation.

In order to establish a prima facie case, the charging party must first prove that the subject employees engaged in protected activity.¹³ Next, it must prove that the person(s) who made the decision(s) that resulted in the harm were aware of such protected activity. Lastly, a nexus or connection must be demonstrated between the employer's conduct and the exercise of a protected right, resulting in harm or potential harm to that right.

Proving the existence of unlawful motivation can be difficult. PERB acknowledged that when it stated the following in Carlsbad Unified School District (1979) PERB Decision No. 89 (Carlsbad), at page 11:

Unlawful motivation, purpose or intent is essentially a state of mind, a subjective condition generally known only to the charged party. Direct and affirmative proof is not always available or possible. However, following generally accepted legal principles the presence of such unlawful motivation, purpose or intent may be established by inference from the entire record. [Fn. omitted.]

In addition, the Board in Novato set forth examples of the types of circumstances to be examined in a determination of whether union animus is present and a motivating factor in the employer's action(s). These circumstances are: (1) the presence of any disparate treatment of charging party; (2) the proximity of time between the participation in protected activity and the adverse action; (3) any inconsistent, contradictory or vague explanation of the employer's action(s); (4) any departure from established procedures or standards; and (5) any inadequate

¹³ Section 3543, in relevant part, grants public school employees:

- (a) the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

investigation. (See also Baldwin Park Unified School District (1982) PERB Decision No. 221.)

Carlsbad states that once a prima facie case is established, the burden of proof shifts to the respondent to show that it would have engaged in the complained-of conduct irrespective of any unlawful motivation.

Analysis

Deglow's continuing attempts to advocate CTA's views on the campus, i.e., her UPC to force the District to permit her to use faculty mailboxes to advocate various non-LRCFT positions, added fuel to the fire. The mathematics department was allegedly a strong supporter of CFT, and opposed to CTA.

The District contends that Dr. Murillo was the person that made the decision to reassign Deglow from Geometry to Algebra. It then states that there was no evidence that Dr. Murillo had any knowledge of Deglow's various protected activities. The District's contention contradicts both logic and the testimony of several witnesses, most notably Dean Haro. In order to support an argument that Dr. Murillo knew nothing of Deglow's protected activities, it must be shown that she never (1) read any of LRCFT's publications, (2) discussed Deglow's grievances, UPCs, or other protected activities with any of her subordinates, or (3) received any inquiries or suggestions from fellow administrators regarding Deglow's various protected activities.

Dean Haro's letter makes it quite clear that when he held Dr. Murillo's position as dean, he was constantly barraged with calls from administrators and faculty alike, to take various negative actions against Deglow. In order to believe respondent's argument, I must also believe that these voluminous and persistent calls must have mysteriously stopped the moment Dean Haro left and Dr. Murillo arrived. This contention is not credited. It is

concluded the Dr. Murillo was very aware of the faculty's animosity towards Deglow and these views influenced her actions.

In addition, as the District strongly relies on the 1997 performance review report to justify the reassignment, and as this process also involves two peers, the knowledge of each participant must also be evaluated. Various witnesses, including Hatton, testified that they were aware of Deglow's activities through the LRCFT publications. The evidence, as a whole, supports a conclusion that Deglow's reputation was widely known by all factions of the administration, faculty, and staff. As Hatton so proudly proclaimed, he had never filed a grievance and he knows no one that has. A contention that a faculty member who has filed 63 grievances, 25 UPCs and numerous Superior Court actions, has done so cloaked in anonymity, even though the District's union periodically attacks her in its newsletter, is supported by neither logic nor the evidence.

Both Hatton and Maloney, the other 1997 review team members, were aware of Deglow's protected activities. Hatton admitted reading LRCFT's publications about Deglow and Maloney's demeanor on the stand left little doubt she was not an unbiased Deglow observer. In addition, the 1995 letter, co-written by Maloney and Vrechek, that asked that Deglow be removed from her Geometry assignment, adds weight to this conclusion. Due to all of the above, Dr. Murillo's assertion that she knew nothing of Deglow's UPC charges is not credited.

Therefore, it is concluded that Dr. Murillo, along with Vrechek, Maloney, and Hatton, were all very much aware of Deglow's protected activities. Therefore, the first two elements of the Novato test are satisfied.

The remaining element is whether a nexus exists between the knowledge of these activities and the negative personnel actions taken.

Unrebutted evidence clearly shows a pattern of animus towards Deglow on the part of the administration, as well as members of the math department. Although there were various reasons for this animus, i.e., the battle over the demolition of the library, much of it was due to her protected activities, i.e., filing grievances, UPCs, and opposition to LRCFT.

As Dean Haro very clearly set forth in his letter, the math department instructors as well as the administration wanted to be rid of Deglow. His recital of the 1993 math department's demand for a rotation plan for her evening Geometry class, irrespective of the department's difficulty in finding a volunteer to teach such a class in the past, was particularly illuminating with regard to the extent to which the department members were willing to go to thwart her interests.

However, the anti-Deglow forces faced a difficult situation. Deglow was a veteran instructor who had received uniformly favorable performance reviews, student evaluations, and high retention rates throughout her career. In addition, she had been given her Geometry assignment as a result of negotiations between the District's ADA officer and the DFEH, as a part of a disability accommodation plan. The only way they could oust her from her Geometry assignment, and hopefully the school itself, would be to document perceived teaching inadequacies.

This task would not be an easy one, as there was a plethora of evidence supporting a conclusion that Deglow was a conscientious, organized, extremely well-prepared, caring instructor who was very proud of the fact that she was successfully reaching and retaining a high percentage of her Geometry students. These traits were demonstrated in many ways, i.e., (1) preparation of hundreds of overhead projections, (2) a student retention rate far above that of her peers, in general, and her mathematics department detractors, in particular, (3) the

unconditional support of ten academicians who testified as to the quality of her preparation and instruction, and (4) the strong support of Dr. Schafer and Dean Haro, two SCC administrators.

In 1995 Vrechek and Maloney, citing a Deglow vote on a 1993 Geometry curriculum matter, wrote Dr. Murillo asking that Deglow no longer teach Geometry. Two years later Maloney was appointed to Deglow's performance review team.

Despite these voluminous manifestations of hostility, the strongest evidence in support of Deglow's unlawful motivation allegations came from the two performance review teams. In 1993 she was given an overall rating of "improvement needed." This rating cited her alleged (1) failure to cover the entire course syllabus, (2) failure to ask sufficiently critical questions in her tests, (3) communication inadequacies and (4) failure to work through proper channels.

The last two of these perceived problems can be traced directly to the animus directed toward her by the administration, with the compliance of her department peers. Communication and "proper channels" are bilateral functions. If one communicator is hostile, it is more than likely the dialogue will be "inadequate," especially in the eyes of the hostile party. In addition, if the channels are under the total control of the hostile forces, it is unlikely the subordinate employee's actions will be deemed "proper."

When it was proven to the District that Deglow's failure to test the students on the added material was not her error, but rather the result of incorrect information supplied her by Dr. Murillo, it voided the review results. The next semester the same three persons gave her a satisfactory rating. In just one semester, after she included the disputed course materials, Deglow mysteriously began to (1) ask sufficiently critical test questions, (2) have open communication with her colleagues, and (3) work through proper channels.

Three years later the administrator, through the math department again tried to review Deglow's performance, i.e., oust her from her Geometry assignment even though such a review

was in violation of the CBA. It placed two peer antagonists, along with Dr. Murillo, on her performance review team. She objected to both of them and asked to participate in a self-evaluation process. Although the performance review did not take place that year it did proceed the next year with the same objected-to peers. The CBA grants the reviewed faculty member a right to peremptorily dismiss one of the proffered peers. Deglow was not afforded this right. This constitutes (1) a departure from established procedures or standards and (2) disparate treatment. Both of these circumstances support an inference of unlawful motivation. (See Novato.)

The review team went through the seventeen separate categories and marked her “needs improvement” in seven of them. It is difficult for a non academician, especially one that has not actually sat in her classroom, to critique an academic performance review. However, there are a number of points in this review report that permit an insight into its validity.

First, the attempt to use the subjective term “lack of depth” to negatively color various irrelevant categories was very apparent. The reason for seventeen separate categories is to evaluate the instructor in seventeen separate areas of instruction. There is always some overlap, but the team’s rating in category No. 6 – preparation, in particular, was especially ludicrous. Deglow’s witnesses as well as the evidence presented in the face of a very tepid rebuttal on this subject, supports a conclusion that she is an exceptionally well prepared instructor. And yet this team, marked her “needs improvement” in this category, citing the ever popular “lack of depth” to support its conclusion.

In Category No. 2 –communicates subject matter clearly, correctly and efficiently, the review team complained of her pure lecture style. Deglow contends her high student retention rate invalidates this rating. Dr. Murillo disputes her reliance on retention rates, stating that these rates are intended only to be used by management to help faculty whose rates are

drastically dropping or below those of their peers. Dr. Murillo's argument is disingenuous. If a poor student retention rate alerts management that a faculty member has a diminished level of effectiveness, it logically follows that a high retention rate supports a conclusion that the subject instructor has a high level of effectiveness, i.e., s/he is communicating the subject matter clearly, correctly, and efficiently.

Category No. 3 – Adheres to approved course outline – was negatively marked due to Deglow not following the order set forth in the textbook. However, she clearly explained why she taught the course in this manner and used the author's language to support her approach. She also cited Math Department Chair Blackwell in support of instructors rearranging the Algebra textbook's order. The conclusion to be drawn from this seems to be that even though the textbook author and the department chair agree it is not necessary to slavishly follow the textbook's order of instruction, when Deglow does it, it is grounds for a "needs improvement" rating. Disparate treatment is a circumstance that supports an inference of unlawful motivation. (See Novato.)

Category No. 4 – Adjust methodologies for student/clientele with special needs and different learning styles. Dr. Schafer, who has been SCC's learning specialist for fifteen years, testified that Deglow was a teacher that "most of the students that were struggling could learn from." (Emphasis added.) She also stated that Deglow's teaching style covered the eight distinct methods of teaching she routinely analyzes. She went on to conclude that Deglow is "as good or better, and probably better, than most of the teachers I've observed teaching math at City College." This endorsement from the college's learning specialist highlights the team's lack of credibility with regard to this rating.

Category No. 14 – Works cooperatively and effectively with others. Given the level of animosity that Deglow experienced at SCC there is little doubt that she had difficulty working

cooperatively and effectively with some of her peers. However, if this failure is based on her protected activity, and the great weight of evidence supports a conclusion that it was, this rating is in violation of the Act, and is therefore, invalid.

The review team's failure to provide requested documentation to support its conclusions until the very end of the spring semester 1998 adds weight to the above conclusions. This is especially true, when the amorphous phrase, "lack of depth" was used so often to justify the team's conclusions. Without documentation, this term has little or no meaning. The team's refusal to provide support for its conclusions dictate a determination the original conclusions lacked substance and validity, and therefore, should not be credited.

The above analysis clearly shows that most of the negative ratings given Deglow by Dr. Murillo, Hatton and Maloney were not supported by credible evidence. Therefore, they support a conclusion they were in response to her protected activities and unlawfully motivated. The performance review conducted in 1998 was merely a rerun of the 1997 review and supports similar conclusions.

As stated, supra, the 1998 review was merely a rubber stamp affirmation of the 1997 review.

Cervantes' Letter

In April 2000 Cervantes attempted to justify Deglow's reassignment from Geometry to Algebra in a letter to DFEH. She cites the 1993 negative performance review report, with no mention of it being voided due to "department and college" error. She then cites the 1997 negative review report and buttresses this with a reference to a "newly formed" team in 1998, which also negatively rated her as "Needs Improvement." Of course, there was no "newly formed" team, just Hatton, Maloney and Dr. Murillo rubber stamping their earlier conclusions. The uninformed reader of Cervantes' letter would conclude that Deglow received three

negative performance reviews and one satisfactory review. In reality, she received only one final negative review with a pro forma verification from the original reviewers. This attempt to mislead the DFEH constitutes an inconsistent explanation for its behavior that supports an inference of unlawful motivation. (See Novato.)

Additional Allegations of Harassment

The instances of harassment alleged by Deglow, although not separate complaint allegations, have a potential impact on the first issue to the extent they lend support to the above conclusions of unlawful motivation.

Textbook Substitution

When these issues are examined in conjunction with the evidence of animosity toward Deglow, it is difficult to give any credibility to Dr. Murillo's protestations that she only changed the textbook because either Deglow or someone else directed her to do so. These circumstances constitute an inconsistent, contradictory or vague explanation for the District's actions, which support an inference of unlawful motivation.

Refusal to Grant Computer Access

Deglow wanted and needed access to computers with Power Point capabilities. Although SCC had such equipment it denied her access until she could demonstrate the ability to properly use the equipment. She asserted that she had such ability, but there was never an opportunity to demonstrate it. There was no evidence proffered that suggested she was denied such opportunity. Wiecking offered to enroll her in a class that would have resulted in her obtaining the access she sought, but the program's overall objectives did not meet Deglow's needs, so she declined such enrollment.

There could have been some degree of unlawful motivation in the District's slow action in assisting Deglow, but the evidence in support of such motivation was vague and

insufficiently persuasive. Therefore, it is concluded that the circumstances surrounding Deglow's inability to obtain computer access do not support an inference of unlawful motivation.

Denial of Leave

Each of the types of leave requested by Deglow were shown to have been inappropriate for the purposes for which she requested them. Therefore, it is concluded that the circumstances surrounding the denial of various leaves requested by Deglow, do not support an inference of unlawful motivation.

Compacted Class and Excessive Student Enrollment

Given Deglow's voice limitation, a compacted class would be disastrous for her. However, initially, she was scheduled to teach a compacted class, starting in mid-semester, because she was not ready in September to teach a regular 18-week Algebra course. The excessive student enrollment issue was quickly and reasonably explained. In fact, it was so obvious an explanation, that Deglow's reliance on this issue acted to negatively impact her credibility.

Therefore, it is concluded that the circumstances surrounding the compacted class assignment and its excessive student enrollment do not support an inference of unlawful motivation.

Failure to Provide Requested Drop-Screens

Certainly the requesting, ordering and installation of these screens was fairly routine. Dr. Murillo's initial challenge to Deglow regarding their necessity could be the result of unlawful motivation or the routine act of an administrator to initially challenge any monetary request by a subordinate. The evidence is insufficient to resolve this conflict. As the burden of proof is on the charging party to prove its case, this allegation must fail.

Therefore, it is concluded that the circumstances surrounding the acquisition of the drop screens do not support an inference of unlawful motivation.

Purchase of Transparencies

The weight of the evidence supports Deglow's contention she did nothing wrong, except perhaps, to ask MW to deliver the order to her house instead of directly to SCC. In the final analysis, Deglow got her transparencies and SCC paid for them, which suggests that Dr. Murillo eventually agreed that they were a legitimate school expense. There is insufficient evidence to prove, or even suggest, that Dr. Murillo's objections were based on anything other than fiscal concerns.

Due to a lack of evidence, it is concluded that the circumstances surrounding the "transparencies" issue does not support an inference of unlawful motivation.

Summary

The above analysis clearly shows that the charging party has established a prima facie case of unlawful motivation. Under Carlsbad the burden shifts to the respondent to show that it would have engaged in the complained-of conduct irrespective of any unlawful motivation. The respondent's position on each charge was described and weighed throughout the above analysis. It is clear that the evidence supports a conclusion that the District's complained-of actions would not have occurred, but for the existence of unlawful motivation. Therefore, it is concluded that, in the absence of a contrary ruling in the statute of limitations issue below, the District when it modified Deglow's teaching assignment violated section 3543.5(a).

ISSUE NO. 2. Are these charges barred by the provisions of the Act that prohibit PERB from issuing a complaint based on behavior that occurred more than six months prior to the filing of the charge?

The District insists that this charge is barred by section 3541.5(a)(1) which prohibits PERB 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 statute of limitations begins to run on the date the charging party obtains actual or constructive knowledge of the subject conduct. (Fairfield-Suisun Unified School District (1985) PERB Decision No. 547; Regents of the University of California (1990) PERB Decision No. 826-H; Regents of the University of California (1993) PERB Decision No. 1023-H.)

Even actual knowledge must “clearly inform” the charging party of the alleged unlawful act. Deglow was informed on December 18, 1997, that her performance review team recommended she be assigned Algebra in the future. On March 19, 1998, Dr. Murillo told Deglow that she would be teaching Algebra during the fall semester. On March 22, 1998, Deglow requested a written confirmation of her fall semester teaching assignment. On March 30 Dr. Murillo wrote, “Annette, your Fall ’98 teaching assignment is Math 51.” However, Dr. Murillo testified that this was merely a “placeholder” assignment and that the final decision to whether she would be reassigned rested with the 1998 performance review team.

The 1998 review team, in a report dated May 28, 1998, merely rubber stamped its recommendations of its previous report, and Deglow’s fall assignment of Algebra moved from placeholder status to a final decision.

With regard to the “no voice” and vocal rest periods, Dr. Murillo communicated an unequivocal cessation of these voice rest periods on September 12, 1999.

Deglow learned in March 1998 that she was being assigned to teach Algebra and in September 1999 that her voice breaks were being withdrawn. However, she contends that she did not know the reasons for these actions until she read Cervantes' April 14, 2000, letter to DFEH. She explains that she did not receive this letter until January 2, 2001, in response to a subpoena duces tecum issued in this case.

In California State Employees Association (Darzins) (1985) PERB Decision No. 546-S and UCLA Labor Relations Division (Regents of the University of California) (1989) PERB Decision No. 735-H, the Board, relying on NLRB cases, stated that the section 3541.5(a)(1) six-month period commences on the date the conduct constituting the unfair practice charge is actually discovered, rather than the date of discovery of the legal significance of that conduct. However, in Peralta Community College District (1998) PERB Decision No. 1281 (Peralta), the Board reversed those decisions when it stated that the six-month period did not begin to run until the charging parties learned of the disparate treatment that formed the basis of the charge.

In Peralta the issue arose from a district decision to contract out security services. There was no record of district antagonism toward the employee(s). The employees had no reason to believe that they were the subject of disparate treatment until they received a document twenty-one days later that made this clear.

With regard to the instant case, Deglow has had a long-standing and intense history of conflict with the District, in general, and the math department, in particular. There is no doubt that when she received both her 1997 and 1998 evaluations she knew or should have known of the conduct that gave rise to her claim that they were a retaliatory reaction to her protected activities. In addition, when she received Dr. Murillo's final direction to begin teaching Algebra classes in the fall of 1998, she knew or should have known of the conduct that gave

rise to her claim that this too was the product of the department's unlawful reaction to her protected activities.

And yet, Deglow claims that the Cervantes' letter first informed her that her reassignment was the result of unlawful discrimination. She further asserts that she did not receive this letter until January 2, 2001. This letter covered a multitude of subjects. Deglow relies on a rather obscure comment in an almost three page letter to support her contention. The subject comment is not an overt assertion of District culpability but is merely an incomplete recitation of the facts concerning the 1997 and 1998 performance evaluations.

Deglow filed her charge on June 22, 2001. Therefore, any unfair practice that occurred prior to December 22, 2000, is barred by section 3541.5(a)(1). PERB has held in Lake Elsinore School District (1987) PERB Decision No. 646 that this six-month limitation is jurisdictional. Therefore, as Deglow knew or should have known of the District's unfair practices well before December 22, 2000, the charges and their resulting complaints are barred and must be dismissed.

SUMMARY

Based on the foregoing findings of fact, conclusions of law, and a thorough examination of the entire record, it is determined that there is insufficient evidence upon which to find that the District has violated the EERA. Therefore, the charge and its subsequent complaint must be dismissed.

PROPOSED ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record in this case, it is ordered that the complaint and underlying unfair practice charge in Case No. SA-CE-2037-E, Annette (Barudoni) Deglow v. Los Rios Community College District, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

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

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Cal. Code Regs., tit. 8, secs. 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 California Code of Regulations, title 8, section 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, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Allen R. Link
Administrative Law Judge