STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

VICTORIA ANN GILLEY-MOSIER, Charging Party, v. COUNTY OF YOLO, Respondent.	Case No. SA-CE-457-M PERB Decision No. 2020-M April 30, 2009

Appearances: Victoria Ann Gilley-Mosier, on her own behalf; Daniel C. Cederborg, Assistant County Counsel, for County of Yolo.

Before Rystrom, Chair; McKeag and Neuwald, Members.

DECISION

RYSTROM, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Victoria Ann Gilley-Mosier (Gilley-Mosier) of a proposed decision by an administrative law judge (ALJ). The unfair practice charge alleged that the County of Yolo (County) violated the Meyers-Milias-Brown Act (MMBA)[1] by involuntarily reassigning her in retaliation for her exercise of protected rights. Gilley-Mosier alleged this conduct constituted a violation of MMBA sections 3506 and 3509(b) and PERB Regulation 32603(a).[2]

The ALJ ruled that Gilley-Mosier failed to establish a nexus between her protected conduct and the adverse action. In addition, the ALJ ruled that even if such a nexus existed, the County adequately demonstrated that it would have taken the same action in the absence of

[1] MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

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

her protected activity. Accordingly, the ALJ dismissed the complaint and the underlying unfair practice charge.

Gilley-Mosier appealed the dismissal. In her appeal, Gilley-Mosier argued, among other things, that she provided sufficient evidence to establish a nexus between her protected conduct and her involuntary transfer.

We have reviewed the entire record in this matter and find Gilley-Mosier failed to establish a nexus between her protected conduct and her involuntary transfer. Further, even if Gilley-Mosier established such a nexus, we find the County would have taken the same actions even in the absence of such protected conduct. Accordingly, for the reasons set forth below, we dismiss the unfair practice charge.

FINDINGS OF FACT

The County is a public agency under MMBA section 3501(c) and PERB Regulation 32016(a). Under PERB Regulation 32016(b), Stationary Engineers, Local 39 (Stationary Engineers) is the exclusive representative of the County's General Unit, which includes the classification of Senior Social Worker. Gilley-Mosier is a public employee under MMBA section 3501(d).

The County Department of Employment and Social Services (DESS) consists of the Employment Services and Social Services sections. The Employment Services section has various programs which assist people who have lost their jobs or have few employment skills to obtain employment. The Social Services section contains the Child Welfare Service division (CWS), which serves children who are suspected to be victims of abuse or neglect, and the Adult Protective Services division (APS). The Permanency Planning Unit (PPU) is within CWS, and places children in safe homes when they cannot reunite with their families.

Gilley-Mosier's County Employment

On March 6, 2000, Gilley-Mosier began DESS employment as a Senior Social Worker working in the CWS Family Child Care Program. Because Gilley-Mosier was a CWS Senior Social Worker, she received an 11 percent salary differential pursuant to section 6.12.1 of the Memorandum of Understanding (MOU) between the Stationary Engineers and the County which provides:

> 6.12.1 Those employees in the classifications of Senior Social Worker, Social Worker Practitioner, and Social Services Assistant assigned to Child Welfare Service or the Multi-Disciplinary Interview Center (MDIC) shall be paid an additional eleven percent (11%) above the normal salary for their classification during such assignment.[3] [Emphasis added.]

In January 2002, Gilley-Mosier began working for the Independent Living Program (ILP) where she assisted emancipated youth to transition to independent living. Gilley-Mosier later was reassigned to the PPU. On January 21, 2003, Supervising Social Worker Kathleen Sutton (Sutton) began supervising Gilley-Mosier.

Sutton performed three evaluations for Gilley-Mosier for the periods of 2002-03, 2003-04 and 2004-06. All three evaluations considered Gilley-Mosier's performance in five separate categories. In the 2002-03 and 2003-04 evaluations, Gilley-Mosier received "exceeds standards" in the "Interpersonal Relationships" category and received "meets standards" in the four remaining categories. In the 2002-03 evaluation, Gilley-Mosier received an overall employee rating of "meets expectations."[4] In the 2004-06 evaluation, Gilley-Mosier received

[3] The MDIC is an intake center for children who are suspected of being victims of sexual assault or abuse. The various salary differentials set forth in MOU section 6.12 et seq., are entitled "Assignment Differential Pay" which include differentials for assignments to the Fair Hearing Unit, APS, and the Ombudsman Program.

[4] The record did not contain Gilley-Mosier's overall employee rating for 2004.

"meets expectations" in all five categories and, like the 2002-03 evaluation, received an overall employee rating of "meets expectations."

In 2004, Gilley-Mosier was offered the ILP Coordinator position, and was informed that if she accepted, she would carry a reduced PPU caseload. Gilley-Mosier accepted the position. After waiting 10 months, Gilley-Mosier still carried a full PPU caseload and was frustrated with the failure to reduce her PPU workload.

In June 2005, Gilley-Mosier decided to address her PPU caseload concerns with CWS Division Manager Kimberly Byrd (Byrd). Byrd replied that she would speak to the DESS Chief Deputy Director Diana Williams (Williams), and the matter would be resolved.

After speaking with Byrd, Sutton informed Gilley-Mosier that her PPU caseload would be reduced. Some time later, Gilley-Mosier noticed that her PPU caseload had not been reduced and, to further aggravate matters, Sutton assigned her the most difficult and time-consuming cases. Gilley-Mosier became more concerned as she believed Sutton followed the same pattern previously with older social workers who eventually retired from County employment.

Protected Activity

Gilley-Mosier contacted Stationary Engineers Business Representative Bob DeRosa (DeRosa) to obtain relief. On October 19, 2005, DeRosa filed a harassment complaint on Gilley-Mosier's behalf regarding Sutton's treatment of her. The complaint was addressed to Byrd and copies were sent to DESS Interim Director Williams and Sutton. Byrd conducted an investigation and found insufficient evidence to substantiate Gilley-Mosier's claim. Gilley-Mosier's PPU caseload was eventually reduced.

DeRosa retired, and Steven Hatch (Hatch) replaced him. On November 10, 2005, Hatch wrote Byrd encouraging her to monitor the interactions between Sutton and Gilley-

Mosier even though the investigation had concluded. On December 8, 2005, Hatch and Gilley-Mosier met with Williams to discuss Sutton's treatment of Gilley-Mosier, including an incident where Gilley-Mosier's caseload was not covered during her bereavement leave. Williams seemed sympathetic to Gilley-Mosier and offered her two choices to resolve her complaint(s) against Sutton. Gilley-Mosier could either stay in CWS and be assigned to a different supervisor and continue working ILP and PPU cases, or she could continue her job with ILP and move to the Employment Services division and maintain her 11 percent salary differential.[5] Gilley-Mosier did not want to subject herself to Sutton's supervision when Sutton was designated as the supervisor-of-the-day, so she accepted the second option. The agreement was not reduced to writing. On January 4, 2006, Byrd issued Gilley-Mosier a memo stating that she was "reassigned" to the Employment Services Workforce Investment Act team due to her request to move out of her unit(s).

On or about January 9, 2006, Gilley-Mosier moved to the Employment Services section and was supervised by Employment Services Program Supervisor Judy Needham (Needham). Gilley-Mosier remained the ILP Coordinator and was assigned to the Employment Services Adolescent Family Life Program (ADFLP) which is a case management program to assist pregnant and parenting teens. ADFLP is not considered the same type of work as that performed by CWS because it does not deal with allegations of child abuse or neglect or require court submissions or appearances. Gilley-Mosier continued to receive her 11 percent salary differential even though she was no longer assigned to CWS.

On January 30, 2006, Pamela Miller (Miller) was appointed as DESS Director. Williams was the Chief Deputy Director, and Rene Craig (Craig) was the Assistant Director over Administration and Employment Services. In April 2006, Mindi Nunes (Nunes) was

[5] Senior Social Workers working for the Employment Services section are not eligible under the MOU for the 11 percent salary differential.

appointed as the County's Director of Human Resources. Miller and Nunes were unaware that Gilley-Mosier was receiving an 11 percent salary differential even though she was no longer employed with CWS.

Needham's Grievance

In August 2006, Needham filed a grievance alleging her contractual rights were violated because her compensation was not 10 percent above the salary of her subordinate, Gilley-Mosier, who received an 11 percent salary differential.[6] Gilley-Mosier's current salary was close to that of Needham. Needham also complained that the other Senior Social Worker subordinates should receive the same salary differential as Gilley-Mosier. The grievance was elevated to Miller, who recognized the salary compaction issue and the potential department-wide fiscal impact of Gilley-Mosier receiving an 11 percent salary differential while working for Employment Services. Miller believed it was unfair that Gilley-Mosier received the salary differential while other Employment Services Senior Social Workers did not.

Miller contacted Nunes, who had extensive labor relations experience in administering and bargaining MOU's, and informed her of Needham's grievance. Nunes spoke to the Human Resources staff and Williams about the issue. After discovering the facts underlying Gilley-Mosier's reassignment and the promises made to her, Nunes concluded that the reassignment was not indefinite. Nunes believed that if the County continued to pay Gilley-Mosier her salary differential, Needham had a meritorious grievance.

Nunes testified that in Gilley-Mosier's situation, the "assigned to Children Welfare Service(s)" language in MOU section 6.12.1 was key to interpreting whether a Senior Social Worker was entitled to the salary differential. According to Nunes, an employee may "report to" different supervisors in different units, but still be "assigned to" one unit. Nunes reasoned

[6] Needham is part of the Supervisory Unit which has its own MOU.

that since Byrd "reassigned" Gilley-Mosier to Employment Services on January 4, 2006, Gilley-Mosier was therefore ineligible for the salary differential.

After receiving Nunes' advice, Miller concluded that Gilley-Mosier should be returned to CWS with her salary differential, or an 11 percent salary differential should be granted to all Senior Social Workers and to all supervisors of Senior Social Workers in the Employment Services section. Miller further concluded that the DESS budget and the section's morale did not allow her to continue paying only Gilley-Mosier the 11 percent salary differential.

Involuntary Reassignment of Gilley-Mosier

Miller attempted to rectify the contractual inconsistency of Gilley-Mosier's salary differential while working for Employment Services by issuing her a memo dated October 11, 2006 entitled, "Reassignment," which provided:

> This memorandum is to serve notice that effective Monday, November 6, 2006 you will be reassigned to Child Welfare Services (CWS). Currently the only vacancy within CWS is in the Family Reunification unit under the supervision of Laverna Gordon. This reassignment to Child Welfare Services will assure that your differential pay (11%) will continue, as provided for by Section 6.12.1 of the Memorandum of Understanding (MOU) between the County of Yolo and Stationary Engineers, Local 39 (General Unit).
>
> You do have the option to remain in Employment Services. If you choose to remain in Employment Services, you will retain your current responsibilities for the Independent Living Skills Program (ILP) and the Adolescent Family Life Program (AFLP) unless otherwise assigned due to changing departmental needs. However, there is no provision in the MOU for differential pay while assigned to Employment Services. Therefore the 11% differential would cease to be effective October 30, 2006.
>
> In consideration of the options available to you please be aware that if you choose to be reassigned to Child Welfare Services there is no option to work a 4/10 alternate work schedule. However, a 9/80 alternate work schedule would be available to you.

> Please advise your supervisor of your preference to either return to CWS or to remain in Employment Services no later than October 18th at the close of business.

Miller believed the options provided to Gilley-Mosier were fair. After the memo was given to Gilley-Mosier, she spoke with Hatch, and they agreed on the strategy that Gilley-Mosier would stay in her current position and grieve the removal of the salary differential. Gilley-Mosier also did not want to return to CWS as she believed Laverna Gordon (Gordon) was the best friend of Sutton. Former CWS social worker Judy Lee (Lee), who was supervised by Sutton until Lee left in 2004 believed Gordon was mad at her all the time and unavailable as a resource after she complained about Sutton.

Hatch telephoned Nunes and objected to the County unilaterally removing Gilley-Mosier's salary differential as violative of the December 2005 agreement with Williams; he would grieve such removal if the County did not follow the appropriate procedures for removing a salary differential. Hatch admitted that the County had the right to involuntarily reassign Gilley-Mosier.[7]

On October 16, 2006, Hatch responded to Miller's memo. After setting forth the history of Gilley-Mosier's dispute with Sutton and the resolution of that dispute, Hatch contended that Miller was giving Gilley-Mosier no choice at all as she did not want to transfer to a CWS position or to stay in her current position and lose her 11 percent differential. Hatch contended that DESS should honor the prior settlement agreement.

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[7] MOU sections 7.1 and 7.2.1 provide:

> 7.1 Transfers. The County reserves the right to transfer employees in accordance with the needs of the County.
>
> 7.2.1 No bargaining unit employee shall be permanently transferred between work sites and/or shifts without ten (10) days prior written notice.

After Miller received Hatch's letter, she believed that he elevated the dispute to an official level which precluded an informal meeting. Miller consulted with Nunes. Nunes did not believe DESS should allow Gilley-Mosier to keep her current job in order to grieve the removal of the differential as she believed they would lose such a grievance. Nunes believed the only resolution would be to involuntarily reassign Gilley-Mosier back to CWS with a supervisor other than Sutton. Miller was unaware that Gilley-Mosier objected to Gordon as a supervisor or believed Gordon to be Sutton's best friend. Miller only knew that Gilley-Mosier had an issue with Sutton. Miller heard only positive feedback concerning Gordon's supervisorial abilities from employee exit interviews.

Miller testified that the only reason she involuntarily reassigned Gilley-Mosier was because of Needham' grievance and the extensive fiscal impact to DESS of Gilley-Mosier's salary differential. Miller and Nunes denied reassigning Gilley-Mosier because of her exercise of her protected activities by DeRosa's and Hatch's representation of her.

On October 23, 2006, Miller sent a memo to Gilley-Mosier that she was being involuntarily reassigned to CWS under the supervision of Gordon effective November 13, 2006. The memo explained that the reassignment upheld the supervisory change in the December 2005 agreement. Additionally, the memo notified Gilley-Mosier that while CWS did not have a four-day/ten-hour alternate work schedule, it did have a nine-day/eighty-hour alternate work schedule which she should discuss with Gordon. After October 23, 2006, Nunes did not communicate with Hatch as Gilley-Mosier retained private legal counsel who attempted to delay the involuntary reassignment.

On November 6, 2006, Craig sent an inter-office memo to fill Gilley-Mosier's position, with a final filing date of November 13, 2006. The ADFLP duties would be supervised by CWS supervisor Alissa Wilfred and the ILP duties supervised by Needham. Miller explained

that under State regulations, the ADFLP program must be supervised/managed by someone with a masters degree. When the Employment Services supervisor/manager with a masters degree left DESS, Miller had to put the program under CWS as Byrd was the only remaining manager who possessed a masters degree. The employee who filled Gilley-Mosier's position was not paid an 11 percent salary differential.

On November 6, 2006, Gilley-Mosier left work early and never returned. Gilley-Mosier applied for a service retirement and a disability retirement. Her disability retirement was granted and became effective December 2006.

Both Nunes and Miller testified that they were never informed that Gilley-Mosier wanted to keep her job in Employment Services without the differential. Gilley-Mosier never proposed to DESS the shifting of ILP from Employment Services to CWS.

ISSUE

Did the County involuntarily reassign Gilley-Mosier in retaliation for her exercise of protected activities?

DISCUSSION

To demonstrate that an employer discriminated or retaliated against an employee in violation of Section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*); *Campbell Municipal Employees Assn. v. City of Campbell* (1982) 131 Cal.App.3d 416 (*Campbell*); *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553 (*San Leandro*).) In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely

upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; fn. omitted.)

A. Gilley-Mosier Exercised Rights Protected by the MMBA

In the instant case, it is uncontested that Gilley-Mosier sought the assistance of Stationary Engineers Business Representative Hatch to represent her to respond to Miller's October 11, 2006 reassignment options memo. In so doing, Gilley-Mosier participated in the activities of her exclusive representative, as the Stationary Engineers represented her in "all matters of employer-employee relations." (MMBA § 3502.) Accordingly, we find Gilley-Mosier satisfied the first element for establishing a prima facie case of retaliation.

B. The County was Aware that Gilley-Mosier Exercised Rights Protected by the MMBA

Nunes and Miller were aware of Stationary Engineers' representation of Gilley-Mosier when Nunes conducted an investigation surrounding the December 2005 settlement agreement with Gilley-Mosier. Additionally, Hatch sent a letter to Miller on October 16, 2006 explaining Stationary Engineers' involvement in the events leading to the December 2005 settlement agreement, as well as the union's continued representation of Gilley-Mosier regarding Miller's October 11, 2006 memo. Hatch also spoke to Nunes about Miller's October 11, 2006 memo. Since both Nunes and Miller were aware of Gilley-Mosier's protected conduct, we find Gilley-Mosier satisfied the second element for establishing a prima facie case of retaliation.

C. The County's Reassignment of Gilley-Mosier Constituted an Adverse Action

We next consider whether Miller's reassignment constitutes an adverse action. Gilley-Mosier's position at Employment Services and the position to which she was reassigned are compensated at the same rate, but the reassignment meant that Gilley-Mosier would lose her four-day/ten-hour per day alternate work schedule and have the possibility of obtaining a nine-day/eighty-hour work schedule. A reasonable person would conclude that losing an alternate work schedule would have an actual adverse impact on an employee's employment and therefore the involuntary reassignment constitutes an adverse action. Accordingly, we find Gilley-Mosier satisfied the third element for establishing a prima facie case of retaliation.

Thus, the remaining question in this case is whether a nexus exists between the Gilley-Mosier's involuntary transfer and her protected conduct.

D. Nexus

When direct proof of unlawful motivation is not available, the Board reviews the record as a whole to determine if the inference of unlawful motive should be drawn. Factors that may support such an inference include the timing of the employer's adverse action in relation to the employee's protected conduct. Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264 (*North Sacramento*)), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation*) (1984) PERB Decision No. 459-S; *Campbell*, *supra*, 131 Cal.App.3d 416); (2) the employer's departure from established procedures and standards

when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104; *San Leandro, supra*, 55 Cal.App.3d 553); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S; *San Leandro*); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M; *Coast Community College District* (2003) PERB Decision No. 1560); (5) the employer's offering of exaggerated, vague, or ambiguous reasons to justify its conduct (*County of San Joaquin (Health Care Service)* (2001) PERB Order No. IR-55-M); (6) employer animosity towards union activists (*Jurupa Community Services District* (2007) PERB Decision No. 1920-M; *Cupertino Union Elementary School District* (1986) PERB Decision No. 572); or (7) any other facts that might demonstrate the employer's unlawful motive. (*North Sacramento*; *Novato, supra*, PERB Decision No. 210.)

1. Timing

As indicated above, the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor in determining whether a nexus exists between the adverse action and the protected conduct. In this case, it is uncontested that Gilley-Mosier sought the assistance of Stationary Engineers Business Representative Hatch to respond to Miller's October 11, 2006 reassignment options memo. Pursuant to this representation, Hatch sent a letter to Miller on October 16, 2006, explaining Stationary Engineers' involvement in the events leading to the December 2005 settlement agreement, as well as the union's continued representation of Gilley-Mosier regarding Miller's October 11, 2006 memo.

Gilley-Mosier's involuntary reassignment and loss of an alternative workweek schedule occurred on November 6, 2006. Because these events occurred less than one month after her

protected conduct, we find Gilley-Mosier established a sufficiently close temporal proximity between the adverse action and her protected conduct to support a finding of nexus in this case.

2. Disparate Treatment

Timing alone, however, is insufficient to establish a nexus. Gilley-Mosier must also show at least one additional factor to establish a nexus between her protected conduct and the adverse action. One such factor is an employer's disparate treatment of the employee. In this case, there is nothing in the record to suggest the County treated Gilley-Mosier differently from other employees. To the contrary, the purpose of Gilley-Mosier's transfer was to ensure that she was compensated in a manner consistent with the parties' MOU and, therefore, treated the same as other similarly situated employees. Accordingly, we find Gilley-Mosier failed to demonstrate she was treated differently from other employees.

3. Departure From Established Procedures And Standards

First, Gilley-Mosier alleges she received a downgraded evaluation after filing her October 19, 2005, complaint against Sutton. The evaluation in question, Gilley-Mosier's 2004-06 evaluation, was signed by the parties on January 6, 2006. Because Gilley-Mosier filed her unfair practice charge on January 15, 2007, this allegation falls outside the six-month statute of limitations for the filing of an unfair practice charge and is, therefore, untimely. However, even if this allegation was timely, we find it lacks merit for the reason set forth below.

Sutton performed evaluations for Gilley-Mosier for the periods of 2002-03, 2003-04 and 2004-06. All three evaluations considered Gilley-Mosier's performance in five separate categories. In her 2002-03 and 2003-04 evaluations, Gilley-Mosier received "exceeds standards" in the "Interpersonal Relationships" category and received "meets standards" in the four remaining categories. In the 2002-03 evaluation, Gilley-Mosier received an overall

employee rating of "meets expectations."[8] In the 2004-06 evaluation, Gilley-Mosier received "meets expectations" in all five categories and, like the 2002-03 evaluation, received an overall employee rating of "meets expectations." We find the variation in these evaluations is insignificant and, therefore, does not demonstrate the County departed from established procedures when performing the evaluation. Accordingly, we find this allegation lacks merit.

An employer's departure from established procedures and standards when dealing with an employee is another factor that may support a finding of nexus. In her appeal, Gilley-Mosier identifies several incidents that allegedly demonstrate the County departed from its established procedures.

Gilley-Mosier also alleges the County violated MOU sections 12.4, 12.4.1 and 12.4.2 by failing to meet with her following the issuance of Miller's October 11, 2006, letter regarding Gilley-Mosier's reassignment. These sections of the MOU, however, pertain to the parties' informal dispute resolution procedure. To invoke these provisions, the grievant must meet with his/her immediate supervisor to discuss the grievance. Based on our review of the record, it does not appear that Gilley-Mosier requested such a meeting or that she otherwise filed a grievance regarding the transfer. Therefore, the County did not violate the informal grievance procedures set forth in the MOU. Accordingly, we find this allegation lacks merit.

Similarly, Gilley-Mosier claims the County failed to meet with her informally to discuss the option of remaining in her former position but doing so without the 11 percent salary differential pay. The County, however, granted Giller-Moiser that option in the October 11, 2006, letter, but Stationary Engineers vigorously objected to the loss of the differential. Accordingly, we find this allegation lacks merit.

[8] The record did not contain Gilley-Mosier's overall employee rating for 2004.

Last, Gilley-Mosier alleges that the County violated MOU sections 12.5 and 12.5.1 by failing to meet with her regarding the involuntary transfer. These sections address formal grievance procedures and require aggrieved employees to file a formal written grievance and submit the grievance to his/her manager. Gilley-Mosier, however, did not file such a grievance. Thus, the County did not violate the formal grievance procedures set forth in the MOU. Accordingly, we find this allegation also lacks merit.

Based on the foregoing, we find Gilley-Mosier failed to demonstrate that the County departed from established procedures in its dealing with Gilley-Mosier.

4. Justifications For Its Actions

An employer's inconsistent or contradictory justifications for its actions is another factor that may be considered as evidence indicating an unlawful motivation when conducting a nexus analysis. Similarly, an employer's exaggerated, vague, or ambiguous reasons may also be considered. In this case, however, the County consistently indicated that the purpose of the transfer was to reconcile Gilley-Mosier's 11 percent salary differential with the MOU. Accordingly, we find Gilley-Mosier failed to establish any of these factors.

5. Cursory Investigation

An employer's cursory investigation of the employee's misconduct may also support a finding of nexus. In this case, however, there is no allegation that Gilley-Mosier engaged in misconduct. According this factor does not apply.

6. Employer Animosity Towards Union Activists

Last, evidence of an employer's animosity towards union activists may also support a finding of nexus. In this case, however, there is nothing in the record to suggest such animosity.

Because she failed to establish any of the nexus factors, we find Gilley-Mosier failed to establish a prima facie case of retaliation by the County. Accordingly, we find the complaint was properly dismissed for lack of nexus.

E. Affirmative Defense

Assuming, arguendo, Gilley-Mosier established a prima facie case, the burden would shift to the County to prove that it would have taken the adverse action even if Gilley-Mosier had not engaged in protected activity. (*Novato, supra,* PERB Decision No. 210; *Martori Brothers Distributors v. Agricultural Labor Relations Bd.* (1981) 29 Cal.3d 721, 729-730.)

In this case, the effect of allowing Gilley-Mosier to remain in her Employment Services position with the salary differential would have exposed the County to the liability of granting every Senior Social Worker who did not work for CWS an 11 percent salary differential, as well as every supervisor of a Senior Social Worker a 10 percent salary differential. Regardless of Gilley-Mosier's protected activity, this arrangement could not continue without causing significant harm to the County's budget and the morale of its workers. We, therefore, find the County would have taken the adverse action regardless of Gilley-Mosier's protected activity.

CONCLUSION

Gilley-Mosier failed to demonstrate by a preponderance of the evidence that her protected activities were a motivating factor in Miller's decision to reassign her. Even assuming Gilley-Mosier met her burden, the County established that it would have taken the same actions even in the absence of such protected conduct. Accordingly, we find this case was properly dismissed.

ORDER

The complaint and underlying unfair practice charge in Case No. SA-CE-457-M are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.