

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VALINDA KYRIAS,

Charging Party,

v.

TRUSTEES OF THE CALIFORNIA STATE
UNIVERSITY,

Respondent.

Case No. SF-CE-870-H

PERB Decision No. 2038-H

June 11, 2009

Appearances: VaLinda Kyrias, on her own behalf; Daniel A. Ojeda, University Counsel, for Trustees of the California State University.

Before Neuwald, Wesley and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by VaLinda Kyrias (Kyrias) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by: (1) reorganizing Kyrias' position at Sonoma State University; (2) denying her request to work a full-time schedule; and (3) failing to give her pay raises, all in retaliation for her protected activity. The Board agent dismissed the charge for failure to state a prima facie case of retaliation.

The Board has reviewed the dismissal and the record in light of Kyrias' appeal, CSU's response and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

¹ HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

BACKGROUND

Since 2002, Kyrias has held the position of Administrative Support Coordinator II (ACII) in the School of Social Sciences at Sonoma State University. In 2004, while serving as chief steward for California State Employees Association, Chapter 304, Kyrias participated in a grievance proceeding against management of the School of Social Sciences. Later in 2004 she filed an unfair practice charge with PERB alleging that she received a written reprimand because of her participation in the grievance proceeding.² Also in 2004, Kyrias began attending law school but continued to work a full-time schedule.

On July 17, 2007, Erica Wilcher (Wilcher), the administrative manager of the School of Social Sciences, granted Kyrias' request for a permanent reduction to an 80 percent timebase to accommodate her law school classes. On January 10, 2008, Wilcher approved Kyrias' request to work 60 percent time beginning September 1, 2008.

On February 22, 2008, Wilcher phoned Kyrias and offered her a position doing website updates and data analysis. Kyrias would retain her ACII classification and rate of pay; it appears there was no discussion of the timebase for the new position. An employee from the Psychology department would subsequently fill Kyrias' current position in the Geography department. Kyrias declined the offer. On February 27, Kyrias emailed Wilcher offering to postpone her reduction to 60 percent timebase until October 1, 2008, because of the increased workload at the beginning of the fall semester. On February 29, Celeste McDonald (McDonald), an administrative specialist in the Psychology department, emailed department

² In *Trustees of the California State University (Sonoma)* (2005) PERB Decision No. 1755, the Board remanded this charge to the Office of the General Counsel for issuance of a complaint. On January 5, 2006, the parties entered into a settlement agreement that resolved the charge.

faculty and staff that she had accepted a new position outside of the department that would begin on July 1, 2008.

Wilcher responded to Kyrias' February 27, 2008 email on March 3. Wilcher's email stated in relevant part:

I plan to combine Geography and Global Studies with other departments and programs in order to streamline processes and increase efficiency. This reorganization will cause a reclassification of what is now your current position. This reorganization also facilitates the need for 100% timebase. Therefore, you will not be able to continue to work in that location beginning July 1st. Alternatively, I would like for you [to] work on website updates and data analysis.

On March 7, 2008, Wilcher met with Kyrias and her union representative, Liona Spring (Spring), to discuss the reorganization. Wilcher presented draft job descriptions for the two new positions; both were dated February 29, 2008. The description of the position classified as "Admin Analyst/Specialist NE" listed McDonald as the incumbent and described major duties and minimum qualifications largely identical to those of Kyrias' current position. In addition to the Geography and Global Studies departments currently supported by Kyrias, the new position would also support the Human Development department and the Holocaust Studies Center. The description of the other position, while it included the same minimum qualifications, listed the major duties as follows:

The Administrative Coordinator (AC) will be responsible for providing website updates including converting course syllabi to PDF format and uploading them to department websites. The AC will also be responsible for compiling requested data including 5-year averages of FTES, FTEF, majors, faculty workload, classroom/office space utilization and budget.

Wilcher also provided a cover sheet summarizing the different positions and their salaries.

Immediately after Wilcher's presentation, Kyrias presented Wilcher with a written grievance that claimed Wilcher retaliated against Kyrias "by reorganizing Ms. Kyrias's current

position, resulting in a reclassification, causing Ms. Kyrias to lose her current position as she has known it since 2002.” As a remedy, Kyrias sought to be offered “the position resulting from the reorganization” and for that position to become full-time starting September 1, 2008. Wilcher signed and dated Spring’s copy of the grievance to acknowledge receipt.

On March 18, 2008, Stephen Green, Sonoma State University’s manager of employee and labor relations, emailed Spring that he had received a copy of Kyrias’ March 7 grievance. The email stated in part: “My understanding of the situation is that, although Ms. Wilcher has discussed with Ms. Kyrias her desire to reorganize the School of Social Studies and asked for Ms. Kyrias’s input, she has not made any move to do so.” Green then asked if Spring wished to proceed with the grievance. On March 19, Wilcher emailed Kyrias and Spring, stating “I have decided not to reorganize Ms. Kyrias’s current position.” Kyrias remained in her existing ACII position after July 1, 2008.

On August 1, 2008, Kyrias emailed Wilcher requesting to work 100 percent timebase starting September 1, 2008. Wilcher denied the request. When Kyrias asked for a reason, Wilcher responded: “The workload for the departments you support does not necessitate a timebase of 100%.” Around August 4, the School of Social Sciences posted job announcements for two temporary, full-time ACII positions. Those positions were filled on September 11 and 12.

On September 11, Kyrias went to the Psychology department and saw a sign posted on the door stating that the Human Development department had moved to the second floor. The charge alleged that one of the new temporary ACII positions supported the relocated Human Development department.

Unfair Practice Charge and Dismissal

On August 21, 2008, Kyrias filed her unfair practice charge alleging that CSU, and specifically Wilcher, retaliated against Kyrias for her protected activity by reorganizing her position, denying her request to work a full-time schedule and failing to give her pay raises. The charge also alleged that CSU failed to provide Kyrias with requested information relevant to her March 7, 2008 grievance.

The Board agent found the charge failed to establish a prima facie case of retaliation because: (1) the reorganization plan was never implemented and therefore could not constitute an adverse action; (2) the charge did not allege any facts showing CSU denied Kyrias' request for full-time hours because of her protected activity; and (3) the charge likewise failed to allege facts establishing that CSU failed to give Kyrias pay raises because of her protected activity. Finally, the Board agent dismissed the allegation that CSU failed to provide Kyrias with requested information on the ground that the duty to provide relevant information is owed to the exclusive representative, not to an individual employee.³

Kyrias' Appeal

Kyrias raises three issues on appeal. First, she asserts all of the allegations in the charge are timely under a continuing violation theory because "[t]he adverse action complained of in this complaint is the deprivation of economic opportunity for VaLinda Kyrias (Kyrias) from 2004 to present." Therefore, she contends, PERB can find that CSU's failure to give her pay raises from 2004 through January 2008 violated HEERA. Second, Kyrias claims the planned reorganization was an adverse action because, while the reorganization was never fully implemented, McDonald nonetheless had already been offered and accepted the

³ Kyrias does not challenge the dismissal of this allegation on appeal and therefore we do not address it further.

reclassified position, and Wilcher had told Kyrias that her current position would end on July 1, 2008. Finally, Kyrias argues the charge alleged sufficient facts to establish that CSU denied her August 1, 2008 request to work 100 percent timebase because of her protected activity.

CSU's Response to Appeal

CSU responds that it never denied Kyrias a pay raise and, moreover, the charge failed to show "that the alleged denial was connected to her participation in protected activity." CSU claims the planned reorganization was not an adverse action because it was never implemented and thus resulted in no harm to Kyrias. As for the denial of Kyrias' request to work 100 percent timebase, CSU asserts that: (1) it would have disrupted School of Social Sciences operations to take back work that had been redistributed to other employees as part of accommodating Kyrias' reduced timebase; and (2) the denial was reasonable given that Kyrias had filed a grievance over the reorganization and thus had in effect rejected the proposed website/analyst position, which CSU claims would have become full-time as of July 1, 2008.

DISCUSSION

1. New Supporting Evidence On Appeal

Kyrias' appeal contains new supporting evidence not presented to the Board agent. "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635(b).⁴) The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

⁴ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Kyrias' appeal contains new evidence regarding another School of Social Sciences employee who did not receive pay raises and further information about the two temporary ACII positions filled in September 2008. The appeal also contains exhibits showing School of Social Sciences employee salaries by position for the years 2004 to 2007; these exhibits were not attached to the original or amended charge. Nothing in the appeal indicates that this information was unavailable to Kyrias before the Board agent dismissed her charge. Accordingly, Kyrias has not established good cause for the Board to consider this new evidence on appeal.

The appeal also contains a recitation of pay raises received by School of Social Sciences employees between 2004 and 2007. CSU asserts this information must be disregarded because it was not presented to the Board agent. However, this information is merely a narrative description of information contained in a spreadsheet attached as an exhibit to the amended charge. Thus, this information is not new supporting evidence and the Board may consider it in reviewing Kyrias' appeal.

2. Statute of Limitations

HEERA section 3563.2, subdivision (a) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.) A charging party bears the burden of demonstrating that the charge is timely filed. (*Long Beach Community College District* (2009) PERB Decision No. 2002.)

Kyrias filed her unfair practice charge on August 21, 2008. Thus, PERB cannot find that any conduct alleged in the charge which occurred prior to February 21, 2008, constituted

an unfair practice in violation of HEERA. The charge alleged three adverse actions that occurred within the statute of limitations period: (1) the March 3, 2008 planned reorganization; (2) Wilcher's March 19 withdrawal of the reclassified position; and (3) Wilcher's August 1 denial of Kyrias' request to work 100 percent timebase. Kyrias attempts to show the charge was timely as to the remaining alleged adverse actions in two ways.

First, Kyrias claims that PERB may find a violation based on CSU's conduct from 2004 to the present under a continuing violation theory. Under the continuing violation doctrine, a violation within the statute of limitations period may "revive" an earlier violation *of the same type* that occurred outside of the limitations period. (*Compton Community College District* (1991) PERB Decision No. 915; italics added.) The violation within the limitations period must constitute an independent unfair practice without reference to the prior violation. (*North Orange County Community College District* (1999) PERB Decision No. 1342.) If these conditions are satisfied, PERB may fully consider the prior violation even though it occurred outside the statute of limitations period.

Kyrias tries to invoke the continuing violation doctrine by characterizing all of the adverse actions alleged in the charge as "deprivation[s] of economic opportunity." This characterization is based on an overly broad view of the requirement that the alleged violations within and outside the limitations period be of the same type. In *Sacramento City Teachers Association (Franz)* (2008) PERB Decision No. 1959, the Board found the continuing violation doctrine did not save untimely allegations that the union failed to return the employee's phone calls and inform her of grievance meetings because the charge did not allege that the union failed to return calls or inform the employee of grievance meetings during the limitations period. Here, the charge alleged that CSU issued Kyrias a written reprimand and a counseling

letter, and denied her vacation time, all in 2004; gave her poor performance evaluations in 2006 and 2007; and failed to give her pay raises from 2004 through January 2008. The charge did not allege that CSU reprimanded Kyrias, denied her vacation time, gave her a poor performance evaluation or failed to give her a pay raise after February 21, 2008.

Consequently, the continuing violation doctrine does not save these untimely allegations.

Second, Kyrias asserts her allegation of discriminatory denial of pay raises is timely because she did not learn until March 2008, while researching her grievance, that most of the other administrative support employees in the School of Social Sciences had received “in-range progression” raises from 2004 to 2007. The six-month statute of limitations period begins on the date the charging party discovers the conduct that constitutes the unfair practice, not the date the charging party discovers the legal significance of that conduct. (*California State Employees' Association (Darzins)* (1985) PERB Decision No. 546-S.) The case before us is similar to *Empire Union School District* (2004) PERB Decision No. 1650, where the charging party alleged she received a low mark on her performance evaluation in May but did not discover facts leading her to believe the low mark was retaliation for her protected activity until November. The Board found the statute of limitations period began in May because the employee knew of the low mark at that time and her later discovery that the low mark may have been motivated by her protected activity did not re-start the limitations period.

Kyrias knew each time she received her paycheck that she had not been given an “in-range progression” pay raise. Her discovery in March 2008 that other administrative support employees had been given such raises was merely a discovery that her failure to receive a raise may have been motivated by her protected activity. Just as in *Empire Union School District*, *supra*, Kyrias’ discovery of the legal significance of CSU’s conduct did not re-start the

limitations period and therefore her allegation that CSU retaliated against her by failing to give her “in-range progression” pay raises from 2004 through January 2008 is untimely.

3. Retaliation

To demonstrate that an employer discriminated or retaliated against an employee in violation of HEERA section 3571, subdivision (a), the charging party must show that: (1) the employee exercised rights under HEERA; (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; *Campbell Municipal Employees Assn. v. City of Campbell* (1982) 131 Cal.App.3d 416; *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553.)

a. Protected Activity and Employer Knowledge Thereof

It is undisputed that Kyrias engaged in activity protected by HEERA when she: (1) participated in a grievance proceeding in 2004 (*Trustees of the California State University* (1990) PERB Decision No. 805-H); (2) filed an unfair practice charge with PERB in 2004 (*Trustees of the California State University* (2008) PERB Decision No. 1970-H); and (3) filed a grievance over the planned reorganization on March 7, 2008 (*Regents of the University of California* (1999) PERB Decision No. 1314-H). It is also undisputed that CSU, and particularly Wilcher, knew of these protected activities.

The charge also alleged that Kyrias served as a union steward in 2004 and that “Kyrias has engaged in protected activity campus wide from 2004 to present.” However, the charge does not allege any specific acts of protected conduct between 2004 and March 7, 2008. Thus, even if Kyrias maintained her status as a union steward during that period, the charge does not allege facts sufficient to establish that she engaged in protected activity between 2004 and

March 7, 2008. (See *Chula Vista Elementary School District* (1997) PERB Decision No. 1232 [charge alleging that employee was union site representative but not alleging that employee engaged in actual protected conduct failed to establish prima facie case of discrimination].)

b. Adverse Action

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; italics added; fn. omitted.)

As noted above, the charge alleged CSU took three adverse actions against Kyrias in 2008. Each action will be addressed in turn.

Planned Reorganization

On March 3, 2008, Wilcher informed Kyrias that she was planning to reorganize support services effective July 1, 2008, by reclassifying Kyrias' position to a full-time position and moving Kyrias to a position doing website updates and data analysis. After Kyrias filed a grievance over the planned reorganization, Wilcher decided not to implement it. The Board agent found that the planned reorganization did not constitute an adverse action because it was never implemented. For the following reasons, we find the charge sufficiently alleged that the planned reorganization constituted an adverse action.

HEERA section 3571, subdivision (a) makes it unlawful for a higher education employer to "[i]mpose or threaten to impose reprisals on employees." Interpreting this

language, PERB has held that the threat of adverse action and the adverse action itself constitute separate and independent violations of HEERA. (*Regents of the University of California* (2004) PERB Decision No. 1585-H.) Thus, a threat may constitute an adverse action even if the employer never follows through with the threatened action. However, for a threat to constitute an adverse action, it must give the employee unequivocal notice that the employer has made a firm decision to take the threatened action. (*County of Merced* (2008) PERB Decision No. 1975-M.)

Wilcher's March 3, 2008 email to Kyrias stated that the reorganization "will cause a reclassification of what is now your current position" and that "you *will not* be able to continue to work in that location beginning July 1st." (Italics added.) This language does not indicate that the reorganization was merely a proposal but rather that it would happen as described. Bolstering this conclusion is the allegation that by the time Wilcher informed Kyrias of the reorganization, McDonald had already been offered and accepted the position that would result from the reclassification of Kyrias' current position. Taken together, these allegations establish that Wilcher had made a firm decision to reorganize Kyrias' position by the time she informed Kyrias of the reorganization on March 3, 2008.

Having concluded that a firm decision was made and communicated to Kyrias, we must next determine whether the planned reorganization would have constituted an adverse action. As explained by Wilcher, the reorganization would result in Kyrias performing different job duties in a different location. PERB has characterized similar moves as involuntary reassignments or transfers. (E.g., *Newark Unified School District, supra* [teacher involuntarily transferred from high school to junior high school].) An involuntary reassignment is an adverse action when the working conditions of the new position are less favorable than those of the previous position, even if the reassignment does not result in loss of pay or benefits.

(*Fresno County Office of Education* (2004) PERB Decision No. 1674.) PERB has found adverse action when a reasonable person would consider the duties of the new position to be a step down from those of the previous position. (*Trustees of the California State University* (2006) PERB Decision No. 1853-H [warehouse worker reassigned to “count discarded supplies”]; *Pleasant Valley School District* (1988) PERB Decision No. 708 [groundskeeper reassigned from mowing duties to raking, pruning and watering].)

Kyrias alleged the proposed website/analyst position was a step down because the job duties would be less complex than those of her current ACII position. In her current position, Kyrias performs duties such as coordinating part-time faculty hiring, supervising student employees and managing their payroll, and coordinating the faculty reappointment, tenure and promotion process for the department. In contrast, the major duties of the proposed website/analyst position are to convert course syllabi to PDF format and upload them to department websites, and to compile requested data. The addition or change of similar job duties typically would not constitute adverse action. (*Alvord Unified School District* (2009) PERB Decision No. 2021.) However, a reasonable person would conclude that a change from a position requiring the incumbent to work independently and exercise his or her own judgment to a position that essentially involves basic clerical work would have an adverse impact on the employee’s employment. Consequently, we find that CSU took adverse action against Kyrias in March 2008 by threatening to reassign her to the website/analyst position.

Withdrawal of Reclassified Position

On March 7, 2008, Kyrias filed a grievance over the reorganization. As a remedy, Kyrias sought to be appointed to the reclassified position that McDonald had been hired to fill. On March 19, Wilcher informed Kyrias that she no longer planned to reorganize her position. Kyrias argues that this constituted an adverse denial of reclassification or promotion.

PERB has found denials of both reclassification and promotion to constitute adverse action. (*Carlsbad Unified School District* (1989) PERB Decision No. 778 [reclassification]; *State of California (Department of Corrections)* (2001) PERB Decision No. 1435-S [promotion].) Nonetheless, PERB has only found a denial to be adverse if the employee was entitled to the reclassification or position denied. (*State of California (Department of Corrections)*, *supra* [employee at top of promotional list]; *State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S [same]; see *Carlsbad Unified School District*, *supra* [employee qualified for reclassified position].)

There is no doubt Kyrias could perform the duties of the reclassified position because they are largely identical to those of her current position. However, the reclassified position also would require the incumbent to work full-time hours. Six days before Wilcher informed Kyrias of the reorganization, Kyrias emailed Wilcher offering to continue to work an 80 percent timebase, instead of a 60 percent timebase, until the end of September 2008. Kyrias did not indicate that she was willing or able to work a 100 percent timebase during those months. Moreover, Kyrias admits in her appeal that she could not have worked a 100 percent timebase between March and September 2008 because of her law school course schedule. Accordingly, we find that because Kyrias was not qualified for the reclassified position at the time it was withdrawn, the withdrawal was not an adverse action.

Denial of 100 Percent Timebase

On August 1, 2008, Kyrias emailed Wilcher requesting “to go to 100% timebase starting September 1, 2008.” Later that day, Wilcher denied the request, stating: “The workload for the departments you support does not necessitate a timebase of 100%.”

A few days later, the School of Social Sciences posted job announcements for two temporary, full-time ACII positions. The charge alleged that one of the positions provided

support to the Human Development department, which would have been supported by the reclassified position as part of the reorganization. Kyrias argues on appeal that CSU could have transferred this work to her to support a 100 percent timebase.⁵

In her charge, Kyrias alleged that she lost approximately \$6,000 in annual income as a result of the denial. Similar to its holdings in cases involving denial of promotion or reclassification, PERB has held that denial of a pay increase is an adverse action only when the employee is contractually entitled to the increase. (*The Regents of the University of California* (1997) PERB Decision No. 1188-H; *Campbell Union High School District* (1988) PERB Decision No. 701; *California State University, Long Beach* (1987) PERB Decision No. 641-H.) Nothing in the charge indicates that Kyrias was entitled to an increase in her work hours, and thus a corresponding increase in her pay, in September 2008. Nor does the charge establish there was available work CSU could have given to Kyrias to support a 100 percent timebase. The allegation that one of the temporary ACII positions supported the Human Development department does not demonstrate that work was enough to increase Kyrias' timebase by 20 percent or that it was feasible for CSU to transfer that work to Kyrias. Accordingly, the charge failed to show that Wilcher's denial of Kyrias' request for 100 percent timebase constituted an adverse action.

c. Nexus Between Protected Activity and Adverse Action

Having found that CSU took adverse action against Kyrias on March 3, 2008 by threatening to reassign her to the website/analyst position, we must now determine whether CSU took that action because of Kyrias' protected activity.

⁵ As noted above, Kyrias presents new evidence in her appeal regarding the work done by the two temporary ACII positions. Because we have found no good cause exists to present this new evidence on appeal, we have not considered the new evidence in reaching our decision in this matter.

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), 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; *City of 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; *City of 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), supra*; *City of San Leandro, supra*, 55 Cal.App.3d 553); (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 failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons (*Baker Valley Unified School District* (2008) PERB Decision No. 1993; *County of San Joaquin (Health Care Services)* (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 School District, supra*; *Novato Unified School District, supra*.)

The charge alleged Kyrias engaged in protected activity when she participated in a grievance proceeding and filed an unfair practice charge, both in 2004, and when she filed a

grievance on March 7, 2008. Because Kyrias filed the 2008 grievance *after* Wilcher had threatened to reassign her, a causal connection cannot be established based on that protected activity. (*Berkeley Unified School District* (2004) PERB Decision No. 1702.) Kyrias' remaining protected activity took place more than three years before the alleged threat of reassignment. A lapse of several years between the protected activity and the adverse action does not support a finding of nexus. (*Los Angeles Community College District* (1999) PERB Decision No. 1325; *State of California (Department of Corrections)* (1996) PERB Decision No. 1155-S.) Therefore, the charge failed to establish the necessary timing factor.

Nor did the charge establish any of the other nexus factors. The charge alleged that Wilcher failed to follow university policies when she reclassified Kyrias' position. Sonoma State University Policy 1993-3 provides, in relevant part:

Prior to altering an employee's assignments or responsibilities to the extent that the classification level may be changed, the department must consult with the Office of Human Services – Human Resources to assess potential classification change and cost impact.

The charge did not provide any facts to show that the consultation did not occur, as required by PERB Regulation 32615(a)(5).⁶ Moreover, the policy does not require the consultation to occur before an employee is notified of the reclassification but only before the employee's job duties are actually altered. Since the planned reclassification never occurred, the alleged facts do not support a finding that Wilcher failed to follow established procedures.

The charge also alleged that Kyrias was treated differently than other administrative support employees in the School of Social Sciences and that CSU gave her inadequate

⁶ PERB Regulation 32615(a)(5) requires that a charge contain "[a] clear and concise statement of the facts and conduct alleged to constitute an unfair practice." This requires the charge to state the "who, what, when, where and how" of the alleged unfair practice; "[m]ere speculation, conjecture or legal conclusions are insufficient" to establish a prima facie case. (*United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.)

explanations of its actions. The allegations of disparate treatment involve events unrelated to the planned reorganization and thus fail to establish that CSU treated Kyrias differently than other employees with regard to the threat of reassignment. As to inadequate explanations, the charge alleged that when Wilcher told Kyrias of the reorganization plan, she failed “to state why Kyrias would not be qualified to manage the reorganized position since Kyrias’s history of efficiency and accuracy is well documented.” Though Wilcher may have failed to answer this concern of Kyrias’, the alleged reasons Wilcher gave for the reorganization were not “exaggerated, vague, or ambiguous” because they clearly indicated that Wilcher intended to increase efficiency and streamline processes by combining support for several departments into one full-time position. These reasons were not “essentially meaningless” to Kyrias under the circumstances and therefore do not support an inference of unlawful motive. (*Baker Valley Unified School District, supra.*)

Finally, the charge alleged that CSU made inconsistent statements regarding the reorganization. Specifically, Kyrias points to claims in CSU’s position statement that Wilcher merely presented the reorganization plan to Kyrias as a proposal. However, this claim does not demonstrate that CSU gave Kyrias one justification for the reorganization on March 3, 2008, and then gave a different justification later. Therefore, this allegation fails to show that CSU gave Kyrias “inconsistent or contradictory justifications for its actions.”

In sum, the charge failed to establish any of the factors necessary for PERB to find a nexus between CSU’s March 3, 2008 threat to reassign Kyrias to the website/analyst position and her protected activity in 2004. Accordingly, because the charge did not allege facts sufficient to show that CSU took adverse action against Kyrias because of her protected activity, we affirm the Board agent’s dismissal of the charge.

ORDER

The unfair practice charge in Case No. SF-CE-870-H is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Neuwald and Wesley joined in this Decision.