

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL)	
UNION, LOCAL 22, AFL-CIO,)	
)	
Charging Party,)	Case. No. S-CE-696
)	
v.)	PERB Decision No. 421
)	
SACRAMENTO CITY UNIFIED SCHOOL)	October 19, 1984
DISTRICT,)	
)	
Respondent.)	
)	

Appearance: William Kelly for Service Employees International Union, Local 22, AFL-CIO.

Before Hesse, Chairperson; Tovar and Burt, Members.

DECISION AND ORDER

HESSE, Chairperson: Charging Party appeals the Regional Attorney's dismissal of its unfair practice charge filed on November 2, 1983, against Sacramento City Unified School District. As the letter of appeal advances no errors of law or fact, nor does it present any newly discovered evidence, the Public Employment Relations Board hereby adopts the attached dismissal by the Regional Attorney as the decision of the Board itself. Accordingly, Charge No. S-CE-696 is DISMISSED in its entirety without leave to amend.

Members Tovar and Burt joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95814
(916) 322-3193



December 14, 1983

Ruth O'Hearn
Business Representative
Service Employees International Union, Local 22
903 30th Street
Sacramento, CA 95816

RE: Service Employees International Union, Local 22 v.
Sacramento City Unified School District;
Unfair Practice Charge No. S-CE-696

Dear Ms. O'Hearn:

The above-referenced charge alleges the Sacramento City Unified School District (District) discriminated against Annie Howard by issuing her a letter of concern and by having a District supervisor call her at home on two occasions. This conduct is alleged to violate section 3543.5(a) of the Educational Employment Relations Act (EERA).

I indicated to you in my letter dated November 25, 1983 that the above-referenced charge did not state a prima facie case and that unless you amended the charge to state a prima facie case or withdrew it prior to December 2, 1983. It would be dismissed. More specifically, I informed you that if there were any factual inaccuracies in the letter or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing this charge based on the facts and reasons stated in my November 25, 1983 letter (Exhibit 1). Please note two factual corrections from that letter. First, Annie Howard has been an employee of the District since 1977. Second, she worked under different supervision prior to working for Betty Swanson.

Pursuant to Public Employment Relations Board regulation section 32.635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

You may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on January 3, 1984, or sent by telegraph or certified United States mail postmarked not later than January 3, 1984 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (section 32132).

Ms. O'Hearn
December 14, 1983
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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By Robert Thompson
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95314
(916) 322-3198



November 25, 1983

Ruth O'Hearn
Business Representative
Service Employees International Union, Local 22
903 30th Street
Sacramento, CA 95816

RE: Service Employees International Union, Local 22 v
Sacramento City Unified School District?
Unfair Practice Charge No. S-CE-696

Dear Ms. O'Hearn:

The above-referenced charge alleges the Sacramento City Unified School District (District) discriminated against Annie Howard by issuing her a letter of concern and. by having a District supervisor call her at home on two occasions'. This conduct is alleged to violate section 3543.5(a) of the Educational Employment Relations Act (EERA).

My investigation revealed the following: Annie Howard has been an employee of the District since September 1981. She has worked under the supervision of Betty Swanson With the exception of the 1982-83 school year when Swanson was away for approximately seven months. During 1982, Howard was counseled on making bank deposits, maintaining the parents' waiting list, and following the steps of the fee collection process. In 1983, Howard was given a letter of reprimand regarding her repeated late arrival at work. This letter was withdrawn from her personnel file because of legal defects relating to Howard's appeal rights. On September 14, 1983, Howard, her supervisor, a Local 22 representative, and the director of the preschools and children's centers had a meeting concerning Howard's work. A second meeting was scheduled for September 30, but never took place because Howard was injured on the job between the two meetings. On October 4, Howard was sent a Letter of concern by her supervisor regarding deposits of funds, notification of families when their fees are overdue, maintenance of the parents waiting list, posting

EXHIBIT I

Ruth O'Hearn
November 25, 1983

of the fees, and tardiness. In addition, the supervisor telephoned Howard on approximately October 21 and during the week of October 24. The first phone call was made at about 6:00 p.m., lasted approximately 1 minute, and concerned whether Howard would be returning to work the following week. The second call involved the waiting list which Howard had in her possession at home, and that her work was backing up. Howard brought in the documents on the next day.

Based on the facts stated above, this charge does not state a prima facie case for the reasons that follow.

You have alleged that the respondent's conduct ~~his~~ violated EERA section 3543.5(a). Violation of that section requires allegations that: (1) an employee has exercised rights under the EERA; (2) the employer has imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced the employee because of the exercise of rights guaranteed by the EERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210.

In Howard's case there is evidence that she exercised protected rights by having a union representative present for a meeting with her supervisor. Charging Party stated that Howard had not participated in any other forms of protected conduct. Although the employer did take adverse action in the form of a letter of concern, there is insufficient evidence to demonstrate a nexus between this adverse action and her participating with a union representative in the meeting. This is especially true in light of her job performance, prior to the date of the September 1983 meeting, which partially involved counseling by a different supervisor than she works under presently. There has been an insufficient showing that the content of the telephone calls make them anything more than an attempt by the supervisor to obtain information necessary for her to perform her job. Such requests for information, without more, do not rise to an unfair practice under the EERA.

Ruth O'Hearn

November 25, 1983 1983

For these reasons, charge number S-CE-696, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before December 2, 1983, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours,

Robert Thompson
Regional Attorney