STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

NANCY A. RIDLEY, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Case No. LA-CE-231-H PERB Decision No. 707-H December 21, 1988

Appearances: B. Benedict Waters for Nancy A. Ridley; Claudia Cate, Attorney, for University of California.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION AND ORDER

This case is before the Public Employment Relations Board (Board) on appeal by Charging Party of the Board agent's dismissal, attached hereto, of her charge that the Respondent violated subdivision (a) of section 3571 of the Higher Education Employer-Employee Relations Act (HERRA). We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the Decision of the Board itself.

The unfair practice charge in Case No. LA-CE-231-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD[1]

[1]Member Camilli did not participate in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010 2334
(213)736-3127

October 7, 1988

B. Benedict Waters

RE: DISMISSAL OF CHARGE AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice Charge No. LA-CE-231-H, Nancy A. Ridley v. The Regents of the University of California

Dear Mr. Waters:

My predecessor as Regional Attorney, Sandra Owens Dennison, indicated to you in the attached "warning letter" dated May 20, 1988, that the above-referenced charge, alleging that UC refused to process a grievance filed by Charging Party, did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly.

You filed an amended charge on June 3, 1988. My investigation of the amended charge revealed the following information.

The amended charge alleges, "Subject matter grievance was filed prior to the agreement being signed [between AFSCME and UC] that instituted [the] new [grievance] form." You later stated in writing, however, "Grievant has no information or belief, at this time, as to when the new form was agreed to" (emphasis yours). AFSCME and UC both maintain that agreement on the new form was reached on or before January 4, 1988, when they signed an amended memorandum of understanding. The grievance was signed on January 4, 1988, and filed on January 7, 1988.

You contend that the new form was unavailable when the grievance was filed. When I asked you, however, whether you contend that the new form was unavailable on January 11, 1988, when Sandra Rich wrote that the form was available from AFSCME, you did not answer yes or no but asserted that "the question misses the point." On January 19, 1988, you delivered to Ms. Rich a letter requesting a copy of the most current "agreed upon form." By a letter dated January 29, 1988, Ms. Rich indicated again that the form was available from AFSCME, and Charging Party did subsequently obtain the new form from AFSCME. AFSCME had the new

form no later than January 14, 1988, when an AFSCME representative signed an unrelated grievance on the new form.

Attached to the amended complaint (as Attachment "D") was a letter to Sandra Rich signed by you and dated January 15, 1988. The letter states that "the subject matter addendum [to the grievance], if it is filed, will not be filed prior to the Step 1 response" and further states, "The relevant AFSCME contract does not provide a specific remedy for sexual harassment." Unlike your letter of January 19, 1988, and Charging Party's letter of January 27, 1988, this letter does not indicate that it was hand-delivered. You say you mailed the letter; UC says it did not receive the letter. The letter was not mentioned in subsequent correspondence.

You alleged in the amended charge that the new grievance form required the same information that Charging Party had supplied on the old form. The old form asked, among other things, for the "adjustment required," while the new form asked for the "remedy requested." Charging Party never requested an "adjustment" or "remedy" on either form.

You contend that the memorandum of understanding "does not provide a remedy for sexual harassment" and in fact "immunizes employees" who engage in such conduct. You contend that this contravenes Government Code section 12940(i) of the Fair Employment and Housing Act, which requires employers to "take all reasonable steps to prevent harassment fromo occurring," and thus violates Government Code section 3598 of the Higher Education Employer-Employee Relations Act, which provides, "No memorandum of understanding shall contravene any federal or state law . . . prohibiting discrimination in employment." Article 4 of the memorandum of understanding deals with "nondiscrimination in employment," and Section D thereof states as follows:

> No settlement, remedy or decision regarding an alleged violation of this Article shall require a punitive action, monetary or otherwise, or the imposition of discipline upon any employee of the University whether or not such employe is a member of the bargaining unit covered by this Agreement.

In response to another grievance filed by Charging Party, alleging racial discrimination and requesting that action be taken against a supervisor, UC cited Article 4, Section D, in stating, "Even assuming for argument's sake that there was any

evidence of racial discrimination in this matter, your remedy is not appropriate."

When I asked you whether it was your position that "(a) the grievance sought no relief and (b) no relief was available through the grievance process," you responded, "Yes; to (a) and to (b)." I also asked you, "Do you contend that if [Charging Party] Ms. Ridley had used the new form and had requested a remedy, the University [UC] would still have refused to process the grievance?" (Emphasis added.) You answered that had Charging Party requested the "remedy desired by her [disciplinary action], the only remedy realistic under the circumstances, respondent [UC] would have denied the remedy immediately." (Emphasis added.)

The charge as amended still does not state a prima facie case, for the reasons that follow.

As stated in the attached "warning letter," employer conduct in connection with the processing of grievances is unlawful only "if the impact of it is to deprive employees of their statutory rights to effectively present their grievances." Regents of the University of California (1983) PERB Decision No. 308-H. The refusal of UC to process the grievance as originally submitted did not deprive Charging Party of her statutory rights, especially since UC offered her the option of requesting an extension of time in which to file an acceptable grievance. There is no evidence that Charging Party could not have filed a grievance that UC would have processed, had she chosen to do so, and she had no statutory right to insist that UC process a grievance submitted on an old form and without a request for relief.

The more substantial question raised by the amended complaint is whether Article 4, Section D, "contravenes" Government Code section 12940(i) of the Fair Employment and Housing Act. It is true that an employer's failure to take disciplinary action against employees guilty of sexual or racial harassment may violate this section. DFEH v. Madera County (1988) FEHC Decision No. 88-11, at p. 27; DFEH v. Rockwell International Corporation (1987) FEHC Decision No. 87-34, at pp. 13-14. A memorandum of understanding that actually immunized employees from such discipline might be said to "contravene" this section. That is not, however, the import of Article 4, Section D. In its context, Article 4, section D, merely provides that "the imposition of discipline" shall not be part of any "settlement, remedy or decision" pursuant to a grievance regarding an alleged

violation of Article 4. This does not "immunize" employees from discipline; it merely provides that discipline shall not be imposed as a contract remedy under the grievance procedure. It does not prevent UC from otherwise imposing discipline, or lessen its statutory duty to do so, and thus it does not "contravene" (oppose, run counter to, contradict, nullify, thwart, defeat) Government Code section 12940(i).

I am therefore dismissing the charge as amended, based on the reasons stated in this letter and in the "warning letter" of May 20, 1988.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. 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 copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Administrative Code, title 8, 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 each copy of a document served upon a party or filed with the Board itself. (See California Administrative Code, title 8, 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 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 (California Administrative Code, title 8, section 32132).

Final Date

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

Sincerely,

CHRISTINE A. BOLOGNA
General Counsel

By.
THOMAS J. ALLEN
Regional Attorney

TJA:rdw

Attachment

cc: Claudia Cate

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 650
Los Angeles, CA 90010 2334
(213)736-3127

May 20, 1988

B. Benedict Waters

Re: Nancy A. Ridley v. The Regents of the University of California, Case Nos. LA-CE-231-H **and** LA-CE-2 32-H

Dear Mr. Waters:

The above referenced charges allege that the Regents of the University of California (UC) refused to process **two** grievances **filed by Charging Party (Charge Number LA-CE-232-H pertains to a grievance numbered GR 88-74CL under UC's system of numbering grievances. Charge LA-CE-231-H pertains to grievance number GR 88-73CL.)**

My investigation of the charges revealed the following information.[1] Charging Party is a Communications and Records Assistant I at University of California, Los Angeles (UCLA). She is in bargaining unit Number 12, and is represented by American Federation of State, County and Municipal Employees (AFSCME). There is a memorandum of understanding (MOU) in effect between AFSCME and UC for the Unit 12 employees That MOU contains a grievance article, Article 6, which states:

> **Section A.2 Only one (1) subject matter shall be covered in any one (1) grievance. A grievance shall contain a clear and ~~concise~~ statement of the grievance by indicating the issue involved, the relief** sought, the date the incident or violation took place and the specific section or

[1]The undersigned wrote to Charging Party's representative ~~on March 23, 1~~988, describing the documents and information UC had provided in response to the Charge and afforded him the opportunity to submit additional evidence and/or legal argument to support the charges. That letter allowed Charging Party until March 31, 1988 to submit the requested documents. (A copy attached.) To date none has been submitted. The facts stated herein, are therefore, based on the charges, and the documents submitted by UC. Those documents are the grievance forms, January 11, 1988 letters from Sandra Rich to the Charging Party, and Article 6 of the MOU.

> **sections of the Agreement involved.** The **grievance shall be presented to the desiqnated campus/Laboratory grievance official on a form mutually agreeable to the parties. The grievance form shall be furnished to the employee by the Union and the form must be signed and dated by the employee(s) and/or Union representative.**
>
> . . . . . .
>
> **Section H.1.a. Within the time limits indicated elsewhere in this Article the employee or his/her representative, if any, shall provide the written grievance on** the **approved form to the designated campus/Laboratory grievance official. The time limits relative to the University's response to the grievance at Step 1 of the Grievance Procedure shall begin on the date the Step 1 grievance official receives the grievance. Receipt of the grievance from the employee or his/her representative shall be acknowledged in writing by the designated Step 1 campus/Laboratory grievance official. Any grievance which is not received within the time limits established by this Article and/or which does not comply with the procedures and requirements of this Article shall be considered waived and withdrawn by the employee and/or the Union.**

UC states that sometime between November 1987 and on January 4, 1988, AFSCME and UC agreed to a new grievance form. On **January 4, 1988,** Charging **Party filed grievance No.** GR 88-73CL, alleging that:

> Article 4; John Sicard, as part of an ongoing pattern of harassment anchored on my continuing association with **a** Black man, caused me to be orally reprimanded for a non-existent infraction on December 17, 1987 at 12:17 PM by Paul Twonsend (sic) and witnessed by Donald Smith, recent director of C&PM.

Under the heading of "adjustment required" on the grievance

form, Charging Party wrote: "An addendum will be filed."

Also on January 4, 1988, Charging Party filed another grievance, GR 88-74CL, alleging:

> Article 4; Paul Townsend issued a written reprimand on December (sic) 16, 1987 without justification, and was motivated to due so by my gender, and upon my continued association with a Black man.

The requested adjustment section of the grievance form stated: "An addendum will be filed."

On January 11, 1988, Sandra Rich, Assistant Labor Relations Manager for UCLA, wrote letters to Ms. Ridley regarding the two grievances she had filed. Each letter acknowledged receipt of the grievances, and stated that:

> . . . prior to its being further processed, the following steps must occur:
>
> 1. You must file the addendum as you indicated on the grievance form.
>
> 2. You must state a specific remedy for the alleged contractual violation.
>
> 3. You must file the grievance on the agreed upon form between the University and AFSCME. The appropriate form is available from the Union.
>
> If you are unable to complete the above steps within the initial filing deadline, you may request an extension from me by contacting me at (213) 206-8663.

Charging Party did not file an addendum to either grievance, nor did she refile the grievance on the new grievance form, or request an extension of time.

Charging Party alleges in each charge that she informed an unnamed agent of Respondent that "she might not file an addendum," and that the grievance, as filed, makes a complete statement.

Based on the facts as stated above, the charge fails to state a prima facie violation of the HEERA for the reasons which follow.

Charging Party alleges that an unfair practice occurred because the MOU mandates that UC process a grievance and the University has interfered with this right by suspending the processing of the grievances pending receipt of the addendum, and filing on the agreed-upon form.

The facts alleged fail to demonstrate that UC has breached the MOU. Article 6, section H.1.a. provides that a grievance not complying with the requirements prescribed by Article 6, including, a clear statement of the grievance and the relief sought, may be considered waived or withdrawn. When the Charging Party informed UC in the grievance forms that she intended to file an addendum to amend both the violation section and the remedy section, UC did not repudiate the MOU by requesting the additional facts and remedial demands before proceeding. Nor did the request to use the agreed-upon-form breach the MOU. Article 6. section A.2 also requires the use of the agreed-upon-form.

However, assuming arguendo that a breach of MOU's provisions for the grievance procedure occurred, a breach alone is not sufficient. PERB "shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter." Government Code section 3563.2(b).

Therefore, the question is whether UC's conduct independently violated the HEERA. In order to state a prima facie violation alleging interference with rights guaranteed by the HEERA, the Charging Party must allege at least slight harm results from the employer's conduct. Carlsbad Unified School District (1979) PER Decision No. 89; Regents of the University of California (1983) PERB Decision No. 308-H. In Regents, PERB held that employer conduct in connection with the processing of grievances is unlawful "if the impact of it is to deprive employees of their statutory rights to effectively present their grievances." That case found that denying a grievant multiple representatives did not establish harm to guaranteed employee rights.

The facts in this case reveal that Charging Party filed the grievances and that UC returned them, indicating that it would not proceed until the "addendum" was filed and the agreed-upon

form was used. These facts alone fail to raise a reasonable inference that UC would have refused to process the grievances if Charging Party had provided the addendum and the proper form. UC's representative, Rich, extended to Charging Party the option of requesting an extension of time if that was necessary. Charging Party took no other action upon receiving letters, either in terms of providing an addendum or requesting that the matters proceed on the basis that there was no new information to add at that time or requesting an extension of time to accomplish one of the above. As noted above, requesting the addendum and the agreed-upon form was not unreasonable in view of the language of the MOU. Therefore the facts alleged fail to demonstrate that UC effectively interfered with Charging Party's right to present grievances.

For these reasons, the above-referenced charges as presently written do 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 charges accordingly. The amended charges should be prepared on a standard PERB unfair practice charge form, each 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(s) must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive amended charge(s) or withdrawal(s) from you before May 27, 1988, I shall dismiss your charges. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely,

Sandra Owens Dennison
Regional Attorney

Attachment