STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

KAREN R. HAWKINS, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-3564 PERB Decision No. 1115 September 14, 1995

Appearance: Karen R. Hawkins, on her own behalf.

Before Carlyle, Garcia and Johnson, Members.

DECISION

GARCIA, Member: This case is on appeal by Karen R. Hawkins (Hawkins) from a Public Employment Relations Board (PERB or Board) agent's dismissal of her unfair practice charge which alleged that the District had violated EERA section 3543.5(a)[1] by taking a series of retaliatory actions against her in response to her engaging in protected activity.

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[1]**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. EERA section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, and Hawkins' appeal. Based upon this review, the Board finds that it lacks jurisdiction and affirms the Board agent's deferral to the grievance agreement between the parties in accordance with the following discussion.

BACKGROUND

Hawkins received a Notice of Unsatisfactory Service-Dismissal (NUS) on October 31, 1994. She then filed several grievances against her employer, the Los Angeles Unified School District (District), through her unit's exclusive representative, the California School Employees Association (CSEA), alleging violations of the collective bargaining agreement (CBA) in effect between June 1994 and April 1995.[2] After several meetings between CSEA and the District, the NUS was withdrawn on March 2, 1995. However, Hawkins' transfer to a different position was not rescinded, nor were all the documents relating to the NUS removed from Hawkins' personnel file.

On April 26, 1995, Hawkins filed an unfair practice charge against the District.

[2]The parties presently have a 1992-94 CBA in effect which is modified by the parties' 1994-95 memorandum of understanding (MOU).

WARNING AND DISMISSAL LETTERS

After investigating the charge, the Board agent dismissed it for lack of jurisdiction under Lake Elsinore School District (1987) PERB Decision No. 646 (Lake Elsinore).[3]

Hawkins filed an amended charge dated June 11, 1995 stating that although she had requested CSEA to file a grievance alleging a violation of the CBA's no-reprisal clause, CSEA did not do so. She stated that:

> My attempts and efforts were ignored and my request to file this grievance and others were not honored, nor was I given an explanation why they were not filed.
>
> As a result, the time perimeter [sic] in which to file a grievance . . . had past. That is the reason I filed an Unfair Practice Charge with PERB.

In the dismissal letter dated June 21, 1995, the Board agent noted that, according to the original charge, CSEA had filed a grievance alleging reprisal for exercise of Hawkins' rights under the CBA. If the basis for Hawkins' charge is that CSEA had not represented her fairly, Hawkins should file a charge against CSEA rather than the District. He then dismissed her charge and deferred it to arbitration.

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[3]The Board agent stated the Lake Elsinore criteria as: First, the grievance machinery of the agreement covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in the charge (retaliation for filing grievances) is arguably prohibited by the MOU.

HAWKINS' APPEAL

Hawkins filed a one-page appeal challenging the Board agent's conclusion. She repeated her claim that CSEA failed to file a grievance on her behalf regarding the District's alleged violation of the no-reprisal clause[4] in the parties' CBA and stated:

> Upon conclusion of PERB review and investigation, I believe PERB will discover prima facie and concur that the adverse acts against me are unethical, unprofessional, dishonest and in retaliation of my protected activities.

DISCUSSION

Hawkins' appeal raises the question of PERB jurisdiction over her reprisal allegation. However, she raised that issue before the Board agent and he correctly applied Lake Elsinore to conclude that PERB lacked jurisdiction over that allegation. There is nothing in her appeal to alter that conclusion; accordingly, the Board agrees with the Board agent that the entire charge, including the reprisal allegation, must be deferred.

ORDER

The Board hereby AFFIRMS the Board agent's refusal to issue a complaint and deferral to the contractual grievance agreement in Case No. LA-CE-3564.

Members Carlyle and Johnson joined in this Decision.

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[4]In her appeal, Hawkins refers to Article V, section 19.0; however, the copy of the MOU reviewed by PERB contains a no-reprisal clause in section 18.0 of Article V. In this decision, the no-reprisal clause will be referred to as Article V, section 18.0.