

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS SADDLEBACK VALLEY)
CHAPTER #616,)
)
Charging Party,) Case No. LA-CE-2109
)
v.) PERB Decision No. 558
)
SADDLEBACK VALLEY UNIFIED SCHOOL DISTRICT,) December 31, 1985
)
Respondent.)
_____)

Appearance: Steven E. Balentine for California School Employees Association and its Saddleback Valley Chapter #616.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California School Employees Association and its Saddleback Valley Chapter #616 (CSEA) of a Board agent's dismissal of its unfair practice charge against Saddleback Valley Unified School District (District). The charge was dismissed as untimely pursuant to Educational Employment Relations Act (EERA) section 3541.5(a)(1),¹ which prohibits the issuance of a

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

Section 3541.5 provides, in pertinent part:

(a) Any employee, employee organization, or employer shall have the right to file an

complaint based on an unfair practice occurring more than six months "prior to" the filing of the charge.

CSEA filed the underlying charge on December 21, 1984. It alleges that the District made an unlawful unilateral change when it adopted a proposal for a change in the employee medical/dental plan at a school board meeting on the evening of June 20, 1984.

On February 14, 1985, the Board agent advised CSEA that the alleged unfair practice had apparently occurred more than six months prior to the filing of the charge and, thus, did not meet the timeliness requirement of section 3541.5(a)(1). He said that the charge would be dismissed unless CSEA amended it to deal with that problem. On February 25, 1985, CSEA responded by arguing that the charge had been filed within the six-month period. On March 1, 1985, the charge was dismissed.

On appeal, CSEA argues again that it filed its charge within the six-month period. It asserts that the six month period immediately preceding the December 21, 1984 filing runs from June 20 to December 20 because the statutory language "prior to" should be read to exclude the date of filing itself.

After reviewing the record in light of the appeal, we

unfair practice charge, except that the board shall not do either of the following:
(1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; . . .

affirm the dismissal based on the reasons and calculations which follow.

DISCUSSION

The issue in this case is how the six-month statute of limitations period is to be calculated. Although we have not directly addressed this particular point before, we find it straightforward. The school board action took place on June 20, 1984. Consistent with section 12 of the Code of Civil Procedure,² we hold that the six-month period is to be computed by excluding the day the alleged misconduct took place and including the last day, unless the last day is a holiday, and then it also is excluded. Thus, the six-month period started on June 21, 1984, the day after the school board adopted the proposal, and ended at the close of business on December 20, 1984. For this reason, we find the charge filed on December 21, 1984 to be untimely and affirm its dismissal.

ORDER

We ORDER that the charge filed in Case No. LA-CE-2109 is hereby DISMISSED.

Members Jaeger and Morgenstern joined in this Decision.

²Section 12 of the California Code of Civil Procedure provides:

The time in which any act provided by law is to be done is computed by excluding the first day, and including the last, unless the last day is a holiday, and then it is also excluded.

PROOF OF SERVICE BY MAIL
C.C.P. 1013a

I declare that I am employed in the County of Sacramento, California.

I am over the age of 18 years and not a party to the within entitled cause; my business address is
1031 18th Street, Suite 200 Sacramento, California 95814

On December 31, 1985, I served the enclosed _____
(Date)

PERB Decision No. 558
Saddleback Valley Unified School District
Case No. LA-CE-2109

(Describe Document)

on the parties to this case by placing a true copy thereof enclosed in a sealed envelope with
postage thereon fully prepaid, in the United States Mail, Sacramento,
(City or Town)

California, addressed as follows:

Richard W. Callister
Director of Classified Personnel
Saddleback Valley Unified School District
25631 Diseno Drive
Mission Viejo, CA 92691

Steven E. Balentine
Field Representative, CSEA
326 West Katella Ave., #4-E
Orange, CA 92667

*I declare under penalty of perjury that the foregoing is true and correct and that this
declaration was executed on*

December 31, 19 85 at Sacramento, California.
(Date) (City or Town)

Teresa Stewart

(Type or print name)



(Signature)

