

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



WAYNE KAY HILL,)
)
 Charging Party,) Case No. LA-CE-2314
)
 v.) PERB Decision No. 579
)
 LUCIA MAR UNIFIED SCHOOL DISTRICT,) June 27, 1986
)
 Respondent.)
)
 _____)

Appearance; Wayne Kay Hill, on his own behalf.

Before Hesse, Chairperson; Morgenstern, Burt, Porter and Craib, Members.

DECISION

This case is before the Public Employment Relations Board (PERB) on appeal by Wayne Kay Hill of a regional attorney's dismissal, attached hereto, of Hill's charge alleging that the Lucia Mar Unified School District violated section 3543.5(a) of the Educational Employment Relations Act (EERA) (Gov. Code sec. 3540 et seq.). The regional attorney dismissed the charge on the ground that it had not been timely filed.

On appeal, Hill acknowledges the untimely filing, but asserts that he was "led to believe" that his phone contact with the regional attorney, which arguably fell within the six-month limitation period provided by statute,¹ would constitute a timely filing. The appeal, however, lacks specificity in that

¹EERA section 3541.5(a).

it fails to describe how Hill was purportedly misled by the regional attorney. We find Hill's general and unsupported assertion that he was misled to be insufficient to indicate any irregularity in the processing of his charge. We, therefore, adopt the regional attorney's finding that the charge was untimely filed.

ORDER

The unfair practice charge in Case No. LA-CE-2314 is hereby DISMISSED WITHOUT LEAVE TO AMEND.

By the BOARD.

²Hill also claims that he was not aware that, in order to be timely filed, a charge must be received in the appropriate regional office prior to the expiration of the six-month limitations period (or sent by U.S. certified mail and postmarked not later than the last day for filing). PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Specific inquiries concerning procedures for filing unfair practice charges may be directed to the regional offices. There is no indication that such inquiries were made in this case or that Hill received erroneous information concerning filing requirements.

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE
3470 WILSHIRE BLVD., SUITE 1001
LOS ANGELES, CALIFORNIA 90010
(2)3 736-3127



February 28, 1986

Wayne Kay Hill

Re: LA-CE-2314, Wayne Kay Hill v. Lucia Mar
Unified School District
DISMISSAL OF UNFAIR PRACTICE CHARGE

Dear Mr. Hill:

The above-referenced charge filed on January 21, 1986 alleges that from September 28, 1984 through June 1985 the Lucia Mar Unified School District unlawfully withheld money from the paycheck of Wayne Kay Hill for agency fees paid to his exclusive representative, the California School Employees Association (CSEA). This conduct is alleged to violate Government Code section 3543.5 (a) of the Educational Employment Relations Act (EERA).

Roger Smith indicated to you in his attached letter dated February 19, 1986 that certain allegations contained in the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to February 26, 1986, they would be dismissed.

We have not received either a request for withdrawal or an amended charge and are therefore dismissing those allegations which fail to state a prima facie based on the facts and reasons contained in Mr. Smith's February 19, 1986 letter.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

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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 March 20, 1986, or sent by telegraph or certified United States mail postmarked not later than March 20, 1986 (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, 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 each copy of a document served upon a party or filed with the Board itself. (See section 32140 for the required contents and a sample form.) The documents 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 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).

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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,

JEFFREY SLOAN
General Counsel

Barbara T. Stuart
Regional Attorney

BTS:eb

Attachment

cc: Robert Hoagland

PUBLIC EMPLOYMENT RELATIONS BOARD

LOS ANGELES REGIONAL OFFICE

3470 WILSHIRE BVD., SUITE 1001

LOS ANGELES, CALIFORNIA 90010

(213) 736-3127



February 19, 1986

Wayne Kay Hill

Re: LA-CE-2314, Wayne Kay Hill v. Lucia Mar Unified
School DistrictDear Mr. Hill:

The above-referenced charge filed on January 21, 1986 alleges that from September 28, 1984 through June 1985 the Lucia Mar Unified School District unlawfully withheld money from the paycheck of Wayne Kay Hill for agency fees paid to his exclusive representative, the California School Employees Association (CSEA). This conduct is alleged to violate Government Code section 3543.5(a) of the Educational Employment Relations Act (EERA).

Article XIII, section 3 of the 7/1/84 - 6/30/87 agreement between CSEA and the District reads:

The District will deduct an amount equal to CSEA dues from the salary warrant of any employee who does not request that such deduction not be made between September 1 - September 15, 1984. . . . It is understood and agreed that each unit member will be notified of his/her options.

On August 8, 1984, the District's supervisors distributed to the bargaining unit employees working during the summer written notification that they must request between September 1 and 15, 1984 that agency fees not be deducted. Mr. Hill claims he did not receive this notification from his supervisor. Having received no communication from Mr. Hill, the District deducted agency fees from his September 1984 and subsequent paychecks.

Mr. Hill filed a grievance regarding the District's conduct in March 1985 pursuant to the negotiated contract. The basis for the grievance was that the District failed to notify him that the contract required each employee requesting the elimination of agency fee deductions to submit a statement during the two-week period of time in September 1984. The District denied the grievance in April 1985 and Mr. Hill then filed a public

entity claim which the District's Board of Trustees denied on July 17, 1985. Mr. Hill left the employ of the District in June 1985.

In January 1986 Mr. Hill's attorney advised him of the role of the Public Employment Relations Board (PERB) in resolving employee-employer disputes. Mr. Hill immediately filed the instant charge.

The merits of this case will not be addressed because the charge is barred by the EERA's six-month statute of limitations. Government Code section 3541.5(a) provides in pertinent part:

Any employee, employee organization, or employer shall have the right to file an 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, . . .

In San Dieguito Union High School District (1982) PERB Decision No. 194, PERB held that, to state a prima facie violation, the charging party must allege and ultimately establish that the employer's conduct either occurred or was discovered within the six-month period immediately preceding the filing of the charge with PERB. This requirement cannot be excused by the fact that the charging party did not know of possible legal remedies through PERB until after the six-month period elapsed. In the instant case, the September 1984 withholding of wages constituted Mr. Hill's first knowledge of the alleged unfair practice. This charge was filed on January 21, 1986, 16 months, after the alleged unfair practice occurred.

Two exceptions to the six month filing requirement do exist. These are the doctrines of continuing violations and equitable tolling. However, even applying these doctrines the instant charge is not timely.

In San Dieguito Union High School District, supra, the Board stated that certain employer conduct may constitute a "continuing violation" where it is reimplemented or revived within the six-month period. It could be found that the employer's conduct in this case did constitute a continuing violation. While the Board has decided no cases on point, the

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National Labor Relations Board has found that an employer's unlawful monthly withholding of union dues is a continuing violation. Norfolk, Portsmouth Wholesale Beer Distributors Association (1972) 196 NLRB 1150 [80 LRRM 1235]. The instant case involving the District's alleged unlawful monthly withholding of agency fees arguably was also a continuing violation until Mr. Hill's departure from the District's employ in June 1985.

PERB recognizes the doctrine of equitable tolling as described in the case of Elkins v. Derby (1974) 12 Cal.3d 410. Tolling is permitted when a party pursues alternative administrative remedies, such as a grievance, which provide the respondent with notice that it should preserve relevant evidence. Los Angeles Unified School District (1982) PERB Decision No. 237.

Hill's public entity claim arguably tolled the statute of limitations until July 17, 1985. However, even so, more than six months elapsed between that date and the filing of the instant charge. Granting the public entity claim tolling status would mean that the charge had to be submitted by January 17, 1986 in order to be deemed timely.

For the above reasons, it is concluded that the unfair practice charge was not timely filed and must therefore be dismissed.

If you feel that there are facts which would correct the deficiencies explain 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, contains 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 on or before February 26, 1986, I shall dismiss your charge. If you have any questions on how to proceed, please call me at (213) 736-3127.

Sincerely yours,

Roger Smith
Labor Relations Specialist

RS:eb