STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES' ASSOCIATION, Charging Party, v. CALIFORNIA STATE UNIVERSITY, FULLERTON, Respondent.	)	Case No. LA-CE-141-H PERB Decision No. 605-H December 31, 1986

Appearances; Princess Grey, on her own behalf; Howard Schwartz, Attorney for California State Employees' Association; William B. Haughton, Attorney for California State University.

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

DECISION

BURT, Member: This case is before the Public Employment Relations Board (Board) on appeal by Princess Grey of a Board agent's order, attached hereto, entitled Order Granting Motion for Reconsideration and Motion to Dismiss Complaint. The complaint alleged that the California State University, Fullerton violated section 3571(a) of the Higher Education Employer-Employee Relations Act (Gov. Code sec. 3560 et seq.) by taking reprisals against Princess Grey.

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself, in that the charges were not timely filed.[1]

ORDER

The unfair practice charge in Case No. LA-CE-141-H is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Members Morgenstern and Porter joined in this Decision.

[1]Chairperson Hesse would dismiss the appeal on the grounds that Grey does not have standing to appeal. She concurs that the ALJ correctly relied upon Saddleback Valley Unified School District (1985) PERB Decision No. 558 in computing the six-month limitation on filing of charges.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party, v. CALIFORNIA STATE COLLEGE (FULLERTON), Respondent.	)	Case No. LA-CE-141-H ORDER GRANTING MOTION FOR RECONSIDERATION AND MOTION TO DISMISS COMPLAINT (3/26/86)

NOTICE IS HEREBY GIVEN that Respondent's Motion for Reconsideration of the Order Denying Respondent's Motion to Dismiss Complaint is granted. Consequently, the order issued March 3, 1986, is reversed. This reversal is due to an error that was made in computing the six-month limitations period established by subsection 3563.2(a) of HEEEA.

After further review of the method of computation employed by the Board in Saddleback Valley Unified School District (1985) PERB Decision No. 558, it is determined, for the reasons set forth below, that the charge is time-barred by subsection 3563.2(a) and the complaint must be dismissed.

PROCEDURAL HISTORY

The Motion to Dismiss Complaint was filed by Respondent on February 10, 1986. In response to a telephone call on

February 19, 1986, Mr. Louis Kiger, representative for the Charging Party, stated that he did not intend to submit a written response to the motion. At the informal conference on February 26, 1986, the undersigned told the parties that the motion would be denied by written order. Subsequently, the Order Denying the Motion to Dismiss was issued on March 3, 1986. On March 14, 1986, the Respondent filed the Motion for Reconsideration of the Order Denying Motion to Dismiss. In another telephone call to Mr. Kiger on March 18, 1986, he was informed that, it he desired, he had until March 24, 1986, to file a written response to the March 14 motion. As of March 25, no response was received.

DISCUSSION

The reversal of the original order denying the motion to dismiss is limited to the method that was used to compute the six-month limitations period for purposes of determining the timeliness of the charge. The discussion of relevant PERB and private sector case law concerning the statute of limitations contained in page 1 through page 6 (through the end of the paragraph 1) of the original order of March 3, 1986, is not changed by this order. Instead, it is incorporated here by reference as though fully set forth.

In Saddleback Valley Unified School District, supra, the

Board, in interpreting section 12 of the California Civil Code,[1] held that "the six-month period is to be computed by excluding the day the alleged misconduct took place and including the last day . . . . " In Saddleback the school board adopted a proposal on June 20. The Board calculated that " . . . 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." The Board then held that the charge, which was filed on December 21, 1984, was untimely. In this case Ms. Gray received the notice of rejection on March 13, 1985. Hence the statute of limitations began to run on March 14.[2] Based on the method of

[1]Section 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.

[2]It is undisputed by the parties that the grievance filed on March 6, 1985 by Miss Gray does not justify a tolling of the statute of limitations. In the March 6 grievance Miss Gray alleged she had been harassed by another employee. That grievance was resolved on March 26, 1985.

Further, it is undisputed by the parties that this grievance was not related to the letter of reprimand Miss Gray received on February 26, 1985, nor the notice of rejection received on March 13, 1985.

Under the collective bargaining agreement then in effect for Unit 7 employees, a grievance could not be filed over an oral or written reprimand. Article 11, section 11.6 stated that: "Reprimands are not subject to Article 7, Grievance Procedure, unless there is an alleged Agreement violation . . . ." Here, there was no allegation of breach of contract. However, the contract does provide that an employee

computation utilized by the Board in Saddleback, the last day CSEA could have filed a timely charge was September 13, 1985. Since the charge was not filed until September 16, 1985, the charge was untimely. Thus the charge and the complaint must be dismissed.

ORDER

Based on the reasons stated above, the complaint and the charge are DISMISSED in their entirety.

Pursuant to Public Employment Relations Board Regulation 32635 (California Administrative Code, title 8, part III),

---

Fn. 2 (Continued)

may request a conference over a written reprimand (Article 11, section 11.2.). Miss Gray received her reprimand on February 16, 1985. She requested a conference which was held on February 26, 1985. Thus, this matter was resolved approximately 3 weeks before Gray received her notice of rejection during probation.

Under the doctrine of equitable tolling, the conference would not justify a tolling of the statute of limitations. For the doctrine of equitable tolling to apply, two criteria must be met. First, the tolling must not frustrate the purposes of the statute of limitations provisions, which is meant to prevent surprises through the revival of old claims. Second, the tolling period must reflect the time during which an injured party "has several legal remedies and pursues one in good faith." California Dept, of Water Resources (1981) PERB Decision No. Ad-122-S. Miss Gray did not pursue any other legal remedy concerning the reprimand. Therefore, the doctrine clearly does not apply.

Finally, under Article 9, section 9.20 of the collective bargaining agreement, an employee rejected during probation is barred from utilizing the grievance procedure to appeal the decision to reject. In this case Miss Gray filed no grievances over the letter of rejection and hence tolling on this basis is not an issue.

Charging Party may appeal the dismissal of this complaint to the Board itself.

Review of Dismissal

Charging Party 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 order (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be filed in writing with the Board itself in the headquarters office by April 15, 1986 and shall be signed by the Charging Party or its agent. The Board's address is

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

If the Charging Party files a timely appeal to this dismissal, any other party may file with the Board itself an original and five copies of a statement in opposition within 20 days following the date of service of the appeal. Service and proof of service of the statement pursuant to section 32140 are required.

Final Date

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

Dated: March 26, 1986

W. Jean Thomas
Administrative Law Judge