STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SHEILA ANN HOPPER, Charging Party, v. UNITED TEACHERS OF LOS ANGELES, Respondent.	Case No. LA-CO-849-E PERB Decision No. 1441 May 31, 2001

Appearances: Garrard & Davis by Donald A. Garrard, Attorney, for Sheila Ann Hopper; Geffner & Bush by Steven K. Ury, Attorney, for United Teachers of Los Angeles.

Before Amador, Baker and Whitehead, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Sheila Ann Hopper (Hopper) of a Board agent's dismissal of her unfair practice charge. On August 17, 2000, Hopper filed a charge alleging that the United Teachers of Los Angeles (UTLA) violated the Educational Employment Relations Act (EERA)[1] by failing to provide notice to new employees of their right not to join the union. Hopper alleged that this conduct constituted a violation of EERA section 3543.[2]

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

[2]Section 3543 provides:

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge and attachments, the warning and dismissal letters, Hopper's appeal and UTLA's opposition. The Board dismisses the unfair practice charge, pursuant to the following discussion.

FACTUAL BACKGROUND

Hopper is a teacher in the Los Angeles Unified School District who has exercised her right not to be a member of UTLA. UTLA is the exclusive representative of the teacher's bargaining unit.

> (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees who are in a unit for which an exclusive representative has been selected, shall be required, as a condition of continued employment, to join the recognized employee organization or to pay the organization a fair share services fee, as required by Section 3546. If a majority of the members of a bargaining unit rescind that arrangement, either of the following options shall be applicable:
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> (1) The recognized employee organization may petition for the reinstatement of the arrangement described in subdivision (a) of Section 3546 pursuant to the procedures in paragraph (2) of subdivision (d) of Section 3546.
>
> (2) The employees may negotiate either of the two forms of organizational security described in subdivision (i) of Section 3540.1.
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> (b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

On August 17, 2000, Hopper filed an unfair practice charge which alleged that UTLA violated EERA section 3543 by giving new teachers an enrollment card which does not mention the option of not joining the union. Hopper also alleged that, since she became a member of UTLA in 1989,[3] UTLA has not put a notice in the UTLA paper or sent notice by mail informing individuals of this option. She asserted that the collective bargaining agreement subsection dealing with nonmembers is "nebulous and would have little or no meaning" to employees and that many employees do not have a copy of the collective bargaining agreement. Hopper alleged that "I learned of the legal and constitutional issues regarding the allegation of an unfair labor practice in May 2000."

UTLA's membership application is typically distributed to new employees at the time they complete their employment packet, or at an initial service meeting attended by new district employees. UTLA does not state in its membership application that new employees may refrain from joining the union.

EERA section 3543 states that public school employees shall have the right to refuse to join or participate in the activities of employee organizations. Hopper alleges that UTLA approached new employees with an application to join their membership, and discussed the benefits the union would provide, but did not mention the employee's right to refrain from joining. She asserted that UTLA has an affirmative duty to inform new employees of their right not to join the union.

On November 17, 2000, the Board agent issued a warning letter indicating that the charge did not state a prima facie case. The Board agent found that Hopper had not presented facts demonstrating the UTLA denied individuals their right to refrain from joining the

[3]It appears that Hopper withdrew her membership in UTLA prior to the filing of her unfair practice charge.

organization. Additionally, Section 3543 does not require the exclusive representative to inform new employees of their right not to join the union, and no other statute or case places this duty on an exclusive representative.

On November 27, 2000, Hopper filed an amended charge with the Board. This charge alleged that UTLA had violated sections 3540,[4] 3543, and 3543.6[5] of EERA by not giving notice to bargaining unit employees of their rights to: (1) decline to become members of UTLA; (2) object to payment of agency fee for non-representational activities of the union; and (3) object to and challenge the union's allocation of expenses for representational and non-representational activities. It further alleged that UTLA was in violation of the collective bargaining agreement between UTLA and Los Angeles Unified School District, and that UTLA's failure to give notice violated the First Amendment of the Constitution. The Board

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[4]Section 3540 describes the purposes of EERA. Since it was not clear in Hopper's allegations which purpose was being frustrated by UTLA, the Board agent presumed that she was alleging that UTLA harmed the employer-employee relationship by not providing notice to new employees of their rights, thus violating the general purposes of EERA.

[5]Section 3543.6 provides:

> It shall be unlawful for an employee organization to:
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> (a) Cause or attempt to cause a public school employer to violate Section 3543.5.
>
> (b) 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.
>
> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.
>
> (d) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

agent rejected all the claims set forth in the amended charge, and subsequently dismissed the unfair practice charge.

DISCUSSION

A. Jurisdiction[6]

EERA section 3541.5(a)(1) precludes PERB from issuing a complaint based on conduct that occurred more than six months prior to the filing of the charge.[7] (Peralta Community College District (1998) PERB Decision No. 1281.) The six-month statute of limitations is mandatory, and serves as a jurisdictional bar to charges filed outside the prescribed period. (Palm Springs Unified School District (1991) PERB Decision No. 888.) The charging party must establish timeliness as part of its prima facie case. (Regents of the University of California (1990) PERB Decision No. 826 (Regents); Davis Teachers Association, CTA/NEA (Heffner) (1995) PERB Order No. Ad-270 (Davis).) The Board has no discretion to waive the six-month period, as it has no power to entertain the case for lack of jurisdiction. (California

[6]The question of jurisdiction was never addressed by either the Board agent or the parties prior to the dismissal. UTLA did raise the question of jurisdiction in its response to Hopper's exceptions.

[7]EERA section 3541.5(a)(1) provides:

> The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:
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> (a) 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.

State University, San Diego (1989) PERB Decision No. 718-H; Regents.) Discovery of the legal significance of conduct of which a party has knowledge does not constitute belated discovery for purposes of EERA's statute of limitations. (California State Employees' Association (Darzins) (1985) PERB Decision No. 546-S (Darzins).)

In the instant case, Hopper alleges that since she became a member of UTLA in 1989, UTLA has not put a notice in the UTLA paper or sent notice by mail informing individuals of the option of not joining the union. Hopper offers nothing to explain why it took her some eleven years to file this unfair practice charge, other than that she learned of the legal and constitutional issues regarding the alleged unfair labor practice in May of 2000. Such a claim does not save the charge. (See Darzins, Davis.) Insofar as the allegations relate to Hopper individually, they are clearly untimely and are dismissed.

B. Standing

Hopper additionally alleges that UTLA's actions violate various rights of new teachers. Hopper has no standing to bring such an unfair practice charge. Hopper is not a member of the class which she claims has been harmed, i.e., new teachers who have not been properly informed of their rights by UTLA. Hopper has been a teacher since approximately 1989. There is no basis for her unfair practice charge. (Cf. Hayward Unified School District (1981) PERB Decision No. 172.) Hopper has suffered no harm in this case, nor does she have any potential for harm. She therefore has no standing to challenge UTLA's alleged failure to provide notice of certain rights. (Los Rios College Federation of Teachers (Deglow) (1992) PERB Decision No. 950.)

ORDER

The unfair practice charge in Case No. LA-CO-849-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.