

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MICHAEL WAYMIRE,

Charging Party,

v.

MONTEREY PENINSULA COMMUNITY
COLLEGE DISTRICT,

Respondent.

Case No. SF-CE-2177-E

PERB Decision No. 1449

June 25, 2001

Appearance: Michael Waymire, on his own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Michael Waymire (Waymire) of a Board agent's dismissal (attached) of his unfair practice charge.

The charge alleged that the Monterey Peninsula Community College District (District) violated section 3543.5 of the Educational Employment Relations Act (EERA)¹ by improperly calculating his holiday pay and other acts of discrimination.

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.5 states:

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

After reviewing the entire record in this case, including the original and amended unfair practice charge, the dismissal and warning letters, Waymire's appeal and the District's response, the Board finds the dismissal letter to be free from prejudicial error and adopts it as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-2177-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Whitehead joined in this Decision.

purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



April 27, 2001

Michael Waymire

Re: Michael Waymire v. Monterey Peninsula Community College District
Unfair Practice Charge No. SF-CE-2177-E
DISMISSAL LETTER

Dear Mr. Waymire:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 19, 2000. You allege that the Monterey Peninsula Community College District (District) violated the Educational Employment Relations Act (EERA)¹ by improperly calculating your holiday pay and other acts of discrimination.² We discussed your charge on January 31, 2001.

I indicated to you in my attached letter dated March 9, 2001, that the above-referenced 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. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 16, 2001, the charge would be dismissed. You requested and were granted an extension of time to amend your charge.

I received your amended charge on March 28, 2001. However, there were no facts which cured the deficiency which I described in my letter of March 9th. The actions taken by the District, which you allege were discriminatory and violate your rights under EERA, occurred outside the six month statutory limitations period. As set forth in my letter of March 9, the EERA prohibits PERB from issuing a complaint "based on an alleged unfair practice occurring more than six months prior to the filing of the charge". (Gov. Code section 3541.5(a)(1)). Because your charge is untimely, it must be dismissed.

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² You have also alleged discrimination based on sex, religion and several other prohibited bases. This agency has no jurisdiction to assist you in those matters. The appropriate state agency which addresses such an allegation is the California Department of Fair Employment and Housing.

In your amended charge, you state that, in my letter of March 9th (regarding SF-CO-580-E), I incorrectly stated that you had requested that PERB reopen your former unfair practice charge, SF-CO-522-E. Please be aware that the error was inadvertent and I apologize for any confusion which may have resulted.

You have also stated a request to have your case taken to a civil court outside the county of Monterey and state of California. PERB cannot provide you with advice or assistance with that request and can only suggest that you seek the assistance of a qualified attorney.

Right to Appeal

Pursuant to PERB Regulations³, 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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 and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

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

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: Daniel A. Osher

BMC

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



March 9, 2001

Michael Waymire

Re: Michael Waymire v. Monterey Peninsula Community College District
Unfair Practice Charge No. SF-CE-2177-E
WARNING LETTER

Dear Mr. Waymire:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 19, 2000. You allege that the Monterey Peninsula Community College District (District) violated the Educational Employment Relations Act (EERA)¹ by improperly calculating your holiday pay and other acts of discrimination.² We discussed your charge on January 31, 2001.

You allege that in 1993 the District engaged in prohibited business practices to provide overtime free work schedule for a union officer. You also allege that from 1996 to 1998 District officials engaged in various acts of reprisal against you including denial of a transfer request, assigning you an improper work schedule, failing to properly accommodate a disability and giving union representatives unauthorized access to your personnel file.

Your charge also states that in 1996 you filed grievances regarding eight contract violations. Between 1996 and 1998 you received settlement offers which you rejected. In July of 1998 negotiations over your grievances were postponed at the request of your doctor. On August 8, 2000 your doctor wrote to the District and stated that you could continue negotiations.

Based on the above information it appears that PERB lacks jurisdiction over your charge because it is untimely.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should

¹ EERA is codified at Government Code section 3540 et seq. The text of the EERA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² You have also alleged discrimination based on sex. This agency has no jurisdiction over sexual discrimination allegations. The appropriate state agency to address such an allegation is the California Department of Fair Employment and Housing.

have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

You have requested that the statutory limitation period be waived based on the District and your union operating outside the grievance rules between 9/96 and 1/98, the District taking 6 months to make a settlement offer to you in 1998, and what you consider poor legal representation by your attorneys. However, I am aware of no legal authority or case law to support such waiver of the statutory time limitation. Accordingly, your charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 16, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC