

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARY THORPE & LONG BEACH COUNCIL
OF CLASSIFIED EMPLOYEES, AFT
LOCAL 6108,

Charging Parties,

v.

LONG BEACH COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-4334-E

PERB Decision No. 1475

February 15, 2002

Appearances: Lawrence Rosenzweig, Attorney, for Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108; Parker & Covert LLP by Spencer E. Covert, Attorney, for Long Beach Community College District.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108 (Thorpe and AFT) of a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the Long Beach Community College District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by refusing to arbitrate Thorpe's grievance.

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all other references are to the Government Code. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

whether PERB has exclusive jurisdiction or whether the court has jurisdiction to decide the Petition to Compel Arbitration. The appeal before the Board states:

The purpose of this Appeal is to show that the dismissal of these charges is based upon a misapplication of the statute of limitations. However, in addition, Charging Parties also urge PERB to remand the matter to the Regional Attorney for a determination of whether PERB has jurisdiction at all. In particular, Charging Parties contend that, pursuant to Government Code Section 3541.5(b), PERB does not have jurisdiction to enforce the collective bargaining agreement between the District and the CSEA.

Thorpe and AFT's appeal essentially seeks an advisory opinion from PERB. As the timeliness of the charge is not established, the Board's inquiry into whether the charge states a prima facie case ends. (EERA section 3541.5(a)(1).) The Board declines to determine whether the untimely allegations constitute a violation of EERA. (Jefferson School District (1980) PERB Order No. Ad-82; Wilmar Union Elementary School District (2000) PERB Decision No. 1371.)

ORDER

The unfair practice charge in Case No. LA-CE-4334-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

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

The Board has reviewed the entire record in this case including the unfair practice charge, the dismissal letter, Thorpe and AFT's appeal and the District's response to the appeal. The Board agent correctly dismissed the charge as untimely. The Board finds the Board agent's dismissal letter to be free from prejudicial error and adopts it as the decision of the Board consistent with the following.

DISCUSSION

Thorpe and AFT argue that the charge alleges a continuing violation and is therefore timely. Thorpe and AFT claim the District's position constitutes a continuous refusal to arbitrate until a new agreement is reached with AFT, therefore the refusal to arbitrate is ongoing and the six-month statute of limitations does not bar the charge. The District correctly notes that Thorpe's grievance is the only dispute at issue in this matter, therefore the District's decision to arbitrate only with the California School Employees Association (CSEA) pertains only to Thorpe's grievance. Thorpe and AFT's continuing violation theory is rejected; the charge is untimely.

Thorpe and AFT's appeal noted that because the dismissal was based upon the statute of limitations, PERB has not resolved the issue presented to the Los Angeles Superior Court in Thorpe's Petition to Compel Arbitration case (Petition) against both CSEA and the District;

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

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

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
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November 8, 2001

Lawrence Rosenzweig, Attorney
2730 Wilshire Blvd., Suite 425
Santa Monica, CA 90403

Re: Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108 v. Long Beach Community College District
Unfair Practice Charge No. LA-CE-4334-E
DISMISSAL LETTER

Dear Mr. Rosenzweig:

This charge was filed October 10, 2001 by Mary Thorpe and Long Beach Council of Classified Employees, AFT Local 6108 (Thorpe and AFT) against the Long Beach Community College District (District). It is alleged that the District refused to arbitrate Ms. Thorpe's out-of-class grievance thereby repudiating a collective bargaining agreement and committing unilateral changes in working conditions. It is alleged the District has also denied AFT its rights. It is alleged that this conduct is in violation of Government Code section 34543.5(a) (b) and (c) of the Educational Employment Relations Act (EERA).¹

On November 7, 2001, I discussed concerns I had about this charge with you. You waived a Warning Letter for Charging Parties and I indicated I would send you a Dismissal Letter instead.

My investigation has revealed the following facts. CSEA was the exclusive representative of classified employees of the District until March 27, 2000 when it was decertified and AFT was declared the new exclusive representative.² The District and CSEA were parties to a collective bargaining agreement effective July 1, 1994 through June 30, 1997. The parties extended it to June 30, 1998.

Ms. Thorpe, a classified unit member represented then by CSEA filed a working out of class grievance on or about December 11, 1998 alleging a violation since April 2, 1998 of Articles XIII (Pay and Allowance) and XXIII (No Discrimination) of the Agreement. On September 14, 1999, CSEA advised the District that it was going to take the grievance to Level

¹ In Oxnard School District (Gorcey and Tripp) (1988) PERB Decision No. 667, it was held that individual employees did not have standing to allege that the employer refused to negotiate in good faith, in violation of EERA section 3543.5(c). Therefore, allegations of unilateral change as to Charging Party Thorpe are hereby dismissed.

² A tally of the ballots in the representation election occurred on March 10, 2000, and the Certification of Representative was issued on March 27, 2000.

IV-Arbitration. After CSEA lost the decertification election in March 2000, it advised Ms. Thorpe by letter dated March 17, 2000, that it could no longer represent her and proceed on the grievance to arbitration. Ms. Thorpe was advised to learn who her new representative was. After AFT decertified CSEA, the matter did not proceed to arbitration and the District has indicated that it will only arbitrate with CSEA, not the new exclusive representative, the AFT. CSEA has been advised of the District's position.

On February 23, 2001, Ms. Thorpe filed a Petition to Compel Arbitration seeking a court order requiring the District to arbitrate with CSEA or another organization. CSEA filed a demurrer arguing that the petition is within PERB's jurisdiction. The ruling on the demurrer was stayed. On September 26, 2001. The Court placed the case in abeyance for ninety (90) days. It directed Ms. Thorpe to file an Unfair Practice Charge at PERB. Charging Parties have filed this charge and a second charge against CSEA, LA-CO-1054.³ The court case is scheduled for January 2, 2002 for determining the status of the PERB matter.

Based on the above facts, the charge does not state a prima facie violation within PERB's jurisdiction.

Charging Parties allege that the District abrogated the contract and made unilateral changes in working conditions involving the grievance procedure. 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 have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) In a unilateral change case, the six month period begins running on the date the Charging Party has actual or constructive notice of the District's clear intent to implement a unilateral change in policy, provided that nothing subsequent to that date evidences a waivering of that intent. (The Regents of the University of California (1990) PERB Decision No. 826-H.) 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.)

In March 2000, CSEA was decertified by the AFT. CSEA advised Ms. Thorpe on March 17, 2000 that it would no longer represent her on her grievance. After AFT decertified CSEA. the District refused to arbitrate the case, except with CSEA. Based on this, on February 23, 2001, Ms. Thorpe filed a Petition to Compel Arbitration in Court. The Charging Parties were aware of the District's alleged changes in policy regarding arbitration during the year 2000. Even assuming that they did not have full knowledge until February 23, 2001, when the Petition was filed, they had until August 23, 2001 to file a charge. As this charge was filed October 10, 2001, it is untimely and is hereby dismissed.

³ I issued a Dismissal Letter on November 1, 2001 in Case No. LA-CO-1054-E.

Right to Appeal

Pursuant to PERB Regulations,⁴ 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

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).)

⁴ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 _____
Marc S. Hurwitz
Regional Attorney

cc: Spencer E. Covert, Esq. Parker & Covert, LLP.

MSH