

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



RUBEN S. KEYMOLENT,

Charging Party,

v.

CITY OF SANTA CLARITA,

Respondent.

Case No. LA-CE-299-M
PERB Decision No. 1865-M
December 7, 2006

Appearance: Grace White, Attorney, for Ruben S. Keymolent.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Ruben S. Keymolent (Keymolent) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the City of Santa Clarita (City) violated the Meyers-Milias-Brown Act (MMBA)¹ by retaliating against Keymolent and denying him union representation.

The Board has reviewed the entire record in this case, including, but not limited to, the unfair practice charge, the amended unfair practice charge, the warning and dismissal letters, and Keymolent's appeal. Based on a review of the complete record, the Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

DISCUSSION

Keymolent was employed until July 14, 2006, by Veolia/Connex/ATC, a private provider of transportation services that contracts with the City. Keymolent alleges that he was terminated from employment because of filing this charge, the employer disciplined him and

¹The MMBA is codified at Government Code section 3500, et seq.

treated him inhumanly because he sent a letter to the county supervisor, and his employer suspended him without providing union representation.

None of the information provided demonstrates that Keymolent is a public employee. The Board agent appropriately cites Fresno Unified School District (1979) PERB Decision No. 82, to validate this conclusion. Veolia/Connex/ATC is a private company that contracts with a public employer. It is also useful to note that Andy Perry, labor representative for Teamsters Local 986, confirmed that Keymolent was not a public employee.

ORDER

The unfair practice charge in Case No. LA-CE-299-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shek and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-3008
Fax: (213) 736-4901



August 22, 2006

Grace White, Attorney
21650 Oxnard Street
Woodland Hills, CA 91367

Re: Ruben S. Keymolent v. City of Santa Clarita
Unfair Practice Charge No. LA-CE-299-M
DISMISSAL LETTER

Dear Ms. White:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 13, 2006. Ruben S. Keymolent alleges that the City of Santa Clarita (City) violated the Meyers-Miliias-Brown Act (MMBA)¹ by retaliating against him and by denying union representation.

I indicated to him in my attached letter dated July 19, 2006, that the above-referenced charge did not state a prima facie case. He was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, he should amend the charge. He was further advised that, unless he amended the charge to state a prima facie case or withdrew it prior to July 26, 2006, the charge would be dismissed.

On July 24, 2006, I received Mr. Keymolent's letter dated July 21, 2006 and on August 22, 2006, you provided a proof of service showing the letter was served on the City.

In his letter Mr. Keymolent states that he indicated on his unfair practice charge form that the City is under the jurisdiction of the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities Code sec. 99560 et seq.). He states "Santa Clarita Transit, a division of Veolia[,] is 'involved' a hundred percent in this unfair complaint" because everything at his work site has the Santa Clarita City Seal including a big sign in front of the Santa Clarita maintenance facility and every bus in the city has the same seal. Moreover, he asserts that the City is his employer because the City pays Veolia and because the supervisors give him instructions in the same physical location where City offices are located (28250 Constellation Road, Santa Clarita). Finally, he asserts he is a City employee because when he asked his supervisors why they all have to work on holidays the supervisors replied that it was the City's decision.

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

He also states that if any federal laws were violated "they were instructed by Santa Clarita City or transportation facility." He also states the City is the main employer and they own everything. He also states ATC Van Com just has two old trucks and a van.

Finally, he states that on July 17, 2006, he came to the Los Angeles Regional Office of PERB and told me Veolia terminated him because he filed this unfair practice charge.

He also states he was referred to PERB by the Labor Department in Van Nuys and he believes PERB is avoiding responsibility by telling him his charge is outside of PERB's jurisdiction.

Discussion

On July 28, 2006, I contacted you since you were representing Mr. Keymolent in another unfair practice charge filed by Mr. Keymolent on July 21, 2006.

On July 31, 2006, I received a notice of appearance indicating you were representing Mr. Keymolent in this case. The same day, I sent you a copy of my July 19, 2006 Warning Letter and I gave you until August 7, 2006, to file an amended charge. You have not filed an amended charge and none of the information Mr. Keymolent provided in his July 21, 2006 letter demonstrates that he is a public employee and that his dispute falls within PERB's jurisdiction. Therefore, I am dismissing the charge based on the facts and reasons contained in my July 19, 2006 letter.

Right to Appeal

Pursuant to PERB Regulations,² 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also 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,

ROBIN WESLEY
Acting General Counsel

By

Mary Creith
Regional Attorney

Attachment

cc: Paul Tucker, Director of Maintenance

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-3008
Fax: (213) 736-4901



July 19, 2006

Ruben S. Keymolent

Re: Ruben S. Keymolent v. City of Santa Clarita
Unfair Practice Charge No. LA-CE-299-M
WARNING LETTER

Dear Mr. Keymolent:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 13, 2006. You allege that the City of Santa Clarita violated the Meyers-Milias-Brown Act (MMBA)¹ by retaliating against you and by denying union representation.

Until July 14, 2006, you were employed by Veolia/Connex/ATC, a private provider of transportation services that contracts with the City of Santa Clarita. You allege that: (1) you were terminated from your employment because you filed this charge; (2) your employer disciplined you and treated you inhumanely because you sent a letter to the County Supervisor; and (3) your employer suspended you without providing union representation.

You state that you were employed by the City of Santa Clarita Transportation Department and Veolia/Connex/ATC, a private company that contracts with the City to provide transportation services. You were paid by ATC and ATC is written on the buses. There is a union contract between ATC and Teamsters Local 986. Your union representative is Andy Perry. You told me your supervisor was Paul Tucker and he is the one that terminated your employment. You said Tucker is employed by the City of Santa Clarita and Veolia/Connex/ATC.

On July 19, 2006 I contacted Mr. Perry and he confirmed that he is a labor representative for Teamsters Local 986. He stated you were employed by ATC/Van Com/Veolia but you were terminated. He also stated you filed a grievance and a meeting regarding your grievance is scheduled for July 26, 2006. He said ATC/Van Com/Veolia is a private company and that the contract between ATC/Van Com/Veolia and Local 986 falls under the purview of the National Labor Relations Board and the National Labor Relations Act. Mr. Perry stated you were not a state or public employee and you had the right to present claims to the National Labor Relations Board.

Discussion

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

July 19, 2006

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The Public Employment Relations Board (PERB or Board) is a quasi-judicial administrative agency charged with administering the collective bargaining statutes covering public employees. PERB only has jurisdiction over public employees and it does not have any authority over collective bargaining laws covering employees of private companies. The National Labor Relations Board has jurisdiction and authority over collective bargaining laws covering employees of private companies. You assert that you were a public employee since you worked for ATC/Connex/ATC which contracted with the City of Santa Clarita to provide public transportation.

In a case similar to yours, PERB decided that employees of a private company that contracted to provide transportation services to the Fresno Unified School District were private employees and not public employees because the dismissal of the employees was carried out by supervisory personnel at the private company and Fresno Unified School District personnel were not in any way involved with the dismissals. (Fresno Unified School District (1979) PERB Decision No. 82.) Since the employees were not found to be public employees, PERB had no jurisdiction over their claims and PERB dismissed their unfair practice charge.

Similar to the facts in Fresno described above, Veolia/Connex/ATC is a private entity that contracts with a public employer, the City of Santa Clarita, to provide transportation services. Also similar to the facts in Fresno, your supervisor, Paul Tucker, was a Veolia/Connex/ATC employee and he terminated your employment. Nobody from the City of Santa Clarita was involved in Veolia/Connex/ATC's termination of your employment. Therefore, the information you have provided indicates you were an employee of a private company and you were not a public employee. As PERB lacks jurisdiction over private employees, your allegations must be dismissed. Please note that as an employee of a private company, your allegations are more properly considered by the National Labor Relations Board.

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 that 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 July 26, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Mary Creith
Regional Attorney

MC