STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TURLOCK IRRIGATION DISTRICT TECHNICAL EMPLOYEES ASSOCIATION, Charging Party, v. TURLOCK IRRIGATION DISTRICT, Respondent.	Case No. SA-CE-400-M PERB Decision No. 1896-M March 28, 2007

Appearances: W. Robert Phibbs, Attorney, for Turlock Irrigation District Technical Employees Association; Littler Mendelson by Bruce M. Timm, Attorney, for Turlock Irrigation District.

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Turlock Irrigation District Technical Employees Association (Association or TIDTEA) of the dismissal of its unfair practice charge. The unfair practice charge alleged that the Turlock Irrigation District (District) improperly denied the Association's petition for recognition (petition), failed to "meet and confer" with the Association prior to doing so, and thus denied the bargaining unit members their right to representation. The Association alleged that this conduct constituted a violation of sections 3502 and 3507(c) of the Meyers-Milias-Brown Act (MMBA)[1].

The Board has reviewed the entire record in this matter, including but not limited to the unfair practice charge, the District's position statement, the warning and dismissal letters, the

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

Association's appeal letter, and the District's opposition to the appeal. We affirm the Board agent's dismissal of the unfair practice charge.

BACKGROUND

The Association filed its petition for recognition to modify an established appropriate unit on September 1, 2005, under the rules established by the District's Employer-Employee Relations Resolution (EERR). In its petition, the Association sought to establish a separate unit for employees in the electrical control and electronic technical service and repair fields.[2] The existing bargaining unit is also comprised of clerical, construction, water distribution, customer service and maintenance employees.

Section 9 of the EERR governs the District's response to a recognition petition. It provides that upon receipt of the petition, the District's Employee Relations Officer (ERO) shall determine whether: (1) there has been compliance with the requirements for a recognition petition, and (2) the proposed representation unit is an appropriate unit. (EERR Sec. 9.A.) If the ERO makes an affirmative determination with regard to these two issues, he/she shall give written notice. (EERR Sec. 9.B.) On the other hand, if either of the two matters under Section 9.A is not affirmatively determined, the ERO "shall offer to consult thereon with such petitioning employee organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing." (EERR Sec. 9.C.)

The District rejected the petition by letter dated October 28, 2005. In this letter, the District offered to consider any input the Association might provide regarding this matter. The letter specifically referenced Section 13.B of the EERR, which provides that the ERO shall

[2]Such a petition would be termed a "severance petition" under PERB rules, but the local rules required it to be filed as a "recognition petition."

modify units in accordance with the EERR "after notice to and consultation with affected employee organizations."

The Association appealed the rejection of the petition to the District's Board of Directors (Board of Directors) by letter dated November 9, 2005. The letter stated, "Prior to moving forward with the appeal, however, TIDTEA accepts Mr. Purdy's [the ERO] invitation to meet and consider additional input pursuant to Section 13.B of the EERR." This letter requested that the District extend the deadline for filing an appeal so that the parties could discuss additional input. The Association alleges that it received no further response from the ERO.

On December 28, 2005, the Association provided further written information to the Board of Directors for consideration. The counsel for the Association stated that he would make himself available during the January 3, 2006, Board of Directors meeting to discuss any questions or concerns. The Board of Directors denied the appeal at the January 3, 2006 meeting, and confirmed this result by letter dated January 10, 2006.

The Association filed an unfair practice charge on June 30, 2006, alleging that the District violated the MMBA by: (1) denying the Association's petition and thus denying the Association members their statutory right of representation; (2) improperly applying the EERR to unreasonably withhold recognition of an employee organization; and (3) failing to meet with the Association and to engage in a "meaningful dialogue" regarding the petition.

The Board agent's warning and dismissal letters concluded that the District had satisfied its obligation under EERR Section 9 to "offer to consult" with and "inform" the petitioning employee organization by its October 28, 2005 letter. In addition, the Board agent found that the Association had provided input to the District in its December 28, 2005 letter. The Board agent found that the Association failed to state a prima facie case since it had not

shown that the District had failed and/or refused to comply with its local rules. The Board agent thus dismissed the allegations, including the derivative allegation that the District had denied the bargaining unit members their right to representation.

In its October 17, 2006 appeal, the Association contends that the District failed to "consult" with and "inform" the Association with regard to its petition. More specifically, the Association alleges that the District was required to "meet and confer" in good faith with the representatives of the Association by engaging in a "meaningful dialogue."

DISCUSSION

To determine whether a charge alleges a prima facie case, the Board must assume that the essential facts alleged in the charge are true. (San Juan Unified School District (1977) EERB[3] Decision No. 12.)

In the warning letter, the Board agent cited the statement in the Westlands Water District (2004) PERB Decision No. 1622-M (Westlands) decision that "[w]ith respect to a unit determination decision under the MMBA, an unfair practice occurs only where it is alleged that the local rule itself is invalid or where there has been unlawful interference or denial of rights." Although this portion of Westlands is now moot,[4] we agree with the Board agent's finding that the Association has failed to establish a prima facie case that the District had failed and/or refused to comply with its local rules.

[3]Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

[4]The Westlands decision further stated that "[w]here a party instead seeks review of the unit determination decision itself, a petition for Board review should be filed. (PERB Reg. 60000, et seq.)" (Westlands. at p. 8, fn. 6; PERB regs. are codified at Cal. Code Regs, tit. 8, sec. 31001, et seq.) Because the Board repealed Regulations 60000 through 60070 on February 9, 2006, effective May 11, 2006, this rule of Westlands has no further application. Parties have the right to seek review of local agencies' unit determination decisions under the MMBA by filing unfair practice charges.

The Association alleged that the District denied the Association its rights by failing to comply with the requirements of EERR Section 9.C. Under that section, if the ERO determines there has not been compliance with the requirements for a recognition petition, and/or that the proposed representation unit is not an appropriate unit pursuant to EERR Section 9.A., the ERO "shall offer to consult thereon with such petitioning employee organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing." (EERR Sec. 9.C, emphasis added.) This provision appears to require the District to do three things in sequence: (1) make a determination as to the appropriateness of the unit, (2) if the determination is negative pursuant to EERR Sec. 9.A., the ERO shall "offer to consult" with the Association regarding an adverse determination, and (3) after consultation, "inform" the Association in writing of the reasons for an adverse determination.

In a letter dated October 28, 2005, the ERO simultaneously rejected the petition, detailed the reasons for rejection, and made an "offer to consult."[5] Instead of

[5]Under the definition in the EERR, the term "offer to consult" in Section 9 of the EERR does not require the District to "meet and confer," or bargain, over the decision, and does not require face-to-face meetings. Section 3.D of the EERR specifically defines "consult/consultation in good faith" to mean:

> ... to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counter-proposals with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV hereof [impasse procedures].
> (EERR sec. 3.D, emphasis added.)

In addition, the MMBA does not require the District to "meet and confer," or bargain, with employee organizations regarding unit determination decisions made pursuant to its local rules. Under the MMBA, a public agency must bargain with any recognized employee representative "prior to adopting (or modifying) rules and regulations themselves, but it need not do so when

providing further input to the ERO, the Association sent a letter on November 9, 2005 to the Board of Directors appealing the ERO's decision. The appeal letter stated that the Association accepted the ERO's invitation to "meet and consult" on the issues. The District also sought to extend the appeal deadlines so that the parties could discuss the Association's additional input. The Association allegedly received no further response from the ERO.

The Board concludes that the ERO's actions in this case were sufficient to satisfy Section 9.C of the EERR. The unfair practice charge does not contain any allegations that the Association attempted to schedule a meeting with the ERO or otherwise provided any further input to the ERO. The Board finds that, for the purposes of this unfair practice charge, the Association's apparent failure to provide additional information to the ERO, in addition to its immediate appeal of the matter to the Board of Directors, excused the ERO from any further obligation to "inform" the Association of its determination after consultation.[6] Therefore, the Board finds that this process satisfied the relevant provisions of the EERR, and affirms the Board agent's dismissal of this allegation.

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determining whether an individual proposed bargaining unit is appropriate under rules previously adopted." (Service Employees Internat. Union v. City of Santa Barbara (1981) 125 Cal.App.3d 459, 469 [178 Cal.Rptr. 89], emphasis added.)

[6]While there is no allegation that the ERO had any further communications with the Association, the Board of Directors, in a letter dated December 13, 2005, also offered to consider any written input from the Association:

> We have received your appeal in the above-referenced matter, dated November 9, 2005. Please be advised that the Board will consider this appeal at its meeting scheduled for January 3, 2006. If you wish to provide any additional information for the Board to consider in its deliberations, please do so in writing to me prior to December 29, 2005.

In a letter dated December 28, 2005, the Association provided additional information for consideration by the Board of Directors at its January 3, 2006 meeting.

The Statute of Limitations Defense

Finally, the District contends that the six-month statute of limitations bars the Association's unfair practice charge.[7] We disagree.

The District argues that the six-month limitations period began to run on October 28, 2005, when the District initially rejected the petition. Alternatively, the District argues that the limitations period began to run on November 9, 2005, the date of the Association's appeal to the Board of Directors, or prior to December 30, 2005, before which the actions constituting failure to meet and confer should have taken place. Furthermore, the District argues that tolling of the statute of limitations should not occur under the MMBA because there is no express statutory authorization for tolling.

The Board finds that the statute of limitations for the unfair practice charge began to run on January 3, 2006, when the Board of Directors denied the Association's appeal. This holding is consistent with former PERB Regulations 60000, et seq., which had required petitions for Board review to be filed "30 days following exhaustion of administrative remedies available under the applicable local rules." Requiring exhaustion of local administrative remedies furthers the purpose of encouraging the resolution of disputes through collectively bargained procedures. Thus, under Regulation 32603, the limitations period for the unfair practice charge in this case did not elapse until July 3, 2006. The Association's charge filed on June 30, 2006, was therefore timely.

[7]The warning and dismissal letters did not discuss the statute of limitations issue.

ORDER

The unfair practice charge in Case No. SA-CE-400-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.