

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DANIEL JAMES TREAS,

Charging Party,

v.

INLANDBOATMANS UNION OF THE PACIFIC,

Respondent.

Case No. SF-CO-149-M

PERB Decision No. 1919-M

August 10, 2007

Appearance: Daniel James Treas, on his own behalf.

Before Duncan, Chairman; Shek and Wesley, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Daniel James Treas of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Inlandboatmans Union of the Pacific (Union)¹ violated the Meyers-Milias-Brown Act (MMBA)² by failing to secure his sick leave and lunch time pay.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the warning and dismissal letters, and the appeal of the dismissal. The Board finds the Board agent's warning and dismissal letters to be without prejudicial error and adopts them as the decision of the Board itself.

¹While transit districts, with their own statutorily prescribed method of administering employer-employee relations, are not subject to the MMBA (see Rae v. Bay Area Rapid Transit Supervisory Etc. Assn. (1980) 114 Cal.App.3d 147, 251 [170 Cal.Rptr. 448]), the Golden Gate Transportation District is a "public agency" within the meaning of MMBA section 3501(c). Therefore, the Board has jurisdiction to decide this case involving this "recognized employee organization" under MMBA section 3501(b).

²MMBA is codified at Government Code section 3500, et seq.

ORDER

The unfair practice charge in Case No. SF-CO-149-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Shek and Wesley joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1022
Fax: (510) 622-1027



April 16, 2007

Daniel Treas

Re: Daniel James Treas v. Inlandboatmans Union of the Pacific
Unfair Practice Charge No. SF-CO-149-M
DISMISSAL LETTER

Dear Mr. Treas:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 8, 2007. Daniel James Treas alleges that the Inlandboatmans Union of the Pacific violated the Meyers-Milius-Brown Act (MMBA)¹ by failing to secure his sick leave and lunch time pay.

I indicated to you in my attached letter dated April 2, 2007, 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 April 9, 2007, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my April 2, 2007, 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

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.

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

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
(916) 322-8231
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.)

SF-CO-149-M

April 16, 2007

Page 3

Final Date

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

Sincerely,

TAMI R. BOGERT
General Counsel

By _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: Dmitri Iglitzin

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
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Fax: (510) 622-1027



April 2, 2007

Daniel Treas

Re: Daniel James Treas v. Inlandboatmans Union of the Pacific
Unfair Practice Charge No. SF-CO-149-M
WARNING LETTER

Dear Mr. Treas:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 8, 2007. Daniel James Treas alleges that the Inlandboatmans Union of the Pacific violated the Meyers-Milias-Brown Act (MMBA)¹ by failing to secure his sick leave and lunch time pay.

Investigation of the charge revealed the following. You are employed by the Golden Gate Transportation District as a Deckhand on the Golden Gate Ferry. As such, you are exclusively represented by the Inlandboatmen's Union. The Union and the District are parties to a collective bargaining agreement, which was not provided with the charge.

On May 2, 2006, you received a letter from the District informing you of your assignment as a provisional deckhand during the 2006 baseball season. The letter stated in pertinent part as follows:

While the District and your Union are still discussing the option of making provisional appointments to allow us to offer benefits for work during the baseball season, the District will provide you the following benefits while we continue working toward a resolution of this matter. Beginning in April, and until the baseball schedule terminates towards the end of September, you will receive:

- * Medical benefits
- * Pension contributions
- * Fixed or observed holiday pay
- * Sick leave and vacation accruals

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.

On January 5, 2007, Charging Party filed a grievance against the District alleging the District failed to provide him sick leave, holiday pay and a uniform allowance. The status of this grievance is unclear.

Based on the above stated facts, the charge as presently written, fails to state a prima facie violation of the MMBA, for the reasons provided below.

Charging Party contends the Union violated its duty of fair representation. However, Charging Party fails to provide any facts regarding his contact with the union. The charge is devoid of any facts regarding when the Charging Party contacted the Union about this problem, whom he spoke with and what their response was. Without such information, it is impossible for PERB to determine if a violation has occurred.

Should Charging Party wish to file an amended charge, the following is the standard that will be applied by PERB to such allegations. While the MMBA does not expressly impose a statutory duty of fair representation upon employee organizations, the courts have held that "unions owe a duty of fair representation to their members, and this requires them to refrain from representing their members arbitrarily, discriminatorily, or in bad faith." (Hussey v. Operating Engineers (1995) 35 Cal.App.4th 1213 [42 Cal.Rptr.2d 389].) In Hussey, the court further held that the duty of fair representation is not breached by mere negligence and that a union is to be "accorded wide latitude in the representation of its members . . . absent a showing of arbitrary exercise of the union's power."

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in Coalition of University Employees (Buxton) (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting Dutrisac v. Caterpillar Tractor Co. (9th Cir. 1983) 749 F.2d 1270 [113 LRRM 3532], at p. 1274; see also, Robesky v. Quantas Empire Airways Limited (9th Cir. 1978) 573 F.2d 1082 [98 LRRM 2090].)

In International Association of Machinists (Attard) (2002) PERB Decision No. 1474-M, the Board determined that it is appropriate in duty of fair representation cases to apply precedent developed under the other acts administered by the Board. The Board noted that its decisions in such cases, including Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332 and American Federation of State, County and Municipal Employees, Local 2620 (Moore) (1988) PERB Decision No. 683-S, are consistent with the approach of both Hussey and federal precedent (Vaca v. Sipes (1967) 386 U.S. 171 [64 LRRM 2369]).

Thus, in order to state a prima facie violation of the duty of fair representation under the MMBA, a charging party must at a minimum include an assertion of facts from which it becomes apparent in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (International Association of Machinists (Attard) (2002) PERB Decision No. 1474-M.) The burden is on the charging party to show how an exclusive representative abused its discretion, and not on the exclusive representative

to show how it properly exercised its discretion. (United Teachers – Los Angeles (Wylor) (1993) PERB Decision No. 970.)

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 April 9, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR