STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RON MONTGOMERY REED KROOPKIN, Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 221, Respondent.	Case No. LA-CO-69-M PERB Decision No. 2006-M February 27, 2009

Appearance: Jeff Geraci, Attorney, for Ron Montgomery Reed Kroopkin.

Before Neuwald, Wesley and Dowdin Calvillo, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Ron Montgomery Reed Kroopkin (Kroopkin) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the Service Employees International Union, Local 221 (Local 221) violated the Meyers-Milias-Brown Act (MMBA)[1] by retaliating against Kroopkin for engaging in protected activity. Kroopkin alleged that this conduct constituted a violation of MMBA sections 3502, 3502.1 and 3506.

The Board has reviewed the entire record in this matter, including but not limited to, the original and amended unfair practice charge, Local 221's position statement, the Board agent's warning and dismissal letters, and Kroopkin's appeal. Based on this review, the Board finds the Board agent's warning and dismissal letters to be a correct statement of the law and well reasoned, and therefore adopts them as the decision of the Board itself, as supplemented by the discussion below.

[1]MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

DISCUSSION

Kroopkin alleges for the first time in his appeal that his nonattendance at Employment and Eligibility Labor/Management Meetings (Labor/Management Meetings) was conditioned on Local 221 filing an unfair practice charge over the County's decision to suspend the meetings. According to Kroopkin, Local 221's members agreed that an unfair practice charge should be filed, but Local 221 never did so.

PERB Regulation 32635(b)[2] provides in full: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (Sacramento City Teachers Association (Ferreira) (2002) PERB Decision No. 1503.) Here, there is no good cause to consider the new allegation that Local 221 failed to file an unfair practice charge over the suspension of the Labor/Management Meetings because it is based on facts that occurred before the dismissal of the charge and thus could have been included in an amended charge. (See American Federation of Teachers, Local 1521 (Paige) (2005) PERB Decision No. 1769 [no good cause when charging party could have presented new allegation in charge or amended charge].)

ORDER

The unfair practice charge in Case No. LA-CO-69-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Wesley and Dowdin Calvillo joined in this Decision.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
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December 19, 2008

Jeff Geraci, Attorney
Law Office of Jeff Geraci
2550 Fifth Avenue, Ninth Floor
San Diego, CA 92103

Re: Ron Montgomery Reed "MONTY" Kroopkin v. SEIU Local 221
Unfair Practice Charge No. LA-CO-69-M
DISMISSAL LETTER

Dear Mr. Geraci:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 26, 2008 and was amended on April 8, 2008. Ron Montgomery Reed "MONTY" Kroopkin[1] alleges that SEIU Local 221 (Local 221 or Union) violated sections 3502, 3502.1 and 3506 of the Meyers-Milias-Brown Act (MMBA or Act)[2] by retaliating against him for engaging in protected activity.

Mr. Geraci was informed in the attached Warning Letter dated November 14, 2008, that the above-referenced charge did not state a prima facie case. Mr. Geraci was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in the November 14 Warning Letter, he should amend the charge. Mr. Geraci was further advised that, unless the charge was amended to state a prima facie case or withdrawn prior to November 26, 2008, the charge would be dismissed.

On November 25 and December 4, 2008, Mr. Geraci requested and received extensions of time to file an amended charge. On December 12, 2008, PERB received an amended charge in the above-referenced case. The December 12 amended charge provides in relevant part:

> The approximately 2,000 people to whom the County's defamatory letter[3] was published are not only union members,

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[1] Mr. Kroopkin is represented by attorney Jeff Geraci.

[2] 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.

[3] In a letter dated August 23, 2007, the County wrote:

> As a result of the incident involving SEIU Steward, Monty Kroopkin, members of the management feel threatened and have requested that Labor Relations suspend the E & E

> they are Mr. Kroopkin's co-workers. There is an undeniable, daily impact on his working conditions as a result of the Union choosing to publish the information in the manner that it did. While there may be situations in which publishing the information about one employee would not harm his working relationships, this is not one of them. Each of these co-workers, and potential co-workers and supervisors, was notified that Mr. Kroopkin made "threats" of such magnitude that multiple "members of management feel threatened," and that they no longer felt "safe" to attend a long standing meeting, and, because "employee safety," is the County's "number one priority," the meeting had to be completely suspended. It is clear that attitudes toward a co-worker identified in this way would be changed. At a minimum, it is enough to allow a full evidentiary hearing to determine the extent of the negative impact the publication of information has had on Mr. Kroopkin.
>
> The future impact of the information is also obvious. People who now, or will in the future, have input into promotional and other employment decisions, have information which is likely to disqualify Mr. Kroopkin and certainly places him at a severe disadvantage. It also exposes him to further retaliation by the County. He has filed multiple grievances and Unfair Labor Practice charges. A publication of this type is known to his supervisors and to Labor Relations and makes it far more likely actions will be taken against him in the future. It is inevitable that he has been marginalized and made to appear that not only will the County will [sic] threaten to, or actually discipline him, it

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> Labor/Management Meeting. This meeting is a valuable source of information for both SEIU and the County; however, employee safety is the County's number one priority. At this time the E & E Labor/Management Meeting will be suspended indefinitely.

On August 27, 2007, Local 221 President Sharon-Frances Moore sent a letter to "the entire Chapter, about 2,000 members." President Moore's August 27 letter provides in relevant part:

> Attached is a copy of a letter sent to me by the County of San Diego. I am asking the Chapter and the Labor Management team for their opinions as to how they would like me to proceed. I will take all opinion under advisement and keep you informed of my response to the County.
>
> Please submit all responses in writing no later than September 15, 2007.

> will falsely label him as dangerous and defame him to co-workers and others, and refuse to even meet with him.
>
> As described above, the retaliatory actions by the Union have had an impact on his working conditions and the relationship with his employer.
>
> [¶]
>
> Mr. Kroopkin had a right to participate in union activities and neither the County nor the Union can interfere with that right. It is clear that barring his attendance at union-management meetings and branding him as dangerous, interfered with his ability to participate.

Discussion

As stated in the November 14 Warning Letter, PERB has long held that the standard applied in cases involving employer retaliation is appropriate in cases alleging retaliation by an employee organization. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S; California Faculty Association (Hale, et al.) (1988) PERB Decision No. 693-H; California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S.)[4] To establish a prima facie case of retaliation in violation of MMBA section 3506 and PERB Regulation 32604(b), the charging party must show that: (1) the employee exercised rights under the MMBA; (2) the employee organization had knowledge of the exercise of those rights; and (3) the employee organization imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

Although the timing of the employee organization's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors must be present: (1) the employee organization's disparate treatment of the employee (Campbell, supra, 131 Cal.App.3d 416); (2) the employee organization's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra, 55 Cal.App.3d 553); (3) the employee organization's inconsistent or contradictory justifications for its actions (Ibid.);

[4] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

(4) the employee organization's cursory investigation of the employee's misconduct; (5) the employee organization's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) animosity towards union activists (Ibid.; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683).

PERB has held that matters concerning internal union affairs are immune from review by PERB, unless they have a substantial impact on the relationship of unit members to their employer so as to give rise to a duty of fair representation. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106; California State Employees Association (Hutchinson and Laosantos) (1998) PERB Decision No. 1304-S.) In numerous cases, the Board has refused to intervene where the alleged unlawful conduct involved internal union affairs and there was no showing of a substantial impact on the employee-employer relationship. For example, in California State Employees Association (Hackett) (1993) PERB Decision No. 1012-S, the Board found no substantial impact on the employee-employer relationship where the union suspended the bargaining team; submitted a proposal for ratification to the membership that was not approved by the bargaining team; failed to provide a secret ballot; and failed to give the membership any choice on the ballot except to vote for ratification or strike. In California State Employees Association (Garcia) (1993) PERB Decision No. 1014-S, the Board rejected claims of union election irregularities and suspension of a job steward, finding no substantial impact on the employment relationship.

The Board has intervened in the internal affairs of a union when alleged reprisals against members for engaging in union activity substantially impacted the employment relationship. In California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S, the union filed a citizen's complaint against a unit member with his employer and subsequently refused to represent the member in the resulting investigation conducted by the employer. In finding a violation, the Board held that the union's conduct directly impacted the unit member's relationship with his employer. In California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S, the Board found a violation where the union refused to provide representation to a member challenging an adverse action imposed by his employer, after the unit member allegedly participated in the activities of a rival employee organization.

PERB Regulation 32615(a)(5)[5] requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Speculation, conjecture or legal conclusions are insufficient to state a prima facie case. (Regents of the University of California (2005) PERB Decision No. 1771-H.)

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

1. President Moore's August 27 Letter

Mr. Kroopkin's allegation that President Moore's August 27 letter substantially impacted his employment relationship with the County is speculative. While Mr. Kroopkin alleges that President Moore's distribution of the County's August 23 letter would cause his co-workers' and supervisors' attitudes toward him to change, there is no evidence that Mr. Kroopkin's co-workers' or supervisors' attitudes toward him *have* in fact changed. Similarly, Mr. Kroopkin's allegation that President Moore's distribution of the County's August 23 letter will substantially impact his relationship with the County in the future is speculative because it requires the prediction of future events. Accordingly, Mr. Kroopkin's allegation that Local 221 retaliated against him for exercising his rights under the MMBA by sending the August 27 letter to "the entire Chapter" is dismissed for the reasons stated above and for the reasons provided in the November 14 Warning Letter.

2. Union-Management Meetings

The test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The courts have described the standard as follows:

> All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons.

(Public Employees Association of Tulare County, Inc. v. Board of Supervisors of Tulare County (1985) 167 Cal.App.3d 797, 807.)

MMBA section 3502 provides in relevant part: "public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." Mr. Kroopkin alleges that he has "a right to participate in union activities and neither the County nor the Union can interfere with that right. It is clear that barring his attendance at union-management meetings and branding him as dangerous, interfered with his ability to participate." However, the record does not support Mr. Kroopkin's allegation that he was barred from attending Union-management meetings. Instead, the record shows that Union-management meetings were "suspended indefinitely."

Moreover, even if Local 221 barred Mr. Kroopkin from Union-management meetings, Mr. Kroopkin has not established that he has an individual right to attend Union-management meetings. Employee organizations have the right to select those individuals who will represent them in meetings with the employer. (See generally, Savanna School District (1982) PERB Decision No. 276; Westminster School District (1982) PERB Decision No. 277.) As

previously stated, PERB does not intervene in the internal affairs of a union absent a showing that the union's conduct substantially impacts an employee's relationship with his or her employer. (California State Employees Association (Hackett), supra, PERB Decision No. 1012-S.) Thus, even if Local 221 barred Mr. Kroopkin from Union-management meetings, Mr. Kroopkin has not provided evidence that Local 221's actions substantially impacted his employment relationship with the County. Accordingly, this allegation is dismissed.

Right to Appeal

Pursuant to PERB Regulations, Mr. Kroopkin 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. (Cal. Code Regs, tit. 8, sec. 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. (Cal. Code Regs, tit. 8, secs. 32135(a) and 32130; see also Gov. Code, sec. 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 PERB 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. (Cal. Code Regs, tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If Mr. Kroopkin files 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. (Cal. Code Regs, tit. 8, sec. 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 Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs, tit. 8, sec. 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. (Cal. Code Regs, tit. 8, sec. 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,

TAMI R. BOGERT
General Counsel

By: _____
Sean McKee
Regional Attorney

Attachment

cc: Fern M. Steiner, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

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November 14, 2008

Jeff Geraci, Attorney
Law Office of Jeff Geraci
2550 Fifth Avenue, Ninth Floor
San Diego, CA 92103

Re: Ron Montgomery Reed "MONTY" Kroopkin v. SEIU Local 221
Unfair Practice Charge No. LA-CO-69-M
WARNING LETTER

Dear Mr. Geraci:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 26, 2008 and was amended on April 8, 2008. Ron Montgomery Reed "MONTY" Kroopkin alleges that SEIU Local 221 (Local 221) violated sections 3502, 3502.1 and 3506 of the Meyers-Milias-Brown Act (MMBA or Act)[1] by retaliating against him for engaging in protected activity.

Background

Mr. Kroopkin is employed by the County of San Diego (County) as a Human Services Specialist. The County's Human Services Specialists belong to a bargaining unit exclusively represented by Local 221. Mr. Kroopkin is both a union steward and member of Local 221's negotiation team. "Mr. Kroopkin has been outspoken about the need for [Local 221] to adequately represent the needs of its members."

On August 21, 2007, Local 221 President Sharon-Frances Moore informed Local 221's Executive Board that Mr. Kroopkin was going to "sue the Union." The following day, Local 221 member Linda Corea questioned Mr. Kroopkin about President Moore's accusation. "Feelings were strong and voices were raised. No threats were made and nothing was done or said which could have possibly been construed as a threat." However, County Manager Kim Medeiros heard Mr. Kroopkin and Ms. Corea speaking with raised voices and intervened. Ms. Medeiros informed Mr. Kroopkin and Ms. Corea that "she would not tolerate this situation." Mr. Kroopkin responded by informing Ms. Medeiros that "this was a discussion between Union members, on Union time, on Union property, and that she had no authority." Ms. Medeiros left without incident.

[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.

In a letter dated August 23, 2007, the County sent President Moore a letter that states in relevant part:

> As a result of the incident involving SEIU Steward, Monty Kroopkin, members of the management feel threatened and have requested that Labor Relations suspend the E & E Labor/Management Meeting. This meeting is a valuable source of information for both SEIU and the County; however, employee safety is the County's number one priority. At this time the E & E Labor/Management Meeting will be suspended indefinitely.

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> Attached is a copy of a letter sent to me by the County of San Diego. I am asking the Chapter and the Labor Management team for their opinions as to how they would like me to proceed. I will take all opinion under advisement and keep you informed of my response to the County.
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> Please submit all responses in writing no later than September 15, 2007.

Discussion

PERB has long held that the standard applied in cases involving employer retaliation is appropriate in cases alleging retaliation by an employee organization. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S; California Faculty Association (Hale, et al.) (1988) PERB Decision No. 693-H; California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S.)[2] To establish a prima facie case of retaliation in violation of MMBA section 3506 and PERB Regulation 32604(b), the charging party must show that: (1) the employee exercised rights under the MMBA; (2) the employee organization had knowledge of the exercise of those rights; and (3) the employee organization imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

[2] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

Although the timing of the employee organization's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors must be present: (1) the employee organization's disparate treatment of the employee (Campbell, supra, 131 Cal.App.3d 416); (2) the employee organization's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra, 55 Cal.App.3d 553); (3) the employee organization's inconsistent or contradictory justifications for its actions (Ibid.); (4) the employee organization's cursory investigation of the employee's misconduct; (5) the employee organization's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) animosity towards union activists (Ibid.; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683).

PERB has held that matters concerning internal union affairs are immune from review by PERB, unless they have a substantial impact on the relationship of unit members to their employer so as to give rise to a duty of fair representation. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106; California State Employees Association (Hutchinson and Laosantos) (1998) PERB Decision No. 1304-S.) In numerous cases, the Board has refused to intervene where the alleged unlawful conduct involved internal union affairs and there was no showing of a substantial impact on the employee-employer relationship. For example, in California State Employees Association (Hackett) (1993) PERB Decision No. 1012-S, the Board found no substantial impact on the employee-employer relationship where the union suspended the bargaining team; submitted a proposal for ratification to the membership that was not approved by the bargaining team; failed to provide a secret ballot; and failed to give the membership any choice on the ballot except to vote for ratification or strike. In California State Employees Association (Garcia) (1993) PERB Decision No. 1014-S, the Board rejected claims of union election irregularities and suspension of a job steward, finding no substantial impact on the employment relationship.

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Here, Local 221 President Moore forwarded the County's August 23 letter to the Local 221 Chapter and invited members to provide President Moore with their "opinions as to how they would like [President Moore] to proceed." There are no facts demonstrating that President

Moore's conduct substantially impacted Mr. Kroopkin's employment relationship with the County. Therefore, the present charge complains of conduct that is an internal union matter and PERB intervention is not warranted under the above-discussed precedent. (See, e.g., California State Employees Association (Hutchinson and Laosantos), supra, PERB Decision No. 1304-S.)

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 Second Amended Charge, contain all the facts and allegations Mr. Kroopkin wishes to make, and be signed under penalty of perjury. 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 an amended charge or withdrawal is not received from Mr. Kroopkin before November 26, 2008, the charge shall be dismissed. Questions concerning this matter should be directed to me at the above telephone number.

Sincerely,

Sean McKee
Regional Attorney

SM