

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FRANZ HINEK,

Charging Party,

v.

TEAMSTERS LOCALS 78 & 853,

Respondent.

Case No. SF-CO-173-M

PERB Decision No. 2056-M

August 26, 2009

Appearance: Franz Hinek, on his own behalf.

Before Dowdin Calvillo, Acting Chair; Neuwald and Wesley, Members.

DECISION

DOWDIN CALVILLO, Acting Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Franz Hinek (Hinek) of the Board agent's dismissal of Hinek's unfair practice charge against Teamsters Locals 78 and 853 (Teamsters).¹ Hinek filed an unfair practice charge on April 29, 2008, alleging that the Teamsters violated the Meyers-Milias-Brown Act (MMBA)² by breaching its duty of fair representation in failing to process a grievance on his behalf. The Board agent dismissed the charge on the grounds that it was not timely filed and failed to state a prima facie case of breach of the duty of fair representation.

Upon a review of the entire record including, but not limited to, the unfair practice charge, the Teamsters' response thereto, the Board agent's warning letter, Hinek's amended

¹ Teamsters Local 78 merged into Local 853 effective February 1, 2008, and no longer exists as a separate entity.

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

charge and supporting materials, the Board agent's dismissal letter, and Hinek's appeal letter,³ the Board affirms the Board agent's dismissal for the reasons stated below.

BACKGROUND

On April 29, 2008, Hinek filed an unfair practice charge alleging that the Teamsters breached its duty of fair representation under the MMBA by failing to process a grievance for vacation pay on his behalf after he was terminated from employment with the Solano County Fair Association (SCFA) on July 17, 2006.⁴ The charge further alleges that the Teamsters' attorney, Sheila Sexton (Sexton), "dropped the case" and failed to adequately represent him regarding his termination. The charge included, among other documents, a copy of a grievance filed by Hinek with the Teamsters on July 18, 2006, and a letter dated July 3, 2007 from Sexton to the President of the Teamsters recommending that the Teamsters not pursue the grievance challenging Hinek's termination based upon allegations that he threatened physical harm and made racially offensive statements to a co-worker.

On August 18, 2008, the Board agent issued a warning letter informing Hinek that the charge was untimely in that the statutory time period began to run in August 2006, when the Teamsters informed Hinek that it would not be filing a grievance over his vacation pay. The warning letter also advised Hinek that the facts showed that, not later than August 9, 2007, the Teamsters advised Hinek that it would not pursue his grievance relating to his discharge, and that this allegation was also time-barred. The warning letter further informed Hinek that the factual allegations had not established a prima facie case of violation of the duty of fair

³ The Teamsters did not file a response to the appeal.

⁴ Hinek previously filed a charge against SCFA challenging the termination. On June 9, 2009, the Board issued its decision dismissing that charge because it was not timely filed with PERB. (*Solano County Fair Association (Hinek)* (2009) PERB Decision No. 2035-M.)

representation under the MMBA and advised him of the elements necessary to correct that deficiency.

On August 22, 2008, Hinek filed an amended charge. In the amended charge, Hinek admits that he knew of the Teamsters' decision not to process the grievance not later than August 2007, but asserts that he refrained from filing a charge with PERB because he was making further efforts to resolve the matter with the assistance of the International Brotherhood of Teamsters (International) in Washington, D.C. The amended charge further alleged that, after August 2007, Hinek tried to contact the Teamsters' attorney, but she did not return his calls. According to Hinek, a representative of the International promised to set up a three-way conference call to discuss Hinek's concerns, but that conference call never took place.

By letter dated August 28, 2008, the Board agent dismissed the charge on the grounds that it was not timely filed and for failure to state a prima facie case of breach of the duty of fair representation.

HINEK'S APPEAL

On appeal, Hinek continues to assert that the charge is timely because he received assurances from the Teamsters in August 2007 and thereafter that the matter was still open for discussion and because the Teamsters' attorney had failed to respond to his telephone calls. Hinek acknowledges, however, that, upon requesting in 2006 that the Teamsters file a grievance on his behalf for vacation pay and Sunday premium pay, he was told that the Teamsters was not going to process the grievance.

DISCUSSION

The statute of limitations for filing an unfair practice charge under the MMBA is six months. (*Coachella Valley Mosquito and Vector Control Dist. v. California Public*

Employment Relations Bd. (2005) 35 Cal.4th 1072.) 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.)⁵ A charging party bears the burden of demonstrating that the charge is timely filed. (*Long Beach Community College District* (2009) PERB Decision No. 2002.)

In cases alleging a breach of the duty of fair representation, the six-month statutory limitations period begins to run on the date when the charging party, in the exercise of reasonable diligence, knew or should have known that further assistance from the union was unlikely. (*SEIU, United Healthcare Workers West (Rivera)* (2009) PERB Decision No. 2025-M; *United Teachers of Los Angeles (Hopper)* (2001) PERB Decision No. 1441; *Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.)* (1991) PERB Decision No. 889.) Thus, the statute of limitations begins to run once the employee is aware, or should be aware, that the union has made a firm decision not to represent him. (*California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC (Sutton)* (2003) PERB Decision No. 1553-S.) Once the statute begins to run, the employee cannot cause it to begin anew by making the same request over and over again. (*Id.*; *California State Employees' Association (Calloway)* (1985) PERB Decision No. 497-H.) Nor does an employee's complaint to higher-level union officials about the handling of the employee's grievance extend the limitations period. (*California School Employees Association (Spiegelman)* (1984) PERB Decision No. 400.)

The facts as alleged by Hinek establish that the Teamsters clearly declined to process a grievance on his behalf not later than August 2007. Hinek's continued attempts to obtain assistance by contacting the Teamsters International and the Teamsters' attorney did not

⁵ 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.)

extend the limitations period. The alleged failure of a representative of the International to set up a conference call as promised did not start the limitations period anew, as Hinek was already on clear notice that the Teamsters had made a firm decision not to process his grievance. Therefore, because the charge was filed at least eight months after Hinek was informed that the Teamsters would not process his grievance, it is untimely and was properly dismissed.

ORDER

The unfair practice charge in Case No. SF-CO-173-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Neuwald and Wesley joined in this Decision.