

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MARY J. HENRY et al.,

Charging Party,

v.

SAN MATEO COUNTY SUPERIOR COURT,

Respondent.

Case No. SF-CE-35-C

PERB Decision No. 2358-C

March 18, 2014

Appearance: Mary J. Henry et al., on their own behalf.

Before Martinez, Chair; Winslow and Banks, Members.

DECISION<sup>1</sup>

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Mary J. Henry et al. (Henry) of the dismissal (attached) by the Office of the General Counsel of Henry's unfair practice charge. The charge, as amended, alleges that the San Mateo County Superior Court (Court) violated the Trial Court Employment Protection and Governance Act (Trial Court Act)<sup>2</sup> by failing to include her and other retired or former employees in a settlement agreement entered into by the Court in settlement of a PERB charge regarding furloughs (court closure days) imposed during the 2009/2010 fiscal year. The Office of the General Counsel dismissed the charge on the grounds that (1) the charging parties were retired or former employees at the time of the alleged unfair

<sup>1</sup> PERB Regulation 32320, subdivision (d), provides in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

<sup>2</sup> The Trial Court Act is codified at Government Code section 71600 et seq.

practice (settlement of the PERB charge) and therefore do not have standing to bring an unfair practice charge; (2) PERB lacks jurisdiction to enforce former Government Code section 68106 governing court closures; and (3) the facts as alleged do not state a prima facie violation of the Trial Court Act under any cognizable theory. Henry filed a timely appeal.

The Board has reviewed the case file in its entirety and has fully considered the relevant issues and contentions on appeal. Based on this review, the Board finds the warning and dismissal letters to be supported by the factual allegations contained in the unfair practice charge, as amended. The Board also finds the warning and dismissal letters to be well-reasoned and in accordance with applicable law, and that the appeal raises no issues warranting the Board's further consideration. Accordingly, the Board hereby adopts the warning and dismissal letters as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-35-C is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Winslow and Banks joined in this Decision.



### Summary of Additional Allegations

In the first amended charge, Charging Parties confirm that they are former employees of the Court. Some retired in 2010, and others were offered a retirement incentive in 2011, which they presumably accepted. Charging Parties “were not present, nor part of the settlement agreement” which was entered into on October 23, 2012, between the Court and Service Employees International Union, Local 721 (SEIU 721). Further, “it is also true that we, (the charging parties) would not, nor should not be a part of any negotiations between the court and any of the unions as we (the charging parties) are no longer employees of the court.”<sup>3</sup>

Charging Parties also contend that, by entering into the settlement agreement, the Court violated Government Code section 68106. This section provides that trial courts must allocate resources in order to preserve access to court services for civil litigants; that trial courts remain open on all days except judicial holidays, Saturdays and Sundays; and that the trial courts provide public notice of any courtroom closures.

### Discussion

As stated in the Warning Letter, retired and former employees generally lack standing to file charges with PERB, because they are not employees within the meaning of the Trial Court Act. (See, e.g., *San Francisco Unified School District* (2009) PERB Decision No. 2000; *State of California (Department of Transportation)* (2006) PERB Decision No. 1835-S; *San Leandro Unified School District* (1984) PERB Decision No. 450.) In the first amended charge, Charging Parties acknowledge that they are retired or former employees. Therefore, they do not have standing and PERB cannot issue a complaint.

PERB jurisdiction in this matter is limited to violations of the Trial Court Act. Government Code section 68106 is not part of the Trial Court Act, and PERB is without jurisdiction to enforce it. (*Ventura County Community College District* (1996) PERB Decision No. 1167.) Accordingly, a prima facie case is not stated and this charge must be dismissed.

### Right to Appeal

Pursuant to PERB Regulations,<sup>4</sup> Charging Party 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, § 32635, subd. (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.

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<sup>3</sup> As explained in the Warning Letter, the settlement agreement between the Court and SEIU 721 provided for reimbursement to current employees for mandatory furloughs which were implemented for fiscal year 2009-2010.

<sup>4</sup> PERB’s Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (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, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 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 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. (Cal. Code Regs., tit. 8, § 32635, subd. (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, § 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, § 32135, subd. (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, § 32132.)

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November 4, 2013  
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Final Date

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

Sincerely,

M. SUZANNE MURPHY  
General Counsel

By \_\_\_\_\_  
Laura Z. Davis  
Senior Regional Attorney

Attachment

cc: Steven R. Crooks, Attorney

**PUBLIC EMPLOYMENT RELATIONS BOARD**

San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514  
Telephone: (510) 622-1021  
Fax: (510) 622-1027



October 1, 2013

Mary J. Henry, et al.

Re: *Mary J. Henry et al. v. San Mateo County Superior Court*  
Unfair Practice Charge No. SF-CE-35-C  
**WARNING LETTER**

Dear Ms. Henry:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 21, 2013. Mary J. Henry, et al., (Charging Parties or Henry)<sup>1</sup> alleges that the San Mateo County Superior Court (Court or Respondent) violated the Trial Court Employment Protection and Governance Act (Trial Court Act)<sup>2</sup> by failing to include her and other retired former employees in a settlement agreement regarding back pay for furloughs.

### **Summary of Facts as Alleged**

Henry is a former employee of the Court. She is a retired courtroom clerk. Henry filed the instant charge on behalf of herself and sixteen other former employees of the Court.

In the Court's Fiscal Year 2009-2010 (approximately September 2009 through August 2010), Court employees were subject to mandatory furloughs. The Court designated certain days as "Court Closure" days for which employees were not paid. The employees received a 10% pay cut.

Service Employees International Union Local 521 (SEIU 521), the exclusive representative of certain Court employees, filed unfair practice charge (UPC) case number SF-CE-18-C with PERB concerning the mandatory furloughs.<sup>3</sup> On October 23, 2012, representatives of SEIU

<sup>1</sup> While PERB regulations do not provide for "class action" unfair practice charges, signatories to the unfair practice charge will be considered to be charging parties. (*United Teachers of Los Angeles (DePace)* (2008) PERB Decision No. 1964; *Regents of the University of California* (2004) PERB Decision No. 1592-H.) Thus, for purposes of this Warning Letter, the 16 other signatories will also be considered charging parties.

<sup>2</sup> The Trial Court Act is codified at Government Code section 71600 et seq. The text of the Trial Court Act and PERB Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

<sup>3</sup> According to PERB records, this charge was filed on September 24, 2009.

521 and the Court entered into a settlement agreement resolving resolve the allegations of UPC Case No. SF-CE-18-C. The agreement provides, in pertinent part, that the Court would reimburse “current SEIU members” for up to seven days’ worth of pay for furlough days taken in Fiscal Year 2009-2010.

On December 12, 2012, the Court entered into a Side Letter Agreement with the American Federation of State, County and Municipal Employees, Local 829 (AFSCME 829), which similarly provides that “current AFSCME members” would be reimbursed for seven furlough days taken in 2009-2010.

On December 10, 2012, retired Deputy Court Executive Officer Melvin Toomer (Toomer) sent a letter to the Court’s Executive Officer John Fitton (Fitton). Toomer stated that he and other former employees of the Court should also be reimbursed for the furlough days they took during 2009-2010. Toomer identified eleven other former employees, including some of the charging parties, and noted that there may be additional former employees he did not know about.

On December 20, 2012, Fitton sent Toomer a letter in reply. Fitton stated that the settlement agreements with SEIU 521 and AFSCME 829 only applied to current employees—i.e., those who were employed as of the dates of the agreements in October 2012 and December 2012. Fitton further stated, “In no instance have any former employees received reimbursement. All of the individuals listed in your letter are former employees and therefore were not eligible for the reimbursement.”

Charging Parties allege: “The settlement reached with the union and the court did not address the issue of former employees. We were not mentioned, nor represented. We were not included or excluded.” Charging Parties state that they and other former employees were employed during 2009-2010 and they request the same reimbursement as their currently-employed counterparts received for the mandatory furlough days.

The Court filed a position statement on March 13, 2013.<sup>4</sup>

### Discussion

Retired and former employees generally lack standing to file charges with PERB, if they were not employed at the time the alleged unfair practice took place. (See, e.g., *San Francisco Unified School District* (2009) PERB Decision No. 2000; *State of California (Department of Transportation)* (2006) PERB Decision No. 1835-S; *San Leandro Unified School District* (1984) PERB Decision No. 450.) Here, the alleged violation occurred when the settlement agreements were reached in late 2012. Charging Parties are all former and retired employees,

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<sup>4</sup> A Board agent may consider additional or undisputed facts provided by a Respondent. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

who were not employed on the dates of the settlement agreements. Accordingly, even if a prima facie violation of the Trial Court Act were stated, the facts do not demonstrate that Charging Parties have standing to pursue this action before PERB.

The Trial Court Act does not extend a remedy against all acts of perceived unfairness or discrimination against public employees. Rather, PERB's jurisdiction is limited to resolving claims of unfair practices, as defined, which violate the Acts enforced by PERB. (See, e.g., *Los Angeles Unified School District* (1984) PERB Decision No. 448.) The facts alleged here do not state a prima facie violation of the Trial Court Act under any cognizable theory.

PERB is generally without jurisdiction to enforce contracts or agreements between parties, including settlement agreements. (See, e.g., Gov. Code, § 3541.5, subd. (b).) While the Trial Court Act does not specifically incorporate this rule, it must be interpreted consistently with existing judicial interpretations of PERB's authority to apply the law concerning unfair labor practices. (Gov. Code, § 71639.1, subd. (c).) The Board has consistently held that a party alleging a breach of a negotiated agreement must show that such breach has "a generalized effect or continuing impact on bargaining unit members' terms and conditions of employment" in order to constitute an unfair labor practice. (*East Side Union High School District* (1997) PERB Decision No. 1236.) In *County of Riverside* (2003) PERB Decision No. 1577-M, the Board adopted this standard in a case interpreting the MMBA, even though the MMBA also does not contain an express provision regarding enforcement of agreements. Accordingly, Charging Parties' allegations, that former employees should be covered by a settlement agreement between the Court and two of its unions, are not within PERB's jurisdiction unless they separately state a violation of the Trial Court Act.

For these reasons the charge, as presently written, does not state a prima facie case.<sup>5</sup> If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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

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<sup>5</sup> In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

PERB. If an amended charge or withdrawal is not filed on or before **October 18, 2013**,<sup>6</sup> PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

*Maura Z. Davis*  
Senior Regional Attorney

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<sup>6</sup> A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)