

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SISKIYOU COUNTY EMPLOYEES'
ASSOCIATION,

Charging Party,

v.

COUNTY OF SISKIYOU,

May

Respondent.

Case No. SA-CE-313-M

PERB Decision No. 1837-M

9, May 9, 2006

Appearances: Tom Dimitre, Business Agent, for Siskiyou County Employees' Association; Liebert Cassidy Whitmore by Ines Vargas Fraenkel, Attorney, for County of Siskiyou.

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Siskiyou County Employees' Association (SCEA) of a Board agent's dismissal of an unfair practice charge. The charge alleged that the County of Siskiyou (County) violated the Meyers-Milias-Brown Act (MMBA)¹ by violating a past practice of reimbursing employees for the costs of licensing examinations. Specifically, the charge alleged that the County violated its duty to meet and confer in good faith with SCEA over actions relating to matters within the scope of representation. SCEA alleged that this conduct constituted a violation of MMBA sections 3504, 3504.5 and 3505.

We have reviewed the entire record, including but not limited to, the unfair practice charge, the documents attached thereto, the first amended unfair practice charge, the County's

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

response, the warning and dismissal letters, SCEA's appeal and the County's opposition to the appeal. We find the dismissal, which was based on a three-year statute of limitations, applied the wrong limitation period in light of the California Supreme Court's ruling in Coachella Valley Mosquito & Vector Control Dist. v. Public Employment Relations Bd. (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234] (Coachella). Under Coachella's six-month statute of limitations, the charge was not timely filed. Accordingly, the Board upholds the dismissal for the reasons set forth below.

BACKGROUND

Before January 2002, the County's Behavioral Health Services Department had an informal practice of reimbursing employees for certain licensure fees. This practice, was not contained in the memorandum of understanding (MOU) between the County and SCEA; rather, it was based on the County's past practice. Under this practice, the County provided reimbursement for various costs incurred in taking a license examination, including, but not limited to, examination fees, lodging and travel expenses.²

On January 16, 2002, the County agreed to reimburse Sarah Collard (Collard) for various costs incurred pursuant to a license examination. In so doing, the County sent a letter to SCEA in which the County declared:

... the current issue is being resolved based on past practice within the department. Be it further understood that a written policy concerning incurred expenses of this nature is being developed. The issuance of this reimbursement to Ms. Collard shall be the end to this practice effective this date. Future

²According to the County, and undisputed by SCEA, the practice varied. In some instances, the County provided reimbursement for lodging and meals only. In other instances, the County provided reimbursement for examination fees and preparatory course costs. Since the Board concludes that the charge was not timely filed, we need not determine whether this conduct created a binding past practice.

reimbursements must be in keeping with negotiated language in the MOU or County policy or ordinance. [Emphasis added.]

Consistent with the January 2002, letter, the County later denied a licensure fee reimbursement request by Renee Peck (Peck), a Behavioral Health Clinician, on or about September 2003.³ In a letter to the County dated September 30, 2003, SCEA asserted that the County reimbursed Peck for expenses incurred in taking her license examination the first two times she took that examination, but wrongfully failed to reimburse Peck for expenses incurred the third time she took the examination.⁴

On February 25, 2005, SCEA filed the instant unfair practice charge. In that charge, SCEA alleged that the County violated a past practice by refusing to reimburse Peck for costs incurred in obtaining her license.

BOARD AGENT'S DISMISSAL

The Board agent issued a warning letter to SCEA on April 7, 2005. Relying on the three-year limitations period found in Code of Civil Procedure section 338(a), the Board agent found that the limitations period began to run in January 2002 when the County issued its letter regarding Collard. Based on this letter, the Board agent concluded that SCEA knew or reasonably should have known that as of January 16, 2002, the County would no longer reimburse employees for license examinations.

On April 15, 2005, SCEA filed a first amended charge in which it disputed the Board agent's reliance on the January 16, 2002, letter as the triggering event for tolling the limitations period. SCEA argued that the County's practice changed when it denied reimbursement to

³SCEA is unable to provide the specific date on which the County denied Peck's request for reimbursement.

⁴Although SCEA's September 30 letter claims that the County reimbursed Peck twice, SCEA's charge alleged that the County only reimbursed Peck for her first examination.

Peck in September 2003, and not when it issued the January 2002 letter regarding Collard. Thus, according to SCEA, the limitations period began to run in September 2003.

Not persuaded by SCEA's arguments, the Board agent concluded that the status quo was established in the January 2002 letter. Consequently, on April 18, 2005, the Board agent dismissed SCEA's charge as untimely under the three-year limitations period.

SCEA appealed the Board agent's dismissal. In its appeal, SCEA argued that the statute of limitations began to run in September 2003 when the County denied Peck's request for reimbursement.

DISCUSSION

Subsequent to the issuance of the dismissal letter, the California Supreme Court ruled that unfair practice charges filed under the MMBA are subject to a six-month limitations period. (Coachella, at p. 1091.) In so doing, the Court rejected PERB's application of the three-year limitations period found in Code of Civil Procedure section 338(a). (Ibid.)

The California Supreme Court also found that its holding applied retroactively. (Coachella, at pp. 1091-1092.) Specifically, the court explained that "[l]egislation that shortens a limitations period is considered procedural and is applied retroactively to preexisting causes of action, so long as parties are given a reasonable time in which to sue." (Ibid.) In this context, the court found that six months was a reasonable time, and further held that "for MMBA unfair practices occurring before July 1, 2001, a charge filed with the PERB was timely if brought within three years of the occurrence of the unfair practice, or within six months of July 1, 2001 (in other words, before January 1, 2002), whichever was sooner." (Coachella, at p. 1092.)

In the instant case, the parties dispute the time in which the statute of limitations began to run. The County argues that the statute of limitations began to run in January 2002, when it issued the letter expressly disavowing its past practice. SCEA, on the other hand, argues that the statute of limitations began to run in September 2003. Since the unfair practice charge was filed in February 2005, the charge was not timely filed under either theory advanced in this case. Thus, based on Coachella, the charge is dismissed as untimely.

ORDER

The unfair practice charge in Case No. SA-CE-313-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neuwald joined in this Decision.