STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HEALTH SERVICES AGENCY PHYSICIANS ASSOCIATION, Charging Party, v. COUNTY OF SANTA CRUZ, Respondent.	Case No. SF-CE-110-M PERB Decision No. 1840-M May 17, 2006

Appearances: Allison & Nordquist by Derek W. Allison, Attorney, for Health Services Agency Physicians Association; Renne, Sloan, Holtzman & Sakai, by Charles D. Sakai, Attorney, for County of Santa Cruz.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Health Services Agency Physicians Association (Association) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the County of Santa Cruz (County) violated the Meyers-Milias-Brown Act (MMBA)[1] by failing to cease dues deductions for SEIU Local 415 and begin them for the Association in a timely manner. The Association alleged that this was a violation of Sections 3500, 3502, 3503 and 3508.5, Local Rules section 181.14 of the Employer-Employee Relations Policy of the County and PERB Regulation 32603(a), (b) and (d).[2]

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

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

The Board has reviewed the entire record including, but not limited to, the unfair practice charge, the amended charge, the warning and dismissal letters, the appeal by the Association and the opposition to the appeal filed by the County. We find the warning and dismissal letters of the Board agent to be without prejudicial error and adopt them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SF-CE-110-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Shek and Neuwald joined in this Decision.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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

November 14, 2005

Kathleen Loughlin, MD
H.S.A. Physicians Association
746 Western Drive
Santa Cruz, CA 95060

Re: H.S.A. Physicians Association v. County of Santa Cruz
Unfair Practice Charge No. SF-CE-110-M; First Amended Charge
DISMISSAL LETTER

Dear Dr. Loughlin:

The above-referenced unfair practice charge was filed by the Health Services Agency Physicians Association (Charging Party) with the Public Employment Relations Board (PERB or Board) on June 10, 2003 Charging Party alleges that the County of Santa Cruz violated the Meyers-Milias-Brown Act (MMBA)[1] when it failed to cease dues deductions for SEIU Local 415 and begin dues deductions for the Association in a timely manner.

I indicated to you in my attached letter dated August 5, 2003, 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 August 18, 2003, the charge would be dismissed.

On September 2, 2003, you filed a first amended charge. The amended charge contends the County violated Government Code section 3508 by failing to deduct union dues and violated additional regulations by interfering and dominating the union. A summary of the relevant facts are provided below.

The Association is the exclusively bargaining representative for the County's Health Service Agency's Psychiatrists and Clinic Physicians. The County and the Association are parties to a memorandum of understanding that expires on November 7, 2006. The allegations described herein pertain to the activities of the County immediately after the Association's certification as the exclusive representative.[2]

---

[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] Charging Party did not contact PERB for over one year regarding this charge. On October 27, 2005 and November 2, 2005, I contacted the Association with regard to this charge. I also provided, by letter, withdrawal forms for the charges, assuming they would be withdrawn as the Association reached agreement with the County. On November 7, 2005, the

In December 2002, the Association was certified as a "recognized employee organization" pursuant to the County's local rules. On February 18 through February 21, 2003, the County held a certification election pursuant to County local rule 181.8.[3] Rule 181.8 provides for the County Clerk to conduct a secret ballot election and states the following with regard to election certification:

> 1. The Employee Relations Officer shall certify the choice of representation as indicated on the ballot which receives 51% or more of the valid ballots case by the employees in the representation unit. Notification of certification shall be made to the Board, departments concerned, employee organizations involved in the election, and employees in the representation unit shall be notified by postings at the work site. However, the Employee Relations Office may refuse to certify the winner of an election as the recognize employee organization for that unit or units if he/she concludes that the winner has coerced, intimidated or grossly mislead employees in securing their votes.. .

On February 24, 2003, prior to the election's certification by the Employee Relations Officer, Dr. Kathleen Loughlin sent a letter to the County stating the Association expected dues deductions to cease for SEIU at the end of the pay period. The letter also requested voluntary dues deduction forms for employees in the Association's unit. Prior to the Association's request, no union had collected voluntary dues deduction without a memorandum of understanding in place.

On February 26, 2003, Acting Personnel Director Ajita Patel informed Dr. Loughlin that dues deductions for SEIU could not cease until the election had been certified by the County's Employee Relations Officer. Ms. Patel indicated that such certification was expected to take place on March 4, 2003, and as such, dues would cease at the end of the pay period on March 15, 2003. Ms. Patel and Dr. Loughlin confirmed this understanding via an electronic message exchange on February 27, 2003. At that time, Dr. Loughlin indicated the March 15, 2003, date was acceptable to the Association. On March 4, 2003, the County's Employee Relations Officer certified the results of the election.

On March 14, 2003, Dr. Loughlin provided the County with voluntary dues deduction forms for all 13 bargaining unit members. As noted above, no other union had sought dues deductions prior to ratification of an MOU.

Association indicated that it did not want to withdraw the charge and wished to continue the PERB investigation.

[3] Prior to the certification election, the physician's were part of a general representation unit represented by SEIU.

On March 15, 2003, the County ceased collecting union dues for SEIU as promised. After investigating the legality of voluntary dues deductions prior to an MOU, the County began collecting dues for the Association on March 29, 2003.

Based on the facts provided in the original and amended charges, the charge still fails to state a prima facie case for the reasons provided below.

Charging Party makes the following allegations: (1) SEIU dues deductions should have begun prior in January 2003, when the Association was recognized as an employee organization under the local rules; (2) the County's 14-day delay to investigate whether voluntary dues deduction was legal, interfered with employee rights in violation of the MMBA; and (3) the County dominated the Association in violation of PERB Regulation 32603(d). To the extent that the original charge included allegations not raised in the amended charge, those allegations are dismissed for the reasons provided in the August 5, 2003, letter.

1. SEIU Dues Deduction

Charging Party contends that SEIU dues deductions should have ceased on January 3, 2003, despite SEIU's status at that time as the exclusive bargaining representative. In support of this contention, the Association cites Government Code section 3507.3. Government Code section 3507.3 states as follows:

> Professional employees shall not be denied the right to be represented separately from nonprofessional employees by a professional employee organization consisting of such professional employees. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the Division of Conciliation of the Department of Industrial Relations for mediation or for recommendation for resolving the dispute.

The Association's reliance on this provision is, however, misguided. While the statute prohibits an employer from refusing to create professional units, nothing provided herein demonstrates the County refused to create a professional physicians unit. Instead, facts provided demonstrate the County's actions were consistent with section 3507.3. Moreover, until the decertification election and certification of the election by the County, SEIU was entitled to dues deductions as the certified exclusive representative. Indeed, Government Code section 3508(c) prohibit an employer from discontinuing union dues as long an exclusive bargaining representative has such status. Had the County ceased dues deduction prior to certification of the election, it is more than likely that SEIU would have filed an charge alleging a violation of the MMBA. As such, this allegation must be dismissed.

II. Interference

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.

Herein, Charging Party contends the County's failure to begin dues deductions on March 15, 2003, constitutes interference with employee rights. The Association assumes that the modification of payroll records takes little more than the "flipping of a switch" in the payroll department. The County's response indicates it took a few days to investigate whether voluntary dues deduction was appropriate under the MMBA and the local rules. The County's local rules called for immediate dues deduction only in bargaining units with more than 100 employees. The two week delay in deduction dues was caused by the County's review of its local rule, given that only 13 employees are in the Association's unit. Without commenting on the validity of the local rule, the two week delay in implementing the dues deduction does not appear unreasonable, and as such, does not violate the MMBA.

III. Domination

To state a prima facie violation of MMBA sections 3502 and 3503 and PERB Regulation 32603(d), the charging party must allege facts which demonstrate that the employer's conduct tends to interfere with the internal activities of an employee organization or tends to influence the choice between employee organizations. (Santa Monica Community College District (1979) PERB Decision No. 103, (Santa Monica CCD); Redwoods Community College District (1987) PERB Decision No. 650, (Redwoods CCD).)[4] Proof that an employer intended to unlawfully dominate, assist or influence employees' free choice is not required. Nor is it necessary to prove that employees actually changed membership as a result of the employer's act. (Santa Monica CCD; Redwoods CCD.) The threshold test is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or the other." (Santa Monica CCD, p. 22.)

[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. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

Herein, the charge fails to provide any facts demonstrating the County attempted to interfere with internal union activities or attempted to sway favor away from the Association. As such, this allegation must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,[5] 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 before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing 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
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 and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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

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.)

Final Date

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

Sincerely,

ROBERT THOMPSON
General Counsel

By
Kristin L. Rosi
Regional Attorney

Attachment

cc: Charles Sakai

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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

August 5, 2003

Kathleen Loughlin, M.D., Secretary
Health Services Agency Physicians Association
746 Western Drive
Santa Cruz, CA 95060

Re: Health Services Agency Physicians Association v. County of Santa Cruz
Unfair Practice Charge No. SF-CE-110-M
WARNING LETTER

Dear Dr. Loughlin:

The above-referenced unfair practice charge was filed by the Health Services Agency Physicians Association (Charging Party) with the Public Employment Relations Board (PERB or Board) on June 10, 2003. Charging Party alleges that the County of Santa Cruz violated the Meyers-Milias-Brown Act (MMBA)[1] when it failed to cease dues deductions for SEIU Local 415 and begin dues deductions for the Association in a timely manner.

My investigation has revealed the following. In June 2002, Charging Party filed a request with the County to sever a unit of clinic physicians and psychiatrists from a general unit of employees represented by SEIU Local 415. The unit was established by the County according to its Employer-Employee Relations Policy (EERP), and an election to determine which organization, if any, would represent the unit was conducted in February 2003. The ballots were counted on February 21, 2003, and the Association won the election.

On February 24, 2003, Charging Party sent a letter to the County stating that it expected dues deduction's for SEIU to cease at the end of the current pay period. The letter also requested that the County provide the Association with voluntary dues deduction forms so that dues deduction for the Association could commence at the beginning of the next pay period.

On February 27, 2003, Acting Assistant Personnel Director Ajita Patel and Association Secretary Dr. Kathleen Loughlin exchanged emails confirming a conversation the previous day in which Ms. Patel informed Dr. Loughlin that dues deductions for SEIU would cease beginning with the March 15 payroll period (Pay Period 7), the first payroll period after March 4, 2003, when the Board of Supervisors was scheduled to certify the election results. The reason given for the delay was that time was needed for the payroll department to process the change. Dues deductions for SEIU did, in fact, cease at the beginning of the March 15 payroll period.

[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 March 13, 2003, the last day of Pay Period 6, Charging Party submitted dues deduction authorization forms to the County. On March 20, 2003, Charging Party sent a letter to Ms. Patel reiterating its request for dues deduction, noting that the County deducts membership dues in two other bargaining units.

Section 181.14(A)(1) of the County's Employer-Employee Relations Policy provides:

> Upon approval of the Employee Relations Officer, a recognized employee organization with at least 100 employees in the representation unit has the exclusive privilege of dues deductions for employees within the representation unit.

The Association's unit is comprised of 14 employees. The County asserts that it delayed implementation of dues deduction for the Association while it reviewed its practice under Section 181(A)(1) in light of the small number of employees in the unit.[2] Implementation occurred on March 29, 2003, the beginning of Pay Period 8.

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 (19851 167 Cal.App.3d 797, 807.

In this case, the employer ceased dues deductions for SEIU beginning with the March 15 pay period, eight work days after the Board of Supervisors certified the Association as the exclusive representative of the new unit. Dues deductions for the Association began with the March 29 payroll period, 11 work days after the authorization forms were submitted. These delays are not significant, given the time typically needed by payroll departments to make such adjustments. Furthermore, the Association, has failed to demonstrate how these delays have harmed the employees it represents.

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

[2] Charging Party referred to this issue in its March 20 letter, stating that "the 100 employee (or any other set number or percentage) limit for 'exclusive deductions' has been determined to be contrary to law."

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 August 18, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Jerilyn Gelt
Labor Relations Specialist