

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



EVAGELIA LISA VORGIAS,

Charging Party,

v.

STATE BAR OF CALIFORNIA,

Respondent.

Case No. SF-CE-389-M

PERB Decision No. 1904-M

May 8, 2007

Appearance: Evagelia Lisa Vorgias, on her own behalf.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Evagelia Lisa Vorgias (Vorgias) of the dismissal of her unfair practice charge. The charge alleged that the State Bar of California (State Bar) violated the Meyers-Milias-Brown Act (MMBA)¹ by delaying the grievance process and wrongfully terminating her employment. The charge alleged that this conduct constituted a violation of MMBA section 3502 and PERB Regulation 32603.²

The Board has reviewed the entire record in this case, including but not limited to, the original and amended unfair practice charges, the State Bar's position statement, the warning and dismissal letters, and Vorgias's appeal. Based upon this review, the Board affirms the dismissal, as discussed herein.

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

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

BACKGROUND

Vorgias filed the original unfair practice charge on August 29, 2006. The unfair practice charge alleged that Vorgias was employed by the State Bar as a Deputy Trial Counsel. Effective October 2003, the State Bar terminated Vorgias's employment on the basis that Vorgias failed to timely file a document in a pending attorney disciplinary proceeding, and allegedly misrepresented to the State Bar Court the reasons for filing the document late.

The unfair practice charge alleged that following her termination from employment, Vorgias proceeded with Step III of the contractual grievance process. It alleged that the State Bar delayed in proceeding with the grievance, and delayed in providing relevant documents to Vorgias and her union, SEIU Local 535. The charge alleged that the State Bar denied Vorgias's grievance and sustained the termination decision in a letter dated July 6, 2004. The charge further alleged that the union notified Vorgias on June 17, 2005 that it would not pursue arbitration.

The unfair practice charge also alleged that on December 6, 2005, Vorgias filed a complaint in the United States District Court, Northern District of California, alleging unfair practices and seeking relief under the Labor Management Relations Act of 1947, 29 U.S.C, section 185 (Vorgias v. The State Bar of California, et al., Case No.C05-05039). Vorgias alleged that the federal district court dismissed the complaint without leave to amend on July 25, 2006, on the grounds of governmental immunity. The State Bar alleges that Vorgias served the State Bar with notice of the federal action on June 1, 2006.

The Board agent issued a warning letter on October 2, 2006, and a dismissal letter on November 2, 2006. Vorgias appealed the dismissal on November 28, 2006.

DISCUSSION

This charge is barred by the six-month statute of limitations applicable to the MMBA. (Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234].) The statute of limitations for an unfair practice charge based upon termination of employment begins to run on the date of actual termination. (Regents of the University of California (2004) PERB Decision No. 1585-H; Los Angeles Unified School District (2005) PERB Decision No. 1754.) In this case, the statute of limitations elapsed on April 3, 2004, which was six months after the October 3, 2003 effective date of Vorgias's termination. The original unfair practice charge was filed on August 29, 2006. Therefore, the unfair practice charge was filed late, and the charge should be dismissed.

Vorgias cites various theories why the statute of limitations was tolled, but none of these theories apply.

First, Vorgias argues that the statute of limitations did not begin to run until arbitration of the termination was denied on June 17, 2005, and that she had an additional five days because the decision was communicated by mail. Based upon the cases cited above, however, the statute of limitations in this case began to run on the effective date of termination, not on the date arbitration was denied.

Second, citing Long Beach Community College District (2003) PERB Decision No. 1564, Vorgias alleges that the statute of limitations was tolled under Government Code section 3514.5(a)(2) (the Ralph C. Dills Act (Dills Act)³) when her action was pending in the

³The Dills Act is codified at Government Code section 3512, et seq. Section 3514.5(a)(2) states, in pertinent part:

[T]he board shall not... (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than

federal district court. However, a federal lawsuit does not fall within section 3514.5(a)(2). Additionally, the federal district court action was not filed until December 6, 2005, long after the statute of limitations had elapsed.

Third, Vorgias argues that the limitations period was further tolled for a period of 30 days after the federal claim was dismissed under 28 U.S.C.A. section 1367(d). Even if that rule applied to PERB cases, it would be insufficient to make the charge timely because the federal district court action was filed long after the statute of limitations had elapsed.

Fourth, Vorgias alleges that the State Bar came to the PERB proceeding with "unclean hands" regarding the delay in processing her grievance. However that argument does not impact the dismissal based upon the statute of limitations.

Based upon these considerations, the Board affirms the dismissal of the unfair practice charge.

ORDER

The unfair practice charge in Case No. SF-CE-389-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag joined in this Decision.

six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.