

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS, LOCAL UNION 465,

Charging Party,

v.

SAN DIEGO TROLLEY, INC.,

Respondent.

Case No. LA-CE-336-M

PERB Decision No. 1909-M

June 18, 2007

Appearances: Jerry Fecher, Business Representative, for International Brotherhood of Electrical Workers, Local Union 465; Paul, Plevin, Sullivan & Connaughton by J. Rod Betts, Attorney, for San Diego Trolley, Inc.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the International Brotherhood of Electrical Workers, Local Union 465 (IBEW) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the San Diego Trolley, Inc. (SDTI) violated the Meyers-Milias-Brown Act (MMBA)¹ by discriminating and dealing directly with employees represented by IBEW.

The Board has reviewed the entire record in this matter, including the unfair practice charge, SDTI's response, the amended charge, the warning and dismissal letters, IBEW's appeal and SDTI's response to the appeal. The Board finds the Board agent's warning and dismissal letters to be without prejudicial error and adopts them as the decision of the Board itself.

¹MMBA is codified at Government Code section 3500, et seq.

ORDER

The unfair practice charge in Case No. LA-CE-336-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Shek and McKeag joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 1435
Los Angeles, CA 90010-2334
Telephone: (213) 736-3543
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January 18, 2007

Jerry Fecher, Business Representative
IBEW Local Union 465
7444 Trade Street
San Diego, CA 92121

Re: International Brotherhood of Electrical Workers, Local Union 465 v. San Diego Trolley, Inc.; Amended Charge
Unfair Practice Charge No. LA-CE-336-M
DISMISSAL LETTER

Dear Mr. Fecher:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 13, 2006. The International Brotherhood of Electrical Workers, Local Union 465 alleges that the San Diego Trolley, Inc. violated the Meyers-Milias-Brown Act (MMBA)¹ by discriminating against and dealing directly with employees.

I indicated to you in my attached letter dated January 4, 2007, that the above-referenced charge did not state a prima facie case as PERB did not have jurisdiction. 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 January 11, 2007, the charge would be dismissed.

I received your Amended Charge on January 9, 2007. It restates the facts in the initial charge,

On August 21, 2006, San Diego Trolley, Inc. bargained directly with a limited amount of employees and offered them a reduction in one unserved unpaid suspension day on the books if they agreed to work on that day. They did not inform the union at all, nor did they bargain with the union. After some investigation, they finally admitted that it occurred on November 16, 2006. Prior to August 21, 2006, the union had filed grievances regarding the elimination and/or reduction of disciplinary suspensions for certain individuals for alleged rule violations, and to our knowledge none of the employees who filed grievances were offered a reduction in suspension if they came in to work on

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.

August 21, 2006. This action of the employer in dealing directly with employees violated the act, and the offering of reductions to employees who did not file grievances constitutes discrimination under the act. The union therefore requests that the company ceases and desists from such activity now and in the future, that they inform all employees as such in writing, and that they make all employees whole by remunerating a suspension day to every employee who had one pending as of August 21, 2006, and to all employees who had a grievance pending regarding a disciplinary suspension.

The remainder of the Amended Charge asserts that PERB has jurisdiction in this matter concerning the San Diego Trolley, Inc. You cite MMBA section 3500(a) indicating that this law is broad in interpreting its coverage for local agencies and sets exceptions which you highlight in bold,

It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies. **Nothing contained herein shall be deemed to supersede the provisions of existing state law and the charters, ordinances, and rules of local public agencies that establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations nor is it intended that this chapter be binding upon those public agencies that provide procedures for the administration of employer-employee relations in accordance with the provisions of this chapter...**

You assert that the definition of "public agency" in MMBA section 3501(c) is broadly construed to include "every" public agency except for school districts. Section 3501(c) provides,

Except as otherwise provided in this subdivision, "public agency" means every governmental subdivision, every district, every public and quasi-public corporation, every public agency and public service corporation and every town, city, county, city and

county and municipal corporation, whether incorporated or not and whether chartered or not. As used in this chapter, "public agency" does not mean a school district or a county board of education or a county superintendent of schools or a personnel commission in a school district having a merit system as provided in Chapter 5 (commencing with Section 45100) of Part 25 and Chapter 4 (commencing with Section 88000) of Part 51 of the Education Code or the State of California.

The San Diego Trolley Inc. is a wholly owned subsidiary of the San Diego Metropolitan Transit System (MTS) and governed by the San Diego Metropolitan Transit Development Board (MTDB).² The MTDB's labor relations provisions are located in the agency's enabling statutes. (Pub. Util. Code section 120500 et seq.) You point out that this law allows for employee recognition through a representation petition and collective bargaining. Section 120502 provides in part for some labor disputes to be resolved through arbitration,

In case of a labor dispute over wages, salaries, hours, working conditions, and benefits on the making or maintaining of collective-bargaining agreements and the terms to be included in such agreements, which is not resolved by negotiations in good faith between the board and the labor organization, upon the joint request of both, the board and the labor organization may submit the dispute to the decision of the majority of an arbitration panel.

If there is no agreement to arbitrate, under section 120503, either party may notify the State Conciliation Service which will determine whether the labor dispute may be settled by the parties. If a determination is made that the dispute cannot be resolved by the parties, the Conciliation Service shall certify its findings to the Governor who then will appoint a factfinding commission. This commission investigates the dispute and reports to the Governor.

It is your position that the above enabling statutes for the San Diego Trolley do not provide for the filing of unfair practice charges. Based on this and the broad grant of power of the MMBA over local public employers, you conclude that the MMBA is applicable to the Trolley employees and since PERB enforces the MMBA, it has jurisdiction in the instant case.

In support of your position, you cite Huntington Beach Police Officers' Assn v. City of Huntington Beach, 58 Cal.App.3d 492, 501-502 (1976) for the following,

Although the Legislature did not intend to preempt all aspects of labor relations in the public sector, we cannot attribute to it an intention to permit local entities to adopt regulations which would frustrate the declared policies and purposes of the MMB Act (noted above in MMBA section 3500).

² The MTDB was recently renamed the MTS pursuant to PUC section 120050(b).

In support of your position, you assert that in Golden Empire Transit District (2004) PERB Decision No. 1704-M, PERB determined that it had jurisdiction and that the District violated the MMBA. In reviewing Golden Empire's enabling statute in the PUC, you state that it also does not allow for the filing of unfair practice charges (see PUC section 101340 et seq.).

Based on the above information, the Amended Charge fails to state a prima facie case within PERB's jurisdiction.

Many California public transit districts are subject to labor relations provisions that are found in the Public Utilities Code enabling statutes. Some transit districts are subject to the MMBA. As noted in my letter to you dated January 4, 2007, California Public Sector Labor Relations, section 2.13(IJ(aJ (LexisNexis 2006) and footnote 3 of this section lists Districts whose labor relations provisions are located in their enabling statutes. One such district is the MTDB (Pub. Util. Code section 120500 et seq.).

As noted in my letter to you dated January 4, 2007,

A transit district that has its own statutorily prescribed scheme of administering its employer-employee relations is not subject to the MMBA. See Rae v. Bay Area Rapid Transit Supervisory etc. Assn. (1980) 114 Cal. App. 3d 147, 150-151, 170 Cal. Rptr. 448. In Public Transportation Services Corporation (2004) PERB Decision No. 1637-M, PERB noted at page 3 that the courts have held that "the MMBA was never intended to include in its coverage transit districts with their own statutory framework for administering labor relations ..." PERB held that the employer, the Public Transportation Services Corporation (PTSC) was a "subsidiary unit" or an "organizational unit" of the Los Angeles County Metropolitan Transit Authority (MTA). PERB held that the PTSC was not a public agency subject to the MMBA, but instead was a transit district subject to the labor relations provisions of PUC section 30750 et seq. Accordingly, the complaint was dismissed as it was held that PERB did not have jurisdiction.

Based on this, I have determined that the employer's labor relations statute in this case is located in the PUC and is not the MMBA. Accordingly, PERB does not have jurisdiction in this matter. You argue that based on the 2004 Golden Empire case, PERB has confirmed that such transit districts are covered by the MMBA and that PERB has jurisdiction. I disagree. A review of Golden Empire reveals that the issue of jurisdiction was not raised nor analyzed. Thus, the holding in that case does not require a finding that PERB has jurisdiction in the instant case.

I find that your argument that the above Rae case is distinguishable as concerning a representation issue of agency shop is not persuasive. The Rae case and Public Transportation cases cited above reveal that transit districts that have their own statutory framework for administering their employer-employee relations are not subject to the MMBA. This is true even if the Rae case concerned an agency shop issue. The 2004 Public Transportation case gave PERB the opportunity to review and analyze the jurisdictional question. It held that the PTSC was not a public agency subject to the MMBA, but in fact was a transit district governed by the labor relations provisions of PUC section 30750 et seq. The Board dismissed the complaint as it was held that PERB did not have jurisdiction. I have found no authority to support the argument that where the enabling statute (in the PUC] for administering a transit district's employer-employee relations does not allow for the filing of unfair practice charges, then the district is governed by the MMBA.

Therefore, I am dismissing the charge based on the facts and reasons contained above, and in my January 4, 2007 letter.

Right to Appeal

Pursuant to PERB Regulations,³ 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(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 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
(916)322-8231
FAX: (916) 327-7960

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.) 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. (Regulation 32135(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. (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,

ROBIN WESLEY
Acting General Counsel

By
Marc S. Hurwitz
Regional Attorney

Attachment

cc: J. Rod Betts, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD



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January 4, 2007

Jerry Fecher, Business Representative
IBEW Local Union 465
7444 Trade Street
San Diego, CA 92121-3413

Re: International Brotherhood of Electrical Workers, Local Union 465 v. San Diego Trolley, Inc.
Unfair Practice Charge No. LA-CE-336-M
WARNING LETTER

Dear Mr. Fecher:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 13, 2006. The International Brotherhood of Electrical Workers, Local Union 465 alleges that the San Diego Trolley, Inc. violated the Meyers-Milas-Brown Act (MMBA)¹ by discriminating and dealing directly with employees.

The charge states,

On August 21, 2006, San Diego Trolley, Inc. bargained directly with a limited amount of employees and offered them a reduction in one unserved unpaid suspension day on the books if they agreed to work on that day. They did not inform the union at all, nor did they bargain with the union. After some investigation, they finally admitted that it occurred on November 16, 2006. Prior to August 21, 2006, the union had filed grievances regarding the elimination and/or reduction of disciplinary suspensions for certain individuals for alleged rule violations, and to our knowledge none of the employees who filed grievances were offered a reduction in suspension if they came in to work on August 21, 2006. This action of the employer in dealing directly with employees violated the act, and the offering of reductions to employees who did not file grievances constitutes discrimination under the act. The union therefore requests that the company ceases and desists from such activity now and in the future, that they inform all employees as such in writing, and that they make all employees whole by remunerating a suspension day to every

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.

employee who had one pending as of August 21, 2006, and to all employees who had a grievance pending regarding a disciplinary suspension.

Based on the above information, the charge fails to state a prima facie case within PERB's jurisdiction.

PERB has jurisdiction over the MMBA as one of the collective bargaining laws that it enforces. Many California public transit districts are subject to labor relations provisions which are located in the Public Utilities Code enabling statutes, in joint powers agreements or in incorporation articles and bylaws. In addition, some transit authorities are subject to the MMBA. See California Public Sector Labor Relations, section 2.13(1J)(a) (LexisNexis 2006) and footnote 3 of this section which lists Districts whose labor relations provisions are found in their enabling statutes. One such district is the San Diego Metropolitan Transit Development Board (MTDB) (Pub. Util. Code section 120500 et seq.).

The San Diego Trolley, Inc. was formed in 1980. In 1985 the City of San Diego transferred its ownership of San Diego Transit Corporation to MTDB. The San Diego Trolley Inc. is a wholly owned subsidiary of the San Diego Metropolitan Transit System (MTS) and governed by the MTDB.²

A transit district that has its own statutorily prescribed scheme of administering its employer-employee relations is not subject to the MMBA. See Rae v. Bay Area Rapid Transit Supervisory etc. Assn. (1980) 114 Cal. App. 3d 147, 150-151, 170 Cal. Rptr. 448. In Public Transportation Services Corporation (2004) PERB Decision No. 1637-M, PERB noted at page 3 that the courts have held that "the MMBA was never intended to include in its coverage transit districts with their own statutory framework for administering labor relations ...". PERB held that the employer, the Public Transportation Services Corporation (PTSC) was a "subsidiary unit" or an "organizational unit" of the Los Angeles County Metropolitan Transit Authority (MTA). PERB held that the PTSC was not a public agency subject to the MMBA, but instead was a transit district subject to the labor relations provisions of PUC section 30750 et seq. Accordingly, the complaint was dismissed as it was held that PERB did not have jurisdiction.

Based on the above information, I conclude that the employer's labor relations statute in this case is not the MMBA but is found in the PUC, and as such, PERB does not have jurisdiction in this matter. You assert that in Golden Empire Transit District (2004) PERB Decision No. 1704-M, a request for information case, PERB found that it had jurisdiction and that the transit district violated the MMBA. I have reviewed Golden Empire and have determined that the issue of jurisdiction was not raised nor analyzed. Accordingly, I have determined that the holding in Golden Empire does not mandate a finding that PERB has jurisdiction in the instant case.

² The MTDB was recently renamed the MTS pursuant to PUC section 120050(b).

LA-CE-336-M

January 4, 2007

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On January 3, 2007, I discussed with you the concerns I have with your unfair practice charge. I also advised you that I would send you a letter.

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 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, Attorney J. Rod Betts of Paul, Plevin, Sullivan and Connaughton, LLP in San Diego, California, and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before January 11, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Marc S. Hurwitz
Regional Attorney

MSH