

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA FEDERATION OF
INTERPRETERS/TNG/CWA,

Charging Party,

v.

SANTA CRUZ COUNTY SUPERIOR COURT,

Respondent.

Case No. SF-CE-6-I

PERB Decision No. 1931-I

November 29, 2007

Appearances: Beeson, Tayer & Bodine by Sheila K. Sexton, Attorney, for California Federation of Interpreters/TNG/CWA; Wiley, Price & Radulovich by Joseph E. Wiley, Attorney, for Santa Cruz County Superior Court.

Before Neuwald, Chair; McKeag and Rystrom, Members.

DECISION

NEUWALD, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California Federation of Interpreters/TNG/CWA (Union) of a Board agent's partial dismissal of an unfair practice charge. In regards to the partial dismissal, the charge alleged that the Santa Cruz County Superior Court (Court) violated the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act)¹ by the following acts: (1) giving independent contractors priority for assignments over employees, in violation of Section 71802(c)(1); (2) hiring non-certified/registered independent contractors despite the availability of certified and registered contractors for the same work, in violation of Section 71802(d); and (3) retaliating against bargaining unit employees for their exercise of protected rights, in violation of Section 71805(f).

¹The Court Interpreter Act is codified at Government Code section 71800, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

The Board reviewed the entire record, including the unfair practice charge, the amended unfair practice charge, the warning and partial dismissal letters, the Court's response to the charges, the complaint, the Union's appeal of the partial dismissal, and the Court's response to the Union's appeal. The Board affirms the Board agent's partial dismissal subject to the discussion below.²

BACKGROUND

The Union is the exclusive representative of all employees of the Superior Courts of California in Region 2 that provide language interpretation services in court and related proceedings. The Court is a member of Region 2 as defined by the Court Interpreter Act.

The Union filed an unfair practice charge with PERB on March 15, 2006. The events upon which this partial dismissal is based began on or around July 5, 2005,³ when the Court hired a large number of independent contractors for a multi-defendant preliminary examination (PX) referred to as the "Honda Express."⁴ In late August, the Union heard rumors that the Court was paying premium rates to independent contractors hired to work on the Honda Express PX. As such, on August 25, the Union made an information request to which the Court responded on September 14. The written request for information sought information on interpreter calendaring, activity logs, and compensation data. The data showed that both certified and non-certified contract interpreters were paid a per diem amount that was significantly higher than the standard rate. For example, certified contract interpreters were hired and paid for each day as follows:

²The Board is not adopting the warning and dismissal letters as decisions of the Board itself.

³Unless otherwise stated, all date references are to the year 2005.

⁴The mere fact that the Court was hiring additional contract interpreters was neither a violation of the Court Interpreter Act nor cause for the Union to believe that the Court Interpreter Act had been violated.

- Raul Hernandez, \$800 per day plus travel from Turlock, California, July 6-8, 11-15, 18-22 and 25-29.
- Jose Zavala, \$720 per day, July 5-7.
- Mila Magallanes, \$1,000 per day, July 7-8, 11-15, 18-22, 26-29, August 10-12 and 15-19.
- Mario Guzman, \$960 per day, July 12-14, 18-21 and 25-29.
- Irene Tenney, \$1,000 per day, July 7-8, 11-15, 18-22, 25-29, August 10-12 and 15-19.
- Edgar Rivera, \$720 per day plus travel from Los Angeles, meals and lodging, July 18-22, 25-29, August 8-12 and 15-19.
- Alex Teran, \$750 per day, July 5-6, and \$675, July 7-8.
- Araceli Zavala, \$450 per day, July 1, 7, 15, 29, August 2-3, 5, 8-10, 12, 15-17 and 19.

Additional certified contract interpreters hired at the regular rate plus travel, meals and lodging include Juan Jose Negrete, Joseph Tobin, Andrew Erickson, Melvyn Quinones, Ursula Shlaepfer, Esther Navarro-Hall and Glen Garcia.⁵

The standard rate of pay for non-certified contractors was \$175 per day and \$92 per half day. The Court hired a number of non-certified contract interpreters who were paid significantly higher than the standard rate. The Court began seeking out non-certified contract interpreters from the start of the PX, before it completed a diligent search for certified interpreters. Examples of non-certified contract interpreter hired include:

- Rosa Hernandez, \$600 per day plus travel, July 18–22 and 25–29.

⁵Rates paid to Melvyn Quinones, Ursula Shlaepfer, Esther Navarro-Hall and Glen Garcia were unknown.

-- David Perez, \$225 per half-day and \$300 per full day plus travel from Los Angeles, July 6–8.

-- Daniel Zavala, \$300 per full day plus travel from Windsor, California, meals and lodging, July 7–8, 11–15, 18–22 and 25–29.

-- Gabriela Saks, \$175 per full day plus local mileage, July 5, 11, 13-14, 18-19 and 25.

The amount of \$200 per day was paid for the following non-certified contract interpreters for a combined total of 61 days: Mario Vilchis-Gutierrez, Joshua Mattei, Marie Cardon, Brenda Oliver and Irene Elias.

The Court also hired cross-assigned employee interpreters from other courts as follows:

-- Alex Teran, from Santa Clara, \$65 per hour (or \$520 per day), July 11–15, 18–22, 25–29, and August 22–26.

-- Maria Galves, from Sonoma, at an unknown rate, July 25–28.

-- Marta Duncan, from Santa Clara, \$400 per day, August 24–25.

-- Ana de Trinidad, from Santa Clara, \$365 per day, August 25.

-- Thelma Oros Fotedar, from Santa Clara, \$365 per day, August 25.

After the Honda Express PX concluded on September 27, the Court continued to employ contract interpreters for the same premium rates of pay and with similar working conditions as the Honda Express trial.

On December 19, 2006, the Board agent issued a partial dismissal because all events prior to September 14, 2005, were untimely.

APPEAL

The Union's sole appeal to the Board agent's partial dismissal was limited solely to the finding regarding the statute of limitations. Specifically, the Union argues that it

was entitled to a reasonable amount of time to review the Court's voluminous response to the Union's information request. It was only after review of this information that the Union became aware of the extraordinarily high compensation and other types of favorable treatment being afforded independent contractor[s] as compared with members of the bargaining unit who were performing the same duties.

The Union "was required not only to review each invoice presented to the Union on September 14, 2005, but it then had to contact members of the bargaining unit to determine whether they had been offered the same premiums."

OPPOSITION TO APPEAL

The Court argues that the Board agent's partial dismissal was correct.

DECISION

Court Interpreter Act section 71825(c) provides, in part:

The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a regional court interpreter employment relations committee require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a regional court interpreter employment relations committee's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subsection shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.)⁶ In this case, the Union filed an unfair practice charge with PERB on March 15, 2006. Six months prior to March 15, 2006 was September 15, 2005.

⁶When interpreting the Court Interpreter Act, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Sec. 71826(b); Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

Therefore, all allegations that occurred prior to September 14, 2005, were untimely and correctly dismissed by the Board agent.

ORDER

The partial dismissal of the unfair practice charge in Case No. SF-CE-6-I is hereby AFFIRMED.

Members McKeag and Rystrom joined in this Decision.