

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MICHAEL DAVID WILSON,

Charging Party,

v.

COUNTY OF PLUMAS,

Respondent.

Case No. SA-CE-446-M

PERB Decision No. 1938-M

January 11, 2008

Appearances: Michael David Wilson, on his own behalf; Clinton P. Walker, Deputy County Counsel, for County of Plumas.

Before Neuwald, Chair; Shek and McKeag, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Michael David Wilson (Wilson) of a Board agent's dismissal (attached) of his unfair practice charge. The unfair practice charge alleged that the County of Plumas (County) violated the Trial Court Employment Protection and Governance Act (Trial Court Act)¹ and the Meyers-Milias-Brown Act (MMBA)² by: (1) entering into an allegedly illegal contract with the Plumas Superior Court and the Plumas County Sheriff's Department concerning a state-funded position under trial court funding; (2) failing to provide representation for the correctional officer/bailiff position; and (3) engaging in unfair labor practices since the Administrative Office of the Courts assumed trial court funding.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters, Wilson's appeal of

¹Trial Court Act is codified at Government Code section 71600, et seq.

²MMBA is codified at Government Code section 3500, et seq.

dismissal, and the County's response. The Board finds the dismissal of this case was proper and adopts the warning and dismissal letters as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-446-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Neuwald and Member McKeag joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377



June 5, 2007

Michael David Wilson

Re: Michael David Wilson v. County of Plumas
Unfair Practice Charge No. SA-CE-446-M, First Amended Charge
DISMISSAL LETTER

Dear Mr. Wilson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 4, 2006. Michael David Wilson alleges that the County of Plumas violated the Trial Court Employment Protection and Governance Act (Trial Court Act).¹

I informed you in my attached letter dated March 14, 2007, 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 March 26, 2007, the charge would be dismissed. I later granted your requests to extend that deadline. On April 30, 2007, you filed a First Amended Charge.

The First Amended Charge provides, in its entirety:

I wish to resubmit claim #SA-CE-446-M. All documents supporting the allegations filed 12-04-16 and documents dated and submitted 01-27-07 support this claim. (Copies are already in your office.) This claim is resubmitted under MMBA. (Gov. Code sec. 3500 et seq.)

As stated in the Warning Letter, the charge failed to state a prima facie violation of the Trial Court Act because it appeared that you were an employee of the County of Plumas, not of the Plumas County Superior Court. The amended charge appears to abandon claims under the Trial Court Act and to allege violations of the Meyers-Milias-Brown Act (MMBA). To the extent that the amended charge alleges violations of the Trial Court Act, they are dismissed. Allegations that the County violated the MMBA are addressed below.

¹ The charge referenced the following Government Code sections: 71634, 71634.2, 71634.3, 71631, 71635.1, 71636.

The Warning Letter contemplated that you might amend the charge to allege violations of the MMBA and noted that the charge did not provide the specific facts necessary to determine whether the County had violated the MMBA. The Warning Letter advised you to provide the "who, what, when, where, and how" of an unfair practice. The Warning Letter also noted that if you were employed in a position under Penal Code section 830.1 you would be outside of PERB's jurisdiction. As the First Amended charge did not provide the requested information, the First Amended Charge does not correct the deficiencies noted in the Warning Letter. As such, the charge does not demonstrate a prima facie violation of the MMBA and must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,² 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

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).)

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

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,

TAMI R. BOGERT
General Counsel

By

Tammy Samzel
Senior Regional Attorney

Attachments

cc: Barbara Thompson
Clinton P. Walker

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377



March 14, 2007

Michael David Wilson

Re: Michael David Wilson v. County of Plumas
Unfair Practice Charge No. SA-CE-446-M
WARNING LETTER

Dear Mr. Wilson:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 4, 2006. Michael David Wilson alleges that the County of Plumas violated the Trial Court Employment Protection and Governance Act (Trial Court Act). In addition to the unfair practice charge, on February 5, 2007 you filed a letter regarding this charge.¹ My investigation revealed the following information.

The County of Plumas (County) employs Wilson as a Correctional Officer II. As such, he is exclusively represented by the Plumas County Sheriff's Association. The County and the Association have a Memorandum of Understanding effective by its terms between May 1, 2005 and April 30, 2007. The MOU's recognition clause does not specify which classifications are in the bargaining unit represented by the Association.

The County also has a Memorandum of Understanding with the Plumas County Superior Court (Court) to provide the Court with bailiff services. Article 3.2(d) of that MOU provides, in pertinent part:

Sheriff/Bailiff Services. The County will provide to the Court two (2) contractual full-time bailiffs for fiscal year 2005/2006. The bailiffs' primary function will be to act as Courtroom bailiffs when Court is in session; when Court is not in session, bailiffs shall provide perimeter security in and around the Court offices and Courtrooms. The Court and the County agree that the basic costs for the services of the two full-time contractual bailiffs shall be \$159,589.41 (included in this amount is uniform allowance and travel/training costs). This basic cost does not include overtime or holiday pay which will be paid at the rates listed below.

¹ The letter objected to, inter alia, the charge being placed in abeyance and the Respondent missing its deadline to file a position statement. The charge has not been placed in abeyance. The Respondent received an extension of time to file a position statement.

* * * * *

On a quarterly basis, the Court shall reimburse County \$39,897.36 for the basic full-time contractual bailiff costs. In addition the Court shall reimburse County for any actual expense incurred related to extra bailiffs, overtime and holiday pay. In the event of unsatisfactory bailiff services, the Court will notify the Sheriff's Department and the Sheriff's Department will take corrective action.

Additionally, the Court and the County agree to re-visit the cost issue of security services during the term of this MOU, if necessary, due to legislative changes, specifically SB 1396, the Court Law Enforcement Act of 2002.

Wilson's identification badge indicates, "This is to certify that M. David Wilson is a duly sworn bailiff of the Sheriff of the County of Plumas, State of California," and is signed by the Sheriff-Coroner Terry Bergstrand. Wilson's paycheck indicates that he is paid by the County of Plumas.

Wilson provided bailiff services to the Court pursuant to the MOU between the County and the Court. However, at some point, Wilson complained and was subsequently reassigned to work in the County's jail. Wilson filed a grievance regarding that matter, which has apparently settled. Wilson began working at the Court again on January 16, 2007.

The charge provides, in pertinent part:

Unfair labor practices include:

- a) Illegal contract between Plumas County, Plumas Superior Court and the Plumas County Sheriff's Office concerning a California State funded position (Trial Court funding)
- b) Non-representation for the correctional officer/bailiff position, which is a courthouse security officer position (peace officer position)? It is treated as a private contracted position.
- c) Unfair labor practices have been going on since the Administrative Office of the Courts took over the trial court funding from the very beginning.

The above-stated information fails to state a prima facie violation of the Trial Court Act for the reasons that follow. Trial Court Act section 71601(l) and (m) provide:

For purposes of this chapter, the following definitions shall apply:

(l) "Trial court employee" means a person who is both of the following:

(1) Paid from the trial court's budget, regardless of the funding source. For the purpose of this paragraph, "trial court's budget" means funds from which the presiding judge of a trial court, or his or her designee, has authority to control, authorize, and direct expenditures, including, but not limited to, local revenues, all grant funds, and trial court operations funds.

(2) Subject to the trial court's right to control the manner and means of his or her work because of the trial court's authority to hire, supervise, discipline, and terminate employment. For purposes of this paragraph only, the "trial court" includes the judges of a trial court or their appointees who are vested with or delegated the authority to hire, supervise, discipline, and terminate.

(m) A person is a "trial court employee" if and only if both paragraphs (1) and (2) of subdivision (l) are true irrespective of job classification or whether the functions performed by that person are identified in Rule 810 of the California Rules of Court. The phrase "trial court employee" includes those subordinate judicial officers who satisfy paragraphs (1) and (2) of subdivision (l). The phrase "trial court employee" does not include temporary employees hired through agencies, jurors, individuals hired by the trial court pursuant to an independent contractor agreement, individuals for whom the county or trial court reports income to the Internal Revenue Service on a Form 1099 and does not withhold employment taxes, sheriffs, and judges whether elected or appointed. Any temporary employee, whether hired through an agency or not, shall not be employed in the trial court for a period exceeding 180 calendar days, except that for court reporters in a county of the first class, a trial court and a recognized employee organization may provide otherwise by mutual agreement in a memorandum of understanding or other agreement.

Wilson is paid by the County, not the Court. As such, it appears that Wilson is employed by the County, and not the Court. Unless the charge demonstrates that Wilson is an employee of the Court, Wilson is without standing to allege a violation of the Trial Court Act. As such, this charge must be dismissed.

As an employee of the County, Wilson could allege that the County violated the Meyers-Miliias-Brown Act (MMBA). The charge, as currently written, does not provide the specific facts necessary to determine whether the County has violated the MMBA. A charging party must allege the "who, what, when, where, and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision 944.) Mere legal conclusions are insufficient. (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.) As presently written, the charge does not provide the requisite facts necessary to demonstrate a prima facie violation.

It appears from the charge that Wilson believes that his position is a position under Penal Code section 830.1. Although the charge does not provide facts supporting that conclusion, and the Respondent indicated that the position was not a position defined as a peace officer position under Penal Code section 830.1, it should be noted that PERB does not have jurisdiction over peace officers as defined in Penal Code section 830.1. MMBA section 3511 provides:

The changes made to Sections 3501, 3507.1, and 3509 of the Government Code by legislation enacted during the 1999-2000 Regular Session of the Legislature shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code.

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 and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 26, 2007, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Senior Regional Attorney