

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DARRELL FISHER,

Charging Party,

v.

STATIONARY ENGINEERS LOCAL 39,

Respondent.

Case No. SF-CO-158-M

PERB Decision No. 1940-M

January 18, 2008

Appearance: Darrell Fisher, on his own behalf.

Before Members McKeag, Wesley and Rystrom.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Darrell Fisher (Fisher) of a Board agent's dismissal of his unfair practice charge. The charge alleges that Stationary Engineers, Local 39 (Local 39 or Union) breached its duty of fair representation in violation of the Meyers-Milias-Brown Act (MMBA)¹ by refusing to submit his grievance to arbitration and by failing to inform him of his civil service commission appeal rights.

Based on a review of Fisher's appeal and the entire record in this case, the Board affirms the dismissal of the charge.

BACKGROUND

Fisher was employed by the City and County of San Francisco (City) as a stationary engineer assigned to the Port of San Francisco (Port). Fisher's classification is in the bargaining unit exclusively represented by Local 39.

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

On March 14, 2006,² at approximately 10:30 a.m., the City work truck assigned to Fisher was observed by Port officials parked on a city street several miles from Fisher's work site. The vehicle was unlocked and the keys were in the ignition. Photographs were taken of the vehicle by a Port official and Fisher's supervisor attempted to contact him on his work radio. Fisher did not immediately respond to the radio calls.

Fisher spoke with his supervisor at approximately 1:15 p.m. Fisher denied leaving the vehicle on a city street claiming he had been on Port property with the vehicle all morning. He also told his supervisor that he did not immediately respond to the radio calls because he had left his radio in the office.

Fisher contacted Local 39 and met with Business Representative Stephanie Allan (Allan) on March 16 to discuss possible disciplinary action. During the meeting, which was summarized by Allan in a letter the same day, Allan expressed concern regarding the evidence against Fisher. She noted the City was in possession of photographs that showed the work truck was off Port property. Allan also stated the City had five supervisors who would testify they saw Fisher's vehicle on the city street. Allan doubted that Fisher's claim that he had the vehicle with him on Port property would prevail in arbitration in light of the City's evidence. Allan advised Fisher to consider an immediate retirement to preserve his pension and health care benefits.

Local 39 represented Fisher at a Skelly³ hearing held on June 14.

On July 18, the City notified Fisher that his employment was terminated. The City also provided Fisher with a Notice of Future Employment Restrictions advising him that he would

²All dates refer to 2006 unless otherwise noted.

³Skelly v. State Personnel Board (1975) 15 Cal.3d 194.

be denied future employment with the City. The notice advised Fisher of his right to appeal the employment ban to the civil service commission within 20 days.

Local 39 filed a grievance challenging Fisher's termination on July 19. On August 17, the Union represented Fisher at a meeting with City representatives to discuss Fisher's termination. Subsequently, Local 39 advanced Fisher's grievance to Step 2 of the grievance procedure. On September 15, the City denied the grievance and upheld the termination of Fisher's employment.

In a letter dated October 16, Local 39 advised Fisher that it would not take his grievance to arbitration. The letter stated:

After receiving the September 15, 2006 notice from the City's Employee Relations Division upholding your termination, the Union sought the advice of Local 39's attorneys. Upon reviewing the file, including all the documents, arguments made on your behalf by the Union and the analysis by management, the attorneys have advised us that we cannot prevail before an arbitrator. Therefore, we will not appeal this decision and seek arbitration on the matter.

BOARD AGENT'S DISMISSAL

The Board agent found the charge untimely filed. Local 39 informed Fisher on October 16 that it would not pursue arbitration of his grievance. The Board agent concluded that Fisher should have filed his charge within six months of October 16. Fisher did not file his charge until June 25, 2007.

Even if timely filed, the Board agent concluded the charge did not state a prima facie case. The Board agent found the charge did not demonstrate that Local 39's decision declining to take his grievance to arbitration demonstrated arbitrary or discriminatory conduct.

(International Association of Machinists (Attard) (2002) PERB Decision No. 1474-M.)

Furthermore, the Board agent advised Fisher that Local 39 did not have a duty of fair

representation over extra-contractual matters, such as the civil service commission appeal. (California State Employees Association (Parisi) (1989) PERB Decision No. 733-S.)⁴

FISHER'S APPEAL

Fisher generally complains that Local 39 did not provide adequate representation or notify him of his right to appeal future employment restrictions with the civil service commission. Fisher's appeal did not address the timeliness of his charge.

DISCUSSION

The issue in this case is whether Fisher's charge was filed within the statutory limitations period. PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board (2005) 35 Cal.4th 1072.) In cases alleging a breach of the duty of fair representation, the six-month statutory limitations period begins to run on the date when the charging party, in the exercise of reasonable diligence, knew or should have known that further assistance from the union was unlikely. (Los Rios College Federation of Teachers, CFT/AFT (Violett, et al.) (1991) PERB Decision No. 889.)

Local 39 filed a grievance on Fisher's behalf and represented him at the Skelly hearing and in meetings with City representatives. After the City denied Fisher's grievance and upheld the termination of his employment, Local 39 reviewed the case to determine whether to submit the grievance to arbitration. On October 16, Local 39 notified Fisher that it would not take his grievance to arbitration. The Union's decision on October 16 declining to pursue the grievance to arbitration was conclusive.

⁴When 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. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

The charge was filed on June 25, 2007. Thus, the statutory limitations period extended six months prior to the filing of the charge to December 25, 2006. Fisher knew or should have known on October 16, 2006 that further assistance from Local 39 was unlikely. This date is more than two months outside the statutory limitations period. Accordingly, the charge is untimely filed and is dismissed on that basis.

ORDER

The unfair practice charge in Case No. SF-CO-158-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Rystrom joined in this Decision.