

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAK ONKVISIT,

Charging Party,

v.

CALIFORNIA FACULTY ASSOCIATION,

Respondent.

Case No. SF-CO-163-H

PERB Decision No. 1947-H

February 29, 2008

Appearance: Sak Onkvisit, on his own behalf.

Before Neuwald, Chair; Wesley and Rystrom, Members.

DECISION

NEUWALD, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Sak Onkvisit (Onkvisit) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the California Faculty Association (CFA) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ by breaching its duty of fair representation. Onkvisit alleged that this conduct constituted a violation of Section 3571.1.

The Board reviewed the entire record in this matter and based upon the discussion below, hereby affirms the Board agent's dismissal.

FACTS

The California State University (CSU) employed Onkvisit as a tenured faculty member in the Marketing Department in the College of Business at its San Jose State University

¹HEERA is codified at Government Code section 3560, et seq. Unless otherwise noted, all statutory references are to the Government Code.

campus. CFA exclusively represented the faculty members of CSU. As such, Onkvisit is represented by CFA.

In 2003, Onkvisit refused to allow a student the opportunity to make up an exam. The student alleged that he missed the exam because of a motorcycle accident which Onkvisit disputes. Subsequently, Onkvisit failed the student for missing the exam. The Student Fairness Committee (SFC) determined that the student be given a make-up exam. Onkvisit rejected the SFC's non-binding recommendation. Associate Dean, Nancie Fimbel (Fimbel), informed Onkvisit that she offered the student an opportunity to take a make-up exam. She also informed Onkvisit that she would convene an ad-hoc committee to determine the student's grade. She requested the student's grades from Onkvisit. Onkvisit refused to turn over the grades. Associate Dean Fimbel renewed her request and Onkvisit refused again. In April 2005, Onkvisit was given a Notice of Pending Disciplinary Action that imposed a demotion from a full association professor for the 2005-06 academic year for his failure to turn over the grades.

On May 27, 2005, Onkvisit submitted a grievance to CFA. In a letter dated April 17, 2006, CFA declined to submit Onkvisit's grievance to arbitration concluding that "[b]ased upon the information in the case record, the administration's request to cooperate in a make-up test for an injured student was reasonable." In a letter dated April 26, 2006, Onkvisit appealed CFA's decision. On May 16, 2006, CFA sent a letter to Onkvisit affirming the decision not to arbitrate his grievance.

Onkvisit filed an unfair practice charge on May 15, 2007. On September 12, 2007, the Board agent issued a warning letter finding the charge untimely. Onkvisit did not submit either an amended charge or a request for withdrawal. The Board agent dismissed the unfair practice charge on September 21, 2007.

DISCUSSION

HEERA section 3563.2(a) prohibits PERB 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." 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.)² A charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

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; United Teachers of Los Angeles (Hopper) (2001) PERB Decision No. 1441.) Repeated union refusals to process a grievance over a recurring issue do not start the limitations period anew. (California State Employees' Association (Calloway) (1985) PERB Decision No. 497-H.)

In May 2006, CFA informed Onkvisit that it would no longer pursue his grievance. As such, the statute of limitations began in May 2006 and expired in November 2006. Onkvisit filed the present charge in May 2007, nearly a year later. Therefore, the Board finds the charge untimely.³

²It is appropriate to take guidance from cases interpreting California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

³Onkvisit argues that the Board agent's dismissal should be reversed because the appeal of his demotion is pending before the State Personnel Board. We find his pending appeal is irrelevant to our determination that his unfair practice charge against the CFA is untimely.

ORDER

The unfair practice charge in Case No. SF-CO-163-H is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Wesley and Rystrom joined in this Decision.