STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3631, Charging Party, v. ORANGE COUNTY FIRE AUTHORITY, Respondent.	Case No. LA-CE-368-M PERB Decision No. 1968-M June 30, 2008

Appearances: Silver, Hadden, Silver, Wexler & Levine by Richard A. Levine, Attorney, for Orange County Professional Firefighters Association, IAFF Local 3631; Woodruff, Spradlin & Smart by Terry C. Andrus, Attorney, for Orange County Fire Authority.

Before McKeag, Wesley and Rystrom, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Orange County Professional Firefighters Association, IAFF Local 3631 (OCPFA) of a Board agent's dismissal of an unfair practice charge. The charge alleged that the Orange County Fire Authority (Fire Authority) violated the Meyers-Milias-Brown Act (MMBA)[1] by unilaterally changing the procedure for modification of bargaining units under it's local rules. OCPFA alleged this conduct constituted a violation of MMBA sections 3502, 3507 and 3507.1.

The Board has reviewed the entire record in this matter, including but not limited to, the unfair practice charge, the Fire Authority's position statement, the warning and dismissal letters, OCPFA's appeal, the Fire Authority's opposition and OCPFA's reply. Based on this review, we

[1]The MMBA is codified at Government Code section 3500 et seq.

find the unfair practice charge was not timely filed. Accordingly, the Board hereby dismisses this case for the reasons set forth below.

FINDINGS OF FACT

OCPFA is the exclusive representative of employees in the Fire Authority's firefighters unit and the fire management unit. On April 3, 2006, OCPFA submitted a request for unit modification pursuant to Section 9 of the Fire Authority's Employee Relations Resolution, Resolution #2004-07 (ERR).[2] The employees at issue were firefighter mechanics and technicians (collectively Fire Mechanics) in the general employee's bargaining unit who were seeking the restoration of, and placement in, an independent bargaining unit that existed prior to 2001.

Prior to 2001, OCPFA was the exclusive representative for two of the Fire Authority's bargaining units: the firefighters unit and the fire management unit. In addition, the Orange County Employees Association (OCEA), was the exclusive representative for three bargaining units: the general employee's unit, the supervisory management unit, and the mechanics and service center unit.

During contract negotiations in 2001, the Fire Authority and OCEA reached an agreement to eliminate the mechanics and service center unit and place the classifications in the larger general employee's and supervisory bargaining units. The memorandum of understanding (MOU) became effective on December 14, 2001, and expired in 2006. Appendix A of the MOU listed all the positions in the general employee's and supervisory bargaining units effective April 5, 2002, and included the positions comprising the Fire

[2]Section 9 of the ERR, which is entitled "Modification of Representation Units", governs the procedures for requesting a modification of an established bargaining unit.

Mechanics. In April 2003, the MOU reflecting the agreement between OCEA and the Fire Authority was posted on the Internet.

On April 3, 2006, OCPFA submitted its request to modify the general and the supervisory management units by removing certain mechanic and technician classifications and establishing a new bargaining unit for these classifications.

On June 13, 2006, the parties met to discuss whether the Fire Mechanics should either remain part of the general employee's bargaining unit or be placed in an independent bargaining unit. The parties were unable to resolve this issue. Consequently, pursuant to Section 9.G of the ERR, the matter was submitted to the Fire Authority's Board of Directors.

The Fire Authority's Board of Directors met on November 16, 2006, to address this issue. In its amended charge, OCPFA alleges that, during this meeting, it learned for the first time that the Fire Authority and OCEA agreed during contract negotiations in 2001 that the Fire Mechanics' former independent bargaining unit -- the mechanics and service center unit -- would be modified and placed into the general employee's bargaining unit represented by OCEA. It is this transfer of the Fire Mechanics in 2001 to the general employee's bargaining unit that forms the basis of the instant dispute. In particular, OCPFA alleges the Fire Authority violated numerous provisions of the ERR when it permitted the transfer.

On April 6, 2007, OCPFA filed the instant unfair practice charge alleging the Fire Authority violated the MMBA by failing to comply with numerous ERR procedures when it placed the Fire Mechanics into the general employees unit represented by OCEA. The Board agent ruled that the charge was not timely filed and dismissed the case.

DISCUSSION

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 & Vector Control Dist. v. California Public Employment Relations Bd. (2005) 35 Cal.4th 1072 [29 Cal.Rptr.3d 234].) 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.)[3] Relevant to this case, the Board has held that a charging party's belated discovery of the legal significance of the underlying conduct does not excuse an otherwise untimely filing. (Empire Union School District (2004) PERB Decision No. 1650 (Empire).)

On appeal, OCPFA argues that it first discovered both the facts revealing the unlawful conduct and the legal significance of such conduct at the Fire Authority's Board of Directors meeting on November 16, 2006. Accordingly, since it filed the unfair practice in April 2007, OCPFA contends the charge was timely filed. However, what OCPFA discovered in November 2006 was evidence that the Fire Authority may not have complied with the ERR when it moved the Fire Mechanics to the general employee's bargaining unit. This evidence merely revealed the legal significance of the Fire Authority's actions. Under Empire, such a discovery does not trigger the limitations period. Rather, the limitation period began to run when OCPFA knew or should have known that the Fire Authority transferred the Fire Mechanics to the general employee's bargaining unit without providing notice of the proposed unit modification.

[3]When 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 [116 Cal.Rptr. 507].)

Unit modifications are significant undertakings that require a substantial commitment of time and resources by a prospective exclusive representative. At a minimum, OCPFA should have discovered during its organizational efforts that the prior unit was eliminated and that the Fire Mechanics were transferred to the general employee's bargaining unit. From that point, OCPFA should have known that it did not receive notice of the change pursuant to the ERR. Accordingly, we find the statute of limitations began to run on April 3, 2006, the day OCPFA submitted its request for a unit modification. Since the charge was filed on April 6, 2007, over one year after OCPFA submitted its request, the charge was not timely filed.

CONCLUSION

Based on the foregoing, we conclude that dismissal is appropriate under the facts of this case.

ORDER

The unfair practice charge in Case No. LA-CE-368-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Member Wesley joined in this Decision.

Member Rystrom's dissent begins on page 6.

RYSTROM, Member, dissenting: I respectfully dissent from the majority's ruling that the Orange County Professional Firefighters Association, IAFF Local 3631 (OCPFA's) charge is untimely based on a factual conclusion that OCPFA should have known prior to November 16, 2006, that the Orange County Fire Authority (Fire Authority) transferred the firefighter mechanics and technicians (collectively Fire Mechanics) to the general employee's bargaining unit in 2001. I agree that the applicable statute of limitations period began to run when the Fire Authority knew or should have known of this transfer. I disagree with the majority's finding that OCPFA should have known prior to November 16, 2006 of the 2001 transfer because there is no evidence in the record before the Public Employment Relations Board (PERB or Board) to support this finding.

The majority held that: "Unit modifications are significant undertakings that require a substantial commitment of time and resources by a prospective exclusive representative. At a minimum, OCPFA should have discovered during its organizational efforts that the prior unit was eliminated and that the Fire Mechanics were transferred to the general employee's bargaining unit."[1]

My review of the entire record in this case including all exhibits and the applicable local rules governing requests for unit modification indicates there is no evidence to support these findings. There are no factual allegations in OCPFA's amended charge that OCPFA's preparation of its request for unit modification involved significant undertakings resulting in

[1]In its findings of fact on page two, the majority states that "The employees at issue were firefighter mechanics and technicians (collectively Fire Mechanics) in the general employee's bargaining unit who were seeking the restoration of, and placement in, an independent bargaining unit that existed prior to 2001." (Emphasis added.) The record before the Board does not contain any evidence which supports a factual finding that at the time OCPFA submitted its request for unit modification it was seeking "the restoration of" a unit that had existed prior to 2001. OCPFA's allegations in its amended complaint along with the uncontroverted evidence before the Board of the prior existence of a fire mechanics unit are that such existence was discovered on November 16, 2006, after OCPFA had submitted its request for a unit modification.

organizational efforts from which it can be concluded that OCPFA should have discovered the 2001 transfer. The same is true of the uncontroverted facts alleged by the Fire Authority.

The amended charge alleges only that on April 3, 2006, OCPFA filed a request for a bargaining unit modification based on the belief that the employees desiring new representation were members of the general employee's unit and that OCPFA followed the procedures and rules outlined in Section 9 of the Employee Relations Resolution (ERR).

My review of the applicable local rules followed by OCPFA, which govern what an employee organization must undertake to request a unit modification, indicates they do not support a conclusion that OCPFA should have known of the 2001 transfer as a result of its organizational efforts.[2]

Section 9 of the ERR provides that to request the modification of an established unit an employee organization need only file a request accompanied by a petition signed by a majority of the regular and probationary employees within the requested modified representation unit. The petition need only contain the printed names of employees, signatures and date signed, and the proof must meet Section 7.A.7's requirements.

Section 7.A.7 provides that to be verified as an employee organization, the organization must submit a request by an authorized representative to the Human Resources Director which

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[2]Pursuant to the MMBA, the Fire Authority adopted local regulations for the administration of employer-employee relations. (MMBA sec. 3507.) Such local regulations are permitted to and did include regulations regarding petitions for unit modification. (City of San Rafael (2004) PERB Decision No. 1698-M (San Rafael) (Board addressed issue whether public agency's local rule regarding petitions for unit modification was reasonable).) When a public agency has adopted such regulations, they will govern unless they are inconsistent with the purposes of the MMBA as a whole. (San Rafael; Huntington Beach Police Officers' Assn. v. City of Huntington Beach (1976) 58 Cal.App.3d 492 [129 Cal.Rptr. 893]; Los Angeles County Firefighters Local 1014 v. City of Monrovia (1972) 24 Cal.App.3d 289 [101 Cal.Rptr. 78].) In this case, the local rules regarding petitions for unit modification are substantially similar to those provided by PERB Regulation 61450* and are the procedures which were followed by OCPFA. (*PERB regs. are codified at Cal. Code Regs. tit. 8, sec. 31001 et seq.)

contains: (1) the name and address of the organization; (2) a statement that the organization has as one of its primary purposes the representation of Fire Authority employees in their employer-employee relations; (3) a statement that the organization includes employees of the Fire Authority as its members who have designated it to represent them in their employer-employee relations; (4) certified copies of the organization's constitution and by-laws; (5) names of the employees it represents with class titles and departments where employed; (6) a designation of those persons authorized to act as representatives in communications with the Human Resources Director; and (7) proof of representation.

None of these local rules provide evidence from which it can be concluded that OCPFA should have discovered the 2001 transfer when OCPFA prepared its 2006 request for a unit modification.

When the Board concludes that the charging party should have known facts which trigger a statute of limitations, such a finding must be based on evidence contained in the record before the Board.[3] If no such evidence is presented, a party's factual claims in support of its statute of limitations defense must be determined during the administrative hearing on the complaint.[4]

I would remand this case to the General Counsel's office with directions that a complaint be issued.

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[3]SEIU Local 99 (Gutierrez) (2007) PERB Decision No. 1899 (charge was dismissed as untimely because a memo authored by charging party and provided with her charge indicated that she knew or should have known that the union was allegedly failing to represent its members more that six months prior to filing the charge); Stockton Unified School District (1997) PERB Decision No. 1211 (evidence of conversations reflected in the record demonstrated that the union either knew or should have known that a weapons search occurring outside the limitations period reflected the district's policy).

[4]At this stage, the Board must accept a charging party's facts as true. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.)