

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GREGORY HAGANS & ED TOOLE,

Charging Parties,

v.

SEIU LOCAL 721,

Respondent.

Case No. LA-CO-70-M

PERB Decision No. 2050-M

July 20, 2009

Appearances: Gregory Hagans and Ed Toole, on their own behalf.

Before Dowdin Calvillo, Acting Chair; McKeag and Neuwald, Members.

DECISION

DOWDIN CALVILLO, Acting Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Gregory Hagans (Hagans) and Ed Toole (Toole) (collectively Charging Parties) of a Board agent's dismissal of their unfair practice charge. The charge alleged that SEIU Local 721 (SEIU or Union) violated the Meyers-Milias-Brown Act (MMBA or Act)¹ by failing to provide Toole with fair representation in a grievance and in proceedings before PERB; retaliating against Toole for exercising his rights under the MMBA; and negotiating in bad faith with the City of Riverside (City). The Board agent dismissed the charge as untimely with respect to allegations of conduct that occurred more than six months prior to the filing of the charge and for failure to state a prima facie case of breach of the duty of fair representation, retaliation, or violation of the duty to meet and confer in good faith.

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

The Board has reviewed the dismissal and the record in light of the Charging Parties' appeal and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.²

BACKGROUND

The charge was initially filed by Hagans and states, in relevant part:

SEIU staff located at[.] [Sic.]

[SEIU] [f]ailed [to move] my grievance to arbitration[.] [SEIU] did not follow procedure by allowing my grievance to go before the arbitration review committee nor did [SEIU] give any reason for not doing so[.]

SEIU also did not protect me against [retaliation] nor supported my attempt addressing labor issues as well as they should have[.] [Sic.] By not doing so have allowed the City to continue to retaliate against me in[.] [Sic.]

Find SEIU negligent in their duties to protect me as a steward[.] Award monetary damages that may apply due to their failure to do so[.] [Sic.]

The Board agent sent Hagans a warning letter indicating that the allegations set forth above failed to state facts demonstrating that the charge was filed within six months of the conduct alleged to constitute a violation of the Act and that, even if the charge was timely filed, it failed to state a prima facie case of violation of the duty of fair representation by SEIU. Subsequently, Hagans and Toole filed amended charges stating additional facts.³ The amended charge alleged that SEIU failed to provide Toole with fair representation in a grievance and in proceedings before PERB, retaliated against Toole for exercising his rights under the MMBA,

² The Board also denies Charging Parties' request for oral argument.

³ The Board agent determined that a first amended charge filed by Hagans did not comply with PERB Regulation 32605 (PERB regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.) because an original copy of the charge was not filed with PERB. Hagans subsequently filed a second amended charge and requested that Toole be named as a co-Charging Party.

and negotiated in bad faith with the City. The charge alleged that this conduct occurred at various times during 2004, 2005, 2006, and January and April 2007.⁴

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.) 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.)*⁵ The charging party bears the burden of alleging facts showing that the unfair practice occurred no more than six months prior to the filing of the charge. *(Los Angeles Unified School District (2007) PERB Decision No. 1929; City of Santa Barbara (2004) PERB Decision No. 1628-M.)*

The original charge was filed on March 14, 2008. Therefore, Charging Parties bear the burden of alleging facts showing that SEIU violated the MMBA on or after September 14, 2007. The charge, as amended, does not contain any allegations of unlawful activity by SEIU during this six-month time frame. Instead, all of the allegations pertain to conduct occurring in 2004, 2005, 2006 and January and April 2007. Accordingly, the charge is barred by the MMBA's six-month statute of limitations.

⁴ The amended charge also alleged: "July 2008 went to H.R[.] and requested copies of grievance and letters that the union was to forward to the City. The City had no such documents." This statement does not allege that SEIU committed an unfair practice in July 2008 or that Toole first discovered SEIU's failure to pursue his grievance at that time and therefore is not considered for purposes of timeliness of the charge.

⁵ 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.)*

Additionally, Charging Parties submitted new allegations and new supporting evidence on appeal. PERB Regulation 32635(b) prohibits a charging party from submitting new allegations and new supporting evidence on appeal absent good cause. The new allegations and evidence predate the dismissal letter and therefore were known to Charging Parties, yet they did not present them to the Board agent in an amended charge. Accordingly, we do not find good cause to consider Charging Parties' new allegations and new supporting evidence. (*Los Angeles County Office of Education* (2005) PERB Decision No. 1743.)

ORDER

The unfair practice charge in Case No. LA-CO-70-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.