GREGORY HAGANS & ED TOOLE,

        Charging Parties,

    v.

SEIU LOCAL 721,

        Respondent.

Case No. LA-CO-71-M

PERB Decision No. 2051-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 its duty of fair

representation under the Meyers-Milias-Brown Act (MMBA or Act)[1] by failing to amend a

previously filed unfair practice charge and allowing Charging Parties to attend a PERB hearing

without representation. The charge also alleged that SEIU negotiated in bad faith with the City

of Riverside (City).

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]

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

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

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

> SEIU staff failed in its obligation to protect 1 – the seniority
> rights regarding promotions and job assignments. 2 – To protect
> the 6 full time positions won as a result of a Grievance filed for
> the members of Special Transportation [sic] As a result members
> have not received the advancement opportunities they were
> entitle [sic] to and members have had their pay affected. All
> members have suffered because of SEIU staff not providing the
> service they are required to as Union representatives.

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 or failure

to negotiate in good faith by SEIU. Subsequently, Hagans and Toole filed amended charges

stating additional facts.[3] The amended charge alleged that SEIU did not provide Charging

Parties with fair representation because SEIU failed to amend a previously-filed PERB charge

and allowed Charging Parties to attend a PERB hearing in a prior case without representation.

The amended charge also alleged that SEIU negotiated in bad faith with the City. The charge

alleged this conduct occurred during contract negotiations with the City in May 2006, during

an informal PERB hearing in April 2007, and during a union meeting in or around May 9,

2007.[4]

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[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.

[4] The amended charge also alleged: "Fail to properly fill out the 1st Unfair Labor
Charge a fact presented during the informal hearing held in April 2008." This allegation lacks
sufficient specificity to establish that it is an allegation that SEIU committed an unfair practice
in April 2008, and therefore is not considered for purposes of timeliness of the charge.

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 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 May 2006 and April and May 2007. Accordingly, the charge is barred by the MMBA's six-month statute of limitations.

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

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[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.)

find good cause to consider Charging Parties' new allegations and new supporting evidence.

(*Los Angeles County Office of Education* (2005) PERB Decision No. 1743.)

<u>ORDER</u>

The unfair practice charge in Case No. LA-CO-71-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.