

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SCOTT F. SLOTTERBECK,

Charging Party,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 1000,

Respondent.

Case No. SA-CO-403-S

PERB Decision No. 2135-S

October 6, 2010

Appearances: Scott F. Slotterbeck, on his own behalf; Anne M. Giese, Senior Staff Attorney, for Service Employees International Union Local 1000.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Scott F. Slotterbeck (Slotterbeck) of a Board agent's dismissal of his unfair practice charge. The charge alleged that Service Employees International Union Local 1000 (SEIU) violated the Ralph C. Dills Act (Dills Act)¹ by collecting the full amount of fair share fees from Slotterbeck via payroll deduction despite his requests to pay a reduced fee and/or challenge SEIU's calculation of the fair share fee amount. The Board agent dismissed the charge for: (1) failure to exhaust SEIU's internal procedures for challenging fair share fee determinations; and (2) being filed more than six months after the alleged unfair practice occurred.

¹ The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

The Board has reviewed the dismissal and the record in light of Slotterbeck's appeal, SEIU's response thereto, and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

BACKGROUND

Slotterbeck is a Research Analyst II at the State Employment Development Department. He is a member of Bargaining Unit 1, which is exclusively represented by SEIU.

On June 25, 2007, Slotterbeck mailed a letter to SEIU objecting to the use of fees collected from him during the 2007-2008 fiscal year "for activities not germane to collective bargaining." On June 5, 2008, Slotterbeck mailed a letter to SEIU stating that he did not want to be a member of SEIU and contending that SEIU was not authorized to deduct "union dues" from his paycheck. The letter also claimed that SEIU failed to send Slotterbeck the required annual notice informing him of the procedures for requesting to pay a reduced fair share fee or challenging the amount of the fee. On June 25, 2009, Slotterbeck mailed a letter to SEIU in which he reiterated that he did not want to be a member of SEIU and therefore SEIU was not authorized to deduct "union dues" from his paycheck. This letter also stated that Slotterbeck did not want SEIU to use any of the deducted funds for political purposes.

Slotterbeck filed the instant unfair practice charge on June 30, 2009. The statement of the charge stated in full:

EMPLOYEE UNION HAS IGNORED DEMANDS THAT APPLICANT (SCOTT SLOTTERBECK) HAS MADE THAT HE NOT BE A MEMBER OF THE UNION. THEY PERSIST IN DEDUCTING FROM MY PAYCHECK A HIGHER AMOUNT OF MONEY THAN IS ALLOWED FOR A "FAIR SHARE" PAYEE. THIS HAS GONE ON FOR YEARS.

The three letters described above were attached to the charge.

The Board agent interpreted Slotterbeck's statement of the charge as alleging that SEIU improperly determined the fee amount for fair share payers. He dismissed this allegation on

the basis that Slotterbeck failed to allege that he had exhausted SEIU's internal procedures for challenging the fair share fee determination. The Board agent also dismissed the charge as untimely because the alleged violations occurred in 2007 and 2008, more than six months before the charge was filed.²

DISCUSSION

The Dills Act permits a recognized employee organization to charge nonmembers a fair share fee that is equal to the union dues amount. (Dills Act § 3513, subd. (k).) However, employees cannot be compelled to pay for the recognized employee organization's political or other nonrepresentational activities. (*Abood v. Detroit Board of Education* (1977) 431 U.S. 209.) Thus, nonmember employees who affirmatively object to the full fair share fee may pay a reduced fee that excludes nonrepresentational expenses. (Dills Act § 3515.8; *Mitchell v. Los Angeles Unified School District* (9th Cir. 1992) 963 F.2d 258, 261, cert. den. *sub nom. Mitchell v. United Teachers – Los Angeles* (1992) 506 U.S. 940.)

Additionally, the recognized employee organization must provide nonmembers an annual written notice that includes, among other things, the basis for the organization's calculation of the full and reduced fair share fee amounts. (PERB Reg. 32992(a),³ *Chicago Teachers Union, Local No. 1 v. Hudson* (1986) 475 U.S. 292 (*Hudson*).) The recognized employee organization must also provide a procedure by which a nonmember employee may challenge the fair share fee calculation. (PERB Reg. 32994(b); *Hudson*.)

² Slotterbeck did not file an amended charge. He claims in his appeal that he did not receive the Board agent's phone message asking if he received the warning letter and if he intended to file an amended charge. Slotterbeck does not deny, however, that he received the warning letter.

³ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

It is unclear from the charge whether Slotterbeck objected to paying the full fair share fee or sought to challenge the fair share fee calculation. Accordingly, we address both issues.

Assuming the charge alleged that SEIU failed to honor Slotterbeck's requests to pay a reduced fair share fee, we find the charge was properly dismissed. Dills Act section 3514.5, subdivision (a)(1) 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.) A charging party bears the burden of demonstrating that the charge is timely filed. (*Long Beach Community College District* (2009) PERB Decision No. 2002.)

Slotterbeck filed his charge on June 30, 2009. Therefore, allegations of unfair practices occurring before December 30, 2008 are untimely.

The charge alleged that SEIU collected the full fair share fee amount from Slotterbeck during fiscal years 2007-2008 and 2008-2009 despite his timely requests to pay a reduced fee. Slotterbeck knew, or should have known, that SEIU was collecting full fair share fees from him, and therefore had not honored his request to pay a reduced fee, when he received his paycheck for the July 2007 and July 2008 pay periods, the first pay period of each respective fiscal year. Each subsequent full fee deduction did not extend the statute of limitations under a continuing violation theory. (*Los Angeles City & County School Employees Union, Local 99 (Grove)* (2008) PERB Decision No. 1973.) Therefore, because Slotterbeck did not file his charge within six months of receiving his first paycheck of either fiscal year, these allegations are untimely.

The allegation that SEIU did not honor Slotterbeck's request to pay a reduced fair share fee for the 2009-2010 fiscal year is timely but fails to establish that SEIU did not honor the request. The charge was filed on June 30, 2009, before Slotterbeck received his first paycheck for that fiscal year. Therefore, at the time the charge was filed, Slotterbeck could not have known whether SEIU would honor his reduced fee request for fiscal year 2009-2010. Moreover, Slotterbeck did not amend the charge to allege that SEIU had deducted the full fair share fee amount from any of his paychecks in the 2009-2010 fiscal year.⁴ Thus, this allegation must be dismissed.

Assuming the charge alleged that SEIU denied Slotterbeck's challenges to the fair share fee calculation, we find the charge was properly dismissed on this ground as well. A fair share fee payer may not file an unfair practice charge challenging the amount of the fee unless the payer has exhausted the employee organization's internal appeal procedure. (PERB Reg. 32994(a).) The charge did not allege that Slotterbeck exhausted SEIU's internal fair share fee challenge procedure for any of the three fiscal years at issue. Consequently, Slotterbeck lacks standing to allege that the fair share fee calculation violated the Dills Act.

Finally, the charge alleged that SEIU failed to send Slotterbeck a *Hudson* notice in June 2008.⁵ This allegation is untimely because the alleged violation occurred approximately one year before the charge was filed.

⁴ The Board agent's warning letter was dated October 21, 2009, approximately four months into the 2009-2010 fiscal year.

⁵ Pursuant to PERB Regulation 32992, the notice must be sent either 30 days prior to collection of the fee or concurrently with the initial fee collection provided the funds are properly escrowed.

ORDER

The unfair practice charge in Case No. SA-CO-403-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.