STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DIANA GARCHOW, et al., Charging Parties, v. STANDARD SCHOOL DISTRICT, Respondent.	Case No. LA-CE-5586-E PERB Decision No. 2273 June 22, 2012

Appearances: California Teachers Association by Robert E. Lindquist, Attorney, for Diana Garchow, et al.; Fagen, Friedman & Fulfrost by James B. Fernow and Jordan I. Bilbeisi, Attorneys, for Standard School District.

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Diana Garchow, et al. (Garchow)[1] of the Office of the General Counsel's dismissal of her unfair practice charge. The charge, as amended, alleged that the Standard School District (District) violated Educational Employment Relations Act (EERA)[2] section 3547 by failing to comply with public notice requirements concerning its negotiations with the Standard Teachers Association (STA). The Board agent found that the charge was untimely and failed to state a prima facie violation of EERA.

[1] The charge was filed by Garchow and signed by 20 other community members. For convenience, we will refer to Garchow as the charging party.

[2] EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

The Board has reviewed the dismissal and the record in light of Garchow's appeal, the District's response, and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons set forth below.

FACTUAL SUMMARY

On September 9, 2010, the District published an agenda listing items to be discussed at the September 14, 2010 meeting of its Board of Trustees (Trustees). Under item 3.1, listing matters that may be reported by the Superintendent, item 3.1.8 states: "District to Sunshine Proposal to STA (supplement)." In addition, item 10.1 states that the Trustees may be required to adjourn to closed session to "discuss matters related to STA and SEIU negotiations."

At the September 14, 2010, Trustees meeting, the District presented a document entitled "Standard School District's Initial Proposals for 2009-2010, 2010-2011 and 2011-2012 to Standard Teachers' Association (Sunshining)." The body of the document states:

> The current collective bargaining agreement between the Standard School District ('District') and the Standard Teachers' Association expired on June 30, 2009. For 2009-2010, 2010-2011 and 2011-2012 school years, the parties will negotiate regarding salary, health and welfare benefits and all other aspects of the contract. The following are the District's initial proposals:
>
> **Article VII – Hours**
>
> The District will propose language to reduce the length of the work year, to modify the time allowed for preparation with regards to middle school teachers and to modify instruction on a pull-out basis as it relates to music and/or physical education instruction.
>
> **Article VIII – Leaves**
>
> The District will propose modifications to its leave policies with the goal to ensure employees receive appropriate leave while maintaining appropriate coverage of classroom and other services provided by regular employees.

Article XII – Class Size

The District will propose language to modify the student contact ratio and the number of teaching periods and the preparation period for grades 6-8.

Article XV – Salary

The District will propose a fair and affordable salary for the 2009-2010, 2010-2011 and 2011-2012 school years based on the current economic climate, with the goal of maintaining a sound fiscal policy.

At its meeting on November 9, 2010, the Trustees held a public hearing for the purpose of allowing members of the public to comment about the District's proposals that were presented at the September 14, 2010 meeting. The public hearing was noticed on the agenda for the November 9, 2010 meeting as follows:

> 6.1 **Public Hearing – District Initial Proposal to STA:** The District's initial proposal to STA was sunshined at the 9-14-10 regular board meeting and has been available to the public since that date. In accordance with code and policy, a public hearing shall be held allowing members of the public to comment about the proposal. There will be no action on this information at this time.

No public comment was offered at the meeting.

STA and the District met and negotiated on March 24 and May 19, 2011. As a result of those negotiations, the District and STA reached a tentative agreement on certain subjects. STA refused, however, to negotiate over any of the District's initial proposals presented at the September and November Trustees meetings. By letter dated May 17, 2011, STA asserted to the District that the District's initial proposals presented at the September 14, 2010 Trustees meeting failed to comply with the requirements of EERA section 3547. On June 2, 2011, the District met with STA and presented proposals on all of the subjects identified at the September 14 Trustees meeting, but STA again refused to negotiate over those proposals. On July 22, 2011, PERB declared the parties to be at impasse and approved the appointment of a

mediator. At a special meeting on July 26, 2011, the Trustees adopted the District's initial proposals as originally presented on September 14, 2010.

On July 11, 2011, Garchow filed a charge alleging that: (1) prior to distributing the agenda at the September 14, 2010 Trustees meeting, the District did not provide the public with notice that it would be presenting the District's proposals and bargaining positions at that meeting; (2) the District did not make copies of its initial bargaining proposal readily available to the public at the September 14, 2010 meeting; (3) even after obtaining a copy of the District's initial bargaining proposals, the proposals lacked sufficient specificity and were so ambiguous and vague that charging parties were unable to determine the District's intent or the nature of those proposals; and (4) the Trustees "did not adopt and has not subsequently maintained" proposals consistent with the initial proposals presented at the September 14, 2010 meeting.

By letter dated August 24, 2011, the Board agent warned charging parties that the charge was untimely with respect to the District's alleged conduct on September 14, 2010 and that the remainder of the charge failed to state a prima facie violation of EERA section 3547. Garchow filed an amended charge on September 15, 2011, including allegations concerning events throughout the same chronology as in the original charge and reasserting the contention that the District violated its obligations under EERA section 3547.

DISCUSSION

EERA section 3547, entitled "Proposals relating to representation; informing public; adoption of proposal; new subjects; regulations" provides:

> (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.

(b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.

(c) After the public has had the opportunity to express itself, the public school employer shall, at a meeting which is open to the public, adopt its initial proposal.

(d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.

(e) The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

We provide some historical context to this provision. As originally enacted in 1975, EERA section 3547, subdivision (e), explicitly empowered the Board to promulgate regulations to implement the statute. The purpose of the statute is to ensure that the public is informed of the issues being negotiated by the public school employer and the positions of their elected representatives, and have an opportunity to express their views. (EERA § 3547, subd. (e); *Los Angeles Unified School District* (1992) PERB Decision No. 964.) This is accomplished under the statute by "sunshining" the initial proposals of both the exclusive representative and the public school employer at a public meeting. (EERA § 3547, subd. (a).) Once sunshined, these proposals are deemed to be public records. The sunshining of the proposals is the "notice" that is required to be given to the public.

Statute of Limitations

Pursuant to the authority provided in EERA section 3547, subdivision (e), PERB promulgated its first set of regulations to implement the public notice requirements (original

regulations). Pertinent to the issue in this case, the original regulations established a 30-day filing deadline by which a member of the public could file a public notice complaint. Former regulation 37010, adopted in 1977, provided that "[a] complaint alleging that an employer or an exclusive representative has failed to comply with [the public notice provisions of the Government Code] . . . shall be filed no later than thirty calendar days subsequent to the date when conduct alleged to be a violation was known or reasonably could have been discovered. . . ."[3] (*Los Angeles Community College (Kimmett)* (1978) PERB Order No. Ad-41 (*Kimmett*), emphasis added.)

In 2006, PERB adopted new regulations that changed the procedures applicable to public notice and other types of cases. Under the new regulations, alleged public notice violations would thereafter be treated as unfair practice charges and subject to the rules and procedures applicable to such cases.[4] With this regulatory realignment, the 30-day statute of limitations for filing a public notice complaint was replaced by the six-month limitations

---

[3] The substance of this regulation was moved to PERB Regulation 32910, which provided:

> A complaint alleging that an employer or an exclusive representative has failed to comply with Government Code sections 3547 or 3595 may be filed in the regional office. An EERA complaint may be filed by an individual who is a resident of the school district involved in the complaint or who is the parent or guardian of a student in the school district or is an adult student in the district. The complaint shall be filed no later than 30 days subsequent to the date when conduct alleged to be a violation was known or reasonable could have been discovered. Any period of time used by the complainant in first exhausting a complaint procedure adopted by an EERA or HEERA employer shall not be included in the 30-day limitation.

[4] Under Subchapter 5 entitled "Unfair Practice Proceedings," PERB Regulation 32602, subdivision (c), codified the public notice complaint practice. It provides: "A charge alleging that an employer or an exclusive representative has failed to comply with Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569, may be filed by any affected member of the public."

period applicable to unfair practice charges. (EERA sec. 3541.5(a).) With this change, affected members of the public who wanted to bring a public notice complaint were afforded five months more than the time period that had been in place for nearly 30 years. Although the 30-day statute of limitations no longer applies, early Board opinions interpreting the timeliness issue provide insight as to the importance of handling public notice complaints in an expeditious manner.

In *Kimmett*, the charging party filed a public notice complaint 55 days after the last in the series of challenged public meetings, alleging that the meetings scheduled for presentation of proposals and public response were held at 1:30 p.m. when full public participation was impossible. The Board concluded that "the conduct alleged to violate the public notice requirements occurred in its entirety more than 30 days prior to the date the complaint was filed." In explaining its decision, the Board stated:

> In implementing the public notice provisions of the EERA, the Board has adopted rules and regulations that provide for expedited proceedings so that the right of the public to receive notice, learn the positions of its elected representatives, and to express its own views can be fully protected. [Fn. omitted.] The public notice provisions, however, were never intended to be read in a vacuum but must be considered in light of the entire EERA. The Legislature has determined that it is within the public interest to achieve improved employer-employee relations within public school systems. The EERA was enacted to promote this goal and reflects the Legislative judgment that the desired improvement in employer-employee relations can best be obtained though [sic] a process of collective negotiations culminating in final agreement and resulting in a mature and stable negotiating relationship. In one section of the EERA, the public notice section, the Legislature secured to the public the right to be informed and to express its view on the negotiating process. The public awareness and input was intended to further, not impede, the broad goals of EERA.
>
> Serious injury to educational employment relations would result if concerned or merely disgruntled citizens could utilize the public notice provisions of the EERA to bring delayed challenges to negotiations that had otherwise been satisfactorily completed.

> Moreover, there are compelling reasons to bar untimely public notice complaints even though the parties may not yet have reached agreement. While the Board has specifically provided in its rules and regulations that the pendency of a public notice complaint will not cause negotiations to cease, [fn. omitted] the filing of a complaint nonetheless has an unsettling effect on the negotiations in progress. This is so because should such a complaint be found to have merit, the status of any final agreement between the parties is uncertain and they must necessarily divert their attention from reaching agreement to defending against the charge. That the parties may ultimately be vindicated in their conduct does not save the negotiating process from harm, for the damage occurs when the unreasonably delayed complaint is filed. A citizen who seeks to file a complaint alleging a violation of the public notice provisions after the prescribed time has elapsed could thus thwart the very harmony between the employer and its employees sought to be promoted by the EERA. Accordingly, we conclude that such untimely complaints must be barred.

As seen above, in its original incarnation, the public notice complaint process was intended to be an "expedited" process. Even when the limitations period was only 30 days, the Board already had concerns about untimely complaints.

We consider this history in light of established PERB precedent governing the statute of limitations for filing an unfair practice charge. EERA section 3541.5(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 (*Gavilan*).)

A charging party bears the burden of demonstrating a charge is timely filed. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929.) The statute of limitations is an element of the charging party's prima facie case. (*Long Beach Community College District* (2009) PERB Decision No. 2002 (*Long Beach CCD*).) The statute of

limitations for new allegations contained in an amended charge begins to run based upon the filing date of the amended charge. (*Sacramento City Teachers Association (Marsh)* (2001) PERB Decision No. 1458.)

Garchow argues that the statute of limitations did not begin to run until mid-June 2011, when she "discovered" the District's allegedly unlawful conduct, relying on judicial authority applicable to civil cases. (See, e.g., *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383.) We reject this standard and conclude that, under the *Gavilan* "knew or should have known" standard, the statute of limitations for a charge alleging a violation of the public notice provisions of EERA begins to run either upon publication of a public notice of a meeting at which bargaining proposals will be sunshined or at the public meeting itself. (See, e.g., *Los Angeles Community College District* (1991) PERB Decision No. 908 (*Los Angeles CCD*) [placement of an initial proposal on a board agenda placed the public on notice of the proposal].) Thus, if the charge alleges that the notice itself was defective, the statute of limitations begins to run upon publication of the notice. If the charge alleges that the notice itself was proper but the proposals sunshined at the meeting failed to comply with the provisions of EERA section 3547, the limitations period begins to run on the date of the meeting where the proposals were presented to the public.

Applying the *Gavilan* standard, the undisputed evidence establishes that the District provided public notice of its intent to sunshine its initial proposals when it published its agenda for the September 14, 2010 Trustees meeting on September 9, 2010, and again when it published its agenda for the November 9, 2010 meeting at which the opportunity for public comment was provided. Accordingly, we conclude that the charging parties knew or should have known of the District's conduct not later than November 9, 2010, when the District

placed its initial proposals on the agenda for public comment and held a public meeting at which it provided the opportunity for public comment.

The original charge was filed on July 11, 2011. Therefore, all alleged violations pertaining to conduct that occurred prior to January 11, 2011 are untimely. Accordingly, all allegations concerning the District's presentation of its initial proposals on September 14, 2010 and the public hearing on those proposals at the November 9, 2010 Trustees meeting are barred by the statute of limitations.

The amended charge was filed on September 15, 2011. Therefore, all new allegations of conduct occurring prior to March 15, 2011 are time-barred.

The only conduct alleged to have occurred during the six months prior to filing the amended charge is that, between March 24 and June 2, 2011, the District attempted to meet and negotiate with STA over its proposals despite its prior alleged lack of compliance with the public notice provisions of Section 3547, and that, on July 26, 2011, the Trustees adopted the District's initial proposals presented at the September 14, 2010 public meeting. Under the "continuing violation" doctrine, a violation within the statute of limitations period may "revive" an earlier violation of the same type that occurred outside of the limitations period. (*Sacramento City Teachers Association (Franz)* (2008) PERB Decision No. 1959 (*Franz*); *Compton Community College District* (1991) PERB Decision No. 915.) The violation within the limitations period must constitute an independent unfair practice without reference to the prior violation. (*North Orange County Community College District* (1999) PERB Decision No. 1342.) If these conditions are satisfied, PERB may consider the prior violation even though it occurred outside the statute of limitations period. For the continuing violation doctrine to apply, the conduct alleged during the limitations period must be of the same type as

that alleged outside the limitations period and must stand on its own as an unfair practice. (*Franz.*)

Although the amended charge alleges that the District attempted to negotiate over its initial proposals between March 24 and June 2, 2011, it further alleges that STA refused to negotiate over those proposals. These allegations do not state an independent unfair practice. Moreover, even if they did, the District's conduct in seeking to negotiate with STA is not of the same type as its alleged violation of the public notice requirements of EERA section 3547 so as to constitute a continuing violation.

Similarly, the District's adoption on July 26, 2011 of its September 14, 2010 initial proposals does not constitute an independent unfair practice. EERA section 3547(c) required the District to adopt its initial proposal at a public meeting after the public has had the opportunity to express itself. Even if this act were an independent violation, it would not "revive" the earlier allegation that the notice provided in September 2010 failed to comply with the requirements of Section 3547. Accordingly, the charge fails to allege any violation of Section 3547 occurring within the six-month limitations period.

Under the *Gavilan* "knew or should have known" standard, members of the public as a whole are placed on notice of the negotiation process by the sunshining of proposals to the public. While we have no authority to determine a public entity's compliance with the open meeting requirements of state and local law[5] when noticing its meetings and agendizing the matters that come before it, we conclude that the public as a whole should have known of the conduct underlying a public notice complaint as of the time the agenda was published or the bargaining proposals were sunshined, at a public meeting where the public was provided an

[5] See Section 11120 et seq. (Bagley-Keene Open Meeting Act); Section 54950 et seq. (Ralph M. Brown Act).

opportunity to comment. This rule provides clear guidance to the public of both its rights and responsibilities and is not dependent upon facts personal to individual members of the public.

Misrepresentation

Garchow also contends that principles of equitable estoppel require tolling the statute of limitations due to the District's misrepresentation and concealment of material facts relevant to the provision of public notice of its initial proposals. While PERB has applied the doctrine of equitable tolling under certain circumstances, none of these circumstances are applicable in this case. (See, e.g., *Long Beach CCD* [statute of limitations is tolled during the period of time the parties are utilizing a non-binding dispute resolution procedure if: (1) the procedure is contained in a written agreement negotiated by the parties; (2) the procedure is being used to resolve the same dispute that is the subject of the unfair practice charge; (3) the charging party reasonably and in good faith pursues the procedure; and (4) tolling does not frustrate the purpose of the statutory limitation period by causing surprise or prejudice to the respondent].)

Garchow asserts that the District misrepresented material facts by: (1) stating in agenda item 10 for the September 14 meeting that the Trustees would hold a closed session to discuss matters related to negotiations; (2) posting the agenda for the September 14 meeting in a manner that made it largely inaccessible to the public; (3) placing agenda item 10 at the end of the meeting and used inaccessible devices to discourage public attendance at the meeting and deny the public a meaningful opportunity to become informed and express itself regarding the proposal; and (4) suggesting that the District had already completed compliance with the requirements of public notice Section 3547 by stating in the minutes of the September 14 meeting that the superintendent would deliver the District's proposals to the STA president.

We find no merit to these claims. In addition to stating that matters related to negotiations with STA and another labor organization would be discussed in closed session,

the September 14 meeting agenda also stated in item 3.1.8 that the District would sunshine its proposal to STA and that there would be a "supplement," presumably containing that proposal. We also find no misrepresentation in the manner in which the District posted its notice of the meeting. As alleged in the charge, the notice was posted in a glass case located beside the entrance to the District's administrative offices. Subsequently, the District also made the notice available on its website. We reject Garchow's assertions that these methods of notice, along with the placement of agenda item 10 and the statement in the September 14 minutes, were misleading, insufficient or deprived the public of a meaningful opportunity to become informed and participate. (*Los Angeles CCD.*) In short, Garchow has failed to allege any facts showing that the District engaged in any misrepresentation with respect to its public notice obligations so as to extend the statute of limitations.

Timeliness as an Element of Garchow's Prima Facie Case

In *Long Beach CCD*, the Board held unequivocally that the charging party bears the burden of proving, by a preponderance of the evidence, that the charge was filed within the six-month limitations period, expressly overruling prior PERB decisions finding the statute of limitations to be an affirmative defense. (See, e.g., *Walnut Valley Unified School District* (1983) PERB Decision No. 289; *Long Beach Community College District* (2003) PERB Decision No. 1564.) Garchow urges us to reverse this rule. The Board thoroughly analyzed this issue in *Long Beach CCD* just three years ago, and we find no basis to revisit it at this time.

CONCLUSION

Garchow bears the burden of establishing, as part of the prima facie case, that the charge was filed within the statutory six-month period. Because Garchow has failed to meet that burden, the Board lacks jurisdiction to consider this matter.

ORDER

The unfair practice charge in Case No. LA-CE-5586-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez joined in this Decision.

Member Huguenin's concurrence begins on page 15.

HUGUENIN, Member, concurring: I support the majority's decision to construe strictly the limitations period in cases involving public notice complaints. I write separately to underscore the distinction in limitations policy applicable to public notice complaints and to unfair practice charges.

Public Notice Limitations Policy

The Legislature included in the Educational Employment Relations Act (EERA) a provision for public notice and participation in formulation of the public school employer's to bargaining proposals. (EERA § 3547.) EERA delegated to the Public Employment Relations Board (PERB or Board) enforcement of this public notice provision, through regulation and adjudication. PERB adopted separate regulations for the public notice, including a thirty (30) day limitations period within which to assert a public notice violation, and thereafter enforced strictly the limitation period. (*Los Angeles Community College District* (1978) PERB Order No. Ad-41.) Later the Board eliminated its separate regulation for public notice complaints, folding public notice complaint enforcement into PERB's unfair practice charge enforcement process. The limitations period for public notice complaints thus increased to six (6) months, but the underlying policy of strictly enforcing the public notice limitations period has remained. The Board here gives effect to that policy by applying its *Gavilan*[1] limitations calculus in public notice cases as follows: the complaining party "should have known" of an allegedly defective notice on the date of its publication, and of an allegedly defective proposal on the date where it was first presented to the public. The public notice complaint must be filed within six (6) months of such date.

[1] *Gavilan Joint Community College District* (1996) PERB Decision No. 1177 (*Gavilan*).

Unfair Practice Limitations Policy

This decision leaves untouched the Board's unfair practice limitations policy, a principal focus of which is, in my view, full and fair enforcement of employee and organizational rights necessary to functioning of the EERA's system of collective negotiations. Thus, the Board will continue to apply its *Gavilan* calculus in unfair practice cases, requiring that a charging party file a charge no later than six (6) months from the discovery of conduct forming the basis for the charge. The Board initially articulated this policy in 1985:

> In *San Dieguito Union High School District* (1982) PEPB Decision No. 194, PERB held that, to state a prima facie violation, charging party must allege and ultimately establish that the alleged unfair practice either occurred or was discovered within the six-month period immediately preceding the filing of the charge with PERB. EERA section 3541.5; *Danzansky-Goldberg Memorial Chapels, Inc.* (1982) 264 NLRB 112 [112 LRRM 1108]; *American Olean Tile Co.* (1982) 265 NLRB No. 206 [112 LRRM 1080]; *A.F.C. Industries, Inc. (Amcar Division)* (1978) 234 NLRB 1063 [98 LRRM 1287], enf'd as modified (8 Cir. 1979) 596 F.2d 1344 [100 LRRM 3074]. The National Labor Relations Board cases cited here hold that the six-month period commences on the date the conduct constituting the unfair practice is discovered. It does not run from the discovery of the legal significance of that conduct.

(*Fairfiled-Suisun Unified School District* (1985) PERB Decision No. 547, Warning Letter, at p. 2.)

Our unfair practice limitations policy reasonably forbids charging parties to "sit on their rights" by requiring that upon discovery of the conduct forming the basis for a charge that a charging party thereafter bring a charge within six (6) months. A charging party is not excused from timely filing on the ground that he/she learned later of the legal significance, i.e., the allegedly unlawful nature, of the conduct. Thus, if a party learns of ("discovers") conduct which might be the basis for a charge, that party has six (6) months to consult counsel or otherwise to assess whether the conduct does violate our statutes, and to file a charge.

The Board's decision herein works no change to our unfair practice limitations policy.

Charging Parties' Limitations Authority

Charging Parties herein rely, inter alia, on *Norgart v. Upjohn Company* (1999) 21 Cal.4th 383 (*Norgart*), and authorities therein cited.[2] *Norgart* reflects the same policy as *Gavilan*, requiring a party to proceed within a prescribed limitations period upon discovering the conduct underlying a violation, even though the legal significance of that conduct is not evident. Thus, pursuant to *Norgart* and our public notice limitations policy explicated above, Charging Parties "had reason to discover" or "should have learned" of the facts essential to their claims in September and/or November of 2010. The Board's decision in this case is consistent with *Norgart* as well as *Gavilan*.

---

[2] *Norgart* states, in part, at pages 397-398:

> An exception to the general rule for defining the accrual of a cause of action—indeed, the 'most important' one—is the discovery rule. [Citation omitted.] It may be expressed by the Legislature or implied by the courts. [Citation omitted.] It postpones accrual of a cause of action until the plaintiff discovers, or has reason to discover, the cause of action.

Footnote 2 states:

> See *Gutierrez v. Mofid* [1985] 39 Cal.3d [892,] at pages 897-898: '[T]he uniform California rule is that a limitations period dependent on discovery of the cause of action begins to run no later than the time the plaintiff learns, or should have learned, the *facts* essential to his claim. [Citations.] It is irrelevant that the plaintiff is ignorant of . . . the legal theories underlying his cause of action. Thus, if one has suffered appreciable harm and knows or suspects that . . . blundering is its cause, the fact than an attorney has not yet advised him does not postpone commencement of the limitations period.'