

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CARLOS A. VELTRUSKI,

Charging Party,

v.

CITY OF HUNTINGTON PARK,

Respondent.

Case No. LA-CE-47-M

PERB Decision No. 1485-M

June 17, 2002

Appearance: Carlos A. Veltruski, on his own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Carlos A. Veltruski (Veltruski) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the City of Huntington Park violated the Meyers-Milias-Brown Act (MMBA)¹ by refusing to consider his employment application on its merits.

After reviewing the entire record in this matter including the unfair practice charge, the warning and dismissal letters, and Veltruski's appeal, the Board adopts the dismissal of the Board agent as the decision of the Board itself.

¹MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

ORDER

The unfair practice charge in Case No. LA-CE-47-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-7242
Fax: (916) 327-6377



March 15, 2002

Carlos A. Veltruski

Re: Carlos A. Veltruski v. City of Huntington Park
Unfair Practice Charge No. LA-CE-47-M
DISMISSAL LETTER

Dear Mr. Veltruski:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 26, 2002. You allege that the City of Huntington Beach violated the Meyers-Milias-Brown Act (MMBA)¹ by refusing to consider your application on its merits.

I indicated to you in my attached letter dated March 1, 2002, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 8, 2002, the charge would be dismissed.

Essentially, the deficiencies in your charge were both technical and substantive. Technically, the charge did not allege actions which occurred less than three years prior to the filing of the charge. This deficiency constituted a jurisdictional bar to PERB's consideration of the charges. Substantively, your charge did not indicate how agents of the City of Huntington Park were responsible for adverse actions against you, nor did you address the manner in which you had suffered harm by any alleged actions.

Since receiving my warning letter, we have had numerous phone conversations in which you address the date on which our office considered your charge against the City of Huntington Park filed. As you know, all filings must comply with PERB Regulations before they are considered "filed." The date you propose as the proper date of filing is December 10, 2001, the same date that you filed charge number LA-CE-573-S. When you filed charge number LA-CE-573-S, I contacted you regarding the inability of this office to consider that charge as simultaneously a Dills Act and a Meyers-Milias-Brown Act (MMBA) charge. Also at that time, you had not served the City of Huntington Park with the charge, rather you had served

¹ The Meyers-Milias-Brown Act is codified at Government Code section 3000 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

the State as the Respondent. Because of these deficiencies, you were informed that the charge would be processed only as a charge under SEERA, with the State as Respondent, and it was treated accordingly.

You subsequently corrected the technical deficiencies above in a new filing against the City of Huntington Park in LA-CE-47-M. This charge was filed on February 26, 2002. You have contended throughout the processing of charge LA-CE-47-M, that the date of filing should relate back to December 10, 2001. This is not possible for the reasons stated above—reasons you were made aware of in December of 2001.

Furthermore, you have not provided any evidence that would tend to correct the substantive deficiencies in your charge. You have not demonstrated how you were harmed by any alleged actions of agents of the City of Huntington Park, nor have you demonstrated how the individuals named in your charge were agents of the City of Huntington Park at the time that the alleged adverse actions were taken against you. Therefore, I am dismissing the charge based on the facts and reasons contained in my March 1, 2002 Warning letter.

Right to Appeal

Pursuant to PERB Regulations,² you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _
Alicia A. Clement
Board Agent

Attachment

cc: Scott Campbell

AAC

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
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March 1, 2002

Carlos A. Veltruski

Re: Carlos A. Veltruski v. City of Huntington Park
Unfair Practice Charge No. LA-CE-47-M
WARNING LETTER

Dear Mr. Veltruski:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 26, 2002. You allege that the City of Huntington Beach violated the Meyers-Milias-Brown Act (MMBA)¹ by refusing to consider your application on its merits.

There are three deficiencies in your charge. First, you cannot demonstrate that the actions which form the basis of your unfair practice charge occurred less than three years prior to the filing of the charge. As such, your allegations are untimely because the three year statute of limitations applicable under the MMBA has lapsed. Second, you cannot demonstrate that the individuals who allegedly discriminated against you were acting as agents of the City of Huntington Park at the time they refused your application for employment. Third, you have not shown that you were damaged by the actions of any agent of the City of Huntington Park because you have not shown that you were eligible for employment or reinstatement at the time you requested employment or reinstatement.

The first deficiency in your charge is that it is beyond the jurisdiction of the PERB as it does not comply with the statute of limitations for unfair practice charges. Code of Civil Procedure section 338 prohibits PERB from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than three years 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.)² The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

¹ The Meyers-Milias-Brown Act is codified at Government Code section 3000 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² 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. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

From your own accounts, your contact with Rosario Marin (Marin) occurred in 1998. As your current charge against the City of Huntington Park was filed on February 26, 2002, I cannot consider any events that occurred prior to February 26, 1999 in an allegation of unfair practice charges.

The second deficiency in your charge is that you have not shown that the alleged unfair practices that were taken against you were made by agents of the City of Huntington Park. In the Warning Letter that I sent to you on February 11, 2002 in regards to charge LA-CE-573-S, I stated,

I am unable to consider their [Rosario Marin's and Sara Luque's] actions in this charge because you have not indicated whether the parties were State employees or City of Huntington Park employees at the time they allegedly discriminated against you. The letter you sent to PERB on December 31, 2001 did not correct this deficiency. If you wish for me to consider their actions as unfair labor practices, you must show either that they were acting as State employees at the time they allegedly took adverse actions against you, or you may file a separate charge that shows that they were acting as City of Huntington Park employees at the time that they allegedly took adverse actions against you.

In response to that warning, you have filed the current charge against the City of Huntington Park, still without correcting the deficiency of alleging whether the individuals named were agents of the City of Huntington Park or agents of the State of California at the time they allegedly discriminated against you.

When unfair labor practice charges are filed against a public employer, PERB has applied general agency principles to SEERA, concluding that a state employer may be held responsible for the actions of supervisors acting within their actual or apparent authority. State of California (Department of Forestry)/State of California, Governor's Office of Employee Relations (1981) PERB Decision No. 174-S. My understanding of your allegations is that when Marin refused to consider your application for employment, she was an agent of the State of California. As such, her conduct would be governed by the SEERA, and not the Meyers-Milias-Brown Act. In order to consider Ms. Marin's actions under the Meyers-Milias-Brown Act, you must show that at the time she took the alleged actions against you, that she was acting in her capacity as an agent of the City of Huntington Park. Your charge states that Ms. Marin was "assistant to Gnor Pete Wilson" when she allegedly discriminated against you. As such, her actions cannot be attributed to the City of Huntington Park, are not governed by the Meyers-Milias-Brown Act, and are not subject to the three year statute of limitations under the Meyers-Milias-Brown Act. If Ms. Marin was acting as an agent of the State of California at the time she allegedly discriminated against you, then her actions are governed by the State

Employer-Employee Relations Act (SEERA), and are subject to a six month statute of limitations.

The third deficiency in your charge is that you have not shown that you were harmed by any agent of the City of Huntington Park. You have not provided any evidence that you applied for or were eligible for any available position with the City of Huntington Park. Instead, you allege that you were harmed by agents of the City of Huntington Park when they refused to hire you for a position as a civil servant for the State of California. In the Dismissal Letter I sent to you on February 25, 2002 in regards to charge LA-CE-573-S, I stated,

At the time that you were allegedly discriminated against, both Ms. Luque and Ms. Marin were employees of the State of California, and were acting as agents of the State. Because both Ms. Luque and Ms. Marin are currently agents for the City of Huntington Park, you claim that your charge arises under the Meyers-Milias-Brown Act. However, under the MMBA, an employer is "any public agenc[y]... which has been held to include only *local* governmental entities." Sacramento County Employees Organization v. County of Sacramento (1988) 201 Cal.App.3d 845, 850. Applying this definition, the State and its agents cannot be considered an "employer" for the purposes of the MMBA. Because Ms. Luque and Ms. Marin were agents of the State of California at the time they allegedly discriminated against you, and were not subject to the MMBA, you have failed to show how you were discriminated against by an employer subject to the MMBA.

In response to my dismissal of charge LA-CE-573-S, you have filed the current unfair labor practice charge. However, the deficiency stated above has not been corrected. You have not explained how an agent of the State of California can be held to the standards articulated by the Meyers-Milias-Brown Act.

The only possible explanation for your actions in filing a separate charge under the Meyers-Milias-Brown Act under the circumstances described is in order to take advantage of the three year statute of limitations under the MMBA. The scope of the MMBA does not reach so far as you would suggest. It is limited to local governments and their agents, and does not extend to the State and its agents. Even if the individuals named were serving concurrently as agents of the State of California and as agents of the City of Huntington Park, you must demonstrate how the individuals were acting in their capacity as agents of the City of Huntington Park when they refused your application for State civil service.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all

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the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before [***7 days], I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Alicia A. Clement
Board Agent

AAC