

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SAMSON TEFASION,

Charging Party,

v.

CITY OF BEVERLY HILLS
(TRANSPORTATION DEPARTMENT),

Respondent.

Case No. LA-CE-282-M

PERB Decision No. 1913-M

June 26, 2007

Appearances: Samson Tesfasion, on his own behalf; Richards, Watson, Gershon by Roy A. Clarke, Assistant City Attorney, for City of Beverly Hills (Transportation Department).

Before Shek, McKeag and Neuwald, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (Board) on appeal by Samson Tesfasion (Tefasion) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the City of Beverly Hills (Transportation Department) (City) violated the Meyers-Milias-Brown Act (MMBA)¹ by denying him his deceased brother Michael Tesfasion's (Michael) life insurance benefits.²

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charges, the warning and dismissal letters, Tesfasion's appeal and the City's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

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

²Absent any evidence to substantiate Tesfasion's allegation that he is the executor of his deceased brother Michael's estate, it is not necessary for us to decide whether or not Tesfasion, as the alleged estate executor, has any standing to file a charge on behalf of Michael.

ORDER

The unfair practice charge in Case No. LA-CE-282-M is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1020
Fax: (510) 622-1027



October 5, 2006

Samson Tesfazion

Re: Samson Tesfazion v. City of Beverly Hills (Transportation Department)
Unfair Practice Charge No. LA-CE-282-M
DISMISSAL LETTER

Dear Mr. Tesfazion:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 19, 2006.¹ You allege that the City of Beverly Hills (Transportation Department) violated the Meyers-Milias-Brown Act (MMBA)² by denying you your deceased brother's benefits.

I indicated to you in my attached letter dated August 30 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 September 11, the charge would be dismissed. On September 7, I granted an extension until September 25. On September 18, I received a first amended charge.

Your amendment contains no new information that establishes a prima facie violation. Essentially, you confirm that your brother, Michael Tesfazion, worked for the City of Beverly Hills for many years as a parking permit assistant. He began his employment on March 18, 1989, and was a valued employee of the City's engineering/transportation department. He was a member of the Part-Time Unit, whose members may work at or near 40 hours in any particular week or weeks³ and for whom no life insurance benefit had been negotiated. Michael became ill in 2001, had heart surgery, and then returned to work. Unfortunately, your brother passed away on December 20, 2005 due to cardiac arrest and cardiomyopathy.

¹ All dates refer to calendar year 2006 unless otherwise indicated.

² The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

³ The pay stubs that you attached indicate that he earned base pay for 80 hours and overtime pay for 14.50 hours for the 2 week pay period ending September 2, 2005, and base pay for 77.50 hours and overtime pay for 4 hours for the 2 week pay period ending December 9, 2005. The number of hours worked and pay conform to the provisions outlined in Section 9. Hours of the Part-Time Unit MOU.

Your amended charge re-asserts your belief that Michael had a life insurance policy through the City, as demonstrated by the deduction of 93 cents per pay period for survivor benefits on the two pay stubs. A copy of his death certificate and two letters dated December 28, 2004 and January 5, 2005 from City personnel confirming Michael's employment status were also submitted.

My warning letter analyzed your allegations using the standing to file⁴ and unilateral change standards. In addition, to establish a prima facie case of discrimination in violation of Government Code section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell, supra); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro Police Officers Association, supra); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro Police Officers Association, supra; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683.).

Unfortunately, you have no standing to file this charge as you are not an employee of the City. In addition, your brother did not exercise rights under MMBA for which the City undertook either a unilateral change or somehow discriminated against him in violation of Government Code section 3506 and PERB regulation 32603(a). Finally, the deduction of 93 cents per pay period for survivor benefits shown on the two stubs you submitted does not amount to a prima facie violation. Therefore, I am dismissing the charge based on the facts and reasons contained in this and my August 30, 2006 letter.

Right to Appeal

⁴ Michael's death certificate in the "Informant" section names you as his brother and lists your address.

Pursuant to PERB Regulations,⁵ 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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
Sacramento, CA 95814-4174
(916) 322-8231
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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also 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

⁵ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.)

Final Date

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

Sincerely,

ROBIN WESLEY
Acting General Counsel

By _____
Anita I. Martinez
Regional Director

Attachment

cc: Sandra Olivencia

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1020
Fax: (510) 622-1027



August 30, 2006

SAMSON TEFASION

Re: Samson Tesfasion v. City of Beverly Hills Transportation Department
Unfair Practice Charge No. LA-CE-282-M
WARNING LETTER

Dear Mr. Tesfasion:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 19, 2006. You allege that the City of Beverly Hills Transportation Department violated the Meyers-Milias-Brown Act (MMBA)¹ by denying you your deceased brother's benefits.

My investigation revealed the following. You are the brother of Michael Tesfasion who was employed by the City of Beverly Hills on March 18, 1989, through the date of his death on December 20, 2005. Michael was a regular part-time employee who worked in the transportation department as a parking permit assistant. This classification is included in the Part-Time Unit represented by the Municipal Employees Association. A Memorandum of Understanding (MOU) currently exists with effective dates of January 1, 2005 through December 31, 2006.

As a member of the Part-Time Unit, Michael was eligible for health insurance (Section 4. Health Insurance and Section 5. Dental Plan) and retirement benefits through the Public Employees Retirement System (PERS). Life insurance is not a benefit that has been negotiated for part-time employees.

Part-time employees may work at or near 40 hours in any particular week or weeks; hours worked over 40 hours a week are compensated at 1 ½ the hourly rate (Section 9. Hours). Part-time employees are also entitled to leave benefits (Section 6. Leave Benefits). At the time of his death, Michael had accumulated approximately 130 hours pursuant to this provision. However, pursuant to section 6.A.2, "leave hours remaining upon separation from City employment shall have no monetary value."

In your charge, you allege that the City denied you Michael's life insurance benefit, leave of absence payments, and other death benefits. You further assert that some of your brother's pay

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

stubs indicate that he worked 40 hours per week, over 40 hours per week, and two-three hours less than 40 hours per week, thereby entitling him to life insurance.

Analysis

PERB Regulation 32602 (b) provides that

(b) Except as provided in subsections (c), (d) and (e), unfair practice charges may be filed by an *employee*, employee organization, or employer against an employee organization or employer. (Emphasis added)

You are not an employee of the City, nor have you filed any documentation that designates you as executor of Michael's estate. Therefore, you do not have standing to file an unfair practice charge and for that reason, your charge must be dismissed.

Your charge does not specify what specific section of the statute the City has violated nor do you provide facts to demonstrate a prima facie violation. I have therefore reviewed your allegations and analyzed them as alleged unilateral changes. (Lillian H. Burton v. Los Angeles County Education Association, CTA/NEA (1999) PERB Decision No. 1358.)

In determining whether a party has violated Government Code section 3505 and PERB Regulation 32603(c),² PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.)³ Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Vernon Fire Fighters v. City of Vernon (1980) 107 Cal.App.3d 802 [165 Cal.Rptr. 908]; Walnut Valley Unified School District (1981) PERB Decision No. 160; San Joaquin County Employees Association v. City of Stockton (1984) 161 Cal.App.3d 813; Grant Joint Union High School District (1982) PERB Decision No. 196.)

Individual employees do not have standing to allege unilateral change violations, (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.)

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

³ 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.)

Your brother was a member of the Part-Time Unit, and as such, was eligible to work 40 hours or more in any particular week(s). However, it was his unit designation, not the number of hours worked, that made him ineligible for a life insurance benefit.⁴ Finally, the MOU specifically provides that leave balances have no monetary value.

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 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 **September 11, 2006**, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Anita I. Martinez
Regional Director

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⁴ Apparently another unit in the City represented by the Municipal Employees Association has a life insurance benefit.