STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PETER NELSON GROVE, Charging Party, v. LOS ANGELES CITY & COUNTY SCHOOL EMPLOYEES UNION, LOCAL 99, Respondent.	Case No. LA-CO-1333-E PERB Decision No. 1973 August 26, 2008

Appearances: Peter Nelson Grove, on his own behalf; Rothner, Segall & Greenstone by Jonathan Cohen, Attorney, for Los Angeles City and County School Employees Union, Local 99.

Before Wesley, Rystrom and Dowdin Calvillo, Members.

DECISION

RYSTROM, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Peter Nelson Grove (Grove) of a Board agent's dismissal of his unfair practice charge. The Board agent found that Grove's claim that the Los Angeles City & County School Employees Union, Local 99 (Local 99) violated the Educational Employment Relations Act (EERA)[1] by failing to honor his request to cease deducting full dues following his resignation of his union membership was untimely filed. The Board agent also found that Grove's claim of a constitutional right to resign from union membership at any time and enjoy an immediate reduction in membership dues was not within PERB's jurisdiction. Grove's charge was dismissed on both bases.

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

The Board has reviewed the entire record in this case, including but not limited to, the unfair practice charge, Local 99's position statement, the amended charge, the Board agent's warning and dismissal letters, Grove's appeal of the dismissal, and Local 99's response thereto. Based on this review, the Board affirms the Board agent's dismissal for the reasons stated below.

FINDINGS OF FACT

Grove is employed by the Los Angeles Unified School District (District) as a bus driver and at all times relevant herein was a member of Bargaining Unit C. Local 99 is the exclusive representative of Bargaining Unit C. Local 99 and the District are parties to a collective bargaining agreement (CBA) that is effective from December 14, 2006, through June 30, 2008.

On or about January 29, 2007, Grove wrote to Local 99, resigned his membership and requested a deduction in his union dues. In that letter Grove stated that he authorized only "those costs that are lawfully chargeable under the First Amendment to the United States Constitution."

On April 15, 2007, Grove wrote again to Local 99 and complained that his union dues deduction had not been reduced.

On June 13, 2007, Local 99's written response to Grove denied his request for a dues reduction, citing the CBA's "maintenance of membership" provision,[2] and stating that it would honor Grove's request provided that it was submitted during the appropriate window period.

[2]CBA Article VIII, section 5.0 provides that: "A dues deduction may only be revoked by an employee in writing during the thirty (30) day period commencing ninety (90) days before the expiration of the Agreement and/or upon expiration of the Agreement. The dues deduction shall automatically terminate if an employee terminates employment or otherwise ceases to be a member of the bargaining unit."

In his second letter to Local 99 dated August 16, 2007, Grove stated that he: (1) acknowledged Local 99's June 13, 2007, refusal to honor his dues deduction request; (2) disagreed with Local 99's position that a dues deduction request is valid only if submitted within the window period provided in the CBA; and (3) renewed his previous requests for an immediate dues reduction.

By letter dated August 23, 2007, Local 99's attorney responded to Grove's August 16, 2007, letter. This response referenced Local 99's June 13, 2007, letter's denial of the same request and reiterated the information contained in the June 13, 2007, letter.

Grove's third letter to Local 99, dated October 15, 2007, again demanded a dues rebate disagreeing with Local 99's window period reasoning.

Grove's instant unfair practice charge was filed with PERB on February 13, 2008.

DISCUSSION

Grove's EERA Claim Was Untimely Filed

We agree with the Board agent that Grove's EERA claim was untimely and that Grove has not alleged sufficient facts to show a continuing violation.

EERA section 3541.5 provides in pertinent part that the Board shall not "Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." In Tehachapi Unified School District (1993) PERB Decision No. 1024, the Board held that "In order to state a prima facie case a charging party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge." The limitations period begins to run once, in the exercise of reasonable diligence, the charging party knows, or should have known, of the conduct underlying the charge. (Fremont Unified

District Teachers Association (Kaiser) (2003) PERB Decision No. 1572; Gavilan Joint Community College District (1996) PERB Decision No. 1177.) A charging party bears the burden of demonstrating that the charge is timely filed. (United Teachers of Los Angeles (DePace) (2008) PERB Decision No. 1964; Los Angeles Unified School District (2007) PERB Decision No. 1929.)

Local 99's June 13, 2007, letter to Grove unequivocally notified him that his dues would not be reduced explaining as follows:

> We declined your request to pay the reduced fair share fee payable by non-members. The current collective bargaining agreement, which was adopted on January 23, 2007, includes a "maintenance of membership" provision, pursuant to which members who authorize payroll deduction of dues can only revoke that authorization during a 30-day window period that commences 90 days prior to the agreement's expiration. The expiration date of the current agreement is June 30, 2008. Thus, your request to revoke that authorization must be submitted between March 31 and April 30, 2008. Also, under state law you may revoke that authorization during the 30 days following expiration of the current agreement on June 30, 2008.
>
> If you submit a revocation request at the appropriate time, we will honor it.

Grove acknowledges this in his August 10, 2007, letter to Local 99 in which he states: "Unfortunately, your letter seems to indicate that you will not honor my right, as a nonmember, to object to the collection and expenditure of any fees seized from me for purposes unrelated to collective bargaining."

We find that the statute of limitations began running June 13, 2007, because that is when Grove knew or at least should have known that Local 99 would not reduce his union dues deduction prior to the window period provided for in the CBA.

The "Continuing Violation" Doctrine Does Not Extend Grove's Statute of Limitations Period

On appeal, Grove again[3] asserts that his claim was timely and argues that each month his membership dues are not reduced constitutes a continuing violation. Grove claims a distinction between the "original offense" – the June 13, 2007 refusal, and the "changed offense" – each subsequent "seizure" of dues from his paycheck. Grove, however, fails to explain and cites no legal authority justifying his argument that the continuing deductions of membership dues from his paycheck constitute "changed offenses."

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.)

However, an employee cannot show a continuing violation unless the nature of the respondent's actions have changed. (State of California (Department of Corrections) (2003) PERB Decision No. 1559-S, citing State of California (Department of Consumer Affairs) (1994) PERB Decision No. 1066-S; El Dorado Union High School District (1984) PERB Decision No. 382 (statute of limitations began running when district adopted the new sign-out policy and requiring teachers to comply with employer's sign-out policy during the limitations period did not constitute a reimplementation or revival of that policy); California State Employees' Association (Calloway) (1985) PERB Decision No. 497-H (denial of subsequent requests for representation did not constitute a continuing violation).)

[3]Grove raised this argument in his first amended charge which was filed in response to the Board agent's warning letter.

To have the effect of being a continuing violation, a 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.)

In this case, Grove has failed to demonstrate that his charge was timely because he has not shown that the nature of Local 99's actions have changed since it denied his request on June 13, 2007. PERB has held that once the statutory period begins to run, an employee "cannot cause it to begin anew by making the same request over and over again" because "such a result would eviscerate the purpose of the statute of limitations." (California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC (Sutton) (2003) PERB Decision No. 1553-S.)

Accordingly, we find that Local 99's refusal to reduce Grove's dues deduction has been consistent since June 13, 2007, and that Grove has not alleged facts which demonstrate a prima facie case that the "continuing violation" doctrine applies.

PERB Lacks Jurisdiction Over Grove's Constitutional Claim

In his appeal Grove continues to assert that Local 99's refusal to reduce his union dues deduction violates his constitutional right to resign from union membership at any time. Grove argues he is entitled to pay a fee "that covers the union's costs of collective bargaining, contract administration, and grievance adjustment (the 'financial core fee'), not the costs of the union's political, ideological and non-representational activities."

We disagree as set forth below and affirm the Board agent's dismissal of Grove's constitutional claim.

In Kern High Faculty Association, CTA/NEA (Maaskant) (2007) PERB Decision No. 1885, an employee alleged that his union's refusal to allow him to serve on its

representative council violated his right of free association under the First Amendment to the United States Constitution. In its decision, the Board explained that PERB's function was to protect employees, employee organizations and employers from violations of organizational and collective bargaining rights guaranteed by state labor laws[4] and held that "PERB does not have the authority to decide the constitutionality of any entity's actions or decisions and is without jurisdiction over this aspect of the charge." (See Union of American Physicians & Dentists (Menaster) (2007) PERB Decision No. 1918-S (PERB has no jurisdiction over the United States Constitution); State of California (Department of Transportation) (2005) PERB Decision No. 1735-S (Board lacks jurisdiction over the United States and California Constitutions).)

The same legal principles apply to Grove's constitutional claim and support its dismissal.

ORDER

The unfair practice charge filed by Peter Nelson Grove in Case No. LA-CO-1333-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Wesley and Dowdin Calvillo joined in this Decision.

[4](See Pacific Legal Foundation v. Brown (1981) 29 Cal.3d 168, 198 [172 Cal.Rptr. 487]; Banning Teachers Assn. v. Public Employment Relations Bd. (1988) 44 Cal.3d 799, 804; [244 Cal.Rptr. 671].)