

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN W. ADAMS,

Charging Party,

v.

LOS ANGELES UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-5177-E

PERB Decision No. 2011

March 13, 2009

Appearance: John W. Adams, on his own behalf.

Before Rystrom, Chair; Neuwald and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by John Adams (Adams) of a Board agent's partial dismissal of his unfair practice charge. The charge alleged numerous acts of reprisal for protected activity by the Los Angeles Unified School District (District), in violation of the Educational Employment Relations Act (EERA).¹ Adams also alleged racial and disability discrimination, and violation of his rights under the Education Code and the First Amendment of the United States Constitution.

After reviewing the entire record in this matter, including the unfair practice charge, the Board agent's partial warning and dismissal letters, and Adams' appeal, the Board affirms the partial dismissal of the unfair practice charge.

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

BACKGROUND

Adams was a certificated employee of the District, and most recently worked at Boyle Heights High School. United Teachers Los Angeles (UTLA) is the exclusive representative of the certificated personnel employed by the District. The District and UTLA are currently parties to a collective bargaining agreement (CBA).

Beginning around April through July 2006, while he was working at Garfield High School, Adams filed several complaints against the District and/or the school site alleging racial bias, and the failure to comply with state regulations. In October 2006, Adams received a negative performance evaluation because his curriculum did not meet state teaching standards. Around the same time, the District reassigned Adams from teaching an honors history class to a subject with which he was unfamiliar, requiring him to develop new curriculum. Also, sometime in 2006, the District accused Adams of striking three students. Adams denied this conduct.

During the 2006-2007 school year, Adams transferred to Boyle Heights High School. On April 17, 2007, he filed a grievance alleging the District failed to comply with the CBA and the Education Code by failing to inform him of students with disciplinary problems.

Shortly after filing the April 17, 2007 grievance, Adams took a medical leave of absence. On two separate occasions, in May 2007 and October 2007, the District improperly notified Adams that he was absent without leave. On August 15, 2007, the District requested that Adams return his school keys by September 7, 2007.

On August 17, 2007, the District ordered Adams to submit to a psychiatric evaluation prior to returning to work. On September 7, 2007, the District accused Adams of selling textbooks that were assigned to his classroom. Adams denied selling District textbooks.

Adams contacted his UTLA representative several times for assistance with these matters.

Adams did not return to school, but met with the District in January 2008, to discuss these issues. It is unclear whether a union representative attended this meeting with Adams.

On February 22, 2008, the District issued Adams a Notice of Unsatisfactory Acts for incidents occurring during the 2006-2007 school year. Finally, in June 2008, the District terminated Adams' employment.

BOARD AGENT'S PARTIAL DISMISSAL

The Board agent dismissed all allegations occurring more than six months prior to the filing of the charge and found no evidence of a continuing violation. The Board agent found these allegations included: in 2006, assigning Adams to teach classes outside his expertise, giving him a negative performance evaluation, and accusing him of striking students; on August 15, 2007, requiring him to return his school keys; and on September 7, 2007, accusing Adams of selling District textbooks.² Additionally, the Board agent dismissed the alleged violations of the Education Code and First Amendment, along with the discrimination claims under the Fair Employment and Housing Act, finding they were not within PERB's jurisdiction.³

CHARGING PARTY'S APPEAL

On appeal, Adams reargues the same facts addressed by the Board agent and asserts the continuing violation doctrine should apply to the untimely allegations. Further, Adams raises

²The Board agent found that three allegations, the required psychiatric examination, the Notice of Unsatisfactory Acts, and the termination of Adams' employment, were timely and a complaint was issued on these allegations. Prior to hearing, the parties reached a settlement of these allegations and the complaint was dismissed.

³The dismissal of these claims was not raised in the appeal, and therefore will not be discussed herein.

new facts and allegations in his appeal but does not provide good cause as to why these matters should be considered for the first time on appeal.

DISCUSSION

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.) A charging party bears the burden of demonstrating that the charge is timely filed. (Los Angeles Unified School District (2007) PERB Decision No. 1929; City of Santa Barbara (2004) PERB Decision No. 1628-M; Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

Nonetheless, an unfair practice charge may still be considered timely if the alleged violation is a continuing one. (San Dieguito Union High School District (1982) PERB Decision No. 194.) A continuing violation occurs if an alleged violation has been revived by subsequent unlawful conduct within the six month statute of limitations. (Sacramento City Teachers Association (Franz) (2008) PERB Decision No. 1959; Compton Community College District (1991) PERB Decision No. 915.)

Adams filed his charge utilizing PERB's electronic filing procedure on March 26, 2008. The statutory limitations period extends six months prior to the filing of the charge to September 26, 2007. Therefore, as stated by the Board agent, the allegations occurring prior to September 26, 2007, are untimely filed.

On appeal, Adams argues that many of the incidents which the Board agent dismissed as untimely represent continuing violations of incidents that were included in the complaint.

However, the untimely allegations of adverse action represent acts by the District that are separate and independent from the timely allegations. Therefore, the continuing violation doctrine cannot be applied and these allegations are untimely. Consequently, the allegations of reprisal that occurred prior to September 26, 2007 are outside the six month statute of limitations and are untimely filed.

Finally, Adams raises new facts and allegations on appeal. PERB Regulation 32635(b)⁴ provides: “Unless good cause is shown, a charging party may not present on appeal new allegations or new supporting evidence.” Adams has failed to demonstrate good cause to allow presentation of new allegations or evidence on appeal and nothing in the appeal indicates that such good cause exists.

ORDER

The partial dismissal of the unfair practice charge in Case No. LA-CE-5177-E is hereby AFFIRMED.

Chair Rystrom and Member Neuwald joined in this Decision.

⁴PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.