

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



HENRIENE ALLUMS, )  
 )  
Charging Party, ) Case No. LA-CE-1267  
 )  
v. ) PERB Decision No. 237  
 )  
LOS ANGELES UNIFIED SCHOOL DISTRICT, ) September 20, 1982  
 )  
Respondent. )  
\_\_\_\_\_ )

Appearances: Henriene Allums, in pro per; Harris E. Kershner, Attorney (O'Melveny & Meyers) for Los Angeles Unified School District.

Before Jensen, Morgenstern and Jaeger, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter PERB) on appeal of the administrative law judge's dismissal of a charge filed by Henriene Allums (hereafter Allums) against the Los Angeles Unified School District (hereafter District). Allums alleged that the District violated subsection 3543.5(a) of the Educational Employment Relations Act (hereafter EERA)<sup>1</sup> by discriminating against her

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<sup>1</sup>EERA is codified at Government Code sections 3540 et seq. All statutory references are to the Government Code unless otherwise noted. Subsection 3543.5(a) provides as follows:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

in retaliation for filing a workers compensation claim. As noted by the administrative law judge, the charge was filed on December 1, 1980, and was based upon conduct occurring approximately 12 months earlier. The District filed a timely motion to dismiss the charge, based upon EERA's statute of limitations contained at subsection 3541.5(a)(1).<sup>2</sup> The administrative law judge dismissed the charge, finding that the statute of limitations applied. Allums appealed, arguing that the statute of limitations was tolled by the filing of a charge against the District with the U.S. Equal Employment Opportunity

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discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

<sup>2</sup>Subsection 3541.5(a)(1) provides, in pertinent part, as follows:

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:  
(1) 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 . . . .

Commission within six months of the allegedly violative District conduct. She placed primary reliance upon the case of Elkins v. Derby (1974) 12 Cal.3d 410 [115 Cal.Rptr. 641] and the doctrine of equitable tolling expressed therein. That argument was considered by the administrative law judge in his ruling on the motion to dismiss. For the reasons set forth by the administrative law judge, we find the doctrine of equitable tolling inapplicable in the circumstances of this case. Thus, we affirm the dismissal of the charges. We note that the administrative law judge dismissed with leave to amend. Because the charges here are barred by the statute of limitations, there is no reason to grant leave to amend. We shall modify the administrative law judge's order accordingly.

ORDER

Upon the foregoing decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The charges filed by Henriene Allums in Case No. LA-CE-1267 are hereby DISMISSED in their entirety, without leave to amend.

By: Vigil W. Jensen

John W. Jaeger, Member

Marty Morgenstern, Member

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA



HENRIENE ALLUMS,	)	
	)	
Charging Party,	)	Unfair Practice
	)	Case No. LA-CE-1267
v.	)	
	)	NOTICE OF REFUSAL
LOS ANGELES UNIFIED SCHOOL	)	TO ISSUE COMPLAINT
DISTRICT,	)	AND DISMISSAL WITH
	)	LEAVE TO AMEND
Respondent.	)	(1/29/81)
	)	

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NOTICE IS HEREBY GIVEN that no complaint will be issued in the above-captioned unfair practice charge and that it is dismissed with leave to amend within twenty (20) calendar days after service of this Notice.

This charge was filed on December 1, 1980. The Charging Party alleged a violation of Government Code section 3543.5(a), under which it is unlawful for a public school employer to "impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by [EERA]."

Specifically, the Charging Party alleged "denial of transfer, harrassment, and intimidation" by the Respondent District as a result of her filing of a workers' compensation claim based on "constant exposure to nervous stress and strain." She claimed that two doctors had recommended a

transfer as a possible solution to her problem, but that the Los Angeles Unified School District (hereafter District) denied her the opportunity to transfer to another school in September of 1979. She cited her willingness to relocate and her efforts to find placement and claimed that the District would not permit her to interview at one school and prevented her acceptance at another. As a result, she did not work from September to December 1979, with loss of pay and seniority. The alleged harrassment and intimidation also involved a threat to "send my credentials to Sacramento for suspension" if the Charging Party did not accept reassignment to her existing position.

The District moved to dismiss on the grounds that the charge was time barred. Under Government Code section 3541.5(a), the Public Employment Relations Board (hereafter Board) may not "issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six (6) months prior to the filing of the charge." The District contends that the Charging Party has not met this six-month limitation because she filed a charge on December 1, 1980, based on events which occurred before or during the period September through December 1979.

The Charging Party's response to this motion lists a number of steps she has taken in "exhausting all of the resources available" to her. The list includes letters to legislators

and other public officials and filings with the Office of Civil Rights (hereafter OCR) and the Equal Employment Opportunity Commission (hereafter EEOC).<sup>1</sup>

The question at hand is whether any of these measures suffices to toll the six-month limitation. An express provision for tolling is found in section 3541.5(a) for cases in which the Charging Party is making use of grievance machinery under an agreement. But nothing in the record here indicates that the Charging Party has attempted to use grievance procedures.

Another possible ground for tolling the limitation derives from the case of Elkins v. Derby (1974) 12 Cal.3d 410 [525 P.2d 81, 115 Cal.Rptr. 641]. In Elkins, the California Supreme Court was presented with the issue of whether the filing of a workers' compensation claim tolled the statute of limitations for a tort action. The settled policy had been that the statute of limitations for a civil action was tolled during the time taken up by the exhaustion of administrative remedies prerequisite to the action. In Elkins, the Court expanded this principle and held that where a party has two alternative remedies for a single injury and pursues one in good faith, the statute of limitations is tolled for the second remedy. The Court reasoned that the filing of the first claim was

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<sup>1</sup>See 42 U.S.C. sec. 2000 et seq.

sufficient to provide timely notice to the defendant of his need to preserve relevant evidence. Since such timely notice is the primary purpose of limitation statutes, there was no need to require the plaintiff to file two actions at the outset.

In the instant case, however, none of the steps listed by the Charging Party satisfies Elkins. Letters to public officials do not constitute administrative remedies. The OCR proceedings were closed on January 25, 1980, more than six months prior to the filing of the charge. The EEOC proceedings appear not to have been closed, but they also do not constitute an alternative remedy for the matters which form the subject of the unfair practice charge. Harrassment and denial of a transfer for filing a workers' compensation claim do not form the basis of EEOC proceedings. Accordingly, the charge should be dismissed for failure to file within the six-month limitation period.

This refusal to issue a complaint is made pursuant to PERB Regulation 32630(a). If the Charging Party chooses to amend, the amended charge must be filed within twenty (20) calendar days. (PERB Regulation 32630(b).) Such amendment must be actually received at the Los Angeles Regional Office of the PERB before the close of business (5:00 p.m.) on February 18, 1981, in order to be timely filed. (PERB Regulation 32135.)

If the Charging Party chooses not to amend, she may obtain review of this Refusal to Issue Complaint by filing an appeal to the Board itself within twenty (20) calendar days after service of this Notice. (PERB Regulation 32630(b).) Such appeal must be actually received by the Executive Assistant to the Board before the close of business (5:00 p.m.) on February 18, 1981, in order to be timely filed. (PERB Regulation 32135.) Such appeal must be in writing, must be signed by the Charging Party or her agent, and must contain the facts and arguments on which the appeal is based. (PERB Regulation 32630(b).) The appeal must be accompanied by proof of service upon all parties. (PERB Regulation 32135, 32142 and 32630(b).)

Dated: January 29, 1981

Bruce Barsook  
Hearing Officer