

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

MARY THORPE & LONG BEACH COUNCIL
OF CLASSIFIED EMPLOYEES, AFT
LOCAL 6108,

Charging Parties,

v.

LONG BEACH COMMUNITY COLLEGE
DISTRICT,

Respondent.

Case No. LA-CE-4334-E

PERB Decision No. 1475

February 15, 2002

Appearances: Lawrence Rosenzweig, Attorney, for Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108; Parker & Covert LLP by Spencer E. Covert, Attorney, for Long Beach Community College District.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Mary Thorpe & Long Beach Council of Classified Employees, AFT Local 6108 (Thorpe and AFT) of a Board agent's dismissal (attached) of their unfair practice charge. The charge alleged that the Long Beach Community College District (District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by refusing to arbitrate Thorpe's grievance.

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all other references are to the Government Code. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

The Board has reviewed the entire record in this case including the unfair practice charge, the dismissal letter, Thorpe and AFT's appeal and the District's response to the appeal. The Board agent correctly dismissed the charge as untimely. The Board finds the Board agent's dismissal letter to be free from prejudicial error and adopts it as the decision of the Board consistent with the following.

DISCUSSION

Thorpe and AFT argue that the charge alleges a continuing violation and is therefore timely. Thorpe and AFT claim the District's position constitutes a continuous refusal to arbitrate until a new agreement is reached with AFT, therefore the refusal to arbitrate is ongoing and the six-month statute of limitations does not bar the charge. The District correctly notes that Thorpe's grievance is the only dispute at issue in this matter, therefore the District's decision to arbitrate only with the California School Employees Association (CSEA) pertains only to Thorpe's grievance. Thorpe and AFT's continuing violation theory is rejected; the charge is untimely.

Thorpe and AFT's appeal noted that because the dismissal was based upon the statute of limitations, PERB has not resolved the issue presented to the Los Angeles Superior Court in Thorpe's Petition to Compel Arbitration case (Petition) against both CSEA and the District;

(a) 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 this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

whether PERB has exclusive jurisdiction or whether the court has jurisdiction to decide the Petition to Compel Arbitration. The appeal before the Board states:

The purpose of this Appeal is to show that the dismissal of these charges is based upon a misapplication of the statute of limitations. However, in addition, Charging Parties also urge PERB to remand the matter to the Regional Attorney for a determination of whether PERB has jurisdiction at all. In particular, Charging Parties contend that, pursuant to Government Code Section 3541.5(b), PERB does not have jurisdiction to enforce the collective bargaining agreement between the District and the CSEA.

Thorpe and AFT's appeal essentially seeks an advisory opinion from PERB. As the timeliness of the charge is not established, the Board's inquiry into whether the charge states a prima facie case ends. (EERA section 3541.5(a)(1).) The Board declines to determine whether the untimely allegations constitute a violation of EERA. (Jefferson School District (1980) PERB Order No. Ad-82; Wilmar Union Elementary School District (2000) PERB Decision No. 1371.)

ORDER

The unfair practice charge in Case No. LA-CE-4334-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.