

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VALINDA KYRIAS,

Charging Party,

v.

CSU EMPLOYEES UNION, SEIU LOCAL 2579,

Respondent.

Case No. SF-CO-172-H

PERB Decision No. 2175-H

March 25, 2011

Appearance: Valinda Kyrias, on her own behalf.

Before Dowdin Calvillo, Chair; McKeag and Miner, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Valinda Kyrias (Kyrias) of a Board agent's dismissal of her unfair practice charge. The charge alleged that CSU Employees Union, SEIU Local 2579 (CSUEU) violated the Higher Education Employer-Employee Relations Act (HEERA)¹ when it failed to file a timely request to move Kyrias' grievance to arbitration. The Board agent dismissed the charge on the basis that it was not timely filed, and that it failed to establish a prima facie case of a breach of the duty of fair representation or retaliation for protected activity.

The Board has reviewed the dismissal and the record in light of Kyrias' appeal and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

¹ HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

BACKGROUND

Kyrias is an employee at Sonoma State University (SSU) and a member of a bargaining unit that is exclusively represented by CSUEU. Kyrias became a CSUEU steward in 2003. In 2007, Kyrias filed a grievance on behalf of employees after CSUEU Labor Relations Representative Phillip Coonley (Coonley) refused to file it. After prevailing on the grievance, Kyrias resigned as a CSUEU steward.

In early 2008, Kyrias filed a grievance alleging that SSU violated the collective bargaining agreement (CBA) between CSUEU and the California State University (CSU) when it moved her to another job and gave her prior position to another employee. A CSUEU steward originally represented Kyrias in this grievance but at some point she decided to represent herself. Around this same time, two other employees asked Kyrias if she would represent them in grievances. After explaining to the employees that she was no longer a CSUEU steward, the employees agreed that she could represent them as a fellow employee.²

After receiving Level III grievances from Kyrias, CSU Labor Relations Manager Teyanna Williams (Williams) contacted CSUEU Labor Relations Representative Michael Hejazi (Hejazi) about Kyrias' status as a steward. On June 25, 2008, Kyrias, Hejazi, and CSUEU steward Liona Spring held a teleconference to discuss the grievances. During the call, Hejazi stated that only CSUEU could represent grievants at Level III. When Kyrias responded that under the CBA employees have the right to be represented by a fellow employee at Level III, Hejazi accused Kyrias of taking his job. Hejazi then requested that Kyrias confirm she was no longer a steward; Kyrias responded that she had not been a steward since

² Article 7.3 of the CBA provides that "a Union Representative or an employee" may represent a grievant through Level III of the grievance procedure. "Representation at Level IV [arbitration] shall be by the Union only."

July 15, 2007. The following day, Hejazi sent a letter to Williams stating that Kyrias was no longer a CSUEU steward or an agent of CSUEU.

On August 13, 2008, CSU denied Kyrias' grievance at Level III. The following day, Kyrias gave Hejazi all documentation from Level III and asked him to notify CSU that she wished to arbitrate the grievance. Per CBA Article 7.19, CSUEU had forty days to notify CSU that it wanted to submit the grievance to arbitration. Kyrias reminded Hejazi on August 27, and September 5, 11 and 15 that she wanted arbitration of her grievance; Hejazi responded with comments indicating that CSUEU was reviewing the merits of her case.

On September 15, Coonley, who had been promoted to Administrative Manager, emailed Kyrias that the arbitration notice would be submitted by September 22, the fortieth day following the denial of the grievance at Level III. Kyrias requested a copy of the arbitration request from Coonley on September 25, 26, and 30.

On September 30, Kyrias received CSU's position statement in PERB Case No. SF-CE-870-H.³ The filing stated that CSUEU had not notified CSU of its intent to arbitrate the grievance. That same day, Coonley told Kyrias via email that he would check with Hejazi to see if he had filed the notice. On October 1, Coonley emailed Kyrias that he would file a notice because he found no record of one in Hejazi's files.⁴

On October 10, Coonley emailed Kyrias that CSU had rejected the arbitration request as untimely, that CSU could waive the untimeliness defense to avoid the PERB proceedings, and that the CSUEU representation committee would review her grievance on the merits at its

³ Although Kyrias did not provide a copy of the grievance over her position change, it appears from statements in the charge that the grievance contained the same factual allegations as the charge in PERB Case No. SF-CE-870-H. The Board affirmed the dismissal of that charge in *Trustees of the California State University* (2009) PERB Decision No. 2038-H.

⁴ Attached to the charge is a copy of an October 1, 2008 letter from Coonley to CSU Human Resources requesting arbitration of a grievance. It appears, however, that the letter references one of Kyrias' other grievances, not the one she filed over her position change.

November meeting. Attached to the email was a letter from CSU Human Resources stating that the arbitration request was untimely and that Kyrias' complaints about SSU's retention of employees' sexual harassment training records were not arbitrable. Following a subsequent email in which Kyrias pointed out the apparent confusion over which grievance she wanted to arbitrate, Coonley emailed Kyrias on October 27, 2008, saying he would communicate to CSU that CSUEU had always intended to arbitrate the grievance over Kyrias' change in position.

DISCUSSION

1. New Allegations on Appeal

In her appeal, Kyrias raises allegations that were not presented in the original or amended charge, such as retaliation by CSUEU against an employee whom Kyrias represented in a grievance and CSUEU's failure to follow its internal procedures in deciding whether to arbitrate her position change grievance. "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635(b).)⁵ The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

The Board agent dismissed Kyrias' charge on July 22, 2010. All of the dates of the events alleged for the first time on appeal predate the dismissal, and the appeal provides no reason why they could not have been alleged in the original or amended charge. Thus, we find no good cause to consider these new allegations.

2. Statute of Limitations

HEERA section 3563.2, subdivision (a) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months

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

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. (*Long Beach Community College District* (2009) PERB Decision No. 2002.)

Kyrias filed this charge on April 13, 2009. Therefore, only allegations of conduct by CSUEU that occurred, or that Kyrias discovered, after October 13, 2008 are timely. The charge alleged that Hejazi’s failure to file a timely request for arbitration of Kyrias’ position change grievance breached CSUEU’s duty of fair representation, constituted retaliation against Kyrias for her protected activity of representing other employees, and interfered with her rights under HEERA. However, this alleged conduct occurred no later than September 22, 2008, the final day for CSUEU to file the arbitration request under the CBA timeline. Furthermore, Kyrias learned on September 30, 2008 that CSUEU had not filed the request by the September 22 deadline. Thus, the alleged violations occurred, and Kyrias first learned of them, more than six months before she filed this charge. Accordingly, the allegations are barred by the statute of limitations.

Responding to the warning letter’s conclusion that the charge was untimely, Kyrias pointed out in her amended charge that CSUEU was still making efforts on her behalf as late as October 27, 2008, when Coonley told her he would clarify to CSU that CSUEU had intended to request arbitration of her position change grievance. However, the charge did not allege that any conduct by CSUEU after October 13, 2008 breached its duty of fair representation, or was an act of retaliation or interference. Indeed, the amended charge stated, “Coonley’s actions were an attempt to cure Hejazi’s breach of the Union’s duty of fair representation.” Kyrias’ reliance on Coonley’s conduct in October 2008 is therefore unavailing.

ORDER

The unfair practice charge in Case No. SF-CO-172-H is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Miner joined in this Decision.