STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CARMEN BAPRAWSKI, Charging Party, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. LA-CE-4883-E PERB Decision No. 2059 September 8, 2009

Appearances: Carmen Baprawski, on her own behalf; Atkinson, Andelson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for Los Angeles Community College District.

Before Dowdin Calvillo, Acting Chair; McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Carmen Baprawski (Baprawski) to the proposed decision (attached) of an administrative law judge (ALJ). The PERB complaint alleged that the Los Angeles Community College District (District) retaliated against Baprawski for using a union representative to obtain a reassignment and by rescinding the reassignment in violation of Educational Employment Relations Act (EERA) section 3543.5, subdivision (a).[1]

Prior to the hearing on the merits of the complaint, the District filed a motion to dismiss, asserting the unfair practice charge was untimely and that the complaint failed to state any protected activity. After taking evidence solely on the motion, the ALJ found the unfair practice charge was not timely filed and granted the District's motion.

[1]EERA is codified at Government Code section 3540 et seq.

We have reviewed the entire record, including but not limited to the unfair practice charge, the complaint, the District's answer to the complaint and subsequent motion to dismiss, Baprawski's opposition to the motion, the hearing transcripts, the District's and Baprawski's post-hearing briefs, Baprawski's exceptions to the ALJ's proposed decision, and the District's response to those exceptions. Based on this review, we find the proposed decision was well-reasoned, adequately supported by the record and generally in accordance with applicable law.

However, subsequent to the issuance of the proposed decision, the Board issued *Long Beach Community College District* (2009) PERB Decision No. 2002 (*Long Beach II*) in which the Board clarified the scope of equitable tolling under EERA. Because equitable tolling was considered in the proposed decision, the Board hereby adopts the proposed decision as a decision of the Board itself, subject to the following discussion regarding equitable tolling in light of *Long Beach II.*

REQUEST FOR ORAL ARGUMENT

Baprawski requested oral argument in this matter. Historically, the Board has denied requests for oral argument when an adequate record has been prepared, the parties have had an opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*City of Modesto* (2008) PERB Decision No. 1994-M.) Based on our review of the record, all of the above criteria have been satisfied. Accordingly, Baprawski's request for oral argument is hereby denied.

DISCUSSION

A. Equitable Tolling Does Not Apply In This Case

Baprawski argues that the statute of limitations should be equitably tolled from June 3, 2005 through September 1, 2005, because, after PERB dismissed her first charge and deferred

it to arbitration, she continued to pursue her grievance and did not receive final notice that her exclusive representative would not take her grievance to arbitration until September 1, 2005.

EERA section 3541.5, subdivision (a)(2) provides that the statute of limitation will be tolled when the parties attempt to resolve their differences through a collectively bargained grievance process that ends in binding arbitration. This mechanism, sometimes referred to as statutory tolling, tolls the statute of limitations during the time it took the charging party to exhaust the grievance machinery.

In addition to statutory tolling, the Board in *Long Beach II,* reaffirmed its decision in *Long Beach Community College District* (2003) PERB Decision No. 1564 (*Long Beach I*) that equitable tolling is allowed under EERA. *Long Beach II* holds that the statute of limitations under EERA "is tolled during the period of time the parties are utilizing a non-binding dispute resolution procedure if: (1) the procedure is contained in a written agreement negotiated by the parties; (2) the procedure is being used to resolve the same dispute that is the subject of the unfair practice charge; (3) the charging party reasonably and in good faith pursues the procedure; and (4) tolling does not frustrate the purpose of the statutory limitation period by causing surprise or prejudice to the respondent." (*Long Beach II*, emphasis added.)

In the instant case, the parties' grievance process ended in binding arbitration. Thus, equitable tolling as delineated in *Long Beach II* cannot apply to Baprawski's grievance because, pursuant to the applicable agreement, the grievance procedure ended in binding arbitration. Accordingly, if any tolling applies to the June 3, 2005 through September 1, 2005 period, it is the statutory tolling provided for in EERA section 3541.5, subdivision (a)(2).

B. The Charging Party Bears The Burden Of Proving A Charge Is Timely Filed

Contending that the District waived the issue of timeliness by withdrawing its answer to the complaint, Baprawski argues that the charge was timely filed and that she did not bear the

evidentiary burden on the issue of timeliness. In *Long Beach II,* however, the Board held that timeliness of the charge is an element of the charging party's prima facie case and, thus, the burden of proof to show that the charge was timely filed is on the charging party. (*Long Beach II*, at pp. 12-13.) *Long Beach II* overruled *Walnut Valley Unified School District* (1983) PERB Decision No. 289 and its progeny as well as *Long Beach I* to the extent that these cases hold that the respondent bears both the burden of pleading the statute of limitations as an affirmative defense in its answer and the burden of proving at hearing that the charge was untimely. Given the Board's holding that timeliness is an element of the charging party's prima facie case, we find Baprawski's claim to be without merit.

C. Tolling Issue Not Before The Board

In *American Federation of Teachers (Kok)* (1999) PERB Decision No. 1352, a case issued after the elimination of equitable tolling in 1989, the Board held that prior PERB charges no longer tolled the statute of limitations. Based on the return of equitable tolling in *Long Beach I*, the ALJ concluded that the six-months limitations period was tolled from April 6, 2005 until May 31, 2005, while Baprawski's first charge was being processed.

None of the parties excepted to this finding by the ALJ. Consequently, the issue is not squarely before the Board and need not be addressed herein. Therefore, we do not decide in this decision whether the doctrine of equitable tolling applies during the pendency of proceedings before PERB involving the same factual allegations.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CE-4883-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Acting Chair Dowdin Calvillo and Member Neuwald joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CARMEN BAPRAWSKI, Charging Party, v. LOS ANGELES COMMUNITY COLLEGE DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-4883-E PROPOSED DECISION August 23, 2006

Appearances: Carmen Baprawski, in pro per; Atkinson, Andelson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for Los Angeles Community College District.

Before Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

On September 14, 2004, Carmen Baprawski (Baprawski) filed a grievance, through her union, against the Los Angeles Community College District (District) alleging that the District wrongfully rescinded her reassignment, in part because of her protected activity. On April 6, 2005, she filed an unfair practice charge alleging the same conduct as unlawful retaliation. On May 31, 2005, the charge was dismissed and deferred to arbitration. However, Baprawski's grievance did not proceed to arbitration, and on September 9, 2005, she filed the instant charge, again alleging the same retaliation and also alleging harassment by the District in 2005. On January 5, 2006, the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that by rescinding Baprawski's reassignment, the District violated the Educational Employment Relations Act (EERA) section 3543.5(a).[1] The District

[1] EERA is codified at Government Code section 3540 et seq. Section 3543.5(a) makes it unlawful for a public school employer to "(I)mpose 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." In turn section 3543(a) provides in part that "(P)ublic school employees shall

filed an answer to the complaint on January 23, 2006, denying any wrongdoing and raising the statute of limitations as an affirmative defense.

On February 21, 2006, an informal settlement conference was held but the matter was not resolved. On May 23, 2006, the District filed a motion to dismiss the charge and complaint on two grounds: (1) the charge was untimely filed; and (2) it failed to state any protected activity. On May 25, 2006, Baprawski filed a response to the motion, contending that the charge was timely filed and that she did engage in protected activity.

On May 30, 2006, a hearing was held before the undersigned, who took evidence only on the matter of timeliness. The undersigned announced at the hearing that she would issue a proposed decision on the motion to dismiss, and if denied, the formal hearing would resume on the substantive matters raised by the complaint. After the filing of post-hearing briefs, the matter was submitted for decision on July 28, 2006.

FINDINGS OF FACT

The facts are for the most part uncontested. Baprawski is a professor of counseling employed by the District, and a member of the bargaining unit represented by the Los Angeles College Faculty Guild, Local 1521, CFT/AFT, AFL-CIO (Guild). The District and the Guild are parties to a collective bargaining agreement (Agreement) effective from July 1, 2002 through June 30, 2005. Article 28 of the Agreement provides for a grievance procedure consisting of Steps One and Two, followed by binding arbitration. The grievant must make a written request for arbitration, with the approval of the Guild, within ten days of the Step Two denial. According to the Guild's constitution, the local grievance representative must get approval from the Guild's Grievance Committee prior to making the written request for

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have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations."

arbitration. Article 28 of the Agreement also provides a procedure for mediation between the District and the Guild in lieu of arbitration.

In the summer of 2004,[2] at Baprawski's request, Henry Ealy (Ealy), the local Guild grievance representative, negotiated with the District to obtain for her a reassignment from a C-basis position (10 months employment per year) as a counselor to a D-basis position (12 months employment per year) as Career Center Director/Counselor. On August 18 the District notified Baprawski that she was awarded the position. However, on August 31 the District notified her that the reassignment was rescinded. The rescission was based on a grievance filed by the counseling department chair, Hector Aguilar (Aguilar), objecting to Baprawski's reassignment because it was not handled according to proper procedure and because he was not invited to be involved in the decision. For the next two weeks after receiving the notice of rescission, Baprawski reviewed the Agreement, spoke with the Guild, and gathered information and documentation in preparation for a grievance. On September 14 Baprawski signed a "Power of Representation" designating the Guild as her exclusive grievance representative and agreeing, inter alia, to "take no action independent of my AFT representative without first conferring with the AFT and rescinding this authorization." On that same date the Guild filed a grievance alleging that the District had wrongfully rescinded her reassignment in violation of various provisions of the Agreement including Article 6.C:

> The Board shall not discriminate against faculty members or applicants for faculty positions because of their membership in the AFT or because of their exercise of other rights to meeting and negotiating as provided by law.

The District denied the grievance at Step One, and Ealy appealed to Step Two. The District contends that the Guild did not pursue the issue of retaliation beyond Step One, as it is

[2] All dates hereafter refer to the year 2004 unless otherwise specified.

not mentioned in the Guild's Step Two appeal. However, Baprawski contends that the appeal contained only "additional material" to what was stated in the grievance. I find that the appeal discusses matters not discussed in the original grievance. I therefore find that the issue of retaliation was not abandoned by the Guild and continued to be pursued in the appeal. On November 1 the District denied the grievance at Step Two. Ealy did not file a request for arbitration within the ten days required by the Agreement, nor did he seek approval from the Guild's Grievance Committee, a constitutional prerequisite to filing a request for arbitration, nor did he engage in the mediation process provided by the Agreement as an alternative to arbitration. At the hearing Baprawski testified that she had read the Agreement's grievance procedure and was familiar with the timelines for Steps One and Two, but that she did not pay attention to the section on arbitration and merely "glossed over" that timeline, thus she was not aware of when the deadline for requesting arbitration would expire. She contended that there are two timelines, the formal one set out in the Agreement and an informal one "behind the scenes." She conceded that the Guild did not participate in the alternative mediation process, but contended that they were engaged in informal discussions, which she preferred because she wanted her grievance resolved "in-house." However, she did not specify who participated, what was discussed, or on what terms they concluded.

On November 22 Ealy told Baprawski that the Guild would not take her grievance to arbitration because it was moot, i.e., there was no available remedy. He was referring to an October 7 letter from Betsy Regaldo (Regaldo), Dean, Student Services/Retention, to interested applicants stating that the Career Center Director/Counselor position was being changed from a 12-month to a 10-month position.[3] Baprawski "vigorously disputed" the Guild's decision not

[3] Baprawski contends that she never received a copy of this letter and that it is fraudulent.

to arbitrate and kept trying to persuade Ealy and other Guild representatives to change their minds, to no avail. However, admittedly outside the grievance process, Ealy did continue to engage in informal discussions with the District regarding Regaldo's October 7 letter. By e-mail of March 11, 2005,[4] Carl Friedlander (Friedlander), Guild president, gave Baprawski written confirmation that he was following advice of counsel not to take her grievance to arbitration because the assignment of an individual employee was a matter within the District's discretion and "(T)he Guild has no legal obligation to arbitrate a case which the Guild believes it cannot win." Friedlander also stated that he would "not be engaging in further discussion with you on this issue."

On April 6 Baprawski filed an unfair practice charge in Case No. LA-CE-4845-E. The charge alleges, inter alia, that the District rescinded her reassignment in retaliation for her requesting the Guild to negotiate the reassignment on her behalf. During investigation of that charge, the District sent the PERB regional office written assurances that it was willing to arbitrate the grievance and would not raise timeliness issues. Baprawski testified that she told the investigating Board agent the Guild did not want to arbitrate and that she showed the Board agent Friedlander's March 11 e-mail. However, Baprawski also testified that the Board agent investigating the instant charge told her to get "something in writing that the union will not arbitrate," and the case file shows that she provided a copy of the March 11 e-mail for the first time on September 27. It appears therefore that the Board agent investigating the first charge was not aware that the Guild had made a firm decision and that resort to arbitration would be futile. Thus, on May 31 the first charge was dismissed and deferred to arbitration.

Baprawski did not appeal the dismissal, but instead once again tried to get the Guild to change its mind. She testified that she believed PERB had authority over the Guild and could

[4] All dates hereafter refer to the year 2005 unless otherwise specified.

force it to arbitrate. In June she spoke with Darryl Eckersley (Eckersley), chief grievance officer, who told her the Guild does not deal with grievances during the summer; Baprawski characterized his response as "shin[ing] me off." However, Baprawski admitted that at no time did the Guild give her any indication that it might change its mind. On August 29, Eckersley told her again that the Guild would not arbitrate her grievance. She asked for written confirmation, but Eckersley said he would not provide it. By e-mail of September 1, the Guild president succinctly stated that Baprawski could refer to the Guild's e-mail of March 11. Baprawski then filed the instant charge on September 9, making the same allegations as the first charge, and also alleging that on April 8 and 13, 2005, Aguilar unlawfully harassed her in two e-mails critical of her work schedule. Complaint issued on January 5, 2006, alleging that the District rescinded Baprawski's reassignment in retaliation for her requesting the Guild to negotiate on her behalf. The PERB complaint did not allege any harassment, the issue of harassment was not raised at the hearing, and the April 8 and 13, 2005, e-mails were not presented as evidence. I therefore make no finding on this issue.

ISSUE

Should the District's motion to dismiss be granted on the basis of

(a) untimeliness?

(b) failure to state any protected activity?

DISCUSSION

Timeliness

EERA section 3541.5(a)(1) provides 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.

There is no question that the instant charge was filed far in excess of six months after the alleged violation. However, the limitations period may be tolled either by statute or by equity. In either case, the charging party bears the burden of demonstrating that the charge was timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S).

(a) Statutory tolling

EERA section 3541.5(a)(2) provides in part that the Board shall not:

> Issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. ... The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

For tolling purposes, PERB has held that the pursuit of a grievance includes any time during which the grievant is engaged in efforts preparatory to its filing, e.g., investigation, discovery, planning and preparation of documents. (State of California (Secretary of State) (1990) PERB Decision No. 812-S (Secretary of State); Los Angeles Unified School District et al (1983) PERB Decision No. 311 (LAUSD.) The grievance machinery will be considered exhausted when the union and/or the grievant fail to take it to the next step of the contractual grievance process. (Santa Monica-Malibu Unified School District (Bradley) (2000) PERB Decision No. 1389; State of California (Department of Corrections) (2003) PERB Decision No. 1559-S.) The limitations period is cumulative and will be tolled only while the grievance is being actively pursued, but not when the grievant knows the union is not pursuing it. (Id. [citing

California School Employees Association (Spiegelman) (1984) PERB Decision No. 400 for the latter proposition.])

Here, I find that Baprawski was actively engaged in preparing for her grievance from the time the District rescinded her reassignment on August 31, 2004, to the filing of her grievance on September 14, 2004, by reviewing the Agreement, speaking with the Guild, and gathering information and documentation. I therefore conclude that the limitations period is tolled during that period. I also find that the grievance was being actively pursued from its filing until the District's Step Two denial on November 1, and therefore conclude that the limitations period is tolled during that period.

However, the Guild, acting as Baprawski's exclusive grievance representative, did not pursue the grievance beyond the District's Step Two denial. Baprawski claims that she did not become aware of the Guild's decision until November 22, 2004. She should have become aware at the latest by November 11, the ten-day deadline to request arbitration under the Agreement. Given that she studied the Agreement in preparation for filing the grievance and was admittedly well aware of the time limits for Steps One and Two, it is improbable that she did not know of the 10-day time limit to request arbitration. At any rate, it is clear that the Guild did not pursue the grievance beyond November 11, thus the contractual grievance procedure was exhausted on that date.

In her first PERB charge Baprawski could easily have demonstrated that further resort to the grievance procedure was futile because of the Guild's decision. However, she chose not to and the charge was dismissed and deferred to arbitration. Baprawski could also have demonstrated futility by filing an appeal to the dismissal, but she chose not to appeal.

Baprawski testified that the Guild and the District have both formal and informal timelines and that they continued to engage in "informal discussions" about her grievance

between November 1 and 22; but she did not specify who participated or what was discussed. Ealy admitted that he engaged in informal discussions with the District regarding Regaldo's October 7 letter, but stated that this was outside the grievance process. The grievance procedure in the Agreement makes no provision for informal discussions. Thus, while informal discussions may in fact resolve problems between parties, they cannot be considered part of the grievance process and cannot continue tolling the statute after the union fails to take the grievance to the next step of the contractual grievance process. (Secretary of State; LAUSD.)

I therefore conclude that the limitations clock started ticking for the first time on November 11, 2004. Baprawski's first PERB charge was filed on April 6, 2005. Accordingly, I find that between these two dates, she used 4 months, 26 days of her available six months.

(b) Equitable tolling

In Long Beach Community College District (2003) PERB Decision No. 1564 (Long Beach), the Board overruled California State University, San Diego (1989) PERB Decision No. 718-H (San Diego),[5] and held that the six-month statute of limitations is not a limitation on the Board's jurisdiction but must be raised as an affirmative defense. The Board also restored the principle of equitable tolling, which had been eliminated in the aftermath of San Diego by The Regents of the University of California (1990) PERB Decision No. 826-H. In Long Beach, the Board stated:

> When a grievance has been filed utilizing a bilaterally agreed upon dispute resolution procedure in an effort to resolve the same dispute which is the subject of the charge, the statute of limitations is tolled during the period of time the grievance is being pursued if: (1) the charging party reasonably and in good faith pursues the grievance; and (2) tolling did not frustrate the purpose of the statutory

[5] That case was decided under the six-month limitations period in the Higher Education Employer-Employee Relations Act, but had been applied to EERA.

> limitation period by causing surprise or prejudice to the respondent.

However, reasoning that "the parties to a negotiated grievance procedure ... should be encouraged to utilize such a procedure whenever possible," the Board declared that its return to the doctrine of equitable tolling was "with a limitation":

> The six-month limitation period should be extended equitably only when a party utilizes a bilaterally agreed upon dispute resolution procedure. [Emphasis added.]

Thus, the informal discussions which Baprawski relies on cannot serve to toll the statute of limitations under an equitable tolling theory any more than they can provide statutory tolling.

After April 6, however, the statute was again tolled during the pendency of the first PERB charge. In this regard, in American Federation of Teachers, et al (Kok) (1999) PERB Decision No. 1352, the Board upheld the dismissal of an untimely-filed charge. The dismissal letter stated that prior PERB charges no longer toll the statute of limitations since the Board eliminated equitable tolling in San Diego. Thus, with the return of equitable tolling in Long Beach, it would appear that the clock would be stopped during PERB's processing of a prior charge alleging the same violations as the current charge. The District does not dispute this principle.

However, the clock started ticking again on May 31, 2005, when the first PERB charge was dismissed. Baprawski did not file the instant charge until September 9, 2005. She argues that she should not be charged for this period, as she believed PERB's deferral mandated the Guild to arbitrate. However, she is wrong. Although arbitration is the preferred method of resolving disputes, and the Board may dismiss a charge in deference to arbitration, the Board not only has no power to require a union to take a grievance to arbitration, but should not dismiss a charge when the union has refused to arbitrate. (Eureka City School District (1988)

PERB Decision No. 702; Lake Elsinore School District (1987) PERB Decision No. 646.)[6] The extensive preparation and legal research Baprawki did on her grievance and the filing of both her charges, including the citation of several PERB cases, casts doubt on her assertion that she was ignorant of the law. But even crediting her claim, a party's ignorance of the law will not excuse an otherwise untimely filing. (Trustees of the California State University (Schmid) (1999) PERB Decision No. 1367-H; Val Verde Teachers Association,CTA/NEA (Twyman) (1998) PERB Decision No. 1257 (Val Verde).)

Baprawski also argues that this period should be tolled because the Guild would not give her an answer during the summer, thus she did not learn of its final decision until her conversation with Eckersley on August 29, 2005. However, Baprawski admitted that Eckersley merely "shine[d] her up" by saying that the Guild does not deal with grievances during the summer. The Guild's final decision had been made in November 2004, and it never gave any indication that it would change its mind, notwithstanding Baprawski's continuing arguments and hopes. Thus, despite Baprawski's efforts, there was no possibility that the grievance would be pursued. (Val Verde [grievant's letter of dissatisfaction to union "will not change the result" of untimeliness.])

I therefore find that the period between the dismissal of the first charge on May 31 and the filing of the instant charge on September 9, 2005, was not tolled and that Baprawski used another 3 months, 9 days of her six months. This brings the total elapsed time to over eight months, which is in excess of the six-month limitations period.

In her post-hearing brief, Baprawski argues that the six-month limitations period was revived in April 2005 when Aguilar sent her two e-mails constituting unlawful harassment. However, harassment was not alleged in the complaint, the issue was not litigated at the

[6] As discussed above, Baprawski did not make it clear to the Board agent investigating the first charge that the Guild decided against arbitration.

hearing, and the e-mails were not presented as evidence. I shall therefore not consider this matter in determining timeliness.

Accordingly, I conclude that the instant charge was untimely filed and that the District's motion to dismiss should be granted on this basis.

Protected Activity

EERA section 3543(a) provides that

> (P)ublic school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. ...

The District argues that Baprawski is not legally entitled to union representation outside of a disciplinary matter or "highly unusual circumstances," citing Redwoods Community College District v. Public Employment Relations Board (1984) 159 Cal.App.3d 617 [205 Cal.Rptr. 523]. However, that case was decided under the principles set forth in National Labor Relations Board v. Weingarten (1975) 420 U.S. 251 (Weingarten), which established an employer's obligation to allow an employee union representation at a disciplinary meeting. That is not analogous to the situation here, and Weingarten does not apply.

The District also cites State of California (Department of Forestry and Fire Protection) (2004) PERB Decision No. 1690-S for the proposition that there is no protected right to request a job transfer, just as there is no protected right to request a vacation day, promotion, or overtime work. However, the complaint does not allege that Baprawski was punished for seeking the transfer. Rather, it alleges that she was retaliated against for seeking Guild representation in obtaining the transfer. That is quite a different situation. It is axiomatic that a transfer of position is a matter of employer-employee relations, and seeking a union's help in this matter constitutes protected activity. (State of California (Department of Corrections) (2001) PERB Decision No. 1435-S [employee who said he would contact union for legal

advice regarding promotion was engaged in protected activity]; Los Angeles Unified School District (Woods) (1991) PERB Decision No. 874 [employee meeting with union representative on job-related issues was protected].)

Accordingly, I conclude that the District's motion to dismiss on this basis is without legal merit.

PROPOSED ORDER

Based on the foregoing, it having been concluded that the charge was filed more than six months after the alleged violation, not including periods during which the limitations period was tolled, the District's motion to dismiss on the ground of untimeliness is hereby GRANTED. Therefore, the charge and complaint in Carmen Baprawski v. Los Angeles Community College District, Case No. LA-CE-4883-E is hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130; Gov. Code sec. 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close

of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Ann L. Weinman
Administrative Law Judge