STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE EMPLOYEES' TRADE COUNCIL, Charging Party, v. STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES, Respondent, APPELLANT.	Case No. LA-CE-16-S PERB Order No. Ad-122-S Administrative Appeal (Interlocutory) December 29, 1981
RICHARD C. MATTA, Charging Party, v. STATE OF CALIFORNIA, DEPARTMENT OF DEVELOPMENTAL SERVICES, Respondent, APPELLANT.	Case No. SF-CE-20-S

Appearances: Barbara T. Stuart, Attorney for the Governor's Office of Employee Relations; R. S. Mintz, Attorney for the State Employees Trades Council and Robert J. Peernock; John D. Fouts, Attorney for Richard C. Matta.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION

These matters are before the Public Employment Relations Board (hereafter PERB or Board) upon the State's filing of objections to hearing officers' denials of motions to dismiss

the complaints in the respective cases. The State contends that PERB is without jurisdiction to hear these cases, claiming that the statute of limitations had run prior to the filing of the unfair practice charges by the charging parties.[1] Pursuant to section 32200 of PERB's rules and regulations,[2] the State has presented five issues for consideration:

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[1]State Employer-Employee Relations Act (hereafter SEERA or Act) is codified at Government Code section 3512, et seq.

3514.5(a) states in part:

> (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; (2) 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 . . . . 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.

[2]PERB rules and regulations are codified at California Administrative Code, title 8, section 31000 et seq.

Rule 32200 provides:

> Objection to Ruling on Motions. A party may object to the ruling on a motion by the Board agent and request a ruling by the Board

1. Does an appeal to the State Personnel Board (hereafter SPB) toll SEERA's statute of limitations?

2. Does a grievance filed pursuant to a nonnegotiated grievance procedure toll the statute?

3. If the employee's conduct occurred before the effective date of SEERA, but the State's disciplinary action occurred after the effective date, can that disciplinary action be found unlawful?

4. Must a charging party rely solely upon evidence occurring within the six-month period immediately preceding the filing of the charge to establish a prima facie case?

5. Does the State have the right to plead its defenses regarding the statute of limitations before the charging parties proceed with their cases?

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itself. The request shall be made in writing to the Board agent and a copy shall be sent to the Board itself. The Board agent may refuse the request or join in the request and thereby certify the matter to the Board itself. The Board agent may join in the request only where all of the following apply:

(a) The issue involved is one of law;

(b) The issue involved is controlling in the case; and

(c) An immediate appeal will materially advance the resolution of the case.

Only the first two issues, however, were certified to the Board. Rule 32380[3] precludes appeals of interlocutory rulings unless certified by the hearing officer. Accordingly, we will restrict our discussion to the tolling issues which have been certified.

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[3]Rule 32380 provides:

> Limitation of Appeals. The following administrative decisions shall not be appealable:
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> (a) A decision by a Regional Director regarding the mechanics of an election as long as the decision does not affect standing of a party to appear on a ballot;
>
> (b) Any of the following interlocutory rulings which may be raised when the case as a whole is appealed to the Board itself;
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> (1) A ruling made by the Chief Administrative Law Judge or a Board agent while processing an unfair practice case;
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> (2) A ruling made by a Board agent during a hearing except when the Board agent joins in the request to appeal pursuant to Section 32200;
>
> (3) A ruling regarding the assignment or substitution of Board agents conducting a hearing.

FACTS

In State Employees' Trade Council v. State of California, Department of Water Resources, LA-CE-16-S, Charging Party, Robert Peernock, was discharged from State service on December 27, 1979. He initially challenged the dismissal by timely filing an appeal with the SPB. However, prior to the commencement of the SPB hearings, which began in July 1980, Mr. Peernock filed charges with PERB on June 5, 1980. In his charges he alleges that he was dismissed because of his role as a steward for the State Employees Trade Council and a leader in a June 1979 work action against the State. He further alleges that the State carried on a systematic two-year program of harassment against him for these activities and that he had filed numerous grievances through the Department of Water Resources' grievance procedure. He contends that many of these grievances were not resolved by the June 5 filing date.

In Richard C. Matta v. State of California, Department of Developmental Services, SF-CE-20-S, the Charging Party, Richard C. Matta, was discharged by the Department of Developmental Services in February 1980 allegedly for mistreatment of a patient. He appealed to SPB and a hearing was held in May 1980. Its decision was issued in September 1980. Four months later, Mr. Matta filed his charge with PERB alleging that he was dismissed because of his activities as a union steward.

In both the Matta and Peernock matters, the State moved for dismissal of all charges, contending that they were filed untimely pursuant to section 3514.5(a), supra. However, the hearing officers found that the statute of limitations was tolled pending the outcome of the respective SPB hearings. The State appeals from these rulings.

DISCUSSION

The fundamental purpose of a statute of limitations is to promote justice by preventing surprise and prejudice to a party from having to defend against stale claims which "have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." Order of Railroad Telegraphers v. Railway Express Agency (1944) 321 U.S. 342 [14 LRRM 506]. A statute of limitations helps to assure that the defendant receives timely notice, which enables him/her to assemble a defense while the facts are still fresh. Elkins v. Derby (1974) 12 Cal.3d 410.

The Doctrine of Equitable Tolling:

Section 3514.5(a) places two limitations on PERB's authority to issue complaints in unfair practice cases: (1) where the alleged unlawful practice occurred more than six months prior to the filing of charges, and (2) where the dispute is subject to resolution through a negotiated grievance procedure culminating in a settlement between the parties or in binding arbitration.

The State contends that the second of these provisions is the exclusive exception to the six-month statute of limitations and that PERB may toll the limitations' period only where there has been recourse to a negotiated grievance procedure. This interpretation of the statute is incorrect. Subsection 3514(a)(2) contains its own internal tolling provision, granting to PERB the discretion to issue a complaint where it determines that the settlement or arbitration award is repugnant to the purpose of the Act. This exception to the limitation on PERB's authority to issue complaints does not preclude the Board from finding other grounds for tolling the six-month statute of limitations' period.

Apropos to the issues raised here, California courts have held that, under certain circumstances, time limitations may be tolled in equity where plaintiffs have satisfied the notification purpose of the statute. Elkins v. Derby, supra, p. 418.[4] Furthermore, equitable tolling principles are applicable regardless of whether the exhaustion of one remedy is a prerequisite to the pursuit of another. The key issue is whether the defendant would be surprised and prejudiced by the

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[4]Concepts of equity require that statutes of limitations should not be turned into stone walls that defeat reasonable efforts of a charging party to seek redress. See Morgan v. Washington Manufacturing Co. (6th Cir. October 7, 1981) ____ F.2d ____ (Dock No. 79-1435). Further, they should not be applied inflexibly and mechanically to administrative hearings. Id.

tolling. Elkins, supra, at p. 414; Myers v. County of Orange (1970) 6 Cal.App.3d 626.

In Elkins, the plaintiff filed an action in tort for personal injury although the applicable statute of limitations had already run its course. Previously, he had pursued an industrial accident claim based on the same injury before the State Workers' Compensation Appeals Board. Defendent asserted the statute of limitations, contending that the doctrine of equitable tolling should not apply, since the matter of "fault", an element of the tort action not in issue in the compensation case, would require him to secure new evidence, a consequence the limitation was designed to prevent. The court rejected this contention and found that the doctrine was applicable "[w]hen an injured person has several legal remedies and, reasonably and in good faith pursues one". Elkins, supra, p. 414. The Court found that the possibility of surprise and prejudice here was insignificant. The employer had been placed on sufficient notice by the timely filing of the first cause of action before the Workers' Compensation Appeals Board to permit him to gather and preserve evidence which would also be relevant in the second civil cause of action in tort. The fact that the compensation action did not deal with the fault issue would impose only a minimal burden on the employer who could be expected to identify and locate persons with knowledge of the events or circumstances surrounding the injury. See also Meyers, supra, p. 634.

The Board finds ample grounds for adopting the doctrine of equitable tolling here. It is beyond dispute that the central thrust of SEERA is to encourage the resolution of employer-employee disputes through internal processes such as negotiations and grievance procedures. Section 3512 expresses the Act's purposes as the promotion of full communication between the State and its employees and the improvement of personnel management and employer-employee relations by such communications.[5] The Board has recognized such legislative

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[5]Section 3512 states:

> It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employee-employer relations within the State of California by providing a uniform basis for recognizing the right of state employees to join organizations of their own choosing and be represented by such organizations in their employment relations with the state.
>
> Nothing in this chapter shall be construed to contravene the spirit or intent of the merit principle in state employment, nor to limit the entitlements of state civil service employees, including those designated as managerial and confidential, provided by Article VII of the California Constitution or by laws or rules enacted pursuant thereto.

intent in cases arising under the Educational Employment Relations Act (hereafter EERA),[6] whose relevant provisions are virtually identical to those of SEERA.[7] See Placerville Union School District (9/18/78), PERB Decision No. 69; and Anaheim Union High School District (10/28/81), PERB Decision No. 177. A narrow construction of subsection 3514.5(a) might well operate to discourage bilateral dispute resolution. Grievants would be forced to file unfair practice charges in the first instance in order to protect their right of access to PERB. Voluntary resolution would be replaced by litigiousness.

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

[7]Section 3540 states, in part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. Nothing contained herein shall be deemed to supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

Further, SEERA affirms State employee access to the proceedings of the SPB,[8] but also provides that PERB shall have initial exclusive jurisdiction to resolve unfair practice charges.[9] In Pacific Legal Foundation v. Brown (1981) 29 Cal. 3d 168, the California Supreme Court acknowledged the overlapping jurisdiction of SPB and PERB. Finding no resulting unconstitutional conflict, the Court left to both Boards the task of working out some accommodation of their respective processes. Were PERB to reject the doctrine of equitable tolling, it would force State employees seeking to resolve certain disputes over disciplinary action either to file simultaneous appeals and charges with SPB and PERB or risk loss of access to one or the other forum. By applying the doctrine, with its inherent safeguards against prejudice and surprise, PERB can provide one form of accommodation to the two Boards' jurisdictional concerns.

In sum, we conclude that it is permissible and appropriate for this Board to apply the doctrine of equitable tolling in cases where unfair practice charges have been filed more than six months after the alleged violation of SEERA[10] and the

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[8]Section 3512, supra.

[9]Section 3514.5, supra.

[10]The Board notes that Mr. Peernock's discharge, which he alleges to be a violation of the Act, occurred on

issues raised by the charge have been pursued by appeal to the SPB or through a grievance procedure, whether or not negotiated.[11]

This doctrine should be applied on a case by case basis, weighing the equities of the respective parties. Because we do not have before us an adequate record of what charges and defenses were raised in the earlier SPB and grievance hearings, we cannot presently make such a determination as to possible prejudice to the charged party. Accordingly, the cases are remanded for further consideration and disposition.

ORDER

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

The cases of State Employees' Trades Council v. State of California, Department of Water Resources (LA-CE-16-S) and Richard C. Matta v. State of California, Department of

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December 27, 1979 and that the charge was timely filed with PERB within six months of that date. However, the tolling question may be of relevance to certain other charges which Mr. Peernock initially processed through his departmental grievance procedure. The parties are in disagreement as to whether most of these grievances were resolved within six months of Pernock's filing of charges.

[11]The State's argument that an appeal of disciplinary action is not a grievance is rejected. Sections 540.1 through 540.11 of title 2 of the California Administrative Code, cited by the State, are regulations adopted by SPB for its own purposes, and are not binding upon PERB.

Developmental Services (SF-CE-20-S), are remanded to the Chief Administrative Law Judge for disposition in accordance with the foregoing decision and this Order.

By: Harry Gluck, Chairperson

John W. Jaeger, Member

Barbara D. Moore, Member