

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SAN DIEGO
HALL OF JUSTICE
TENTATIVE RULINGS - July 29, 2010**

EVENT DATE: 07/30/2010 EVENT TIME: 10:30:00 AM DEPT.: C-73
JUDICIAL OFFICER: Steven R. Denton

CASE NO.: 37-2008-00081583-CU-WT-CTL

CASE TITLE: HARTNETT VS. SAN DIEGO COUNTY OFFICE OF EDUCATION

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Wrongful Termination

EVENT TYPE: Summary Judgment / Summary Adjudication (Civil)

CAUSAL DOCUMENT/DATE FILED: Motion for Summary Judgment and/or Adjudication, 05/13/2010

Defendants LORA DUZYK and MICHELLE FORT-MERRILL'S motions for summary judgment are GRANTED. C.C.P. § 437c. These defendants are only parties to the sixth cause of action within the Second Amended Complaint such that this ruling is directed to the sixth cause of action only.

Defendants initially argue that the required government tort claim was untimely. A claim must be presented "not later than six months after the accrual of the cause of action." Government Code § 911.2. The filing requirement established by the Tort Claims Act is a jurisdictional prerequisite to a civil action for damages. See *Munoz v. State of California*, 33 Cal. App. 4th 1767, 1779 (1995). For purposes of filing a tort claim for wrongful termination, the cause of action accrues when the employment is actually terminated, not the date on which an employee is unequivocally informed his employment will be terminated. *Colores v. Board of Trustees*, 105 Cal. App. 4th 1293, 1320 (2003). The evidence submitted by the parties demonstrates that plaintiff was informed of the recommendation for termination on August 17, 2007, but the actual termination occurred on October 5, 2007 within six months of submission of the tort claim. Although defendant Duzyk's recommendation for the termination was the alleged retaliatory act, no damages were incurred until the actual date of termination. Thus, the retaliation was not completed and did not accrue until October.

On the other hand, Education Code sections 4113 and 4114 do not apply such that this claim is barred as a matter of law. It is undisputed that both defendants are "management employees" such that section 4113 does not apply. Education Code § 44112(a); Government Code § 3540.1. In contrast, the application of section 4114 is dependent on whether plaintiff's position is defined as an "employee" position, as opposed to a "management" position. The undisputed evidence presented by defendants demonstrate that SDCOE "classified" plaintiff's position of "Claims Coordinator" as a management position. In other words, defendant SDCOE intended that plaintiff's position would be treated as a management position. Plaintiff presents evidence tending to demonstrate that the position was, in fact, not a management position. However, this evidence is immaterial as discussed below.

Government Code section 3540.1(g) states: "Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board." A trial court has only appellate, as opposed to original, jurisdiction to review PERB decisions. *California Teachers Assn. v.*

Public Employment Relations Bd., 169 Cal. App. 4th 1076, 1087 (2009). Exclusive initial jurisdiction over matters protected or prohibited by the EERA exists in PERB. *International Federation of Prof. & Technical Engineers v. Bunch*, 40 Cal. App. 4th 670, 675-678 (1995). Given this authority, the court finds that section 3540.1(g) has only one reasonable interpretation: PERB has exclusive initial jurisdiction to review the "management" classification. As PERB has not yet taken action, this court must defer to SDCOE's designation and any evidence offered by plaintiff must be disregarded. Therefore, plaintiff is a management level employee such that section 4114 does not apply and summary judgment is granted on this basis.

Finally, the court notes plaintiff was not required to file a complaint with SDCOE as a prerequisite to filing this action and summary judgment is not granted on this basis. The court does not read subsections (a) and (c) within section 4114 as requiring this prerequisite. In fact, there is no apparent need for this extra step given that an employee is required to file a government tort claim in any event.

The objections to evidence submitted by the parties are overruled.

AS A COURTESY TO THE COURT, IT IS REQUESTED THAT COUNSEL CONTACT EACH OTHER, AND THEREAFTER NOTIFY THE COURT ONLY IF ALL PARTIES AGREE TO SUBMIT TO THE TENTATIVE RULING. PLEASE CONTACT THE COURT AS SOON AS PRACTICABLE IF THE PARTIES ARE SUBMITTING.