SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

OUR VIRGIN ISLANDS LABOR UNION, **PETITIONER,** **V.** **PUBLIC EMPLOYEES RELATIONS BOARD; GOVERNMENT OF THE VIRGIN ISLANDS; DEPARTMENT OF AGRICULTURE; DEPARTMENT OF PUBLIC WORKS; AND DEPARTMENT OF JUSTICE,** **RESPONDENTS.**	**SX-12-CV-183** **ACTION FOR WRIT OF REVIEW** Cite as: 2019 V.I. Super 128

MEMORANDUM OPINION and ORDER

¶ 1 **THIS MATTER** is before the Court for disposition of the Petition for Writ of Review filed by Our Virgin Islands Labor Union (hereinafter "OVILU") on May 10, 2012. The writ of review was initially granted on September 5, 2013 and the certified record of proceedings was submitted on October 11, 2013. OVILU filed its formal brief on November 22, 2013, and the Public Employees Relations Board (hereinafter "PERB") filed its Response on December 24, 2013.

BACKGROUND

¶ 2 This case stems from claims filed by OVILU against the Government of the Virgin Islands, V.I. Department of Agriculture, V.I. Department of Public Works, and V.I. Department of Justice, docketed as PERB-ULPC-11-43X. OVILU alleged unfair labor practices by these entities stemming from the Virgin Islands Economic Stability Act of 2011 (hereinafter the "Stability Act"). The Stability Act was a measure that reduced the salaries of many government employees by eight percent in response to a budget crisis caused by economic recession. *United Steel Paper & Forestry Rubber Mfg. Allied Ind. And Serv. Workers Int'l Union AFL-CIO-CLC v. Gov't of the Virgin Islands*, 65 V.I. 468 (3d Cir. 2016). It has been noted by the Third Circuit Court of Appeals that the Stability Act interfered with collective bargaining agreements that set out salary and benefit schedules for government employees. *See id.* at 473.

¶ 3 OVILU's complaint was that the named Respondents violated Virgin Islands Code Title 24, Sections 378(a)(5), (7), and (8), which states in pertinent part:

> **(a)** It is hereby expressly prohibited for any public employer or agent of a public employer willfully to:
> **(5)** refuse to bargain collectively in good faith with an exclusive representative;
> . . .
> **(7)** violate or fail to comply with any of the provisions of this chapter;
> **(8)** violate or fail to comply with any of the terms of a valid collective bargaining agreement to which it is a party.

¶ 4 On April 25, 2012, PERB came to the conclusion that it has a conflict of interest in OVILU's claims and decided to abstain from ruling on them. (Pet. 2, ¶ 1.2.) In the same decision, PERB stated that the District Court of the Virgin Islands had already ruled on the validity of the Stability Act. (*Id.*) PERB then granted the Respondents' motion to dismiss. (*Id.* at ¶ 1.3.)

¶ 5 According to OVILU, the dismissal was erroneous because 1) PERB could not have dismissed the claims if it had a conflict of interest that required abstention; 2) the District Court's ruling did not resolve the issues to be considered; 3) OVILU's claims bear no relation to the claims of other unions brought before the District Court; and 4) PERB adjudicated OVILU's claims on the merits without a finding of facts and without evidentiary support. (*See id.*at ¶ 1.4.)

¶ 6 PERB counters that "it did not rule on the merits of the charge of unfair labor practice." (PERB Response 6.) Rather, PERB, "acting within its authority, dismissed the charge" after a consideration of the record, facts, and arguments. (*Id.*) As to the claim that PERB's ruling erroneously relied on a District Court case, without facts properly cited to, that does not resolve OVILU's issues, PERB reiterates that it did not rule on OVILU's claims, and that it referenced the District Court's Stability Act ruling "because it dealt with an aspect of [the Stability Act], and nothing further." (*Id.*)

¶ 7 With regard to the allegation that OVILU's claims were dismissed without minimum evidentiary support, PERB states that, in investigating, making findings of fact, and issuing a written determination, PERB "can take such action as may be warranted, including dismissing a complaint." (*Id.* at 7.) "PERB is unclear as to why the Petitioner is asking the Court to reverse the PERB's Decision and Order when it did not rule on the merits of the charge. Clearly, the PERB is within its authority to dismiss a charge without further proceedings." (*Id.* citing 24 V.I. Regs. § 379.5(D) and 24 V.I.C. § 379(a)(4).) PERB goes on to assert that the Court should give deference to PERB's decision. (*Id.* at 8.)

STANDARD OF REVIEW

¶ 8 Pursuant to Section 380 of Title 24, Virgin Islands Code, "[a]ny party aggrieved by any final order of the PERB...may appeal to the Superior Court of the Virgin Islands for review of such order...." 24 V.I.C. § 380(a). "In a review by appeal...all questions of fact determined by the PERB...shall be conclusive if supported by substantial evidence on the record considered as a whole." 24 V.I.C. § 380(b). "In reviewing a final order of the PERB, the court may enforce the order, modify the order and enforce it, set the order aside, or return the matter to the PERB with instructions for further proceedings...." 24 V.I.C. § 380(c).

DISCUSSION

A. PERB's dismissal of OVILU's claims was proper and must be enforced.

¶ 9 A preliminary issue of this petition is whether PERB ruled on the merits of OVILU's case subsequent to finding a conflict of interest. The Court recognizes that, as a general rule, an adjudicating entity cannot rule on the merits of a matter when it has a conflict of interest in that matter. In this particular case, OVILU claims that PERB erroneously ruled on the merits of its case after finding a conflict of interest. PERB alleges just the opposite. PERB's Decision and Order states:

> [B]efore considering the merits of the instant matter, the PERB notes that on August 5, 2011, Respondents submitted a Motion to Dismiss, and on August 16, 2011, the PERB

> received Charging Party's Response to Respondents' Motion to Dismiss. In its Motion, Respondents argue that the PERB should abstain from ruling on this matter because of the pending action in the District Court of the Virgin Islands challenging the Virgin Islands Economic Stability Act. Respondents contend that if the PERB was to rule on this matter and a party seeks review of the Decision, it would be appealed to the Superior Court of the Virgin Islands; however, the Superior Court judges have already recused themselves from ruling on such issues. Furthermore, Respondents argue that employees of the PERB have also received an eight [sic] (8%) salary reduction and that it would be inappropriate for the PERB to rule on this issue, and ask for the PERB abstain and defer this matter to the District Court.
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> Charging Party countered stating that Respondents' Motion was filed untimely because it was filed three (3) days before the hearing. We note that this matter has not been set for a hearing; rather, on August 11, 2011, the parties came before the PERB for an informal conference. Charging Party contends that Respondents have filed a Motion to Dismiss in the District Court for lack of subject-matter jurisdiction and not tells [sic] PERB that this matter should be dismissed as well; however, Respondents can't have it both ways. Also, Charging Party states that there are no constitutional challenges before the PERB but a wage claim and failure to bargaining collectively. Additionally, Charging Party contends that not all PERB members have been impacted by the Virgin Islands Economic Stability Act, and if a member has been affected, and believes there is a personal conflict, the member can elect not to participate by vote.
>
> We have carefully reviewed the parties' arguments, and have determined that the PERB shall abstain from ruling on this matter. The PERB board currently consists of four (4) Board Members, two (2) of which have been impacted by the Virgin Islands Economic Stability Act. The PERB's staff as well as the Executive Director/Hearing Officer has also been impacted by VIESA. In addition, on March 29, 2012, the District Court of the Virgin Islands issued a Memorandum Opinion in the case of *United Steelworkers, et al. v. Government of the Virgin Islands, et al.*, Civil No. 2011-76. The issue of the validity of the Virgin Islands Economic Stability Act was decided on. Therefore, in light of this, we perceive that a conflict exists and the underlying issues have already been addressed by the District Court of the Virgin Islands. As a result, we will decline to further consider this matter.

¶ 10 The language of the Decision and Order is ambiguous as to whether PERB intended to dismiss the claim solely because of the conflict or because of both the conflict and District Court decision. However, the Decision and Order specifically states that PERB "shall abstain from ruling," indicating that it did not intend to rule on the merits. Having determined that the merits of OVILU's case have not been adjudicated, the Court will now consider whether PERB had the authority to dismiss the matter.

¶ 11 According to the Virgin Islands Rules and Regulations, "PERB may dismiss a charge at the conclusion of the investigation without further proceedings if the PERB determines that the facts revealed by the investigation demonstrate no reasonable basis to believe the Act has been violated, or if the violations alleged are not within the jurisdiction of PERB, or for other good cause." 24 V.I. Regs § 379(D). In this case, PERB decided that it lacked jurisdiction due to its conflict of interest. For this reason, the dismissal was not erroneous and the Court need not consider OVILU's other arguments to that effect.

¶ 12 After PERB's Decision and Order, OVILU appealed to the Superior Court pursuant to Section 380(a), Title 24 of the Virgin Islands Code. As noted above, the Court may enforce, modify, or set aside the PERB order, or return the matter to PERB. 24 V.I.C. § 380(c). The Court cannot modify or set aside the order, or send the matter back to PERB for further proceedings because the Court can do nothing about PERB's inherent conflict of interest. The Court's only course of action is to enforce the dismissal of the claims. However, the Court is unwilling to leave OVILU without recourse.

B. Equitable Tolling

¶ 13 Suits for violation of contracts between a public employer and an exclusive representative, or between labor organizations, may be brought in any court of this Territory having jurisdiction of the parties, including the Federal District Court…." 24 V.I.C. § 383(a). Since this is ultimately an action on contract, a limitation period of six years applies. 5 V.I.C. § 31. However, this matter stems from an alleged injury dating back to 2011, meaning that the statute of limitations for OVILU's claim has now expired. If this matter had been ruled upon in 2013-2014 after it was fully briefed, the Court could have denied the petition and OVILU would undoubtedly have had time to file suit. The Court believes that equitable tolling will allow OVILU the fair opportunity to prosecute its claims. Though the Court cannot preemptively order the application of the doctrine to a suit that has not yet been filed, the Court will provide a brief analysis for future reference.

¶ 14

> "Th[e] doctrine of equitable tolling preserves the protections that statutes of limitations are intended to afford to defendants. At the same time, it avoids the unfairness to plaintiffs that would occur if plaintiffs who diligently but mistakenly prosecute their claims in a court that lacks personal jurisdiction find their claims time-barred when they refile in a proper jurisdiction."
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> *Island Insteel Sys. Inc. v. Waters*, 296 F.3d 200, 205 (3d. Cir. 2002) (cited by *Pichierri v. Crowley*, 59 V.I. 973, 979 (V.I. Sup. 2013)).
>
> As applicable in the present circumstance, the doctrine of equitable tolling states that the statutory limitation period for a second action may be equitably tolled by the filing of an earlier action which is dismissed for lack of personal jurisdiction, if
>
> 1. the first action gave defendant timely notice of plaintiff's claim;
> 2. the lapse of time between the first and second actions will not prejudice the defendant; and
> 3. the plaintiffs acted reasonably and in good faith in prosecuting the first action and exercised diligence in filing the second action.
>
> *Pichierri*, 59 V.I. at 978 (citing *Island Insteel Sys, Inc.*, 296 F.3d at 217-18.

¶ 15 In this case, the issue of tolling is two-fold, because OVILU's claims were dismissed due to a conflict of interest which removed jurisdiction from PERB, and then OVILU's petition in Superior Court was not timely ruled upon. The Court finds that OVILU's first action before PERB put the Respondents on notice of the claims, and that OVILU acted reasonably and diligently in pursuing the resolution of its claims. That the statute of limitations has run, and there will be eight years between the filing of the initial petition and a suit in Superior Court--should OVILU wish to press its claims further--is no fault of the Plaintiff and should not be held against the Plaintiff. The Court does not believe that the named Respondents, all well-resourced governmental entities, will be prejudiced should a suit be filed.

CONCLUSION

¶ 16 The Court finds that PERB's dismissal of OVILU's claims stemmed from a conflict of interest, and that the dismissal was in accordance with PERB's statutory authority. The Court also finds that should OVILU wish to file suit in Superior Court there is grounds for the application of equitable tolling despite the filing of the suit after so many years from the initial injury. Accordingly, it is hereby:

ORDERED that the PERB's Decision and Order of April 25, 2012 is **CONFIRMED** and this Petition for Writ of Review is **DISMISSED**; and it is further

ORDERED that Our Virgin Islands Labor Union file suit in a court of appropriate jurisdiction within **FORTY-FIVE (45) DAYS** if it wishes to pursue its claims.

DONE and so ORDERED this 18th day of October 2019.

HAROLD W.L. WILLOCKS
Presiding **Judge of the Superior Court**

ATTEST:
Estrella H. George
Clerk of the Court

By: __________
Court Clerk Supervisor

Dated: 10/18/2019