

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LINDA E. WOMBLE,

Charging Party,

v.

COUNTY OF COLUSA,

Respondent.

Case No. SA-CE-297-M

PERB Decision No. 1757-M

March 8, 2005

Appearances: Linda E. Womble, on her own behalf; Williams & Associates by Martha M. Stringer, Attorney, for County of Colusa.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Linda E. Womble (Womble) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the County of Colusa (County) violated the Meyers-Milias-Brown Act (MMBA)¹ by assigning her duties associated with the administration of a separate and distinct County department, i.e., the Public Defender's Office, and denying her claim for additional compensation for performing those duties.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the County's response, the amended charge, the warning and dismissal letters, Womble's appeal and the County's response. The Board finds the Board agent's warning and dismissal letters to be without prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

¹The MMBA is codified at Government Code section 3500, et seq.

DISCUSSION

On appeal, Womble has raised for the first time the issue of her request for reclassification of her duties. The County, in its response correctly points out that to raise an issue for the first time on appeal is a violation of PERB Regulation section 32635(b).² Womble provided no facts to show this could not have been included with the underlying charge. Without a showing of good cause, the appeal must also be dismissed as to this issue.

ORDER

The unfair practice charge in Case No. SA-CE-297-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Shek joined in this Decision.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. Regulation section 32635(b) states: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence."

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 324-0142
Fax: (916) 327-6377



January 13, 2005

Linda E. Womble

Re: Linda E. Womble v. County of Colusa
Unfair Practice Charge No. SA-CE-297-M
DISMISSAL LETTER

Dear Ms. Womble:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 2, 2004. Linda E. Womble alleges that the County of Colusa violated the Meyers-Milias-Brown Act (MMBA)¹ by failing to compensate her properly.

I indicated to you in my attached letter dated January 5, 2005, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to January 12, 2005, the charge would be dismissed.

I received your amended charge by facsimile on January 10 and a signed original on January 12, 2005. You continue to allege that you were not properly compensated for the time you spent administering the Public Defender's office for the County of Colusa. However, as I stated in my letter of January 5,

You apparently wish to challenge this decision with your unfair practice charge. However, it is not clear what you allege to be a violation of the Meyers-Milias-Brown Act (MMBA).

PERB is an agency which administers the collective bargaining acts covering most public employees in the State of California. An employee alleging that an employer has taken an adverse action in violation of the MMBA must demonstrate that the employer has illegally discriminated against the employee

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

because of the employee's exercise of rights guaranteed by the MMBA.

In my previous letter I also set forth the elements of a prima facie case and the types of facts that you would need to provide to demonstrate discrimination in violation of the MMBA. However, your amended charge does not cure those defects. It does not demonstrate that you engaged in activity protected by the MMBA or that your employer took its action in reprisal for your protected activity.

I am dismissing the charge based on the facts and reasons contained here and in my January 5 letter.

Right to Appeal

Pursuant to PERB Regulations,² you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

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

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Bernard McMonigle
Administrative Law Judge

Attachment

cc: Martha M. Stringer, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 324-0142
Fax: (916) 327-6377



January 5, 2005

Linda E. Womble

Re: Linda E. Womble v. County of Colusa
Unfair Practice Charge No. SA-CE-297-M
WARNING LETTER

Dear Ms. Womble:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 2, 2004. The Linda E. Womble alleges that the County of Colusa violated the Meyers-Milias-Brown Act (MMBA)¹ by failing to compensate her properly.

You are employed by the County of Colusa as a Legal Administrative Assistant in the Office of the County Counsel. Your charge alleges that, in addition to your normal duties, you performed "duties associated with the assignment of administering a separate and distinct county department, i.e., the 'public defender'..." You requested additional compensation and your claim was denied by the Board of Supervisors in November 2004.

You apparently wish to challenge this decision with your unfair practice charge. However, it is not clear what you allege to be a violation of the Meyers-Milias-Brown Act (MMBA).

PERB is an agency which administers the collective bargaining acts covering most public employees in the State of California. An employee alleging that an employer has taken an adverse action in violation of the MMBA must demonstrate that the employer has illegally discriminated against the employee because of the employee's exercise of rights guaranteed by the MMBA.

To establish a prima facie case of discrimination in violation of Government Code section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action in protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell, supra); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro Police Officers Association, supra); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro Police Officers Association, supra; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683.).

With regard to adverse action, the Court of Appeal in Campbell held that if the employer's conduct is "inherently destructive" of important employee rights, proof of unlawful intent is not required under the MMBA, even if the employer's conduct was motivated by business considerations. (Campbell at 423.) However, if the adverse effect on employee rights is "comparatively slight," unlawful intent must be proved if the employer produces evidence of legitimate and substantial business justifications. (Campbell at 424.)

Your charge presents no facts that demonstrate you exercised right guaranteed by the MMBA or that the employer has denied your compensation claim in reprisal for that activity.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before January 12, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Administrative Law Judge