

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



PAUL MAURIELLO,

Charging Party,

v.

BAY AREA AIR QUALITY MANAGEMENT
DISTRICT,

Respondent.

Case No. SF-CE-336-M

PERB Decision No. 1927-M

November 6, 2007

Appearances: Paul Mauriello, on his own behalf; Linda A. Tripoli, Attorney, for Bay Area Air Quality Management District; Peter M. Rogosin, on his own behalf.

Before Neuwald, Chair; McKeag and Wesley, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by Paul Mauriello (Mauriello) for the withdrawal of both his exceptions to a proposed decision by an administrative law judge (ALJ) and the underlying unfair practice charge. The charge alleged that the Bay Area Air Quality Management District (District) violated the Meyers-Milias-Brown Act (MMBA)¹ by retaliating against Mauriello when he used the grievance procedure to arbitrate his termination. Mauriello alleged this conduct constituted a violation of MMBA sections 3506 and 3509(b), and PERB Regulation 32603(a).²

¹MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. Section 32603(a) provides that it shall be an unfair practice for a public agency to:

Interfere with, intimidate, restrain, coerce or discriminate against public employees because of their exercise of rights guaranteed by Government Code section 3502 or by any local rule adopted pursuant to Government Code section 3507.

BACKGROUND

This action was initiated on December 29, 2005, when Mauriello filed an unfair practice charge against the District. A complaint was issued on April 3, 2006 by the PERB General Counsel's office, and a proposed decision dismissing the case was issued by an ALJ on September 28, 2006. Mauriello filed exceptions.

By letter dated March 12, 2007, Mauriello notified the Board that he was substituting himself as his representative in this matter in lieu of his former representative, Peter M. Rogosin (Rogosin).³ In addition, Mauriello stated the matter was settled and requested the withdrawal of his unfair practice charge with prejudice.

Shortly thereafter, on March 16, 2007, Rogosin filed a "Declaration of Interference" (Declaration) as a supplemental filing to Mauriello's statement of exceptions to the proposed decision. According to the Declaration, Linda A. Tripoli, attorney for the District, met with Mauriello at least two times outside the presence of Rogosin for the purpose of settling the matter and demanded that Mauriello keep "secret from Rogosin" any action taken to resolve the case. The Declaration concluded this conduct denied "fundamental fairness to Mauriello and interfere(d) with his business relationship with Rogosin."

The same day the Declaration was filed, Mauriello faxed a letter to PERB which provides as follow:

I am been [sic] informed that Mr. Rogosin, my former representative, filed a paper with PERB of which I have not received a copy nor did I authorize Mr. Rogosin to file those papers on my behalf. I have already informed PERB that Mr. Rogosin is no longer my representative and I still wish to withdraw my PERB charge... .

Later, on July 11, 2007, Rogosin filed an "Application for Joinder of Interested Party (Rogosin) & Request to Reject Withdrawal of Charges (amicus curiae)." In his application,

³Mauriello is covered by a memorandum of understanding between the District and the Bay Area Air Quality Management District Employees Association (Association). The Association is not a party to this dispute.

Rogosin argued that the District engaged in contractual interference by intentionally inducing Mauriello to breach his agreement with Rogosin. According to Rogosin, the only manner in which he could collect his fees was through a "full hearing on the retaliation claim." In addition, Rogosin alleges that Mauriello's settlement was coerced in violation of MMBA section 32603-a.⁴ As such, Rogosin argues PERB has a "responsibility to reject the present request for withdrawal."

For the reasons set forth below, we deny Rogosin's application for joinder and grant Mauriello's request for withdrawal.

DISCUSSION

Request for Joinder

PERB Regulation 32164(a) provides that an "employee, employee organization or employer" may file an application for joinder. As indicated above, Rogosin, Mauriello's former representative, filed the application for joinder as an interested party to the case. Rogosin, however, is not an employee, employee organization or employer. Accordingly, he lacks standing to file such an application.

Alternatively, PERB Regulation 32164(d) authorizes the Board, on its own motion, to order joinder of individuals in specific situations. In Sacramento City Unified School District (1994) PERB Order No. Ad-252 (Sacramento USD), the Sacramento City Teachers Association filed an unfair practice charge against the Sacramento City Unified School District based on actions taken by the district in connection with the establishment of a charter school. The principal of the school, Dennis Mah (Mah), was not a named party to the charge. Consequently, he filed an application for joinder as an individual and as a representative of the school's steering committee. The Board denied Mah's request for joinder pursuant to PERB

⁴There is no MMBA section 32603-a. Presumably, Rogosin is relying upon PERB Regulation 32603(a) which is cited in footnote 2, ante.

Regulation 32164(a) based on lack of standing but, on its own motion, ordered Mah's joinder pursuant to PERB Regulation 32164(d). According to the Board:

Mah has made a compelling argument that he represents certain interests at Bowling Green. Due to the unique character of this charter school and the alleged violations in the unfair practice complaint, these interests are related to the subject of this unfair practice charge. Mah is situated so that the disposition of this case in his absence may, as a practical matter, impair or impede his ability to protect that interest.

Thus, based on the Sacramento USD case, the Board may order the joinder of a party pursuant to PERB Regulation 32164(d) if the party has an interest that is related to the subject matter of the unfair practice charge at issue.

In his moving papers, Rogosin alleges the District induced Mauriello into settling the case without Rogosin. As such, Rogosin concludes that such conduct constituted "direct interference" with his business relationship with Mauriello. According to Rogosin, the only way to collect his fees is to:

... (conduct) a full hearing on the retaliation claim, obtain a finding of frivolous legal action, obtain a proper determination of the arbitration award and apply any other pertinent factors to determine a proper fee for the services rendered.

Rogosin's "interference" claim, however, is not based on interference in violation of MMBA section 3506; rather, it appears to be based on a common law tort and, therefore, beyond the scope of PERB's statutory charge. As such, the Board lacks the jurisdiction to entertain this claim. Moreover, unlike the party seeking joinder in Sacramento USD, Rogosin's interest is not related to the subject matter of the unfair practice charge. Instead, Rogosin's interest is the collection of his fees.

While we may empathize with Rogosin's plight, PERB is not the appropriate tribunal in which to resolve his fee dispute. Accordingly, Rogosin's request for joinder is denied.

Request for Withdrawal

By letter dated March 12, 2007, Mauriello informed the Board that the case was settled and requested that his appeal and unfair practice charge be withdrawn. Later, after learning the Declaration was filed, Mauriello promptly notified the Board that Rogosin was no longer his representative, confirmed that Rogosin was not authorized to file the pleading on his behalf and reiterated his request for the withdrawal of his unfair practice charge.

Notwithstanding Rogosin's allegations, we find that the settlement and withdrawal are in the best interests of the parties over whom PERB has jurisdiction and that the settlement is consistent with the purposes of the MMBA. Accordingly, Mauriello's request for withdrawal is granted.

ORDER

Peter M. Rogosin's request for joinder in Case No. SF-CE-336-M is hereby DENIED. Paul Mauriello's request to withdraw both his exceptions and the underlying unfair practice charge in Case No. SF-CE-336-M is hereby GRANTED.

Chair Neuwald and Member Wesley joined in this Decision.