STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DEBRA A. ROELEVELD, Charging Party, v. COUNTY OF SAN BERNARDINO (COUNTY LIBRARY), Respondent.	Case No. LA-CE-450-M PERB Decision No. 2071-M October 20, 2009

Appearance: Debra A. Roeleveld, on her own behalf.

Before Dowdin Calvillo, Acting Chair; Neuwald and Wesley, Members.

DECISION

DOWDIN CALVILLO, Acting Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Debra A. Roeleveld (Roeleveld) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the County of San Bernardino (County Library) (County) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by: (1) failing to follow its personnel rules when it interviewed Roeleveld for a full-time Library Assistant position; and (2) failing to provide Roeleveld with a written rejection letter or examination results both before and after Roeleveld requested them. The Board agent dismissed the charge for lack of jurisdiction and failure to state a prima facie case of retaliation.

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

The Board has reviewed the dismissal and the record in light of Roeleveld's appeal and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

BACKGROUND

Roeleveld has been employed as a part-time Library Assistant at the County's Twentynine Palms Branch Library since 1991.[2] On November 30, 2007, the library's regional manager, Peggy Bryant (Bryant), sent an email to staff informing them of vacancies at the various library branches. One of the available positions was a full-time Library Assistant I position at the Twentynine Palms Branch. The minimum requirements section of the attached job description did not contain a requirement that the applicant have childhood education experience.

In a reply email to Bryant on December 1, Roeleveld indicated her interest in the full-time Library Assistant I position. Roeleveld alleged that Bryant told her she did not need to submit an application for the position because she was currently a County employee but does not allege when this conversation occurred.

Roeleveld interviewed for the full-time Library Assistant I position on December 10, 2007. The branch manager of the Twentynine Palms Branch, Linda Muller (Muller), who was also Roeleveld's direct supervisor, was a member of the interview panel; Bryant was also on the panel. On December 12, Muller informed Roeleveld verbally that another applicant was selected for the position. When Roeleveld asked why she was not selected, Muller responded that the chosen applicant had childhood education experience. Muller also told Roeleveld that she was required to pretend she did not know Roeleveld during the interview.

[2] Though her job title has changed several times over the years, Roeleveld alleges that her job duties have remained the same for the entire period of her employment with the County Library.

Unsatisfied with Muller's response, Roeleveld contacted Regional Manager Bryant, who also told her that the other applicant was hired because she had childhood education experience. Roeleveld contacted Assistant County Librarian Rick Erickson (Erickson) and expressed concern about the hiring process. Erickson told her that job descriptions were intentionally vague and that based on her years of experience working for the library, she should have known that the library was looking for a "Youth Services Librarian," not a Library Assistant.

On December 14, 2007, Roeleveld met with Dan Long (Long), a representative of the San Bernardino Public Employees Association (SBPEA). When Long asked to see her application, Roeleveld responded that Bryant and Muller had told her she did not need to submit one. Long also asked Roeleveld for her rejection letter. When she responded that she had not received one, Long said the letter was necessary for SBPEA to start the grievance process and he would contact human resources and library administration to get more information.

On February 12, 2008, Roeleveld requested that Bryant and Muller provide her with a written rejection letter. Bryant told Roeleveld that the County did not send written rejection letters but informed applicants of examination results verbally. In the meantime, SBPEA continued to request documents relevant to Roeleveld's interview, including a written rejection letter, from County management. In her appeal, Roeleveld claims that the County still has not provided that information to her or SBPEA.

On April 14, 2008, Roeleveld contacted Kristy Dykas (Dykas) in the County's human resources department. Dykas informed her that no recruitment for a full-time Library Assistant I position had been conducted since April 2007. Two days later, Roeleveld spoke with Kofie McCray (McCray), the applicant chosen instead of Roeleveld. McCray told her

that she had applied for the position in October 2007. In December 2008, County Librarian Ed Kieczykowski responded to an anonymous post on a County intranet bulletin board by saying that only those employees who are on an eligibility list created pursuant to a recruitment may be interviewed for an open position.

Unfair Practice Charge and Dismissal

Roeleveld filed the instant unfair practice charge on April 23, 2008. The charge alleged that the County violated its personnel rules by: (1) basing its hiring decision for the full-time Library Assistant I position on a criterion, childhood education experience, not listed in the job description; (2) hiring an applicant who was not on an eligibility list for the full-time Library Assistant I position; (3) failing to consider Roeleveld's prior experience working with children's programs at the library; and (4) failing to provide her with a written rejection letter or examination results both before and after she requested them.

The Board agent sent Roeleveld a warning letter stating that PERB does not have authority to enforce the County's personnel rules and that the charge failed to state a prima facie case of discrimination. Roeleveld filed an amended charge on January 2, 2009, three days after the Board agent dismissed the charge because he had not received an amended charge or withdrawal by the deadline set forth in the warning letter. In *County of San Bernardino (County Library)* (2009) PERB Decision No. 2023-M, the Board found good cause to excuse the late filing and remanded the charge to the Board agent for further processing.

Based on his review of the amended charge and additional material submitted as part of Roeleveld's appeal of the dismissal, the Board agent dismissed the charge. The Board agent concluded that the County's personnel rules were not local rules adopted pursuant to MMBA section 3507, as Roeleveld argued in the amended charge. He also found the charge failed to

state a prima facie case of retaliation because Roeleveld's protected conduct of using SBPEA representation in her dispute over the Library Assistant I position occurred after she had not been hired for the position.

DISCUSSION

1. Violation of Memorandum of Understanding and Personnel Rules

On appeal, Roeleveld argues that PERB has jurisdiction over her claims because both the Memorandum of Understanding (MOU) between SBPEA and the County, and the County's personnel rules, are local rules adopted pursuant to MMBA section 3507.[3] Thus, she asserts, a

[3] MMBA section 3507, subdivision (a) states, in full:

> A public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization or organizations for the administration of employer-employee relations under this chapter. The rules and regulations may include provisions for all of the following:
>
> (1) Verifying that an organization does in fact represent employees of the public agency.
>
> (2) Verifying the official status of employee organization officers and representatives.
>
> (3) Recognition of employee organizations.
>
> (4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the agency or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 3502.
>
> (5) Additional procedures for the resolution of disputes involving wages, hours and other terms and conditions of employment.
>
> (6) Access of employee organization officers and representatives to work locations.
>
> (7) Use of official bulletin boards and other means of communication by employee organizations.

violation of those rules may be processed as an unfair practice charge pursuant to MMBA section 3509, subdivision (b).

Roeleveld contends that, because the County adopted the MOU after good faith consultation with SBPEA, it constitutes a local rule under MMBA section 3507, subdivision (a) and is thus enforceable by PERB. Section 4 of the MOU's grievance procedure states, in relevant part:

> Any dispute which may arise between parties involving the application, meaning, or interpretation of the Personnel Rules shall be settled by the Civil Service Commission in accordance with the appropriate appeal procedure established in the Personnel Rules.

Because the MOU explicitly states that the personnel rules are the exclusive means for resolving Roeleveld's claims, we turn to whether the personnel rules constitute local rules adopted pursuant to MMBA section 3507.

Section 3507, subdivision (a) allows public agencies to adopt rules and regulations "for the administration of employer-employee relations under this chapter." Though the MMBA does not define "employer-employee relations under this chapter," the type of relations contemplated by the Act are described in section 3500, subdivision (a):

> It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations. It is also the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the various public agencies in the State of California by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those

---

> (8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.
>
> (9) Any other matters that are necessary to carry out the purposes of this chapter.

> organizations in their employment relationships with public agencies.

As indicated by this preamble, the MMBA governs relations between public agency employers and organizations representing their employees. Thus, the only type of local rules and regulations that may be adopted pursuant to section 3507 are those that regulate relations between the public agency and its employee organizations. Indeed, all eight of the specific subjects addressed in section 3507, subdivision (a) pertain to employer-employee organization relations.

The County's personnel rules, on the other hand, deal with relations between the County and individual employees. The rules set forth procedures for classifying positions, selecting individuals to fill positions, evaluating employee work performance and disciplining employees. The personnel rules do not address relations between the County and its employee organizations in any way.

The difference between these two types of public agency rules was highlighted in *Covina-Azusa Fire Fighters Union, Local 2415, IAFF, AFL-CIO v. City of Azusa* (1978) 81 Cal.App.3d 48. In the beginning of its decision, the court stated:

> In the case before this court, the City of Azusa did not adopt a local employee relations procedure either by ordinance or by resolution for the implementation of the act, as authorized by Government Code section 3507. The city has followed its own civil service rules and regulations in dealing with employee organizations.

(*Id.* at p. 54, fn. omitted.)

The court then proceeded to address the city's obligation to recognize employee organizations in the absence of local rules adopted pursuant to MMBA section 3507. We therefore conclude that the County's personnel rules are not local rules adopted pursuant to

MMBA section 3507, subdivision (a). Accordingly, PERB has no authority to process an alleged violation of those rules as an unfair practice charge.

2. Retaliation

To demonstrate that the County retaliated against her in violation of MMBA section 3506 and PERB Regulation 32603(a),[4] Roeleveld must show that: (1) she exercised rights under MMBA; (2) the County had knowledge of her exercise of those rights; (3) the County took adverse action against her; and (4) the County took the action because of her exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210; *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553.)

Roeleveld engaged in conduct protected by the MMBA when she enlisted SBPEA's assistance in pursuing her complaints about the selection process for the full-time Library Assistant I position. (*County of Merced* (2008) PERB Decision No. 1975-M.) The County had knowledge of Roeleveld's protected conduct because SBPEA representatives contacted the County's human resources department on several occasions seeking documentation related to Roeleveld's participation in the selection process.

Roeleveld argues on appeal that the County took adverse action against her, not by denying her the full-time Library Assistant I position, but by failing to provide her with a written rejection letter or examination results and thereby preventing her from appealing the denial to the County Civil Service Commission. Rule IV, section 20 of the County's personnel rules sets forth the process for appealing "any part or process of an examination." An appeal must be filed "within thirty (30) calendar days after the date of mailing of examination results." This implies that written examination results are a prerequisite to an appeal but the

[4] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

section does not explicitly state such a requirement. Moreover, Roeleveld did not allege that she attempted to appeal the denial without written results and her appeal was rejected. Because the charge failed to establish that the Civil Service Commission would have rejected Roeleveld's appeal under such circumstances, the County's failure to provide her with a written rejection or examination results was not an adverse action.

Even if the County's failure to provide written documentation was an adverse action, the charge does not establish that the action was the result of unlawful motive. Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation)* (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104; *San Leandro, supra*, 55 Cal.App.3d 553); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S; *San Leandro, supra*, 55 Cal.App.3d 553); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M; *Coast Community College District* (2003) PERB Decision No. 1560); (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 (*County of San Joaquin (Health Care Service)* (2001) PERB Order No. IR-55-M); (6) employer animosity towards union activists (*Jurupa Community Services*

District (2007) PERB Decision No. 1920-M; *Cupertino Union Elementary School District* (1986) PERB Decision No. 572); or (7) any other facts that might demonstrate the employer's unlawful motive. (*North Sacramento School District*, *supra*; *Novato Unified School District*, *supra*.)

SBPEA contacted the County's human resources department in late December 2007 or early January 2008 seeking documentation about Roeleveld's participation in the selection process for the full-time Library Assistant I position. On February 21, 2008, Roeleveld told Bryant, the library regional manager, that she needed a rejection letter so she could appeal the denial of the position. Bryant responded that "they do not write rejection letters – it has always been a verbal communication of their decision." This refusal to provide Roeleveld with a rejection letter, however, was not a new act by the County. Rather it was the continuation of a course of conduct that began with Muller's verbal notification on December 12, 2007, two days before Roeleveld sought assistance from SBPEA. Thus, the charge failed to establish the timing element. (*Berkeley Unified School District* (2004) PERB Decision No. 1702.) Nor does the charge establish that Roeleveld was treated differently from other similarly situated employees, that the County failed to follow established procedures, or that the County harbored any animus toward SBPEA or employees represented by it. Accordingly, the charge failed to demonstrate the required nexus between Roeleveld's use of SBPEA representation and the County's failure to provide her with a written rejection letter or examination results.

ORDER

The unfair practice charge in Case No. LA-CE-450-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Neuwald and Wesley joined in this Decision.