STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANATOLIY STRYGIN, Charging Party, v. UNITED TEACHERS OF LOS ANGELES, Respondent.	Case No. LA-CO-1421-E PERB Decision No. 2149 December 13, 2010

Appearance: Alek Strygin, Attorney, for Anatoliy Strygin.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Anatoliy Strygin (Strygin) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the United Teachers of Los Angeles breached its duty of fair representation, set forth in section 3544.9 of the Educational Employment Relations Act (EERA),[1] and thereby violated EERA section 3543.6(b), when it failed to timely assist Strygin with filing a grievance. The Board agent found the charge did not state a prima facie violation of the duty of fair representation and therefore dismissed the charge.

The Board has reviewed the dismissal and the record in light of Strygin's appeal and the relevant law. Based on this review, the Board finds the Board agent's warning and dismissal letters to be well-reasoned and a correct statement of the law, and therefore adopts them as the decision of the Board itself.

[1] EERA is codified at Government Code section 3540 et seq. All references herein are to the Government Code.

ORDER

The unfair practice charge in Case No. LA-CO-1421-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Dowdin Calvillo and Member McKeag joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8385
Fax: (916) 327-6377

June 2, 2010

Alex Strygin, Attorney

Re: *Anatoliy Strygin v. United Teachers of Los Angeles*
Unfair Practice Charge No. LA-CO-1421-E
DISMISSAL LETTER

Dear Mr. Strygin:

The above-referenced unfair practice charge was filed on March 2, 2010. Anatoliy Strygin (Mr. Strygin or Charging Party) alleges that the United Teachers of Los Angeles (UTLA or Respondent) violated the Educational Employment Relations Act (EERA)[1] by breaching its duty of fair representation.

Charging Party was informed in the attached Warning Letter dated May 11, 2010, 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 that 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 on or before May 18, 2010, the charge would be dismissed.

On May 17, 2010, PERB received correspondence from the Charging Party that stated in pertinent part as follows:

> The Charging Party has reviewed the Warning Letter dated May 11, 2010, which concludes that UTLA's arbitrary refusal to represent the Charging Party in enforcing provisions of the LAUSD-UTLA Collective Bargaining Agreement "does not rise to the level of a breach of the duty to provide fair representation." The Charging Party is not prepared to amend the facts asserted in the Unfair Practice Charge originally filed on May 2, 2010. However, conclusions reached by the Board in the Warning Letter are clearly erroneous as a matter of law because (i) the Board acted inappropriately in *sua sponte* raising affirmative defenses on behalf of the Respondent, (ii) the Board violated its

[1] EERA is codified at Government Code section 3540 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

> own rules and deprived the Charging Party of its due process rights in adjudicating affirmative defenses as an element of the prima facie case, prior to affording the Charging Party an opportunity to rebut these defenses, (iii) the Warning Letter ignores a crucial element of the charge, (iv) the Warning Letter misinterprets the plain language of the Collective Bargaining Agreement, (v) the Warning Letter misstates the well-established applicable law. Accordingly, the Charging Party respectfully requests that the Warning Letter be withdrawn and in support states as follows...

While the Charging Party specifically notes that he is not "factually" amending the charge, he asserts a number of legal arguments that will be addressed in greater detail below.

A. Board Agent's Role with Respect to Investigating a Charge

In essence, Charging Party challenges the legal conclusion made by the undersigned in the May 11, 2010 Warning Letter that no prima facie case of a breach of the duty of fair representation has been shown to have occurred in this matter, and furthermore alleges that the undersigned improperly: (1) took into consideration affirmative defenses that should not have been considered as part of the prima facie case, and (2) such affirmative defenses had not been previously asserted by the Respondent.

PERB Regulation 32620(b) provides in pertinent part that the powers and duties of a board agent shall be to:

> (1) Assist the charging party to state in proper form the information required by section 32615;
>
> (2) Answer procedural questions of each party regarding the processing of the case;
>
> (3) Facilitate communication and the exchange of information between the parties;
>
> (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
>
> (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case . . .

Further, the Board held in *County of San Joaquin* (2003) PERB Decision No. 1570-M, that a Board agent must accept the plain language of a contract or rule where it is clear and unambiguous.

With all due respect and contrary to Charging Party's assertions, the undersigned did not take into consideration any affirmative defenses that were not part of the prima facie case and/or misinterpret the plain language of the applicable collective bargaining agreement (CBA).

B. Prima Facie Case of the Duty of Fair Representation

As previously noted in the May 11, 2010 Warning Letter, the duty of fair representation imposed on the exclusive representative extends to grievance handling. (*United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258; *Fremont Teachers Association (King)* (1980) PERB Decision No. 125.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. Charging Party admits that he is not alleging that UTLA's conduct was either "discriminatory" or in "bad faith," and therefore only "arbitrary" conduct was examined.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

> must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.) The Board has clearly stated that it is the charging party's burden to show how a union abused its discretion; it is not the union's burden to show that it properly exercised its discretion. (*United Teachers of Los Angeles (Wyler)* (1993) PERB Decision No. 970.)

As previously explained in the Warning Letter, the charge fails to establish how UTLA's actions—or inactions—were without a rational basis or devoid of honest judgment. Specifically, Charging Party has failed to establish that UTLA breached its duty of fair representation by its (1) initial failure to respond to Mr. Strygin's inquiries for an approximate two-month period of time and (2) delay of filing a "meritorious"[2] grievance on Mr. Strygin's behalf for an approximate two-month period of time.

[2] Contrary to the Charging Party's assertion, the undersigned does not take a position one way or another as to the "merits" of the grievance UTLA filed on behalf of Mr. Strygin.

1. Failure to Respond to Mr. Strygin's Inquiries for Approximately Two Months

The Board has determined that an exclusive representative's failure to return an employee's correspondence does not, by itself, establish a breach of the duty of fair representation. (*SEIU Local 790 (Chan)* (2007) PERB Decision No. 1892-M.)

Here, although the various UTLA representatives did not immediately respond to Mr. Strygin's inquiries, there is no dispute that a UTLA Area Representative was communicating about his concerns within approximately two months of Mr. Strygin's initial inquiries. Charging Party has therefore failed to establish that UTLA breached its duty of fair representation in this matter.

2. Failure to File a Grievance for Approximately Two Months

In *Service Employees International Union, Local 250 (Hessong)* (2004) PERB Decision No. 1693-M, the Board determined that the union did not violate its duty of fair representation despite taking over two years to process a member's grievance.

Here, there is no dispute that UTLA filed a grievance on behalf of Mr. Strygin on April 8, 2010. Charging Party has therefore, failed to establish that UTLA breached its duty of fair representation in this matter.

3. Mere Negligence

Finally, as part of the prima facie case, PERB examines whether "mere negligence" might constitute arbitrary conduct. The Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act **completely extinguishes the employee's right to pursue his claim**." (Emphasis added; quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also, *Robesky v. Quantas Empire Airways Limited* (9th Cir. 1978) 573 F.2d 1082.)

Charging Party has failed to establish that UTLA's approximate two-month delay in responding to his inquiries and the approximate two-month delay in filing a grievance on his behalf completely extinguished Mr. Strygin's right to pursue his claim as to the unhealthy/unsanitary conditions of his classroom. Rather, at best, it appears that UTLA's delay in both cases constitutes "mere negligence."

Further it should be noted that the Board affirmed the Board agent's dismissal of a duty of fair representation charge in *Service Employees International Union, Local 99 (Arteaga)* (2008) PERB Decision No. 1991, in which the Board agent had written in the Dismissal letter as follows:

1. The Duty of Fair Representation

As stated in the July 17 Warning Letter, EERA requires that exclusive representatives fairly represent each and every employee in the bargaining unit. (Gov. Code, § 3544.9.) This duty of fair representation extends to grievance handling. (*Fremont Teachers Association (King)* (1980) PERB Decision No. 125; *United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258 *(Collins)*.) However, a breach of the duty of fair representation is not stated merely because an exclusive representative declines to proceed or negligently forgets to file a timely appeal of a grievance. (*SEIU Local 99 (Jones)* (2007) PERB Decision No. 1882; *San Francisco Classroom Teachers Association, CTAJNEA (Bramell)* (1984) PERB Decision No. 430.) The Board has recognized an exception to this rule where the exclusive representative's negligence foreclosed any remedy for the grievant. (*Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H.)

Here, Mr. Arteaga alleges that Local 99 violated the duty of fair representation by forgetting to file a grievance on his behalf. While Local 99 may have been negligent in forgetting to file a grievance on Mr. Arteaga's behalf, nothing Local 99 did, or failed to do, completely extinguished the right of Mr. Arteaga to pursue his claim. On the contrary, Mr. Arteaga stipulates that Article V, Section 1.0 of the CBA provides that a grievance may be filed by an employee or Local 99 on behalf of an employee. Accordingly, Mr. Arteaga has failed to establish that Local 99 breached its duty of fair representation.

(See also, *College of the Canyons Faculty Association (Lynn)* (2004) PERB Decision No. 1706.)

As previously noted in the Warning Letter, there is no evidence in the charge that Charging Party attempted to file a grievance on his own behalf pursuant to the clear and unambiguous terms of CBA, Article XXVIII, Section 5.0, the special grievance procedure for alleged health and safety violations. Furthermore, there is no evidence contained in the charge that Charging Party attempted to use any of the other means of redress listed in CBA, Article XXVIII, Section 1.6, for resolving health and safety concerns. Thus, Charging Party has failed to establish that a prima facie case of a breach of the duty of fair representation has been established and the charge is hereby dismissed.

Right to Appeal

Pursuant to PERB Regulations, Charging Party 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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs, tit. 8, § 32635, subd. (b).)

Service

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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (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. (Cal. Code Regs, tit. 8, § 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,

TAMI R. BOGERT
General Counsel

By _____
Wendi L. Ross
Deputy General Counsel

Attachment

cc: Dana S. Martinez, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8385
Fax: (916) 327-6377

May 11, 2010

Alek Strygin, Attorney

Re: *Anatoliy Strygin v. United Teachers of Los Angeles*
Unfair Practice Charge No. LA-CO-1421-E
WARNING LETTER

Dear Mr. Strygin:

The above-referenced unfair practice charge was filed on March 2, 2010. Anatoliy Strygin (Mr. Strygin or Charging Party) alleges that the United Teachers of Los Angeles (UTLA or Respondent) violated the Educational Employment Relations Act (EERA)[1] by breaching its duty of fair representation.[2]

BACKGROUND

UTLA is the exclusive representative for certificated personnel employed by the Los Angeles Unified School District (LAUSD or District), including Mr. Strygin. Mr. Strygin is a full-time mathematics teacher at James Monroe High School.

1. Facts Alleged in the Charge

The charge states in part,

> Starting in March 2009, I sent repeated requests to the custodial personnel and administrators at Monroe High, requesting that the cleaning and maintenance services be restored, because failure to clean the classroom results in ongoing health and safety hazards, such as overflowing trash bins, dust, dirt, repulsive odors, maintenance irregularities (e.g., door handle not being fixed for weeks, making the door inoperable and creating a fire hazard),

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

[2] The parties have submitted to the undersigned various correspondence since the charge was filed. To the extent that such correspondence is relevant, it will be identified and discussed in greater detail.

> debris on the floor, including papers left behind by students (once again, a fire hazard). Over twenty (20) such requests are enclosed with this Unfair Practice Charge . . . .

Mr. Strygin firmly insists that UTLA's failure to take immediate action to address the continual unhealthy and unsanitary condition of his classroom constitutes a breach of the duty to provide him with fair representation. The charge states in pertinent part that on February 1, 4, and 19, 2010[3] Mr. Strygin,

> contacted numerous representatives of the Respondent[[4]] with a request that the Respondent assist the Charging Party with filing and processing a grievance against LAUSD, based on repeated and ongoing health and safety violations at Monroe High, which LAUSD failed to remedy in violation of Article XXVIII ("Health and Safety") of the LAUSD-UTLA Collective Bargaining Agreement ("CBA"). Over a period of almost a month, the Charging Party's requests were simply ignored – the Respondent failed to provide *any* response, conduct *any* investigation, or file a grievance within the time period prescribed by the CBA. . . .

(Emphasis in the original.)

2. Relevant Provisions of the Collective Bargaining Agreement

There is currently a collective bargaining agreement (CBA) in existence between UTLA and LAUSD. CBA, Article XXVIII, "SAFETY" addresses health and safety issues and will be discussed in detail below. Section 1.1 of this Article, states in pertinent part,

> It is the District's commitment to provide safe working conditions for employees within the operational and financial limitation that may exist within the District. The District shall make every reasonable effort to provide school facilities that are clean, safe, and maintained in good repair and to otherwise maintain a safe place of employment. . . .

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[3] All dates are in 2010 unless otherwise noted.

[4] Charging Party's footnote states verbatim, "The following UTLA representatives were contacted by email, using current addresses provided on the website . . . : Mike Gipson, UTLA Area Representative, Valley West; Tom Alfano, UTLA Area Representative, Valley West; Lydia Laurans, UTLA Area Representative, Valley West; Gregg Solkovits, UTLA Secondary Vice President; Michael Cranshaw, UTLA Chair, Monroe High; and A.J. Duffy UTLA President."

Section 1.6 states in part, "In addition to the Special Grievance Procedures contained in section 7.0 [sic] of this Article, other avenues of inquiry, complaint and appeal regarding health and safety issues exist in the District. . . ."

Section 5.0 provides a special grievance procedure for health and safety grievances and states in part,

> If, after giving notice to the site administration, the employee believes that an unsafe or hazardous condition persists, the employee may file a grievance. . . . If the [site administrator's] response does not resolve the matter, the grievant may within (3) days file a written appeal with the appropriate Local District Superintendent or designee and UTLA Area Chair. . . . Within two days after the administrator's appeal decision is announced, UTLA must, if it wishes to arbitrate the matter, notify the District of its intention.

Section 7.0 provides, "[e]mployees shall immediately notify site administration . . . of any unsafe or hazardous conditions at the site. Upon notification, the District shall take immediate steps to investigate and correct an unsafe or hazardous condition."

3. Parties' Correspondence to the Undersigned[5]

On April 7, UTLA provided the undersigned with a copy of an April 6 e-mail message from Mr. Strygin to Mr. Gipson that appears to confirm that Mr. Gipson called Mr. Strygin's home on April 5 in an attempt to discuss his concerns regarding the cleanliness of his classroom. Mr. Strygin was apparently not home at the time of the telephone call.

On April 7, Mr. Strygin sent the undersigned a letter enclosing an e-mail exchange on April 7 between Mr. Strygin and Mr. Gipson about the concerns Mr. Strygin has with the cleanliness of his classroom.

On April 13, UTLA informed the undersigned that a grievance had been filed on behalf of the Mr. Strygin on April 8. Attached to the April 13 letter was a copy of the April 8 grievance.

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[5] The Board Agent must accept the charge's factual allegations as true. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.) However, absent a factual dispute, a Board Agent may rely on information that does not appear in the charge, including information provided by the Respondent. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

4. Respondent's Position

After the instant charge was filed, UTLA's correspondence to the undersigned, discussed above, establishes that the Union's representatives attempted to contact Mr. Strygin both by telephone and in writing to discuss the concerns as stated by Mr. Strygin and to file a grievance on his behalf. On or about April 8, UTLA did in fact file a grievance on behalf of Mr. Strygin.

DISCUSSION

The duty of fair representation imposed on the exclusive representative extends to grievance handling. (*United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258; *Fremont Teachers Association (King)* (1980) PERB Decision No. 125.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. In *United Teachers of Los Angeles (Collins)*, the Public Employment Relations Board stated:

> Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]
>
> A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

> must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment.

(*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332, p. 9, quoting *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124; emphasis in original.)

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also, *Robesky v. Quantas Empire Airways Limited* (9th Cir. 1978) 573 F.2d 1082.)

There is no dispute that UTLA did not file a grievance on Mr. Strygin's behalf until approximately April 8. Taking Charging Party's facts as true (*Golden Plains Unified School District*, *supra*, PERB Decision No. 1489), the Union acted more than two months after initially being contacted by Mr. Strygin. UTLA's failure to immediately file a grievance on Charging Party's behalf, however, does not rise to the level of a breach of the duty to provide fair representation.

The Board stated in *College of the Canyons Faculty Association (Lynn)* (2004) PERB Decision No. 1706:

> [T]he [collective bargaining agreement] vests the responsibility of filing grievances on the individual employee, not [the union]. Certainly, the [union] is responsible for providing advice and expertise, but [the employee] had a concomitant responsibility to read the [collective bargaining agreement], learn of her right to file a grievance, and to take the necessary steps to do so. She cannot fault the [union] for her personal failure to take this action.

There is no evidence in the charge that Charging Party attempted to file a grievance on his own behalf pursuant to the clear and unambiguous terms of CBA, Article XXVIII, Section 5.0, the special grievance procedure for alleged health and safety violations. Furthermore, there is no evidence contained in the charge that Charging Party attempted to use any of the other means of redress listed in CBA, Article XXVIII, Section 1.6, for resolving health and safety concerns.

While Charging Party asserts that UTLA ignored his request to file a grievance for over two months, it does not appear that the Union's two-month delay has completely extinguished his right to file a grievance regarding the unhealthful conditions that continue to exist in his classroom. (*Service Employees International Union, Local 250 (Hessong)* (2004) PERB Decision No. 1693-M [the union did not violate its duty of fair representation despite taking over two years to process a member's grievance].) In fact, as noted previously, such a grievance was in fact filed by the Union on April 8 on behalf of Mr. Strygin. Charging Party has therefore, failed to establish that UTLA breached its duty of fair representation in this matter.

For these reasons the charge, as presently written, does not state a prima facie case.[6] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before **May 18, 2010**,[7] PERB will dismiss your charge.

If you have any questions, please call me at the above telephone number.

Sincerely,

Wendi L. Ross
Deputy General Counsel

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[6] In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make "a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

[7] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)