STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MIAO XIAN CHEN, Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Respondent.	Case No. SF-CO-310-M PERB Decision No. 2348-M December 16, 2013

Appearances: Miao Xian Chen, on their own behalf; Weinberg, Roger & Rosenfeld by Kerianne R. Steele, Attorney, for Service Employees International Union, Local 1021.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION[1]

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Miao Xian Chen (Chen) from the dismissal (attached) by the Office of the General Counsel of Chen's unfair practice charge. The charge alleges that the Service Employees International Union, Local 1021 (SEIU), violated the Meyers-Milias-Brown Act (MMBA)[2] by failing to fairly represent Chen in dealings with the City and County of San Francisco, the employer, concerning a special closed civil service examination. The

[1] PERB Regulation 32320, subdivision (d), provides in pertinent part:

> Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal field under Section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential.

Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB Regs. are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

[2] The MMBA is codified at Government Code section 3500 et seq.

examination was open to "as-needed" employees in specified classifications. It was not open to "provisional" employees in those same classifications. Prior to having been laid off, Chen was one such provisional employee. The Office of the General Counsel dismissed the charge for lack of standing and failure to state a prima facie case.

The Board has reviewed the record in its entirety and has fully considered the appeal and the response thereto. Based on this review, we find the warning and dismissal letters to be well-reasoned, adequately supported by the factual allegations and in accordance with applicable law. Accordingly, the Board hereby adopts the warning and dismissal letters as the decision of the Board itself.

DISCUSSION

Pursuant to PERB Regulation 32635, subdivision (a), an appeal from dismissal must:

> (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
> (2) Identify the page or part of the dismissal to which each appeal is taken;
> (3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635, subdivision (a), the appeal must sufficiently place the Board and the respondent "on notice of the issues raised on appeal." (*State Employees Trade Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H (*State Employees Trade Council*); *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent's dismissal fails to comply with PERB Regulation 32635, subdivision (a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381 *(Pratt)*; *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers – Los Angeles (Glickberg)* (1990) PERB Decision No. 846.) Likewise, an appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635, subdivision (a). (*Pratt*; *State*

Employees Trade Council; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M: *County of Solano (Human Resources Department)* (2004) PERB Decision No. 1598-M.)

The appeal, in its entirety, states:

> We, Ming Hua Zhao, Jin Chao Liang, Miao Xian Chen are not challenging the exam per se, we are challenging the role of SEIU 1021, who willfully collaborated with the City and County to create criteria, which was 1400 hours worked within a three year time period and also willfully recruited the applicant pool with the City and County by soliciting managers and HR excluding us, though we wrote a letter to the union and city and county prior to the exam. The applicant pool that was accepted was only laid off 3 months prior to the exam and so were we. Both we and the people who were accepted to take the exam were unemployed, but the union refused to accept our protest prior to the examination. The union treated us differently than the people who were accepted to take the exam because we are Asian[3] and we all met the same criteria and were both laid off. This is not only an examination protest, but a protest of the SEIU's role in discriminating against us.

The appeal reiterates facts alleged in the unfair practice charge. It does not take issue with the determination made by the Office of the General Counsel that the charging party lacks standing to pursue an unfair practice charge as a former employee seeking an opportunity for re-employment through the civil service examination procedures. Regarding the Office of the General Counsel's duty of fair representation analysis and determination, Chen does not state specific issues to which the appeal is taken, identify the page or part of the dismissal to which the appeal is taken or state the grounds for each issue stated. The appeal raises no issues that were not adequately addressed by the Office of the General Counsel in the warning and dismissal letters. Therefore, Chen's appeal is denied. (*City of Brea* (2009) PERB Decision

[3] Eligibility for the examination was based not on race or ethnicity, but on the type of status the employee enjoyed. Only those categorized as "as-needed" were eligible. Those categorized as "provisional" were not.

No. 2083-M [failure to comply with PERB Reg. 32635(a), is grounds for denial of appeal on that basis alone].)[4]

ORDER

The unfair practice charge in Case No. SF-CO-310-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Huguenin and Winslow joined in this Decision.

[4] SEIU argues that Chen's appeal should be denied because it was not timely served and asserts for the first time that SEIU treated Chen and two other charging parties who filed charges containing the same allegations differently because they are Asian. (*Ming Hua Zhao v. Service Employees International Union, Local 1021*, PERB Case No. SF-CO-311-M and *Jin Chao Liang v. Service Employees International Union, Local 1021*, PERB Case No. SF-CO-312-M.) Given the outcome reached herein, it is unnecessary to decide those issues.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027

August 16, 2013

Miao Xiao Chen

Re: *Miao Xian Chen v. Service Employees International Union Local 1021*
Unfair Practice Charge No. SF-CO-310-M
DISMISSAL LETTER

Dear Miao Xiao Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 21, 2013. An amended charge was filed on March 6, 2013. Miao Xian Chen (Charging Party) alleges that the Service Employees International Union Local 1021 (SEIU 1021 or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by failing to fairly represent Charging Party in dealings with an employer.

Charging Party was informed in the attached Warning Letter dated July 15, 2013, that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, the charge should be amended. Charging Party was further advised that, unless the charge was amended to state a prima facie case or withdrawn by July 25, 2013, the charge would be dismissed.

On July 25, 2013, Charging Party filed a second amended charge. As discussed below, the second amended charge does not cure the deficiencies noted in the Warning Letter and does not state a prima facie case. Therefore, the charge is hereby dismissed based on the facts and reasons set forth herein and in the July 15, 2013 Warning Letter.

Allegations of Second Amended Charge

The allegations of the second amended charge appear directed at the position statement filed by Respondent SEIU 1021 on April 5, 2013.[2] Charging Party contends that the "unemployed applicants" were eligible to take a promotional exam, and that SEIU 1021 collaborated with the employer, the City and County of San Francisco (CCSF) to deny them this right. Charging

[1] The MMBA is codified at Government Code section 3500 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

[2] SEIU 1021 filed a further position statement dated August 1, 2013.

Party also disputes SEIU 1021's allegation that it did not know, until after the exam was held, that he and others wanted to be included. Charging Party alleges that SEIU 1021 had this information by January 22, 2013, and that the examination was held on February 4, 2013.

Discussion

As stated in the Warning Letter, the MMBA applies only to current employees of a public agency. It appears from the facts alleged in the initial and first amended charges that Charging Party was laid off at an unspecified time in the past, and was not an employee at the time that the exam was noticed and held. Accordingly, he is not an employee of a public agency within the meaning of the MMBA. In the second amended charge, Charging Party states that "this [rule] shouldn't apply." However, no additional facts are provided to establish that Charging Party was an employee at the time of the alleged violation. Accordingly, Charging Party lacks standing. (*Alameda County Management Employees Association (Harper)* (2011) PERB Decision No. 2198-M.) Moreover, even assuming that Charging Party had standing, the facts alleged do not demonstrate a prima facie case of the breach of SEIU 1021's duty of fair representation.

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,

M. SUZANNE MURPHY
General Counsel

By _____
Laura A. Davis
Senior Regional Attorney

Attachment

cc: Vincent Harrington, Jr., Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
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July 15, 2013

Miao Xian Chen

Re: *Miao Xian Chen v. Service Employees International Union Local 1021*
Unfair Practice Charge No. SF-CO-310-M
WARNING LETTER

Dear Miao Xian Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 21, 2013. An amended charge was filed on March 6, 2013. Miao Xian Chen (Charging Party) alleges that the Service Employees International Union Local 1021 (SEIU 1021 or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by failing to fairly represent Charging Party in dealings with an employer.

Facts as Alleged

The statement of charge states, in its entirety, as follows:

> Make these three laid-off provisional employees whole by allowing them the same rights as any laid off as-needed DPH employees in the same class, who all meet the same criteria such as 1400 hrs. within the past 3 years. See attached announcements. Also afford these 3 provisional employees the same rights as previous provisional employees before them, who were made permanent, for the past 15 years by accelerated testing. These issues, the union has failed to represent against the unfair practice & discrimination of the employer.

The reference to "three laid-off" employees is an apparent reference to two other employees who filed charges identical to this one. It is assumed that "DPH" stands for the City and County of San Francisco (CCSF) Department of Public Health. It is further assumed that SEIU 1021 is the exclusive representative of an appropriate bargaining unit of employees of the CCSF, and that the position held by Charging Party, prior to his layoff, is in that bargaining unit.

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

The charge attaches a letter dated February 19, 2013, addressed to Ed Tingsley of SEIU 1021, which states as follows, on behalf of Charging Party and two other employees:

> City and county department of public health employees have been excluded from a special, closed civil service exam. Please see attached notification from the city and count[y] including emails regarding the same process and notices from the union written in Chinese.
>
> Provisional 2736 employees in the same classification as the as-needed 2736 employees, who were contacted for this special exam meet the same criteria, which is 1400 hours worked within a period of 3 years. The fliers and notices from DHR and the union do not state anything about excluding provisional employees. Not only do they both meet the same criteria, they both are temporary employees. They both have taken and failed the last civil service exam for the same classification, 2736 porter. They both have also been laid off, but in an unfair practice, the city has excluded them in reapplying in this special closed exam. The union has failed to represent the provisional employees, when they are both paying members of the same union, SEIU 1021.
>
> Please accept this claim for unequal, unfair practice and failure to represent the following union members: Miao Chen, Jin Chao Liang, Ming Hua Zhao and Liang Xiang Wu by the city and county health department and SEIU 1021.

Also attached to the charge is a letter dated January 9, 2013, from the CCSF to Ricardo Myers, notifying Mr. Myers that he has been identified as a potential candidate for a civil service exam for the classification of 2736 Porter.[2] This exam resulted from contract bargaining between CCSF and SEIU 1021. The exam is "only open to temporary exempt/as needed employees who have worked 1400+ hours total in 2736 Porter during the three (3) year period ending December 7, 2012." The exam was scheduled for February 4, 2013, and the letter provides further instructions regarding how to apply.

[2] It is noted that this letter to Mr. Myers was provided with the initial charge but not included in the amended charge. However, it appears that the amended charge was intended to include the allegations of the original charge, and therefore all documents will be considered as one pleading. (*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332.)

Position of the Exclusive Representative

SEIU 1021 filed a position statement on April 5, 2013.[3]

In approximately May, 2012, an arbitrator issued an award resolving a collective bargaining dispute between CCSF and SEIU 1021. The arbitration award was made pursuant to CCSF City Charter provisions, and related to negotaitions between CCSF and SEIU 1021 for a successor labor agreement. As a result of the arbitration award, CCSF and SEIU negotiated and entered into a Side Letter of Agreement governing civil service examinations for "as-needed" bargaining unit members. In particular, the Side Letter of Agreement provided for certain closed promotional exams for TEX 16 (also called temporary or as-needed) employees in the classification of 2736 Porter. According to SEIU 1021, Charging Party is a provisional employee and therefore not covered by this agreement.

Subsequently, SEIU 1021 and CCSF arranged for a promotional exam to be held. On January 9, 2013, notices were sent to employees, an application period was scheduled, and the exam was held in February. Only after these arrangements had been made, and the exam held, did Charging Party and others notify SEIU 1021 that they wanted to participate in these exams. To include these employees in the exam would have been beyond the scope of the arbitration award and the subsequent negotiated Side Letter.

Discussion

From the facts provided, it appears that Charging Party and two or three other employees were provisional employees with the CCSF DPH. It further appears that these employees were laid off, on an unspecified date, and afterwards were interested in reemployment. The charge appears to allege that Charging Party and other employees were not offered the opportunity to apply for or take the special civil service exam given on February 4, 2013.[4] Charging Party alleges that SEIU 1021 failed to represent him with respect to this issue.

The MMBA only applies to current employees of a public agency, as defined. (Gov. Code, § 3501.) For example, retirees are not employees. (*County of Sacramento* (2009) PERB Decision No. 2045-M.) A person seeking reemployment, who is an employee at the time he or

[3] Allegations of the Charging Party must be taken as true at this stage of the proceedings. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.) However, PERB may consider allegations made by the Respondent to the extent they do not conflict with facts alleged by Charging Party. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

[4] While information concerning other employees can be considered for background purposes, only signatories to the unfair practice charge will be considered to be charging parties. (*United Teachers of Los Angeles (DePace)* (2008) PERB Decision No. 1964; *Regents of the University of California* (2004) PERB Decision No. 1592-H.)

she applies for reemployment, may be considered an employee under this definition. (*Hacienda La Puente Unified School District* (1989) PERB Decision No. 741; *Chula Vista Elementary School District* (2011) PERB Decision No. 2221.)[5] Here, it appears that Charging Party was laid off from his employment on an unspecified date in the past. Insufficient facts are alleged to show that Charging Party sought reemployment while still employed, or otherwise was an employee, within the meaning of MMBA, at the time of the alleged violation. Therefore, it appears that Charging Party lacks legal standing to pursue this charge against the exclusive representative, SEIU 1021. (See, e.g., *Alameda County Management Employees Association (Harper)* (2011) PERB Decision No. 2198-M [the duty of fair representation extends only to bargaining unit employees]; *Santa Ana Educators Association (Felicijan & Hetman)* (2009) PERB Decision No. 2008 [an employee who is terminated with no automatic right to reemployment is not an employee, and the duty of fair representation does not apply].)

Duty of Fair Representation

While the MMBA does not expressly impose a statutory duty of fair representation upon employee organizations, the courts have held that "unions owe a duty of fair representation to their members, and this requires them to refrain from representing their members arbitrarily, discriminatorily, or in bad faith." (*Hussey v. Operating Engineers* (1995) 35 Cal.App.4th 1213.) In *Hussey*, the court further held that the duty of fair representation is not breached by mere negligence and that a union is to be "accorded wide latitude in the representation of its members . . . absent a showing of arbitrary exercise of the union's power."

In *International Association of Machinists (Attard)* (2002) PERB Decision No. 1474-M, the Board determined that it is appropriate in duty of fair representation cases to apply precedent developed under the other acts administered by the Board. The Board noted that its decisions in such cases, including *Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332 and *American Federation of State, County and Municipal Employees, Local 2620 (Moore)* (1988) PERB Decision No. 683-S, are consistent with the approach of both *Hussey* and federal precedent (*Vaca v. Sipes* (1967) 386 U.S. 171).

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.)

[5] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

Thus, in order to state a prima facie violation of the duty of fair representation under the MMBA, a charging party must at a minimum include an assertion of facts from which it becomes apparent in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (*International Association of Machinists (Attard), supra*, PERB Decision No. 1474-M.) The burden is on the charging party to show how an exclusive representative abused its discretion, and not on the exclusive representative to show how it properly exercised its discretion. (*United Teachers – Los Angeles (Wyler)* (1993) PERB Decision No. 970.)

PERB Regulation 32615(a)(5)[6] requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging sufficient facts to establish the existence of the elements of the prima facie case. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

Charging Party does not allege any facts to show how any conduct by SEIU 1021 was arbitrary, discriminatory, or in bad faith. Charging Party generally alleges that SEIU 1021 failed to fairly represent employees, but does not provide any factual allegations from which a prima facie case can be stated. It is also noted that, to the extent Charging Party alleges that SEIU 1021 failed to fairly represent him regarding civil service requirements, the exclusive representative does not have a duty of fair representation with respect to extra-contractual proceedings. (*Alameda County Probation Peace Officers Association (Huntsberry)* (2004) PERB Decision No. 1709-M.)

Duty of Exclusive Representative With Respect to Bargaining

As a general rule, an exclusive representative enjoys a wide range of bargaining latitude. As the United States Supreme Court stated in *Ford Motor Co. v. Huffman* (1953) 345 U.S. 330, 338:

> Inevitably differences arise in the manner and degree to which the terms of any negotiated agreement affect individual employees and classes of employees. The mere existence of such differences does not make them invalid. The complete satisfaction of all who are represented is hardly to be expected. A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to good faith and honesty of purpose in the exercise of its discretion.

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

Acknowledging the need for such discretion, PERB determined that an exclusive representative is not expected or required to satisfy all members of the unit it represents. (*California School Employees Association (Chacon)* (1995) PERB Decision No. 1108.) Moreover, the duty of fair representation does not mean an employee organization is barred from making an agreement which may have an unfavorable effect on some members, nor is an employee organization obligated to bargain a particular item benefiting certain unit members. (*Ibid.*; *Los Rios College Federation of Teachers (Violett)* (1991) PERB Decision No. 889.) The mere fact that Charging Parties were not satisfied with the agreement is insufficient to demonstrate a prima facie violation. (*Los Rios College Federation of Teachers (Violett)*, *supra.*)

From information provided by SEIU 1021, it appears that the eligibility for the special closed civil service exam resulted, in part, from negotiations between CCSF and SEIU 1021. To the extent that Charging Party alleges that SEIU 1021 breached its duty of fair representation by its conduct in negotiating this agreement, Charging Party alleges no facts which would support finding a prima facie case. Charging Party alleges no facts to show that SEIU 1021's conduct was unreasonable, dishonest, or in bad faith. Accordingly, no prima facie violation is stated.

For these reasons the charge, as presently written, does not state a prima facie case.[7] 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 Second 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

[7] 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.*)

PERB. If an amended charge or withdrawal is not filed on or before **July 25, 2013**,[8] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Laura Z. Davis
Senior Regional Attorney

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