

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



TALAI SMITH,

Charging Party,<sup>1</sup>

v.

CITY OF INGLEWOOD,

Respondent.

Case No. LA-CE-750-M

PERB Decision No. 2424-M

June 1, 2015

Appearances: City Employees Associates by Mary LaPlante, Labor Representative, for Talai Smith; Bergman Dacey Goldsmith by Michele M. Goldsmith, Attorney, for City of Inglewood.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Talai Smith (Smith) to the proposed decision of a PERB administrative law judge (ALJ). The unfair practice complaint identified the Inglewood Management Employees Organization (IMEO) as the charging party and alleged an unlawful unilateral change under the Meyers-Milias-Brown Act (MMBA).<sup>2</sup> IMEO withdrew from the case one week before the formal hearing. The case then went to a formal hearing without a charging party, let alone a charging party with standing to pursue the type of unfair practice alleged. This case is dismissed because there was no basis to proceed to a formal hearing once IMEO, the exclusive representative and charging party, withdrew from the case.

<sup>1</sup> For purposes of continuity, the same caption as used in the proposed decision appears here, including reference to Talai Smith as the charging party.

<sup>2</sup> The MMBA is codified at Government Code section 3500 et seq. Undesignated code sections are to the Government Code.

## BACKGROUND

Section 1 of the unfair practice charge form seeks information about the charging party. The filer is asked whether the charging party is an employee, an employee organization, an employer or the public.

The unfair practice charge in this case was filed under a cover letter dated February 1, 2012, signed by Mary L. Neeper, Labor Representative, with the City Employees Associates (CEA).<sup>3</sup> The box for "employee organization" is checked off. The "full name" provided is "Talai Smith." The address given is "c/o CEA, 2918 East 7<sup>th</sup> Street, Long Beach, CA 90804." The person filing the charge is identified as "Mary L. Neeper, Labor Representative."

The charge alleges an unlawful unilateral change in the duties of a bargaining unit position. The charge alleges that IMEO is the exclusive representative of the bargaining unit and that the bargaining unit position in question was then occupied by Smith. According to the charge, the parties' grievance procedure was pursued to seek a reclassification of Smith; the grievance steps were exhausted; and Smith was not reclassified. The charge alleges that by this conduct, the City violated the duty to meet and confer in good faith with IMEO under MMBA section 3505.

By letter of April 30, 2013, CEA Labor Representative Mary LaPlante (LaPlante) wrote:

The Unfair Practice Charge was filed by the Inglewood Management Employees Organization (IMEO), who is the exclusive bargaining representative for the positions of Administrative Secretary and Senior Administrative Analyst and for the employee, Talai Smith (Smith). The IMEO, as the exclusive representative, has the standing necessary to file a claim with the PERB.

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<sup>3</sup> At the request of IMEO, the charge was placed in abeyance on June 18, 2012, pending a reclassification study undertaken by the City. The charge was removed from abeyance on September 18, 2012, at the further request of IMEO.

By letter of July 23, 2013, LaPlante wrote:

The Inglewood Management Employees Organization (IMEO) is the filing party and charging party to the above referenced case. Please provide a status update on the case. Please contact me, if you have any questions or need further information.

The Office of the General Counsel issued a complaint on July 30, 2013, identifying IMEO as the charging party and the City as the respondent. The complaint charged the City with a (c) violation (refusal or failure to meet and negotiate in good faith)<sup>4</sup> and a derivative (a) violation (interference with the right to be represented)<sup>5</sup> and a derivative (b) violation (denial of the right to represent).<sup>6</sup>

By letter to PERB from LaPlante dated January 20, 2014, IMEO withdrew “representation.” IMEO’s withdrawal occurred one week before the formal hearing, which was scheduled for January 27 and January 28, 2014. The letter stated that Smith would represent herself at the formal hearing. On January 24, 2014, the City filed a motion to dismiss the PERB complaint in its entirety.

On the first day of hearing, the ALJ granted the City’s motion in part. The ALJ determined that with IMEO’s withdrawal, Smith lacked standing to assert a (c) or (b) violation, and dismissed those allegations. The ALJ amended the complaint sua sponte (on his own motion) to allege that the City did not follow its reclassification process, a violation of MMBA section 3507, subdivision (d) (local rule/regulation challenge).<sup>7</sup> The City objected to the amendment. The case was heard on the derivative (a) violation, based on the bad faith

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<sup>4</sup> See MMBA section 3506.5, subdivision (c).

<sup>5</sup> See MMBA section 3506.5, subdivision (a).

<sup>6</sup> See MMBA section 3506.5, subdivision (b).

<sup>7</sup> See MMBA section 3507, subdivision (d), which states in pertinent part: “Employees and employee organizations shall be able to challenge a rule or regulation of a public agency as a violation of this chapter.”

bargaining claim originally alleged in the complaint, and the new MMBA section 3507, subdivision (d) violation.<sup>8</sup> At the end of Smith's case-in-chief, the City moved to dismiss the remaining claims in the PERB complaint as amended. The ALJ granted the City's motion on the record and stated that a proposed decision would issue forthwith.

#### PROPOSED DECISION

The proposed decision issued on January 29, 2014. The ALJ framed the following issues for decision:

1. Does Smith have standing to assert a violation of MMBA section 3506.5(b) or (c) on behalf of IMEO?
2. Did the City violate any local rules or regulations regarding reclassification requests?
3. Did the City otherwise interfere with Smith's protected rights?

Regarding the standing issue, the ALJ concluded that Smith lacked standing to assert the bargaining rights of IMEO, and that the City had no obligation under the MMBA to meet and confer in good faith with Smith as an individual employee. Regarding the local rules issue, the ALJ concluded that, with respect to the reclassification request, there was insufficient proof that the City violated City Service Rules (CSR), Rule II, Section 6(e),<sup>9</sup> or any other local rule. Regarding the interference issue, the ALJ concluded that there was no showing that the City interfered with Smith's protected right to file or pursue a grievance, to

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<sup>8</sup> CEA did not represent Smith at the formal hearing.

<sup>9</sup> CSR Rule II, Section 6(e) provides:

Any classified employee may at any time submit a request to the [City] through his department head for a review of the specification and allocation of his position, setting forth the reasons he feels justifies the review. Such a review shall then be made, appropriate action taken, and the employee and the department head so notified.

represent herself in her employment relations with the City, or to engage in any other right protected by the MMBA. Based on the foregoing conclusions of law, the ALJ dismissed the complaint and underlying unfair practice charge.

#### EXCEPTIONS

Smith retained CEA to represent her on appeal. Smith contends that she was “neither prepared for the amended complaint nor able to articulate how the evidence presented shows a violation of the local rules.” Smith further asserts:

Had Ms. Smith been represented at hearing, the evidence submitted would have been used to show that 21-months delay in resolving a reclassification request would be unreasonable and a violation of the local rules that calls for the continuously maintained, proper classification that reflects the current duties performed by each employee, specifically Ms. Smith.

It is Ms. Smith’s position that the City’s failure to provide an accurate job description that reflects her current duties is a violation of the Civil Service Rules and an unfair labor practice. Had this information been presented at hearing, we believe the results would have been in favor of Ms. Smith. We respectfully request that Ms. Smith be granted a hearing with the Board, so that her case can be presented with all the necessary evidence to render a decision, based on the local rules violation.

#### RESPONSE TO EXCEPTIONS

The City points out that Smith’s exceptions relate only to the issue whether the City violated its local rules, the MMBA section 3507, subdivision (d) violation, not to the standing or interference issues or to the ALJ’s dismissal of the (c) and (b) violations. The City contends that Smith’s exceptions lack merit and that the ALJ’s proposed decision should be affirmed. The City argues that the Board should reject Smith’s attempt to offer new evidence not presented at the formal hearing about the reclassification process and that the Board should also reject Smith’s attempt to introduce on appeal new theories not litigated at the formal hearing concerning the MMBA section 3507, subdivision (d) violation. The City asserts that if

the Board decides to construe Smith's exceptions as a request to reopen the record and/or give oral argument, the requirements for granting such requests have not been satisfied.

### DISCUSSION

There was only ever one charging party in this case, IMEO. The complaint identifies IMEO as the charging party. When IMEO withdrew,<sup>10</sup> the case lost its charging party.<sup>11</sup> Smith never attained the status of a charging party and, even if she had, she had no standing to pursue the unlawful unilateral change claim alleged in the complaint as an individual employee. In a nutshell, this matter went to a formal hearing before a PERB ALJ on a bad faith bargaining claim with a respondent and no charging party, let alone a charging party with standing to pursue the claim.

The formal hearing produced an evidentiary record, which formed the basis for the proposed decision. The proposed decision is now before the Board on exceptions filed by Smith who is not a party to the case. With the receipt of IMEO's withdrawal and the City's motion to dismiss the complaint in its entirety, the case should have been disposed of by way

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<sup>10</sup> The letter of withdrawal states that IMEO "hereby withdraws representation of [sic] in the appeal of the above referenced case." It is an odd choice of language given that the formal hearing is not an appeal and IMEO's representational status is that of an exclusive representative, not a hearing representative. Certainly, by this letter, IMEO did not intend to affect IMEO's representational status as the exclusive representative of the bargaining unit. Therefore, the most logical interpretation of this sentence is that, by that letter, IMEO intended to withdraw from the case. Given that IMEO did not appear at the formal hearing and that, at the start of the hearing, the ALJ dismissed those violations that only can be charged by an exclusive representative, this interpretation holds sway.

<sup>11</sup> Where the exclusive representative is the charging party, it controls the administrative litigation of its case. (*Regents of the University of California (Lawrence Berkeley National Laboratory)* (2013) PERB Order No. Ad-397-H; *Santa Maria-Bonita School District* (2013) PERB Order No. Ad-400.) It does not, however, control PERB processes. It is unknown what IMEO sought to accomplish when it informed PERB that Smith would represent herself at the formal hearing.

of a notice or order of dismissal.<sup>12</sup> Accordingly, the Board need not pass judgment on the ALJ's proposed decision in response to Smith's exceptions because the matter should have ended with IMEO's withdrawal.

#### Charging Party Status and Standing

When IMEO withdrew, the ALJ might have considered joining Smith as a party to the case, upon application by Smith or upon the ALJ's own motion. (PERB Reg. 32164.) Smith's joinder, however, would not have solved the problem created by IMEO's withdrawal. As the ALJ concluded, Smith lacked standing to pursue a violation of the duty to bargain in good faith, the (c) violation. (See *City of Santa Monica* (2012) PERB Decision No. 2246-M, p. 2.) Under the collective bargaining statutes enforced by PERB, the duty to meet and confer in good faith is a reciprocal one belonging only to employers and exclusive representatives. (*Oxnard School District (Gorcey and Tripp)* (1988) PERB Decision No. 667, pp. 8-9.)<sup>13</sup> Allowing other entities, such as non-exclusive employee organizations or individuals, to pursue bargaining claims "could very well interfere with the right of the exclusive representative to determine, in its own best judgment, those matters on which it decides to negotiate." (*Id.* at p. 11, quoting *Hanford Joint Union High School District Board of Trustees* (1978) PERB Decision No. 58.) Accordingly, PERB regularly dismisses claims filed by individual employees alleging unlawful unilateral policy changes or other violations of an employer's duty to meet and confer in good faith. (See, e.g., *Oxnard Union High School District* (2012) PERB Decision No. 2265, dismissal letter at p. 3; *City of Santa Monica, supra*,

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<sup>12</sup> Although the City did not raise this issue in its response to the exceptions, the Board is not constrained from applying legal analysis not urged by the parties or from considering legal issues sua sponte if necessary to correct a serious mistake of law or procedure. (See *California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479a-S.)

<sup>13</sup> 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.)

PERB Decision No. 2246-M, p. 2; *City of Long Beach* (2008) PERB Decision No. 1977-M, p. 11.)

The Board's decision in *State of California (Department of Corrections)* (1993) PERB Decision No. 972-S (*State of California*) is instructive. The unfair practice charge was filed by a union. The Office of the General Counsel issued a complaint alleging violations of section 3519, subdivisions (b) (denying the employee organization protected rights) and (d) (dominating or interfering with formation or administration of employee organization, etc.) of the Ralph C. Dills Act.<sup>14</sup> Joyce Thomas (Thomas) filed a motion to amend the complaint to substitute in as the charging party in place of the union and to add new factual allegations regarding events that occurred after issuance of the complaint. Apparently there was a conflict of interest between Thomas and the union, as the decision states: "This conflict was given as the basis for the withdrawal by counsel for CSEA." (*Id.*, notice of dismissal at p. 2.) The chief ALJ granted Thomas's motion to amend and, in response thereto, the respondent filed a motion to dismiss based on Thomas's lack of standing as an individual employee to pursue the claims under the theories set forth in the complaint. In granting respondent's motion to dismiss, the ALJ held:

[S]ince CSEA was the aggrieved party, it had the right to make the judgment on pursuit of the charge. Ms. Thomas should not now be able to compel litigation on an issue that CSEA has chosen to avoid.

Since the rights at issue here are those of the union and not of an individual member, the action must be prosecuted in the name of the union. When the union withdrew from prosecuting the alleged violations of section 3519(b) and (d), the legal effect was the same as if the charges had been withdrawn.

(*Id.*, notice of dismissal at p. 8.)

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<sup>14</sup> The Ralph C. Dills Act is codified at section 3512 et seq.

Thomas appealed the ALJ's dismissal of the complaint to the Board, which affirmed the dismissal and adopted the decision of the ALJ as the decision of the Board itself. The Board held:

The rights at issue in this case, the right to represent and the right to be free from employer interference with internal union activities, are union rights which require that an alleged violation of these rights be prosecuted by the union. To grant an individual standing to file charges of this nature would undermine stable labor-management relations existing between the employer and the exclusive representative. When CSEA withdrew from pursuing the alleged violations, the legal effect was the same as if the charges had been withdrawn. Therefore, Thomas does not have standing to pursue the alleged violations in this case.

(*State of California, supra*, PERB Decision No. 972-S, pp. 3-4.)

The logic of *State of California* applies with equal force here. In *State of California*, the complaint was amended to join the individual employee as the charging party. Here Smith was never joined. Even if Smith had been joined, consistent with the Board's decision in *State of California*, she would not have had standing to pursue IMEO's bad faith bargaining claim, as the ALJ correctly determined.

Applying a standing analysis, the ALJ dismissed the (c) and (b) violations, but not the (a) violation, on the basis that (c) and (b) violations may be pursued only by the union whereas an (a) violation may be pursued by an individual employee. Although true that an (a) violation generally may be pursued by an individual employee, the (a) violation *in this case* was derivative of the (c) violation. With dismissal of the (c) violation, both the (a) and the (b) violations fell away.

#### Sua Sponte Amendment of Complaint

In addition to allowing the (a) violation to go forward, the ALJ amended the complaint sua sponte to allege a violation of MMBA section 3507, subdivision (d), which provides that employees and employee organizations shall be able to challenge a rule or regulation of a

public agency as a violation of the MMBA. Under MMBA section 3507, subdivision (a), a public agency may adopt reasonable rules and regulations after consultation in good faith with representatives of a recognized employee organization “for the administration of employer-employee relations under this chapter.” The rules and regulations subject to this section include provisions for the following: representation procedures;<sup>15</sup> additional procedures for the resolution of employment disputes;<sup>16</sup> employee organization access to work locations;<sup>17</sup> use of official bulletin boards and other means of communication by employee organizations;<sup>18</sup> furnishing non-confidential information to employee organizations;<sup>19</sup> and “any other matters that are necessary to carry out the purposes of this chapter.”<sup>20</sup> “[T]he power reserved to local agencies to adopt rules and regulations was intended to permit supplementary local regulations which are ‘consistent with, and effectuate the declared purposes of, the statute as a whole.’” (*Huntington Beach Police Officers’ Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 502, quoting Grodin, *Public Employee Bargaining in California: The Meyers-Milias-Brown Act in the Courts* (1972) 23 Hastings L.J. 719, 724-725.)

An alleged violation of any rules and regulations adopted by a public agency pursuant to MMBA section 3507 shall be processed as an unfair practice charge. (MMBA, § 3509.) As

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<sup>15</sup> See MMBA section 3507, subdivision (a)(1) (verification that employee organization represents public agency’s employees); subdivision (a)(2) (verification of employee organization’s official officers and representatives); subdivision (a)(3) (recognition of employee organizations); and subdivision (a)(4) (exclusive recognition of employee organizations).

<sup>16</sup> See MMBA section 3507, subdivision (a)(5).

<sup>17</sup> See MMBA section 3507, subdivision (a)(6).

<sup>18</sup> See MMBA section 3507, subdivision (a)(7).

<sup>19</sup> See MMBA section 3507, subdivision (a)(8).

<sup>20</sup> See MMBA section 3507, subdivision (a)(9).

stated in PERB Regulation 32603, subdivision (g), it shall be an unfair practice for a public agency to violate the MMBA or any local rule adopted pursuant to section 3507. Such conduct also interferes with employee rights. (*County of Ventura* (2009) PERB Decision No. 2067-M, proposed dec. at pp. 17-18.)

Related to the bad faith bargaining claim alleged in the complaint are allegations that the City failed to take action to resolve the process of completing its reclassification studies, including one undertaken in response to Smith's reclassification request. The ALJ honed in on the reclassification-related allegations in amending the complaint to allege a (d) violation under MMBA section 3507. CSR Rule II, Section 6(e), permits employees to request reclassification. Smith requested reclassification, but did not receive a decision from the City about that request. The proposed decision states that there was insufficient evidence to conclude that the City's failure to communicate with Smith about her reclassification request violated CSR Rule II, Section 6(e). The ALJ then dismissed the claim that the City violated its local rules and the claim that the City's application of its local rules to Smith's reclassification request interfered with Smith's protected rights. In her exceptions, Smith concedes that she was "neither prepared for the amended complaint nor able to articulate how the evidence presented shows a violation of the local rules."

With IMEO's withdrawal, the ALJ was faced with an unusual predicament. IMEO left Smith in the lurch on the eve of the formal hearing. Only Smith had a personal stake in the outcome of the case. The ALJ showed ingenuity in giving Smith her proverbial day in court, but it was a day in court even Smith was ill-equipped to handle. However compelling the ALJ's desire to salvage the proceedings to provide Smith a forum in which to adjudicate the dispute, the Board is constrained by procedural rules and precedent.

The Office of the General Counsel is the division within PERB that is authorized to issue unfair practice complaints. (PERB Reg. 32620, subd. (b)(7).) The Office of the General Counsel is responsible for determining whether the factual allegations of the charge state a prima facie case and whether the charging party is capable of providing admissible evidence in support of the allegations. (*Kings In-Home Supportive Services Public Authority* (2009) PERB Decision No. 2009-M.) If the Office of the General Counsel determines that the charge states a prima facie case, a complaint shall issue, identifying the conduct alleged to constitute an unfair practice. (PERB Reg. 32640, subd. (a).)

Once issued, an unfair practice complaint may be amended, but only on motion of the charging party. PERB Regulation 32647 allows the charging party to move to amend the complaint before the formal hearing.<sup>21</sup> PERB Regulation 32648 allows the charging party to move to amend the complaint during the formal hearing.<sup>22</sup>

Under our regulatory system, it is the role of the Office of the General Counsel to determine the types of unfair practices for which there is a prima facie showing, and the legal theories upon which the unfair practice complaint should issue. (See *Los Banos Unified School District* (2007) PERB Decision No. 1935 [where a charging party fails to allege that any specific section of the Government Code has been violated, the Board agent, upon a review of the charge, may determine under what section the charge should be analyzed].)

By contrast, the ALJs have considerable authority, but they have no role in determining the claims to be pursued at hearing by the charging party or the legal theories supporting those

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<sup>21</sup> But amended complaints served after the answer is filed shall be deemed denied, except for those matters admitted in the answer that were not changed by the amendment. (PERB Reg. 32644, subd. (a).)

<sup>22</sup> In ruling on a motion to amend the complaint that is made during the hearing, the ALJ shall consider the possibility of prejudice to the respondent, among other factors. (PERB Reg. 32648.)

claims. The powers and duties of the ALJ are set out in PERB Regulation 32170. They include: (a) inquiring fully into all issues and obtaining a complete record; (b) authorizing the taking of depositions; (c) issuing subpoenas and ruling on petitions to revoke subpoenas; (d) regulating the course and conduct of the hearing; (e) holding conferences for the settlement or simplification of issues; (f) ruling on objections, motions (including motions to amend the complaint) and questions of procedure; (g) administering oaths and affirmations; (h) taking evidence and ruling on the admissibility of evidence; (i) examining witnesses for the purpose of clarifying the facts and issues; (j) authorizing the submission of briefs; (k) hearing oral argument; (l) rendering a proposed decision; and (m) carrying out the duties of an ALJ as authorized.<sup>23</sup>

The powers and duties of the ALJ include ruling on a motion to amend the complaint, but do not include amending the complaint sua sponte on behalf of the charging party. Taking such action blurs the line between the role of the Office of the General Counsel and the role of the ALJ. Assisting the charging party to state the facts and conduct alleged to constitute an unfair practice is among the powers and duties of the Office of the General Counsel in processing an unfair practice charge. (PERB Regs. 32620, subd. (a)(1), and 32615, subd. (a)(5).) It is not among the powers and duties of the ALJ. By the same token, the Office of the General Counsel would be in excess of its authority if it were to resolve disputes over

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<sup>23</sup> The ALJ also has discretionary authority to dismiss a complaint sua sponte absent a showing of good cause based on charging party's failure to prosecute the complaint. (*State of California (Department of Corrections)* (2006) PERB Decision No. 1806-S; *Los Angeles Unified School District* (1984) PERB Decision No. 464 [ALJs have inherent power to control the proceedings, a power also found in PERB Reg. 32170, subd. (d), including discretionary authority to dismiss a complaint sua sponte absent good cause for failure to prosecute].) The withdrawal from a case by the sole charging party is equivalent to a failure to prosecute. Here, the ALJ would have been well within his discretionary authority to dismiss the complaint sua sponte at that time.

material facts<sup>24</sup> or disputes over the meaning of ambiguous contractual provisions<sup>25</sup> when processing and investigating an unfair practice charge. That is the role of the ALJ.

Given the unique and sympathetic facts of this case, the ALJ's desire to assist Smith is understandable. Leaving aside the distinction in the roles of the divisions, the problem with the sua sponte amendment comes into sharp focus by substituting a represented (or unrepresented) public employer or employee organization for Smith. A sua sponte amendment would impair the right of the parties to control the litigation of their claims and defenses, which claims and defenses may have been selectively chosen to the purposeful exclusion of other equally (or more) viable ones. A sua sponte amendment involves the ALJ directly in the prosecution of the case in a way that may signal prejudgment or bias toward one party or the other. Neutrality *and the appearance of neutrality* are essential. Because of the specific facts of this case, we by no means intend by this decision to question the ALJ's neutrality. It is clear he was differently motivated. This decision merely serves to remind that uniformity and regularity in the application of the Board's procedural rules and regulations is what will ensure fairness each and every time.

By this decision, the Board intends no change in the unalleged violations doctrine. Under this doctrine, the ALJ may entertain unalleged independent violations only under the following circumstances: (1) adequate notice and opportunity to defend has been provided to the respondent; (2) the conduct is intimately related to the subject matter of the complaint and part of the same course of conduct; (3) the unalleged violation has been fully litigated; and (4) the parties have had the opportunity to examine and be cross-examined. (*Tahoe-Truckee Unified School District* (1988) PERB Decision No. 668 (*Tahoe-Truckee*)). The failure to meet

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<sup>24</sup> *San Juan Unified School District* (1977) EERB Decision No. 12. (Prior to 1978, PERB was known as the Educational Employment Relations Board or EERB.)

<sup>25</sup> *Eastside Union School District* (1984) PERB Decision No. 466.)

any of these standards will prevent the ALJ from considering unalleged conduct as violations of the particular act in question. (*Ibid.*) The Board in *Tahoe-Truckee* cited to numerous private sector precedent for the principle that an ALJ decision finding an unalleged violation will be rejected where notice was not provided that the evidence of unalleged conduct might constitute the basis for an independent violation. The Board stated:

[W]e find that the ALJ erred in adjudicating allegations never raised by the parties. That the ALJ and this Board are constrained from resolving, sua sponte, issues neither set forth in the complaint nor fully litigated after proper notice and an opportunity to defend was recently reiterated by the California Court of Appeal in J.R. Norton Co. v. ALRB (1987) 192 Cal.App.3d 874.

(*Tahoe-Truckee, supra*, PERB Decision No. 668, p. 9.)

Under the unalleged violations doctrine, the role of the ALJ is not to raise unalleged violations, but to ensure that the above standards have been met before considering the unalleged violation as within the scope of matters to be decided. A sua sponte amendment to add a new violation and theory to the complaint is not an unalleged violation. It is an *alleged violation*, just one alleged by the ALJ, not by the parties. As discussed above, sua sponte amendments are not authorized by the regulations. They encroach on the duties and powers of the Office of the General Counsel, impair the rights of the parties to control the litigation and raise questions of neutrality. The unalleged violations doctrine implicates none of these concerns.

On a final note, in amending the complaint sua sponte to allege that the City violated its local rules, the ALJ did not identify the subdivision of MMBA section 3507 under which CSR Rule II, Section 6(e), falls. Rules regarding the classification or reclassification of employees may not be representation procedures and do not fall within any of the other enumerated categories of local rules subject to PERB's jurisdiction in MMBA section 3507, subdivision (a). CSR Rule II, Section 6(e), conceivably could be construed, however, not as a

local rule regarding the classification or reclassification of employees, but as a local rule providing employees with a procedure for resolving classification disputes. Under that interpretation of CSR Rule II, Section 6(e), it may fall under MMBA section 3507, subdivision (a)(5), as a procedure for the resolution of disputes involving wages, hours and other terms and conditions of employment. We need not decide which interpretation prevails, as the record was not developed on this issue and resolution of this issue is unnecessary to the outcome reached herein. We merely take the opportunity to remind that not all public agency rules and regulations fall within the definition of local rules subject to PERB's jurisdiction.

#### CONCLUSION

With IMEO's withdrawal and the City's motion to dismiss the complaint, the matter should have been disposed of by an order or notice of dismissal. Because there is no charging party, there is no case, and therefore, the complaint and underlying unfair practice charge are dismissed.

#### ORDER

The unfair practice charge and complaint in Case No. LA-CE-750-M is hereby  
DISMISSED WITHOUT LEAVE TO AMEND.

Members Winslow and Huguenin joined in this Decision.