

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SHEEHAN GILLIS,

Charging Party,

v.

CITY OF OAKLAND (OAKLAND FIRE
DEPARTMENT),

Respondent.

Case No. SF-CE-1251-M

PERB Decision No. 2451-M

August 31, 2015

Appearances: Sheehan Gillis, in propria persona; Renne, Sloan, Holtzman & Sakai by Erich W. Shiners, Attorney, for City of Oakland (Oakland Fire Department).

Before Huguenin, Winslow and Banks, Members.

DECISION¹

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by Sheehan Gillis (Gillis) from dismissal on January 29, 2015, by PERB's Office of the General Counsel of an unfair practice charge filed on October 8, 2014, against the City of Oakland (Oakland Fire Department) (City) on behalf of the International Federation of Professional and Technical Engineers, Local 21, AFL-CIO (Union).² The charge alleged that the City denied Gillis' requests for Union representation, or

¹ PERB Regulation 32320(d) provides, in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed 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 regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

² On March 11, 2015, the Union notified PERB that it was not the charging party in this case and did not represent Gillis. Accordingly the caption names Gillis as charging party.

*Weingarten*³ rights, in several meetings with his superiors and thereby violated Gillis' rights under the Meyers-Milias-Brown Act (MMBA).⁴

During February 2015, Gillis made various efforts to perfect his appeal from the dismissal of the charge. On March 13, 2015, PERB's Appeals Assistant determined Gillis' efforts to perfect an appeal were insufficient and dismissed the appeal as not timely filed. Gillis appealed this administrative determination, giving rise to a decision by the Board itself on June 24, 2015, that Gillis' appeal was timely. (*City of Oakland (Oakland Fire Department)* (2015) PERB Order No. Ad-425-M.)

On June 24, 2015, PERB's Appeals Assistant notified the parties that a response to Gillis' appeal would be due on July 20, 2015. Thereafter, on July 20, 2015, the City timely filed its response to Gillis' appeal.

On July 23, 2015, Gillis filed a package of documents in support of his appeal.⁵ Gillis' cover letter does not explain why the "Statement of Exceptions" set forth therein was not, or could not have been, filed timely, viz., with Gillis' appeal in February 2015. Moreover, neither the two page cover letter to the package of documents, nor any of the attached documents, contains the contents of an appeal specified by PERB Regulation 32635.

³ *NLRB v. J. Weingarten, Inc.* (1975) 420 U.S. 251 (*Weingarten*).

⁴ MMBA is codified at Government Code section 3500 et seq.

⁵ Included in this package are: (1) a two-page cover letter dated July 21, 2015, from Gillis to the Board, in which Gillis: (a) sets forth a brief "Statement of Exceptions" averring that his position with the City is one which under the City's own past practice enjoys *Weingarten* rights and (b) identifies the remaining documents in the package; (2) copies of correspondence dated June 2015 between Gillis and the City regarding a Freedom of Information Act request and or California Public Records Request made by Gillis to the City in June 2015; (3) an exchange of e-mails between Gillis and an employee relations analyst for the City from August 2014 concerning *Weingarten* rights; (4) an undated informational document attributed to the City containing a description of the *Weingarten* rule; (5) a copy of Gillis' first amended charge with attachments; and (6) a proof of service by mail indicating that Gillis served the entire package on July 21, 2015, by mail, upon PERB's Headquarters Office and the counsel for the City.

On July 27, 2015, the City responded to Gillis' July 23, 2015 filing. The City objects to our consideration of Gillis' July 23, 2015, filing on two grounds: first, that the filing constitutes an inappropriate response to the City's reply brief opposing Gillis' appeal; and second, that even if considered by the Board, the filing fails to comply with PERB Regulation 32635(a) governing the contents of appeals.

We have reviewed Gillis' charge and amended charge, the City's response, the warning and dismissal letters, Gillis' appeal, the City's response, Gillis July 23, 2015, filing and the City's July 27, 2015, response. Based on our review, we conclude that the warning and dismissal letters (attached) issued by PERB's Office of the General Counsel are well reasoned and in accordance with applicable law. However, for the reasons set forth below, we conclude that Gillis has failed to comply with PERB Regulation 32635, both in his appeal filed in February 2015, and in the filing he made on July 23, 2015, and that therefore he has not filed a valid appeal from the dismissal of his charge. On that basis, we affirm the dismissal.

BACKGROUND

Gillis is employed by the City as an emergency medical services coordinator. Gillis is a member of the management employees bargaining unit which is represented by the Union.

The Initial and Amended Unfair Practice Charge

On October 8, 2014, Gillis filed an unfair practice charge alleging that on seven (7) separate occasions between June 25, 2013 and August 21, 2014,⁶ he was denied representational rights during meetings with City Fire Division Manager Stewart McGehee (McGehee). Gillis' charge purported to be filed by the Union and described his title as "Dir. Political H & M." In support of his allegations, Gillis submitted several e-mail exchanges, a

⁶ The initial and amended unfair practice charges refer to an incident on August 21, 2013. However, the documents submitted in support of this allegation concerning this incident are dated August 21, 2014.

copy of a grievance filed by Gillis regarding McGehee's denial of his representational rights, and a second step grievance response from City Fire Chief Teresa Deloach Reed denying Gillis' grievance.

On November 21, 2014, the City filed its first position statement asserting that:

(1) PERB lacked jurisdiction under the MMBA section 3509(f) because Gillis is a management employee; (2) six of the seven alleged violations occurred beyond the six-month statute of limitations; (3) Gillis failed to allege facts showing that his representational rights were violated on the one timely allegation; and (4) Gillis' charge failed to provide a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice" as required under PERB Regulation 32615(a)(5).

On November 24, 2014, Gillis filed his first amended charge alleging two additional denials by McGehee of his representational rights on July 30 and November 20, 2014. On December 19, 2014, the City filed its second position statement reiterating its contentions from its first position statement and asserting that Gillis' November 20, 2014, allegation that he was denied representational rights also failed to comply with PERB Regulation 32615(a)(5).⁷ On January 8, 2015, the City submitted a copy of its Employer-Employee Relations Resolution in support of its position statement.

Warning and Dismissal Letters

On January 13, 2015, the Office of the General Counsel sent Gillis a warning letter notifying him that his charges failed to state a prima facie case. The warning letter noted that Gillis was a management employee of the City and, while he had a right to join an employee organization under MMBA section 3507.5, PERB lacked jurisdiction under MMBA section 3509(f) over employees designated as management employees. In addition, the

⁷ The City's response did not address Gillis' July 30, 2014, allegation that he was denied representational rights.

warning letter concluded that seven (7) of Gillis' nine (9) allegations were not timely alleged because they occurred outside of PERB's six-month statute of limitations.

With regard to Gillis' two timely allegations, the warning letter concluded that Gillis failed to allege sufficient facts to establish that he was denied representational rights. The warning letter noted that mere legal conclusions and references to attached documents did not sufficiently state a prima facie case. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S; *County of Riverside* (2013) PERB Decision No. 2307-M.) Gillis was afforded the opportunity to amend his charge to correct the deficiencies explained in the warning letter.

Gillis did not submit a second amended charge curing the deficiencies noted in the warning letter. On January 29, 2015, the Office of the General Counsel dismissed Gillis' charge. The dismissal letter informed Gillis that he could appeal the dismissal of his charge and described the filing requirements under PERB Regulation 32635.

DISCUSSION

Gillis' Appeal

PERB Regulation 32635(a) states, in relevant part:

The Appeal shall:

- (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.

Thus, an appeal must sufficiently place the Board and the respondent "on notice of the issues raised on appeal" in order to comply with PERB Regulation 32635(a). (*State Employees Trades Council United (Ventura, et al.)* (2009) PERB Decision No. 2069-H.) An appeal that

merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381; *Contra Costa County Health Services Department* (2005) PERB Decision No. 1752-M.)

On February 19, 2015, Gillis filed as his appeal a package of documents under a cover memo which states:

I wish to submit Unfair Practice Charge No SF[-]CE[-]1251[-]M to your attention for appeal. A copy of all relevant correspondence and proof of service has been included as an attachment.

Thank you for giving this matter your consideration.

Included in the package were copies of Gillis' original charge and amended charge and the exhibits to these charges. Not included in the package was any explanation from Gillis for his appeal other than the above-mentioned documents. In particular, the package did not contain the elements described in PERB Regulation 32635(a).

Gillis' appeal was determined not to be timely filed by PERB's Appeals Assistant. There followed an administrative appeal from this timeliness determination, and on June 24, 2015, the Board ruled that Gillis' February 19, 2015 appeal from dismissal of his charge was timely. (*City of Oakland (Oakland Fire Department)* (2015) PERB Order No. Ad-425-M.)

Also on June 24, 2015, PERB's Appeals Assistant notified the parties that the City's response to Gillis' timely appeal would be due on July 20, 2015. On July 20, 2015, the City timely filed its response to Gillis' appeal.

On July 23, 2015, Gillis filed another package of documents, this time including a two-page letter to the Board setting forth a brief "Statement of Exceptions" in which Gillis avers that the City has a past practice of providing *Weingarten* rights to employees in Gillis' employment classification, a claim Gillis unsuccessfully advanced below. However, as with

his appeal filed on February 19, 2015, Gillis more recent package of documents fails to address the required contents for an appeal set forth in PERB Regulation 32635(a).

Gillis included no explanation or grounds for his appeal, either in the “appeal” filed in February 2015 or in the package of documents filed on July 23, 2015. Thus, his appeal does not satisfy any of the three requirements listed in PERB Regulation 32635(a). On this basis,⁸ we dismiss Gillis’ appeal and affirm the Office of the General Counsel’s dismissal of the charge.

ORDER

The unfair practice charge in Case No. SF-CE-1251-M is hereby DISMISSED.

Members Winslow and Banks joined in this Decision.

⁸ We do not reach, and thus do not decide, the City’s claim that Gillis’ July 23, 2015, filing should be disregarded as an inappropriate reply to the City’s July 20, 2015, response to Gillis’ appeal.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1139
Fax: (510) 622-1027



January 29, 2015

Sheehan Gillis, Director of Political Activities
IFPTE, Local 21
436 14th Street, Suite 1520
Oakland, CA 94612

Re: *IFPTE, Local 21, AFL-CIO v. City of Oakland (Oakland Fire Department)*
Unfair Practice Charge No. SF-CE-1251-M
DISMISSAL LETTER

Dear Mr. Gillis:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 8, 2014, and amended on November 24, 2014. International Federation of Professional and Technical Engineers, Local 21, AFL-CIO (Local 21 or Charging Party) alleges that the City of Oakland (Oakland Fire Department) (City or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)¹ by denying Sheehan Gillis (Gillis) his right to union representation.

Charging Party was informed in the attached Warning Letter dated January 13, 2015, 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, it should amend the charge. Charging Party was further advised that, unless it amended the charge to state a prima facie case or withdrew it on or before January 23, 2015, the charge would be dismissed.

PERB has not received either an amended charge or a request for withdrawal.² Therefore, the charge is hereby dismissed based on the facts and reasons set forth in the January 13, 2015 Warning Letter.

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 On January 28, 2015, I left a voice mail message for you regarding this matter, stating that unless I received a response from the end of the day, I would proceed with dismissing this charge. I have received no response.

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,

WENDI L. ROSS
Acting General Counsel

By _____
Joseph Eckhart
Regional Attorney

Attachment

cc: Erich W. Shiners

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
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January 13, 2015

Sheehan Gillis, Director of Political Activities
IFPTE, Local 21
436 14th Street, Suite 1520
Oakland, CA 94612

Re: *IFPTE, Local 21, AFL-CIO v. City of Oakland (Oakland Fire Department)*
Unfair Practice Charge No. SF-CE-1251-M
WARNING LETTER

Dear Mr. Gillis:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 8, 2014, and amended on November 24, 2014. International Federation of Professional and Technical Engineers, Local 21, AFL-CIO (Local 21 or Charging Party) alleges that the City of Oakland (Oakland Fire Department) (City or Respondent) violated the Meyers-Milius-Brown Act (MMBA or Act)¹ by denying Sheehan Gillis (Gillis) his right to union representation.

FACTS AS ALLEGED²

Local 21 is the exclusive representative of seven City bargaining units, including its Exempt Management Employees unit, designated "UM1," and its Management Employees unit, designated "UM2." Gillis is employed by the City as an Emergency Medical Services Coordinator, a classification that is in the UM2 unit.

The City has adopted an employer-employee relations ordinance (EERO). Section 1(d) of the EERO defines "Management Employee" as "an employee having significant responsibilities for formulating and administering City policies, procedure and programs, including but not limited to the City Manager, his staff, all department heads, assistant department heads and division chiefs, as designated from time to time by the City Manager." Section 14 of the EERO provides, in relevant part:

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 The following summary includes facts provided by the City in its position statement, where those facts do not conflict with Local 1's allegations. (*Chula Vista Elementary School District* (2003) PERB Decision No. 1557.)

- d. Neither Management Employees nor Confidential Employees shall represent an employee organization which includes non-management or non-confidential employees, in consulting with, or in meeting and conferring with, the Employee Relations Officer.
- e. Management employees shall not be included in the same unit as non-management employees.

Attached to the first amended charge is the following statement:

To: Whom It May Concern

On the following dates and times Medical Services Division Manager Stewart McGehee [McGehee] proceeded [with the] questioning of matters that could be used in discipline after Weingarten Rights had been activated and without allowing for union representation:

- June 25th 2013, 1:30PM at the Medical Services Division (Attachment 1)
- August 7th 2013, 1:30PM at the Medical Services Division (Attachment 2)
- August 29th 2013, 2:00PM at the Medical Services Division (Attachment 3)
- December 6th 2013, 2:00PM at the Medical Services Division (Attachment 4-5)
- January 22nd 2014, 1:22PM at the Medical Services Division (Attachment 6-7)
- April 3rd 2014, 3:00PM at the Medical Services Division (Attachment 8-11)
- July 30th 2014, 3:00PM at the Medical Services Division (Attachment 16)

On August 21[st] 2013, at 2:31PM at the Medical Services Division [McGehee] directed represented employees to not involve the union in matters that could possibly affect the confidentiality of other employees, thereby limiting an employee's right to representation (Attachment 12-14).

On November 20th 2014, at 2:20PM at the Medical Services Division Mr. McGehee proceeded with questioning without allowing for reasonable accommodation for representation (Attachment 19).^[3]

The attachments referred to in the statement of the charge consist of correspondence, primarily by e-mail, between Gillis, McGehee, and other City administrators. For instance, Attachment 1 is an e-mail message from Gillis to McGehee, stating:

³ The allegations regarding events on July 30, 2014 and November 20, 2014 were first alleged in the amended charge. All other allegations were first alleged in the original charge.

Mr. McGehee:

I am emailing you to confirm that I exercised my Weingarten Rights at the beginning of the meeting you called for today at 1:30PM. You asked if I preferred that we continue in writing. I replied affirmatively. You chose to continue to conduct the meeting.

Feel free to contact me any time if you have any comments or questions.

DISCUSSION

I. Jurisdiction

Before determining whether a charging party has established a prima facie case that an unfair practice has been committed, it must be determined whether PERB has jurisdiction over the charge. (See *Los Angeles Community College District* (1994) PERB Decision No. 1060.) It appears that PERB does not have jurisdiction over this charge.

Although the MMBA grants management employees the right to form, join and participate in employee organizations (see Gov. Code, §§ 3501(d), 3507.5), the statute specifically denies the Board any power over employees designated as management employees. MMBA section 3507.5 permits a local agency to:

adopt reasonable rules and regulations providing for designation of the management and confidential employees of the public agency and restricting such employees from representing any employee organization, which represents other employees of the public agency, on matters within the scope of representation.

MMBA section 3509, which sets forth PERB's powers and duties with respect to the MMBA, states in relevant part:

(b) A complaint alleging any violation of this chapter *or* of any rules and regulations adopted by a public agency pursuant to Section 3507 or 3507.5 shall be processed as an unfair practice charge by the board. . . .

(f) This section [3509] *shall not apply to employees designated as management employees under Section 3507.5.*

(Emphasis added.) The Board has confirmed that PERB lacks jurisdiction to investigate unfair practice charges filed by or concerning employees who have been designated by their employer as management employees, even when those employees believe they have been improperly classified. (*County of Santa Barbara* (2011) PERB Decision No. 2181-M.)

The City's EERO defines a management employee as "an employee having significant responsibilities for formulating and administering City policies, procedure and programs, including but not limited to the City Manager, his staff, all department heads, assistant department heads and division chiefs, as designated from time to time by the City Manager." Gillis's job classification, Emergency Medical Services Coordinator, is included in one of the City's two bargaining units of management employees. It therefore appears that Gillis has been designated as a management employee, in which case, PERB does not have jurisdiction over this charge. (Gov. Code, § 3509(f); *County of Santa Barbara, supra*, PERB Decision No. 2181-M.)

II. Prima Facie Case

Even assuming PERB has jurisdiction over this charge, it fails to state a prima facie case.

A. Statute of Limitations

The charging party's burden includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited from issuing a complaint with respect to any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.)

Here, the charge alleges nine separate instances where Gillis was denied his right to union representation. Because the charge was originally filed on October 8, 2014, only those events that took place within the six months preceding that date—on or after April 8, 2014—may be considered timely. Therefore, the allegations of events on June 25, August 7, August 21, August 29, and December 6, 2013 and on January 22 and April 3, 2014, are untimely.

B. The Charging Party's Burden

PERB Regulation 32615(a)(5) requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." This means that a charging party should allege with specificity the particular facts giving rise to a violation. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) The charging party may do this by alleging sufficient facts describing the "who, what, when, where and how" of an unfair practice. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S (*Dept. of Food and Agriculture*), citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB

Decision No. 873.) Nor are references to documents attached to the charge. (*County of Riverside* (2013) PERB Decision No. 2307-M.)

The charge alleges that Gillis was denied his right to union representation. An employee required to attend an investigatory interview with the employer is entitled to union representation where the employee has a reasonable basis to believe discipline may result from the meeting. (*Rio Hondo Community College District* (1982) PERB Decision No. 260 [*Rio Hondo*].) The Board recognized this rule based on the U.S. Supreme Court's decision in *NLRB v. J. Weingarten, Inc.* (1975) 420 U.S. 251 [*Weingarten*].)

In order to establish a violation of an employee's *Weingarten* right, the charging party must demonstrate: (a) the employee requested representation; (b) for an investigatory meeting; (c) which the employee reasonably believed might result in disciplinary action; and (d) the employer denied the request. (See *Redwoods Community College District v. Public Employment Relations Board* (1984) 159 Cal.App.3d 617; *Fremont Union High School District* (1983) PERB Decision No. 301; see also *Social Workers' Union, Local 535 v. Alameda County Welfare Department* (1974) 11 Cal.3d 382.) A right to union representation may be held to exist, in the absence of an objectively reasonable fear of discipline, only under "highly unusual circumstances." (*Redwoods, supra*, 159 Cal.App.3d 617.)

In this case, the charge fails to allege sufficient facts to establish that Gillis was denied his right to union representation. Rather, the charge contains the legal conclusion that his rights were denied on a number of occasions, and, as support for this conclusion, refers to documents attached to the charge. Legal conclusions and references to attached documents are not sufficient to state a prima facie case. (*Dept. of Food and Agriculture, supra*, PERB Decision No. 1071-S; *County of Riverside, supra*, PERB Decision No. 2307-M.)

CONCLUSION

For these reasons the charge, as presently written, does not state a prima facie case.⁴ 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 Charging Party wishes 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

⁴ 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.*)

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January 13, 2015
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must be filed with PERB. If an amended charge or withdrawal is not filed on or before January 23, 2015,⁵ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Joseph Eckhart
Regional Attorney

JE

⁵ A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile or electronic mail. (PERB Regulation 32135.)