

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ANTHONY FRANK DORADO,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
FORESTRY AND FIRE PROTECTION),

Respondent.

Case No. SA-CE-2033-S

PERB Decision No. 2456-S

October 9, 2015

Appearances: Anthony Frank Dorado, on his own behalf; California Department of Human Resources by Todd M. Ratshin, Labor Relations Counsel, for State of California (Department of Forestry and Fire Protection).

Before Martinez, Chair; Banks and Gregersen, Members.

DECISION¹

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Anthony Frank Dorado (Dorado) of a dismissal (attached) by the Office of the General Counsel of his unfair practice charge. The charge, as amended, alleges that State of California (Department of Forestry and Fire Protection) (CAL FIRE) violated the Ralph C. Dills Act (Dills Act)² when it rescinded a job offer. The Office of the General Counsel dismissed the charge for failure to state a prima facie case under the Dills Act. The Office of the General Counsel also dismissed the charge for lack of jurisdiction over

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 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 The Dills Act is codified at Government Code section 3512 et seq.

Dorado's claims relating to contract violations and constitutional merit system issues. Dorado timely filed the instant appeal, and CAL FIRE timely filed an opposition.

The Board itself has reviewed this matter in full, including Dorado's charge and first amended charge, CAL FIRE's position statements, the Office of the General Counsel's warning and dismissal letters, Dorado's appeal and CAL FIRE's opposition. Based on that review, the Board itself concludes that the warning and dismissal letters accurately summarize the charge allegations in all material respects,³ and are well-reasoned and consistent with the applicable law.

Dorado's appeal fails to comply with PERB Regulation 32635, subdivision (a), which provides:

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.

³ We note that the Office of the General Counsel misstates certain allegations concerning the candidates for the Fire Captain positions. Both the warning and dismissal letters state: "Charging Party states that the first applicant's 'retirement disposition was never in question';" and "Charging Party believes that the first applicant's retirement paperwork was submitted well before the September 10, 2014 Director's Memo" (Warning letter, p. 2; Dismissal letter, p. 2.) As we understand Dorado's allegations, there were two positions to be filled. CAL FIRE filled the first position with the candidate who scored the highest on the hiring list. The second was offered to Dorado who scored the second highest on that list. In response to his Level II grievance, CAL FIRE informed Dorado that the offer was contingent "pending the final disposition of the employee filing for retirement." Dorado then interviewed the employee in question, Robert Drexel (Drexel), and confirmed that Drexel had in fact submitted his retirement papers prior to the job offer and that Drexel's retirement was never in question. The employee referred to in Dorado's allegations is not the "first" applicant. It is Drexel, whose retirement necessitated the filling of a second Fire Captain position, for which Dorado was made an offer. We disregard the misstatement as immaterial to the disposition of the charge.

An appeal that does not reference the substance of the Board agent's dismissal fails to comply with PERB Regulation 32635, subdivision (a). (*San Bernardino City Unified School District* (2012) PERB Decision No. 2278.) An appeal that merely reiterates facts alleged in the unfair practice charge also fails to comply with PERB Regulation 32635, subdivision (a). Dorado's appeal fails in both these ways. Thus, Dorado's appeal is denied based on its failure to comply with PERB's regulatory requirements. (See *City of Brea* (2009) PERB Decision No. 2083-M.)⁴

Dorado asks that the Board grant him a forum for two specific reasons: (1) to gain access to documents he has been unable to obtain from CAL FIRE through public records requests; and (2) to subpoena administrators who told him they cannot help because they fear that they will be found insubordinate by their supervisors. A charge may proceed to a complaint and formal hearing only where a prima facie case is stated in the charge. Such is not the case here.

For the above reasons, we affirm the dismissal of the charge. Because we agree with the Office of the General Counsel that Dorado's primary claim, i.e., that CAL FIRE violated constitutional merit system principles in rescinding the job offer, falls outside PERB's jurisdiction,⁵ we adopt the warning and dismissal letters as the decision of the Board itself, with the correction noted in footnote 3, *ante*.

ORDER

⁴ The appeal also includes new factual allegations concerning the transfer policy, CAL FIRE's lack of compliance with grievance procedure deadlines and statements made by CAL FIRE personnel. "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (PERB Reg. 32635, subd. (b).) No good cause has been established. The Board itself, therefore, declines to consider these new allegations on appeal. Even if there were good cause to consider these new allegations, the problem remains that the charge does not state a claim under the Dills Act.

⁵ See *State Personnel Board v. Department of Personnel Administration* (2005) 37 Cal.4th 512, 526-527 (under a constitutional grant of authority, the State Personnel Board is the state agency empowered to enforce the state's civil service statutes).

The unfair practice charge in Case No. SA-CE-2033-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Banks and Gregersen joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8387
Fax: (916) 327-6377



July 6, 2015

Anthony Frank Dorado

Re: *Anthony Frank Dorado v. State of California (Department of Forestry and Fire Protection)*
Unfair Practice Charge No. SA-CE-2033-S
DISMISSAL LETTER

Dear Mr. Dorado:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 10, 2015. Anthony Frank Dorado (Charging Party) alleges that the State of California, Department of Forestry and Fire Protection (CAL FIRE or Respondent) violated the Ralph C. Dills Act (Dills Act),¹ California Constitution, and the applicable memorandum of understanding (MOU) by rescinding an employment offer that it made to Charging Party.

Charging Party was informed in the enclosed Warning Letter dated May 20, 2015, that the above-referenced charge did not state a prima facie case. Charging Party was informed that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, Charging Party should amend the charge. Charging Party was further informed that, unless the charge was amended to state a prima facie case or withdrawn on or before June 5, 2015,² the charge would be dismissed. On June 12, 2015, Charging Party filed a first amended charge.

FACTUAL BACKGROUND

- I. Charging Party's Allegations
 - a. Original Charge Allegations

Charging Party alleged the following in his original unfair practice charge:

¹ The Dills Act is codified at Government Code section 3512 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the Dills Act and PERB Regulations may be found at www.perb.ca.gov.

² On June 4, 2015, Charging Party requested and was granted a brief extension of time to file an amended charge.

In October 2014 I was offered a permanent Fire Captain position with Cal Fire NEU. One week later that offer was rescinded. The reason cited for the withdrawal of the job offer was a memo from Director Pimlott. I participated in a hiring process that was consistent with decades of past hiring practices. This process was merit-based, and ascertained by competitive examination. I seek to have my classification changed immediately from Limited Term Fire Captain to Permanent Fire Captain.

Charging Party alleges that Respondent violated the "California Constitution Article 7 & CDF Firefighters Local 2881^[3] MOU, Article 9."

Charging Party includes as an attachment to his charge a copy of a grievance that he filed on or about October 28, 2014, concerning this same issue. Charging Party describes this dispute in his grievance paperwork as follows. Charging Party communicates his frustration with not having yet received documents that he requested pursuant to the California Public Records Act. Charging Party states that in Respondent's grievance level II response it found that, "Northern Region granted NEU permission to hire both Fire Captains however the second Fire Captain offer was contingent pending the final disposition of the employee filing for retirement. NEU was instructed to wait to make the offer to their candidate until NEU was certain the employee retiring was in-fact retiring." In this scenario, Charging Party was the "second applicant." Charging Party states that the first applicant's "retirement disposition was never in question." Charging Party quotes the timeline of events provided by Respondent: "September 2, 2014 – NEU given permission to hire [Charging Party;] September 10, 2014 – Director Pimlott forwards Memo^[4]; October 3, 2014 – Division Chief DeSena offers me Permanent FC-8 position[.]"

Charging Party believes that the first applicant's retirement paperwork was submitted well before the September 10, 2014 Director's Memo and that Charging Party's "job offer was rescinded one week after it was issued on October 10, 2014."

Respondent stated in the grievance level II response that it "failed to follow the September 10, 2014 Director's memo requiring active BU8 Rank and File Inter-Unit In-Class transfer candidates to be offered the position prior to list candidates." Charging Party states, however, that the Director's Memo was "'effective immediately,' *not* retroactively. And since the hiring

³ PERB is aware that CDF Firefighters Local 2881 is now referred to as CAL FIRE Local 2881.

⁴ PERB understands that the Director's Memo concerns a change in policy that was issued by Respondent on September 10, 2014, per an agreement with CAL FIRE Local 2881 that transfer candidates would be considered first, before promotional candidates, when applying the MOU between the Respondent and CAL FIRE Local 2881, specifically with respect to Article 9 of the MOU dealing with voluntary transfers and reassignments.

process of which [Charging Party] was involved started on September 2, 2014, and the Director's Memo was dated September 10, 2014, it does not apply to" Charging Party. Rather, the Director's Memo should have only impacted candidates applying to positions after September 10, 2014.

Charging Party continues, in his attached grievance paperwork, to state that if Respondent's grievance level II response is true—that it failed to follow the Director's Memo requiring that transfer candidates are to be offered positions before list candidates—then it violated Article 9.2.2 of the MOU "by creating prejudice against promotional candidates by circumventing an active score-order hiring list." Charging Party states that he "won [his] job, fair and square, through a competitive examination process in which transfer candidates were given first consideration in accordance with Article 9 of the BU8 MOU [and to deny him a] lawfully awarded position would violate Article 7, Section 1 of the California Constitution by negating" the merit and competitive examination system.

b. First Amended Charge Allegations

Charging Party reasserts many of the facts contained in the original unfair practice charge and maintains that Respondent violated the "Bargaining Unit 8 MOU, the Merit Principle of the California Constitution, and decades of past practice." On April 10, 2015, Charging Party filed an unfair practice charge (Unfair Practice Case No. SA-CO-484-S) against CAL FIRE Local 2881 concerning these same facts. Here, Charging Party alleges:

Whether unilaterally, or in cooperation with [CAL FIRE] Local 2881, the Director's Memo contradicts the [CAL FIRE] Local 2881 MOU and Article 7, Section 1 of the California Constitution. Article 9 of the MOU already has in place a system for providing first consideration to transfer candidates, as well as service credit points. And while PERB may lack jurisdiction to adjudicate alleged violations of the California Constitution, Section 3512 of [t]he Dills Act[] states that the spirit or intent of the merit principle in state employment shall not be contravened.

[¶ . . . ¶]

The Memo was effective immediately, not retroactively and my hiring process was already well underway, therefore the memo if it were not contravening the merit principle, would apply to all candidates from the time of its issuance, not the week before.

In the weeks that followed, because the Director's Memo ran counter to many years of past hiring practices, the Hiring Workgroup sent out a Q&A form in an attempt to control confusion and clarify the department's position. It clearly states that the MOU has not changed. However, the follow-up to the

Director's Memo states that, "the vacant position must be offered to the transfer candidate." This is in fact a change to the MOU as Article 9 states that transfer candidates will be "considered first." . . . And if [Respondent] and/or [CAL FIRE] Local 2881 seek to change the meaning of "consider first" to mean "must be given," then such a drastic change in past practice should be brought through normal channels to the members or the employee organization. Was there a "Meet and Confer?" If so, was there a "Side Letter?"

[CAL FIRE] Local 2881 and [Respondent] have both skirted their [way] around our labor contract, [Respondent's] policy, and the Dills Act by denying me my rightfully awarded position.

Charging Party provides additional reasoning for his position that reiterates the information summarized and quoted above:

II. Respondent's Position

The Respondent asserts that this charge must be dismissed because PERB does not have jurisdiction over alleged constitutional or contractual violations. Further, the Respondent asserts that Charging Party fails to provide facts that demonstrate that a violation of the Dills Act has occurred or that these allegations are not barred by PERB's six-month statute of limitations. Respondent asserts that claims concerning an alleged violation of civil service rights are outside of PERB's jurisdiction as the State Personnel Board (SPB) enforces civil service laws.

DISCUSSION

As discussed in the enclosed Warning Letter, 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." In doing so, 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.) Such allegations should focus on the elements of the prima facie case. 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 is alleging that the Respondent breached or violated the California Constitution and terms of the MOU. However, it is well-settled that PERB lacks jurisdiction to adjudicate alleged violations of the California Constitution and Charging Party acknowledges this limitation in his first amended charge. (*State of California (Department of Personnel*

Administration) (2009) PERB Decision No. 2085-S, citing *State of California (Department of Transportation)* (2005) PERB Decision No. 1735-S; *Los Angeles Unified School District* (1990) PERB Decision No. 835.)

Further, without delving into the propriety of SPB's jurisdiction, with respect to PERB's jurisdiction, individual employees do not have standing to allege through PERB that the employer has unilaterally changed a policy or past practice or breached an MOU. (*State of California (Department of Corrections)* (1999) PERB Decision No. 1329-S.) PERB lacks jurisdiction over pure contract violations unless an unfair practice is separately stated. (*Regents of the University of California* (2010) PERB Decision No. 2109-H.) As the Board recently held in *City of Inglewood (Smith)* (2015) PERB Decision No. 2424-M:

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.) 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.

Therefore, the charge is hereby dismissed based on the facts and reasons set forth herein and in the enclosed Warning Letter.

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.)

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July 6, 2015

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

J. FELIX DE LA TORRE
General Counsel

By _____
Jonathan Levy
Regional Attorney

Enclosure

cc: Todd M. Ratshin

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-8387
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May 20, 2015

Anthony Frank Dorado

Re: *Anthony Frank Dorado v. State of California (Department of Forestry and Fire Protection)*

Unfair Practice Charge No. SA-CE-2033-S

WARNING LETTER

Dear Mr. Dorado:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 10, 2015. Anthony Frank Dorado (Charging Party) alleges that the State of California, Department of Forestry and Fire Protection (CAL FIRE or Respondent) violated the Ralph C. Dills Act (Dills Act),¹ California Constitution, and the applicable memorandum of understanding (MOU) by rescinding an employment offer that it made to Charging Party.

FACTUAL BACKGROUND

I. Charging Party's Allegations

Charging Party alleges:

In October 2014 I was offered a permanent Fire Captain position with Cal Fire NEU. One week later that offer was rescinded. The reason cited for the withdrawal of the job offer was a memo from Director Pimlott. I participated in a hiring process that was consistent with decades of past hiring practices. This process was merit-based, and ascertained by competitive examination. I seek to have my classification changed immediately from Limited Term Fire Captain to Permanent Fire Captain.

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Charging Party alleges that Respondent violated the "California Constitution Article 7 & CDF Firefighters Local 2881^[2] MOU, Article 9."

Charging Party includes as an attachment to his charge a copy of a grievance that he filed on or about October 28, 2014, concerning this same issue. Charging Party describes this dispute in his grievance paperwork as follows. Charging Party communicates his frustration with not having yet received documents that he requested pursuant to the California Public Records Act. Charging Party states that in Respondent's grievance level II response it found that, "Northern Region granted NEU permission to hire both Fire Captains however the second Fire Captain offer was contingent pending the final disposition of the employee filing for retirement. NEU was instructed to wait to make the offer to their candidate until NEU was certain the employee retiring was in-fact retiring." In this scenario, Charging Party was the "second applicant." Charging Party states that the first applicant's "retirement disposition was never in question." Charging Party quotes the timeline of events provided by Respondent: "September 2, 2014 – NEU given permission to hire [Charging Party;] September 10, 2014 – Director Pimlott forwards Memo[;]³ October 3, 2014 – Division Chief DeSena offers me Permanent FC-8 position[.]"

Charging Party believes that the first applicant's retirement paperwork was submitted well before the September 10, 2014 Director's Memo and that Charging Party's "job offer was rescinded one week after it was issued on October 10, 2014."

Respondent stated in the grievance level II response that it "failed to follow the September 10, 2014 Director's memo requiring active BU8 Rank and File Inter-Unit In-Class transfer candidates to be offered the position prior to list candidates." Charging Party states, however, that the Director's Memo was "effective immediately," *not* retroactively. And since the hiring process of which [Charging Party] was involved started on September 2, 2014, and the Director's Memo was dated September 10, 2014, it does not apply to" Charging Party. Rather, the Director's Memo should have only impacted candidates applying to positions after September 10, 2014.

Charging Party continues, in his attached grievance paperwork, to state that if Respondent's grievance level II response is true—that it failed to follow the Director's Memo requiring that transfer candidates are to be offered positions before list candidates—then it violated Article 9.2.2 of the MOU "by creating prejudice against promotional candidates by circumventing an

² PERB is aware that CDF Firefighters Local 2881 is now referred to as CAL FIRE Local 2881.

³ PERB understands that the Director's Memo concerns a change in policy that was issued by Respondent on September 10, 2014, per an agreement with CAL FIRE Local 2881 that transfer candidates would be considered first, before promotional candidates, when applying the MOU between the Respondent and CAL FIRE Local 2881, specifically with respect to Article 9 of the MOU dealing with voluntary transfers and reassignments.

active score-order hiring list.” Charging Party states that he “won [his] job, fair and square, through a competitive examination process in which transfer candidates were given first consideration in accordance with Article 9 of the BU8 MOU [and to deny him a] lawfully awarded position would violate Article 7, Section 1 of the California Constitution by negating” the merit and competitive examination system.

II. Respondent’s Position

The Respondent asserts that this charge must be dismissed because PERB does not have jurisdiction over alleged constitutional or contractual violations. Further, the Respondent asserts that Charging Party fails to provide facts that demonstrate that a violation of the Dills Act has occurred or that these allegations are not barred by PERB’s six-month statute of limitations.

DISCUSSION

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.” In doing so, 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.) Such allegations should focus on the elements of the prima facie case. Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The charging party’s burden also 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.)

It appears that Charging Party is alleging that the Respondent breached or violated the California Constitution and terms of the MOU. However, it “is well-settled that PERB lacks jurisdiction to adjudicate alleged violations of the California Constitution. (*State of California (Department of Transportation)* (2005) PERB Decision No. 1735-S; *Los Angeles Unified School District* (1990) PERB Decision No. 835.)” (*State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2085-S.) Further, individual employees do not have standing to allege through PERB that the employer has unilaterally changed a

policy or past practice or breached an MOU. (*State of California (Department of Corrections)* (1999) PERB Decision No. 1329-S.) PERB lacks jurisdiction over pure contract violations unless an unfair practice is separately stated. (*Regents of the University of California* (2010) PERB Decision No. 2109-H.)

Charging Party's above-quoted statement of the charge does not provide facts sufficient to demonstrate a prima facie violation of the Dills Act as it appears to concern a dispute over Respondent's implementation and application of a policy and MOU. (*National Union of Healthcare Workers, supra*, PERB Decision No. 2249a-M.) For instance, it is unclear what the Director's Memo states exactly, when all pertinent events occurred (Charging Party has the burden of demonstrating that this charge was filed within six-months of the Respondent's unlawful conduct), and how the Dills Act is implicated. (*Ibid.*)

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 First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If an amended charge or withdrawal is not filed on or before June 5, 2015,⁵ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Jonathan Levy
Regional Attorney

JL

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.*)

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.)