

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



RUBEN CASAREZ,

Charging Party,

v.

IMPERIAL IRRIGATION DISTRICT,

Respondent.

Case No. LA-CE-1094-M

PERB Decision No. 2534-M

June 29, 2017

Appearance: Ruben Casarez, on his own behalf.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION¹

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Ruben Casarez (Casarez) from the dismissal (attached) of his unfair practice charge following an investigation by PERB’s Office of the General Counsel. The charge, which was filed on May 20, 2106, alleged that the Imperial Irrigation District (District) violated section 3502.5, subdivisions (a) and (b), and section 3504 of the Meyers-Milias-Brown Act (MMBA).² The narrative statement of the charge also alleged that, on or about January 2016, the District enforced a previously undisclosed policy, whereby Casarez could no

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, sec. 31001 et seq.)

² The MMBA is codified at Government Code section 3500 et seq. Unless otherwise noted, all statutory references herein are to the Government Code.

longer file a lawsuit or receive protection from the International Brotherhood of Electrical Workers Local 465 (Local 465), which is the exclusive representative of the District's employees, and that, on or about February 2016, the District terminated Casarez' employment in retaliation for his protected activity on behalf of Local 465.

The Board has reviewed the entire case file and Casarez' appeal. Because the appeal fails to comply with PERB Regulations, we decline to consider or decide the merits of any issues raised therein. Accordingly, we adopt the warning and dismissal letters as the Decision of the Board itself and affirm the dismissal.

PROCEDURAL BACKGROUND

On May 20, 2016, Casarez filed the present charge. Following its investigation, on January 3, 2017, the Office of the General Counsel notified Casarez in a warning letter that the factual allegations in the charge did not support violations of either of the two statutory provisions cited by Casarez, which concern the establishment of an agency shop agreement (§ 3502.5, subs. (a), (b)) and define the scope of representation under the MMBA (§ 3504), respectively. The warning letter also advised Casarez that the Office of the General Counsel had determined that the charge did not state a prima facie case of discrimination for protected activity, in violation of MMBA sections 3502, 3506 and 3506.5, subdivision (a). As described in the warning letter, the Office of the General Counsel determined that the charge failed to allege that Casarez had engaged in any protected activity in reasonably close temporal proximity to his termination, and that it also failed to allege any facts or circumstances that would link Casarez' termination to any protected activity. The warning letter advised Casarez that, in the opinion of PERB's Office of the General Counsel, the charge did not state a prima

facie case of any violation of the MMBA and that, unless the charge was amended or withdrawn by January 11, 2017, it would be dismissed.

After receiving no response to its warning letter, the Office of the General Counsel left a voicemail message for Casarez on January 16, 2017, inviting him to discuss the contents of the warning letter. As of January 18, 2017, Casarez had not responded, and the charge was dismissed.

Casarez' appeal followed on February 10, 2017.

On June 20, 2017, while Casarez' appeal was pending before the Board, Casarez requested that the Board consider as part of his appeal an unpublished opinion by the California Court of Appeal, Fourth Appellate District, Division One, in *Casarez v. Imperial Irrigation District*, Case No. D070099 (Super. Ct. No. ECU08791), which was filed on May 25, 2017. A copy of the court's decision was included with Casarez' request.

DISCUSSION

To obtain Board review of a dismissal/refusal to issue a complaint, the appeal must: (1) state the specific issues of procedure, fact, law or rationale to which the appeal is taken; (2) identify the page or part of the dismissal to which each appeal is taken; and (3) state the grounds for each issue stated. (PERB Reg. 32635;³ *United Teachers – Los Angeles* (1989) PERB Decision No. 738, p. 2.) An appeal that simply repeats the allegations of the charge, does not reference the substance of the dismissal, the page or part of the dismissal to which the appeal is taken, or the grounds for each issue, or that otherwise fails to identify the specific issues of procedure, fact, law or rationale to which the appeal is taken is subject to dismissal on

³ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

that basis alone. (PERB Reg. 32635, subd. (a); *Beaumont Teachers Association/CTA (Grace)* (2012) PERB Decision No. 2260, pp. 2-3; *State of California (Department of Mental Health, Department of Developmental Services)* (2012) PERB Decision No. 2305-S, p. 4.)

While an appeal must minimally identify the issues of fact, law, rationale or procedure to place the Board and the respondent on notice of the issues (*Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, pp. 14-15), generally, the Board's consideration is also limited to those factual allegations and legal issues that were set forth in the charge or any amendments made thereto *before* the charge was dismissed. (*Trustees of the California State University* (2014) PERB Decision No. 2384-H, p. 20; *Service Employees International Union, Local 1021 (Estival)* (2009) PERB Decision No. 1998-M, p. 2; *California School Employees Association & its Chapter 198 (Bruce)* (2006) PERB Decision No. 1858, p. 2.) The Board may only consider newly-submitted information or supporting evidence for "good cause," as when a newly-presented allegation or supporting evidence was not known by the charging party and could not have been discovered with the exercise of reasonable diligence before the charge was dismissed. (PERB Reg. 32635, subd. (b); *Hartnell Community College District* (2015) PERB Decision No. 2452 (*Hartnell*), p. 27.) For example, "good cause" may exist when the events giving rise to the new information or evidence did not occur until after the charge was dismissed. (*Claremont Unified School District* (2014) PERB Decision No. 2357 (*Claremont*), p. 5.)

The majority of Casarez' appeal consists of factual allegations which were not included in the charge, and which allegedly occurred *before* the charge was filed. Among other matters, these allegations pertain to Casarez' 2010 lawsuit against the District and its settlement and dismissal with prejudice, Casarez' protected activity before June 2014, and various acts by the

District and its agents allegedly taken in reprisal against Casarez because of his protected activity, which acts also allegedly occurred before June 2014. The appeal acknowledges that much of this information is “new evidence and explanation,” but gives no indication that this information was unknown to Casarez before the charge was dismissed, nor provides any other reason to consider the newly-presented information in Casarez’ appeal. Accordingly, factual allegations raised for the first time in Casarez’ appeal and apparently aimed at clarifying or explaining the theory of his case are not properly before the Board and were not considered as part of the appeal.

When an appeal contains newly-submitted information without good cause, the Board should not summarily reject the entire appeal, but rather consider the substance of the appeal, minus any new information submitted without good cause. (*SEIU Local 721 (Hagans & Toole)* (2009) PERB Decision No. 2051-M, pp 3-4; *Calaveras County Water District* (2009) PERB Decision No. 2039-M, p. 9.) The problem here, however, is that once the newly-submitted information is subtracted, little remains of Casarez’ appeal. The way Casarez frames his appeal, “[I] petition the Board of PERB to allow me to continue my case against [the District]” does not put the respondent or the Board on notice of the grounds of the appeal. In his assertion that the District has “in its secret policies, a secret policy designed to attack those who promote the union.” Casarez does repeat the allegations of the charge. But merely repeating the allegations of the charge does not comply with PERB Regulation 32635, since the purpose of an appeal is to obtain Board review of any factual, legal, procedural or other errors identified in the appeal.

We note that, for two reasons, we have considered the appellate decision in *Casarez v. Imperial Irrigation District*, which Casarez submitted to PERB on June 20, 2017 while this appeal was pending before the Board. To the extent the judicial opinion is submitted for its legal analysis or reasoning, it is not new information or allegations subject to the good cause requirement of PERB Regulation 32635, subdivision (b), but rather newly-decided law. (See,

e.g., *Hartnell, supra*, PERB Decision No. 2452, p. 4, fn. 4.) Additionally, to the extent it is considered newly-submitted information or supporting evidence, we find good cause to consider it. Because the decision was filed with the Court on May 25, 2017, after Casarez' unfair practice charge was dismissed, Casarez could not have reasonably known about it. (*Hartnell, supra*, PERB Decision No. 2452, p. 27; *Claremont, supra*, PERB Decision No. 2357, p. 5).

However, while we have considered the appellate decision as part of Casarez' appeal, its significance, either as newly-decided law or as newly-submitted supporting evidence or information is not immediately apparent. As explained above, Casarez' appeal does not identify any specific errors of fact, law, procedure or rationale that would place the appellate decision in context, nor explain how the Court's decision would require reversal of the dismissal of Casarez' unfair practice charge.⁴

Because Casarez' appeal does not, even minimally comply with the requirements of PERB Regulations, we reject Casarez' appeal, affirm the dismissal of his charge, and adopt the Office of the General Counsel's warning and dismissal letters as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-1094-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Gregersen and Member Winslow joined in this Decision.

⁴ The District has filed no opposition to Casarez' appeal or to his request that the Board consider the appellate court decision as part of his appeal and, in any event, because we reject Casarez' appeal without considering its merits, the District has not been prejudiced in any way by the decision to permit Casarez to submit newly-available information as part of his appeal.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2808
Fax: (818) 551-2820



January 18, 2017

Ruben Casarez

Re: *Ruben Casarez v. Imperial Irrigation District*
Unfair Practice Charge No. LA-CE-1094-M
DISMISSAL LETTER

Dear Mr. Casarez:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 20, 2016. Ruben Casarez (Casarez or Charging Party) alleges that the Imperial Irrigation District (District or Respondent) violated section 3502.5, subdivisions (a)-(b), and section 3504 of the Meyers-Milias-Brown Act (MMBA or Act)¹.

Charging Party was informed in the attached Warning Letter dated January 3, 2017, 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, he should amend the charge. Charging Party was further advised that, unless he amended the charge to state a prima facie case or withdrew it on or before January 11, 2017, the charge would be dismissed.

On January 16, 2017, the undersigned Board agent called Charging Party at the telephone number provided on his unfair practice charge form. A voicemail message was left asking that Charging Party call the undersigned Board agent to discuss the January 3, 2017, correspondence. Charging Party did not return the voicemail message.

PERB has not received either an amended charge or a request for withdrawal. Therefore, the charge is hereby dismissed based on the facts and reasons set forth in the January 3, 2017, 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.

Right to Appeal

Pursuant to PERB Regulations,² 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).)

² PERB’s Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB’s Regulations may be found at www.perb.ca.gov.

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,

J. FELIX DE LA TORRE
General Counsel

By _____
Mirna Solís
Regional Attorney

Attachment

cc: Frank A. Oswalt III, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2808
Fax: (818) 551-2820



January 3, 2017

Ruben Casarez

Re: *Ruben Casarez v. Imperial Irrigation District*
Unfair Practice Charge No. LA-CE-1094-M
WARNING LETTER

Dear Mr. Casarez:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 20, 2016. Ruben Casarez (Casarez or Charging Party) alleges that the Imperial Irrigation District (District or Respondent) violated section 3502.5, subdivisions (a)-(b), and section 3504 of the Meyers-Milias-Brown Act (MMBA or Act)¹.

Facts As Alleged

In June 2010, the District and Charging Party settled a discrimination claim, which was filed in an unstated venue by Charging Party. He asserts that on January 26, 2016, the District informed him that under the June 2010 settlement agreement, Charging Party “could no longer file a lawsuit or receive protection from the IBEW 465 agreement.”

In February 2016, the District terminated Charging Party’s employment.²

Charging Party attaches a statement which reads as follows:

[The District] has created a secret policy whereby when a heavily involved IBEW 465 employee, myself, files a lawsuit against [the District] for union retaliation and is financially unable to continue the lawsuit, [the District] will abuse the employee[.]

[The District] forced me to sign a settlement with the term with prejudice.

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 No additional details concerning the termination are provided.

[The District] revealed [on] January 20th, 2016 that I had lost my rights to file a lawsuit inferring I had lost all my union rights and was not protected by the IBEW 465 Memorandum of Understanding since June of 2010. [The District's] Directors then proceeded to terminate me.

[The District] is a closed agency and all employees are represented by IBEW 465, Casarez has been paying dues since 1996.

Casarez has prevailed against [the District's] on a PERB charge submitted in June of 2006 of [the District] harassing [sic] against Casarez for Union activities.

Casarez was involved in organizing [the District] employees into a closed agency and signed on behalf of the employees certifying the certification of the IBEW in June of 2010.

Casarez also ran IBEW 465 political endorsements of [the District's] Directors in 2010[.]

Casarez is a well[-]known IBEW 465 member.

Discussion

I. Charging Party's Burden

The Charging Party alleges the District violated section 3502.5, subdivisions (a)-(b), and section 3504. However, the charge is devoid of facts to support these allegations.

PERB Regulation 32615(a)(5) requires that a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice" be stated in the charge itself. Allegations of fact should be contained in the statement of charge. (*Sacramento City Teachers Association (Franz)* (2008) PERB Decision No. 1959; see also, *Monrovia Unified School District* (1984) PERB Decision No. 460.) The charging party may satisfy its burden by providing facts sufficient to establish the "who, what, when, where and how" of an unfair practice charge. (*State of California (Department of Food and Agriculture)* (1994) PERB Decision No. 1071-S, 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.)

Section 3502.5 addresses agency shop agreements. Subdivision (a) of section 3502.5 authorizes an agency shop agreement between a public agency and an exclusive representative and provides for agency shop fees. Subdivision (b) of the same section provides for an alternative method of creating an agency shop arrangement. It is unclear how either of these sections was violated by the District.

It is also unclear how the District could have violated section 3504 because this section simply defines the scope of representation.

Also, for the reasons discussed below, the charge fails to provide a clear and concise statement of facts to support a retaliation and/or discrimination claim.

II. Discrimination and/or Retaliation

To demonstrate that an employer discriminated or retaliated against an employee in violation of Government Code section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (2) the employer had knowledge of the exercise of those rights; (3) the employer took adverse action against the employee; and (4) the employer took the action because of the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*.) In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation)* (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M; *Coast Community College District* (2003) PERB Decision No. 1560); (5) the employer's failure to offer the employee justification at the time it took action (*Oakland Unified School District* (2003) PERB Decision No. 1529) or the offering of exaggerated, vague, or ambiguous reasons (*McFarland Unified School District* (1990) PERB Decision No. 786); (6) employer animosity towards union activists (*Jurupa Community Services District* (2007) PERB Decision No. 1920-M; *Cupertino Union Elementary School District* (1986) PERB Decision No. 572); or (7) any other facts that might demonstrate the employer's

unlawful motive (*North Sacramento School District, supra*, PERB Decision No. 264; *Novato, supra*, PERB Decision No. 210).

Here, there are insufficient facts to establish that Charging Party was a union official of IBEW at the time he was terminated. It is also unclear what Charging Party means by “Casarez also ran IBEW 465 political endorsements of [the District’s] Directors in 2010” and how this activity would constitute protected activity.

Nor are there sufficient facts to establish nexus. Temporal proximity is lacking because Charging Party was terminated in February 2016 and the most recent protected activity occurred more than six years ago in June 2010, when Charging Party was involved in organizing efforts for IBEW. Additionally, there are no other facts to support any of the other nexus factors.

For these reasons the charge, as presently written, does not state a prima facie case.³ 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 *****7 days**,⁴ PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Mirna Solís
Regional Attorney

³ 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.*)

⁴ 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.)