STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ANTHONY WONG, Charging Party, v. LONG BEACH UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-6230-E PERB Decision No. 2552 February 23, 2018

Appearances: Anthony Wong, on his own behalf; Parker & Covert by Steven Montanez, Attorney, for Long Beach Unified School District.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION[1]

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Anthony Wong (Wong) from the dismissal (attached) by PERB's Office of the General Counsel of Wong's unfair practice charge against his employer, the Long Beach Unified School District (District). The charge, as amended, alleged that the District violated the Educational Employment Relations Act (EERA)[2] by denying Wong's right to union representation in several meetings with his supervisors between April 14, 2014 and January 9, 2017. The Office of the General Counsel dismissed most of the charge allegations as untimely, noting that, with one exception, all of the meetings at issue were alleged to have

[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] EERA is codified at Government Code section 3540 et seq.

occurred more than six months before Wong filed his charge, and that no facts were included in the charge to indicate that these allegations were subject to statutory or equitable tolling. For the remaining meeting at issue, which is alleged to have occurred on January 9, 2017, the Office of the General Counsel determined that the charge included insufficient facts to indicate that the meeting was investigative in nature, or that it occurred under highly unusual circumstances giving rise to a right to union representation.

The Board has reviewed the entire case file and has fully considered the relevant issues and contentions on appeal in light of applicable law. The warning and dismissal letters accurately describe the factual allegations included in the unfair practice charge, as amended, and the Office of the General Counsel's legal conclusions are well-reasoned and in accordance with applicable law. Wong's appeal mostly reiterates the allegations included in his charge. It does not, however, identify any particular error of fact, law, procedure or rationale, reference the portion of the warning or dismissal letter appealed from, or state the grounds for appeal, as required by PERB Regulation 32635, subdivision (a).[3] The appeal is therefore denied in its entirety for non-compliance with the requirements of the Regulation.

Additionally, the charge, as amended, fails to state a prima facie case that the District denied Wong's right to union representation for the reasons set forth in the Office of the General Counsel's warning and dismissal letters, and Wong's appeal raises no issues which were not already adequately addressed in the warning and dismissal letters. The Board therefore adopts the warning and dismissal letters as the decision of the Board itself.

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[3] In addition to repeating the factual allegations included in his charge, Wong's appeal also includes new or different dates of meetings at which the District is alleged to have denied his right to union representation. Because the appeal provides no good cause to consider new allegations or information presented for the first time on appeal, we decline to review these new or different allegations. (PERB Reg. 32635, subd. (b); *Hartnell Community College District* (2015) PERB Decision No. 2452, pp. 27-28.)

ORDER

The unfair practice charge in Case No. LA-CE-6230-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Gregersen and Member Winslow joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (510) 622-1038
Fax: (916) 327-6377

August 16, 2017

Anthony Wong

Re: *Anthony Wong v. Long Beach Unified School District*
Unfair Practice Charge No. LA-CE-6230-E
DISMISSAL LETTER

Dear Mr. Wong:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 5, 2017. Anthony Wong (Wong or Charging Party) alleges that the Long Beach Unified School District (District or Respondent) violated the Educational Employment Relations Act (EERA or Act)[1] by denying an employee his right to union representation.

Charging Party was informed in the attached Warning Letter dated May 15, 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 May 29, 2017, the charge would be dismissed.

After receiving an extension of time, on June 15, 2017, Charging Party filed a timely First Amended Charge.

FACTS AS ALLEGED

Original Charge

For the last 17 years, Charging Party has been employed by the District as a Network Specialist in its Information Technology Department.

At all times relevant, Matt Woods (Woods) and Shawn Organ (Organ) have been Charging Party's supervisors.

[1] EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

On the following dates, Organ called Charging Party into his office: (1) April 14, 2014; (2) March 9, 2016; (3) March 11, 2016; (4) April 4, 2016; (5) August 23, 2016; and September 19, 2016. On each occurrence, Charging Party requested union representation and was denied by Organ.

On January 9, 2017, Woods invited Charging Party to his office for a meeting. Charging Party "asked him twice" what the meeting was about. Woods did not tell Charging Party the purpose of the meeting. Charging Party asked for a union representative. Woods ignored Charging Party's request and continued the meeting.

First Amended Charge

The First Amended Charge provides the following, stated in part:

> The record has shown a repeat pattern of violation of Government Code 3543 and denied a good faith interactive process by Mr. Shawn Organ and Mr. Matt Woods for last three years. My management [has] not only den[ied] me my *Weingarten* rights[but] also threaten to reprimand and discipline me in the meetings. My [California School Employees Association (CSEA) representative], Mrs. Madore and I have complained about my management unfair practice and their *Weingarten* right violation many times from 2014-2017 with Human Resources, Employee Relationship Director and Mrs. Takahashi, [Chief Executive Officer]... But the School District [was ignorant] and failed to take any preventive measure steps to stop them.
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> On October 5, 2016, in the meeting with [the District and my union representative], Mr. Woods reaffirmed his [denial] of my *Weingarten* right on [September 19, 2016] and he believes he can deny my union representation request. Mr. Woods fold us he will find out whether he is wrong or not and will apologize. Mr. woods did not get back with us with an answer.
>
> In a January 9, 2017, meeting, Mr. Woods failed to provide a good faith interactive process and ignored my request for a union [representative]. There is no doubt that these unfair practices [come from] my department head, Mr. Woods.

THE DISTRICT'S POSITION[2]

On May 8, 2017, and July 10, 2017, the District filed position statements. In its position statements, the District contends that allegations prior to October 5, 2016 are untimely. The District also asserts that Charging Party's allegation that the District failed to engage in a good faith interactive process lacks jurisdiction and merit. Additionally, the District contends that the meetings described in the charge were for the purpose of providing to Charging Party memoranda related to job performance, and therefore *Weingarten* rights did not attach.

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.)

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

[2] A Board agent is permitted to consider undisputed facts supplied by a respondent in its position statement. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.) The District's position statement includes a verification of facts provided under penalty of perjury and a proof of service on the Charging Party. (PERB Regulation 32620(c).) To the extent there are any factual disputes, those questions are properly resolved through PERB's hearing processes. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.)

result from the meeting. PERB adopted the *Weingarten*[3] rule in *Rio Hondo Community College District* (1982) PERB Decision No. 260. In order to establish a violation of this 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 (*Redwoods*); *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.)

In *Rio Hondo Community College District, supra*, PERB Decision No. 260, the Board cited with approval *Baton Rouge Water Works Company* (1979) 246 NLRB 995, that provided:

> the right to representation applies to a disciplinary interview, whether labeled as investigatory or not, so long as the interview in question is not merely for the purpose of informing the employee that he or she is being disciplined.

In approving the *Weingarten* rule, the U.S. Supreme Court noted with approval that the National Labor Relations Board would not apply it to "such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques." (*Weingarten, supra*, 420 U.S. 251, quoting *Quality Manufacturing Co.* (1972) 195 NLRB 197, 199.)

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.) The finding of "highly unusual circumstances" in the *Redwoods* case was based on the requirement that the employee attend a meeting that she no longer sought over her appeal of a negative performance rating; the fact that the interview was investigatory and formal; the interview was held by a high-ranking official of the employer; and the hostile attitude of the official toward the employee.

The charge was filed on April 5, 2017. Thus, any conduct that occurred prior to October 5, 2016 falls outside of the statute of limitations period. The original charge alleges that on: April 14, 2014; March 9, 2016; March 11, 2016; April 4, 2016; August 23, 2016; and September 19, 2016, Organ called Charging Party into his office for a meeting, and each time Charging Party requested union representation and was denied by Organ. Each of these allegations reference conduct that occurred prior to October 5, 2016, and are therefore untimely and do not establish a prima facie case.

Also, the original charge alleges that on January 9, 2017, Woods invited Charging Party to his office for a meeting, without telling Charging Party the purpose of the meeting. Charging

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[3]In *National Labor Relations Board v. Weingarten* (1975) 420 U.S. 251 (*Weingarten*), the U.S. Supreme Court granted employees the right to representation during disciplinary interviews.

Party asked for a union representative, and Woods ignored Charging Party's request and continued the meeting. This allegation fails to demonstrate a prima facie case, as the original charge fails to provide facts demonstrating that the meeting was investigatory in nature or took place under "highly unusual circumstances."

The First Amended Charge does not add sufficient facts to establish a prima facie case. In the First Amended Charge, Charging Party repeats his allegation stated in his original charge that his supervisors, Organ and Woods, denied him his *Weingarten* rights. The Warning Letter informed Charging Party that these allegations were untimely, and Charging Party has not provided any additional facts to establish that this conduct falls within the statute of limitations period. Charging Party's allegation that he and his union representative complained about the alleged *Weingarten* violations as recently as 2017 does not demonstrate that the District's conduct falls within the statutory period.

The First Amended charge alleges that, on October 5, 2016, Charging Party and his union representative participated in a meeting with the District. At this meeting, Charging Party alleges Woods "reaffirmed" his September 19, 2016, denial of Charging Party's *Weingarten* rights. The Warning Letter informed Charging Party that the District's September 19, 2016, conduct was untimely. Woods' alleged "admission" of his denial of Charging Party's *Weingarten* rights does not make the conduct timely. Moreover, as to the October 5, 2016, meeting, Charging Party does not appear to allege, nor does the charge establish, that any conduct by the District during this meeting violates Charging Party's *Weingarten* rights, as the meeting does not appear to be investigatory in nature or occur under "highly unusual circumstances," nor does there appear to be a denial of union representation.

Also, the First Amended Charge alleges that, on January 9, 2017, Woods "failed to provide a good faith interactive process" and "ignored" Charging Party's request for a union representative. Charging Party does not establish that the January 9, 2017, meeting was investigatory in nature or occurred under "highly unusual circumstances," nor that Charging Party had a reasonable belief the meeting might result in disciplinary action. Moreover, the District asserts that the purpose of the meeting was solely to deliver to Charging Party a memoranda related to his work performance. A meeting is neither investigatory nor disciplinary in nature if the sole purpose of the meeting is to inform the employee of disciplinary action (*Rio Hondo Community College District*, *supra*, PERB Decision No. 260), and nothing in PERB case law requires a Board agent to ignore undisputed facts provided by the Respondent and consider only the facts provided by the Charging Party. (*Service Employees International Union #790*, *supra*, PERB Decision No. 1632-M.) Thus, Charging Party does not establish that the District's January 9, 2017, conduct amounts to a *Weingarten* violation and this allegation does not state a prima facie case.

Based on the reasons set forth in the Warning Letter and this Dismissal Letter, the charge does not establish a prima facie case and is hereby dismissed.

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,

J. FELIX DE LA TORRE
General Counsel

By _____
James Coffey
Regional Attorney

Attachment

cc: Steven Montanez, Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1038
Fax: (510) 622-1027

May 15, 2017

Anthony Wong

Re: *Anthony Wong v. Long Beach Unified School District*
Unfair Practice Charge No. LA-CE-6230-E
WARNING LETTER

Dear Mr. Wong:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 5, 2017. Anthony Wong (Wong or Charging Party) alleges that the Long Beach Unified School District (District or Respondent) violated the Educational Employment Relations Act (EERA or Act)[1] by denying an employee his right to union representation.

FACTS AS ALLEGED

For the last 17 years, Charging Party has been employed by the District as a Network Specialist in its Information Technology Department.

At all times relevant, Matt Woods (Woods) and Shawn Organ (Organ) have been Charging Party's supervisors.

On the following dates, Organ called Charging Party into his office: (1) April 14, 2014; (2) March 9, 2016; (3) March 11, 2016; (4) April 4, 2016; (5) August 23, 2016; and September 19, 2016. On each occurrence, Charging Party requested union representation and was denied by Organ.

On January 9, 2017, Woods invited Charging Party to his office for a meeting. Charging Party "asked him twice" what the meeting was about. Woods did not tell Charging Party the purpose of the meeting. Charging Party asked for a union representative. Woods ignored Charging Party's request and continued the meeting.

[1] EERA is codified at Government Code section 3540 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

THE DISTRICT'S POSITION[2]

On May 8, 2017, the District filed a position statement. In its position statement the District contends that allegations prior to October 5, 2016 are untimely and that the timely allegations fail to state sufficient facts to establish a prima facie case.

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.)

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. PERB adopted the *Weingarten*[3] rule in *Rio Hondo Community*

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[2] A Board agent is permitted to consider undisputed facts supplied by a respondent in its position statement. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.) The District's position statement includes a verification of facts provided under penalty of perjury and a proof of service on the Charging Party. (PERB Regulation 32620(c).) To the extent there are any factual disputes, those questions are properly resolved through PERB's hearing processes. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.)

[3] In *National Labor Relations Board v. Weingarten* (1975) 420 U.S. 251 (*Weingarten*), the U.S. Supreme Court granted employees the right to representation during disciplinary interviews.

College District (1982) PERB Decision No. 260. In order to establish a violation of this 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 (*Redwoods*); *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.)

In *Rio Hondo Community College District*, *supra*, PERB Decision No. 260, the Board cited with approval *Baton Rouge Water Works Company* (1979) 246 NLRB 995, that provided:

> the right to representation applies to a disciplinary interview, whether labeled as investigatory or not, so long as the interview in question is not merely for the purpose of informing the employee that he or she is being disciplined.

In approving the *Weingarten* rule, the U.S. Supreme Court noted with approval that the National Labor Relations Board would not apply it to "such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques." (*Weingarten*, *supra*, 420 U.S. 251, quoting *Quality Manufacturing Co.* (1972) 195 NLRB 197, 199.)

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.) The finding of "highly unusual circumstances" in the *Redwoods* case was based on the requirement that the employee attend a meeting that she no longer sought over her appeal of a negative performance rating; the fact that the interview was investigatory and formal; the interview was held by a high-ranking official of the employer; and the hostile attitude of the official toward the employee.

The charge was filed on April 5, 2017. Thus, any conduct that occurred prior to October 5, 2016 falls outside of the statute of limitations period. The charge alleges that on: April 14, 2014; March 9, 2016; March 11, 2016; April 4, 2016; August 23, 2016; and September 19, 2016, Organ called Charging Party into his office for a meeting, and each time Charging Party requested union representation and was denied by Organ. Each of these allegations reference conduct that occurred prior to October 5, 2016, and are therefore untimely and do not establish a prima facie case.

Also, the charge alleges that on January 9, 2017, Woods invited Charging Party to his office for a meeting, without telling Charging Party the purpose of the meeting. Charging Party asked for a union representative, and Woods ignored Charging Party's request and continued the meeting. This allegation fails to demonstrate a prima facie case, as the charge fails to provide facts demonstrating that the meeting was investigatory in nature or took place under "highly unusual circumstances." Absent such facts, this allegation fails to state a prima facie case.

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 **May 29, 2017**,[5] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

James Coffey
Regional Attorney

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[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.)