

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LUELLA M. SEELEY,

Charging Party,

v.

COUNTY OF SANTA CLARA,

Respondent.

Case No. SF-CE-276-M

PERB Decision No. 1877-M

January 10, 2007

Appearance: Irene Martell, Personal Representative, for Luella M. Seeley.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

SHEK, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Luella M. Seeley (Seeley) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the County of Santa Clara (County) violated the Meyers-Milias-Brown Act (MMBA)¹ by: (1) denying her union representation on September 14, 2004; and (2) discriminating against her for filing grievances by not reasonably accommodating her illnesses and injuries. Seeley alleged that this conduct constituted a violation of MMBA sections 3503 and 3506.

The Board has reviewed the entire record in this matter, including but not limited to the unfair practice charge, the County's position statement, the warning and dismissal letters, and the appeal. Based upon this review, the Board finds that the warning and dismissal letters are free from prejudicial error, and adopts them as the decision of the Board itself, subject to the following discussion.

¹MMBA is codified at Government Code section 3500, et seq.

On appeal, Seeley alleges new charge allegations and new evidence. Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence. (PERB Reg. 32635(b);² Los Angeles County Office of Education (2005) PERB Decision No. 1743.) The appeal does not demonstrate that there is good cause for allowing the presentation of new charge allegations or new evidence, and therefore, the Board upholds the dismissal of the unfair practice charge.

ORDER

The unfair practice charge in Case No. SF-CE-276-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag joined in this Decision.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



December 16, 2005

Luella M. Seeley
P.O. Box 24203
San Jose, CA 95154

Re: Luella M. Seeley v. County of Santa Clara
Unfair Practice Charge No. SF-CE-276-M
DISMISSAL LETTER

Dear Ms. Seeley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 17, 2005. You allege that the County of Santa Clara (County) violated the Meyers-Milias-Brown Act (MMBA)¹ by interfering with your rights by not allowing you to have the union representative of your choosing present for a meeting in September 2004 and by discriminating against you by not granting you additional unpaid leave when you did not to return to work in December 2004 or January 2005.

I indicated to you in my attached letter dated October 5, 2005, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to October 24, 2005, the charge would be dismissed.

You were granted three additional extensions of time through requests by your representative, Ms. Irene Martell. The last request was through December 15, 2005. I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my October 5, 2005 letter.

Right to Appeal

Pursuant to PERB Regulations,² you 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. (Regulation 32635(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.

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
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. (Regulation 32635(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 Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

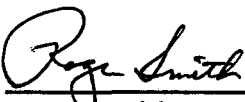
A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. 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. (Regulation 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,

ROBERT THOMPSON
General Counsel

By 

Roger Smith
Labor Relations Specialist

Attachment

cc: Irene Martell
My-Le Jacqueline Duong

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8387
Fax: (916) 327-6377



October 5, 2005

Luella M. Seeley
P.O. Box 24203
San Jose, CA 95154

Re: Luella M. Seeley v. County of Santa Clara
Unfair Practice Charge No. SF-CE-276-M
WARNING LETTER

Dear Ms. Seeley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 17, 2005. You allege that the County of Santa Clara (County) violated the Meyers-Milias-Brown Act (MMBA)¹ by interfering with your rights by not allowing you to have the union representative of your choosing present for a meeting in September 2004 and by discriminating against you by not granting you additional unpaid leave when you did not to return to work in December 2004 or January 2005.

This charge was not being processed while awaiting settlement discussions between the County, your exclusive representative, SEIU Local 715 and your representative, Irene Martell regarding numerous grievances which you had filed. I attempted to contact Ms. Martell to ascertain the status of the settlement discussions but discovered her telephone number had been disconnected and there was no new number to reference. Since I am unsure as to the status of the case, I have decided to spell out the deficiencies in the statements supporting the charge and give you an opportunity to respond to this letter with additional facts.

The two basic violations which you seek PERB to review are (1) the County's denial of representation by the union representative of your choosing on September 14, 2004 and (2) the County's discriminating against you by not reasonably accommodating you due to your illnesses and injuries and for filing numerous grievances through the contract between SEIU Local 715 and the County. Specifically you assert that the County has failed to reasonably accommodate you pursuant to your Doctor's instructions and County policies.

The background information I was able to gather from the charge and supporting documents is that you are employed as an Office Specialist III by the County. You were employed in the CalWORKS Department of Social Services when you went on an unpaid leave from November 2000 to August 2002. You returned to work in that Department with accommodations to your work restrictions based on medical concerns. You continued to work there until June 1, 2004

¹ The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

when you again went out on an unpaid leave due to medical issues. At that same time the Manager of the program informed you that the Department could no longer accommodate your restrictions. The County with your concurrence then placed you with the Public Administrator/Guardian/ Conservator's Office beginning in mid-August 2004.

On September 7, 2004 an incident at work occurred in which you assert that you were verbally, mentally, emotionally and physically abused by a co-worker. The details of the incident are unclear but it caused you to leave your job and call in sick for a few days. On September 13, 2004, you were telephoned and advised that you needed to come to the office on the following day and that you would need medical clearance to return to work. On September 14, 2004 you went to your office and requested the presence of Olga Martinez as a union representative. The County failed to comply with your request. You subsequently were notified by a number of letters that your unpaid leave was going to expire and that unless you received medical clearance to return to work and reported to work, the County would begin the process to terminate your employment status. The charge does not indicate whether the termination ever occurred. Numerous grievances were filed and were being processed at the same time you filed this charge.²

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. (Social Workers' Union, Local 535 v. Alameda County Welfare Department (1974) 11 Cal.3d 382.) 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. (Id.; Civil Service Assn. v. City and County of San Francisco (1978) 22 Cal.3d 552.)

In Social Workers' Union, Local 535, supra at page 391, the Court noted the importance of using federal decisions to guide interpretation of state labor provisions the language of which parallels that of federal statutes. California courts have taken notice of such federal precedent in representation matters, citing with favor the U.S. Supreme Court's ruling in NLRB v. Weingarten (1975) 420 U.S. 251. (Civil Service Assn., supra at 556.) In approving the Weingarten rule, the U.S. Supreme Court noted with approval 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, quoting Quality Manufacturing Co. (1972) 195 NLRB 197, 199 [79 LRRM 1269, 1271].)

You did not provide any facts to demonstrate that a meeting was held with your supervisor on September 14, 2004 in which questions were asked of you. The County indicates that you simply picked up a letter addressed to you and no interview was conducted. Without an assertion that an investigatory meeting was conducted, a violation can not be stated.

² I note that the current MOU between the County and SEIU Local 715 does contain a non-discrimination clause at Article 2 Section 2.1 and Section 2.4 requires the parties to review compliance with the ADA. This MOU also contains a binding arbitration procedure.

To establish a prima facie case of discrimination 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; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of those rights. (Campbell Municipal Employees Association v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Association v. City of San Leandro (1976) 55 Cal.App.3d 553.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, 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 nexus factors should be present: (1) the employer's disparate treatment of the employee (Campbell, supra); (2) the employer's departure from established procedures and standards when dealing with the employee (San Leandro Police Officers Association, supra); (3) the employer's inconsistent or contradictory justifications for its actions (San Leandro Police Officers Association, supra); (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) employer animosity towards union activists (San Leandro Police Officers Association, supra; Los Angeles County Employees Association v. County of Los Angeles (1985) 168 Cal.App.3d 683.).

With regard to adverse action, the Court of Appeal in Campbell held that if the employer's conduct is "inherently destructive" of important employee rights, proof of unlawful intent is not required under the MMBA, even if the employer's conduct was motivated by business considerations. (Campbell at 423.) However, if the adverse effect on employee rights is "comparatively slight," unlawful intent must be proved if the employer produces evidence of legitimate and substantial business justifications. (Campbell at 424.)

You have not stated how the County's advising you that your two years of unpaid administrative leave was about to expire and that failure to return to work with your Doctor's medical assurance was a discriminatory act. Were you treated disparately from other employees who may have exhausted their two year leave allotment? Without further information which would establish the necessary "nexus", this allegation fails to state a violation of the MMBA.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please 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 the charging party. The amended charge must have the case number written on the top right hand

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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 I do not receive an amended charge or withdrawal from you before October 24, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

A handwritten signature in cursive script that reads "Roger Smith".

Roger Smith
Labor Relations Specialist

RCS

cc: Irene Martell