

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FAITH LANGLOIS-DUL, ET AL.,

Charging Parties,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 715,

Respondent.

Case No. SF-CO-140-M

PERB Decision No. 1917-M

August 2, 2007

Appearance: Faith Langlois-Dul, on behalf of Charging Parties.

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Faith Langlois-Dul, et al. (Langlois-Dul) of a Board agent's dismissal of her unfair practice charge. The charge alleged that the Service Employees International Union, Local 715 (Association) violated the Meyers-Milias-Brown Act (MMBA)¹ by breaching its duty of fair representation during meet and confer sessions leading to the ratification of a memorandum of understanding (MOD).

The Board has reviewed the entire record in this matter, including the original unfair practice charge, the warning and dismissal letters of the Board agent, and Langlois-Dul's appeal. Based on the discussion below, the Board vacates the dismissal and remands this matter to the Office of the General Counsel for further investigation and processing.

¹The MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

BACKGROUND

Langlois-Dul filed the charge on December 13, 2006, alleging that during the meet and confer session leading to the ratification of an MOD on June 16, 2006, the Association failed to provide fair representation to her and eight other employees. The charge further alleged that the Association negotiated a MOD that was unfavorable to her and the other charging parties, relative to other employees covered by the MOD. The Board agent issued a warning letter on December 19, 2006, and a dismissal letter on January 9, 2007. Both letters were addressed to Langlois-Dul, at 751 S. Bascom Avenue, San Jose, CA 95131. As the original unfair practice charge showed, the correct zip code for Langlois-Dul's address was "95128," and not "95131."

The Board agent stated in the warning letter dated December 19, 2006, inter alia:

For these reasons the charge, as presently written, does not state a prima facie case. . . . If I do not receive an amended charge or withdrawal from you before December 29, 2006, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

On January 9, 2007, the Board agent stated in the dismissal letter, in part:

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge, in its entirety, based on the facts and reasons contained in my December 19, 2006 letter.

On appeal to the Board, Langlois-Dul alleges that as of January 18, 2007, she had not received any correspondence from PERB via regular mail. She stated that she had first learned of the dismissal on January 18, 2007, after PERB sent a copy of the dismissal letter through electronic mail to her, in response to her inquiry about whether PERB had received her unfair practice charge. She also alleged that she had made a similar inquiry in December, 2006.

DISCUSSION

In accordance with PERB Regulation 32620,² PERB's General Counsel, through a Board agent, must investigate an unfair practice charge to determine whether the charge and the evidence supporting it state a prima facie case. The Board agent may make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being committed. (Reg. 32620(b)(4).) The Board agent also has the powers and duties to assist the charging party to state the contents of the charge in proper form, answer any

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq. Regulation 32620 provides, in pertinent part:

- (a) When a charge is filed, it shall be assigned to a Board agent for processing.
- (b) The powers and duties of such Board agent shall be to:
 - (1) Assist the charging party to state in proper form the information required by section 32615;
 - (2) Answer procedural questions of each party regarding the processing of the case;
 - (3) Facilitate communication and the exchange of information between the parties;
 - (4) Make inquiries and review the charge and any accompanying materials to determine whether an unfair practice has been, or is being, committed, and determine whether the charge is subject to deferral to arbitration, or to dismissal for lack of timeliness.
 - (5) Dismiss the charge or any part thereof as provided in Section 32630 if it is determined that the charge or the evidence is insufficient to establish a prima facie case; or if it is determined that a complaint may not be issued in light of Government Code Sections 3514.5, 3541.5, 3563.2, 71639.1(c) or 71825(c), or Public Utilities Code Section 99561.2; or if it is determined that a charge filed pursuant to Government Code section 3509(b) is based upon conduct occurring more than six months prior to the filing of the charge.

procedural questions regarding the processing of the case, and facilitate communication and the exchange of information between the parties. (Reg. 32620(b)(1)(2)(3).) The charging party may file an amended charge before the Board agent issues or refuses to issue a complaint. (Reg. 32621.)³

As the warning letter in the present case demonstrates, the Board agent gave Langlois-Dul ten (10) days from the date of the warning letter to file an amended charge, and provided Langlois-Dul the opportunity to make further inquiries if she had any questions. Unfortunately, the warning letter was addressed to the wrong zip code, and allegedly never reached Langlois-DuL. The Board agent was prevented from performing her duties under Regulation 32620, and Langlois-Dul was barred, albeit inadvertently, from filing an amended charge pursuant to Regulation 32621. We therefore vacate the dismissal letter, and restore this matter to the status quo that existed immediately before the issuance of the warning letter. We remand this matter to the Office of the General Counsel for the re-issuance of the warning letter and for further investigation and processing.

ORDER

The dismissal of the unfair practice charge in Case No. SF-CO-140-M is hereby VACATED; and the matter is REMANDED to the Office of the General Counsel for further investigation and processing.

³PERB Regulation 32621 states:

Before the Board agent issues or refuses to issue a complaint, the charging party may file an amended charge. The amended charge must contain all allegations on which the charging party relies and must meet all of the requirements of Section 32615. The amended charge shall be processed pursuant to Section 32620.