STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RON MONTGOMERY REED KROOPKIN, Charging Party, v. COUNTY OF SAN DIEGO, Respondent.	Case No. LA-CE-434-M PERB Decision No. 2005-M February 27, 2009

Appearance: Jeff Geraci, Attorney, for Ron Montgomery Reed Kroopkin.

Before Neuwald, Wesley and Dowdin Calvillo, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Ron Montgomery Reed Kroopkin (Kroopkin) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the County of San Diego (County) violated the Meyers-Milias-Brown Act (MMBA)[1] when it: (1) removed material he posted on his union's bulletin board; (2) denied his request for release time; (3) placed him on administrative leave; (4) issued him a letter of warning; (5) disbanded the Foster Care Worksite Issues Committee; (6) refused to process a grievance filed by him regarding the County's decision to disband the Foster Care Worksite Issues Committee; (7) issued him a disciplinary memorandum; (8) advised the president of Service Employees International Union, Local 221, that the County was suspending Employment and Eligibility Labor/Management Meetings (Labor/Management Meetings) because of Kroopkin's conduct at a past Labor/Management Meeting; and (9) denied a grievance filed by Kroopkin regarding

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

the County's decision to suspend the Labor/Management Meetings. Kroopkin alleged that this conduct constituted a violation of MMBA sections 3502, 3502.1, 3506 and 3578.[2] The Board agent dismissed all allegations in the charge.

On appeal, Kroopkin does not challenge the dismissal of allegations (1) through (7). Accordingly, the Board has only considered allegations (8) and (9) on appeal.

The Board has reviewed the entire record in this matter, including but not limited to, the original and amended unfair practice charge, the County's position statement, the Board agent's warning and dismissal letters, and Kroopkin's appeal. Based on this review, the Board finds the Board agent's warning and dismissal letters to be a correct statement of the law and well reasoned, and therefore adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. LA-CE-434-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Wesley and Dowdin Calvillo joined in this Decision.

[2]Section 3578 is part of the Higher Education Employer-Employee Relations Act (HEERA) (HEERA is codified at Sec. 3560 et seq.), not the MMBA. Because the County is not an "employer" as defined in HEERA section 3562(g), HEERA provisions are not applicable in this case.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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December 17, 2008

Jeff Geraci, Attorney
Law Office of Jeff Geraci
2550 Fifth Avenue, Ninth Floor
San Diego, CA 92103

Re: Ron Montgomery Reed "MONTY" Kroopkin v. County of San Diego
Unfair Practice Charge No. LA-CE-434-M
DISMISSAL LETTER

Dear Mr. Geraci:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 26, 2008 and was amended on April 8, 2008. Ron Montgomery Reed "MONTY" Kroopkin[1] alleges that the County of San Diego (County) violated sections 3502, 3502.1, 3506 and 3578 of the Meyers-Milias-Brown Act (MMBA or Act)[2] by: (1) removing material he posted on his union's (SEIU Local 221) bulletin board; (2) denying his request for release time; (3) placing him on administrative leave; (4) issuing him a Letter of Warning; (5) disbanding the Foster Care Worksite Issues Committee; (6) refusing to process a grievance filed by him regarding the County's decision to disband the Foster Care Worksite Issues Committee; (7) issuing him a Disciplinary Memorandum; (8) advising the president of Local 221 that the County was suspending E & E Labor/Management Meetings (Labor/Management Meetings or Union-management meetings) because of Mr. Kroopkin's conduct at a past Labor/Management Meeting and (9) denying a grievance filed by him regarding the County's decision to suspend the Labor/Management Meetings.

Mr. Geraci was informed in the attached Warning Letter dated November 20, 2008, that the above-referenced charge did not state a prima facie case. Mr. Geraci was advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in the November 20 Warning Letter, he should amend the charge. Mr. Geraci was further advised that, unless the charge was amended to state a prima facie case or withdrawn prior to December 1, 2008, the charge would be dismissed.

On November 25 and December 4, 2008, Mr. Geraci requested and received extensions of time to file an amended charge. On December 12, 2008, PERB received an amended charge in the above-referenced case. The December 12 amended charge is devoid of new facts and

[1] Mr. Kroopkin is represented by attorney Jeff Geraci.

[2] 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.

arguments regarding allegations 1-7. Accordingly, allegations 1-7 are hereby dismissed for the reasons stated in the attached November 20 Warning Letter.

In regards to allegation 8, the December 12 amended charge provides in relevant part:

> The County knew, or should have known that its letters would be re-published and their contents discussed. The approximately 2,000 people to whom the County's defamatory letter was published are not only union members, they are Mr. Kroopkin's co-workers. There is an undeniable, daily impact on his working conditions as a result of the Union choosing to publish the information in the manner that it did. While there may be situations in which publishing the information about one employee would not harm his working relationships, this is not one of them. Each of these co-workers, and potential co-workers and supervisors, was notified that Mr. Kroopkin made "threats" of such magnitude that multiple "members of management feel threatened," and that they no longer felt "safe" to attend a long standing meeting, and, because "employee safety," is the County's "number one priority," the meeting had to be completely suspended. It is clear that attitudes toward a co-worker identified in this way would be changed. At a minimum, it is enough to allow a full evidentiary hearing to determine the extent of the negative impact the publication of information has had on Mr. Kroopkin.
>
> The future impact of the information is also obvious. People who now, or will in the future, have input into promotional and other employment decisions, have information which is likely to disqualify Mr. Kroopkin and certainly places him at a severe disadvantage. It also exposes him to further retaliation by the County. He has filed multiple grievances and Unfair Labor Practice charges. A publication of this type is known to his supervisors and to Labor Relations and makes it far more likely actions will be taken against him in the future. It is inevitable that he has been marginalized and made to appear that not only will the County will [sic] threaten to, or actually discipline him, it will falsely label him as dangerous and defame him to co-workers and others, and refuse to even meet with him.
>
> [¶]
>
> Mr. Kroopkin had a right to participate in union activities and neither the County nor the Union can interfere with that right. It is clear that barring his attendance at union-management

> meetings and branding him as dangerous, interfered with his ability to participate.

In regards to allegation 9, the December 12 amended charge provides in relevant part:

> Mr. Kroopkin grieved these issues and, at each step, was advised they were not grievable. For example, on October 23, 2007, the County refused to rule, claiming, "The subject matter of your grievance is not grievable." Under Article 3 of the Memorandum of Agreement between the County and the Union, Mr. Kroopkin was entitled to receive the rights afforded by the Agreement without being discriminated against in any way for his union activities. He was denied participation in a Union-Management meeting, something referred to specifically in Article 2 of the MOA. His grievance should have been processed.

Attached to the December 12 amended charge is a partial copy of Article 2 of the Memorandum of Agreement (MOU) and a complete copy of Article 3 of the MOU. Article 3 prohibits the County from discriminating against employees for various reasons, including an employee's "union activities or membership. The portion of Article 2 filed with PERB provides:

> ARTICLE 2. UNION RIGHTS (Cont'd)
>
> A. The following procedure shall apply to:
>
> 1. Grievance handling.
> 2. Proceedings for appealing Performance Evaluation and/or Disciplinary actions.
> 3. Union-management committees for which the employee has been designated as a member.
> 4. Formal meet and confer meetings with the County.
> 5. Meetings of the Board of Supervisors, Civil Service Commission, or proceedings under the Labor Relations Ordinance which directly affect employees represented by the Union.
> 6. Union-management meetings convened and approved by the Agency and the Union.
> 7. Release time for one (1) employee to attend and make a one-half (1/2) hour presentation at the Agency's orientation during formal new employee training to acquaint new employees with the Union and its services.
>
> B. The employee shall complete an Agency Release Time Form.

C. The employee shall submit the completed form to his/her immediate supervisor for approval.

Discussion

1. Retaliation

As stated in the November 20 Warning Letter, to demonstrate that an employer discriminated or retaliated against an employee in violation of Government Code section 3506 and PERB Regulation 32603(a),[3] 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); Campbell Municipal Employees Assn. v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Assn. v. City of San Leandro (1976) 55 Cal.App.3d 553 (San Leandro).) 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.)

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging 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, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Speculation, conjecture or legal conclusions are insufficient to state a prima facie case. (Regents of the University of California (2005) PERB Decision No. 1771-H.)

The December 12 amended charge asserts, "The County knew, or should have known that its letters would be re-published and their contents discussed." However, there are no facts contained in either the charge or subsequent amendments that support this conclusion. To the

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

contrary, the record demonstrates that the County only sent the August 23 letter to the president of Local 221.

Nevertheless, even if the County knew that Local 221 would disclose the contents of the August 23 letter with others, Mr. Kroopkin's allegation that his employment was adversely impacted by the August 23 letter is speculative. While Mr. Kroopkin alleges that distribution of the August 23 letter would cause his coworkers' and supervisors' attitudes toward him to change, there is no evidence that Mr. Kroopkin's coworkers' or supervisors' attitudes toward him *have* changed. Similarly, Mr. Kroopkin's allegation that distribution of the August 23 letter will adversely impact his employment in the future is speculative because it requires the prediction of future events. Accordingly, Mr. Kroopkin's allegation that the County retaliated against him for exercising his rights under the MMBA by sending the August 23 letter to the president of Local 221 is dismissed for the reasons stated above and for the reasons provided in the November 20 Warning Letter.

2. Interference

A. Labor/Management Meetings

As stated in the November 20 Warning Letter, the test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The courts have described the standard as follows:

> All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons.

(Public Employees Association of Tulare County, Inc. v. Board of Supervisors of Tulare County (1985) 167 Cal.App.3d 797, 807.)

MMBA section 3502 provides in relevant part: "public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." Mr. Kroopkin alleges County interfered with his right to participate in protected activities under the MMBA by "barring his attendance at union-management meetings . . . ." However, the record does not support Mr. Kroopkin's allegation that he was barred from attending Labor/Management Meetings.[4] Moreover, even if the County barred Mr. Kroopkin from Labor/Management

[4] The County's August 23 letter provides in its entirety:

Meetings, Mr. Kroopkin has not established that he has an individual right to attend Labor/Management Meetings.

On the contrary, the partial MOU provided to PERB by Mr. Kroopkin lists "Union-management meetings" as one of several "UNION RIGHTS." As stated in the November 20 Warning Letter, Mr. Kroopkin does not have standing to allege that the County's decision to suspend Labor/Management Meetings violates Local 221's right to select its representatives. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S; Savanna School District (1982) PERB Decision No. 276; Westminster School District (1982) PERB Decision No. 277.) Accordingly, Mr. Kroopkin's allegation that the County interfered with his right to attend Labor/Management Meetings is dismissed for the reasons stated above and for the reasons provided in the November 20 Warning Letter.

B. Processing Mr. Kroopkin's Grievance

As stated above, the record demonstrates that Labor/Management Meetings are one of Local 221's rights under the MOU. Mr. Kroopkin has not presented any evidence establishing that individual employees have a right to attend Labor/Management Meetings. Consequently, Mr. Kroopkin has not demonstrated that he has an individual right to grieve the County's decision to suspend the Labor/Management Meetings. Accordingly, Mr. Kroopkin's allegation that the County interfered with his right to grieve its decision to suspend Labor/Management Meetings is dismissed for the reasons provided above and for the reasons provided in the November 20 Warning Letter.

The December 12 amended charge alleges that the County discriminated against Mr. Kroopkin by not processing his grievance regarding the County's decision to suspend Labor/Management Meetings. As stated above, the Board has held that in order for an employee to demonstrate a prima facie case of retaliation/discrimination, the employee must establish that the employer took action that adversely impacts the employee's employment. (Newark Unified School District, supra, PERB Decision No. 864.)

The record does not establish that Mr. Kroopkin's *employment* was adversely impacted by the County's decision to suspend Labor/Management Meetings. Thus, Mr. Kroopkin has failed to satisfy all of the elements of discrimination/retaliation set forth in Novato, supra, PERB Decision No. 210. Consequently, this allegation is dismissed.

As a result of the incident involving SEIU Steward, Monty Kroopkin, members of the management feel threatened and have requested that Labor Relations suspend the E & E Labor/Management Meeting. This meeting is a valuable source of information for both SEIU and the County; however, employee safety is the County's number one priority. At this time the E & E Labor/Management Meeting will be suspended indefinitely.

Right to Appeal

Pursuant to PERB Regulations, Mr. Kroopkin 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(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(a) and 32130; see also Gov. Code, § 11020(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(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 Mr. Kroopkin files 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(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(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,

TAMI R. BOGERT
General Counsel

By_____
Sean McKee
Regional Attorney

Attachment

cc: Susan Brazeau, Labor Relations Manager

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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November 20, 2008

Jeff Geraci, Attorney
Law Office of Jeff Geraci
2550 Fifth Avenue, Ninth Floor
San Diego, CA 92103

Re: Ron Montgomery Reed "MONTY" Kroopkin v. County of San Diego
Unfair Practice Charge No. LA-CE-434-M
WARNING LETTER

Dear Mr. Geraci:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 26, 2008 and was amended on April 8, 2008. Ron Montgomery Reed "MONTY" Kroopkin alleges that the County of San Diego (County) violated sections 3502, 3502.1, 3506 and 3578 of the Meyers-Milias-Brown Act (MMBA or Act)[1] by: (1) removing material he posted on his union's (SEIU Local 221) bulletin board; (2) denying his request for release time; (3) placing him on administrative leave; (4) issuing him a Letter of Warning; (5) disbanding the Foster Care Worksite Issues Committee; (6) refusing to process a grievance filed by him regarding the County's decision to disband the Foster Care Worksite Issues Committee; (7) issuing him a Disciplinary Memorandum; (8) advising the president of Local 221 that the County was suspending E & E Labor/Management Meetings (Labor/Management Meetings) because of Mr. Kroopkin's conduct at a past Labor/Management Meeting and (9) denying a grievance filed by him regarding the County's decision to disband the Labor/Management Meetings.

Background

In 2006 and 2007, Mr. Kroopkin filed four unfair practice charges against the County (PERB Case Nos. LA-CE-332-M, LA-CE-335-M, LA-CE-338-M and LA-CE-376-M). These four charges contain several of the above-described allegations. On May 18, 2007, PERB dismissed Case Number LA-CE-376-M. On August 21, 2008, PERB issued a complaint against the County in Case Number LA-CE-332-M. Thereafter, an informal settlement conference was held between Mr. Kroopkin and the County resulting in the withdrawal of Case Numbers LA-CE-332-M, LA-CE-335-M and LA-CE-338-M.

On November 19, 2008, Mr. Geraci and the undersigned discussed the above-titled case via telephone. During that telephone conversation, Mr. Geraci stated that the present charge only

[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.

concerns allegations 8 and 9. Therefore, this Warning Letter only analyzes whether the County violated the MMBA by advising Local 221's president that the County was suspending Labor/Management Meetings because of Mr. Kroopkin's conduct at a past Labor/Management Meeting and by denying a grievance filed by Mr. Kroopkin regarding the County's decision to disband Labor/Management Meetings.[2]

Mr. Kroopkin is employed by the County as a Human Services Specialist. The County's Human Services Specialists belong to a bargaining unit exclusively represented by Local 221. Mr. Kroopkin is both a union steward and member of Local 221's negotiation team.

On August 21, 2007, Local 221 President Sharon-Frances Moore informed Local 221's Executive Board that Mr. Kroopkin was going to "sue the Union." The following day, Local 221 member Linda Corea questioned Mr. Kroopkin about President Moore's accusation. "Feelings were strong and voices were raised. No threats were made and nothing was done or said which could have possibly been construed as a threat." However, County Manager Kim Medeiros heard Mr. Kroopkin and Ms. Corea speaking with raised voices and intervened. Ms. Medeiros informed Mr. Kroopkin and Ms. Corea that "she would not tolerate this situation." Mr. Kroopkin responded by informing Ms. Medeiros that "this was a discussion between Union members, on Union time, on Union property, and that she had no authority." Ms. Medeiros left without incident.

In a letter dated August 23, 2007, the County sent President Moore a letter that states in relevant part:

> As a result of the incident involving SEIU Steward, Monty Kroopkin, members of the management feel threatened and have requested that Labor Relations suspend the E & E Labor/Management Meeting. This meeting is a valuable source of information for both SEIU and the County; however, employee safety is the County's number one priority. At this time the E & E Labor/Management Meeting will be suspended indefinitely.

The above-titled charge states in relevant part:

> Mr. Kroopkin received a copy of this letter about September 1, 2007. The Labor Relations letter goes beyond accusing Mr. Kroopkin of a making [sic] a threat of violence. It claims there was a threat, considers it proven, and implements the punishment—suspension of the meetings if Mr. Kroopkin attends.

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[2] Please contact me immediately if Mr. Kroopkin wants allegations 1-7 analyzed. Otherwise, allegations 1-7 will be dismissed.

> By stressing the importance of the Meeting, but stating it would be suspended because of Mr. Kroopkin, the County pressured [Local 221] to exclude him if it wanted to continue the meeting. Given the history of actions taken against Mr. Kroopkin, it appears obvious its goal was to retaliate against Mr. Kroopkin, and to dictate to [Local 221] who could attend meetings and bargain on behalf of the members.
>
> Labor Relations issued a second letter on September 24, 2007, again claiming Mr. Kroopkin had caused "safety concerns," but those were "alleviated" because he would no longer attend the meetings.
>
> Mr. Kroopkin grieved these issues and, at each step, was advised they were not grieveable. For example, on October 23, 2007, the County refused to rule, claiming, "The subject matter of your grievance is not grievable."

Discussion

1. Retaliation

To demonstrate that an employer discriminated or retaliated against an employee in violation of Government Code section 3506 and PERB Regulation 32603(a),[3] 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); Campbell Municipal Employees Assn. v. City of Campbell (1982) 131 Cal.App.3d 416 (Campbell); San Leandro Police Officers Assn. v. City of San Leandro (1976) 55 Cal.App.3d 553 (San Leandro).) 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.

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

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

Here, the County sent the August 23 letter to the president of Mr. Kroopkin's union. The August 23 letter complains of Mr. Kroopkin's conduct at a past Labor/Management Meeting and advises the president of Mr. Kroopkin's union that the County was suspending further Labor/Management Meetings because Mr. Kroopkin's presence at the meetings caused management to fear for their safety. While the August 23 letter may have affected Mr. Kroopkin's relationship with Local 221 and his relationship with the County as a union representative, the current record is devoid of any evidence that the August 23 letter adversely affected Mr. Kroopkin's employment. Consequently, Mr. Kroopkin has not established that a reasonable employee would consider the County's actions to have an adverse impact on his or her employment. (Newark Unified School District, supra, PERB Decision No. 864.) Accordingly, this allegation must be dismissed.

2. Standing

The Board has previously held that both employers and employee organizations have the right to select those individuals who will represent them in negotiations without interference from the other party. (Savanna School District (1982) PERB Decision No. 276; Westminster School District (1982) PERB Decision No. 277.) Individual employees do not have standing to allege violations of sections of the Government Code that protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.[4])

The present charge was filed by Mr. Kroopkin as an individual employee. Consequently, Mr. Kroopkin does not have standing to allege that the County's conduct violates Local 221's right to select its representatives.

3. Refusing to Process Mr. Kroopkin's Grievance

The test for whether a respondent has interfered with the rights of employees under the MMBA does not require that unlawful motive be established; only that at least slight harm to employee rights results from the conduct. The courts have described the standard as follows:

> All [a charging party] must prove to establish an interference violation of section 3506 is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the

[4] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

> exercise of those activities, and (3) that employer's conduct was not justified by legitimate business reasons.

(Public Employees Association of Tulare County, Inc. v. Board of Supervisors of Tulare County (1985) 167 Cal.App.3d 797, 807.)

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging 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, 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.)

Mr. Kroopkin alleges that his grievance regarding the County's decision to disband Labor/Management Meetings was unlawfully denied. However, Mr. Kroopkin has not provided a copy of Local 221's memorandum of understanding (MOU) with the County. Consequently, Mr. Kroopkin has not established that his grievance alleges a violation of the MOU. Thus, Mr. Kroopkin has not demonstrated that the County has interfered with his rights.

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 Second Amended Charge, contain all the facts and allegations Mr. Kroopkin wishes to make, and be signed under penalty of perjury. 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 received from Mr. Kroopkin before December 1, 2008, the charge shall be dismissed. Questions concerning this matter should be directed to me at the above telephone number.

Sincerely,

Sean McKee
Regional Attorney

SM