

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ALFRED LAM,

Charging Party,

v.

CITY & COUNTY OF SAN FRANCISCO,

Respondent.

Case No. SF-CE-574-M

PERB Decision No. 2075-M

November 4, 2009

Appearances: Alfred Lam, on his own behalf; Gina M. Roccanova, Deputy City Attorney, for City and County of San Francisco.

Before Dowdin Calvillo, Acting Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Acting Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Alfred Lam (Lam) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the City and County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA)¹ by: (1) intimidating local officers of Lam's exclusive representative, Service Employees International Union, Local 1021 (SEIU), to not file/sign grievances on behalf of Lam; (2) colluding with SEIU to close two grievances filed by Lam;² (3) failing to notify Lam or local SEIU officers of the grievance closure; (4) retaliating against Lam for filing grievances and an unfair practice

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

² SEIU's role in the closure of Lam's grievances is the subject of the unfair practice charge in Case No. SF-CO-181-M. Lam's appeal of the dismissal of that charge is addressed in a separate Board decision.

charge; and (5) violating various sections of the City's Administrative Code. The Board agent dismissed the charge for failure to state a prima facie case of any of the alleged violations.

The Board has reviewed the dismissal and the record in light of Lam's appeal, the City's response and the relevant law. Based on this review, the Board affirms the dismissal of the charge for the reasons discussed below.

BACKGROUND

Lam is employed by the City as a counselor in the Juvenile Probation Department. On June 19, 2007, Lam filed a grievance alleging that he had been verbally harassed by his supervisor in retaliation for filing a complaint against the supervisor.³ The grievance was signed by an SEIU steward. On July 25, 2007, Lam filed a grievance alleging that Asian-American employees were being unfairly targeted for disciplinary action. Again, the grievance was signed by an SEIU steward.

On August 15, 2007, Lam sent two letters to the Chief Probation Officer moving both grievances to Level II. SEIU Local Vice President Kirk Edwards (Edwards) signed both letters. On September 5, 2007, Lam sent letters to the City's Employee Relations Division moving both grievances to Level III because the City had not responded to the grievances at Level II. Edwards again signed the letters.

In a letter dated January 25, 2008, City Labor Relations Manager Mary Hao (Hao) informed SEIU Worksite Organizer Margot Reed (Reed) that the Employee Relations Division considered both of Lam's grievances closed. The letter informed SEIU that Lam had filed discrimination claims with the City's Equal Employment Opportunity (EEO) office containing

³ All of the documents referenced in this decision were provided by the City as part of its position statement. In evaluating whether an unfair practice charge states a prima facie case, PERB is not required to ignore facts provided by the respondent and consider only the facts provided by the charging party. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

the same allegations as the grievances. The letter stated that, pursuant to Article II.A., section 63 of the collective bargaining agreement (CBA) between SEIU and the City, Lam had elected to pursue a remedy through the EEO office and thus could not maintain grievances over the same subject matter.⁴

On July 21, 2008, Lam called the Employee Relations Division to ask about the status of his two grievances. He was informed that both grievances were closed by Hao and Reed, on behalf of the City and SEIU respectively, on January 25, 2008. The charge alleged that the City did not inform Lam or any local SEIU official of the closure. The charge further alleged that in early 2008, the Assistant Director of the Juvenile Probation Department intimidated Edwards and the local SEIU chapter's chief steward into not signing anymore grievances for Lam. Finally, the charge alleged that the City violated several sections of its Administrative Code.

DISCUSSION

1. Compliance with PERB Regulation 32635(a)⁵

The City contends that Lam's appeal fails to comply with PERB Regulation 32635(a), which states in relevant part:

The Appeal shall:

(1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;

⁴ Article II.A., section 63 states in full:

In the event more than one administrative remedy may be available within the City and County governmental system of San Francisco, the Union and the employee shall elect only one. The election is irrevocable.

⁵ PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

(2) Identify the page or part of the dismissal to which each appeal is taken;

(3) State the grounds for each issue stated.

To satisfy the requirements of PERB Regulation 32635(a), the appeal must sufficiently place the Board and the respondent “on notice of the issues raised on appeal.” (*State Employees Trades Council United* (2009) PERB Decision No. 2069-H.)

In his appeal, Lam alleges that the City unlawfully closed his grievances without notifying him or local SEIU officers and that it retaliated against him because he filed grievances and this unfair practice charge. As indicated by the City’s discussion of the merits of these allegations in its response, Lam’s appeal sufficiently put the Board and the City on notice that Lam is appealing the Board agent’s dismissal of the grievance closure/notice and retaliation allegations.⁶ Therefore, the appeal complies with PERB Regulation 32635(a).

2. Collusion with SEIU to Close Grievances and Failure to Notify Lam or Local SEIU Officers of Closure

The charge alleged that the City committed an unfair practice by closing Lam’s grievances on January 25, 2008, in collusion with SEIU. However, the charge provided no facts showing that the City engaged in any conduct by which it conspired with SEIU to close Lam’s grievances. The City sent a letter on January 25, 2008, to SEIU Worksite Organizer Reed stating that the City considered the grievances closed based on the election of remedies provision of the parties’ CBA. The letter stated that Lam had elected to pursue a remedy through the EEO office and thus could not maintain grievances over the same subject. There is no indication that the letter was the result of any agreement or consultation with SEIU.

⁶ Because Lam’s appeal does not challenge the Board agent’s dismissal of the allegations that the Assistant Director of Juvenile Probation intimidated local SEIU officials and that the City violated sections of its Administrative Code, we do not address these allegations further.

The charge also alleged that the City committed an unfair practice by failing to notify both Lam and local SEIU officers of the closure of his grievances. The charge did not establish that the City owed a statutory duty to inform Lam directly of the closure. As for informing SEIU, the City sent a letter on January 25, 2008, to SEIU Worksite Organizer Reed stating that the City considered the grievances closed. Reed's failure to communicate that message to local SEIU officials is an internal union matter which PERB may not review because Lam has not demonstrated that the lack of communication had a substantial impact on his employment relationship with the City. (*Service Employees International Union, Local 221 (Kroopkin)* (2009) PERB Decision No. 2006-M; *Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106.) We therefore conclude that the City's role in the closure of Lam's grievances and its failure to inform him or local SEIU officials of the closures did not violate the MMBA.

3. Retaliation

To demonstrate that the City retaliated against him in violation of Section 3506 and PERB Regulation 32603(a), Lam must show that: (1) he exercised rights under the MMBA; (2) the City had knowledge of his exercise of those rights; (3) the City took adverse action against him; and (4) the City took the action because of his exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210; *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553.)

Lam engaged in activity protected by the MMBA when he filed the June 19 and July 25, 2007 grievances. (*Bay Area Air Quality Management District* (2006) PERB Decision No. 1807-M.) It is undisputed that the City knew of Lam's protected activities because the grievances were filed with the City.

It is arguable whether the City's closure of Lam's grievances and its failure to notify him or local SEIU officers directly of the closure constituted adverse actions. (See *City & County of San Francisco* (2004) PERB Decision No. 1664-M ["The adverse action must involve actual and not merely speculative harm."].) Nonetheless, assuming that the actions were adverse, the charge failed to establish the required nexus between Lam's protected activities and the alleged adverse actions. The charge alleged no facts showing that Lam was treated differently from other similarly situated employees or that the City in any way departed from established procedures. Nor did the charge allege facts to demonstrate that the City harbored animus toward SEIU or employees who used SEIU representation. The charge thus failed to establish an inference that the alleged adverse actions were unlawfully motivated. Accordingly, the charge did not state a prima facie case of retaliation.

ORDER

The unfair practice charge in Case No. SF-CE-574-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Wesley joined in this Decision.