STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LUELLA WARREN, Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Respondent.	Case No. SF-CO-215-M PERB Decision No. 2215-M November 9, 2011

Appearance: Luella Warren, on her own behalf.

Before Martinez, Chair; McKeag and Dowdin Calvillo, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Luella Warren (Warren) of a Board agent's dismissal (attached) of Warren's unfair practice charge. The charge alleged that the Service Employees International Union, Local 1021 (SEIU) violated the Meyers-Milias-Brown Act (MMBA)[1] by breaching its duty of fair representation. The Board agent dismissed the charge for failure to state a prima facie case.

In response to the appeal, we have reviewed the charge, the amended charge, SEIU's position statement, the warning and dismissal letters, and the entire record in light of the relevant law. Based on this review, the Board finds the Board agent's warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with

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

applicable law. Accordingly, the Board adopts the warning and dismissal letters as the decision of the Board itself, supplemented by the brief discussion below.[2]

DISCUSSION

PERB Regulation 32635(a)[3] provides that an appeal from a dismissal "shall" comply with the following requirements:

> (1) State the specific issues of procedure, fact, law or rationale to which the appeal is taken;
>
> (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 (Ventura, et al.)* (2009) PERB Decision No. 2069-H.) An appeal that merely reiterates facts alleged in the unfair practice charge does not comply with PERB Regulation 32635(a). (*Ibid.*)

The appeal in this matter does not comply with PERB Regulation 32635(a) in that it neither states specific issues appealed from and grounds for each issue, nor identifies the part of the dismissal to which the appeal is taken. The appeal largely reiterates, and expands upon, facts alleged in the unfair practice charge. As such, the appeal fails to sufficiently place the

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[2] In adopting the Board agent's warning and dismissal letters as the decision of the Board itself, the Board expressly excludes footnote 3 of the dismissal letter, which touches on the issue of whether negative remarks on a performance evaluation constitute adverse action. As the footnote correctly indicates, that issue is not directly relevant in a duty of fair representation case. The footnote also refers to Warren's performance evaluation as being "above average," but the performance evaluation attached to Warren's amended charge indicates her overall performance rating to be 2.95 (2 indicates "needs improvement" and 3 indicates "meets standard").

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

Board and SEIU on notice of the issues raised on appeal and is subject to dismissal on that basis alone. (*City of Brea* (2009) PERB Decision No. 2083-M.)

The appeal also contains factual allegations and documents that were not presented to the Board agent. PERB Regulation 32635(b) provides: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence." (*Los Banos Unified School District* (2009) PERB Decision No. 2063 [new evidence on appeal not considered where charging party was aware of such evidence prior to filing the charge and there was no demonstration of good cause].) The purpose of this regulation "is to require the charging party to present its allegations and supporting evidence to the Board agent in the first instance, so that the Board agent can fully investigate the charge prior to deciding whether to issue a complaint or dismiss the case." (*South San Francisco Unified School District* (1990) PERB Decision No. 830.)

The factual allegations and documents presented by Warren for the first time on appeal, with one exception, refer to events that pre-date the dismissal of the charge. Warren does not offer any evidence of good cause for her failure to provide these allegations and documents to the Board agent at the charge processing stage. Thus, they are not considered here.

The one exception concerns a March 17, 2011 submission, which Warren filed outside the time limit for filing the appeal. PERB Regulation 32635(a) requires that an appeal of a Board agent's dismissal of an unfair practice charge be filed within 20 days of the date the dismissal is served on the charging party. The charging party is free to supplement the appeal during the 20-day period. (See *San Leandro Unified School District* (2007) PERB Decision No. 1924 [Board accepted three addenda to appeal filed during the 20-day appeal period].) An addendum filed after the 20-day period has expired, however, is untimely unless good cause is shown for the late filing pursuant to PERB Regulation 32136, which provides as follows:

> A late fling may be excused in the discretion of the Board for good cause only. A late filing which has been excused becomes a timely filing under these regulations.

(*San Leandro Unified School District* (2007) PERB Decision Order No. Ad-366.) The Board has found good cause when a party makes a conscientious effort to timely file and the late filing was caused by circumstances beyond the party's control, such as a mailing or clerical error. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.) If the reason for the untimely filing is "reasonable and credible," the Board evaluates whether the opposing party would suffer any prejudice. (*Barstow Unified School District* (1996) PERB Order No. Ad-277.)

The submission filed by Warren on March 17, 2011, includes a cover letter by Warren dated March 16, 2011, and a letter co-signed by Warren and Elizabeth Udeafor (Udeafor), a fellow registered nurse, dated February 18, 2011 (joint letter). The joint letter consists of two short paragraphs expressing dissatisfaction with SEIU over Warren's and Udeafor's grievance matters. Warren's cover letter states that she had lost contact with Udeafor, but that on February 18, 2011, they resumed contact after a chance meeting.

Warren's chance meeting with Udeafor, however, does not in and of itself constitute good cause to excuse the late filing on March 17, 2011. This is especially true given that Warren had been in contact with Udeafor at least as of September 3, 2009, when Warren accompanied Udeafor to a meeting with SEIU representative, Susan Stofan, concerning Udeafor's employment issues. Warren filed her charge less than two months later on October 28, 2009. Presumably, Warren had the opportunity to solicit Udeafor's assistance at that time. Warren does not explain when she lost contact with Udeafor, what efforts she made to locate her prior to February 18, 2011, or any other facts that would show that the late filing was caused by circumstances beyond Warren's control. Moreover, although the joint letter

was executed on February 18, 2011, Warren waited a full month before filing it. Such conduct does not demonstrate a conscientious effort to comply in a timely fashion with the rules governing these proceedings. Therefore, Warren has failed to establish good cause for the Board to accept her late-filed submission.

Moreover, even were we to consider the contents of Warren's late-filed submission, it would not alter the Board's conclusion that Warren has not met her burden of establishing a prima facie breach of the duty of fair representation. The joint letter contains generalized statements that do not aid Warren in demonstrating that SEIU's actions or inactions were without a rational basis or devoid of honest judgment. (*International Association of Machinists (Attard)* (2002) PERB Decision No. 1474-M.)

ORDER

The unfair practice charge in Case No. SF-CO-215-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Dowdin Calvillo joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: 510-622-1023
Fax: (510) 622-1027

December 30, 2010

Luella Warren
1200 Lakeshore Avenue #14D
Oakland, CA 94606

Re: *Luella Warren v. SEIU Local 1021*
Unfair Practice Charge No. SF-CO-215-M
DISMISSAL LETTER

Dear Ms. Warren:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 28, 2009. Luella Warren (Ms. Warren or Charging Party) alleges that SEIU Local 1021 (Union or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by breaching its duty of fair representation.

Charging Party was informed in the attached Warning Letter dated October 18, 2010, 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, the charge should be amended. Charging Party was further advised that, unless the charge was amended to state a prima facie case or withdrawn prior to October 29, 2010, the charge would be dismissed.

On November 2, 2010, PERB received a timely amended charge. The amended charge consists of a single-page statement of facts and several attached documents including e-mail messages between Charging Party and her supervisor and an annual evaluation dated August 26, 2009. The October 18, 2010 Warning Letter informed the Charging Party that there were deficiencies in her charge and advised her to provide the following information:

- The date she contacted the Union for assistance;
- The Union agent with whom she spoke,
- The specific form of assistance she requested from the Union and its response, if any, to her request; and
- Any other facts demonstrating why the Union's failure to file a grievance or grievances on her behalf was arbitrary, discriminatory or in bad faith.

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

In the November 2, 2010 amended charge, Charging Party states that she contacted the Union on September 2, 2009 to learn that her Union Representative, Susan Stofan, was on vacation. She was interviewed by Wayne Templeton, and informed him that she had been given an adverse and unfair performance evaluation by her supervisor and that her supervisor had repeatedly failed to "promote" her into a full-time position despite her repeated requests. When Ms. Stofan returned from vacation, Charging Party states that she repeatedly attempted to contact her and to meet with her. Charging Party was interviewed by Ms. Stofan once, but states that "no meeting was held as promised." Presumably, Charging Party means to say that Ms. Stofan never arranged to meet with Ms. Warren's supervisor on her behalf. Charging Party also states that she spoke to the Union President once "and she was no help. They did nothing on my behalf."

Among the complaints that Ms. Warren lists in her statement of facts are several training opportunities, "promotions" and volunteer positions for which Ms. Warren applied and in which she was denied the opportunity to participate. A number of these opportunities and "promotions" were instead made available to younger nurses with less experience than Ms. Warren. At least one concern involves a claim that Ms. Warren did not "like Asians," a claim that Ms. Warren wanted to "clear up." The attached e-mail messages include a number of inquiries by Ms. Warren of her supervisor, asking about the status of her application(s) to various positions.

The attached performance evaluation of Ms. Warren rates her performance as a 2.95 on a 1-5 scale with a score of "1" being "Unsatisfactory," and a score of "5" being "Superior." Many of the "Needs Improvement" ratings in Ms. Warren's performance evaluation are in the area of interpersonal communications with other staff members. There are several comments that note various times when Ms. Warren was counseled for her negative interactions with coworkers. Ms. Warren received several "Exceeds Standards" in categories relating to patient interactions. The performance evaluation was administered to Ms. Warren on August 31, 2009. She refused to sign it.

In its response to the amended charge, the Union provides the following additional facts. During the meeting with Ms. Stofan, Ms. Warren explained that she is hard of hearing and that her hearing impairment (prior to her recent acquisition of multi-directional hearing aides) caused her to speak loudly in a manner that was sometimes perceived as anger. According to Ms. Stofan, the primary concern raised in the meeting was with regard to Ms. Warren's disability accommodation. Ms. Stofan reviewed the facts and determined that the employer's Disability Coordinator had received and was processing Ms. Warren's reasonable accommodation paperwork. Thus, Ms. Stofan determined that there was no action necessary to preserve or protect Ms. Warren's rights as to that issue. Ms. Stofan also promptly determined that the evaluation was not a matter that was subject to the grievance provisions in the MOU. Ms. Warren did not inform Ms. Stofan that she had been denied a promotion or transfer as a result of the unfavorable performance evaluation.[2]

[2] PERB has recently held that negative remarks in an otherwise positive performance evaluation are not an adverse act. (*State of California (Department of Corrections &*

The Union points out also that, even if Ms. Stofan had been made aware of all of Ms. Warren's concerns, a number of the other issues raised by Ms. Warren were not subject to the grievance provision of the MOU. Thus, the Union would not have filed a grievance even if it were aware of these additional concerns. These concerns include the employer's repeated failure to hire Ms. Warren into a full-time position, the employer's refusal to grant Ms. Warren a temporary status change, it's denial of her requests to teach computer charting and to serve as a volunteer. Finally, the Union asserts that Ms. Warren lacked the qualifications to be a Relief Charge Nurse.

Discussion

Charging Party has established that the charge was timely filed within two months of her first request for Union assistance. However, it is unclear what form of assistance Ms. Warren requested.

Assuming she sought Union assistance to file a grievance against her employer, it is not clear what grounds she presented for filing a grievance. Although Ms. Warren clearly believes that her seniority rights were violated when younger, less experienced nurses were hired for positions she sought, she does not attach a copy of the memorandum of understanding (MOU) or seniority provisions therein. However, an excerpt of the MOU is attached to the Union's response to the original charge. Evaluations are not subject to the grievance procedure in the MOU. However, an employee may grieve the denial of a promotion or transfer if the decision was based in whole or in part on an evaluation. According to the Union, Ms. Warren never requested that the Union file a grievance on her behalf, and even if she had, the facts she has alleged in her unfair practice charge do not amount to a breach of the MOU.

As noted in the October 18, 2010 Warning Letter, in order for Charging Party to establish the prima facie elements of a complaint against the Union for breaching its duty of fair representation, she must provide facts from which it becomes clear how the Union's failure to take some action on her behalf was arbitrary, discriminatory or in bad faith. (*Hussey v. Operating Engineers* (1995) 35 Cal.App.4th 1213.) The fact that the Union failed to file a grievance on her behalf, alone, does not establish a breach of that duty. Further undisputed evidence provided by the Union demonstrates that the Union representative considered the concerns that Ms. Warren raised to her, and made a reasoned judgment that these concerns were not grievable. Under these circumstances, it is not clear how the Union's action or failure to act was arbitrary, discriminatory or in bad faith.

Therefore, the charge is hereby dismissed based on the facts and reasons set forth in this letter and the October 18, 2010 Warning Letter.

Rehabilitation) (2010) PERB Decision No. 2118-S.) While this is not directly relevant to the allegation of a breach of the duty of fair representation by a union, it is noteworthy that Ms. Warren's performance evaluation, overall, was above-average.

Right to Appeal

Pursuant to PERB Regulations,[3] 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

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

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,

WENDI L. ROSS
Interim General Counsel

By _____
Alicia Clement
Regional Attorney

Attachment

cc: Vincent Harrington, Jr., Attorney

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor
PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
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October 18, 2010

Luella Warren
1200 Lakeshore Avenue #14D
Oakland, CA 94606

Re: *Luella Warren v. SEIU Local 1021*
Unfair Practice Charge No. SF-CO-215-M
WARNING LETTER

Dear Ms. Warren:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 28, 2009. Luella Warren (Ms. Warren or Charging Party) alleges that SEIU Local 1021 (Union or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by breaching its duty of fair representation.

The charge states, in its entirety:

> Within the last six months the above named labor organization has failed to fairly represent Luella Warren by failing to file a grievance concerning a less than satisfactory eval [sic] she received and a change in her work assignment for arbitrary or bad faith reasons.

In its December 2, 2009 response to the charge, the Union asserts that the charge should be dismissed because it does not provide facts demonstrating that the Union's conduct was arbitrary, discriminatory or in bad faith. Additionally, the Union states that neither evaluations nor changes in work assignments are grievable under the Memorandum of Understanding between the Union and the employer. Thus, even viewing Charging Party's facts in the light most favorable to her, the charge fails to establish the prima facie elements of an unfair practice charge.

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

Discussion

Burden:

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.)

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.) The charging party's burden includes providing specific dates of the alleged violation(s). (*United Teachers of Los Angeles (Seliga)* (1998) PERB Decision No. 1289.)

At present, there are no specific dates provided for the alleged violation(s) of the Act. Accordingly, it is not possible for PERB to find that the charge was timely filed. Even assuming the charge was timely filed, it is not clear that the Union breached its duty of fair representation, for the following reasons.

Breach of the Duty of Fair Representation:

While the MMBA does not expressly impose a statutory duty of fair representation upon employee organizations, the courts have held that "unions owe a duty of fair representation to their members, and this requires them to refrain from representing their members arbitrarily, discriminatorily, or in bad faith." (*Hussey v. Operating Engineers* (1995) 35 Cal.App.4th 1213.) In *Hussey*, the court further held that the duty of fair representation is not breached by mere negligence and that a union is to be "accorded wide latitude in the representation of its members . . . absent a showing of arbitrary exercise of the union's power."

In *International Association of Machinists (Attard)* (2002) PERB Decision No. 1474-M, the Board determined that it is appropriate in duty of fair representation cases to apply precedent developed under the other acts administered by the Board. The Board noted that its decisions in such cases, including *Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332 and *American Federation of State, County and Municipal Employees,*

Local 2620 (Moore) (1988) PERB Decision No. 683-S, are consistent with the approach of both *Hussey* and federal precedent (*Vaca v. Sipes* (1967) 386 U.S. 171).

With regard to when "mere negligence" might constitute arbitrary conduct, the Board observed in *Coalition of University Employees (Buxton)* (2003) PERB Decision No. 1517-H that, under federal precedent, a union's negligence breaches the duty of fair representation "in cases in which the individual interest at stake is strong and the union's failure to perform a ministerial act completely extinguishes the employee's right to pursue his claim." (Quoting *Dutrisac v. Caterpillar Tractor Co.* (9th Cir. 1983) 749 F.2d 1270, at p. 1274; see also, *Robesky v. Quantas Empire Airways Limited* (9th Cir. 1978) 573 F.2d 1082.)

Thus, in order to state a prima facie violation of the duty of fair representation under the MMBA, a charging party must at a minimum include an assertion of facts from which it becomes apparent in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (*International Association of Machinists (Attard)*, *supra*, PERB Decision No. 1474-M.) The burden is on the charging party to show how an exclusive representative abused its discretion, and not on the exclusive representative to show how it properly exercised its discretion. (*United Teachers – Los Angeles (Wyler)* (1993) PERB Decision No. 970.)

When a charge alleges that the exclusive representative's failure to act on behalf of an employee constituted a breach of its duty of fair representation, PERB looks to whether "the cumulative actions of the exclusive representative, considered in their totality, [are] sufficient to constitute a prima facie showing of an arbitrary failure to fairly represent the employee." (*American Federation of State, County and Municipal Employees, International, Council 57 (Dehler)* (1996) PERB Decision No. 1152-H.) A violation may be established based on an overall pattern of conduct even if any one of the exclusive representative's actions by itself would not breach the duty of fair representation. (*Ibid.; San Francisco Classroom Teachers Association, CTA/NEA (Bramell)* (1984) PERB Decision No. 430.) However, the exclusive representative's failure to take certain actions does not establish a violation if the overall pattern of conduct was one in which the union assisted the employee. (*California School Employees Association (Hansen)* (2000) PERB Decision No, 1379.)

At present, the charge is devoid of facts regarding Ms. Warren's contact with the Union. Absent such facts as when Ms. Warren contacted the Union, with whom she spoke, and what response, if any, was given to her, it is not possible for PERB to find that the Union's alleged failure to file grievances on her behalf breached its duty of fair representation. (*Inlandboatmans Union of the Pacific (Treas)* (2007) PERB Decision No. 1919-M.)

Finally, even assuming that Ms. Warren is able to provide additional facts establishing that she contacted the Union and that the Union refused to file a grievance or grievances on her behalf, she must provide facts establishing that the Union's failure to do so was based on an arbitrary, discriminatory or bad faith reasons. This is because a union's reasonable decision not to pursue a grievance, regardless of the merits of the grievance, is not a violation of the duty of

fair representation. (*California State Employees' Association (Calloway)* (1985) PERB Decision No. 497-H.)

In sum, the charge, as written, is devoid of the following pertinent facts:

- The date she contacted the Union for assistance;
- The Union agent with whom she spoke,
- The specific form of assistance she requested from the Union and its response, if any, to her request;
- Any other facts demonstrating why the Union's failure to file a grievance or grievances on her behalf was arbitrary, discriminatory or in bad faith.

In the absence of these additional facts, PERB is unable to find the prima facie elements of a breach of the duty of fair representation, and the charge will be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case.[2] 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 October 29, 2010,[3] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Alicia Clement
Regional Attorney

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[2] 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.*)

[3] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)