

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



RIVERSIDE COUNTY ATTORNEYS'
ASSOCIATION,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. LA-CE-566-M

PERB Decision No. 2228-M

December 21, 2011

Appearances: Hayes & Cunningham by Lauren Arens, Attorney, for Riverside County Attorney's Association; The Zappia Law Firm by Brett M. Ehman, Attorney, for County of Riverside.

Before McKeag, Dowdin Calvillo and Huguenin, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Riverside County Attorneys' Association (RCAA) of a Board agent's partial dismissal of its unfair practice charge. The charge alleges that the County of Riverside (County) violated sections 3502, 3507(c), 3507.1(c) and 3507.3 of the Meyers-Milias-Brown Act (MMBA)¹ by: (1) failing to process RCAA's request to be registered as an employee organization; (2) refusing to allow a neutral third-party² to review employee support cards selecting RCAA as the representative of employees in the position of deputy county counsel in order to determine RCAA's majority status; (3) refusing to allow

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

² The third party in this case was state mediation and conciliation service (SMCS).

SMCS to review employee support cards selecting RCAA as the representative of employees in the position of deputy public defender to determine RCAA's majority status; (4) refusing to create a bargaining unit consisting of County employees employed in the position of deputy county counsel; (5) refusing to create a bargaining unit, or, in the alternative, recognize a previously established bargaining unit consisting of County employees in the position of deputy public defender; (6) unreasonably withholding recognition of RCAA as an exclusive employee organization representing deputy county counsel and deputy public defender employees; and (7) refusing to negotiate with RCAA, thereby denying RCAA its right to represent employees.³

On appeal, RCAA challenges the dismissal of its allegation that the County violated MMBA section 3507.1(c) by refusing to create a bargaining unit consisting of County employees in the position of deputy county counsel. The Board has reviewed the entire record in this matter. Based on this review, we dismiss RCAA's appeal as untimely for the reasons discussed below.

PROCEDURAL BACKGROUND

On January 3, 2011, RCAA's charge was partially dismissed. In the partial dismissal letter, the Board agent notified RCAA that it had 20 calendar days to appeal the partial dismissal.

On January 21, 2011, RCAA filed its appeal with PERB by facsimile and letter. RCAA's January 21, 2011 appeal contained no factual information and set forth no issues of contention which RCAA had taken with the Board agent's partial dismissal.

³ The partial dismissal letter fully addresses only allegations number 2, 4, 6, and 7 above. Additionally, allegation number 1 is partially addressed in the partial dismissal.

On February 3, 2011, by facsimile and letter, RCAA attempted to again file its appeal. Again, that letter contained no factual information and set forth no issues of contention with the Board agent's partial dismissal.

On February 4, 2011, PERB rejected the February 3, 2011 letter as untimely and notified the parties that the January 21, 2011 filing would be considered to constitute the appeal from the Board agent's partial dismissal. RCAA did not appeal that determination pursuant to PERB Regulation 32360.⁴

On February 28, 2011, the County filed its opposition to the appeal.

On March 7, 2011, PERB notified RCAA and the County by letter that the filings were completed and the case was placed on the Board's docket on February 28, 2011.

On March 7, 2011, by facsimile and letter, RCAA supplemented its appeal with additional factual allegations and documents that challenged the Board's agent's partial dismissal.

On March 8, 2011, the County objected to PERB's consideration of RCAA's March 7, 2011 letter.

On March 8, 2011, RCAA faxed a letter to PERB contending that there was good cause for PERB to consider the additional factual allegations and documents in the March 7, 2011 supplement to the appeal.

On March 9, 2011, PERB notified the parties that acceptance of the March 7, 2011 and March 8, 2011 filings would be at the discretion of the Board.

On March 24, 2011, the County again objected to consideration of RCAA's March 7, 2011 filing.

⁴ PERB regulations are codified at California Code of Regulations, title 8 section 31001 et seq.

DISCUSSION

RCAA'S Compliance With Requirements For Filing Appeal

Pursuant to PERB Regulation 32635(a) an appeal from a dismissal must:

- (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; *City & County of San Francisco* (2009) PERB Decision No. 2075-M.) An appeal that does not reference the substance of the Board agent's dismissal fails to comply with PERB Regulation 32635(a). (*United Teachers of Los Angeles (Pratt)* (2009) PERB Order No. Ad-381; *Lodi Education Association (Hudock)* (1995) PERB Decision No. 1124; *United Teachers - Los Angeles (Glickberg)* (1990) PERB Decision No. 846.)

RCAA's January 21, 2011 appeal is timely.⁵ However, RCAA did not state in the appeal the specific issues of procedure, fact, law or rationale to which the appeal is taken, identify the page or part of the dismissal to which each appeal is taken, nor did it state the grounds for each

⁵ RCAA's January 21, 2011 filing with PERB is an appeal and not a request for an extension of time. PERB Regulation 32132(a) provides that a request for an extension of time must be filed at least three calendar days before the expiration of the time required for filing the document. Even if the filing were a request for an extension of time, RCAA did not file it with PERB at least three calendar days before the January 23, 2011 deadline to file the appeal. Therefore, the request for an extension of time would have been tardy.

issue stated.⁶ Thus, RCAA's January 21, 2011 appeal does not comply with the requirements of PERB Regulation 32635(a).⁷

Good Cause For The Board To Find The March 7, 2011 Filing As Timely

PERB Regulation 32136 provides that a late filing may be excused in the discretion of the Board for good cause only. (*North Orange County Regional Occupation Program* (1990) PERB Decision No. 807; *Trustees of the California State University* (1989) PERB Order No. Ad-192-H.)

In a letter sent to PERB on March 8, 2011, RCAA contends that it has shown good cause for the Board to find the March 7, 2011 supplement to the appeal to be timely. We disagree.

The sole reason RCAA sets forth as to why we should find good cause is that RCAA needed additional time to collect the exhibits which were included in the appeal. The new factual allegations and documents in the March 7, 2011 supplement all predate the filing of the original charge. RCAA states no reason why it needed extra time to collect the exhibits. We are therefore unable to conclude that good cause exists for the delay. As the March 7, 2011 supplement to the appeal is untimely, we do not consider it here.

Good Cause For The Board To Consider New Information On Appeal

Even if RCAA's March 7, 2011 filing were timely, the information in the supplement to the appeal does not meet the requirements of PERB Regulation 32635(b).

PERB Regulation 32635(b) provides: "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new support evidence." (*Los Banos Unified*

⁶ In the January 21, 2011 appeal, RCAA did inform PERB that RCAA would send its "position statement forthwith."

⁷ RCAA's February 3, 2011 appeal is untimely and will not be considered by the Board. However, even if the February 3, 2011 appeal were timely, it still would not satisfy the requirements of PERB Regulation 32635(a).

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 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.)

In its March 7, 2011 supplement to its appeal, RCAA appeals the dismissal of its allegation that the County violated the MMBA when it refused to create a bargaining unit consisting of County employees in the position of deputy county counsel. RCAA’s supplement to its appeal contains factual allegations and documents that were not presented to the Board agent. The new factual allegations and documents all reference incidents which predate the filing of the original charge. Neither the appeal nor the supplement to the appeal provides a reason why these factual allegations and documents could not have been presented in the original charge. Thus, RCAA has failed to establish the requisite good cause to consider these new allegations and documents (*Ibid.*), and we do not consider them on appeal.

ORDER

The unfair practice charge in Case No. LA-CE-566-M is hereby DISMISSED IN PART WITHOUT LEAVE TO AMEND.

Members McKeag and Dowdin Calvillo joined in this Decision.