STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA MONICA COLLEGE FACULTY ASSOCIATION, Charging Party, v. SANTA MONICA COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. LA-CE-5581-E PERB Decision No. 2243 February 29, 2012

Appearances: Lawrence Rosenzweig, Attorney, for Santa Monica College Faculty Association; Fagen, Friedman & Fulfrost by Anna J. Milller, Attorney, for Santa Monica Community College District.

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

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Santa Monica College Faculty Association (Association) of the Office of the General Counsel's dismissal (attached) of its unfair practice charge. The charge alleged that the Santa Monica Community College District (District) violated the Educational Employment Relations Act (EERA)[1] during contract negotiations for a successor collective bargaining agreement (CBA) by violating the parties' ground rules and engaging in surface bargaining. The charge alleged that this conduct constituted a violation of EERA section 3543.5, subdivisions (a), (b) and (c).

The Office of the General Counsel dismissed the charge. The Board agent determined that the allegation concerning violation of the parties' ground rules was untimely and that,

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

notwithstanding the timeliness issue, the allegations taken together failed to state a prima facie violation of the duty to bargain in good faith.

We have reviewed the entire record in this matter. Based on our review of the record and application of the relevant law, the Board finds the Board agent's warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law. Accordingly, the Board adopts the warning and dismissal letters as the decision of the Board itself, as supplemented by a brief discussion of the issues raised on appeal.

DISCUSSION

The Board agent determined that the Association's allegation regarding the District's violation of the parties' ground rules fell outside the six-month statutory limitations period. The Association contends on appeal that the limitations period does not apply because the District's alleged unlawful conduct is in the nature of a continuing violation.

The Association is the exclusive bargaining representative of a bargaining unit composed of faculty members employed by the District. At the time the charge was filed, the Association and the District were in negotiations for a successor CBA. On June 21, 2010, the negotiators for each party executed a list of ground rules for the negotiations. The specific ground rule alleged to have been violated by the District is: "9. Any tentative agreement shall be reduced to writing and signed by a representative of each party."

The Association alleged that the parties reached agreement on several articles of the CBA on July 14 and July 28, 2010. The Association also alleged that in negotiations for previous CBAs, the parties had always signed off on "tentative agreements as they were reached at the bargaining table." Further, the Association alleged that on January 25 and March 30, 2011, the District distributed a document entitled "Status of Negotiations" stating

that the articles on which the parties reached agreement were no longer open for discussion; that at a negotiation session on April 18, 2011, the Association requested that the District sign off on the articles on which the parties reached agreement; and that to date, the District has failed to do so.

PERB is prohibited from issuing a complaint "in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." (EERA § 3541.5, subd. (a)(1).) 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.) A charging party bears the burden of demonstrating that the charge is timely filed. (*Tehachapi Unified School District* (1993) PERB Decision No. 1024; *State of California (Department of Insurance)* (1997) PERB Decision No. 1197-S.)

The unfair practice charge was filed on June 20, 2011. The limitations period therefore extends back to December 20, 2010. Because it is the Association's position that the parties were required to sign off on "tentative agreements as they were reached at the bargaining table,"[2] the Association knew or should have known that the District violated the ground rules as to the agreed upon articles of the CBA when those agreements were reached at the bargaining table on July 14 and July 28, 2010. As this allegation concerns conduct that occurred outside the limitations period, it is time-barred. The Board agent further correctly determined that the Association's April 18, 2011, request that the District sign off on the

[2] The District argues that under the ground rule at issue it was only required to sign one final tentative agreement at the conclusion of contract negotiations, emphasizing that the ground rule refers to "tentative agreement" in the singular, not in the plural. Given the conclusion reached in this decision that the Association's allegation concerning the District's violation of the ground rules is time-barred, it is unnecessary to address the parties' conflicting interpretations of the ground rule.

tentative agreements reached on July 14 and July 28, 2010, did not restart the limitations period. (See, e.g., *Los Angeles City & County Employees Union, Local 99 (Grove)* (2008) PERB Decision No. 1973.)

The Association argues that the District's alleged refusal to sign off on the tentative agreements reached concerning certain articles of the CBA on July 14 and July 28, 2010, in violation of the parties' ground rules, is a continuing violation and therefore the statutory limitations period does not apply. We disagree.

To establish a continuing violation, a charging party must show that there is some new violation, sufficiently independent of the original act, occurring within the statutory limitations period. (*North Orange County Community College District* (1999) PERB Decision No. 1342.) A continuing violation is not found where an employer's conduct during the statutory limitations period is simply maintaining the original position or action it took outside the limitations period. (*Compton Unified School District* (2009) PERB Decision No. 2015 [employer's maintenance of position taken that employees were exempt until reclassified did not constitute a continuing violation]; *UCLA Labor Relations Division* (1989) PERB Decision No. 735-H [university's failure to change its position did not constitute a continuing violation].) As the Board stated in *Pasadena Unified School District* (1977) EERB[3] Decision No. 16, "[a]ll alleged unlawful conduct of the respondent [respondent's failure to remove letters from personnel files] occurred in 1974. A claim based thereon cannot continue without end."

The Association alleges that the ground rule at issue required the District to sign off on "tentative agreements as they were reached at the bargaining table." Those agreements were

[3] Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

reached on July 14 and July 28, 2010. If violations of the ground rule occurred, they occurred when the District did not sign off on those tentative agreements at or about the time those agreements were reached at the bargaining table. It is recognized that the District's duty to negotiate with the Association continues throughout their negotiating relationship. That does not mean, however, that an alleged violation of that duty retains its unlawful character on a continuing basis for that length of time. A claim based on the District's failure to sign tentative agreements reached on July 14 and July 28, 2010, should have been brought within six months of that time. Such a claim cannot continue without end.

Moreover, the Board agent correctly determined that neither of the allegations in the amended charge established any indicia of bad faith bargaining. Nothing raised on appeal alters that determination. Therefore even assuming the allegation in the original charge concerning a violation of the ground rules is timely, under the totality of the circumstances test, a single indicia of bad faith bargaining is insufficient to establish a prima facie violation. (*State of California (Department of Personnel Administration)* (2003) PERB Decision No. 1516-S [single allegation of the employer reneging on the ground rules insufficient to demonstrate bad faith bargaining].)

ORDER

The unfair practice charge in Case No. LA-CE-5581-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Dowdin Calvillo joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
700 N. Central Ave., Suite 200
Glendale, CA 91203-3219
Telephone: (818) 551-2808
Fax: (818) 551-2820

November 10, 2011

Lawrence Rosenzweig, Attorney
Law Offices of Lawrence Rosenzweig
2730 Wilshire Blvd., Suite 425
Santa Monica, CA 90403

Re: *Santa Monica College Faculty Association v. Santa Monica Community College District*
Unfair Practice Charge No. LA-CE-5581-E
DISMISSAL LETTER

Dear Mr. Rosenzweig:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2011. The Santa Monica College Faculty Association (Association or Charging Party) alleges that the Santa Monica Community College District (District or Respondent) violated section 3543.5, subdivisions (a), (b), and (c) of the Educational Employment Relations Act (EERA or Act)[1] by engaging in surface bargaining.

Charging Party was informed in the attached Warning Letter dated October 14, 2011, 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, Charging Party should amend the charge. Charging Party was further advised that, unless Charging Party amended the charge to state a prima facie case or withdrew it prior to October 21, 2011, the charge would be dismissed. Charging Party filed a First Amended Charge on October 19, 2011.

In the Warning Letter, Charging Party was advised that the charge's allegation that the District violated the parties' ground rules on July 14, 2010 and July 28, 2010 was outside the six-month statutory period. Charging Party was further advised that even if this allegation is timely, the mere presence of one indicia of surface bargaining alone is insufficient to establish bad faith. (*Regents of the University of California* (1985) PERB Decision No. 520-H.)

The First Amended Charge provides the following additional facts, in verbatim:

> On June 29, 2011, July 12, 2011, September 19, 2011 and September 26, 2011, the District came to bargaining sessions without any written proposals or counter-proposals. The lack of

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

> written proposals from the District made it impossible to make any progress towards agreement and demonstrates the District's "take it or leave it" attitude.
>
> This inflexible attitude is also reflected in negotiations regarding Article 1.4 of the collective bargaining agreement. On October 17, 2011, the District proposed modifications to Article 1.4 and refused to entertain any counterproposals from the Association. The District stated it would not allow any modifications whatsoever by the Association.

The District provided the following undisputed facts.[2] During the parties June 29, 2011 negotiations session, the Association presented the District with several proposals, which the District reviewed and stated that it would respond to at the next session. At the July 12, 2011 session, the District accepted several of the Association's proposals. Furthermore, during the parties' July 26, 2011 session, the District presented a revised proposal to the Association as well as worked with the Association to revise a Memorandum of Understanding (MOU) regarding flex day obligations. During the September 19, 2011 session, the District accepted several of the Association's proposals and rejected one proposal. On September 26, 2011, the parties signed an MOU regarding flex time and agreed on revised language for another proposal.

As an initial matter, because the First Amended Charge alleges additional factors that are within the six-month statutory period, the untimely allegation regarding the District's violation of the parties' ground rules may be considered for purposes of analyzing the totality of the District's course of conduct in bargaining. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.) As explained below, the charge still fails to state a prima facie violation of bad faith bargaining.

PERB Regulation 32615(a)(5)[3] 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.) Here, Charging Party merely

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[2] The District provided a response to the First Amended Charge on November 2, 2011. Nothing in PERB case law requires a Board agent to ignore undisputed 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.)

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

concludes that because the District came to several bargaining sessions without any proposals or counterproposals, the District exhibited a "take-it-or-leave-it" attitude. The charge fails to satisfy its burden of alleging clear and concise facts regarding what proposals the District failed to make or respond to, and how the District's failure to make proposals or counterproposals demonstrated a "take-it-or-leave-it" attitude. (PERB Regulation 32615(a)(5); *State of California (Department of Food and Agriculture)*, *supra*, PERB Decision No. 1071-S.) In fact, PERB has held that an employer is not obligated to make a counterproposal to a union's proposal that is predictably unacceptable. (*Regents of the University of California* (2010) PERB Decision No. 2094-H.) The charge does not allege any facts regarding what proposals were made by the Association, therefore making it is impossible to determine whether the District had any obligation to respond to them. Moreover, despite the non-presentation of District proposals during these negotiating sessions, the District accepted several of the Association's proposals and revised others. Further, on July 26, 2011, the District presented a revised proposal to the Association. Accordingly, the charge fails to demonstrate that the District exhibited a "take-it-or-leave-it" attitude during negotiations. (*General Electric Co.* (1964) 150 NLRB 192, 194, enf. 418 F.2d 736; *Charter Oak Unified School District*, *supra*, PERB Decision No. 873.)

The charge also alleges that the District refused to entertain the Association's proposed modifications to Article 1.4. PERB has made clear that while a party may not merely go through the motions, it may lawfully maintain an adamant position on any issue. Adamant insistence on a bargaining position is not necessarily refusal to bargain in good faith. (*Oakland Unified School District* (1982) PERB Decision No. 275.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (*NLRB v. Herman Sausage Co.* (5th Cir. 1960) 275 F.2d 229.) Accordingly, the District's adamant position on refusing to modify Article 1.4 is not necessarily bad faith bargaining. Moreover, the charge fails to allege any facts suggesting that the District's position on Article 1.4 was not fairly maintained. (*NLRB v. Herman Sausage Co.*, *supra*, 275 F.2d 229.)

As the First Amended Charge fails to establish an additional indicia of surface bargaining, the single allegation that the District reneged on the ground rules by refusing to sign the tentative agreements when they were reached is insufficient to establish bad faith bargaining. (*State of California (Department of Personnel Administration)* (2003) PERB Decision No. 1516-S; *Regents of the University of California*, *supra*, PERB Decision No. 520-H.) Therefore, the charge is hereby dismissed based on the facts and reasons set forth above and in the October 14, 2011 Warning Letter.

Right to Appeal

Pursuant to PERB Regulations, 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

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,

M. SUZANNE MURPHY
General Counsel

By _____
Ellen Wu
Regional Attorney

Attachment

cc: Howard Friedman, Attorney

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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700 N. Central Ave., Suite 200
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October 14, 2011

Lawrence Rosenzweig, Attorney
Law Offices of Lawrence Rosenzweig
2730 Wilshire Blvd., Suite 425
Santa Monica, CA 90403

Re: *Santa Monica College Faculty Association v. Santa Monica Community College District*
Unfair Practice Charge No. LA-CE-5581-E
WARNING LETTER

Dear Mr. Rosenzweig:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2011. The Santa Monica College Faculty Association (Association or Charging Party) alleges that the Santa Monica Community College District (District or Respondent) violated section 3543.5, subdivisions (a), (b), and (c) of the Educational Employment Relations Act (EERA or Act)[1] by violating the parties' ground rules during contract negotiations.

Facts as Alleged[2]

The Association is the exclusive representative of a bargaining unit comprised of faculty employees at the District. In or about June 2010, the parties began negotiations for a successor collective bargaining agreement (CBA).

On June 21, 2010, the parties executed a list of ground rules for their negotiations. Item 9 of the ground rules provides:

> Any tentative agreement shall be reduced to writing and signed by a representative of each party.

[1] EERA is codified at Government Code section 3540 et seq. The text of the EERA and PERB Regulations may be found at www.perb.ca.gov.

[2] The District provided a response to the charge on July 15, 2011. Some of the facts recited herein are provided by the District. Nothing in PERB case law requires a Board agent to ignore undisputed 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 charge asserts that during negotiations for prior collective bargaining agreements, the parties have always memorialized and signed tentative agreements "as they were reached at the bargaining table."

During the course of the parties' current negotiations for a successor CBA, they reached tentative agreements on the following:

1. Article 24.5 – Team Teaching. Tentative agreement reached on July 14, 2010.

2. Article 30.1, 30.2 – Employee Rights; Article 6.4, 6.5.1 – Faculty Assignment and Load; Article 9.5.3, 9.5.4 – Intersession Assignments; and Article 18.5 – Safety, Health and Welfare. Tentative agreements reached on July 28, 2010.

The charge provides that the above tentative agreements were reduced to writing, and the Association requested that the District sign the same at a negotiation session on April 18, 2011. Additionally, on January 25, 2011 and March 30, 2011, the District distributed documents entitled "Status of Negotiations," which stated that the above agreed-upon articles were no longer open for discussion.

The District, nevertheless, has refused to sign the written tentative agreements.

Discussion

1. Statute of Limitations

The charging party's burden 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.)

In this case, the charge was filed on June 20, 2011. This means that the six-month statutory period extends back until December 20, 2010. Accordingly, any allegations of wrongdoing by the District occurring prior to December 20, 2010 are untimely unless an exception applies.

The charge alleges that the parties' ground rules and past practice require the parties to sign off on tentative agreements "as they are reached at the bargaining table." Here, since the parties reached tentative agreements regarding several articles on July 14, 2010 and July 28, 2010, they should have signed off on these agreements on or about those same dates. However, to date, the District has refused to do so. As provided above, the statutory period begins to run

once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District*, *supra*, PERB Decision No. 1177.) Here, the Association knew on July 14 and 28, 2010, or soon thereafter, that the District had failed to sign off on the tentative agreements. Accordingly, these allegations occurred outside the statutory period and therefore fail to state a prima facie case.

The charge also fails to establish that an exception applies. The charge alleges that the Association asked the District to sign these tentative agreements on April 18, 2011, nearly nine months after the agreements were reached at the bargaining table. Once the statutory period begins to run, it does not begin anew by making the same request. (*IFPTE, Local 21, AFL-CIO* (2011) PERB Decision No. 2192-M; *Los Angeles City & County Employees Union, Local 99 (Grove)* (2008) PERB Decision No. 1973.) Accordingly, the Association's April 18, 2011 request that the District sign off on the tentative agreements does not restart the statutory period.

2. Failure to Bargain in Good Faith

Even if the allegations are timely, the charge fails to state a prima facie violation of the duty to bargain.

The charge alleges that the employer violated EERA section 3543.5(c) by engaging in bad faith or "surface" bargaining. It is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (*Muroc Unified School District* (1978) PERB Decision No. 80.) Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (*Oakland Unified School District* (1982) PERB Decision No. 275.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain because it amounts to merely going through the motions of negotiations. (*General Electric Co.* (1964) 150 NLRB 192, 194, enf. 418 F.2d 736.) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (*Oakland Unified School District* (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (*Ibid.*) Conditioning agreement on economic matters upon prior agreement on non-economic subjects is evidence of an unwillingness to engage in a give-and-take. (*State of California (Department of Personnel Administration)* (1998) PERB Decision No. 1249-S.)

Other factors that have been held to be indicia of surface bargaining include: negotiator's lack of authority which delays and thwarts the bargaining process (*Stockton Unified School District* (1980) PERB Decision No. 143); efforts to renege on previously agreed on ground rules (*Stockton Unified School District* (1980) PERB Decision No. 143); and reneging on tentative

agreements the parties already have made (*Charter Oak Unified School District* (1991) PERB Decision No. 873; *Stockton Unified School District*, *supra*; *Placerville Union School District* (1978) PERB Decision No. 69).

In the instant charge, the single allegation that the District reneged on the ground rules by refusing to sign the tentative agreements when they were reached is insufficient to establish bad faith bargaining. (*State of California (Department of Personnel Administration)* (2003) PERB Decision No. 1516-S [single allegation of the employer reneging on the ground rules was insufficient to demonstrate bad faith bargaining]; *Regents of the University of California* (1985) PERB Decision No. 520-H [unless the conduct is egregious, the mere presence of one of these indicia alone is insufficient to establish bad faith].) Accordingly, the charge fails to state a prima facie violation of bad faith bargaining.

3. Retaliation

The charge also alleges that by the above conduct, the District violated EERA section 3543.5, subdivision (a).

To demonstrate that an employer discriminated or retaliated against an employee in violation of EERA section 3543.5(a), the charging party must show that: (1) the employee exercised rights under EERA; (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*).)

The charge does not allege any facts to support any of the above elements for retaliation and accordingly fails to state a prima facie case.

For these reasons the charge, as presently written, does not state a prima facie case.[3] 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 Charging Party or 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

[3] 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.*)

October 21, 2011,[4] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Ellen Wu

Ellen Wu
Regional Attorney

EW

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