STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Charging Party, v. CITY OF NOVATO, Respondent.	Case No. SF-CE-2311-M PERB Decision No. 3048-M August 12, 2026

Appearances: Weinberg, Roger & Rosenfeld by Kerianne R. Steele and R. Maxwell Sinclair, Attorneys, for Service Employees International Union, Local 1021; Burke, Williams & Sorensen by Mark E. Wilson, Allison B. Hernandez, and Donald V. Le, Attorneys, for City of Novato.

Before Krantz, Krausse, and Ortega, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Charging Party Service Employees International Union, Local 1021 (SEIU) from a determination by PERB's Office of the General Counsel (OGC) to dismiss SEIU's unfair practice charge. The charge, as amended, alleged that Respondent City of Novato interfered with rights protected by the Meyers-Milias-Brown Act (MMBA; Govt. Code, § 3500 et seq.) when it photographed or video recorded bargaining unit members picketing outside a City building, or created the appearance of doing so. OGC dismissed the amended charge for failure to state a prima facie case. SEIU timely appealed, and the City filed an opposition.

In resolving an appeal from a dismissal, we review OGC's determinations de novo. (*City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2 (*San Francisco*).) At the pre-complaint stage, the charging party's burden is not to produce evidence, but merely to allege facts that, if proven, would state a prima facie case. (*Ibid*., citing *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13, fn. 8.) We assume that charging party's factual allegations are true, and we view them in the light most favorable to the charging party. (*San Francisco*, *supra*, p. 2; *Cabrillo Community College District* (2015) PERB Decision No. 2453, p. 8 (*Cabrillo I*); *Cabrillo Community College District* (2019) PERB Decision No. 2622, p. 4 (*Cabrillo II*).) We do not rely on the respondent's responses if they explicitly or implicitly create a factual conflict with charging party's allegations, even if the respondent's contrary responses are stated more persuasively or appear as if they may be backed up by more supporting evidence, when compared to charging party's allegations. (*San Francisco*, *supra*, p. 2; *Cabrillo I*, *supra*, p. 8.) Additionally, "where a material factual dispute turns on the respondent's state of mind, we take into account that motive is generally within respondent's own knowledge and that there is little opportunity for pre-hearing discovery," meaning that "we impose on charging party a relatively low burden to allege facts tending to show the requisite state of mind." (*San Francisco*, *supra*, at p. 3 [citation and internal quotation marks omitted].)

Thus, in the current procedural posture, we generally do not resolve conflicting allegations, make factual findings, or judge the merits of the dispute. (*San Francisco*, *supra*, PERB Decision No. 2712-M, p. 2; *Cabrillo II*, *supra*, PERB Decision No. 2622, pp. 4-5.) If there are one or more contested, outcome-determinative facts (or mixed

questions of law and fact), OGC should issue a complaint. (*San Francisco*, *supra*, pp. 2-3; *Salinas Valley Memorial Healthcare System* (2012) PERB Decision No. 2298-M, p. 13.) Furthermore, a complaint must ordinarily issue when there are contested, colorable legal theories. (*San Francisco*, *supra*, p. 3; *County of Santa Clara*, *supra*, PERB Decision No. 2321-M, p. 13.) In contrast, it is appropriate to dismiss an alleged violation without issuing a complaint if the parties' filings disclose undisputed facts sufficient to defeat the claim. (*San Francisco*, *supra*, p. 3; *Cabrillo I*, *supra*, PERB Decision No. 2453, p. 9.)

As we proceed to explain, applying these standards requires us to reverse the dismissal and remand for OGC to issue a complaint consistent with this decision.

FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

In 2025, the parties were engaged in bargaining for a successor memorandum of understanding. On August 1, 2025, SEIU filed an unfair practice charge alleging that the City had failed to bargain in good faith. Shortly thereafter, SEIU notified the City that its membership had authorized an unfair practice strike to be held on August 5, 2025.

On the day of the strike, bargaining unit employees picketed at several locations, including the parking lot of the City's Administrative Building. SEIU alleges that picketers observed Assistant City Manager Carla Hansen in the Administrative Building, holding her phone up to a window overlooking SEIU's parking lot picket line, creating the appearance that she was photographing or video recording the picketers. SEIU alleges that picketers who observed Hansen felt intimidated because they believed she was photographing or video recording their presence on the picket line.

In response to the charge, the City denied that Hansen photographed or video recorded picketers during the August 2025 strike. The City also stated, without contradiction, that it neither disciplined nor threatened discipline against any striking employee.

On January 8, 2026, OGC issued SEIU a warning letter stating that the facts set forth in SEIU's initial charge failed to establish a prima facie case of interference. The warning letter characterized it as "purely speculative" to allege that Hansen was engaged in photography or video recording activity, as "[t]here may be any number of reasons why Hansen may have been using her phone, in her office, near a window." The warning letter also stated that, even if Hansen was photographing and/or video recording the picketers, SEIU did not "establish that such conduct would tend to cause some harm to protected rights." In reaching this conclusion, OGC relied on the City's argument that SEIU posted photographs and videos of picketers on the union's social media accounts and website, and local media published similar photos and videos of striking workers.

After receiving the warning letter, SEIU filed an amended unfair practice charge, slightly modifying its original allegations regarding Hansen's apparent use of her cell phone to photograph or video record picketers. SEIU also alleged that it only posted photographs or videos of picketers if they consented, and media outlets followed this practice as well. SEIU further alleged that Hansen's apparent surveillance was particularly intimidating given that the Assistant City Manager's job duties include disciplining employees.

On May 15, 2026, OGC dismissed the amended charge. After briefly summarizing the allegations, the dismissal letter stated as follows:

> "SEIU's allegations amount to a showing that, on the day of the strike, the Assistant City Manager observed the strike that was going on in her workplace. Presumably a large number of other people also observed the strike, watched news footage of the strike, or visited social media sites regarding the strike. There are no facts to show that Hansen actually recorded the picket line, and there is no allegation that she distributed or published any recording she might have made. Accordingly, it is irrelevant that SEIU and local news media obtained consent from their subjects. There are also no allegations that the City or Hansen took or threatened any action whatsoever as a result of observing the picket line.
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> "The charge is hereby dismissed based on the facts and reasons set forth herein and in the January 8, 2026 Warning Letter."

DISCUSSION

To establish a prima facie interference case, the facts must show that a respondent's conduct tends to or does result in some harm to protected rights. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 36 (*San Diego*).) A charging party need not show that the respondent acted because of an unlawful motive. (*Claremont Unified School District* (2019) PERB Decision No. 2654, p. 20.)

If a charging party union or employee establishes a prima facie interference case, the burden shifts to the employer. (*San Diego*, *supra*, PERB Decision No. 2747-M, p. 36.) The degree of harm dictates the employer's burden. (*Ibid*.) If the harm is "inherently destructive" of protected rights, the employer must show that the interference results from circumstances beyond its control and that no alternative

course of action was available. (*Ibid*.) For conduct that is not inherently destructive, the employer may attempt to justify its actions based on operational necessity. (*Ibid*.) In such cases, PERB balances the asserted business need against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, PERB finds a violation. (*Ibid*.) Within the category of actions or rules that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its business need was important and that it narrowly tailored its actions or rules to attain that purpose while limiting harm to protected rights as much as possible. (*Id*. at pp. 36-37, fn. 19.)

Surveillance of protected activity, as well as the appearance of such surveillance, constitutes conduct that tends to chill the exercise of protected rights. (*Palomar Health* (2024) PERB Decision No. 2895-M, pp. 43-48 (*Palomar*); *County of San Bernardino* (2018) PERB Decision No. 2556-M, pp. 20-21 (*San Bernardino*).) Accordingly, a charging party pleads a valid prima facie case of interference by alleging that an employer's agent has gone beyond merely observing open, public protected activity near the employer's property and instead has: (a) photographed, video recorded, or engaged in other recordkeeping of protected activities, or (b) created the appearance of such conduct. (*Palomar*, *supra*, pp. 43-48; *San Bernardino*, *supra*, pp. 20-21.)

Had OGC applied these standards, it would have concluded that SEIU alleged facts establishing a prima facie case. However, OGC did not cite or apply any precedent relating to surveillance or the appearance of surveillance. Among other consequences, OGC did not acknowledge that the appearance of surveillance by an

employer's agent is sufficient to establish a prima facie interference case. (*Palomar*, *supra*, PERB Decision No. 2895-M, pp. 47-48; *San Bernardino*, *supra*, PERB Decision No. 2556-M, pp. 21-22.)

OGC must issue a complaint where, as here, the charging party has alleged facts amounting to a prima facie case. Then, at the formal hearing, the respondent can contest charging party's factual allegations. The respondent can also present evidence that it had a legitimate business need outweighing the tendency to harm protected rights, and that it narrowly tailored its conduct to that business need while limiting harm to protected rights as much as possible. (See *ante* at p. 6; *Palomar*, *supra*, PERB Decision No. 2895-M, pp. 42-48; *San Bernardino*, *supra*, PERB Decision No. 2556-M, pp. 20-23.) Based on the record before us, we do not yet know whether the City will seek to defend Hansen's alleged conduct based upon a business need. The City has not yet been required to answer a complaint, and it has so far offered no explanation of what Hansen was doing with her phone, or why she was doing it.

OGC labeled SEIU's charge as "speculative" because SEIU does not know exactly what Hansen was doing when picketers observed her conduct. This ignores that the charge at least alleged that Hansen's actions created the appearance of surveillance, which on its own is a fully actionable allegation. Moreover, OGC's warning letter, later affirmed and incorporated into its dismissal letter, itself engaged in speculation by opining that "[t]here may be any number of reasons why Hansen may have been using her phone." OGC cannot refrain from issuing a complaint on that basis, as doing so would preemptively validate an as-of-yet unarticulated and unproven defense. Such reasoning would effectively invert the burden of proof,

requiring the charging party to rebut in advance potential defenses that the employer may assert. SEIU will not have the burden of proof on such defenses even after OGC issues a complaint, and it is even more improper to place that burden on SEIU at the pre-complaint stage.

Lastly, we address the fact that SEIU's picketing occurred in public view, and both media and the union published photos and videos of the picketing. SEIU's allegations about consent are relevant, but even absent such allegations, neither the public nature of the picketing nor the images that SEIU and media outlets posted would constitute a basis for dismissal. PERB precedent recognizes that an employer's surveillance or the appearance thereof tends to intimidate employees from engaging in protected activity, even when the protected activity is public facing. (See, e.g., *Palomar*, *supra*, PERB Decision No. 2895-M, pp. 44-45 [leafletting patrons at a public facility's front entrance].) This is consistent with other decisions in which we have noted that employers are unique in that their control over discipline makes their conduct more likely to discourage protected activity. (*San Jose/Evergreen Federation of Teachers, AFT Local 6157, and American Federation of Teachers, AFL-CIO (Crawford et al.)* (2020) PERB Decision No. 2744, p. 23.)

Also instructive is *F.W. Woolworth Co.* (1993) 310 NLRB 1197 (*Woolworth*), cited with approval in *Palomar*, *supra*, PERB Decision No. 2895-M, p. 43 and *San Bernardino*, *supra*, PERB Decision No. 2556-M, pp. 20-21.[1] In *Woolworth*, even

[1] Although California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, PERB considers federal precedent for its potential persuasive value. (*Palomar*, *supra*, PERB Decision No. 2895-M. p. 43, fn. 21; *Operating Engineers Local Union No. 3, AFL-CIO (Wagner et al.)* (2021) PERB

though the union had notified local media that employees would be leafletting store entrances, resulting in at least one television spot that included interviews with employees engaged in leafletting, the National Labor Relations Board found the employer liable for unlawfully photographing and video recording the leafletting. (*Woolworth*, *supra*, 310 NLRB 1197-1198 [affording little weight to the fact that the union chose to publicize its protected activities]; see also *National Steel and Shipbuilding Co. v. National Labor Relations Bd.* (D.C. Cir. 1998) 156 F.3d 1268, 1272 [upholding surveillance violation despite fact that union invited local media to attend rally]; *John Ascuaga's Nugget* (1990) 298 NLRB 524, 554 fn. 105 [fact that media reporters and photographers were covering an event did not detract from conclusion that surveillance by employer tended to chill protected activity].)

For the foregoing reasons, SEIU has alleged facts that, if proven, would establish a prima facie interference case.

ORDER

We reverse the dismissal in unfair practice charge Case No. SF-CE-2311-M. We remand the matter to the Office of the General Counsel to issue a complaint consistent with this decision.

Members Krausse and Ortega joined in this Decision.

Decision No. 2782-M, p. 9, fn. 10; *City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 47, fn. 16.)