STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RAGUI H. MICHAEL, Charging Party, v. CITY & COUNTY OF SAN FRANCISCO (DEPARTMENT OF AGING AND ADULT SERVICES), Respondent. SAN FRANCISCO IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY, Joined Party.	Case No. SF-CE-829-M PERB Decision No. 2295-M November 30, 2012

Appearances: Ragui H. Michael, on his own behalf; Hanson Bridgett by Angela M. Clements, Attorney, for San Francisco In-Home Supportive Services Public Authority.

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

DECISION

MARTINEZ, Chair: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Ragui H. Michael (Michael) from the dismissal (attached) of his unfair practice charge. The charge, as amended, alleged that the City & County of San Francisco (Department of Aging and Adult Services) (CCSF DAAS) violated the Meyers-Milias-Brown Act (MMBA)[1] by withholding agency fees from Michael's pay without his knowledge or permission. Before the amended charge was dismissed, Michael filed an application for joinder of parties, requesting that the San Francisco In-Home Supportive Services Public Authority (Public Authority) be joined as a respondent. By dismissal letter

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

dated August 1, 2012, the Office of the General Counsel granted Michael's request for joinder, but dismissed the charge for failure to state a prima facie case. Michael filed a timely appeal.

The Board has reviewed the record in its entirety and given full consideration to the appeal and to a statement in opposition to the appeal filed by the Public Authority. Based on this review, the Board finds the warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law. Accordingly, the Board hereby adopts the warning and dismissal letters as the decision of the Board itself.

On appeal, Michael asserts that the CCSF DAAS falsely represented that union membership is mandatory for homecare workers working more than 20 hours and coerced him into paying union membership fees. He asserts that an unfair practice charge is therefore warranted under the MMBA. Michael also takes issue with the Office of the General Counsel's determination that the CCSF DAAS is not Michael's employer. Regardless of the validity of either of Michael's assertions, however, his charge was ultimately dismissed not because he named the wrong employer, but because he named the wrong respondent. (Dismissal, pp. 4-5.)

PERB Regulation 32900 et seq.[2] set forth procedures required to be followed by an employee organization for providing notice and opportunity to object to agency fees. PERB Regulation 32997 specifically provides that "[i]t shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations." Michael's dispute is with the Service Employees International Union, Local 250, Health Care Workers Union, AFL-CIO (SEIU), not with his employer. Therefore, he should have named SEIU, rather than his employer as respondent. Because the unfair practice charge was filed against the wrong respondent, we affirm the dismissal of the charge.

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

ORDER

The unfair practice charge in Case No. SF-CE-829-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dowdin Calvillo and Huguenin joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027

August 1, 2012

Ragui H. Michael
214 Garces Drive
San Francisco, CA 94132

Re: *Ragui H. Michael v. City & County of San Francisco (Department of Aging and Adult Services)*
Unfair Practice Charge No. SF-CE-829-M
DISMISSAL LETTER

Dear Mr. Michael:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 4, 2011. In the initial charge, Ragui H. Michael (Michael or Charging Party) alleges that the City & County of San Francisco (Department of Aging and Adult Services) (CCSF or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by withholding agency fees from his pay without his knowledge or permission. CCSF filed a position statement on June 27, 2011.

Charging Party was informed in the attached Warning Letter dated January 24, 2012, 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 on or before February 13, 2012, the charge would be dismissed. Subsequently, an extension of time to respond was granted.

On April 16, 2012, Charging Party filed a First Amended Charge. The First Amended Charge identifies the respondent as the San Francisco In-Home Supportive Services Public Authority (Public Authority). On May 18, 2012, Charging Party filed an Application for Joinder of Parties, asking that the Public Authority be joined as a respondent to this case pursuant to PERB Regulation 32164.[2]

---

[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.

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

On June 4, 2012, the CCSF filed a further position statement asking that it be dismissed with prejudice as a party in this matter. On June 8, 2012, the Public Authority filed a position statement objecting to joinder.

For the reasons discussed below, the Public Authority is appropriately joined as a party in this matter. As further discussed below, the First Amended Charge does not cure the deficiencies discussed in the Warning Letter. The First Amended Charge does not state a prima facie case that either the CCSF or the Public Authority committed a violation of the MMBA. Therefore, for the reasons discussed below and in the January 24, 2012, Warning Letter, the charge is dismissed.

Summary of Facts and PERB Investigation

As stated in the Warning Letter, Michael provides in-home supportive services (IHSS) to his disabled parent. The CCSF and its Department of Aging and Adult Services (DAAS) processes his timesheets and makes payroll deductions, and his paychecks are issued by the State Controller's Office.

Also as stated in the Warning Letter, PERB's investigation reveals that CCSF has established a Public Authority to provide for delivery of IHSS services. The Public Authority is established by California statutory law and City Ordinance. (Welf. & Inst. Code, § 12301.6; San Francisco Administrative Code, §§ 70.1 et seq.) According to CCSF, there is a Collective Bargaining Agreement (CBA) between the Public Authority and Service Employees International Union Local 250 (SEIU). This CBA governs terms and conditions of employment and provides for deduction of an agency fee for IHSS providers who work more than 25 hours per month.

Michael first learned on January 26, 2011 that the CCSF was deducting money from his paycheck for union dues. A DAAS social worker named Brenda McGregor (McGregor) told Michael that the dues were paid to the SEIU. She stated that automatic union membership was mandatory for homecare providers working 20 or more hours, and did not provide him with any information about the Public Authority. When Michael enrolled as an IHSS provider for his parent, the Public Authority was not involved and never contacted Michael about his employment.

In the First Amended Charge, Michael alleges that he has never applied to be a member of SEIU and that the deduction of dues is unauthorized. The Public Authority never notified him of the existence of the CBA. Michael's primary point of contact was with McGregor of the CCSF DAAS. The DAAS repeatedly provided him with incorrect information about the dues deduction, and the Public Authority never provided him with any information at all. Michael learned later that McGregor had sent a union membership enrollment form to SEIU, without his knowledge or permission.

In its position statement dated June 27, 2011, the CCSF alleges that it is not Michael's employer for any purpose. The Public Authority, in its position statement dated June 8, 2012, likewise states that it is not Michael's employer and that the MMBA does not apply.

The Public Authority is Appropriately Joined as a Party in This Matter

PERB Regulation 32164, subdivision (c), provides:

> The Board may allow joinder if it determines that the party has a substantial interest in the case or will contribute substantially to a just resolution of the case and will not unduly impede the proceeding.

PERB Regulation 32164, subdivision (d), provides:

> The Board may order joinder of an employer, employee organization or individual, subject to its jurisdiction, on application of any party or its own motion if it determines that:
> (1) In the absence of the employer, employee organization or individual, as a party, complete relief cannot be accorded; or
> (2) The employer, employee organization or individual has an interest relating to the subject of the action and is so situated that the disposition of the action in their absence may:
> (A) As a practical matter impair or impede their ability to protect that interest; or
> (B) Leave any of the parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of said interest.

The crux of Michael's charge is that his employer failed to inform him that an agency fee or union dues would be deducted from his paycheck. Michael alleges that he received conflicting information from various sources regarding which entity was his employer for the purposes of agency fee deduction. His paychecks are issued by the State Controller; his parent directs him with respect to services he provides; the CCSF/DAAS processes his timesheets; and the Public Authority delivers IHSS services for CCSF. Questions of joint or dual employment may properly be addressed by the Board. (See, e.g., *Ravenswood City Elementary School District* (2004) PERB Decision No. 1660 [finding that charter school, not public school district, was appropriate employer].)

Providers of IHSS services may sign up for a registry maintained by the Public Authority, which refers them to recipients in need of services. These registry providers are deemed employees of the Public Authority for the purposes of wages, benefits, and other terms and conditions of employment. (Welf. & Inst. Code, § 12301.6, subd. (c).) Alternatively, recipients of services may select their own provider, such as a family member. Michael's disabled parent used this option. These providers are "referred to the Public Authority" for the purposes of wages, benefits, and other terms and conditions of employment. (Welf. & Inst. Code, § 12301.6, subd. (h).)

The San Francisco Administrative Code, section 70.3, subdivision (f) specifically states that IHSS providers are not employees of CCSF for any purpose. It further states that the Public Authority "shall be deemed to be the employer of IHSS personnel" for the purposes of the MMBA. (San Francisco Administrative Code, § 70.3, subd. (g).)

Thus, as stated in the Warning Letter, it appears that the Public Authority arguably may be considered to be Michael's employer for purposes of an unfair practice charge filed under the MMBA. As such, the Public Authority arguably has a substantial interest in this case or will contribute substantially to a just resolution of the case. Disallowing joinder at this stage of the proceedings might subject all parties to inconsistent or multiple obligations. Accordingly, the request for joinder is granted.

The Charge is Dismissed Because Charging Party Does Not State a Prima Facie Case Against Either CCSF or the Public Authority

Government Code section 3500 provides that the statutory purpose of the MMBA is to allow for full communication between public employers and their employees. Michael alleges that he was enrolled as a member of the union without his knowledge or consent in violation of this provision and of Government Code section 3502. He contends that this violation impacts numerous other IHSS providers who are not enrolled in the Public Authority's registry and who may not be aware of their rights under the MMBA.

Michael alleges that the DAAS provided the State Controller's office with false information, resulting in the unauthorized dues deduction. Michael contends that this violates Government Code section 3508.5. Michael further argues that the dues deduction is a violation of Labor Code sections 224 and 225 and is a misdemeanor.

As stated in the Warning Letter, the MMBA authorizes an agency fee arrangement under which employees are required, as a condition of employment, to join the union and pay union dues, or refrain from membership and pay an agency fee. (Gov. Code, § 3502.5.) The union is required to provide annual written notice to each nonmember who will be required to pay an agency fee. (PERB Regulation 32992.) Enough information must be provided to potential agency fee objectors to make an intelligent objection, and the information must be provided with the initial collection of the agency fee. (*Office of Professional Employees International Union, Local 29, AFL-CIO & CLC (Fowles)* (2012) PERB Decision No. 2236-M.) The union's failure to provide adequate notice, or its provision of inaccurate information, may be the basis for an unfair practice charge. (*Ibid.*)

PERB has held that the proper respondent in an action to challenge the amount of an agency fee deduction is the union or exclusive representative. (*National Education Association (Henkel, et al.)* (1987) PERB Decision No. 656; *Capistrano Unified School District* (1984) PERB Decision No. 437.) The union, not the employer, collects the fee, and the union must follow certain procedures in calculating the amount of the fee, including reducing the fee proportionally to account for money used for political purposes. (*Ibid.*) An employer is not required to obtain written authorization before withholding agency fee deductions from

employee paychecks. (*Sweetwater Union High School District* (2001) PERB Decision No. 1417.) The employer does not have an obligation to ensure that a union complies with notice requirements. (*Ibid.*; see also *San Ramon Valley Unified School District* (1989) PERB Decision No. 751.)

Accordingly, neither the Public Authority nor the CCSF has an affirmative obligation under the MMBA to advise Michael of agency fee deductions, procedures or requirements. The general statutory purpose of the MMBA to promote communication between public employers and their employees does not impose a specific obligation on the employer to inform employees about agency fee requirements or union membership. (Gov. Code, § 3500.) MMBA section 3508.5, subdivision (b), requires a public employer to deduct agency fees and transmit them to an exclusive representative as provided by an agency fee agreement. The facts presented here do not state a prima facie violation of either of these sections. Regardless of whether the Public Authority or the CCSF is considered Michael's employer, a prima facie violation of the MMBA is not stated.

Michael alleges that either the CCSF or Public Authority violated Labor Code sections 224 and 225. PERB does not have jurisdiction to enforce violations of the Labor Code. (*State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2018-S.) Therefore, these allegations do not state a prima facie case.

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 _____
Laura Z. Davis
Regional Attorney

Attachment

cc: Molly L. Kaban, Attorney
Janet Richardson, Deputy City Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027

January 24, 2012

Ragui H. Michael
214 Garces Drive
San Francisco, CA 94132

Re: *Ragui H. Michael v. City & County of San Francisco (Department of Aging and Adult Services)*
Unfair Practice Charge No. SF-CE-829-M
WARNING LETTER

Dear Mr. Michael:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 4, 2011. Ragui H. Michael (Michael or Charging Party) alleges that the City & County of San Francisco (Department of Aging and Adult Services) (CCSF or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by withholding agency fees from his pay without his knowledge or permission.

Facts Alleged by Charging Party

The State of California provides services programs for disabled adults who choose to live independently in their homes, with assistance. The In-Home Supportive Services (IHSS) program is authorized by California Welfare and Institutions Code section 12000 et seq. The Personal Care Services Program (PCSP) is authorized by California Welfare and Institutions Code section 14000 et seq.

Michael provides in-home care and services to his permanently disabled mother and is paid for these services. Michael does not allege when he began providing these services. The CCSF Department of Aging and Adult Services (DAAS) processes Michael's timesheets and makes payroll deductions, but his paychecks are issued by the State Controller's Office.

In November 2010, Michael's mother appealed an action taken by DAAS. The resulting decision by an Administrative Law Judge (ALJ), dated January 26, 2011, found that Michael was a PCSP provider, not an IHSS provider as he had always thought. This incident caused Michael to question a notation on his paystub, which showed that some money was deducted from his pay as "dues".

[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.

Michael asked a DAAS representative to explain what the dues were for and was told they were union dues payable to SEIU because Michael "was a DAAS employee." SEIU told Michael that there was no Collective Bargaining Agreement (CBA) between SEIU and DAAS. Michael alleges that he never consented to join a union or have union dues withheld, and that the dues are not authorized by a CBA.

Fact Provided by Respondent

CCSF asserts that Michael is not an employee of CCSF. CCSF provides a declaration from its Director of Human Resources stating that according to CCSF personnel records from January 2000 to the present, Michael has not been employed by any department of CCSF, including DAAS.

Under California Welfare and Institutions Code section 12301.6, CCSF has established an independent Public Authority to provide for the delivery of IHSS. The Public Authority is established by City Ordinance. (San Francisco Administrative Code, Section 70.1 et seq.) The Ordinance provides that the Public Authority is deemed to be the employer for Independent Providers (IPs) who provide IHSS services to individual recipients.

DAAS employs a Director of IHSS, Megan Elliott (Elliott). Elliott provides a declaration stating that the Public Authority is the employer of record for IPs who provide services directly to recipients. Recipients hire, fire, and supervise the work of the IPs. The Public Authority bargains collectively with the exclusive representative of the IPs. The State of California issues paychecks directly to the IPs and makes deductions from their paychecks, including union dues and agency fees. The CCSF DAAS receives IP timesheets and forwards the data to the State of California. DAAS has never employed Ragui Michael.

CCSF provides portions of an undated CBA between the Public Authority and Service Employees International Union Local 250 (SEIU 250). A complete executed copy of the CBA is available on the Public Authority's website. Section 2 of the CBA recites that the Public Authority recognizes SEIU 250 as the exclusive representative of IHSS IPs in CCSF. Section 4(D) of the CBA provides that providers who work 25 or more hours per month must either become union members or pay a fair share fee, also known as an agency fee.

PERB's Investigation

According to the Public Authority, IHSS IPs provide services under one of three funding programs. One is the PCSP, authorized by California Welfare and Institutions Code section 14132.95. The other two are referred to as "IHSS-Residual" (Welf. & Inst. Code, §§ 12300 et seq.) and "IHSS Independence Plus." (Welf. & Inst. Code, § 14132.951.) Recipients of IP services are covered by one of the three funding programs, depending upon the individual's age, family relationships, and source of income. IPs of services under all three funding programs are considered IHSS IPs, and are in the bargaining unit covered by the CBA, employed by the Public Authority, and exclusively represented by SEIU. The CBA has a

duration of November 30, 2006 to November 30, 2007, and continues in force and effect by consent of the parties.

Discussion

A. Statutory Authority for Agency Fee

MMBA section 3502.5 authorizes a public agency and a recognized exclusive representative (i.e., union) to enter into an agency shop agreement. This statute provides that, under an agency shop agreement, employees of the public agency are required, as a condition of employment, either to join the union and pay union dues, or to refrain from joining the union and pay an agency fee in lieu of union dues. Here, there is a bargaining relationship between the Public Authority and SEIU. SEIU is the exclusive representative of IPs covered by the IHSS. Under the MMBA, Michael may be required to pay union dues, or, in the alternative, an agency fee. Section 4(D) of the CBA requires IPs who work 25 or more hours per month to pay an agency fee or union dues. Based upon the facts provided, this is a lawful requirement authorized under the MMBA.

B. The Public Authority is Michael's Employer for Purposes of the MMBA

As authorized by the Welfare and Institutions Code, CCSF has established an independent agency, the Public Authority, to provide for the delivery of IHSS. The Public Authority is a separate entity from CCSF and employees of the Public Authority shall not be employees of the CCSF for any purpose. (San Francisco Administrative Code, §§ 70.3(a); (f).) The Public Authority is the employer of IHSS personnel for the purposes of the MMBA. (San Francisco Administrative Code, § 70.3(g).)

No facts are alleged to establish that CCSF is Michael's employer.[2] CCSF/DAAS serves as the financial liaison between the Public Authority and the State of California. Its role appears limited to receiving timesheets from IPs and forwarding them to the State Controller's Office, along with procuring and distributing funds for the Public Authority. (San Francisco Administrative Code, § 70.4(c).) The CBA between the Public Authority and SEIU 250 recites that the Public Authority is the employer for purposes of collective bargaining.

According to the information received, the Public Authority—not CCSF—is the employer for bargaining purposes of IPs providing PCPS services as well as IPs providing services under the other two funding programs. The CCSF is not Michael's employer within the meaning of the MMBA. A charging party who is not an employee of the respondent at the time a charge is filed does not have legal standing to pursue the charge. (*San Francisco Unified School District*

[2] See also *Service Employees International Union, Local 434 v. County of Los Angeles* (1990) 225 Cal.App.3d 761, holding that IHSS providers in Los Angeles County were not County employees for the purposes of the MMBA.

(2009) PERB Decision No. 2000.) Therefore, Michael's charge against CCSF must be dismissed.

C. Timeliness Not Established

Michael alleges that he first became aware that an agency fee was being deducted from his paycheck on January 26, 2011, following a hearing before an ALJ which caused him to question the accuracy of information provided by the DAAS.

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.)[3] 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 instant charge was filed on May 4, 2011. Therefore, allegations occurring prior to November 4, 2010, are untimely filed.

It is unclear from the facts alleged whether there had been a deduction for "dues" on Michael's paycheck prior to January 26, 2011. Michael does not allege that this was his first paycheck, but rather that this was the first paycheck he scrutinized and noticed that there was a deduction for dues. Michael does not affirmatively allege that he did not know and should not have known, before November 4, 2010, that union dues or agency fees were being deducted from his paycheck.

In conclusion, PERB's investigation reveals that Michael may be lawfully required to pay an agency fee to SEIU as a condition of his employment. Michael's employer for purposes of the MMBA is the Public Authority, not CCSF and CCSF is not the proper respondent in this case. Moreover, Michael does not affirmatively allege facts sufficient to establish that the charge is timely filed.

For these reasons the charge, as presently written, does not state a prima facie case.[4] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies

---

[3] When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

[4] 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

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 **February 13, 2012**,[5] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Laura Davis
Regional Attorney

LD

---

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.*)

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