STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

OLUCHI NNACHI, Charging Party, v. CITY & COUNTY OF SAN FRANCISCO, Respondent.	Case No. SF-CE-657-M Administrative Appeal PERB Order No. Ad-391-M November 9, 2011

Appearances: Oluchi Nnachi, on his own behalf; Office of the City Attorney by Stacey A. Lucas, Deputy City Attorney, for City & County of San Francisco.

Before McKeag, Dowdin Calvillo and Huguenin, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Oluchi Nnachi (Nnachi) of a dismissal (attached) of an unfair practice charge by a Board agent and request to accept a late filing. The charge alleged that the City & County of San Francisco (City) violated the Meyers-Milias-Brown Act (MMBA)[1] when it demoted him without regard to his seniority rights. Nnachi alleged that this conduct constituted a violation of MMBA section 3506 and PERB Regulation 32603(a).[2]

The Board agent found the charge was not timely filed. Additionally, the Board agent found that Nnachi failed to plead sufficient facts to establish a prima facie case of discrimination in violation of the MMBA. Accordingly, the Board agent dismissed the charge.

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

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

We have reviewed the entire record in this matter and find the Board agent's warning and dismissal letters to be well-reasoned, free of prejudicial error and in accordance with applicable law. Accordingly, we hereby adopt the warning and dismissal letters as the decision of the Board itself, subject to the following discussion.

MOTION TO ACCEPT LATE FILING

In the June 23, 2010, dismissal letter, Nnachi was informed that he could appeal the Board agent's determination by filing an appeal to the Board itself within 20 days following the service of the dismissal. Nnachi's appeal, however, was received by the Board on July 29, 2010, well outside the 20-day-limit.

PERB Regulation 32136 provides that the Board may excuse a late filing for good cause. The Board has found good cause when the explanation for the late filing was "reasonable and credible" and the delay did not cause prejudice to any party. (*Barstow Unified School District* (1996) PERB Order No. Ad-277.) Good cause is typically found when the late filing was caused by circumstances beyond the party's control. (*United Teachers of Los Angeles (Kestin)* (2003) PERB Order No. Ad-325.)

In the instant case, Nnachi claims he timely mailed his appeal, but the United States Postal Service (USPS) inexplicably returned his envelope with the notation, "no such number." Nnachi included the returned envelope in his motion. We find this envelope confirms the fact that Nnachi timely mailed his appeal and that the envelope was, in fact, returned by the USPS. We further find, and the City does not dispute, that the City was not prejudiced by the delay. Accordingly, since the delay in filing was caused by circumstances beyond Nnachi's control, we find Nnachi demonstrated good cause to excuse his late-filed appeal.

DISCUSSION

In his appeal, Nnachi alleges for the first time that he participated in a collection of salary data from comparable counties that would be used to set the salaries of the City's juvenile hall supervisors. According to Nnachi, the salary data would have resulted in significant raises for the supervisors. Nnachi claims he was demoted because of his participation in the data collection process.

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." The Board has found good cause when "the information provided could not have been obtained through reasonable diligence prior to the Board agent's dismissal of the charge." (*Sacramento City Teachers Association (Ferreira)* (2002) PERB Decision No. 1503.)

In the instant case, the Board agent issued a warning letter on April 13, 2010, informing Nnachi, among other things, that the charge did not state a prima facie case of retaliation. Nnachi filed an amended charge on April 21, 2010. The Board agent found the amended charge also failed to state a prima facie case of retaliation. Accordingly, the Board agent dismissed Nnachi's amended charge on June 23, 2010. Nnachi timely appealed the dismissal. The appeal, however, does not provide a reason why his participation in the salary data collection process could not have been alleged in either his original charge or his amended charge. Thus, we do not find good cause to consider these new allegations and evidence on appeal.

ORDER

The unfair practice charge in Case No. SF-CE-657-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

June 23, 2010

Oluchi Nnachi

Re: *Oluchi Nnachi v. City & County of San Francisco*
Unfair Practice Charge No. SF-CE-657-M
DISMISSAL LETTER

Dear Mr. Nnachi:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 26, 2009. Oluchi Nnachi (Nnachi or Charging Party) alleges that the City and County of San Francisco (City or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by demoting him from a supervisory position into a lower classification.

Charging Party was informed in the attached Warning Letter dated April 13, 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 April 23, 2010, the charge would be dismissed.

On April 21, 2010, Charging Party filed an amended charge. As discussed below, the amended charge does not cure the deficiencies identified in the Warning Letter. Therefore, the charge is hereby dismissed based on the facts and reasons set forth below and in the April 13, 2010, Warning Letter.

Summary of Allegations

The amended charge alleges as follows.

In June 2008, the City had an agreement with Nnachi's exclusive representative, Teamsters Local 856, to do a wage survey. Before the study was done, the City demoted certain employees, including Charging Party, from the classification of Supervising Counselor. According to information previously submitted, the demotions were the result of the City's

[1] The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the MMBA and PERB Regulations may be found at www.perb.ca.gov.

layoff process. Nnachi alleges that the City "protected" some employees from demotion and that Mr. Siffermann (elsewhere identified as the chief probation officer) does not like union members he cannot control. Nnachi alleges that he was demoted without regard to his seniority rights. Following the demotions, the City spent over $1.5 million to hire new employees. Nnachi believes that the demotions were due to the push to conduct the wage survey.

Nnachi alleges that he "began the grievance process in June 2008, with the Department of Human Resources." The Department then approved the demotions because they were not objective. Nnachi filed an appeal with the Civil Service Commission, which is still pending.

Discussion

As explained in the Warning Letter, unfair practice charges under the MMBA are subject to a six-month limitations period. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) This charge was filed on May 26, 2009. Therefore, events occurring prior to November 26, 2008, are outside of the limitations period and untimely. Pursuant to the equitable tolling doctrine, the statute of limitations under the MMBA is tolled (i.e., suspended) when the parties use a bilaterally agreed-upon dispute resolution procedure to resolve the same dispute that is the subject of the unfair practice charge, where such tolling does not frustrate the purposes of the MMBA. (*Solano County Fair Association* (2009) PERB Decision No. 2035-M.)

Nnachi alleges that he filed a "grievance" in June 2008. He does not allege any facts to show that the grievance was filed pursuant to a "bilaterally agreed-upon dispute resolution procedure." Typically, a bilaterally agreed-upon dispute resolution procedure is a grievance and arbitration procedure provided for in a Memorandum of Understanding (MOU) or Collective Bargaining Agreement (CBA) between an employer and an exclusive representative. Nnachi does not refer to an MOU or CBA nor does he explain in what context or with whom the grievance was filed. Nnachi alleges that the grievance was denied on an unspecified date by the Department of Human Resources and that the matter was appealed to the Civil Service Commission. He does not allege any facts to establish that this procedure or the appeal to the Civil Service Commission was the result of a bilaterally agreed-upon dispute resolution procedure. Therefore, there is no basis under which PERB can apply the equitable tolling doctrine to extend the limitations period under the MMBA.

The City's allegedly unlawful demotion of employees, including Nnachi, occurred in June 2008, more than six months prior to the filing of the charge on May 26, 2009. Therefore, the charge is not timely filed and Nnachi has failed to allege facts sufficient to constitute a prima facie case.[2]

[2] Even assuming, arguendo, that the allegations were timely filed within the limitations period, and as also discussed in the earlier Warning Letter, the amended charge does not allege with any specificity that Nnachi engaged in protected activity, within the meaning of the MMBA, for purposes of determining whether his employer unlawfully retaliated against him

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).)

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for his protected activity in violation of Government Code section 3506 and PERB Regulation 32603(a).

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,

TAMI R. BOGERT
General Counsel

By _____
Laura Davis
Regional Attorney

Attachment

cc: Gina Roccanova, 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

April 13, 2010

Oluchi Nnachi

Re: *Oluchi Nnachi v. City & County of San Francisco*
Unfair Practice Charge No. SF-CE-657-M
WARNING LETTER

Dear Mr. Nnachi:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 26, 2009. Oluchi Nnachi (Nnachi or Charging Party) alleges that the City and County of San Francisco (City or Respondent) violated the Meyers-Milias-Brown Act (MMBA or Act)[1] by demoting him from a supervisory position into a lower classification.

Summary of Facts as Alleged

In addition to the charge filed on May 26, 2009, Nnachi submitted further statements of his charge on July 7, 2009 and on August 11, 2009. These further statements were submitted in response to position statements filed by the City and appear to be intended to amend his charge. Accordingly, the three documents will be treated as one charge[2] and the pertinent facts are summarized below.

Nnachi has been employed by the City's Juvenile Probation Department for approximately 23 years. During this time, he has experienced discrimination on the basis of his race, ethnicity and national origin. For six years he was classified as a Senior Counselor 8322 and for ten years he was classified as a Supervising Counselor 8324. On an unspecified date, the City demoted him, apparently from the Supervising Counselor 8324 position to the classification of Counselor 8320.[3] Nnachi alleges that the demotion was made without due process and in

[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] Where a later charge incorporates pleadings of original charge, all will be considered one pleading. (*Reed District Teachers Association, CTA/NEA (Reyes)* (1983) PERB Decision No. 332.)

[3] It does not appear from the facts alleged that Nnachi is excluded from PERB's jurisdiction as a peace officer pursuant to MMBA section 3511.

violation of various State and Federal laws.[4] He further alleges that he was treated differently on the basis of his race, and that Caucasian employees were not similarly demoted.

At the time Nnachi was demoted, eight other employees classified as Supervising Counselors were serving probationary periods in those positions but were not demoted. The City, through Mr. W.B. Sifferman (Sifferman), the chief probation officer, "protected" those eight employees from demotion, and also protected sixteen other employees from demotion from other classifications. This matter was taken to the City's Civil Service Commission which has not yet made a final decision. Nnachi contends that the City's Civil Service Rule 121 requires that reductions in force be made by seniority and not by class, and that the rule was not followed. He further contends that the City violated its Civil Service Rule 109.11.1

The City alleges that Nnachi's demotion was the result of a layoff and that due to a budget crisis the City was implementing layoffs City-wide. The City makes the uncontradicted allegation that it notified Nnachi on June 2, 2008 that he would be laid off from the Supervising Counselor 8324 classification, effective August 22, 2008. The City alleges that it followed Civil Service rules pertaining to layoffs and, because Nnachi had permanent rights as a Counselor 8320, he was placed in that position.

Nnachi argues that the City's budget shortfall does not justify demoting him. He gives several examples where the City has replaced incumbent employees at higher salaries, has hired new employees at high salaries, and has show favoritism in awarding "Status Grants" to certain employees.

Nnachi alleges that the City violated PERB regulations[5] 32603(a), (e) and (f). Nnachi requests relief pursuant to California Government Code section 12926 [defining unlawful practices under the California Fair Employment and Housing Act].)

Legal Analysis

Nnachi alleges violations of both the Dills Act (the Ralph C. Dills Act is codified at Government Code section 3512 et seq.) and the MMBA. Because Nnachi is an employee of the City, which is an employer covered by the MMBA, his charge will be analyzed under the MMBA and not the Dills Act. A Board Agent may, upon review of an unfair practice charge, determine the grounds under which the charge should be analyzed. (*Los Banos Unified School District* (2007) PERB Decision No. 1935.)

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[4] In particular, Amendment XIV to the U.S. Constitution; Title VII (i.e., 42 U.S.C. §§2000 et seq.) and California Proposition 209.

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

PERB Regulation 32615(a)(5) requires 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.)

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 *Saddleback Valley Unified School District* (1985) PERB Decision No. 558, the Board held that the six months statute of limitations period provided by the Educational Employment Relations Act "is to be computed by excluding the day the alleged misconduct took place and including the last day." Thus, where the school employer adopted a proposal on June 20, 1984, the Board calculated that "the six-month period started on June 21, 1984, the day after the school board adopted the proposal, and ended at the close of business on December 20, 1984." (*Ibid.*; see also *California State University, Fullerton* (1986) PERB Decision No. 605-H.) The same method of calculation should be applied to the statute of limitations under the MMBA.[6]

This charge was filed on May 26, 2009. Therefore, events occurring prior to November 26, 2008, are outside of the limitations period and untimely. Nnachi's charge alleges that the City committed an unfair practice when it demoted him from the Supervising Counselor 8324 position to the classification of Counselor 8320. The City makes the uncontradicted allegation that it notified Nnachi of this demotion on June 2, 2008 and that the demotion would be effective on August 22, 2008.[7] Nnachi knew or should have known of the demotion no later

[6] 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.)

[7] A Board agent is not required to ignore the facts provided by Respondent and to only consider the facts provided by Charging Party. (*Service Employees International Union #790 (Adza)* (2004) PERB Decision No. 1632-M.)

than August 22, 2008, and possibly as early as June 2, 2008. Nnachi did not file his charge until May 2009. Therefore, the charge is untimely filed.

Nnachi contends that the time to file his charge should be tolled while he pursued the matter before the City's Civil Service Commission. The statute of limitations under the MMBA is tolled when the parties use a bilaterally agreed-upon dispute resolution procedure to resolve the same dispute that is the subject of the unfair practice charge, where such tolling does not frustrate the purposes of the MMBA. (*Solano County Fair Association* (2009) PERB Decision No. 2035-M.) However, Nnachi does not provide any facts concerning when he took the matter to the City's Civil Service Commission or what transpired at those proceedings. Further, it is unlikely that the City's Civil Service Commission would be considered a "bilaterally agreed-up dispute resolution procedure." (See, e.g., *City of Alhambra* (2009) PERB Decision No. 2036-M [equitable tolling does not apply to non-contractual disciplinary proceedings].)

Accordingly, Nnachi has not established that the charge is timely filed within the limitations period.

2. PERB's Jurisdiction

In should be noted that the MMBA does not extend a remedy against all acts of perceived unfairness or discrimination against public employees. Rather, PERB's jurisdiction is limited to resolving claims of unfair practices, as defined, which violate the Acts enforced by PERB. (See, e.g., *Los Angeles Unified School District* (1984) PERB Decision No. 448.)

Absent an independent violation of the MMBA, PERB does not have jurisdiction over other California Government Code provisions, Federal law, or the U.S. Constitution. (See, e.g., *Ventura County Community College District* (1996) PERB Decision No. 1167; *California State University, Hayward* (1991) PERB Decision No. 869-H.) PERB does not have jurisdiction over claims of racial discrimination. (*Berkeley Federation of Teachers, Local 1078, AFL-CIO (Moore)* (1988) PERB Decision No. 658.) Nnachi primarily alleges that he was discriminated against on the basis of his race, ethnic background, or national origin, and that Caucasian employees of the City received preferential treatment. PERB lacks jurisdiction over these claims.

3. Retaliation for Protected Activity

To demonstrate that an employer discriminated or retaliated against an employee in violation of Government Code section 3506 and PERB Regulation 32603(a), the charging party must show that: (1) the employee exercised rights under MMBA; (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 <u>because of</u> the exercise of those rights. (*Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*); *Campbell Municipal Employees Assn. v. City of Campbell* (1982) 131 Cal.App.3d 416 (*Campbell*); *San Leandro Police Officers Assn. v. City of San Leandro* (1976) 55 Cal.App.3d 553 (*San Leandro*).) In determining

whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (*Palo Verde Unified School District* (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(*Newark Unified School District* (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (*North Sacramento School District* (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (*Moreland Elementary School District* (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (*State of California (Department of Transportation)* (1984) PERB Decision No. 459-S; *Campbell*, *supra*, 131 Cal.App.3d 416); (2) the employer's departure from established procedures and standards when dealing with the employee (*Santa Clara Unified School District* (1979) PERB Decision No. 104; *San Leandro*, *supra*, 55 Cal.App.3d 553); (3) the employer's inconsistent or contradictory justifications for its actions (*State of California (Department of Parks and Recreation)* (1983) PERB Decision No. 328-S; *San Leandro*, *supra*, 55 Cal.App.3d 553); (4) the employer's cursory investigation of the employee's misconduct (*City of Torrance* (2008) PERB Decision No. 1971-M; *Coast Community College District* (2003) PERB Decision No. 1560); (5) the employer's failure to offer the employee justification at the time it took action (*Oakland Unified School District* (2003) PERB Decision No. 1529) or the offering of exaggerated, vague, or ambiguous reasons (*McFarland Unified School District* (1990) PERB Decision No. 786); (6) employer animosity towards union activists (*Jurupa Community Services District* (2007) PERB Decision No. 1920-M; *Cupertino Union Elementary School District* (1986) PERB Decision No. 572); or (7) any other facts that might demonstrate the employer's unlawful motive. (*North Sacramento School District*, *supra*, PERB Decision No. 264; *Novato*, *supra*, PERB Decision No. 210.)

The demotion of an employee may be viewed as adverse action within the meaning of the MMBA. (*Trustees of the California State University* (2009) PERB Decision No. 2038-H.) However, Nnachi does not allege any facts to establish that he engaged in protected activity or that he was demoted *because of* any such protected activity. Rather, Nnachi contends that he was demoted on the basis of his race, ethnic background, or national origin.[8] He further

[8] He makes a single allegation that "CCSF did not respect my seniority because of my past complaints," but he provides no explanation of this conclusory statement nor does he specify what those past complaints were or when they were made.

contends that the City wasted money or spent money in other areas and therefore was not experiencing a budget crises sufficient to justify demoting him. These allegations do not establish that the City retaliated against Nnachi because of his protected activity. Accordingly, Nnachi fails to state a prima facie case of a violation under the MMBA.

d. Failure to Participate in Impasse Proceedings

Nnachi alleges a violation of PERB Regulation 32603(e), which states that it is an unfair practice for a local agency to fail to exercise good faith while participating in impasse proceedings. Nnachi does not allege any facts to suggest that the City was engaged in impasse proceedings.[9] Moreover, Nnachi lacks standing with respect to this claim. (*County of Riverside* (2009) PERB Decision No. 2065-M [individual lacks standing to allege that employer failed to meet and confer].)

e. Adoption or Enforcement or Local Rule

Nnaci also alleges a violation of PERB Regulation 32603(f), which states that it is an unfair practice for a local agency to adopt or enforce a local rule that is not in conformance with the MMBA. Nnachi does not identify any local rule which he alleges is not in conformance with the MMBA. Therefore he does not establish a prima facie case on this basis.

For these reasons the charge, as presently written, does not state a prima facie case.[10] 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

[9] He makes a vague reference to the City's agreement with his Union, Teamsters Local 856, to conduct a classification compensation study which, he states, was "botched."

[10] 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.*)

PERB. If an amended charge or withdrawal is not filed on or before **April 23, 2010**,[11] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Laura Davis
Regional Attorney

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