STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JOCELYN JACALA, Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Respondent.	Case No. SF-CO-186-M PERB Decision No. 2188-M June 29, 2011

Appearance: Jocelyn Jacala, on her own behalf.

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

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Jocelyn Jacala (Jacala) of the proposed decision (attached) of a PERB administrative law judge (ALJ) dismissing her unfair practice charge. The charge alleged that Service Employees International Union, Local 1021 (SEIU) breached its duty of fair representation when it failed to respond to requests for a *Weingarten*[1] representative and for assistance regarding a demotion, discipline and supervisor harassment. Jacala alleged this conduct violated sections 3506 and 3509(b) of the Meyers-Milias-Brown Act (MMBA)[2] and PERB Regulation 32604(b).[3]

[1] *NLRB v. Weingarten* (1970) 420 U.S. 251.

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

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

The ALJ found that Jacala failed to demonstrate that SEIU's conduct was arbitrary, discriminatory or in bad faith and, therefore, concluded SEIU did not breach its duty of fair representation or otherwise violate Jacala's rights under the MMBA.

We have reviewed the entire record in this matter and find the proposed decision to be well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, the Board adopts the proposed decision as a decision of the Board itself.

ORDER

The complaint and underlying unfair practice charge in Case No. SF-CO-186-M are hereby DISMISSED.

Chair Martinez and Member Dowdin Calvillo joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JOCELYN JACALA, Charging Party, v. SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1021, Respondent.	UNFAIR PRACTICE CASE NO. SF-CO-186-M PROPOSED DECISION (09/09/09)

Appearances: Jocelyn Jacala, in pro per; Weinberg, Roger and Rosenfeld, by Alan Crowley, Attorney, for Service Employees International Union, Local 1021.

Before Donn Ginoza, Administrative Law Judge.

PROCEDURAL HISTORY

Jocelyn Jacala initiated this case under the Meyers-Milias-Brown Act (MMBA or Act)[1] on October 31, 2008, by filing an unfair practice charge against Service Employees International Union, Local 1021 (SEIU). On January 6, 2009, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that SEIU failed to respond to requests for a *Weingarten*[2] representative and for assistance regarding a demotion, discipline and supervisor harassment, demonstrating a breach of the duty of fair representation. This conduct is alleged to violate sections 3506 and 3509(b) of the Act and PERB Regulation 32604(b).[3]

[1] The MMBA is codified at Government Code section 3500 et seq. Hereafter all statutory references are to the Government Code unless otherwise indicated.

[2] *NLRB v. Weingarten* (1970) 420 U.S. 251.

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

On January 23, 2009, SEIU filed its answer to the complaint, denying the material allegations of the complaint and raising a number of affirmative defenses.

On February 11, 2009, an informal settlement conference was held, but the matter was not resolved.

On May 20, 2009, a formal hearing was conducted in Oakland by the undersigned. With the filing of post-hearing briefs on August 1, 2009, the matter was submitted for decision.

FINDINGS OF FACT

Jacala is employed as a clerk II by the Alameda County Employees Retirement Association (ACERA). She is a "public employee" within the meaning of section 3501(d). SEIU is an "employee organization" within the meaning of section 3501(a) and an "exclusive representative" of a bargaining unit of public employees within the meaning of PERB Regulation 32016(b).

ACERA is a public entity created by the County of Alameda to administer retirement benefits under the County Retirement Law of 1937.[4] It serves three groups. Active members are current employees making contributions into the retirement fund. Retirees are former employees receiving benefits from the fund. Disabled employees are former employees receiving disability benefits from the fund.

Jacala was hired to fill a clerk II position beginning in June 2007. Clerk IIs handle the range of contacts and service requests from members and retirees. Within one month Jacala was assigned duties from a vacant retirement support specialist position. Retirement support specialists process enrollment forms for new and returning members, process checks, and handle other related matters. The assignment was not officially approved as an out-of-class assignment until February 28, 2008, with out-of-class pay taking effect on March 9, 2008. A

[4] Administrative judicial notice is taken of http://www.acera.org/about.

document confirming the assignment asserts compliance with the terms of SEIU's memorandum of understanding (MOU).

On January 25, 2008, Jacala was injured in a fall on her way home from work. Over the next three months, she took time off for doctor's appointments and physical therapy sessions. Jacala felt that Sandra Duenas, her supervisor, pressured her not to take time off because the unit was short-staffed.

On July 30, 2008, Jacala sought assistance from Ofelia Garrido in the human resources department regarding her leave issues and Duenas's alleged harassment of her. Garrido suggested that Jacala consider invoking leave through the Family Medical Leave Act (FMLA). Jacala had been unaware of this option.

Later that day, Duenas called Jacala into a meeting attended by Garrido. Duenas appeared angry, saying "So, you think I'm harassing you." Duenas presented Jacala with a list of approximately 25 instances of alleged tardiness or absences dating back nine months. She counseled Jacala about taking extended lunch and rest breaks. Jacala attempted to invoke her *Weingarten* right to enforce her MOU rights, though she had never reviewed the contract, SEIU never having provided her a copy of one. At the hearing Jacala only conceded that she had "very few" tardies, all due to late-scheduled therapy appointments of which Duenas had notice. Duenas also informed Jacala that another employee would be trained to take over the specialist position. Jacala was instructed to attend a meeting the next day, July 31.[5] Jacala believes at this moment Duenas embarked on an escalated campaign of harassment and retaliation.

[5] An August 1 e-mail from Duenas to Jacala stated a decision had not yet been made whether to change Jacala's assignment.

On July 31, Jacala declined to attend the proposed meeting, again asserting her *Weingarten* right. She immediately sought assistance from SEIU, making several calls to the union office that day. The receptionist stated that she did not know who Jacala's representative was. Sometime on August 1, Jacala spoke with SEIU Field Representative Blake Huntsman. During the 22-minute call, Jacala explained the circumstances of her situation.[6] She testified she explained to Huntsman that Duenas had been harassing her since January. Huntsman has responsibility for servicing 2,200 bargaining unit employees, but not those in Jacala's department. Sometime after taking the call, Huntsman determined that Fred Beal, the representative assigned to ACERA employees, was responsible for servicing Jacala. Because Beal was temporarily on leave, Huntsman agreed to assist Jacala. When Jacala stated that Duenas had rescheduled the second meeting for August 1, Huntsman asked Jacala to clarify the nature of the meeting with management. She did so by e-mail. Huntsman advised Jacala regarding invoking her *Weingarten* right.

Huntsman offered his own account of this conversation. He testified that Jacala was distraught, so he first tried to calm her down. He began filling out an intake sheet. Jacala complained that management was "going after her." She mentioned a "footnote" position and a potential demotion from that position.[7] A footnote position is one which the union and ACERA have agreed in advance is not a temporary out-of-class assignment, such that it can be rescinded at management's sole discretion. Jacala mentioned tardiness issues, her health problems, and that Garrido had proposed an FMLA leave. Huntsman suggested that Jacala get

[6] Jacala produced phone records indicating the 22-minute call was followed by eight other calls for a total of 53 minutes.

[7] Jacala asserts that she was unfamiliar with the term and therefore could not have said this. I do not read this as necessarily undermining Huntsman's credibility because it was not established that he was using the term literally.

certified for FMLA leave in order to cover the time for her medical appointments. In regard to the scheduled meeting, Huntsman agreed he counseled Jacala on her *Weingarten* right, and he advised her to determine if the proposed meeting was "disciplinary." He denied that a claim of harassment was made during this first call.

Jacala attended the August 1 meeting and reported to Huntsman afterwards. She explained to him that management skirted the issue of whether the meeting was disciplinary. After asking for Jacala's supervisor contact information, Huntsman promised to investigate her situation and, according to Jacala, assert the *Weingarten* right on her behalf. He reminded Jacala he was not her regular representative and cautioned that he was also about to go on vacation. Huntsman contacted Duenas and reported back to Jacala. He told her he sensed ACERA was moving toward termination. He also advised her to be careful and get to work on time. Huntsman requested that Jacala fax him documents, and she did.

Events began to move swiftly for Jacala the following week. According to an August 4 e-mail, Duenas communicated to Jacala's work group her department's rules for lunch breaks, calling in late, calling in sick, and scheduling medical appointments. Jacala began completing her FMLA forms. On August 5, she learned that Beal was her assigned representative. On August 6, Jacala called SEIU and left a message for Beal.

On August 8, Jacala was handed a memorandum announcing the termination of her out-of-class assignment, removal of her differential pay, and a return to her clerk II duties. Duenas demanded that Jacala sign the document and was angry when Jacala asked first to read it. As a result of the directive and her frustration over lack of representation, Jacala became physically ill that day during work. She decided she needed additional time off the following week.

Although Huntsman did not place his actions precisely in relation to these events, he testified that within the first two weeks of August he undertook investigation of Jacala's

situation, using the names and contact information she had provided and placing calls to management. Duenas "almost panicked" when she took his call. She insisted that her meeting with Jacala was not disciplinary in nature.

Huntsman next spoke with Victoria Arruda, director of the human resources department and Duenas's supervisor. He asked Arruda whether Jacala was currently working out of class in a footnote position. Arruda asserted that the position was not a footnote position. She also identified the issue as Jacala's attendance, mentioning peripheral concerns around timesheet corrections and unauthorized overtime. Huntsman concluded that if Jacala were simply being counseled or issued written reprimands on these matters, such actions would not be grievable under the MOU. Huntsman inquired whether Duenas was overstepping her authority as a supervisor in terms of her one-on-one dealings with Jacala. Arruda told him that Jacala was receiving counseling on attendance but no formal discipline. Huntsman did not raise harassment or retaliation because he did not hear of that issue from Jacala until sometime later. Huntsman testified that he reported his investigation to Jacala over the telephone. He told Jacala he did not believe that any contract violation was implicated by virtue of the removal of her out-of-class assignment. He conceded he may not have explained to Jacala that the reprimands were not grievable.[8] At some point Huntsman considered whether there was a basis for Jacala's claim of harassment and/or retaliation, but he concluded there were no grounds for it.

On August 12, Jacala spoke with Huntsman and faxed him the memorandum rescinding the assignment. Huntsman explained he was in meetings most of the day. On the same day Jacala received a second memorandum from Duenas regarding tardiness and errors in

[8] Huntsman testified that low-level discipline is not grievable, and the MOU supports his assertion on that point.

her timesheets. The alleged timesheet discrepancies were based on Jacala entering earlier reporting times than those recorded by management, and Jacala was instructed to correct previous timesheets. Jacala disputed the memorandum, believing the alleged discrepancies were not substantiated. The memorandum proposed a follow-up meeting with Jacala on August 18, and warned that discipline could result. Duenas instructed Jacala to sign the memorandum, but Jacala declined. Duenas responded, "So you're refusing to sign again? So you're being insubordinate?"[9]

Jacala spoke with Huntsman about the timesheet issue, prompting him to ask what clock she used to check in. After hearing her side, Huntsman asked why she was reluctant to amend the timesheets. She asserted the times were incorrect. Huntsman requested copies of Jacala's personnel records. She produced those on August 14. Jacala declined the proposed meeting date on the 18th, citing a doctor's appointment. Management proposed August 20. Jacala agreed to comply with the directive to correct the timesheets because Huntsman had been too busy to respond.

On August 19, Huntsman told Jacala he was unable to attend the August 20 meeting. That day passed with no meeting occurring. Duenas proposed to reschedule the meeting to August 25 at 1:00 p.m. Huntsman told Jacala he had a conflict at that time and asked her to propose 2:00 p.m. In the meantime, Huntsman proposed a meeting with just Jacala on August 21 after 5:00 p.m. at the SEIU offices. She appeared, but Huntsman was not there. Jacala spoke with him the following day and found he had left for another meeting that evening. Jacala reported to Duenas that she had been unable to confirm a meeting time on the 25th with the union.

[9] According to an e-mail from Duenas to Jacala later the same day, Duenas advised Jacala her signature was only to signify receipt of the document not agreement with the accusations.

Jacala was approached by Garrido on the afternoon of the 25th and told that Duenas was waiting for her. Duenas was angry and inquired as to the whereabouts of Jacala's union representative. When Jacala explained she had been unable to contact the union, Duenas told Jacala she was "holding [Jacala] accountable" for the meeting. Jacala then left to make calls to Huntsman and Beal. Beal answered. Beal denied any knowledge about her case but allowed her to explain. He asked Jacala to call him back at a later time. Upon her return to Duenas's office but before entering, Jacala was told by Arruda that her rights were not going to be violated, that the matter had been reviewed by the legal department, and she should proceed with the meeting. Arruda ushered Duenas into her office and told Jacala she was just there to "comply" and nothing would be "discussed." Duenas then handed Jacala a written reprimand. The memorandum instructed Jacala to enter amendments to her timesheets, cited her for tardiness and misrepresenting check-in times, submitting timesheets with overtime, and refusing instruction to sign for receipt of documents.[10]

After the meeting, Jacala called Beal, who took down her supervisor's contact information while advising her that nothing could be done at that point regarding the reprimand. Jacala also proceeded to comply with instructions to train the employee who was to assume her duties. She provided one day of training sometime in August. On August 26, Jacala commenced a 10-day leave to undergo a medical procedure.

Separately, Jacala arranged for an 8:00 a.m., August 26 meeting with Huntsman at a local coffee shop. Huntsman failed to show again. At 2:15 p.m., he called Jacala, explaining that his wife had a medical emergency. According to Jacala, Huntsman described the incident as "stubbing her toe." Jacala also called Beal, but he denied knowledge of the coffee shop meeting. Beal advised her that he did not have her file and she was not helping herself by

[10] One of the directives was to recode an absence from sick leave to FMLA leave.

calling several times a day. In her own defense, Jacala testified that during this period of time she was "just left hanging with no representation" while "nothing was resolved." Huntsman advised her he would be forwarding her file to Beal and said the union did have concerns about the removal of the out-of-class assignment and the timesheet amendments.

Huntsman did not dispute Jacala's account of the failed attempts to obtain his attendance culminating in the August 25 and 26 meetings. He asserted that he attempted to contact Jacala when he first learned of his wife's medical emergency on the 26th. He described it as much more serious than a toe injury. As to his failure to be more responsive, Huntsman defended his actions on the ground that his responsibilities are too great to allow him to attend every meeting when an employee requests representation. He believed no *Weingarten* violation occurred during the August 25 meeting because it was not investigatory, and it is not his custom to attend meetings when a decision to impose discipline has already been made.[11]

On September 8, Jacala returned to work, resuming her clerk II duties. Duenas explained a "temporary" had been hired to perform the specialist duties. She reminded Jacala of the August timesheet as well as the one due for September. Jacala responded that she was very busy and had a pile of e-mails to address. Jacala told Duenas she was leaving early that day, upsetting Duenas. In a late afternoon encounter Duenas pounded her fist on the desk, scratched her head, and accused Jacala of not following instructions.

On September 9, Beal began investigating Jacala's case. Beal demurred to Jacala's request for an in-person meeting. Beal testified that after reviewing the file he called Arruda.

[11] Huntsman testified that SEIU does not categorically refuse to be present (unless the meeting is investigatory as distinct from disciplinary) but determines the need on a case-by-case basis.

Arruda asserted that ACERA was not removing Jacala from a footnote assignment, only ceasing the out-of-class assignment and returning her to the original position. The decision was based on the unit's heavy workload coupled with Jacala's attendance issues. Beal inquired about Jacala's complaint regarding training a temporary retirement support specialist in her duties. Arruda explained that the position was given to a person with civil service eligibility (i.e., that it was intended as a permanent replacement). In discussing the overtime issue, Arruda explained management position's regarding the unauthorized time. Arruda said ACERA intended to address that problem with more coaching of Jacala.

Beal reported this conversation to Jacala. He testified that he understood Jacala to be conceding that the footnote assignment was no longer at issue. He was also led to believe that all other matters had been resolved. However Jacala continued to be displeased with SEIU for refusing to meet with her in person and getting no resolution to her issues.

On October 1, Jacala began receiving state disability. She did not work for ACERA between that time and the hearing. Later in October, Jacala approached Darlene White, whom she discovered to be the local shop steward. White offered to speak to Beal. She also asked Jacala if she wanted a grievance filed. Though White confirmed that Beal was the paid staff representative with ultimate authority regarding representation issues, she was willing to listen. Both Beal and Huntsman attempted to contact Jacala after she had spoken to White. However, only messages could be left. According to Jacala, White told her she had been "used" because she complained without knowing her rights under the MOU and the "culture" of the workplace, an apparent reference to her race. Beal testified Jacala never claimed she was the victim of discrimination.

ISSUE

Did SEIU breach its duty of fair representation owed to Jacala with respect to her employment disputes with ACERA?

CONCLUSIONS OF LAW

Though the MMBA does not expressly impose a statutory duty of fair representation upon employee organizations, the California courts held prior to PERB's assumption of jurisdiction that "unions owe a duty of fair representation to their members, and this requires them to refrain from representing their members arbitrarily, discriminatorily, or in bad faith." (*Hussey v. Operating Engineers Local Union No. 3* (1995) 35 Cal.App.4th 1213 (*Hussey*); see also *Service Employees International Union, Local 616 (Jeffers)* (2004) PERB Decision No. 1675-M.) Following assumption of MMBA jurisdiction, PERB held in *International Association of Machinists (Attard)* (2002) PERB Decision No. 1474-M that it is appropriate to find a duty of fair representation under the MMBA and to apply precedent developed under the other statutes its administers.

The exclusive representative's duty to fairly represent bargaining unit members extends to grievance handling. (*Fremont Unified District Teachers Association, CTA/NEA (King)* (1980) PERB Decision No. 125.) To establish a violation in the grievance handling context, the charging party must show that the union's conduct was arbitrary, discriminatory, or in bad faith. (*United Teachers of Los Angeles (Collins)* (1982) PERB Decision No. 258.) As PERB explained:

> Whether a union has met its duty [of fair representation in grievance processing] depends not upon the merits of the grievance but rather upon the union's conduct in processing or failing to process the grievance. Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations.]

> A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal. [Citation.]

(*Id.*; see also *International Association of Machinists (Attard)*, *supra*, PERB Decision No. 1474-M, citing *Hussey*, *supra*, 35 Cal.App.4th 1213.) The *Hussey* court stated:

> A union is accorded wide latitude in the representation of its members, and courts are reluctant to interfere with a union's decisions in representing its members absent a showing of arbitrary exercise of the union's power. [Citation.]

(35 Cal.App.4th at p. 1219.) With respect to a refusal to process a grievance, the aggrieved unit member must show how the exclusive representative's decision was "without rational basis or devoid of honest judgment." (*International Association of Machinists (Attard)*, *supra*, PERB Decision No. 1474-M; see also *California Faculty Association (Wunder)* (2007) PERB Decision No. 1889-H [union not obligated to elevate a grievance when it has doubts as to the merits].)

Jacala contends that SEIU breached its duty of fair representation by failing to represent her regarding ACERA's false accusations of tardiness, discrimination due to medical condition, harassment, hostile work environment, retaliation for reporting harassment, termination of the out-of-class position, denials of her *Weingarten* right, and requirement to attend disciplinary meetings. She cites language of the MOU (sec. 5, para. B) that requires SEIU stewards "be willing to meet in good faith to settle grievances as they arise." Citing appropriate precedent, Jacala contends SEIU acted without a rational basis and devoid of honest judgment, and that its conduct was so far outside a "wide range of reasonableness" as to be irrational and arbitrary. Jacala frames the relevant inquiry to be "not whether the union in fact pursues an employee's grievance, but rather whether the union has made a full

investigation, has given the grievant notice and opportunity to participate, has mustered colorable arguments and has refuted insubstantial arguments by the employer."

Implicit in Jacala's argument is the notion that if the union falls below some level of adequate investigation, fails to participate in face-to-face meetings with the employer, or fails to advocate vigorously enough on the employee's behalf regarding workplace conflicts with management, it breaches the duty of fair representation regardless of whether any particular issue can be pursued as a grievance. The relevant case law does not support Jacala's framing of the issue in this manner. (See *California Teachers Association, CTA/NEA (Torres)* (2000) PERB Decision No. 1386 [rejecting claim that union accepted false accusations by management and failed to act upon other matters raised by the employee]; *United Teachers-Los Angeles (Simms)* (1992) PERB Decision No. 932 [same, regarding refusal to meet with employee or present certain evidence to employer].)

The evidence in this case dispels any claim that SEIU undertook only minimal investigation so as to suggest a lack of honest effort on Jacala's behalf. The SEIU representatives did not ignore Jacala's many telephone calls, though their level of response subjectively failed to satisfy Jacala's needs. There were times when Huntsman or Beal asserted they were too busy, but overall the course of conduct establishes they were at worst attempting to manage the urgency of Jacala's demands in light of other ongoing work. The evidence demonstrates that Huntsman and Beal each assessed Jacala's issues as framed by her descriptions of the circumstances.

Ultimately, resolution of the question of SEIU's handling of Jacala's requests for assistance depends on whether the union ignored a meritorious grievance for arbitrary, discriminatory, or bad faith reasons. Jacala's description of her dispute with management during the hearing—and as eventually understood by SEIU—centered on the claim that

Duenas escalated a pattern of harassment immediately after Jacala complained to Garrido and sought assistance regarding her need for time off to obtain medical treatment. Huntsman explained that he considered the claim, although in his first conversation with Jacala he did not understand that to be the thrust of her case. He determined no grievance could be pursued. The MOU contains no language of protection against harassment, in that or similar terms. It also contains no language prohibiting retaliation or discrimination on the basis of medical condition.

SEIU did attempt to render Jacala's complaint of harassment/retaliation into its component parts, beginning with the alleged "demotion" involving Duenas's removal of the out-of-class assignment duties. The analysis of whether this issue was grievable depends on whether the MOU circumscribes management's discretion to do so. As Huntsman and Beal concluded, absent evidence that Jacala occupied a footnote position the MOU offers no protection against removal of those duties, regardless of management's purpose in undertaking it. Huntsman and Beal made inquiries with management to determine the existence of a potential grievance based on the footnote position theory. Jacala presents no evidence—and I find none in the record—establishing that the transfer of duties to another employee violated the MOU.

The second form in which retaliation was manifested in Jacala's view was Duenas's written reprimand, particularly the timesheet directives which comprise the main portion of the memorandum. Again, even crediting Jacala's perception that Duenas's "corrections" was without a factual basis, the evidence does not suggest that SEIU ignored a meritorious grievance on this score. While potentially any timesheet matter implicates issues of compliance with the hours provision of the MOU, Jacala's leave requests sufficient to warrant FMLA status and the absence of clear evidence supporting timekeeping errors by management

suggest that any grievance would have been problematic. For this reason I find that SEIU"s failure to intervene on the timekeeping issue does not demonstrate a breach of the duty of fair representation. (*California Faculty Association (Wunder)*, *supra*, PERB Decision No. 1889-H; and see *IUOE Local 39 (Kempe)* (2005) PERB Decision No. 1747-M.) In addition, there is no MOU language on which to challenge the written reprimand concerning those issues separate from the timekeeping discrepancies. (See *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704 [employer's ability to investigate and dismiss on grounds of insubordination for lack of cooperation upheld over employee's constitutional claim of the right against self-incrimination].)

Even assuming a union has a duty to provide a representative when the *Weingarten* right may be invoked, the evidence does not demonstrate that SEIU breached such duty. (See *Union of American Physicians & Dentists (Menaster)* (2007) PERB Decision No. 1918-S [no MOU language for *Weingarten* right].) The *Weingarten* right is limited to cases where the meeting not only carries potential disciplinary consequences but management uses the meeting to conduct an investigation designed to elicit factual support for that disciplinary action. (See also *Redwoods Community College Dist. v. Public Employment Relations Bd.* (1984) 159 Cal.App.3d 617 [absent the potential for discipline, representation only required under highly unusual circumstances].) The evidence does not establish that ACERA violated Jacala's *Weingarten* rights because it confined itself to delivering notice of disciplinary actions decided upon prior to the meeting itself. (See *Trustees of the California State University* (2006) PERB Decision No. 1853-H.) Therefore Huntsman's reasons for not attending the meetings with Duenas have not been shown to be arbitrary, discriminatory, or in bad faith.

Accordingly, I find that SEIU did not breach its duty of fair representation or otherwise violate Jacala's rights under the MMBA.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the complaint and underlying unfair practice charge in Case No. SF-CO-186-M, *Jocelyn Jacala v. Service Employees International Union, Local 1021*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 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, subd. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served

on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Donn Ginoza
Administrative Law Judge