



**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

JASON PICKARD & THE ANONYMOUS
KNOW NOTHINGS,

Charging Parties,

v.

CALIFORNIA COMMISSION ON TEACHER
CREDENTIALING,

Respondent.

Case No. LA-CE-18-X

PERB Decision No. 2728-S

May 29, 2020

Appearance: Jefferey Norman, Representative, for Jason Pickard and The Anonymous Know Nothings.

Before Banks, Shiners, and Paulson, Members.

DECISION¹

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Jason Pickard (Pickard) and the Anonymous Know Nothings (collectively Charging Parties) of the Office of the General Counsel's (OGC) dismissal of their unfair practice charge against the California Commission on Teacher Credentialing (CCTC). The charge, as amended, alleges that Pickard's former employer, the Los Angeles Unified School District (LAUSD or District), reported

¹ Subdivision (d) of PERB Regulation 32320, as amended effective April 1, 2020, permits a majority of Board members issuing any decision or order to designate all or part of such decision or order as non-precedential. Based on all relevant circumstances, including the criteria set forth in Regulation 32320, subdivision (d), we designate the instant decision as non-precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

his resignation to the CCTC after Pickard testified against the District at a PERB hearing. Charging Parties allege that CCTC, by accepting LAUSD's report and taking additional actions adverse to Pickard's teaching credential, conspired with the District to retaliate against him for his testimony.² OGC dismissed the charge, finding that because Pickard did not allege sufficient facts to show he was a "state employee" as defined in the Ralph C. Dills Act (Dills Act),³ he lacked standing to file a charge against CCTC, a state agency subject to the Dills Act. Having reviewed the case file in its entirety and considered applicable legal authority, we agree that Charging Parties lack standing and affirm the dismissal of the charge.

DISCUSSION

We review OGC's dismissal of a charge de novo, applying the same legal standard OGC applied to the allegations in the charge. At this stage of the case, "the charging party's burden is not to produce evidence, but merely to allege facts that, if proven true in a subsequent hearing, would state a prima facie violation." (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13, fn. 8.) We thus assume the charging party's factual allegations are true, and view them in the light most favorable to the charging party. (*Cabrillo Community College District* (2015) PERB Decision No. 2453, p. 8.) Mere legal conclusions, however, are insufficient to state a prima

² CCTC is the State agency that issues teaching credentials. (Ed. Code, § 44225, subd. (d).) CCTC also has authority to investigate alleged misconduct by a credential holder and to suspend or revoke a credential based on the results of its investigation. (Ed. Code, §§ 44242.5, 44244.1.)

³ The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

facie case. (*Lake Elsinore Unified School District* (2018) PERB Decision No. 2548, p. 18.)

PERB Regulation 32602, subdivision (b) provides that, subject to exceptions not relevant here, “unfair practice charges may be filed by an employee, employee organization, or employer against an employee organization or employer.”⁴ Here, the charge alleges that Pickard’s former employer, LAUSD, retaliated against him by reporting his resignation to CCTC after he testified against the District at a PERB hearing. Yet the charge does not name LAUSD as a respondent. We therefore cannot consider whether LAUSD retaliated against Pickard. (See *National Education Association-Jurupa* (2014) PERB Decision No. 2371, p. 12 [PERB cannot consider charge allegations against an entity not named as a respondent].)

The only respondent named in the charge is CCTC, an agency of the State of California subject to the Dills Act.⁵ To have standing to file a charge against CCTC, Pickard or the Anonymous Know Nothings must also be subject to the Dills Act. (See *Los Angeles Community College District* (1994) PERB Decision No. 1060, pp. 2-3 [to have standing to allege discrimination or retaliation, the charging party must be an employee or employee organization as defined in the statute applicable to the employer].) The amended charge alleges that Pickard is a state employee as defined in Dills Act section 3513, subdivision (c), which states, in pertinent part, “[s]tate

⁴ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

⁵ LAUSD, in contrast, is a public school employer subject to the Educational Employment Relations Act, codified at section 3540 et seq.

employee' means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or Superintendent of Public Instruction." But the charge does not allege facts showing that Pickard is, or has ever been, employed in a civil service position by CCTC (or any other state agency), or by a school "under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction."⁶ The charge thus fails to establish Pickard is a "state employee" as defined in the Dills Act. Likewise, the charge alleges no facts from which it could be determined that the Anonymous Know Nothings are an "employee organization" as defined in Dills Act section 3513, subdivision (a).⁷

On appeal, Pickard argues he is a state employee because LAUSD and CCTC were his joint employers. A joint employer situation exists "where two or more employers exert significant control over the same employees—where from the evidence it can be shown that they share or co-determine those matters governing essential terms and conditions of employment." (*United Public Employees v. PERB* (1989) 213 Cal.App.3d 1119, 1128.) The specific question to be answered is whether the purported employer "retains the 'right to control and direct the activities of the person rendering service, or the manner and method in which the work is performed.'" (*County*

⁶ This language appears to refer to the three state special schools, the California School for the Blind and the California Schools for the Deaf, which are under the direct administrative oversight of the Department of Education.

⁷ Dills Act section 3513, subdivision (a) provides: "Employee organization' means any organization that includes employees of the state and that has as one of its primary purposes representing these employees in their relations with the state."

of Ventura (2009) PERB Decision No. 2067-M, pp. 4-5, quoting *Service Employees Internat. Union v. County of Los Angeles* (1990) 225 Cal.App.3d 761, 769.)

Charging Parties contend CCTC exercised control over Pickard's working conditions because he could not have been employed by LAUSD as a teacher without a valid teaching credential, which only CCTC could issue. But issuing Pickard a teaching credential did not give CCTC the right to control or direct the work he performed for LAUSD. And we have found no legal authority for the proposition that a state licensing agency is an employer of those it licenses. The charge therefore does not allege facts that, if true, would establish CCTC was Pickard's employer.

As the charge provides no factual or legal basis to find that Pickard is a "state employee" or that the Anonymous Know Nothings are an "employee organization" under the Dills Act, Charging Parties lack standing to file a charge against CCTC. Accordingly, the charge must be dismissed for lack of jurisdiction. (*Los Angeles Community College District, supra*, PERB Decision No. 1060, pp. 8-9; cf. *City and County of San Francisco (Department of Aging and Adult Services)* (2012) PERB Decision No. 2295-M, p. 2 [dismissing charge filed against wrong respondent].)

ORDER

The amended unfair practice charge in Case No. LA-CE-18-X is DISMISSED WITHOUT LEAVE TO AMEND.

Members Banks and Paulson joined in this Decision.