

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION,)
)
Charging Party,) Case No. S-CE-737-S
)
v.) PERB Decision No. 1101-S
)
STATE OF CALIFORNIA (DEPARTMENT) May 9, 1995
OF CORRECTIONS);)
)
Respondent.)
_____)

Appearance; Bill Kelly, Senior Labor Relations Representative,
for California State Employees Association.

Before Blair, Chair; Carlyle and Garcia, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (Board) on an appeal filed by the California State Employees Association (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. In its charge, CSEA alleged that the State of California (Department of Corrections) (State) violated section 3519(c) of the Ralph C. Dills Act (Dills Act)¹ when it refused to honor an April 7, 1993 settlement agreement pertaining to shift schedules for teachers at the California State Prison, Solano.

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in pertinent part:

It shall be unlawful for the state to do any of the following:

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

The Board has reviewed the entire record in this case, including the warning and dismissal letters, CSEA's original and amended unfair practice charge, and its appeal.² The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. S-CE-737-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Carlyle and Garcia joined in this Decision.

²On April 25, 1995, the PERB appeals assistant rejected the State's response to CSEA's appeal as untimely filed. On May 1, 1995, the State filed an appeal of the rejection of its late filed response with the Board claiming good cause exists to excuse the late filing. In light of the Board's decision in this case, the Board finds it unnecessary to consider the State's appeal. Therefore, the Board hereby dismisses the State's appeal of its late filed response.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



March 8, 1995

Bill Kelly
Senior Labor Relations Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: California State Employees Association v. State of
California (Department of Corrections)
Unfair Practice Charge No. S-CE-737-S
DISMISSAL LETTER

Dear Mr. Kelly:

On January 23, 1995, you filed a charge on behalf of California State Employees Association (CSEA) in which you allege that the State of California, Department of Corrections (CDC) violated section 3519(c) of the Ralph C. Dills Act (Dills Act). Specifically, you allege that the California State Prison, Solano failed to comply with a settlement of a grievance which was reached on February 6, 1992. (Your charge alleges California State Prison, Soledad, violated the law, but your accompanying documentation and a follow-up telephone call clarified that the charge was against the Solano facility.) You allege that on January 13, 1995, CDC refused to honor the agreement of April 7, 1993, relating to the implementation of the February 6, 1992 grievance settlement. The agreement pertains to shift schedules for teachers at the Solano facility.

I indicated to you, in my attached letter dated February 17, 1995, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to February 28, 1995, the charge would be dismissed.

On February 24, 1995, you requested an extension of time to submit an amendment to the charge to substantiate your claim that the charge was timely filed. An extension of time was granted until March 7, 1995.

On March 7, 1995, an amended charge was filed which contends that you did not have definitive knowledge that CDC Solano was refusing to comply with the 1993 settlement proposal until

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January 13, 1995. You contend that following your replacement of CSEA staff representative Bob Losik, you were lead to believe that CDC Solano was willing to further discuss the shift change proposal from 1993 by telephone conversations and correspondence from CDC. (I note that the correspondence you submitted to support your charge, contains no reference from CDC Solano staff of a change in position from that first expressed to CSEA staff Gretchen Seagraves on June 3, 1993, wherein Janet Waugh, CDC Labor Relations Specialist, advised that the Warden denied the recommendations of the 1993 settlement proposal.)

Section 3514.5(a) of the Dills Act states in pertinent part, that PERB shall not:

Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

Generally, the charging party must file its charge within six months from the point at which it knew or should have known about the facts giving rise to the unfair practice. See The Regents of the University of California (1983) PERB Dec. No. 359-H and San Dieguito Union High School District (1982) PERB Dec. No. 194. The date of the discovery is the date on which the conduct constituting the unfair practice is discovered or could reasonably have been discovered, not the date that the legal significance of the conduct is discovered. See California State Employees Association (Darzins) (1985) PERB Dec. No. 546-S. Your charge contends that the CDC never implemented the April 7, 1993 agreement at the Solano facility. You allege that on January 13, 1995, CDC refused to honor the agreement. Likewise, on April 8, 1993, CDC refused to comply with the agreement to adjust shifts and eliminate double shifts. There is no information provided to demonstrate why CSEA was not aware of the failure to comply with the agreement. Because you have failed to demonstrate why CSEA was not aware of the violation until January 13, 1995, the charge must be deemed to have been untimely filed.

Based on the facts and reasons expressed in my February 17, 1995, letters and your failure to present additional evidence to demonstrate that the charge was timely filed following the June 3, 1993, Waugh letter to Seagraves, I am hereby dismissing your charge.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing

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an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 of Regs., tit. 8, sec. 32635(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 of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

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 of Regs., tit. 8, sec. 32132.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By _____
Roger Smith
Board Agent

Attachment

cc: Charles D. Sakai, Legal Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



February 17, 1995

Bill Kelly
Senior Labor Relations Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: WARNING LETTER
California State Employees Association v. State of
California (Department of Corrections)
Unfair Practice Charge No. S-CE-737-S

Dear Mr. Kelly:

On January 23, 1995, you filed a charge on behalf of California State Employees Association (CSEA) in which you allege that the State of California, Department of Corrections (CDC) violated section 3519(c) of the Ralph C. Dills Act (Dills Act). Specifically, you allege that the California State Prison, Solano failed to comply with a settlement of a grievance which was reached on February 6, 1992. (Your charge alleges California State Prison, Soledad, violated the law, but your accompanying documentation and a follow-up telephone call clarified that the charge was against the Solano facility.) You allege that on January 13, 1995, CDC refused to honor the agreement of April 7, 1993, relating to the implementation of the February 6, 1992 grievance settlement. The agreement pertains to shift schedules for teachers at the Solano facility.

Section 3514.5(a) of the Dills Act states in pertinent part, that PERB shall not:

Issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

Generally, the charging party must file its charge within six months from the point at which it knew or should have known about the facts giving rise to the unfair practice. See The Regents of the University of California (1983) PERB Dec. No. 359-H and San Dieguito Union High School District (1982) PERB Dec. No. 194. The date of the discovery is the date on which the conduct constituting the unfair practice is discovered or could reasonably have been discovered, not the date that the legal significance of the conduct is discovered. See California State Employees Association (Dargins) (1985) PERB Dec. No. 546-S. Your charge contends that the CDC never implemented the April 7, 1993 agreement at the Solano facility. You allege that on January 13,

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1995, CDC refused to honor the agreement. Likewise, on April 8, 1993, CDC refused to comply with the agreement to adjust shifts and eliminate double shifts. There is no information provided to demonstrate why CSEA was not aware of the failure to comply with the agreement. Because you have failed to demonstrate why CSEA was not aware of the violation until January 13, 1995, the charge must be deemed to have been untimely filed.

If there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one explained above, please 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 the Charging Party. The amended charge must be served on the Respondent and the original proof of service filed with PERB. If I do not receive an amended charge or withdrawal from you before February 28, 1995, I shall dismiss your charge without leave to amend. If you have any questions, please call me at (916) 322-3198 ext. 358.

Sincerely,

Roger Smith
Board Agent

RCS:cb