

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LYDIA RAMIREZ AND LINDA ROBERTS,)
)
 Charging Parties,) Case No. SA-CE-890-S
)
 v.) PERB Decision No. 1202-S
)
 STATE OF CALIFORNIA (STATE) June 4, 1997
 TEACHERS RETIREMENT SYSTEM),)
)
 Respondent.)
 _____)

Appearance: Lydia Ramirez, on her own behalf.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Lydia Ramirez (Ramirez) and Linda Roberts (Roberts) of a Board agent's partial dismissal (attached) of their unfair practice charge. In the charge, Ramirez and Roberts alleged that the State of California (State Teachers Retirement System) engaged in various acts of reprisal and interference in violation of section 3519(a) and (d) of the Ralph C. Dills Act (Dills Act).¹ The Board has

¹The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519 states, in pertinent part:

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

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of

reviewed the entire record in this case, including the original and amended unfair practice charge, the Board agent's partial warning and partial dismissal letters, and the appeal thereto filed by Ramirez and Roberts. The Board finds the partial warning and partial dismissal letters to be free of prejudicial error and hereby adopts them as the decision of the Board itself.

DISCUSSION

PERB Regulation 32635(b) states:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

In their appeal, Ramirez and Roberts offer new supporting evidence and make new allegations. However, they offer no explanation or showing of good cause for submitting this information for the first time on appeal. Therefore, it may not be presented for the first time on appeal and has not been considered by the Board.²

this subdivision, "employee" includes an applicant for employment or reemployment.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

²On January 30, 1997, the Board agent issued a complaint concerning those allegations by Ramirez and Roberts not referenced in the partial dismissal letter. In their appeal, Ramirez and Roberts assert that one of the allegations not dismissed was not included in the complaint. The allegation involves an allegedly harassing memorandum to Ramirez from her supervisor, dated December 12, 1996. The unfair practice charge originally identified the date of the memorandum as November 12, 1996, an error which Ramirez and Roberts corrected in their fifth

ORDER

The partial dismissal of the unfair practice charge in Case No. SA-CE-890-S is hereby AFFIRMED.

Members Johnson and Dyer joined in this Decision.

amended charge. The allegation concerning the memorandum is included in the January 30, 1997, complaint as paragraph 4(j).

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 30, 1997

Linda Roberts

Re: NOTICE OF PARTIAL DISMISSAL
Lydia Ramirez and Linda Roberts v. State of California
(State Teachers Retirement System)
Unfair Practice Charge No. SA-CE-890-S

Dear Ms. Roberts:

I indicated to you, in my attached letter dated January 23, 1997, that certain allegations contained in 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 these allegations to state a prima facie case or withdrew them prior to January 30, 1997, the allegations would be dismissed.

Your Fifth Amended Charge was received on January 29, 1997, with a notation that it was being filed "in response to partial warning letter." The newly amended charge includes brief statements of fact and/or argument intended to perfect the charge allegations (numbered 17 through 23) addressed by my earlier warning letter. The amended charge also clarifies that Linda Roberts is a charging party in this case. Finally, the amended charge adds five new allegations (referenced as 24 through 28).

Discussion

Both the new and carry-over allegations shall be addressed in turn, and referenced following the numbering system adopted in my January 23, 1997 letter and followed in the Fifth Amended Charge.

17. The amended charge states:

8-30-96 letter was dated this date but not given to Ms. Ramirez until 10-2-96. Back dating of memo was an attempt to reprise against Ms. Ramirez.

The charge as amended still fails to identify the content of the memo sufficient to support a finding that its issuance constitutes a reprisal under the standard discussed in my January 23, 1997 letter.

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19. The original allegation was that management had encouraged "reprisal behavior" by Ramirez's co-workers. The amended charge alleges that a luncheon was held at Mountain Mike's Pizza and the "union is under the impression that management paid for everyone's lunch." This allegation still fails to establish what "reprisals" Ramirez's co-workers engaged in that would violate her rights under the Ralph C. Dills Act (Dills Act).

21. The amended charge contains information concerning past activities of Steve Fagundes which the union is concerned about, and a statement that he is not in the chain of command over Ramirez. This allegation still fails to posit a plausible theory for why management's decision to include certain personnel in a meeting constitutes an "adverse action" or discrimination under the relevant legal tests.

22 and 23. The amended charge reiterates that State Personnel Board (SPB) rules ban discourteous treatment of employees. PERB, however, lacks authority to enforce rules of the SPB and this allegation does not state a prima facie violation of the Dills Act.

24. This new allegation contends that Respondent violated contractual and SPB confidentiality rules when a memo discussing disciplinary action against Ramirez was left "by management" sometime in January 1997 for several hours on a printer used by other employees. Under the Novato and Palo Verde test discussed in my January 23, 1997 letter, this allegation fails to state a prima facie discrimination violation because it does not identify how the action was "adverse" under an objective standard. This allegation also does not meet the "who, what, when, where and how" burden required for an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S.)

25. This new allegation contends that the decision to send Ramirez's supervisor to a course on "How to Legally Fire Employees" proves Respondent's intent to take reprisals against Ramirez. I am unaware of any case holding that management's decision to provide training to supervisors on personnel matters is itself an unfair practice. This allegation also fails the applicable legal test and must be dismissed.

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Conclusion

I am dismissing those allegations identified as numbered allegations 17, 19, 21, 22, 23, 24 and 25¹ based on the facts and reasons set forth above and those contained in my January 23, 1997 letter.

Right to Appeal

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

¹Two allegations addressed by my January 23, 1997 -- numbered allegations 18 and 20 -- are not dismissed by this letter.

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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.)

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
Les Chisholm
Regional Director

Attachment

cc: Robert Allen

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 24, 1997

Linda Roberts

Re: PARTIAL WARNING LETTER
Lydia Ramirez v. State of California (State Teachers
Retirement System)
Unfair Practice Charge No. SA-CE-890-S

Dear Ms. Roberts:

The above-referenced charge was filed with the Public Employment Relations Board (PERB or Board) on October 4, 1996, and subsequently amended on October 9 and 29, 1996, December 18, 1996 and January 17, 1997. The charge concerns various alleged acts of reprisal and interference by the State Teachers Retirement System (STRS or State) against Lydia Ramirez and Linda Roberts in violation of the Ralph C. Dills Act (Dills Act)¹ at section 3519 (a) and (d).²

Background

Lydia Ramirez and Linda Roberts are employed by STRS, and are included in bargaining units represented by the California State Employees Association (CSEA). Both Ramirez and Roberts serve as CSEA stewards. Ramirez has served as a steward for several years, has held CSEA chapter offices and has participated in grievances, lawsuits and demonstrations concerning employee rights at STRS.

In August 1996, Ramirez began work under a new supervisor, Diane Alvord. On or about August 24, 1996, Alvord assigned duties to Ramirez which Ramirez believes are below the classification level she holds. Ramirez protested the change in assignment, and was represented in this action by Roberts.

¹The Dills Act is codified at Government Code section 3512 et seq.

²As originally filed, the charge also alleged violations of Government Code section 3519(c) which individual employees lack standing to file. The charge as subsequently amended dropped reference to these violations, and the allegations were re-filed by the California State Employees Association in Unfair Practice Charge No. SA-CE-920-S.

The Charge Allegations

The following summarizes my understanding of the allegations contained in the charge as amended. These allegations have been numbered herein to facilitate later reference to them.

1. August 27, 1996: Ramirez received a corrective memo from Alvord which imposed a requirement that she submit daily status reports not required of other employees.
2. September 16, 1996: Ramirez was denied sick leave by Alvord.
3. September 23, 1996: Alvord changed Ramirez's time sheet to delete one-half hour of time which she had worked to make up for a long lunch.
4. September 25, 1996: Ramirez received a "Letter of Instruction" concerning her inability to follow instructions, lack of proficiency in completing assignments and AWOL problems.
5. September 26, 1996: Ramirez received a memo returning her unapproved time sheet to her, which again stated Alvord's concerns about Ramirez's ability to follow instructions.
6. October 2, 1996: Management cancelled meeting with Ramirez and Roberts, and then re-scheduled meeting with Ramirez and another steward.
7. October 4, 1996: Roberts received memo from Norma Applegate, STRS Labor Relations Officer, regarding her use of OFFICEVISION (E-mail) and threatening adverse action if she continued to use it for communications regarding grievances.
8. On or about October 20, 1996, STRS management moved Ramirez's work station "to a non-ergonomic configuration in order to get into the locked portion of her desk," and on October 20, 1996, management got into the locked portion of the desk where she keeps files relating to her steward activity.
9. October 24, 1996: "Letter of Performance" received from Alvord which threatened further corrective or adverse action.
10. November 13, 1996: Alvord issued memo to Ramirez concerning "Cash Batch Process" and stating that Ramirez had performed her duties in an "unacceptable" manner.
11. December 17, 1996: Ramirez was served with notice of adverse action (reduction in pay).

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12. December 18, 1996: Alvord accused Ramirez verbally of being on break and not working any time she is not at her work station.

13. December 23, 1996: Alvord sent Ramirez an E-mail "cautioning" her about her failure to turn in timely and complete status reports.

14. December 26, 1996: Ramirez received a memo from STRS Manager Mercedes Ray informing her she was being charged with 4.5 hours of AWOL for December 17.

15. December 30, 1996: Ramirez received a memo from Alvord informing her she would be placed on AWOL for any time away from her work station without Alvord's approval.

16. January 15, 1997: Alvord refused, because she "did not have time," to allow a representative for Ramirez in a meeting which included questions relating to prior adverse actions and threats of future adverse action.

The charge also includes the following allegations:

17. A "harassing" memo was written on August 30, 1996 (author unknown) and received by Ramirez on October 2, 1996.

18. On October 2, 1996, Alvord told Ramirez to stop making copies and "get back to work," and "discouraged" Ramirez from contacting her steward.

19. In October 1996, Alvord took co-workers of Ramirez to lunch and "encouraged reprisal behavior."

20. November 12, 1996: "Harassing memo received."

21. On November 18, 1996, Alvord, Ray and Steve Fagundes met and discussed this unfair practice charge "in violation of the rules."

22. On November 21, 1996, Ray allowed a co-worker to call Ramirez a "bitch."

23. On various occasions, Alvord was "rude" to Ramirez "in violation of SPB rules."

Discussion

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice."

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Thus, 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.) Legal conclusions are not sufficient to state a prima facie case. (Id.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

The allegations identified above as numbered paragraphs 17 through 23 fail to state a prima facie violation of the Dills Act. Numbered paragraphs 17 and 20 fail to identify who wrote the memos, what the memos said or how the memo content would violate any protected right of Ramirez.

Numbered paragraph 18 fails to establish how Ramirez was "discouraged" from contacting a steward. Numbered paragraph 19 fails to explain how Ray "encouraged reprisal behavior" by Ramirez's co-workers, who the co-workers were or what "reprisal behavior" they might be able to engage in which would violate the Dills Act.

Numbered paragraphs 21, 22 and 23 fail to state a prima facie discrimination violation. To demonstrate a violation of Government Code section 3519(a), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Prima facie evidence of some adverse action is required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 688; Newark Unified School District (1991) PERB Decision No. 864 (Newark); State of California (Department of Parks and Recreation) (1994) PERB Decision No. 1031-S.) In determining whether prima facie evidence of an adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Id.) In Newark, 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

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reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. (Emphasis added; footnote omitted.)

The allegations identified above as numbered paragraphs 21, 22 and 23 do not allege facts to establish that the complained-of conduct had "adverse impact" on Ms. Ramirez's employment, and therefore do not state a prima facie violation of Government Code section 3519(a).

Conclusion

For these reasons the allegations identified herein as numbered paragraphs 17 through 23, as presently written, do not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled Fifth 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 must be filed with PERB. If I do not receive an amended charge or withdrawal from you before January 31, 1997, I shall dismiss the above-described allegations from your charge. If you have any questions, please call me at (916) 322-3198, ext. 359.

Sincerely,

Les Chisholm
Regional Director