

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VIVIENNE SCHMID (GUNTHER SCHMID,
DECEASED),)
)
)
 Charging Party,) Case No. SF-CE-207-S
)
 v.) PERB Decision No. 1366-S
)
)
 STATE OF CALIFORNIA (DEPARTMENT) December 17, 1999
 OF CORRECTIONS),)
)
 Respondent.)
 _____)

Appearances: Cessaly D. Hutchinson for Vivienne Schmid (Gunther Schmid, Deceased); State of California (Department of Personnel Administration) by Wendi L. Ross, Labor Relations Counsel, for State of California (Department of Corrections).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION AND ORDER

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Vivienne Schmid (Gunther Schmid, Deceased) (Schmid) to a Board agent's dismissal (attached) of the unfair practice charge. The charge alleged that the State of California (Department of Corrections) (State) violated the Ralph C. Dills Act (Dills Act) section 3519(a)¹ when

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

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 this subdivision, "employee" includes an

it permitted settlement of Schmid's disability case just prior to a change in the law that would have increased his benefits, in retaliation for Schmid's protected conduct as a union steward.

The Board agent found that the charge did not state a prima facie case because of untimeliness.

The Board has reviewed the unfair practice charge, the warning and dismissal letters, Schmid's appeal, and the State's response. The Board finds that the warning and dismissal letters are free of prejudicial error, and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CE-207-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

applicant for employment or reemployment.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



October 6, 1999

Cessaly Hutchinson

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Gunther Schmid (Vivienne Schmid) v. State of California
(Department of Corrections)
Unfair Practice Charge No. SF-CE-207-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on August 24, 1999, alleges that the State of California (Department of Corrections) retaliated against Gunther Schmid because of his activities as a job steward for the California State Employees Association (Association). This conduct is alleged to violate Government Code section 3519(a) of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated September 27, 1999, 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 October 5, 1999, the charge would be dismissed.

Charging Party requested that certain additional factual information be noted. Gunther Schmid retired shortly after having successfully rebutted claims of misconduct lodged against him by inmates. However, this fact is not shown to have any bearing on the finding in this case that the charge was not timely filed.

Charging Party also questions whether knowledge of the Dills Act provisions can be imputed to him (Gunther Schmid) so as to render the charge untimely. The dismissal of the charge due to lack of timeliness is not based on imputing knowledge of the Dills Act to Charging Party. Rather it is based on the construction of the statute of limitations provisions of the Dills Act that results in the conclusion that a charging party's lack of knowledge is not an excuse to a late filing.

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Based on the facts and reasons stated above as well as those set forth in the September 27, 1999 letter, I am dismissing the charge.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you 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, sec. 32635(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 before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135 (a); see also Cal. Code Regs., tit. 8, sec. 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 Cal. Code Regs., tit. 8, sec. 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, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
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, sec. 32635(b).)

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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, 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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, 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

DONN GINOZA
Regional Attorney

Attachment

cc: Wendi L. Ross

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



September 27, 1999

Cessaly Hutchinson

Re: **WARNING LETTER**

Gunther Schmid (Vivienne Schmid) v. State of California
(Department of Corrections)
Unfair Practice Charge No. SF-CE-207-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on August 24, 1999, alleges that the State of California (Department of Corrections) retaliated against Gunther Schmid because of his activities as a job steward for the California State Employees Association (Association). This conduct is alleged to violate Government Code section 3519(a) of the Ralph C. Dills Act (Dills Act).

Investigation of the charge revealed the following. Gunther Schmid was employed by the Department of Corrections in 1982 when he retired on disability. Vivienne Schmid, Gunther's surviving wife, is filing the charge in her personal capacity as successor-in-interest to her deceased husband.

The charge alleges that the State Compensation Insurance Fund settled Gunther's case just prior to a change in the law that would have increased his benefits. Vivienne alleges that she believes this was a deliberate action, taken in retaliation for Gunther's activities as a steward in the Association.

In seeking to explain why she waited seventeen years after the events in question to file the instant unfair practice charge, Vivienne Schmid has stated that she did not learn of the existence of the Public Employment Relations Board (PERB) until the week before she filed.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the Dills Act for the reasons that follow.

An unfair practice must be filed with PERB within six months of its occurrence. (Gov. Code, sec. 3514.5(a).) PERB has held that the six-month period commences once the charging party knows, or should have known, of the conduct underlying the charge.

(Fairfield-Suisun Unified School District (1985) PERB Decision

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No. 547; Regents of the University of California (1983) PERB Decision No. 359-H.) This statute of limitations is jurisdictional. The charging party's lack of knowledge of PERB, the statutes enforced by PERB, or charging party's rights under those statutes does not excuse a late filing. (Orange Unified Education Association (Rossman) (1999) PERB Decision No. 1307; California State University, San Diego. (1989) PERB Decision No. 718-H.) PERB has held that a charging party's belated discovery of the legal significance of the conduct underlying the charge also does not excuse an otherwise untimely filing. (UCLA Labor Relations Division (1989) PERB Decision No. 735-H.) The instant charge was not filed within six months of the date Charging Party knew or should have known of the conduct underlying the charge and is therefore untimely.

For these reasons the charge, as presently written, does 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 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 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 PERB. If I do not receive an amended charge or withdrawal from you before **October 5, 1999**, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

DONN GINOZA
Regional Attorney