

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JUANITA COLEMAN,)
)
 Charging Party,) Case No. LA-CE-553-S
)
 v.) PERB Decision No. 1406-S
)
 STATE OF CALIFORNIA (DEPARTMENT) September 26, 2000
 OF MENTAL HEALTH),)
)
 Respondent.)
 _____)

Appearances: Juanita Coleman, on her own behalf; State of California (Department of Personnel Administration) by Barrett W. McInerney, Labor Relations Counsel, for State of California (Department of Mental Health).

Before Dyer, Amador and Baker, Members.

DECISION AND ORDER

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Juanita Coleman (Coleman) of a Board agent's dismissal (attached) of her unfair practice charge. Coleman filed a charge alleging that the State of California (Department of Mental Health) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)¹ by

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:

(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

terminating her employment in retaliation for her exercise of protected activity. After investigation, the Board agent dismissed the charge for failure to establish timeliness.

The Board has reviewed the entire record in this case, and finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-553-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Baker joined in this Decision.

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

(b) Deny to employee organizations rights guaranteed to them by this chapter.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 19, 2000

Juanita Coleman

Re: Juanita Coleman v. Metropolitan State Hospital
Unfair Practice Charge No. LA-CE-553-S
Dismissal Letter and Refusal to Issue a Complaint

Dear Ms. Coleman:

I indicated to you, in my attached letter dated May 10, 2000, 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 May 17, 2000, the charge would be dismissed. On May 10, 2000, we spoke on the telephone, and I explained the statute of limitations and the reasoning in my letter.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my May 10, 2000 letter.

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

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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).)

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.)

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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

Tammy L. Samsel
Regional Director

Attachment

cc: Barrett McInerney

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 10, 2000

Juanita Coleman

Re: Juanita Coleman v. Metropolitan State Hospital
Unfair Practice Charge No. LA-CE-553-S -
Warning Letter

Dear Ms. Coleman:

In the above-referenced charge you allege the Metropolitan State Hospital (State or Hospital) violated the Ralph C. Dills Act (Dills Act or Act) § 3519(a) and (b) by retaliating against you. On or about May 4, I spoke with you regarding this charge, and requested that you fax me the documents that the State sent to you. You indicated that you would provide this additional information. I have not yet received these documents. My investigation revealed the following information.

The Charging Party, Juanita Coleman, filed this charge on April 28, 2000. The charge alleges that the State terminated Coleman on November 4, 1999. Prior to her termination, Coleman filed a racial discrimination complaint against the State. Coleman alleges she did not attend the State Personnel Board appeal hearing regarding her termination due to illness.

Coleman alleges:

The accusations made against me were false, [and] blown out of proportion. The accusations were retaliation for filing a complaint for racial and physical discrimination.

The above-stated information fails to state a prima facie violation within the jurisdiction of PERB for the reasons that follow.

Dills Act § 3514.5(a)(1) provides the Public Employment Relations Board 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," It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

Coleman filed this charge on April 28, 2000. Although the charge alleges that she was "officially terminated" on November 4, 1999, the facts indicate that the State notified Coleman of her termination on July 16, 1999, and scheduled an SPB hearing regarding the adverse action on October 12, 1999. As the charge was filed on April 28, 1999, the statute of limitations period would date back to include events occurring on or after October 28, 1999. As it appears that the State acted to terminate Coleman on or about July 16, 1999, approximately nine months prior to the filing of this charge, the charge is outside the jurisdiction of PERB. Thus, this charge must be dismissed.

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 May 17, 2000, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6944.

Sincerely,

TAMMY SAMSEL
Regional Director