



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FLORENCE ELAINE TORBA,)	
)	
Charging Party,)	Case No. SA-CO-229-S
)	
v.)	PERB Decision No. 1408-S
)	
CALIFORNIA ASSOCIATION OF)	September 27, 2000
PROFESSIONAL SCIENTISTS,)	
)	
Respondent.)	
_____)	

Appearance: Florence Elaine Torba, on her own behalf.

Before Dyer, Amador and Baker, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Florence Elaine Torba's (Torba) unfair practice charge. Torba's charge alleges that the California Association of Professional Scientists breached its duty of fair representation, in violation of section 3519.5(c) of the Ralph C. Dills Act (Dills Act),¹ by failing to represent her when she was involuntarily transferred in July, 1998.

¹ The Dills Act is codified at Government Code section 3512 et seq. Section 3519.5 provides, in pertinent part:

It shall be unlawful for an employee organization to:

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

ORDER

The unfair practice charge in Case No. SA-CO-229-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

(c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8386
Fax: (916) 327-6377



May 25, 2000

Florence Elaine Torba

Re: Florence Elaine Torba v. California Association of Professional Scientists
Unfair Practice Charge No. SA-CO-229-S

DISMISSAL LETTER

Dear Ms. Torba:

You filed the above-referenced unfair practice charge with the Public Employment Relations Board (PERB or Board) on April 10, 2000. The charge alleges a violation of the duty of fair representation by the California Association of Professional Scientists (CAPS or Union).

I indicated to you in my attached letter dated April 19, 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 April 26, 2000, the charge would be dismissed.

You were granted an extension of time and filed an amended charge on May 1, 2000. In that amended charge, you state that you did not have sufficient knowledge of contract provisions with regard to your transfer until "I found the 1992-1993 contract summary on October 6, 1999." It was only at that time that you had sufficient information for challenging the Union's handling of your complaints regarding your involuntary transfer in July 1998. Based on your reading of the contract summary, you disagree with reasons given by Union representative, Matt Austin to you in September 1998 to the effect that any grievance over the matter would be "frivolous."

On or about October 6, 1999, you sent correspondence to CAPS president Dan Aquirre. On November 19, 1999, CAPS representative Matt Austin sent you a letter in response to your letter of October 6. In that letter, Mr. Austin confirmed the position he had taken a year earlier, stating in part:

Your reassignment from the Food and Drug Lab to the Sanitation and Radiation Lab is such a typical exercise of management prerogative that filing of a grievance on the basis of some imagined contractual prohibition is without merit. I believe we discussed this in some detail, and on several occasions.

As stated in my prior letter of April 19, 2000, it appears that you are alleging that CAPS violated the duty of fair representation when they did not file a complaint or grievance on your behalf in the summer and/or fall 1998. As discussed in my prior letter, the alleged violation falls significantly outside the six months statutory limit found in Government Code section 3514.5(a). Recent discovery of the contractual summary does not toll the statute. Accordingly, your charge must be dismissed.

Right to Appeal

Pursuant to PERB Regulations¹, 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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. (Regulation 32635(b).)

Service

¹ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

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 Regulation 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. (Regulation 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. (Regulation 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

Bernard McMonigle
Regional Attorney

Attachment

cc: Dennis Moss, Counsel

BMC:cke

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916)327-6377



April 19, 2000

Florence Elaine Torba

Re: Florence Elaine Torba v. California Association of Professional Scientists
Unfair Practice Charge No. SA-CO-229-S

WARNING LETTER

Dear Ms. Torba:

You filed the above-referenced unfair practice charge with the Public Employment Relations Board (PERB or Board) on April 10, 2000. The charge alleges a violation of the duty of fair representation by the California Association of Professional Scientists (CAPS or Union). I called you by telephone to discuss this matter on April 18 and 19, 2000. However, there was no answer.

According to your charge, you were involuntarily transferred in July 1998 and sought help from the Union at that time. The most recent event described in your charge is that on September 29, 1998, you talked to Matt Austin of CAPS about filing a complaint. At that time, Mr. Austin referred to your complaint on the transfer as frivolous.

Government Code section 3514.5(a) states in relevant part that an employee shall have the right to file an unfair practice charge. However, PERB may not "issue a complaint in respect of any charge based on an alleged unfair practice occurring more than six months prior to the filing of the charge." In your charge, filed on April 10, 2000, it appears that you are alleging a violation that occurred in the summer and/or fall of 1998, which falls significantly outside the six months statutory limit. Accordingly, your charge must be dismissed.

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

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Warning Letter
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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 April 26, 2000, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

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