

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PAULA SUTTON,

Charging Party,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION, LOCAL 1000, SEIU, AFL-CIO,
CLC,

Respondent.

Case No. LA-CO-105-S

PERB Decision No. 1553-S

October 21, 2003

Appearance: Paula Sutton, on her own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Paula Sutton (Sutton) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleges that the California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC (CSEA) violated the Ralph C. Dills Act (Dills Act)¹ by breaching its duty of fair representation.

The Board has reviewed the entire record in this matter, including the original and amended charge, the warning and dismissal letters and Sutton'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 consistent with the discussion below.

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

DISCUSSION

This matter stems from Sutton's request for CSEA representation in a disciplinary hearing. Based on the documents submitted with the charge, Sutton was aware in October 2000 that CSEA had denied her request for representation. For the next two years, Sutton apparently tried to convince CSEA to reverse its decision and/or to provide her the funds to hire a private attorney.² Sutton alleges that the last denial by CSEA occurred in September 2002. On appeal, Sutton argues that each time CSEA denied her request for representation the statute of limitations was re-triggered. Thus, according to Sutton, the limitations period should be measured from September 2002, when CSEA last denied her request.

It is well-settled that in a claim for breach of the duty of fair representation, the statute of limitations is triggered "on the date when the employee, in the exercise of reasonable diligence, knew or should have known that further assistance from the union was unlikely." (International Union of Operating Engineers, Local 501 (Reich) (1986) PERB Decision No. 591-H; Los Rios College Federation of Teachers, CFT/AFT (Violet, et al.) (1991) PERB Decision No. 889.) Thus, the statute of limitations begins to run once the employee is aware, or should have been aware, that the union has made a firm decision not to represent her. Once the statute begins to run, the employee cannot cause it to begin anew by making the same request over and over again. Indeed, to allow such a result would eviscerate the purpose of the statute of limitations.

Here, Sutton was aware in October 2000 that CSEA would not provide her an attorney. Nothing in the charge suggests that CSEA thereafter gave Sutton any indication that its

² Sutton's charge fails to provide a clear and concise statement of the facts as required by PERB Regulation 32615 (PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001, et seq). Although Sutton was told to provide specific facts and dates in the warning letter, she failed to do so.

decision would change. Accordingly, Sutton's charge, filed on March 31, 2003, is untimely and must be dismissed on that basis alone.

ORDER

The unfair practice charge and complaint in Case No. LA-CO-105-S is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



April 29, 2003

Paula Sutton

Re: Paula Sutton v. California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC
Unfair Practice Charge No. LA-CO-105-S
DISMISSAL LETTER

Dear Ms. Sutton:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 31, 2003. Paula Sutton alleges that the California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC violated the Ralph C. Dills Act (Dills Act)¹ by failing to properly represent her.

I indicated to you in my attached letter dated April 8, 2003, 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 15, 2003, the charge would be dismissed. You received an extension of time to file an amended charge.

I received a copy of your amended charge of April 28, 2003. In your amended charge you continue to allege that CSEA failed to properly represent you between "early 2000 to late 2002". However you provide no specific dates except of a denial of assistance in September 2002. You describe the September incident "as the most recent example of unfair labor practice by CSEA". As I stated in my letter of April 8,

Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed.

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

(Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

You have provided no specific dates beyond "fall 2002". Without more information, it cannot be concluded that any alleged violation occurred within six months of the filing of your charge on March 31, 2003. Accordingly, your charge must be dismissed.

Because your amended charge only states alleged violations outside the statutory limitations period the charge must be dismissed.

Right to Appeal

Pursuant to PERB Regulations,² 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

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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

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
General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: Michael Shanahan

PUBLIC EMPLOYMENT RELATIONS BOARD



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



April 8, 2003

Paula Sutton

Re: Paula Sutton v. California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC
Unfair Practice Charge No. LA-CO-105-S
WARNING LETTER

Dear Ms. Sutton:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 31, 2003. Paula Sutton alleges that the California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC violated the Ralph C. Dills Act (Dills Act)¹ by failing to properly represent her.

Your charge states that CSEA has failed to prevent Caltrans from retaliating against you for your union activities and filing complaints and grievances. Your charge states that between "early 2000 to late 2002" CSEA failed to represent you as you requested for a variety of meetings and appeals.

The most recent denial of representation was at a fall 2002 Civil Service Division meeting (no specific date provided).

Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

You have provided no specific dates beyond "fall 2002". Without more information, it cannot be concluded that any alleged violation occurred within six months of the filing of your charge on March 31, 2003. Accordingly, your charge must be dismissed.

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Even if your charge is determined to be timely filed it does not state a prima facie case of a violation of the duty of fair representation.

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by Dills Act section 3515.7(g) and California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S and thereby violated section 3519.5(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of the Dills Act, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

". . . must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (Emphasis added.)" [Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

Your charge presents insufficient facts to establish how the union violated its duty under this legal standard. Accordingly, for this reason it must be dismissed.

Your charge alleges that CSEA has failed to represent you in a variety of forums including Department of Fair Employment and Housing (DFEH) complaints. Please be advised that the duty of fair representation is limited to contractually based remedies under the union's exclusive control (such as the contractual grievance procedure) and does not include DFEH procedures. California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S

April 8, 2003

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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 that 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 April 15, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:b