STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JESSE VICKERS, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent.	Case No. SA-CE-1384-S PERB Decision No. 1559-S November 21, 2003

Appearance: Jesse Vickers, on his own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Jesse Vickers (Vickers) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the State of California (Department of Corrections) (State) violated the Ralph C. Dills Act (Dills Act)[1] by taking State vehicles away from parole agents in Region III Headquarters assigned to the Immigration and Naturalization Service (INS) unit in violation of the Memorandum of Understanding (MOU) between the State and the California Correctional Peace Officers Association (CCPOA); by creating a new supervision level, "DP", in the INS unit in violation of the MOU; by reducing the status of INS cases in violation of the MOU; and, by local agreement between the Department of Corrections' Parole and Community Services Division (PCSD) and CCPOA, increasing workloads for INS unit agents well beyond that allowed by the MOU. In November and

[1]The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

December 2000, Vickers filed grievances regarding these allegations.[2] In July 2002, Vickers alleged that he unsuccessfully requested information from Jerome Marsh (Marsh), PCSD Region III about "local agreements." As a job steward, Vickers investigated the issues alleged above, and as a result filed this charge on December 21, 2002. He alleges that the State's conduct constituted a violation of Dills Act section 3519(a).

Upon review of the charge, the warning and dismissal letters, and Vickers' appeal, the Board hereby affirms the Board agent's dismissal consistent with the discussion below.

BACKGROUND

Looking at the dates of the grievances attached to the charge, the Board agent found that the allegations in the charge occurred beyond the six-months limitations period and dismissed the charge on that basis. (Dills Act sec. 3514.5(a)(1); Gavilan Joint Community College District (1996) PERB Decision No. 1177 (Gavilan); Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.) The Board agent also found that the charge did not contain the specificity required by PERB Regulation 32615(a)(5).[3] (See State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S (Food and Agriculture); United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944 (UTLA); and Charter Oak Unified School District (1991) PERB Decision No. 873 (Charter Oak).) According to the

[2]The State's responses to Vickers' grievances were issued no later than the end of December 2000. CCPOA in writing had refused to proceed with any of these grievances through the MOU mini-arbitration process. The letters of refusal were issued no later than the end of February 2001. There is nothing in the file to indicate that since February 2001, Vickers has appealed the grievances or that the grievances were ultimately submitted to arbitration.

[3]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Board agent, although the charge alleged discrimination, Vickers did not explain how the State's conduct resulted in such violations. The charge alluded to local agreements between the State and the Parole Agent Association Chapter but failed to provide copies of these agreements or the relevant provisions. The charge also did not provide the dates of these local agreements or implementation of policies, or show how the referenced MOU provisions were violated by the State's conduct. Finally, the Board agent found that Vickers failed to state a prima facie case of discrimination under Section 3519(a) of the Dills Act. For example, Vickers failed to provide information showing that the State's actions were taken as a result of Vickers' grievances or even that the State's actions were directed at him.

Vickers raises several issues on appeal. He states that he was not allowed sufficient time to file an amended charge.[4] He also alleges that his allegations did not exceed the six-month limitations period, but rather were continuous violations occurring from April 1, 2000 through July 1, 2002, citing Gavilan. In July 2002, Vickers unsuccessfully requested copies of the local agreements from PCSD. According to Vickers, that led to the four listed allegations in his charge. He believes his statements to be clear and concise and that Food and Agriculture, UTLA and Charter Oak do not apply here.

Vickers further believes that his allegations state a prima facie case for violation of Dills Act section 3514.5.[5] With regard to removal of state vehicles from the INS unit, he says

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[4]The warning letter was served on Vickers by mail on February 24, 2003 and stated that an amended charge had to be filed by March 3, 2003. Vickers states that he received the warning letter on February 26, 2003 and had only four days to file an amended charge.

[5]Section 3514.5 provides, in pertinent part:

> The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised

that the policy was not applied consistently throughout the Department of Corrections. Otherwise, Vickers simply reiterates the allegations in his charge. Because Vickers claims he had such a short time to submit an amended charge, he asks the Board to treat his appeal as an amended charge in order to allege a violation of Dills Act section 3514.5.

DISCUSSION

The Board agrees with the Board agent that the four allegations regarding changed working conditions were untimely. 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.) Whatever investigation that Vickers conducted after his inquiry to Marsh in July 2002, he filed grievances over the same issues in November and December 2000. The State responded to his grievances no later than the end of December 2000. CCPOA refused to proceed to mini-arbitration on these grievances no later

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and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) 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; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

than February 2001. A charge would have to have been filed, depending on the issue, by June 2001. Vickers' charge however was filed on December 21, 2002 and so, is untimely. As a result, the Board dismisses the four allegations in the charge regarding changes in working conditions and declines to address their merits.

Vickers alleged in his charge and on appeal that he unsuccessfully requested information in July 2002. That allegation was not addressed in the dismissal. The allegation might be construed in two ways. First, Vickers might be saying that this unsuccessful request led to his investigation of the issues leading to the November and December 2000 grievances. In this circumstance, however, it is clear that he was aware of these issues in November and December 2000 and cannot argue that they are a continuing violation just because he requested information about them again in July 2002. A violation is not timely where the State's conduct during the limitations period relates back to the original offense. (State of California (Department of Consumer Affairs) (1994) PERB Decision No. 1066-S, warning letter p. 5, citing El Dorado Union High School District (1984) PERB Decision No. 382.) For a continuing violation, new conduct independent of the original conduct must occur during the limitations period. (Id.) In this case, there is no evidence that the nature of the State's conduct has changed since Vickers filed his grievances in November and December 2000.

Alternatively, the allegation might be construed as claiming, albeit inartfully, that the State's refusal to provide Vickers with the requested information is the violation, and not the items grieved in November and December of 2000. The State's duty to provide information arises out of the duty to bargain in good faith. (Dills Act sec. 3519(c); see also, e.g., Stockton Unified School District (1980) PERB Decision No. 143.) However, that obligation only extends to the exclusive representative, in this case CCPOA, and not to an individual

employee. (Regents of the University of California (1996) PERB Decision No. 1148-H; State of California (Department of General Services) (2001) PERB Decision No. 1420-S, warning letter at p. 2.) Vickers thus lacks the standing to raise this issue.

Finally, Vickers states that he lacked sufficient time to file an amended charge. Under PERB Regulation 32132, Vickers could have requested an extension of time from the Board agent to file an amended charge. He did not do so. Instead he asks that the appeal comprise his amended charge. Vickers has not provided good cause to file a late amended charge and therefore the Board denies this request. (PERB Reg. 32136; Los Angeles Unified School District (2003) PERB Order No. Ad-318.)

ORDER

The unfair practice charge in Case No. SA-CE-1384-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Neima joined in this Decision.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-7242
Fax: (916) 327-6377

March 6, 2003

Jesse Vickers

Re: Jesse Vickers v. State of California (Department of Corrections)
Unfair Practice Charge No. SA-CE-1384-S
DISMISSAL LETTER

Dear Mr. Vickers:

The above referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 21, 2002. Jesse Vickers alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act section 3519(a).

I indicated to you in my attached letter dated February 24,2003, 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 March 3, 2003, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal but received your message indicating you were waiting for me to issue the Dismissal Letter. Therefore, I am dismissing the charge based on the facts and reasons contained in my February 24, 2003 letter.

Right to Appeal

Pursuant to PERB Regulations,[1] 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.)

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

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

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
Heather McLaughlin
Board Agent

Attachment

cc: Crystal L. Mitchell, Legal Counsel
Department of Personnel Administration

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-7242
Fax: (916) 327-6377

February 24, 2003

Jesse Vickers

Re: Jesse Vickers v. State of California (Department of Corrections)
Unfair Practice Charge No. SA-CE-1384-S
WARNING LETTER

Dear Mr. Vickers:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on December 21, 2002. Jesse Vickers alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act section 3519(a).

The charge details several actions taken by the State in alleged violation of the Dills Act, the Memorandum of Understanding between the State and Bargaining Unit 6, and the Department's Operational Manual. However, as presently stated, the facts alleged in the charge fall outside PERB's six month statute of limitations and fail to state a violation of the Dills Act.

Facts:

1. Removal of Vehicles: The charge alleges that the Department of Corrections Parole and Community Services Division (P&SCD) and the Parole Agent Association Chapter (Association) entered into an agreement to remove vehicles from agents working in the Immigration and Naturalization Services (INS) Unit. It is further alleged that this agreement was in violation of the Department's Operational Manual (DOM) and the Memorandum of Understanding (MOU).

MOU Section 19.07 states in its entirety:

> Assigned state vehicles for home storage for all CDC PAs I, II, and Parole Service Associates (PSA) assigned to private and public community correctional facilities; institution-based revocation unites, gang coordinators, jail liaison duties, INS/Deport Units, non-case carrying re-entry duties, Interstate Unit, Regional/Parole Headquarters, administrative or special

assignments shall be subject to local agreements in each parole region and the Community Correctional Facilities Program.
A. State vehicles may be made available for those parole staff at their work locations for use during the scheduled work day. A parole staff person, with prior supervisory approval, may be permitted temporary overnight home storage of a state vehicle based on workload or operational needs.

B. PAs, with prior supervisory approval, may be authorized to use their private vehicle and be reimbursed for mileage.

C. Specially funded programs which provide state vehicles for PAs I and II are excluded from this provision.

2. Supervision Level of "DP": The charge alleges that the P&CSD implemented the supervision level of "DP", for cases where the parolee has been deported and the case is no longer active, in the INS Unit in violation of the DOM and MOU.

3. Case Reviews: The charge alleges that cases are being reduced to the "MS" standard without reviews, in violation of the DOM, MOU, and the Penal Code.

4. Increase in Workload: The charge alleges that the P&CSD entered into a local agreement to increase the workload of agents in the INS Unit, in violation of the DOM and MOU.

Statute of Limitations:

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.)

With respect to the first allegation concerning the termination of the use of State vehicles for agents in the USINS unit, attached to the charge is evidence that the Charging Party filed a grievance on the matter in November 2000. The state denied the grievance also in November 2000. The Charging Party had until May 2001 to file an unfair practice charge with PERB. The present charge was filed on December 21, 2002, therefore is untimely with respect to this allegation.

The second allegation in the charge concerns the use of the supervisory level of "DP" on certain cases. The Charging Party filed a grievance in December 2000. The grievance was denied in January 2001, and mini-arbitration on the grievance was denied in February 2001. The Charging Party had until August 2001 to file an unfair practice charge with PERB on this

matter. The present charge was filed on December 21, 2002 and is therefore untimely with respect to this allegation.

The third allegation in the charge concerns the reduction of cases without reviews. Again the Charging Party filed a grievance in December 2000 which was denied in January 2001 as well as mini-arbitration in February 2001. Charging Party failed to file a charge by August of 2001 and therefore the present charge is untimely with respect to this allegation.

The last allegation in the charge concerns an increase in workload for UNINS agents. The charge indicates that a grievance was filed by the Charging Party in November 2000. The State denied the grievance in December 2000 and further denied mini-arbitration in January 2001. Charging Party had until July 2001 to file an unfair practice charge with PERB. The present charge was filed on December 21, 2002, and is therefore untimely with respect to this allegation.

Failure to Carry Burden of Specificity:

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." 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.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

The charge, as presently written, does not provide the required specificity for an unfair practice charge. The Charging Party alleges violations of the Dills Act section 3519(a) for discrimination, yet fails to detail how the State's actions constitute such violations. The charge makes vague statements alleging agreements between the State and the Parole Agent Association Chapter as well as local agreements, but does not provide these agreements. In addition, it is unclear from the charge how referenced portions of the MOU are violated by these alleged agreements. Furthermore the charge fails to give the dates of the alleged agreements or implementation of policies, making it impossible to determine whether there is a violation of the Dills Act.

Failure to State a Prima Facie Case:

It appears from the information in the charge that the Charging Party is alleging the State discriminated against the Charging Party because of union activity. For the following reasons, the charge fails to state a prima facie case of Discrimination.

To demonstrate a violation of Dills Act 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.)

Evidence of adverse action is also required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 689.) In determining whether such evidence is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Ibid.) In a later decision, 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 reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. [Newark Unified School District (1991) PERB Decision No. 864; emphasis added; footnote omitted.]

While the charge details several actions by the State which may have had an adverse effect on the Charging Party, it fails to establish the elements of a Discrimination violation. The Charging Party engaged in the protected activity of filing grievances. And the State knew of this protected activity as evidenced by its participation in the grievance process. However, the charge neglects to put forth any information supporting that allegations that the actions taken by the State were in response to the Charging Party's actions, or that the State's conduct was directed at the Charging Party at all. As presently written, the charge fails to establish any of the elements of a prima facie case for Discrimination under the Dills Act.

For these reasons the charge, as presently written, does not state a prima facie case and the facts supporting the charge fall outside the six month statute of limitations. 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 March 3, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Heather McLaughlin
Board Agent