

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KARIN CHEN,

Charging Party,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Respondent.

Case No. LA-CO-111-S

PERB Decision No. 1736-S

January 19, 2005

Appearance: Karin Chen, on her own behalf.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Karin Chen (Chen) of a Board agent's dismissal (attached) of her unfair practice charge. The unfair practice charge alleged that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act)¹ by violating its duty of fair representation.

The Board has reviewed the entire record in this matter, including the unfair practice charge, CSEA's response to the unfair practice charge, the Board agent's warning and dismissal letter and Chen's appeal. The Board finds the Board agent's warning and dismissal letters to be free of prejudicial error and adopts them as a decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. LA-CO-111-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1023
Fax: (510) 622-1027



September 24, 2004

KARIN CHEN

Re: Karin Chen v. California State Employees Association
Unfair Practice Charge No. LA-CO-111-S
DISMISSAL LETTER

Dear Ms. Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 10, 2004. Karin Chen alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)¹ by violating its duty of fair representation. On September 14, 2004, I spoke with the Charging Party regarding this charge. On September 16, 2004, Charging Party faxed me a note reiterating the information she provided to me on the telephone. On September 17, 2004, I spoke with Charging Party confirmed the receipt of the fax and explained the statute of limitations issue raised in the warning letter.

I indicated to you in my attached letter dated September 14, 2004, 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 September 23, 2004, the charge would be dismissed.

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 September 14, 2004 letter.

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

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.

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

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. (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

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.)

LA-CO-111-S
September 24, 2004
Page 3

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
Tammy Samsel
Regional Attorney

Attachment

cc: Michael Shanahan

PUBLIC EMPLOYMENT RELATIONS BOARD

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September 14, 2004

Karin Chen

Re: Karin Chen v. California State Employees Association
Unfair Practice Charge No. LA-CO-111-S
WARNING LETTER

Dear Ms. Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 10, 2004. Karin Chen alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)¹ by violating its duty of fair representation. On September 14, 2004, I spoke with the Charging Party regarding this charge. My investigation revealed the following information.

Chen is exclusively represented by CSEA. On December 9, 2003, CSEA Representative Henry Walton agreed to file a grievance on Chen's behalf and completed the requisite paperwork for her signature. Walton told Chen that the process would take approximately one month. On December 12, 2003, Chen wrote Walton for a copy of the grievance. Walton did not respond to Chen's letter. On January 9, 2004, Chen called Walton regarding the status of her grievance. Chen made another telephone call to Walton within a few days of her first call. Again, Walton did not respond. Chen alleges Walton failed to file the grievance.

Article 6.3 of the parties' memorandum of understanding provides:

Within twenty-one (21) calendar days after receipt of the formal grievance, the person designated by the department head as the first formal level of appeal shall respond in writing to the grievance.

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

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

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.

(1996) PERB Decision No. 1177.) The statute of limitations is an affirmative defense which has been raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party now bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

In a duty of fair representation charge, the statute of limitations begins to run when the Charging Party knew or reasonably should have known that further assistance from the union was unlikely. (California State Employees Association (Sutton) (2001) PERB Decision No. 1553.) Since Chen filed this charge on August 10, 2004, the statute of limitations period extends back to February 10, 2004. As this is a case of CSEA's failure to act there is not a definitive action upon which to base the statute of limitations period. It is instead, a question of when Chen should have known CSEA was not pursuing her grievance. Walton failed to respond to Chen's December 12, 2003 letter. This is one indication that CSEA was not pursuing her grievance. When Chen had not received a response to this letter by February 9, 2004, a full month had passed. Walton also failed to respond to Chen's telephone messages during the week of January 12, 2004. When Chen had not received a return call by February 9, 2004, several weeks had passed. Pursuant to the parties' contract, the State has twenty-one days to respond to a grievance. Chen would have received such a response in mid-January had Walton filed the grievance. Thus, it appears Chen should have known prior to February 9, 2004, that there was a problem with CSEA's representation. Thus, the charge is untimely filed and 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 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 September 23, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney

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