

**STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD**



ANDREA THOMAS,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF  
SOCIAL SERVICES),

Respondent.

Case No. SF-CE-281-S

PERB Decision No. 2500-S

September 19, 2016

Appearances: Andrea Thomas, on her own behalf; California Department of Human Resources by Elizabeth P. Krehe, Labor Relations Counsel, for State of California (Department of Social Services).

Before Winslow, Banks and Gregersen, Members.

DECISION<sup>1</sup>

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Andrea Thomas (Thomas) from the dismissal (attached) of her unfair practice charge by PERB's Office of the General Counsel. The charge, as amended, alleged that in or about November 2015, Job Steward Shandra Njoku (Njoku), a representative of Service Employees International Union, Local 1000 (Local 1000), requested an informal meeting with State of California (Department of Social Services) (DSS) managers to discuss certain issues affecting Thomas' employment with DSS. According to the amended charge, after exchanging several communications with Njoku, Branch Chief John Schromm

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<sup>1</sup> PERB Regulation 32320, subdivision (d), provides, in pertinent part: "Effective July 1, 2013, a majority of the Board members issuing a decision or order pursuant to an appeal filed under Section 32635 [Board Review of Dismissals] shall determine whether the decision or order, or any part thereof, shall be designated as precedential." Having met none of the criteria enumerated in the regulation, the decision herein has not been designated as precedential. (PERB regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

(Schromm) responded to some of the concerns in an e-mail message to Njoku and informed Njoku that he would not meet without first obtaining further clarification of the issues to be discussed. By this conduct, the amended charge alleged that DSS denied the employees' representative the right to meet and discuss issues affecting Thomas' employment.

The Office of the General Counsel dismissed the charge for failure to state a prima facie case and/or for lack of standing. Specifically, the Office of the General Counsel determined that the charge failed to allege sufficient facts to state a prima facie case that Thomas was denied union representation, since Schromm's correspondence did not condition a meeting on the absence of representation or seek to exclude Njoku from a meeting but rather required additional information about the issues to be discussed before agreeing to meet with Thomas and Njoku. Further, the Office of the General Counsel determined that because Thomas filed the charge as an individual employee and nowhere alleges that she is a representative or agent of Local 1000, she lacks standing to assert a violation of the exclusive representatives' right to represent employees.

On appeal, Thomas acknowledges that she did not fully understand the requirements for stating a prima facie case of an unfair practice charge and that she did not provide all of the necessary information as part of her charge. She attempts to correct this problem by providing additional factual detail in her appeal. For the reasons discussed below, we reject her appeal and affirm the dismissal.

#### DISCUSSION

PERB Regulation 32635, subdivision (b), provides that unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence. The Board has generally found good cause to do so when the new allegations or supporting

evidence could not have been discovered by the charging party through the exercise of reasonable diligence before the charge was dismissed. (*Cabrillo Community College District* (2015) PERB Decision No. 2453, p. 14.) By contrast, good cause does not exist where there are no *new* facts, i.e., ones that were not already known to the appealing party or which the charging party could have discovered through the exercise of reasonable diligence. (*United Faculty of Grossmont-Cuyamaca Community College District (Tarvin)* (2010) PERB Decision No. 2133, pp. 2-3.) Although Thomas was apparently unaware of the legal requirements for stating a *prima facie* case, our precedents have consistently held that the good cause standard applies to facts, not to legal standards or authority and that, a charging party's ignorance of the law is insufficient to warrant a finding of good cause. (*Id.* at p. 3; *State of California (State Teachers Retirement System)* (1997) PERB Decision No. 1202-S, p. 2.) Having failed to demonstrate good cause, we decline to consider the additional factual detail provided in Thomas' appeal.

We have reviewed the entire record in this matter and find the warning and dismissal letters were well-reasoned, adequately describe the factual allegations included in the amended charge and are in accordance with applicable law. Accordingly, we adopt the warning and dismissal letters as a decision of the Board itself.

#### ORDER

The unfair practice charge in Case No. SF-CE-281-S is hereby DISMISSED  
WITHOUT LEAVE TO AMEND.

Members Winslow and Gregersen joined in this Decision.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

San Francisco Regional Office  
1330 Broadway, Suite 1532  
Oakland, CA 94612-2514  
Telephone: (510) 622-1021  
Fax: (510) 622-1027



June 28, 2016

Andrea Thomas

Re: *Andrea Thomas v. State of California (Department of Social Services)*  
Unfair Practice Charge No. SF-CE-281-S  
**DISMISSAL LETTER**

Dear Ms. Thomas:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 18, 2015. Andrea Thomas (Ms. Thomas or Charging Party) alleges that the State of California (Department of Social Services) (DSS or Respondent) violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by failing to meet with her union representative.

DSS filed a verified position statement on December 18, 2015.

Charging Party was informed in the attached Warning Letter dated May 2, 2016 that the above-referenced charge did not state a prima facie case. Charging Party was advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, the charge should be amended. Charging Party was further advised that, unless the charge was amended to state a prima facie case or withdrawn prior to May 20, 2016, the charge would be dismissed.

On May 23, 2016, Charging Party filed a First Amended Charge (FAC). DSS filed a further verified position statement on June 9, 2016.

### **Summary of Facts**

Charging Party is a member of Bargaining Unit 4, represented by SEIU Local 1000.

The FAC recites a timeline of events in October and November, 2015.<sup>2</sup> On October 16, SEIU Steward Shandra Njoku (Njoku) requested an Informal Meeting with supervisor Leticia Ortega

<sup>1</sup> The Dills Act is codified at Government Code section 3512 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the Dills Act and PERB Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

<sup>2</sup> All subsequent dates herein are in 2015, unless otherwise stated.

(Ortega). Ortega asked why the meeting was requested. Njoku “advised Ms. Ortega by email, some of the issues.” Ortega did not respond.

On November 5, Njoku requested an Informal Meeting with Branch Chief John Schromm (Schromm). Schromm responded he should be available, “but for productivity of the meeting requested specific information.” Njoku responded “and proceeded to provide some issues.” Schromm responded and “asked for more specifics on concerns to discuss.” Njoku responded “by giving details of my [i.e., Charging Party’s] workload and flextime.”

Charging Party and Njoku believed that they were going to meet on November 18. But, on November 9, Schromm “responded to Ms. Njoku with his feedback on the issues before we could meet informally.” Njoku replied “let’s discuss everything on [November 18].” Schromm replied “No, I am not going to meet without more clarification.”

Charging Party alleges that Schromm “stated he could not discuss certain issues yet he discussed them in writing.” She further alleges that Schromm “did not allow the employees Union [sic] the right to meet to discuss issues. Instead he ranted back in forth [sic] by email rather than simply meeting with the Union Representative and employee.”

### **Discussion**

As discussed in the Warning Letter, PERB Regulation 32615(a)(5) requires that an unfair practice charge include a “clear and concise statement of the facts and conduct alleged to constitute an unfair practice.” In doing so, a charging party should allege with specificity the particular facts giving rise to a violation. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) The charging party may do this by alleging sufficient facts describing 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 (*Dept. of Food and Agriculture*), citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Such allegations should focus on the elements of the prima facie case. Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

It cannot be determined from the facts alleged what the basis of a Dills Act violation might be. Charging Party does not identify the purpose of the “Informal Meeting” or give any details regarding what the issue between the parties was. Charging Party alleges that an SEIU Steward had several communications with management employees, apparently on behalf of Charging Party. These discussions may have had to do with Charging Party’s workload and flextime. It appears that Schromm communicated via e-mail message rather than in an in-person meeting. This does not violate the Dills Act.

An employee required to attend an investigatory interview with the employer is entitled to union representation where the employee has a reasonable basis to believe discipline may

result from the meeting. PERB adopted the *Weingarten*<sup>3</sup> rule in *Rio Hondo Community College District* (1982) PERB Decision No. 260. In order to establish a violation of this right, the charging party must demonstrate: (a) the employee requested representation; (b) for an investigatory meeting; (c) which the employee reasonably believed might result in disciplinary action; and (d) the employer denied the request. (See *Redwoods Community College District v. Public Employment Relations Board* (1984) 159 Cal.App.3d 617 (*Redwoods*); *Fremont Union High School District* (1983) PERB Decision No. 301; see also, *Social Workers' Union, Local 535 v. Alameda County Welfare Department* (1974) 11 Cal.3d 382.)

To the extent Charging Party is attempting to assert a *Weingarten* violation, none of the elements are established. It appears that Charging Party's representative, Njoku, was attempting to set up a meeting and no meeting occurred. There are no facts to support that Charging Party was deprived of her right to representation.

To the extent Charging Party seeks to enforce the rights of the exclusive representative, she lacks standing to do so. (*State of California (Department of Corrections)* (1993) PERB Decision No. 972-S.)

The FAC does not cure the deficiencies discussed in the Warning Letter, and it does not state a prima facie case. Therefore, the charge is hereby dismissed based on the facts and reasons set forth herein and in the May 2, 2016 Warning Letter.

#### Right to Appeal

Pursuant to PERB Regulations,<sup>4</sup> Charging Party 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, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

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<sup>3</sup>In *National Labor Relations Board v. Weingarten* (1975) 420 U.S. 251 (*Weingarten*), the U.S. Supreme Court granted employees the right to representation during disciplinary interviews.

<sup>4</sup> PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95811-4124  
(916) 322-8231  
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, § 32635, subd. (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, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (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, § 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,

J. FELIX DE LA TORRE

General Counsel

By

Laura Z. Davis

Senior Regional Attorney

Attachment

cc: Elizabeth P. Krehe, Legal Counsel

**PUBLIC EMPLOYMENT RELATIONS BOARD**

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



May 2, 2016

Andrea Thomas

Re: *Andrea Thomas v. State of California (Department of Social Services)*  
Unfair Practice Charge No. SF-CE-281-S  
**WARNING LETTER**

Dear Ms. Thomas:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 18, 2015. Andrea Thomas (Ms. Thomas or Charging Party) alleges that the State of California (Department of Social Services) (DSS or Respondent) violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by failing to meet with her union representative.

DSS filed a verified position statement on December 18, 2015.

### **Summary of Facts**

The statement of charge states, in its entirety, as follows:

My union steward request[ed] to meet with management regarding work issues. First level supervisor responded but did not agree to meet, never responded back. Branch chief was contacted by union steward, chief refused to meet.

Charging Party is a member of State Bargaining Unit 4. This bargaining unit is exclusively represented by Service Employees International Union, Local 1000.

### **Discussion**

PERB Regulation 32615(a)(5) requires that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." In doing so, a charging party should allege with specificity the particular facts giving rise to a violation. (*National Union of Healthcare Workers* (2012) PERB Decision No. 2249a-M.) The charging

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<sup>1</sup> The Dills Act is codified at Government Code section 3512 et seq. PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of the Dills Act and PERB Regulations may be found at [www.perb.ca.gov](http://www.perb.ca.gov).

party may do this by alleging sufficient facts describing 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 (*Dept. of Food and Agriculture*), citing *United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944.) Such allegations should focus on the elements of the prima facie case. Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The charging party’s burden also includes alleging facts showing that the unfair practice charge was timely filed; i.e., that the alleged unfair practice occurred no more than six months prior to the filing of the charge. (*Los Angeles Unified School District* (2007) PERB Decision No. 1929; *City of Santa Barbara* (2004) PERB Decision No. 1628-M.) PERB is prohibited 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. (*Coachella Valley Mosquito and Vector Control District v. Public Employment Relations Board* (2005) 35 Cal.4th 1072.) 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 charge is devoid of any facts or detail such that it can be determined whether a prima facie case of a violation of the Dills Act is stated. Charging Party does not identify when her union representative requested to meet with a supervisor or manager, or for what purpose. Charging Party does not allege what the “work issues” were regarding. It cannot be determined whether the allegations were timely filed or how the employer is alleged to have violated the act.

For these reasons the charge, as presently written, does not state a prima facie case.<sup>2</sup> If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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

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<sup>2</sup> In *Eastside Union School District* (1984) PERB Decision No. 466, the Board explained that a prima facie case is established where the Board agent is able to make “a determination that the facts as alleged in the charge state a legal cause of action and that the charging party is capable of providing admissible evidence in support of the allegations. Consequently, where the investigation results in receipt of conflicting allegations of fact or contrary theories of law, fair proceedings, if not due process, demand that a complaint be issued and the matter be sent to formal hearing.” (*Ibid.*)

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May 2, 2016

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PERB. If an amended charge or withdrawal is not filed on or before **May 20, 2016**,<sup>3</sup> PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Laura Z. Davis  
Senior Regional Attorney

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<sup>3</sup> A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile or electronic mail. (PERB Regulation 32135.)