

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



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| WILLIAM THOMAS FLINT, |) | |
| |) | |
| Charging Party, |) | Case No. S-CE-186-S |
| |) | |
| v. |) | PERB Decision No. 394-S |
| |) | |
| STATE OF CALIFORNIA (DEPARTMENT |) | August 10, 1984 |
| OF CONSUMER AFFAIRS), |) | |
| |) | |
| Respondent. |) | |
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Appearances; William Thomas Flint, in propria persona; Christopher W. Waddell, Attorney (Department of Personnel Administration) for the State of California (Department of Consumer Affairs).

Before Hesse, Chairperson; Tovar and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on charging party's appeal of the regional attorney's dismissal of charges alleging that the State of California (Department of Consumer Affairs) unlawfully discharged William Thomas Flint discriminatorily or in reprisal for protected activity, thereby violating subsection 3519(a) of the State Employer-Employee Relations Act (SEERA).¹

After a review of the entire record in this matter, the Board adopts the attached dismissal as the decision of the

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

Board itself. Additionally, with regard to the propriety of the late amendment sought by Flint, we note that the regional office dismissed the charge for failure to state a prima facie case. The charging party was given seven days in which to amend or withdraw the charges, and he failed to do so.

PERB has indicated that mitigating circumstances will sometimes excuse a party for missing a deadline to amend a charge. But in Hanford Joint Union High School District (2/1/78) PERB Decision No. 46, the Board refused to allow a late amendment where the filing party offered no explanation for its tardiness. Since the charging party in the instant case offered no explanation for failing to amend his charge within the time allowed, he will not be permitted to do so on appeal.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, the Public Employment Relations Board hereby DISMISSES the charges filed by William Thomas Flint against the State of California (Department of Consumer Affairs).

Chairperson Hesse and Member Tovar joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Suite 102
Sacramento, California 95814
(916) 322-3198



July 26, 1983

William Thomas Flint
2755 Hyannis Way
Sacramento, CA 95827

Re: Flint v. State of California (Department of
Consumer Affairs)
Charge No. S-CE-18&-S

Dear Mr. Flint:

I indicated to you in my letter dated July 18, 1983, that the above-referenced charge did not state a prima facie case, and that unless you amended the charge to state a prima facie case or withdrew it prior to July 25, 1983, it would be dismissed.

I have not received either a request for withdrawal or an amended charge from you and am therefore dismissing this charge for the reasons stated below.

The above referenced charge alleges that you were rejected from probation and dismissed by the State of California, Department of Consumer Affairs, (State) without notice prior to the effective date of the dismissal, without materials upon which the dismissal was based and without an opportunity to respond prior to the effective date of the dismissal. This conduct is alleged to violate section 3519 and 3519.5 of the State Employer-Employee Relations Act (SEERA).

My investigation revealed the following: On December 9, 1982, you began working with the State in the Board of Accountancy as an Associate Governmental Program Analyst. You were to be on probation for the first six months of employment. On February 8, 1983 you were given your first report of performance for probationary employee which contained ratings of either unacceptable or improvement needed with the over-all rating being unacceptable. On February 22, 1983, your supervisor, Delia Bousquet, wrote a personal and confidential memorandum to the department's legal office enclosing a copy of your initial evaluation and your rebuttal and stating, "I wish to proceed with rejection on probation,"

On April 8, 1983, you received a second report of performance for probationary employee which contained ratings of

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unacceptable. On April 29, 1983, you were served with a Notice of Rejection During Probation and ordered to leave the building with your possessions by 5:00 p.m. that evening. The Notice of Rejection During Probation contains, among other things, the following:

4. You have failed, refused or otherwise . been unable to communicate effectively with or to be responsive to your supervisor. For example, you had been instructed verbally and in writing on at least three occasions prior to March 24, 1983 that your handwritten draft letters were to be reviewed by your supervisor prior to typing. Thereafter, you continued to refuse to comply with this instruction. When asked for an explanation for your failure to follow instructions, you told your supervisor that she should contact your union representative regarding any "agreement" you had made concerning such instructions. The next day, on March 29, 1983, you informed your supervisor that you had never "agreed" to allow her to review your draft letters prior to typing. Although you finally did agree to follow your supervisor's instructions, you informed her that further questions concerning this matter should be directed to your union representative.

Your inability to discuss simple instructions with your supervisor, without the intervention of third parties, prevent you from performing your job in a professional and efficient manner.

Based on these facts, the above-referenced unfair practice charge does not state a prima facie violation of the SEERA for the reasons explained below.

Although you allege that sections 3519 and 3519.5 of the SEERA have been violated, only violation of section 3519 will be discussed as section 3519.5 relates to unfair practices committed by employee organizations, and the facts of this charge do not support such a violation. Based on my review of

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the case, it appears that the only theory under which your case could proceed would be that of discrimination which would be a violation of section 3519(a), Violation of that section requires allegations that: (1) an employee has exercised rights under the SEERA; (2) the employer has imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced the employee because of the exercise of rights guaranteed by the SEERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 39; Novato Unified School District (4/30/82) PERB Decision No. 210. State of California (Department of Developmental Services) (7/18/82) PERB Decision No. 228-S. Thus, the charging party must demonstrate a connection between the employee's protected activity and the employer's adverse action against the employee.

Although you have demonstrated that you had been involved with an employee organization, there is no evidence that this involvement played a role in your rejection from probation. Both of your performance reports showed several areas in which your supervisor found your work to be less than acceptable. In fact, according to the February 22 memorandum, your supervisor had made the decision to terminate you at that point. The fact that two months later she mentioned your involvement with an employee organization in the final notice of rejection is insufficient to establish the "because of" connection necessary to make out a prima facie case.

Pursuant to Public Employment Relations Board regulation section 32635 {California Administrative Code, title 8, part III}; you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on August 15, 1983, or sent by telegraph or certified United States mail postmarked not later than August 15, 1983 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 the document filed with the Board itself (see section 3214C 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.

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 (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours,

DENNIS M. SULLIVAN
General Counsel

By

Robert Thompson
Regional Attorney