*** * * OVERRULED IN PART by multiple decisions, as recognized in *State of California (Department of Corrections and Rehabilitation)* (2024) PERB Decision No. 2926-S, pp. 16-19 * * ***

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA DEPARTMENT OF FORESTRY EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. S-CE-392-S
v.	)	PERB Decision No. 734-S
STATE OF CALIFORNIA (CALIFORNIA DEPARTMENT OF FORESTRY AND FIRE PROTECTION),	)	May 3, 1989
Respondent.	)	

Appearances: Carroll, Burdick & McDonough by Ronald Yank, Attorney, for the California Department of Forestry Employees Association; Department of Personnel Administration by Roy J. Chastain, Labor Relations Counsel, for the State of California (California Department of Forestry and Fire Protection).

Before Hesse, Chairperson; Porter, Craib, Shank and Camilli, Members.

DECISION

This case is before the Public Employment Relations Board (Board) on appeal by the charging party of the Board agent's dismissal, attached hereto. The charging party challenges the dismissal of that portion of its charge that alleges that the respondent violated section 3519(b) of the Ralph C. Dills Act. We have reviewed the dismissal and find that the unfair practice charge alleging a violation of section 3519(a) states a prima facie case that respondent interfered with employees' rights, and we agree that this allegation must be deferred to arbitration under Lake Elsinore School District (1987) PERB Decision No. 646.

With regard to the allegation that respondent interfered with the rights of the employee organization, we find that the alleged statement wherein the respondent threatened that there would not be a contract states a prima facie case that the respondent interfered with the rights of the employee organization.[1] Finally, we summarily deny respondent's request that it be awarded costs and fees.

ORDER

For the reasons stated above, the Board AFFIRMS the Board agent's dismissal of the allegation that respondent interfered with the employees' rights. The Board hereby REVERSES the Board agent's dismissal of the allegation that the respondent interfered with the rights of the employee organization, and REMANDS the Board agent's dismissal of this allegation to the General Counsel. The Board hereby ORDERS the General Counsel to issue a complaint alleging a violation of section 3519(b).

By the BOARD

[1]We note that the charging party alleged the minimum required to state a prima facie case. In future cases, the charging party runs the risk of a dismissal should it fail to allege the necessary facts.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

November 17, 1988

Ronald Yank
Carroll, Burdick & McDonough
One Ecker Place, Suite 400
San Francisco, CA 94105

Re: California Department of Forestry Employees Association v. State of California, Case No. S-CE-392-S

Dear Mr. Yank:

On July 25, 1988, the California Department of Forestry Employees Association (CDFEA) filed an unfair practice charge against the State of California alleging violations of the Dills Act, sections 3519(a), (b) and (d). Specifically, the charge alleges that a management representative made threats against employees and the union for engaging in protected activity.

I indicated to you in my attached letter dated November 8, 1988, 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 that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to November 15, 1988, the charge would be dismissed.

I have not received either a request for withdrawal or an amended charge. I am therefore dismissing the charge based on the facts and reasons contained in my November 8, 1988, letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United

States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

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

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 calendar days following the date of service of the appeal (California Administrative Code, title 8, 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 each copy of a document served upon a party or filed with the Board itself. (See California Administrative Code, title 8, section 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.

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 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 (California Administrative Code, title 8, 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.

Sincerely,

CHRISTINE A. BOLOGNA
General Counsel

By
Bernard McMonigle
Staff Attorney

Attachment

cc: Jeffrey Fine

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STATE OF CALIFORNIA GEORGE DEUKMEJIAN Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

November 9, 1988

Ronald Yank
Carroll, Burdick & McDonough
One Ecker Place, Suite 400
Ban Francisco, CA 94105

Re: California Department of Forestry Employees Association v. State of California. Case No. S-CE-392-S

Dear Mr. Yank:

Our letter of November 8 incorrectly states that your charge will be dismissed without leave to amend if we do not receive an amended charge or withdrawal from you by November 11. The date for dismissal if the above is not received should be November 15. I apologize for any inconvenience.

Sincerely,

Bernard McMonigle
Staff Attorney

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PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

November 8, 1988

Ronald Yank
Carroll, Burdick & McDonough
One Ecker Place, Suite 400
San Francisco, CA 94105

Re: WARNING LETTER. California Department of Forestry Employees Association v. State of California, Case No. S-CE-392-S

Dear Mr. Yank:

On July 25, 1988, the California Department of Forestry Employees Association (CDFEA) filed an unfair practice charge against the State of California alleging violations of the Dills Act, sections 3519(a), (b) and (d). Specifically, the charge alleges that a management representative made threats against employees and the union for engaging in protected activity.

Investigation of this charge revealed the following. The Mid-Valley Fire District had a contract with the California Department of Forestry and Fire Protection (CDF) to provide fire protection for the district. Local union representatives made public criticisms of local CDF management including criticisms to the Mid-Valley Fire District Board. Among the policies criticized was a recommendation to the Mid-Valley Board by local CDF management that the jurisdiction of two fire stations in the district be turned over to the City of Fresno. According to the union, that particular proposal could have meant a shift in firefighting responsibilities from state employees to City of Fresno firefighters.

On May 11, 1988, management representative Brian Weatherford, a Ranger III employed by CDF, allegedly made a statement about how employees should be asked who they work for, and if they say Mid-Valley instead of CDF, they should be transferred. According to the union, Weatherford also said that, "if the union and that board don't quit screwing around with that contract, then there won't be any more contract and CDF will see to it."

At the time of these events, CDF and CDFEA were signatory to a collective bargaining agreement. That agreement provides in section 6.06, Employee Rights, that "each employee retains all rights conferred by section 3515, et seq. of the State Employer-Employee Relations Act." The agreement's grievance

and binding arbitration procedure, also contained in Article 6, defines a grievance as "a dispute of one or more employees, or a dispute between the State and CAUSE involving the interpretation, application, or enforcement at the express time of this Agreement."

Section 3514.5(a)(2) of the Dills Act states, in pertinent part, that PERB,

> shall not . . . issue a complaint against conduct also prohibited by the provisions of the . . . [collective bargaining agreement in effect] 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.

In Lake Elsinore School District (1987) PERB Decision No. 646, PERB held that section 3541.5(a) of the Educational Employment Relations Act, which contains language identical to Section 3514.5(a) of the Dills Act, established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Rule 32620(b)(5) (California Administrative Code, title 8, section 32620(b)(5)) also requires the investigating board agent to dismiss a charge where the allegations are properly deferred to binding arbitration.

These standards are met with respect to this case. First, the grievance machinery of the agreement/MOU covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge, that management interfered with the rights of both CDFEA and CDFEA members by way of threats, is arguably prohibited by section 6.06 of the collective bargaining agreement. The first threat that employees would be transferred out of the geographical area for expressing their opinions seems to be clearly covered by section 6.06, which states, "each employee retains all rights conferred by section 3515 et seq. of the State Employer-Employee Relations Act."

The second threat that "if the union and the board don't quit screwing around with the contract, there won't be any more

contract," may also interfere with employee rights. Threats to employee organizations have been held to be interference with employee rights. Santa Monica Unified Union School District (1979) PERB Decision No. 103. CDFEA contends that the second threat also interferes with the employee organization's rights and that those rights are not guaranteed under the contract and therefore are not subject to the grievance and arbitration procedure. Thus, CDFEA contends that there is a separate violation of Government Code section 3519(b) based on the same conduct.

This theory is without merit for the following reasons. First, Charging Party has not established that its rights were threatened independently of the threat against employee rights. Novato Unified School District (1982) PERB Decision No. 210; Gonazales Union High School District (1984) PERB Decision No. 410. Charging Party states that "[t]he threat could materialize into acts that do not directly run against individuals, but rather against the Association. . . ." Such an assertion is speculative and is not a statement of fact. As explained, the threat which is alleged to have been made interferes with employee rights. Second, this case involves a substantial question of whether section 6.06 of the agreement between the parties has been violated. It is clear that interference with employee rights is at the center of this dispute and resolution of this issue may settle this matter in a way compatible with the Act. Accordingly, this charge must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. See PERB Regulation 32661 (California Administrative Code, title 8, section 32661); Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.

If you feel that there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one explained above, please amend the charge accordingly. This 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 be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before

November 11, 1988, I shall dismiss your charge without leave to amend. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Staff Attorney

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