

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MARIA B. KATKA,)
)
 Charging Party,) Case No. S-CO-152-S
)
 v.) PERB Decision No. 996-S
)
 CALIFORNIA STATE EMPLOYEES) May 19, 1993
 ASSOCIATION,)
)
 Respondent.)
 _____)

Appearances: Maria B. Katka, on her own behalf; Howard Schwartz, Attorney, for California State Employees Association.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on an appeal filed by Maria B. Katka (Katka), to the Board agent's dismissal (attached hereto) of her unfair practice charge. The charge alleged that the California State Employees Association (CSEA) violated sections 3515 and 3519.5 of the Ralph C. Dills Act (Dills Act)¹ by

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3515 states:

Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (i) of Section 3513,

providing misleading ballot information to Bargaining Unit 4 members at the time of contract ratification. The Board agent dismissed the charge on the ground that it was filed beyond the six-month statutory limitations period.

The Board has reviewed the entire record in this case de novo and, finding the dismissal to be free of prejudicial error, adopts it as the decision of the Board itself, consistent with the following discussion.

or a fair share fee provision, as defined in subdivision (k) of Section 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

Section 3519.5 states:

It shall be unlawful for an employee organization to:

- (a) Cause or attempt to cause the state to violate Section 3519.
- (b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
- (c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.
- (d) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

DISCUSSION

The Board agent dismissed the charge on the ground that it was filed beyond the statutory limitations period. The unlawful conduct (the distribution of misleading ballot material) occurred between May 18, 1992,² when the ratification vote commenced, and June 15, the last day to return the ballots. The charge was filed on December 21. To be timely, it should have been filed on or before December 15.

On appeal, Katka contends that the charge was, in fact, timely filed because the results of the vote were not officially released until CSEA distributed a memo to the membership. She claims that the memo was dated June 19, but was not actually distributed until "around June 21, 1992." This contention, however, does not make the charge timely. The alleged unlawful conduct was the distribution of misleading ballot materials, not the release of the results of the vote. As the distribution of the materials did not occur within six months prior to the filing of the charge, the charge is untimely and must be dismissed. It is irrelevant when the results were released.

Katka also alleges in the charge that the contract proposal discriminates against women workers. The Board agent dismissed this allegation on the ground that it did not conform to PERB Regulation 32615,³ which requires a clear and concise statement

²All dates herein refer to 1992, unless otherwise indicated.

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

of the facts and conduct alleged to constitute an unfair practice. This allegation is also untimely, as any CSEA conduct relevant to drafting or promoting the proposal must have occurred prior to the vote. Therefore, this allegation is untimely for the reasons discussed above.

ORDER

The unfair practice charge in Case No. S-CO-152-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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

January 27, 1993

Maria B. Katka

Re: Maria B. Katka v. California State Employees Association
Unfair Practice Charge Case No. S-CO-152-S

DISMISSAL LETTER

Dear Ms. Katka:

On December 21, 1992, you filed a charge in which you allege that the California State Employees Association (Association) violated Government Code sections 3515 and 3519.5 (the Dills Act). Specifically, you allege that CSEA violated its duty of fair representation by providing misleading ballot information to Bargaining Unit 4 members at the time of contract ratification in order to secure approval of the contract between the Association and the State.

I indicated to you, in my attached letter dated January 15, 1993, 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 January 22, 1993 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 January 15, 1993 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. (Cal. Code of Regs., tit. 8, sec. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 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 (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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 (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 of Regs., tit. 8, sec. 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
Deputy General Counsel

By _____
Michael E. Gash
Regional Attorney

Attachment

cc: Howard Schwartz, Assistant Chief Counsel
California State Employees Association
1108 O Street
Sacramento, CA 95814

PUBLIC EMPLOYMENT RELATIONS BOARD



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



January 15, 1993

Maria B. Katka

Re: Maria B. Katka v. California State Employees Association
Unfair Practice Charge Case No. S-CO152-S

WARNING LETTER

Dear Ms. Katka:

On December 21, 1992, you filed a charge in which you allege that the California State Employees Association (Association) violated Government Code sections 3515 and 3519.5 (the Dills Act). Specifically, you allege that CSEA violated its duty of fair representation by providing misleading ballot information to Bargaining Unit 4 members at the time of contract ratification in order to secure approval of the contract between the Association and the State. My investigation revealed the following facts.

On or about May 18, 1992, the ratification vote for the current Memorandum of Understanding (MOU) for State Bargaining Unit 4 commenced when the Association wrote all Unit 4 employees and provided them with a synopsis of the tentative agreement and a ratification ballot.

This letter also announced that all ballots must be returned by June 15, 1992. On June 16, 1992 the Unit 4 ballots were counted and the results were made public. On June 16, 1992, the Association issued a press release announcing the results of the ratification vote.

In order to state a prima facie case a Charging Party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge. San Dieguito Union High School District (1982) PERB Decision No. 194.

Government Code section 3514.5(a) states in relevant part:

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, . . .

Your charge was filed with the Public Employment Relations Board on December 21, 1992, which means that to be timely any alleged unfair practice by the Association should have occurred during the six-month statutory period which began on June 21, 1992.

The six month limitation period runs from the date the charging party knew or reasonably should have known of the alleged unfair practice, if the knowledge was obtained after the conduct occurred. Fairfield Suisun Unified School District (1985) PERB Decision No. 547.

The Association's letter of May 18, 1992, announced that all ballots must be returned by June 15, 1992. This letter also contained the allegedly misleading ballot information, which you allege the Association provided to bargaining unit members for the purpose of securing approval of the ratification vote.

The Association's May 18, 1992, correspondence, which contained the allegedly misleading information and announced the deadline for the return of all ballots, indicates that you had knowledge that the Association may have engaged in an unfair labor practice prior to June 16, 1992. Since the conduct you complained of and your receipt of knowledge of that conduct occurred outside the six-month limitation period, your charge is untimely and must be dismissed.

Your charge also states,

Bargaining **Unit 4** employees are dominated by women workers that are making lower salaries. The reduction in salary impacts them greater than other bargaining units, therefore we feel that this proposal discriminates against women workers. This Violates [sic] 3519.5(b) of the Ralph C. Dills Act.

PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615) requires that your charge contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice.

The statement contained in your charge fails to state sufficient facts to demonstrate the specific conduct engaged in by the Association which demonstrates discrimination. In the absence of a clear statement of facts and conduct constituting an unfair practice, your charge fails to state a prima facie violation of the Dills Act and will 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 any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. 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 must 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 January 22, 1993, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Michael E. **Gash**
Regional **Attorney**