

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JOHN M. KALKO,)
)
 Charging Party,) Case No. LA-CE-277-S
)
 v.) PERB Decision No. 1031-S
)
 STATE OF CALIFORNIA (DEPARTMENT)
 OF PARKS AND RECREATION),) January 4, 1994
)
)
 Respondent.)
 _____)

Appearance: John M. Kalko, on his own behalf.

Before Blair, Chair; Caffrey and Garcia, Members.

DECISION AND ORDER

GARCIA, Member: This case is before the Public Employment Relations Board (Board) on appeal by John M. Kalko (Kalko) of a Board agent's dismissal (attached hereto) of his unfair practice charge. In the charge, Kalko alleged that the State of California (Department of Parks and Recreation) violated section 3519(a) of the Ralph C. Dills Act (Dills Act or Act)¹ by discriminating and taking reprisal actions against Kalko because

¹The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519(a) provides, in part that:

It shall be unlawful for the state to do any of the following:

(a) 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.

of his exercise of rights protected by the Act. The Board agent dismissed his charge and refused to issue a complaint on the grounds that Kalko had failed to state a prima facie case of a violation of section 3519(a).

The Board has reviewed applicable statutes and case law, the warning and dismissal letters, the charge, Kalko's appeal and the entire record in this case. The Board finds the Board agent's dismissal, for failure to state a prima facie violation of the Dills Act, to be free of prejudicial error and adopts it as the decision of the Board itself.

The unfair practice charge in Case No. LA-CE-277-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



August 31, 1993

John M. Kalko

Re: NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
John M. Kalko v. State of California (Department of Parks
and Recreation)
Unfair Practice Charge No. LA-CE-277-S

Dear Mr. Kalko:

I indicated to you, in my attached letter dated August 13, 1993, 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 August 26, 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 August 13, 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).)

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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 _____
Les Chisholm
Regional Director

Attachment

cc: Linda A. Mayhew

PUBLIC EMPLOYMENT RELATIONS BOARD



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



August 13, 1993

John M. Kalko

Re: WARNING LETTER
John M. Kalko v. State of California (Department of Parks
and Recreation)
Unfair Practice Charge No. LA-CE-277-S

Dear Mr. Kalko:

The above-referenced unfair practice charge, filed in the Los Angeles Regional Office of the Public Employment Relations Board (PERB or Board) on March 2, 1993, alleges that the State of California (Department of Parks and Recreation) (hereafter, Employer or DPR) violated Government Code section 3519(a) by discriminating and taking reprisal actions against John M. Kalko (Kalko or Charging Party) because of his exercise of rights protected by the Ralph C. Dills Act (Dills Act).¹

My investigation of this charge has revealed the following. Kalko is employed as a State Park Ranger I (Permanent Intermittent) in DPR's Orange Coast District. His position is included in State Bargaining Unit 7 - Protective Services and Public Safety which is represented by the California Union of Safety Employees (CAUSE).

Kalko has, since 1985, filed several grievances. Beginning in 1990, and continuing each year thereafter, the DPR has reduced Kalko's hours of employment from a range of 1200-1300 per year to a range of 600-750. On November 6, 1990, a Notice of Adverse Action (5% salary reduction) was served on Kalko based on alleged non-adherence to DPR policy on the wearing of Low Profile Peace Officer Protective Equipment. Kalko grieved the adverse action and alleged the salary reduction constituted a reprisal action based on earlier protected activity. While the salary reduction was rescinded, DPR refused to acknowledge that the supervisor had acted inappropriately or engaged in reprisals against Kalko. CAUSE declined to take this grievance to arbitration.

On various occasions, including in December 1990 and January and May 1991, co-workers reported to Kalko that DPR managers and

¹The Dills Act is codified at Government Code section 3512 et seq. All statutory references herein are to the Government Code unless otherwise specified.

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supervisors had been heard to say that "heads would roll," Kalko's hours would be "zeroed out" or similar comments to the effect that the department intended to "get" Kalko if he continued to file grievances.

On or about January 2, 1992, information concerning the grievance filed by Kalko over the 1990 adverse action, specifically information raised by Kalko in his grievance concerning alleged illegal activities by DPR Lifeguards, was shared by Kalko's supervisor with other DPR employees who had no "need to know" information from the grievance. Kalko alleged that this disclosure of confidential information was engaged in as a reprisal for filing the earlier grievance and caused fellow employees to believe he had caused a curtailment of their rights to hold parties within park grounds. Kalko filed a grievance concerning the alleged disclosure of confidential grievance information on January 26, 1992, alleging a violation of the "No Reprisals" article of the CAUSE contract. This grievance was denied at each step; DPR noted in its response that no contract was in effect in Unit 7 but still responded to the substance of the grievance.² Kalko received written notice on September 6, 1992 that CAUSE had declined to take the grievance to arbitration.

Discussion

This charge alleges three unfair practices by the Employer: the reprisal in the form of a salary reduction imposed in November 1990; the reduction of hours beginning in 1990 and continuing in 1993; and the disclosure, in January 1992, of confidential information from the grievance filed in 1990.

PERB, pursuant to section 3514.5(a) of the Dills Act, lacks jurisdiction to issue a complaint concerning any alleged unfair practices occurring more than six months prior to the filing of the charge.

Charging Party's first allegation, concerning reprisals allegedly imposed in November 1990, is untimely and must be dismissed.

The second allegation, concerning reductions in hours imposed in 1990 and other years, is also untimely. The charge alleges on its face that Charging Party had reason to believe as early as January 1991 that Kalko's numbers of hours assigned were being reduced as a reprisal for earlier protected activity. The charge

²The prior Unit 7 contract had expired on July 30, 1991, and there was no new agreement in effect until July 1, 1992.

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does not provide any information, e.g., the filing of grievances over the reductions in hours, which might toll the time limits relative to the filing of this charge. The charge also does not contain specific allegations which provide a basis for concluding that the numbers of hours have been further reduced within the six months prior to the filing of this charge. This allegation must also, therefore, be dismissed.

The third allegation, apparently timely filed, concerns the Employer's disclosure to co-workers of information from an earlier grievance of Charging Party. To demonstrate a violation of section 3519(a), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employer had knowledge of the exercise of those rights; and (3) the employer 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 those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Prima facie evidence of some adverse action is also required to support a claim of discrimination or reprisal under this Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 688.) In determining whether prima facie evidence of an adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Id.) In a later decision, the Board further explained that

The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment. (Newark Unified School District (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

The instant allegation does not meet the standard established under Novato, and Palo Verde Unified School District, supra, and Newark Unified School District, supra. The charge does not allege facts to establish how (using an objective test) the action of the Employer in disclosing information from a grievance to the grievant's co-workers caused harm or had "impact on the employee's employment." However understandable the Charging

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Party's subjective reaction to this incident, the facts alleged here do not bring the conduct within the ambit of a violation of the Dills Act and the allegation 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 which 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 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 August 26, 1993, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Les Chisholm
Regional Director