

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MICHAEL RUBIN,)
)
 Charging Party,) Case No. SF-CO-28-S
)
 v.) PERB Decision No. 1042-S
)
 CALIFORNIA STATE EMPLOYEES)
 ASSOCIATION,) March 24, 1994
)
)
 Respondent.)
)
 _____)

Appearance; Cathy Hackett on behalf of Michael Rubin.
Before Caffrey, Carlyle and Garcia, Members.

DECISION AND ORDER

GARCIA, Member: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal of an unfair practice charge filed by Michael Rubin (Rubin). The Board agent found that the charge, alleging that the California State Employees Association (CSEA) violated section 3519.5(b) of the Ralph C. Dills Act (Dills Act), did not state a prima facie case.¹

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519.5 states, in pertinent part:

It shall be unlawful for an employee organization to:

(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.

The Board has reviewed the original and amended charge, the warning and dismissal letters, and Rubin's appeal. The Board finds the Board agent's dismissal to be free of prejudicial error, attaches the dismissal and warning letters, and adopts them as the decision of the Board itself.²

The unfair practice charge in Case No. SF-CO-28-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Carlyle joined in this Decision.

²In his dismissal letter dated November 30, 1993, the Board agent refers to an attached warning letter dated November 15, 1993, which explained why the charge did not state a prima facie case. In that warning letter, we note an inadvertent omission of the word "not:"

The facts alleged do [not] establish that the Association attempted to prevent Rubin from conducting any meetings in facilities not provided by the Association.
(Warning letter, p. 2.)

We also note that the November 30 dismissal letter corrected that error.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350



November 30, 1993

Michael Rubin
1519 E. 17th Street
Oakland, California 94606

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Michael Rubin v. California State Employees Association
Unfair Practice Charge No. SF-CO-28-S

Dear Mr. Rubin:

The above-referenced unfair practice charge, filed on October 26, 1993, alleges that the California State Employees Association (Association) retaliated against Michael Rubin and coerced him by ordering him to cease conducting a meeting of the Caucus for a Democratic Union. This conduct is alleged to violate Government Code section 3519.5(b) of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated November 15, 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 November 23, 1993, the charge would be dismissed.

On November 29, 1993, you filed an amended charge. The amended charge notes that the meeting proposed to be held by Charging Party was planned to occur after the events scheduled by the Association, essentially, during the participants' "free time" between consecutive days of the Association's Committee meeting. The amended charge adds further evidence concerning the purposes of the Caucus for a Democratic Union. The amended charge does not dispute the Association's assertion that room where the meeting was scheduled had been paid for by the Association.

These additional facts fails to cure the deficiencies noted in the attached November 15, 1993 letter. The Dills Act does not guarantee an employee organization member the right to conduct a meeting in facilities provided by the employee organization. The facts alleged do not establish that the Association attempted to prevent Rubin from conducting any meetings in facilities not provided by the Association.

Therefore, I am dismissing the charge based on the facts and reasons set forth above and in my November 15, 1993 letter.

November 29, 1993

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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.)

November 29, 1993
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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,

ROBERT THOMPSON
Deputy General Counsel

By _____

~~JOHN GINOZA~~
DC

Regional Attorney

Attachment

cc: Mark DeBoer

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 557-1350



November 15, 1993

Michael Rubin
1519 E. 17th Street
Oakland, California 94606

Re: **WARNING LETTER**
Michael Rubin v. California State Employees Association
Unfair Practice Charge No. SF-CO-28-S

Dear Mr. Rubin:

The above-referenced unfair practice charge, filed on October 26, 1993, alleges that the California State Employees Association (Association) retaliated against Michael Rubin and coerced him by ordering him to cease conducting a meeting of the Caucus for a Democratic Union. This conduct is alleged to violate Government Code section 3519.5(b) of the Ralph C. Dills Act (Dills Act).

Investigation of the charge revealed the following. Michael Rubin is an employee of the State of California and is employed within State bargaining unit #4, as defined by the Public Employment Relations Board (PERB). Rubin is a member of the Association, the exclusive representative of bargaining unit #4. Rubin also serves on the Bargaining Unit Negotiating Committee (Committee) for the Association as an elected representative, and in that capacity, communicates with other State employees regarding the collective bargaining activities of the Association. In addition, Rubin is an active member of the Caucus for a Democratic Union (Caucus), an organization composed of Association members, and in that capacity, has advocated for changes in internal election procedures for the Association in ways opposed by the statewide leadership of the Association.

On or about October 9, 1993, Rubin was attending a meeting of the Committee in Sacramento. During the period of time scheduled for the Committee meeting, Rubin announced a separate meeting of the Caucus in his hotel room, which was paid for by the Association. Wyvon Matthews, Chair of the Committee, delivered a letter to Rubin ordering him to "cease and desist" from conducting the meeting. The charge alleges that the Association's "current efforts to punish [Rubin] are motivated by a desire to retaliate against employees for their protected activities" and threaten and coerce him because of his protected activities.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the Dills Act for the reasons that follow.

November 15, 1993

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Although the charge frames the violation in this case both as one of retaliation or discrimination and interference, a more logical reading of the facts suggests simply a violation involving interference. The employee organization is alleged in this case to have attempted to directly restrain alleged protected activities, rather than indirectly through a retaliatory adverse action.

In order to state a prima facie violation involving interference, the charging party must demonstrate harm to rights guaranteed under the Dills Act. (Gov. Code, sec. 3519.5(b); Carlsbad Unified School District (1978) PERB Dec. No. 89.) However, there is nothing in the Dills Act which guarantees an employee organization member the right to conduct a meeting in facilities provided by the employee organization. That appears to be the case here. The Association asserts that its policies do not permit the use of its funds for use in organizing activities not authorized or sponsored by the Association and that Rubin was attempting to conduct a Caucus meeting in a room paid for by the Association. The facts alleged do establish that the Association attempted to prevent Rubin from conducting any meetings in facilities not provided by the Association.

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 November 23, 1993, I shall dismiss your charge. If you have any questions, please call me at (415) 557-1350.

Sincerely,

DONN GINOZA
Regional Attorney