

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CHARLES GREGORY,)
)
 Charging Party,) Case No. S-CE-796-S
)
 v.) PERB Decision No. 1155-S
)
 STATE OF CALIFORNIA (DEPARTMENT) June 11, 1996
 OF CORRECTIONS),)
)
 Respondent.)
 _____)

Appearances: Charles Gregory, on his own behalf; State of California (Department of Personnel Administration) by Michael P. Cayaban, Labor Relations Counsel, for State of California (Department of Corrections).

Before Caffrey, Chairman; Garcia and Johnson, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Charles Gregory (Gregory) of a Board agent's dismissal (attached) of his unfair practice charge. In his charge, Gregory alleged that the State of California (Department of Corrections) (State) discriminated against him in retaliation for his exercise of protected rights in violation of section 3519(a) of the Ralph C. Dills Act (Dills Act).¹

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in pertinent part:

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. For purposes of

The Board has reviewed the entire record in this case, including Gregory's unfair practice charge, the warning and dismissal letters, Gregory's appeal and the State's response thereto.² The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CE-796-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Garcia and Johnson joined in this Decision.

this subdivision, "employee" includes an applicant for employment or reemployment.

²In its response, the State incorrectly asserts that it was not served with Gregory's appeal until after the filing deadline provided for by PERB regulations. (PERB regs. are codified at Cal. Code Regs., tit.8, sec. 31001 et seq.) In fact, the State was served with Gregory's appeal prior to the filing deadline established pursuant to PERB Regulation 32130(c).

PUBLIC EMPLOYMENT RELATIONS BOARD



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



April 4, 1996

Charles Gregory

Re: Charles Gregory v. State of California (California
Department of Corrections)
Unfair Practice Charge No. S-CE-796-S
DISMISSAL LETTER

Dear Mr. Gregory:

On January 27, 1996, you filed the above-referenced charge alleging illegal discrimination by the California Department of Corrections (CDC).

I indicated to you, in my attached letter dated March 13, 1996, 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 advisee that, unless you amended the charge to state a prima facie case or withdrew it prior to March 20, 1996, 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 March 13, 1996 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

Dismissal Letter
S-CE-796-S
April 4, 1996
Page 2

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
Bernard McMonigle
Regional Attorney

Attachment

cc: Michael Cayaban, DPA

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 13, 1996

Charles Gregory

Re: Charles Gregory v. State of California (California
Department of Corrections)

Unfair Practice Charge No. S-CE-796-S

WARNING LETTER

Dear Mr. Gregory:

On January 27, 1996, you filed the above-referenced charge alleging illegal discrimination by the California Department of Corrections (CDC).

Your charge indicates that you have seven years of experience with CDC and a teaching credential. However, you just found out that you were not selected for a position of Vocational Instructor. The selected candidate has had three promotions in the last year and a half. You've interviewed for numerous promotions and lateral transfers, but have not been selected for any. Your charge states "I feel that I am being punished for being a CSEA Union Steward in 1989 and 1990". On March 13, 1996, I telephoned your place of work and we briefly discussed the charge and the fact that this letter would be forthcoming.

To demonstrate an illegal reprisal, the Charging Party must show that the employee participated in a protected activity, the employer had knowledge of such participation, the employer took action adverse to the employee's interest, and unlawful motive exists. In this case, you have not shown that those people making the selection for the teaching position, were aware of your union participation. Nor have you demonstrated unlawful motive.

Circumstantial evidence of unlawful motive includes timing plus another indicia of motive. Such indicia may include disparate treatment of the employee, a departure from established procedures, the employer's failure to offer justification to the employee, the employer's inconsistent justifications, or a pattern of obstructionist conduct. (Novato Unified School District (1982) PERB Dec. No. 210)

The significance of timing of employer conduct depends on the circumstances. The Public Employment Relations Board evaluates timing on a case by case basis. The Board has found an inference of unlawful intent, where an employee's work schedule was changed

Warning Letter
S-CE-796-S
February 28, 1996
Page 2

six months after his participation in an unfair practice hearing. (University of California (1984) PERB Dec. No. 403-H) However, in your case, it has been approximately five years since your stated participation as a union steward. Such a lapse of time does not lead to an inference of unlawful motive. Nor have you supplied any other circumstantial evidence that the employer was unlawfully motivated. Accordingly, this charge 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 March 20, 1996, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:eke