

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION,)
)
Charging Party,) Case No. S-CE-802-S
)
v.) PERB Decision No. 1172-S
)
STATE OF CALIFORNIA (DEPARTMENT)
OF TRANSPORTATION),) October 29, 1996
)
Respondent.)
_____)

Appearances: Anne M. Giese, Attorney, for California State Employees Association; State of California (Department of Personnel Administration) by Carol A. McConnell, Labor Relations Counsel, for State of California (Department of Transportation).

Before Garcia, Johnson and Dyer, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by the California State Employees Association (CSEA). In its charge, CSEA alleged that the State of California (Department of Transportation) (State) violated section 3519 of the Ralph C. Dills Act (Dills Act)¹ when one of its supervisors retaliated against several

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

employees.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, CSEA's appeal and the State's response thereto. The Board finds the Board agent's 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-802-S is hereby DISMISSED WITHOUT LEAVE TO AMEND..

Members Garcia and Dyer joined in this Decision.

guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 15, 1996

Anne M. Giese, Staff Attorney-
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: DISMISSAL LETTER
California State Employees Association v. State of
California (Department of Transportation)
Unfair Practice Charge No. S-CE-802-S

Dear Ms. Giese:

On January 26, 1996, Cathy R. Hackett, Chief Steward for the California State Employees Association (CSEA) filed the above-captioned charge in which she alleged that the State of California, Department of Transportation (CalTrans) violated the Ralph C. Dills Act (Dills Act) by and through its supervisor Pete Barrios taking reprisals against Unit 14 employee, Caroline Dansby and employees Doug Blithe, Kenneth Kessler, Ivan Slayton, Norma Campisi, Virgil Weatherford, Danny Carroll and Modesto Rios. (Your July 3, 1996, amendment fails to provide any additional information regarding these individuals.) More specifically, the allegations focus on violations of Dills Act section 3519(a) by Barrios, against employees he supervised.

The alleged acts of reprisal against Dansby began on July 26, 1995 when Barrios suspended Dansby for five days. CSEA contends this suspension occurred as a result of and in retaliation for Dansby pursuing a grievance with CSEA, a sexual discrimination charge and a request to file charges against Barrios by CSEA. These actions were all the result of an incident during which you allege Barrios struck Dansby with his arm/elbow on March 21, 1995. You subsequently amended the charge on April 19, 1996 by alleging another act of retaliation, a twenty day suspension dated October 26, 1995 again alleging Barrios retaliated against Dansby for the earlier filings.

I indicated to you, in my attached letter dated May 29, 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 advised that, unless you amended the charge to state a prima facie case or withdrew it prior to June 10, 1996, the charge would be dismissed. You were granted an extension of time to July 3, 1996, to submit additional facts.

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On July 3, 1996, you filed an amendment to the charge. Through the amendment, you recite the series of incidents between Dansby and Barrios that began with the March 21, 1995, confrontation and continued through two disciplinary actions in July and October 1995. You did not provide any further facts which support a finding of the "nexus" element required for a prima facie case. The allegation alleging interference with Dansby's protected rights by her supervisor, Barrios, are dismissed.

In addition, for the first time, you raise an allegation of interference and unilateral change by CalTrans supervisors on October 19, 1995. You contend that CalTrans supervisors removed CSEA flyers from the break room and from Dansby's work station. (In our telephone conversation regarding this allegation you indicated that there was no evidence that Barrios was engaged in the removal of the flyers.) These flyers were posted in customary locations where CSEA notices had been posted previously.

Section 3514.5(a)(1) of the Dills Act provides that PERB "shall not issue a complaint in respect of any charge based on an alleged unfair practice charge occurring more than six months prior to the filing of the charge."

PERB has held that the six month period commences to run when the charging party knew or should have known of the conduct giving rise to the alleged unfair practice. (Regents of the University of California (1983) PERB Dec. No. 359-H.) Since the allegations regarding interference and unilateral change were raised for the first time on July 3, 1996, the statute of limitations period began to run on January 3, 1996.

Therefore, I am dismissing this new allegation as being untimely and the remainder of the charge for the facts and reasons contained in my May 29, 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

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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

Roger Smith
Board Agent

Attachment

Carol A. McConnell



PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 29, 1996

Anne M. Giese, Staff Attorney-
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: WARNING LETTER
California State Employees Association v. State of
California Department of Transportation
Unfair Practice Charge No. S-CE-802-S

Dear Ms. Giese:

On January 26, 1996, Cathy R. Hackett, Chief Steward for the California State Employees Association (CSEA) filed the above-captioned charge in which she alleged that the State of California, Department of Transportation (CalTrans) violated the Ralph C. Dills Act (Dills Act) by and through its supervisor Pete Barrios taking reprisals against Unit 14 employee, Caroline Dansby and employees Doug Blithe, Kenneth Kessler, Ivan Slayton, Norma Campisi, Virgil Weatherford, Danny Carroll and Modesto Rios. More specifically the allegations focus on violations of Dills Act section 3519(a) by Barrios against employees he supervised.

The alleged acts of reprisal against Dansby began on July 26, 1995 when Barrios suspended Dansby for five days. CSEA contends this suspension occurred as a result of and in retaliation for Dansby pursuing a grievance with CSEA, a sexual discrimination charge and a request to file charges against Barrios by CSEA. These actions were all the result of an incident involving Barrios striking Dansby with his arm/elbow on March 21, 1995. You subsequently amended the charge on April 19, 1996 by alleging another act of retaliation, a twenty day suspension dated October 26, 1995 again alleging Barrios retaliated against Dansby for the earlier filings.

The allegations involving acts of reprisal towards other employees all occurred more than six months prior to this charge being filed, or in the case of Virgil Weatherford, provide no specific allegations regarding what adverse action he may have suffered, or when. Section 3514.5(a) of the Dills Act states, in pertinent part, that PERB shall not:

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.

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Those alleged reprisals occurring more than six months prior to the filing of the charge will be dismissed.

Additionally, to demonstrate a violation of Dills 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 employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210; 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.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other facts which might demonstrate the employer's unlawful motive. (Novato Unified School District, supra; North Sacramento School District (1982) PERB Decision No. 264.) As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of Dills section 3519(a).

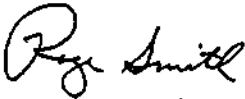
The alleged acts of reprisal in July and October, 1995, provide none of the "nexus" information necessary to demonstrate a violation of discriminatory conduct. The fact that Dansby had earlier filed a grievance and a DFEH complaint may establish some protected conduct but without more facts to establish the "nexus", the charge does not state a prima facie case 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 additional facts which would correct the deficiencies explained above, please amend the charge. The

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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 June 10, 1996. I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198 ext. 358.

Sincerely,



Roger Smith
Board Agent

cc: Cathy Hackett