

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LYNDA G. BRUSHIA,)	
)	
Charging Party,)	Case No. SA-CO-194-S
)	
v.)	PERB Decision No. 1207-S
)	
CALIFORNIA STATE EMPLOYEES)	June 23, 1997
ASSOCIATION,)	
)	
Respondent.)	
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Appearance; Lynda G. Brushia, on her own behalf.
Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Lynda G. Brushia's (Brushia) unfair practice charge. Brushia's charge alleges that the California State Employees Association violated section 3515.7(g) of the Ralph C. Dills Act (Dills Act)¹ when it failed to adequately represent her in the processing of a grievance; interfered with her communications with her employer; and failed to adequately represent her in appealing her automatic resignation.

¹The Dills Act is codified at Government Code section 3512 et seq. Dills Act section 3515.7(g) provides:

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

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

ORDER

The unfair practice charge in Case No. SA-CO-194-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Johnson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 31, 1997

Lynda G. Brushia

Re: Lynda G. Brushia v. California State Employees
Association
Unfair Practice Charge No. SA-CO-194-S

Dear Ms. Brushia,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 6, 1997. In the charge you allege that the California State Employees Association (CSEA) violated Government Code section 3519.5(b) and the duty of fair representation by (1) failing to represent you properly during the grievance procedure, (2) failing to inform the employer as to your extension of sick leave and (3) not properly representing you in a hearing concerning the automatic separation from state service.

I indicated to you, in my attached letter dated March 21, 1997, that certain allegations contained in the 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 March 28, 1997, 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 21 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:

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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 Dave Hitch

cc: Catherine Kennedy

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 21, 1997

Lynda G. Brushia

Re: Lynda Brushia v. California State Employees Association
Unfair Practice Charge No. SA-CO-194-S

WARNING LETTER

Dear Ms. Brushia,

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or the Board) on January 6, 1997. In your charge you allege that the California State Employees Association (CSEA) violated Government Code section 3519.5 (b) and the duty of fair representation by (1) failing to represent you properly during the grievance procedure, (2) failing to inform the employer as to your extension of sick leave and (3) not properly representing you in a hearing concerning the automatic separation from state service.

Investigation of this charge revealed the following information. Lynda Brushia was employed by the Department of Health Services (DHS) as a Staff Services Analyst. CSEA filed a grievance on behalf of Ms. Brushia in February 1996. The CSEA assigned Ms. Brushia's case to Jefferey Young. Mr. Young pursued this grievance to the fourth level of the grievance process and is awaiting the outcome of a private suit filed by Ms. Brushia before proceeding any further.

In April of 1996 Ms. Brushia took time off from work due to work related stress. In May Ms. Brushia received an informal letter of reprimand for not submitting a physician's verification for the time she had spent on leave. Ms. Brushia contacted Mr. Young, who instructed Ms. Brushia to draft a response and deliver it to him as soon as possible for editing. The response was submitted to Mr. Young on May 20, 1996. Ms. Brushia contacted Mr. Young approximately 2 weeks later and the letter had not been reviewed.

When Ms. Brushia contacted Mr. Young to inquire about the status of her response, she was on another work related sick leave. Mr. Young asked if she was going to return to work on June 18, 1996, the day the physician's verification expired. Ms. Brushia responded in the negative, informing Mr. Young that the doctor had extended her sick leave until July 30, 1996. The allegation then states that Mr. Young did not instruct Ms. Brushia to provide either himself or DHS with the physician's extension of

her sick leave. Relying on this, Ms. Brushia did not send the physician's verification of extended leave to DHS and, as a result, DHS invoked the AWOL statute¹ and sent a "NOTICE OF AUTOMATIC RESIGNATION" to Ms. Brushia.

On July 11, 1996 a Coleman² hearing was scheduled. Prior to the hearing, Mr. Young had left for vacation. The CSEA assigned Anna Kammerer to represent Ms. Brushia at the hearing. Ms. Kammerer and Ms. Brushia had a disagreement about how the case was going to be handled. Ms. Kammerer said that the only way she would represent Ms. Brushia at the Coleman hearing was if Ms. Brushia would remain quiet and let Ms. Kammerer do all the speaking. Although Ms. Brushia did not speak at the hearing, she submitted a written account of Mr. Young's role in her work separation.

Ms. Kammerer and Ms. Brushia also disagreed upon whether Brian Klock, Ms. Brushia's boyfriend, would attend the hearing. Upon Ms. Brushia's insistence, Mr. Klock attended the hearing and eventually made comments that adversely affected the outcome of the hearing. At the conclusion of the hearing, Ms. Brushia was not reinstated.

Discussion

A. Statute of Limitations

Government Code section 3514.5 (a) states:

Any employee . . . 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 to any charge based upon an alleged unfair practice charge occurring more than six months prior to the filing of the charge. . .

¹Government Code section 19996.2(a) provides that, "Absence without leave, whether voluntary or involuntary, for five consecutive working days is an automatic resignation from state service, as of the last date on which the employee worked."

²In Coleman v. Department of Personnel Administration (1991) 52 Cal.3d 1102; 278 Cal.Rptr. 346; 805 P.2d 300, the court held that when the state exercises its statutory authority under Government Code section 19996.2(a), it must give notice of facts supporting resignation and an opportunity to respond in order to satisfy the principles of due process. This hearing was scheduled to meet these due process requirements.

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The allegations that concern the editing of the response to the informal letter of reprimand and the acts of Mr. Young and Ms. Brushia concerning the physician's verification occurred more than 6 months before the unfair practice charge was filed. Therefore they are barred by the 6 month statute of limitations.

B. Violation of the Duty of Unfair Representation

Under the Dills Act, the union is prohibited from representation that is "arbitrary, discriminatory, or in bad faith" (See Gov. Code Section 3578.) and if the union's conduct toward a member is such, a breach of the duty of fair representation will be found. (Rocklin Teachers Professional Association (1980) PERB Decision No. 124.) In order to show a prima facie violation of a union's duty of fair representation, the party must show facts that the union acted without rational basis or in a way that is devoid of honest judgment. (Reed District Teachers Association, CTA/NTA (Reyes) (1983) PERB Decision No. 332.)

1. Representation during the Grievance Procedure

From the investigation of this case, it was discovered that the grievance CSEA had filed on behalf of Ms. Brushia has not been abandoned and is currently pending. The charge is void of any facts that would indicate that CSEA acted "arbitrary, discriminatory, or in bad faith" in the handling of your case. Additionally, you have failed to allege facts that would indicate that the Union had acted with gross negligence in handling your case. (See California School Employees Association (1984) PERB Decision No. 427 where the Board held that mere negligence by a union in handling a grievance does not constitute a breach of the duty of fair representation.) As a result, the facts submitted do not establish a prima facie case.

2. Representation during the Coleman Hearing

It was alleged that the CSEA representative, Ms. Kammerer, stated that she would only represent Ms. Brushia if Ms. Brushia would remain quiet and allow her to do the talking. Taking this statement as true, the charge still does not state a prima facie case. "[T]he failure to introduce every favorable document or to raise every argument deemed significant by the charging party does not amount to a breach of the duty of fair representation." California Faculty Association (Mirhady) (1989) PERB Decision No. 746-H. The charge does not indicate that Ms. Kammerer's decision to have Ms. Brushia not speak at the hearing was "arbitrary, discriminatory or in bad faith." Thus, the charge, as submitted, fails to state a prima facie case.

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For these reasons the allegations that the CSEA violated their duty for fair representation in violation of 3519.5(b) by (1) failing to represent you properly during the grievance procedure, (2) failing to inform the employer as to her extension of sick leave and (3) not properly representing you in a hearing concerning the automatic separation from state service fail to 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 practice charge form, clearly labeled First Amended Charge, must contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 28, 1997, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Dave Hitch
Board Agent