

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION, LOCAL 1000, SEIU,)
AFL-CIO, CLC,)
)
Charging Party,) Case No. SF-CE-179-S
)
v.) PERB Decision No. 1328-S
)
STATE OF CALIFORNIA (DEPARTMENT OF) April 26, 1999
MENTAL HEALTH),)
)
Respondent.)
_____)

Appearance: California State Employees Association by Terrence Ryan, Labor Relations Representative, for California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. In the charge, CSEA alleged that the State of California (Department of Mental Health) failed and refused to provide information to CSEA in violation of section 3519(b) and (c) 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:

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

The Board has reviewed the entire record in this case, including the unfair practice charge, the Board agent's warning and dismissal letters and CSEA'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. SF-CE-179-S is DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415)439-6940



February 5, 1999

Terrence Ryan
Labor Relations Representative
California State Employees Association
2020 Challenger Drive, Suite 102
Alameda, California 94501-1017

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**

California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC v. State of California (Department of Mental Health)

Unfair Practice Charge No. SF-CE-179-S

Dear Mr. Ryan:

The above-referenced unfair practice charge, filed on December 8, 1997, alleges that the State of California (Department of Mental Health) (State) failed and refused to provide information to the California State Employees Association, Local 100, SEIU, AFL-CIO, CLC (Association). This conduct is alleged to violate Government Code section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated January 22, 1999, 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 January 29, 1999, 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 January 22, 1999 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

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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.)

Final Date

If no appeal is filed within the specified time limits, the

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dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
DONNGINOZA
Regional Attorney

Attachment

cc: Robert J. Allen

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415)439-6940



January 22, 1999

Terrence Ryan
Labor Relations Representative
California State Employees Association
2020 Challenger Drive, Suite 102
Alameda, California 94501-1017

Re: **WARNING LETTER**

California State Employees Association, Local 1000, SEIU,
AFL-CIO, CLC v. State of California (Department of Mental
Health)

Unfair Practice Charge No. SF-CE-179-S

Dear Mr. Ryan:

The above-referenced unfair practice charge, filed on December 8, 1997, alleges that the State of California (Department of Mental Health) (State) failed and refused to provide information to the California State Employees Association, Local 100, SEIU, AFL-CIO, CLC (Association). This conduct is alleged to violate Government Code section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act).

Investigation of the charge revealed the following. The Association is an exclusive representative of an appropriate bargaining unit composed of State employees.

The Association represents employees who work at the California Medical Facility (CMF), located in Vacaville. The Association alleges that beginning in or around January 1997, RNs at the facility were denied overtime on each occasion that they were required to stay at their posts during lunch periods due to the lack of other RN coverage during that time.

During the initial discussions of the dispute, the State took the position that the RNs were permitted by licensing laws to leave their posts during the lunch period so long as they notified their supervisor. However, it did so apparently after a short time earlier saying that RNs were required by the same regulations not to leave their posts without substitute coverage. Also during these discussions, on or about February 11, 1997, the State responded by requesting that the Association identify (1) the lunch breaks that RNs worked without payment, (2) days on which substitute coverage was lacking, and (3) the total number of uncompensated hours for each employee affected.

On or about April 24, 1997, Susan Matranga, a registered nurse (RN) at CMF as well as an Association job steward, filed a

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grievance on behalf of herself and other RNs at the facility. According to the Association, the State did not provide appropriate responses at Levels 1 and 2 of the grievance procedure.

Terrence Ryan, Association Labor Relations Representative, carried the grievance forward. He wrote to Stephen W. Mayberg, Director of Mental Health on May 15, 1997 requesting that the grievance be elevated to the third step. In the letter, Ryan notes that the State, despite asserting authority under licensing provisions, failed to submit them to the Association. However, the charge does not allege that the Association made any specific request for that information.

After an unsatisfactory response at Level 3, Ryan elevated the grievance to the fourth step. In his June 13, 1997 letter elevating the grievance, Ryan complains that the Department of Mental Health is "not giving us records of when nurses actually worked but did not claim [overtime compensation] and when R.N.s did not cover wards." Again, the charge fails to allege if or when a specific request for this information was lodged.

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.

The written factual statement accompanying the charge indicates that the primary focus of the charge concerns the allegations prior to the filing of the grievance, in January and February 1997. During that time, the State demanded that the Association provide factual information underlying the claim for overtime payments. It also reversed its position on what the licensing requirements required. The Association alleges that these actions constitute bad faith.

This alleged conduct, alleged to have occurred in January and February 1997, appears to be untimely filed because the charge was not filed until December 8, 1997. Government Code section 3514.5(a) (1) of the Dills Act states that the Public Employment Relations Board (PERB) shall not "issue a complaint in respect of any charge, based on an alleged unfair practice occurring more than six months prior to the filing of the charge." The charge to be timely must involve events occurring on or after June 8, 1997. 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.)

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With respect to the merits of the allegations, the Association appears to be alleging a refusal to bargain in good faith. While these early discussions may be considered pre-grievance discussions or negotiations, the allegations fail to demonstrate that the State did anything improper so as to constitute an unfair practice. Even assuming a duty to bargain in good faith applies in this setting, the facts are insufficient to demonstrate a violation. (See Stockton Unified School District (1980) PERB Decision No. 134 ["totality of the circumstances" test in bad faith bargaining cases].)

The Association also appears to contend that the State refused to provide staffing and pay records for RNs, thus unlawfully refusing to provide information. (Id. [duty to provide information].) However, the Association fails to allege that it made any specific demands or requests for information in the possession of the State. The fact that the State demanded that the Association produce factual information substantiating its claims in the context of a potential grievance is not improper. The State was entitled to request the evidence underlying the potential grievance in order to determine its potential merit for settlement purposes.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before **January 29, 1999**, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

DONN GINOZA
Regional Attorney