

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CESSALY D. HUTCHINSON,)
)
 Charging Party,) Case No. SF-CO-40-S
)
 v.) PERB Decision No. 1380-S
)
 CALIFORNIA STATE EMPLOYEES) February 29, 2000
 ASSOCIATION,)
)
 Respondent.)
 _____)

Appearance: Cessaly D. Hutchinson, on her own behalf.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Cessaly D. Hutchinson (Hutchinson) to a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act) section 3519.5.¹

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519.5 states that:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the state to violate Section 3519.

(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.

After reviewing the entire record, including the unfair practice charge, the warning and dismissal letters, and the appeal, the Board hereby affirms the dismissal, as modified by the following discussion.

DISCUSSION

Hutchinson filed the instant unfair practice charge against CSEA on October 4, 1999, alleging that the various acts cited in the charge violate the Dills Act because they permit CSEA "to interfere with the employer-employee relationship, in order to control the member."

According to the Board agent's warning letter, Hutchinson was terminated from her position with the State of California (Department of Transportation) (State) in September 1998.² She filed the instant unfair practice charge more than a year later, in October 1999. In California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S, the Board held that where the charge involves conduct between an employee organization and a terminated employee which occurred subsequent

(c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

(d) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

²See also, California State Employees Association (Hutchinson) (1999) PERB Decision No. 1355-S, in which the Board dismissed an earlier unfair practice charge in which Hutchinson alleged, among other things, that CSEA orchestrated her termination.

to the termination of that individual from State employment, the former employee lacks standing to file an unfair practice charge against the employee organization based on that conduct.³ (Id. at p. 21.)

In the case at bar, most of Hutchinson's allegations involve conduct by CSEA that occurred subsequent to her termination from State employment. For those allegations, Hutchinson lacks standing to file an unfair practice charge against CSEA because she was not an employee at the time of the alleged interference.

ORDER

The unfair practice charge in Case No. SF-CO-40-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

³However, that holding does not alter the longstanding rule that terminated employees have the right under the Dills Act to challenge the termination itself as discriminatory, because such persons were State employees at the time of the allegedly unlawful conduct that formed the basis of the charge. (California Union of Safety Employees (Trevisanut. et al.) (1993) PERB Decision No. 1029-S, at p. 9.)

PUBLIC EMPLOYMENT RELATIONS BOARD



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



December 22, 1999

Cessaly D. Hutchinson

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

Cessaly D. Hutchinson v. California State Employees Association

Unfair Practice Charge No. SF-CO-40-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge filed on October 4, 1999, alleges that the California State Employees Association (Association) has continued attempts to incorporate the Civil Service Division despite a vote rejecting such an action. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated December 13, 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 December 21, 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 December 13, 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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's

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receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135 (a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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.

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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 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

DONNGINOZA
Regional Attorney

Attachment

cc: Nancy T. Yamada

PUBLIC EMPLOYMENT RELATIONS BOARD



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



December 13, 1999

Cessaly D. Hutchinson

Re: **WARNING LETTER**

Cessaly D. Hutchinson v. California State Employees
Association

Unfair Practice Charge No. SF-CO-40-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge filed on October 4, 1999, alleges that the California State Employees Association (Association) has continued attempts to incorporate the Civil Service Division despite a vote rejecting such an action. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act (Dills Act).

Investigation of the charge revealed the following. Cessaly D. Hutchinson was employed as a Legal Analyst for the Legal Division of Department of Transportation (Department) until her termination in September 1998. During this period of time, she was active in the Association, serving as a chief steward and a president of the Association's District Labor Council (DLC) 750.

The Association is a large employee organization that exclusively represents numerous bargaining units within the State. Organizationally, the Association is divided into four divisions. These divisions include the Civil Service Division, Retirees Division, Supervisors Division, and State University Division. The Civil Service Division is divided geographically into 56 DLCs. A DLC is governed similarly to a local union chapter. It elects a president and other officers. Each DLC president serves on the Association's Civil Service Division Council (Council). The Council governs the Civil Service Division, although the Association Board of Directors has ultimate authority over the Civil Service Division. The Association Board of Directors governs all of the four divisions.

Perry Kenny is president of the Association. Hutchinson alleges that Kenny has long advocated incorporation of the civil Service Division as a separate entity from the Association. Incorporation of the Civil Service Division is viewed as a means to remove the division from the control of the Board of Directors. In 1995, Kenny, then-director of the Civil Service

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Division, prepared a set of bylaws for an incorporated Civil Service Division that would have given him "complete autonomy" over the division, according to Hutchinson. In 1995, Hutchinson asked to see a copy of the bylaws, but was refused.

On or about October 2, 1999, the Association leadership voted against incorporation. Notwithstanding the vote, it was reported that Jim Hard, a proponent of incorporation, was planning to file incorporation papers on or about October 4, 1999.

Hutchinson alleges that the 1995 Kenny bylaws "may possibly re-surface" and be filed, instead of the Hard bylaws, in accordance with an organized-crime plan for takeover of the Association. Hutchinson alleges that Kenny, Frank Sulla, William Cook, and Frank Guilelmino, also known as the "big four," actually control the Association and that these individuals have ties to organized crime.

Hutchinson contends that to allow the filing of the Kenny bylaws would violate the Dills Act because Kenny would attain complete control of the Association. He would have the ability to terminate Association employees in the Civil Service Division. Hutchinson also alleges that Kenny controls the Board of Directors because he controls the expense account reimbursing directors for travel.

Hutchinson further alleges that her termination was orchestrated by Kenny and Guilelmino because she openly opposed incorporation in 1995. She refers to previous allegations contained in unfair practice charge number SF-CO-39-S. That case was dismissed on July 12, 1999 by the undersigned; the dismissal was upheld by Public Employment Relations Board (PERB) on October 7, 1999.

Finally, Hutchinson alleges that the Board of Directors is planning to put the Civil Service Division into receivership and that this would also allow Kenny to dominate the division by appointing "figurehead" officers.

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

Hutchinson alleges that the various acts cited in the charge violate the Dills Act because they permit the Association "to interfere with the employer-employee relationship, in order to control the member." She does not specify whether the employer-employee relationship to which she refers is the one between the

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Association member and the State or the Association employee/member and the Association. Presumably, she refers to both.

To the extent that Hutchinson alleges that Kenny is interfering with the relationship between the Association employee/member and the Association, the charge contains only speculative allegations. There is no indication that the bylaws, which allegedly will grant greater control to Kenny, have actually been filed, or that they will have any force and effect given that the Association has voted against incorporation.¹ The charge provides no clear evidence that Kenny would in fact exercise undue control by virtue of the terms of the bylaws. Although she claims she does not have access to the bylaws, if they are filed with the Department of Corporations, they will then become matters of public record. The same defect exists with respect to the allegation regarding the plan to put the Civil Service Division into receivership. The Board of Directors has not yet acted to place the Civil Service Division into receivership; it is unclear how receivership would cede undue control to Kenny.

To the extent that Hutchinson alleges that Kenny and others are interfering with her employment relationship with the State, the charge is merely a repeat of the claim dismissed in unfair practice charge number SF-CO-39-S. There are no new allegations that cure the defects cited in the dismissal decision upheld by PERB. Furthermore, since Hutchinson was terminated in September 1998, she has not had an employment relationship with the State for over one year. Her new allegations are therefore untimely. (Gov. Code, sec. 3514.5 (a).)

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

¹Hutchinson notes that Association attorneys are prepared to file an injunction against the bylaws if they are filed.

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amended charge or withdrawal from you before **December 21, 1999**, shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

DONN GINOZA
Regional Attorney