

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JUANITA COLEMAN,)
)
 Charging Party,) Case No. LA-CO-93-S
)
 v.) PERB Decision No. 1407-S
)
 CALIFORNIA STATE EMPLOYEES)
 ASSOCIATION,) September 26, 2000
)
 Respondent.)
 _____)

Appearances: Juanita Coleman, on her own behalf; California State Employees Association by Michael D. Hersh, Attorney.

Before Dyer, Amador and Baker, Members.

DECISION AND ORDER

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by Juanita Coleman (Coleman) of a Board agent's dismissal (attached) of her unfair practice charge. Coleman filed a charge alleging that the California State Employees Association violated section 3519 (c) of the Ralph C. Dills Act (Dills Act)¹ in its handling of her suspension and termination from employment. After investigation,

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:

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

the Board agent dismissed the charge for failure to establish timeliness and failure to state a prima facie case.

The Board has reviewed the entire record in this case, and 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. LA-CO-93-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Baker joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 26, 2000

Juanita Coleman

Re: Juanita Coleman v. California State Employees
Association
Unfair Practice Charge No. LA-CO-93-S
Dismissal and Refusal to Issue a Complaint

Dear Ms. Coleman:

In the above-referenced charge you allege the California State Employees Association (CSEA or Association) violated the Ralph C. Dills Act (Dills Act or Act) § 3519.5(c). I indicated to you, in my attached letter dated June 9, 2000, 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 16, 2000, the charge would be dismissed. On June 16, 2000, I received a letter as an amended charge.

The charge was filed on April 28, 2000. The statute of limitations period included only those events occurring on or after October 28, 1999. The Warning Letter explained that CSEA's attempts to represent Coleman culminated at the October 12, 1999 SPB hearing which occurred more than six months prior to the filing of the charge.

The amended charge provides information regarding Coleman's initial meetings with the Civil Rights Officer, Igancio Trujillo and CSEA regarding a racial discrimination complaint. Although the amended charge does not provide a specific date for these meetings, the charge indicates that they occurred prior to Coleman's suspension on October 20, 1998. Thus, the amended charge does not provide any facts regarding events occurring within the six months prior to the filing of the charge.

The amended charge alleges that the statute of limitations should have begun to run on November 1, 1999, which is the date when the State Personnel Board (SPB) adopted the Administrative Law Judge's dismissal of Coleman's appeal of her termination. However it appears that CSEA's last contact was during the October 12, 1999 SPB hearing. The amended charge does not provide facts indicating that CSEA had contact with Coleman after

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that hearing. Thus, the charge is dismissed for the above-stated reasons and those stated in the warning 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 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"

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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. 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

Tammy L.Samsel
Regional Director

Attachment

cc: Michael D. Hersh

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 9, 2000

Juanita Coleman

Re: Juanita Coleman v. California State Employees
Association
Unfair Practice Charge No. LA-CO-93-S
Warning Letter

Dear Ms. Coleman:

In the above-referenced charge you allege the California State Employees Association (CSEA or Association) violated the Ralph C. Dills Act (Dills Act or Act) § 3519.5 (c). On or about May 4, I spoke with you regarding this charge. My investigation revealed the following information.

Coleman was employed by the Metropolitan State Hospital (State). On or about October 20, 1998, the State served Coleman with notice of a two-week suspension. On October 23, 1998, CSEA Labor Relations Representative Maria Del Carmen Perez met with Coleman, and subsequently filed an appeal of the suspension to the State Personnel Board (SPB).

The charge states in its entirety:

I appealed the decision for the termination but at the appeals dated, October 2, 1999, I was too ill (emotionally and physically ill, + could not handle the meeting, + called for another date was denied. [sic] I was very disturbed and to make matters worse I was denied legal representation by the attorney after being told I would have one first at the suspension by Linda McPherson, Union Steward, then I was told that at the time of the termination appeal I would definitely have one, but was denied an attorney. I tried to ask for another appeal but was denied.

On October 28, 1999, Perez represented Coleman at a Skelly hearing. As a result of the hearing, one of the allegations against Coleman was dismissed.

Following the Skelly hearing Coleman requested that an attorney represent her at the SPB hearing. On November 24, 1998, CSEA Southeast Area Manager, William K. Sweeney, sent Coleman a letter denying her request. Coleman was also provided an opportunity to appeal Sweeney's decision.

On January 5, 1999, the SPB held a hearing on Coleman's case. Perez was present to represent Coleman at the hearing. At the hearing, SPB Administrative Law Judge Ornah Becker told Perez that Coleman had just called her on the telephone and indicated that she was promised an attorney to represent her during the hearing. Perez indicated that she had not promised Coleman an attorney. Becker granted Coleman an extension by which to obtain an attorney and rescheduled the hearing.

Coleman contacted CSEA and requested that a local job steward represent her during the hearing, rather than Perez. CSEA denied her request, indicating that job stewards were not trained to conduct SPB hearings. CSEA indicated that a job steward could represent her during the hearing as a separate individual, but could not do so as an official representative of CSEA.

On March 25, 1999, the SPB held a hearing on Coleman's case. CSEA Job Steward, Linda McPherson, represented Coleman during the hearing, but did so as an individual not in her official capacity as a CSEA Job Steward. On May 4, 1999, the SPB sustained Coleman's suspension without modification.

On July 23, 1999, the State notified Coleman of her termination. Coleman requested CSEA representation, and Labor Relations Representative, Dick Olnick was assigned to the case. On September 13, 1999, Coleman asked Olnick to find out whether the State would allow her to resign. The State agreed that if Coleman resigned, the dismissal and the suspension would be removed from her personnel file. Coleman later changed her mind about this offer.

In October 1999, Coleman requested that the SPB Administrative Law Judge (ALJ) give her a continuance so that she might obtain new counsel. The SPB denied the request, and told Coleman to appear at the upcoming hearing or her appeal would be dismissed. Coleman told the ALJ she would appear.

On October 12, 1999, the SPB held the hearing. Olnick appeared on Coleman's behalf, but Coleman did not appear. Olnick made a request for a continuance, but the ALJ denied his request. Olnick contacted Coleman by telephone, but she requested that he call her back in five minutes. Olnick's return call was unanswered. Olnick left a message requesting that Coleman come to the hearing. Coleman did not attend the hearing, and the ALJ

dismissed Coleman's appeal. On November 1, 1999, the SPB adopted the ALJ dismissal of the appeal as its decision in the matter.

The above-stated facts fail to state a prima facie violation for the reasons that follow.

Dills Act § 3514.5(a) (1) provides the Public Employment Relations Board 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." It is your burden, as the charging party to demonstrate the charge has been timely filed. (See Tehachapi Unified School District (1993) PERB Decision No. 1024.)

Coleman filed this charge on April 28, 2000. Thus, the statute of limitations period would include those events occurring on or after October 28, 1999. It appears that CSEA's attempts to represent Coleman culminated at the October 12, 1999 SPB hearing. This hearing occurred more than six months prior to the filing of the charge. Thus, any allegations that CSEA failed to meet its duty of fair representation would appear to be untimely filed.

The charge more specifically alleges CSEA failed to meet its duty of fair representation by failing to provide Coleman with an attorney. CSEA denied Coleman's request for an attorney on November 24, 1998. Coleman had knowledge of this action more than six months prior to the filing of the charge. Thus, this charge must be dismissed as untimely filed.

Even if the charge were timely filed, the charge fails to state a prima facie violation. Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by Dills Act. In order to state a prima facie violation of this section of Dills Act, Charging Party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

"... must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (Emphasis added.)" [Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

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The charge fails to provide facts indicating that CSEA acted in an arbitrary, discriminatory, or bad faith manner. Although CSEA did not provide Coleman with an attorney, CSEA provided Coleman with written notice of that decision, and provided her with an opportunity to have that decision reconsidered. CSEA also provided Labor Relations Representatives to represent her at several hearings. Thus, the charge fails to state a prima facie violation.

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 June 16, 2000, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6944.

Sincerely,

TAMMY L. SAMSEL
Regional Director