STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CARLOS A. VELTRUSKI, Charging Party, v. STATE OF CALIFORNIA (STATE PERSONNEL BOARD, DEPARTMENT OF MOTOR VEHICLES, DEPARTMENT OF INDUSTRIAL RELATIONS AND UNEMPLOYMENT INSURANCE APPEALS BOARD), Respondent.	Case No. LA-CE-572-S PERB Decision No. 1500-S October 17, 2002

Appearances: Carlos A. Veltruski, on his own behalf; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California (State Personnel Board, Department of Motor Vehicles, Department of Industrial Relations and Unemployment Insurance Appeals Board).

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Carlos Veltruski (Veltruski) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleges that the State Personnel Board (SPB), Department of Motor Vehicles, Department of Industrial Relations and Unemployment Insurance Appeals Board (UIAB) (collectively, "State") violated the Ralph C. Dills Act (Dills Act)[1] by refusing to consider him a State employee, refusing to hire or "promote" him, and failing or refusing to provide him with various requested forms in retaliation for protected

[1] The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

activity. Veltruski alleged that this conduct constituted a violation of sections 3513, 3514.5, 3515 and 3516 of the Dills Act.

After review of the charge, the warning and dismissal letters, Veltruski's appeal and the State's opposition, 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.

VELTRUSKI'S APPEAL

In a document deemed an appeal by the Board's Appeals Office, Veltruski alleges, inter alia, that the Board agent "fails in a deliberate manner to file charges because [the Board agent] does not want to read all explanation I provided: request for PERB to go back in time into 1991-92 and 96-97-98-99-00 and to coordinate with [Employment Development Department], UIAB, SPB, [Immigration and Naturalization Service] – and Homeland Security Chief Tom Ridge, with Huntington Park, CA & Rosario Marin US Treasurer."

OPPOSITION TO THE APPEAL

The State filed an opposition to Veltruski's appeal, arguing that Veltruski failed to offer any allegations showing that its employees were motivated by anti-union animus.

UNTIMELY FILED SUPPLEMENTAL DOCUMENTS

After the appeal deadline, Veltruski submitted numerous documents with additional, detailed allegations and argument, some of which were related to the allegations in his charge. Inter alia, Veltruski contends that the three-year statute of limitations governing claims under the Meyers-Milias-Brown Act (MMBA)[2] should apply to his allegations in this case.[3]

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[2] The MMBA is codified at Government Code section 3500 et seq.

[3] Veltruski also asserts that, in addition to the instant case, he is appealing decisions in Case Nos. LA-CE-556-S, LA-CE-562-S, LA-CE-564-S and LA-CE-566-S. The appeal of those cases was previously resolved by the Board in State of California (2002) PERB Decision No. 1484-S (State of California). Thus, they are not at issue in this appeal.

In the supplemental documents, Veltruski restates many of the claims rejected by the Board agent. For example, he realleges that he was a civil service employee of the State.[4] Veltruski elaborates in his untimely documents on other claims that were rejected by the Board agent. For example, he contends that he was treated disparately when a trainee was promoted to a Deputy Labor Commissioner I position without a written examination, while various agencies repeatedly denied Veltruski similar opportunities for "promotion" through an oral examination. He also elaborates that a state employee allegedly would not have addressed him in a manner he found objectionable unless that individual were discriminating for protected activity; that he was deprived of various forms he requested from the agencies; that various Occupational Safety and Health Administration and federal immigration regulations were violated; that a variety of his records were destroyed; and that his applications for employment with the agencies were denied in retaliation for protected activity.

Veltruski also submitted, after the filing deadline, a copy of a more recent charge with attached documents, dated February 8, 2002, which was filed February 14, 2002, in Case No. LA-CE-575-S.

DISCUSSION

The Board first notes that the supplemental documents, including the new charge and attachments, were not timely filed and are not properly before the Board. Moreover, even had the documents been timely filed, PERB Regulation 32635(b)[5] provides, "Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence."

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[4] This contention was previously raised and rejected by the Board in State of California.

[5] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Veltruski argues that the Board should apply a three-year statute of limitations to his claims. However, in this case, Veltruski's allegations falling within PERB's subject matter jurisdiction involve only State employees and State agencies. Therefore, his claims, to be viable, must state a prima facie violation of the Dills Act. The governing statute of limitations is expressly codified as six months at Dills Act section 3514.5(a)(1).[6] Thus, any conduct alleged to have occurred more than six months prior to the date of the charge in the instant case is untimely.

Most of the incidents alleged in Veltruski's appeal and supplemental documents occurred well outside the statutory six-month limitation period for Dills Act charges. Others involve federal and state laws over which PERB has no jurisdiction. On appeal, Veltruski offers no evidence linking any of the alleged adverse actions with his alleged protected activity and no nexus is apparent from the facts he alleges. Accordingly, in addition to finding these allegations to be untimely, the Board finds good cause lacking to consider them on appeal.

In his untimely supplemental documents, Veltruski identifies only one allegation as occurring within the statutory period that was not expressly addressed by the Board agent: that he was unlawfully denied various forms he says he requested from several State employees. Even had he timely raised this claim on appeal, however, failure to specifically address this allegation in the dismissal letter would not constitute prejudicial error because the record reveals that Veltruski did not present any factual allegations to the Board agent indicating that the alleged refusal to provide the forms was in retaliation for protected activity. Veltruski

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[6] Government Code section 3514.5(a)(1) provides, in relevant part:

> (a) ...the board shall not ... (1) 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.

attempts to revive this allegation on appeal, but fails to offer any factual allegations indicating that the claimed adverse action was in retaliation for protected activity.

The Board finds that, in addition to the fact that the charge in Case No. LA-CE-575-S and attached documents were not timely filed in the instant case, good cause is lacking to allow their presentation here because: (1) most of the allegations in the charge and attached narrative are irrelevant to the allegations in the instant appeal and many involve alleged violation of laws outside PERB's jurisdiction; (2) the allegations on the face of the charge and attached narrative involve matters alleged to have occurred between 1996 and 2001, so, in addition to the fact that most of them fall outside the six-month limitations period governing Dills Act charges, there is no indication they could not have been obtained through reasonable diligence prior to the Board agent's consideration of the instant case; (3) many of the allegations on the face of the charge are repetitive of those in the instant case; (4) the documents attached to the charge are not relevant to the charges at issue in the instant case; and (5) the charge and attachments were separately filed in Case No. LA-CE-575-S and were processed by PERB in due course.[7]

Finding that good cause does not exist to allow presentation of Veltruski's supplemental documents, including the charge in Case No. LA-CE-575-S and its attached documents, the Board has not considered them or their contents in resolving the instant appeal.

Based on the foregoing, the Board finds that Veltruski's appeal lacks merit. Therefore, the Board finds that the Board agent's warning and dismissal letters are free of prejudicial error and adopts them as the decision of the Board itself.

[7] Case No. LA-CE-575-S was dismissed on March 29, 2002. No appeal was filed. Therefore, the case was closed April 19, 2002.

ORDER

The unfair practice charge in Case No. LA-CE-572-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Baker and Whitehead joined in this Decision.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-7242
Fax: (916) 327-6377

December 14, 2001

Carlos A. Veltruski
603 N. Ford Boulevard
Los Angeles, CA 90022

State of California, Linda Nelson
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814

Re: Carlos A. Veltruski v. State of California (Department of Personnel Board)
Unfair Practice Charge No. LA-CE-572-S
DISMISSAL LETTER

Dear Mr. Veltruski:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 30, 2001. Carlos A. Veltruski alleges that the State of California (Department of Personnel Board) violated the Ralph C. Dills Act (Dills Act)[1] by refusing to consider you an employee of the state, refusing to promote you, and refusing to consider your application for employment on its merits.

I indicated to you in my attached letter dated November 29, 2001 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 6, 2001 the charge would be dismissed.

The information I have received in your amended charge is insufficient to state a prima facie case. You have not provided any specific dates within the 6 month statute of limitations that show that a state employer has acted adversely toward you on the basis of protected activity. Therefore, I am dismissing the charge based on the facts and reasons contained in my November 29, 2001 letter. The deficiencies are as follows:

In your amended charge, you state that Ms. Martinez has spoken with you as recently as October and November of 2001. You fail to show how her comments to you have caused you injury, or how her comments to you have been motivated by anti-union animus.

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

In your amended charge, you state that Jimmy Gomez, and Maria Contreras-Sweet refused to allow you to take an oral examination. You provide no dates on which Ms. Contreras-Sweet and Mr. Gomez refused to consider your request, and provide no information showing how her decision was motivated by anti-union animus.

In your amended charge you state that Officer J. Gainey and Deputy Labor Commissioner Victor Jurado refused to consider your application on its own merits, but you fail to show how their actions were motivated by anti-union animus, although you do state that they are aware of your union activities.

Your charges against Judge Harrison of the CA Unemployment Insurance Appeals Board date back to 1996, and are outside of the statute of limitations.

In your amended charge, you mention an incident that occurred with an employee of the California Labor Commissioner, Mariana Vitale. Your original charge describes Ms. Vitale as "a female trainee at the CA Labor Commissioner office in Long Beach". You fail to show how her actions could be considered an unfair practice, or that her actions were motivated by anti-union animus.

Right to Appeal

Pursuant to PERB Regulations,[2] 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Regulation 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 Regulation 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. (Regulation 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. (Regulation 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 Alicia Clement
Alicia A. Clement
Board Agent

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-7242
Fax: (916) 327-6377

November 29, 2001

Carlos A. Veltruski
603 N. Ford Boulevard
Los Angeles, CA 90022

State of California
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814

Re: Carlos A. Veltruski v. State of California (State Personnel Board, Department of Motor Vehicles, Labor Commissioner, Department of Personnel Administration, and Unemployment Insurance Appeals Board)
Unfair Practice Charge No. LA-CE-572-S
WARNING LETTER

Dear Mr. Veltruski:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 30, 2001. Carlos A. Veltruski alleges that the State of California (Department of Personnel Board) violated the Ralph C. Dills Act (Dills Act)[1] by refusing to consider you an employee of the state, refusing to promote you, and refusing to consider your application for employment on its merits.

Your recent charge, LA-CE-572-S alleges many acts of discrimination were taken against you by State agencies, at various times during your employment and reapplication for employment with the State. All of the dates you provided for the activities you allege were in violation of your rights are outside of the six month statute of limitations. In your charge, you acknowledge the fact that these actions occurred more than six months ago, and argue that PERB should consider them in spite of the statutorily mandated jurisdictional limitations. Specifically, your charge states, "This is my Request to go back [in] time to 1991-1992, and 1996, 1997, 1998, 1999, 2000 to expand investigation to the original Discrimination..." It is not possible for PERB to act upon your request for reasons discussed below.

1. PERB does not have subject matter jurisdiction over conduct that has occurred outside of the six month statute of limitations.

The Public Employment Relations Board is an independent state agency that is given jurisdiction to administer and enforce the Meyers-Milias-Brown Act, the Educational

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Employment Relations Act, the Ralph C. Dills Act, and the Higher Education Employer-Employee Relations Act by the state legislature. PERB's powers and jurisdiction are created by the legislature, and can only be expanded by the legislature. What this means is where PERB has no subject matter jurisdiction, there is no internal act by PERB that can alter that mandate.

Government Code section 3514.5(a) states: "the board shall not...(1) 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..." In California State University, San Diego (1989) PERB Decision No. 718-H, the Board found that the six-month statute of limitations was unambiguous, and not subject to interpretation by the Board. It stated that the "Board has only such jurisdiction and powers as have been conferred on it by statute. Further, this Board acts in excess of its jurisdiction if it acts in violation of the statutes conferring or limiting its jurisdiction and powers...Moreover, where the Board is without jurisdiction, it cannot acquire jurisdiction by the parties' consent, agreement, stipulation or acquiescence, nor by waiver or estoppel... Finally, the absence of jurisdiction cannot be overcome by the established practices or customs of this Board, nor by Board regulation." California State University, San Diego (1989) PERB Decision No. 718-H.

You have indicated that you began working for the State of California in the Department of Motor Vehicles in 1991. Since before that time, it has been the practice of the Board to issue complaints only for activities that have occurred within the six-month statute of limitations. Even if you were unaware of the statute of limitations at the time that the unfair practices were allegedly committed, the Board does not have authority to circumvent the clear intent of the legislature in providing Charging Parties more than six months in which to file charges.

2. The intent of the Legislature in enacting and enforcing the labor statutes is to promote positive labor relations, not to penalize employers for their failure to adhere to the statutes.

On page 4 of your complaint/appeal dated October 30, 2001, you state that "the intent of the Legislator [sic] was to punish violators and not to allow for a prescription when there is enough evidence that the agencies and their judges, administrators and supervisors, personnel managers had all acted in bad faith..." To the contrary, the intent of the legislature was expressed in the statute itself at §3512, "It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee organizations." This concept was expressed in California State University, San Diego (1989) PERB Decision No. 718-H, that "Unlike the typical litigants involved in a civil lawsuit, parties in a labor dispute must sustain an ongoing collective bargaining relationship, despite pending unfair practice charges or grievances. Extending the time duration which an unfair practice charge may be raised prolongs the threat of disruption of such collective bargaining relationships and is antithetical to HEERA's foremost goal of promoting the improvement of harmonious employer-employee relations."

Therefore, it was found by PERB that the legislature's intent in maintaining a good working relationship between parties to a collective bargaining relationship was more important than allowing charging parties to dredge up old injuries. The statutes are in fact designed to create ongoing relationships—they are not primarily punitive in nature as you suggest. While PERB may issue orders that seem punitive in nature when violations are found, these orders are intended to carry out the intent of the legislature in maintaining the collective bargaining relationship between the parties.

Issuing complaints based on actions that were taken against you in 1991 would contravene the purpose of the Ralph C. Dills Act. Rather than promoting the maintenance of a collective bargaining relationship between employers and employees, this would create an antagonistic relationship between the parties.

Thus, the legislature's clear and unambiguous directive that PERB may not issue unfair labor practice complaints on actions more than six months old is for the purpose of promoting positive collective bargaining relationships between employers and employees.

3. There is no good cause exception for the statute of limitations.

You state on page 4 of your charge that "there is GOOD CAUSE to go beyond the 6 month Statute of Limitation..." You do not provide any evidence that the legislature intended a good cause exception, or that the Board has ever granted a good cause exception to the statute of limitations. My own investigation has revealed that the intent of the legislature was not to grant exceptions to the statute of limitations for any reason, because the interests of maintaining collective bargaining relationships outweighed the rights of individual charging parties to resurrect stale claims. In the absence of evidence of a contrary legislative intent, or a PERB decision that supports your contention, I must find that there is no good cause exception to the six month statute of limitations.

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 that 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 December 6, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Alicia Clement

Alicia A. Clement
Board Agent