

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JESSE VICKERS,

Charging Party

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS),

Respondent.

Case No. SA-CE-1384-S

Request for Reconsideration
PERB Decision No. 1559-S

PERB Decision No. 1559a-S

February 19, 2004

Appearance: Jesse Vickers, on his own behalf.

Before Baker, Whitehead and Baker, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on a request for reconsideration by Jesse Vickers (Vickers) of State of California (Department of Corrections) (2003) PERB Decision No. 1559-S (Corrections). The charge alleged that the State of California (Department of Corrections) (Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by taking State vehicles away from parole agents in Region III Headquarters assigned to the Immigration and Naturalization Service (INS) unit in violation of the memorandum of understanding (MOU) between the State of California and the California Correctional Peace Officers Association (CCPOA); by creating a new supervision level, "DP", in the INS unit in violation of the MOU; by reducing the status of INS cases in violation of the MOU; and, by a local agreement between Corrections' Parole and Community Services Division (PCSD) and CCPOA which increased workloads for INS unit agents greater

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

than that allowed by the MOU. In November and December 2000, Vickers filed grievances regarding these allegations.² In July 2002, Vickers alleged that he unsuccessfully requested information from Jerome Marsh, PCSD Region III, about “local agreements.” As a job steward, Vickers investigated the issues alleged above, and as a result filed the charge on December 21, 2002. He alleged that the State’s conduct constituted a violation of Dills Act section 3519(a). On November 21, 2003, the Board issued Corrections. On December 8, 2003, Vickers filed a request for reconsideration of the Board’s decision.

VICKERS’ REQUEST FOR RECONSIDERATION

Vickers requests reconsideration on the basis that Corrections did not fully delineate his issues in the body of the decision, i.e., violations of PERB’s regulations and the California Penal Code. Vickers also claims that the decision contained an error of fact by overlooking the stated facts and physical evidence in the charge. Vickers further alleges that the agreement between Corrections and CCPOA is a successful conspiracy to Vickers’ detriment. He concludes that notwithstanding Dills Act section 3514.5(a)³, the Board should litigate his charge.

²The State’s responses to Vickers’ grievances were issued no later than the end of December 2000. CCPOA had refused in writing to proceed with any of these grievances through the MOU mini-arbitration process. The letters of refusal were issued no later than the end of February 2001. There is nothing in the record to indicate that since February 2001, Vickers has appealed the grievances or that the grievances were ultimately submitted to arbitration.

³Dills Act Section 3514.5 provides, in pertinent part:

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

DISCUSSION

Requests for reconsideration are governed by PERB Regulation 32410.⁴ Section 32410

provides, in pertinent part:

(a) Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision within 20 days following the date of service of the decision. An original and five copies of the request for reconsideration shall be filed with the Board itself in the headquarters office and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 32140 are required. The grounds for requesting reconsideration are limited to claims that: (1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the

(a) Any employee, employee organization, or employer 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 of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

⁴PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

exercise of reasonable diligence. A request for reconsideration based upon the discovery of new evidence must be supported by a declaration under the penalty of perjury which establishes that the evidence: (1) was not previously available; (2) could not have been discovered prior to the hearing with the exercise of reasonable diligence; (3) was submitted within a reasonable time of its discovery; (4) is relevant to the issues sought to be reconsidered; and (5) impacts or alters the decision of the previously decided case. [Emphasis added.]

Although the request for reconsideration alleges generally that the decision contains an error of fact, the request does not “state with specificity the grounds claimed” or specify the page of the decision at which the error or errors occurs. Vickers states that the decision did not delineate all the issues in the charge but does not identify those issues, only general references to PERB regulations and the California Penal Code. PERB lacks jurisdiction over violations of the California Penal Code unless the alleged conduct also constitutes an independent violation of the Dills Act. (See e.g., Salinas City Elementary School District (1996) PERB Decision No. 1131; Ventura County Community College District (1996) PERB Decision No. 1167; Service Employees International Union, Local 535 (Mickle) (1996) PERB Decision No. 1168.) In the request, Vickers did not make this connection between alleged violations of the Penal Code and the Dills Act. Vickers also alleges a conspiracy between CCPOA and Corrections involving an agreement; however, he did not identify the agreement, describe the alleged conspiracy, or show how the conspiracy violates the Dills Act.

The Board concludes that Vickers’ request for reconsideration did not meet the requirements of PERB Regulation 32410 because it did not contain the requisite specificity nor allege the limited grounds that could support a grant of reconsideration. As a result, the Board denies Vickers’ request for reconsideration.

ORDER

Jesse Vickers' request for reconsideration of the Board's decision in State of California (Department of Corrections) (2003) PERB Decision No. 1559-S is hereby DENIED.

Members Baker and Neima joined in this Decision.