

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MOSES M. SARINANA,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
FORESTRY & FIRE PROTECTION),

Respondent.

Case No. SA-CE-1398-S

PERB Decision No. 1619-S

April 16, 2004

Appearances: Moses M. Sarinana, on his own behalf; State of California (Department of Personnel Administration) by Gail T. Onodera, Labor Relations Counsel, for State of California (Department of Forestry & Fire Protection).

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Moses M. Sarinana (Sarinana) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the State of California (Department of Forestry & Fire Protection) (State) violated the Ralph C. Dills Act (Dills Act)¹ by retaliating against Sarinana for protected activities. The Board agent dismissed the charge as untimely.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the warning and dismissal letters, Sarinana's appeal and the State's response. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

¹The Dills Act is codified at Government Code section 3512, et seq.

DISCUSSION

Sarinana's unfair practice charge was filed on April 7, 2003. As all the relevant events in the charge occurred in June, July, and August 2002, the Board agent dismissed the charge as untimely. On appeal, Sarinana urges the Board to excuse his untimely charge. Sarinana alleges that:

The original case was put together by me, and submitted to CDF Firefighters (Employees Association) on October 2002. After learning that the case was still sitting on the shelves of the association office I ask [sic] why, and the reply from state rank & file office was they [were too] busy, I immediately requested the files back.

Sarinana's appeal must be rejected.

PERB Regulation 32635(b)² provides:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

Sarinana's allegations regarding why his charge was filed late constitute new supporting evidence. Sarinana provides no reason why he could not have included such evidence in an amended charge. Indeed, Sarinana requested and received an extension to file an amended charge, but failed to do so. Accordingly, the Board finds that good cause does not exist to accept Sarinana's new evidence.

Even if the Board were to accept Sarinana's new evidence, however, the disposition of this case would not change. Sarinana alleges that his union "misrepresented" his claim by allowing the claim to expire. However, there is no evidence that Sarinana or his union ever filed a contract grievance, which may have tolled the limitations period. (Long Beach Community College District (2003) PERB Decision No. 1564.) These allegations, even if accepted as true, would not save Sarinana's untimely charge.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

ORDER

The unfair practice charge in Case No. SA-CE-1398-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
Fax: (916) 327-6377



June 25, 2003

Moses M. Sarinana
P O Box 443
Galt, CA 95632

Re: Moses M. Sarinana v. State of California (Department of Forestry & Fire Protection)
Unfair Practice Charge No. SA-CE-1398-S
DISMISSAL LETTER

Dear Mr. Sarinana:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 7, 2003 and amended to provide the proof of service on April 23, 2003. You allege that the State of California (Department of Forestry & Fire Protection) violated the Ralph C. Dills Act (Dills Act)¹ by retaliating against you.

I indicated to you in my attached letter dated June 6, 2003, 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 13, 2003, the charge would be dismissed. I spoke with you on June 10, and you explained that you needed additional time to amend your charge. We selected June 23, 2003, as the date by which you should amend your charge.

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 June 10 letter.

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.

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.

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

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:

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

SA-CE-1398-S

June 25, 2003

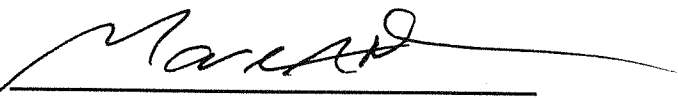
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If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By



Marie A. Nakamura
Regional Attorney

Attachment

cc: Gail T. Onodera

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8384
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June 6, 2003

Moses M. Sarinana
P O Box 443
Galt, CA 95632

Re: Moses M. Sarinana v. State of California (Department of Forestry & Fire Protection)
Unfair Practice Charge No. SA-CE-1398-S
WARNING LETTER

Dear Mr. Sarinana:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 7, 2003 and amended to provide the proof of service on April 23, 2003. You allege that the State of California (Department of Forestry & Fire Protection) violated the Ralph C. Dills Act (Dills Act)¹ by retaliating against you.

You work for the California Department of Forestry in Santa Clara and are a member of State Bargaining Unit 8, represented by the CDF Firefighters. Previously you worked in Riverside and on an undisclosed date you began working in Santa Clara as a Limited Term Fire Apparatus Engineer.

On June 24, 2002, you became the CDF Firefighters Santa Clara Chapter's rank and file representative. You were immediately asked to represent a member who had been demoted. On June 25, 2002, you called CDF Administration Chief Rick Hutchinson to ask questions about the demotion case. Mr. Hutchinson became very upset and told you that the matter was being dealt with as a rejection of probation.

On June 29, 2002, you had a meeting with Operations Chief John Ferreira. During that meeting, Mr. Ferreira stated that you were number 20 on a hire list, ranked number 4 and that there were at least four permanent Fire Apparatus Engineer openings. On June 30, 2002, you received a phone call from Mr. Hutchinson. He explained that he was sending you back to Riverside because there had been a mistake and you were not reachable on the Fire Apparatus Engineer list. He told you that your report back date to Riverside was July 1, 2002. On July 2, you received a phone call from Mr. Ferreira who told you that there had been a mistake and you could stay in Santa Clara.

On July 9, 2002, you received a call from Riverside Battalion Chief Jim Cook, who asked you if you would be reporting to work in Riverside on July 10. When you explained that you had been told by Mr. Ferreira that there had been a mistake and you were to stay in Santa Clara,

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.

Mr. Cook told you that if you did not report to work in Riverside on July 10, you would be absent without leave. There are no facts in the charge indicating whether you reported to work in Riverside on July 10, 2002.

In early August 2002, you were at the Morgan Hill Headquarters and you heard Mr. Hutchinson on the phone asking if he could pick from a higher rank for Fire Apparatus Engineer, because he wanted to select someone from the academy for the position.

Discussion

As Charging Party, you allege that the CDF violated the Dills Act by retaliating against you. Further you allege that CDF violated Government Code sections 3502.1, 18525.1 and 11507.6(E). For the following reasons this charge fails to establish a prima facie violation of the Dills Act.

Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

This charge was filed on April 7, 2003. Thus only conduct occurring on or after October 7, 2002 falls within the six-month statute of limitations. The facts provided in the charge occurred in June, July and August 2002 when Mr. Hutchinson allegedly retaliated against you by stating that you were not reachable on the Fire Apparatus Engineer list and threatening to transfer you back to Riverside. As such, the allegation that Mr. Hutchinson retaliated against you is outside the statute of limitations and PERB does not have jurisdiction to address it.

It should also be noted that you allege without explanation that CDF violated Government Code sections 18525.1 and 11507.6(E) and 3502.1.

Government Code section 3502.1 provides:

No public employee shall be subject to punitive action or denied promotion, or threatened with any such treatment, for the exercise of lawful action as an elected, appointed, or recognized representative of any employee bargaining unit.

This section of the Government Code is part of the Meyers-Milias-Brown Act, which covers most employees of California's counties, cities and special districts. Although PERB does have jurisdiction to administer this Act, it does not apply to employees of the State of California, and is thus inapplicable to this charge. The other two sections of the Government Code allegedly violated are not within PERB's jurisdiction.

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 June 13, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Marie A. Nakamura
Regional Attorney

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