

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MELODI F. HARRIS,

Charging Party,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Respondent.

Case No. SA-CO-269-S

PERB Decision No. 1696-S

September 28, 2004

Appearance: Melodi F. Harris, on her own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Melodi F. Harris (Harris) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the California State Employees Association failed to seek a waiver of the statute of limitations period for filing a grievance and failed to pursue reimbursement of expenses for educational course work that had been denied by her employer in violation of the Ralph C. Dills Act (Dills Act)¹ sections 3515.7(g) and 3519.5(b).

The Board has reviewed the entire record in this case, including the unfair practice charge, the amended charge, the warning and dismissal letters and Harris' appeal. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. SA-CO-269-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



July 27, 2004

Melodi F. Harris

Re: Melodi F. Harris v. California State Employees Association
Unfair Practice Charge No. SA-CO-269-S
DISMISSAL LETTER

Dear Ms. Harris:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 13, 2004. Melodi F. Harris alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)¹ by failing to properly represent her

I indicated to you in my attached letter dated July 20, 2004, 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 July 27, 2004, the charge would be dismissed. I received your amended charge on July 23, 2004. On July 26, we discussed this charge by telephone.

As stated in your initial charge, the underlying issue is one which you have pursued since 2002. The grievance procedure of the applicable MOU (Unit 1) provides for the filing of a formal grievance within 21 days of the affected employee learning of the events leading to the grievance. Prior to filing a formal grievance there is a provision for informal discussion and settlement of the matter. In your amended charge you continue to assert that CSEA should have pursued a grievance on your behalf. You also contend that the informal inquiry stage has no set time limit.

PERB has held that a Union's failure to assist employee with his/her request that the State agree to waive timelines to file a grievance does not breach the duty of fair representation when facts fail to show the union's action was without rational basis or devoid of honest judgment. California State Employees Association (Bradford) (2001) PERB Decision

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.

No. 1421-S. The Board has also held that a union is not required to process a grievance to any level if it has a reasonable belief that the claim is without merit. Los Rios College Federation of Teachers (Lowman) (1996) PERB Decision No. 1142. Accordingly, CSEA was not obligated to seek a waiver of timelines or pursue the matter through informal discussions as long as its actions were not arbitrary or taken in bad faith.

You contend that a grievance would have merit because you are entitled to employer reimbursement for your educational courses and upward mobility efforts. You disagree with the union representative's assessment that such a claim is without merit. As stated in your initial charge, the union representative, Brian Caldeira, took the position that, after the employer has denied a request for courses, you are not entitled to then take the courses and later receive reimbursement. Your charge does not provide facts that demonstrate Caldeira's position on this issue was devoid of a rational basis. As stated in my prior letter, the duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of the Dills Act, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

The facts provided with your amended charge do not establish a violation of the duty of fair representation. Therefore, I am dismissing the charge based on the facts and reasons contained herein and in my July 20 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.

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. (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

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

Sincerely,

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July 27, 2004

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ROBERT THOMPSON
General Counsel

By

Bernard McMonigle
Regional Attorney

Attachment

cc: Paul Harris

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



July 20, 2004

Melodi F. Harris

Re: Melodi F. Harris v. California State Employees Association
Unfair Practice Charge No. SA-CO-269-S
WARNING LETTER

Dear Ms. Harris:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 13, 2004. Melodi F. Harris alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)¹ by failing to properly represent her.

Your charge states that on July 12, 2004, you asked union representative Brian Caldeira to file a grievance on your behalf. You explained that you wanted to grieve a failure to reimburse you for educational expenses, wage loss and promotion loss. You had been involved with these issues since 2002 and had filed charges with the State Personnel Board.

Caldeira informed you that he would not pursue a grievance because a grievance would be untimely under the 21 day limit in the grievance procedure. Apparently, he also informed you that your grievance was without merit: your charge states he told you "That I could not be denied from the office to take classes, then take the classes anyway, then later ask for reimbursement." You disagreed and told him that you had filed proper charges with all department heads, "And that it would not be unreasonable for the union to inquiry to the situation." Caldeira reaffirmed that he would not pursue a grievance.

You asked Caldeira to provide you with a letter containing his response to your grievance request. He first stated he would not do so but then told you to make such request in writing and he would have the union's attorneys review it.

You contend that the union should seek a waiver of the limitations period for filing a grievance and seek the reimbursement of expenses denied by your employer.

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.

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by Dills Act section 3515.7(g) and California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S and thereby violated section 3519.5(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of the Dills Act, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

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.]

From your charge, it appears that Caldeira refused to pursue the grievance because it was untimely and he believed it did not have merit. You have not presented facts that demonstrate that conclusion was "without a rational basis or devoid of honest judgment." Accordingly, this charge must be dismissed.

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

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July 20, 2004

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amended charge or withdrawal from you before July 27, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC