STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ERIC JON QUIGLEY, Charging Party, v. STATIONARY ENGINEERS LOCAL 39, Respondent.	Case No. SF-CO-48-S PERB Decision No. 1790-S December 21, 2005

Appearance: Eric Jon Quigley, on his own behalf.

Before Whitehead, McKeag and Neuwald, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Eric Jon Quigley (Quigley) of a Board agent's dismissal (attached) of his unfair practice charge. Quigley alleged that the Stationary Engineers Local 39 violated the Ralph C. Dills Act (Dills Act)[1] by breaching its duty of fair representation when it failed to file grievances on his behalf and denied his request for representation before the State Personnel Board.

The Board has reviewed the entire record including the unfair practice charge, the amended unfair practice charge, Local 39's response, the Board agent's warning and dismissal letters, and Quigley's appeal. The Board finds the dismissal and warning letters to be free of prejudicial error and adopts them as the decision of the Board itself.

On appeal, Quigley presents new charge allegations and new supporting evidence that were not previously presented and that were known to Quigley when he filed his unfair

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

practice charge and amended unfair practice charge. PERB Regulation 32635(b)[2] precludes a charging party from raising new allegations or new supporting evidence on appeal without good cause. Quigley failed to demonstrate good cause for the presentation of new allegations and/or supporting evidence on appeal, and nothing in the documents filed related to the appeal indicates good cause.

ORDER

The unfair practice charge in Case No. SF-CO-48-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and McKeag joined in this Decision.

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

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
Fax: (510) 622-1027

August 17, 2005

Eric Jon Quigley
P.O. Box 8173
Salinas, CA 93912

Re: Eric Jon Quigley v. Stationary Engineers Local 39
Unfair Practice Charge No. SF-CO-48-S
DISMISSAL LETTER

Dear Mr. Quigley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2005. The charge alleges that the Stationary Engineers Local 39 violated the Ralph C. Dills Act (Dills Act)[1] by breaching its duty to represent you fairly on numerous occasions. An amended (supplemental) charge was filed on August 1, 2005.

I indicated to you in my attached letter dated August 2, 2005, 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 August 16, 2005, the charge would be dismissed.

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 August 2, 2005, 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.

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[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. (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,

ROBERT THOMPSON
General Counsel

By _____
Jerilyn Gelt
Labor Relations Specialist

Attachment

cc: J. Felix De La Torre

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
1330 Broadway, Suite 1532
Oakland, CA 94612-2514
Telephone: (510) 622-1021
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August 2, 2005

Eric Jon Quigley
P.O. Box 8173
Salinas, CA 93912

Re: Eric Jon Quigley v. Stationary Engineers Local 39
Unfair Practice Charge No. SF-CO-48-S
WARNING LETTER

Dear Mr. Quigley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2005. The charge alleges that the Stationary Engineers Local 39 violated the Ralph C. Dills Act (Dills Act)[1] by breaching its duty to represent you fairly on numerous occasions. An amended (supplemental) charge was filed on August 1, 2005.

The initial charge alleges incidents of misconduct occurring on the following dates: May 30, September 19 and November 24, 2003; February 26, March 4 and 26, April 5 and 9, May 11, July 22 and December 15, 2004. The amended charge provides more background information regarding the these incidents.

In addition, the amended charge includes an allegation that the union "without exception failed to successively complete to a satisfactory condition any grievance." A letter (Exhibit O) dated March 16, 2005, from Charlie Solt, Local 39 Business Representative, to Julie Chapman, Labor Relations Officer for the Department of Personnel Administration, is attached to the charge in support of this allegation. The letter requests that a grievance apparently filed on your behalf by the union be accepted at the third level of review. There is no date given for the initial filing of the grievance.

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 statute of limitations is an affirmative defense which has been raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party now bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993)

[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.

PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

All of the allegations of misconduct in the initial charge occurred than six months prior to the filing date, June 20, 2005, with the exception of the December 15, 2005, allegation. Therefore, those allegations must be dismissed as untimely.

On October 13, 2004, you received a notice of dismissal from your employer. On October 19, 2004, your union representative attended a Skelly hearing with you. You were subsequently dismissed on October 22, 2004. You received a letter from the union on December 15, 2004, stating that it had decided not to pursue an appeal of your dismissal before the State Personnel Board. The letter stated the union and its attorneys had investigated the matter, and decided the appeal would likely be denied. The union advised of your right to pursue an appeal independent of the union.

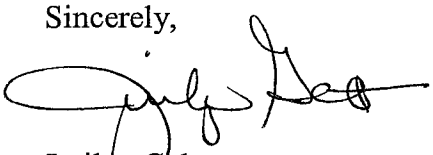
PERB has held that an exclusive representative does not owe a duty of fair representation to unit members in a forum over which the union does not exclusively control the means to a particular remedy. (California State Employees Association (Parisi) (1989) PERB Decision No. 733-S.) Accordingly, the duty of fair representation does not attach to an exclusive representative in extra-contractual proceedings before agencies such as Department of Fair Employment and Housing or the State Personnel Board. (California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S; California State Employees Association (Carrillo) (1997) PERB Decision No. 1199-S.) Thus, the union had no duty to represent you at the appeal of your dismissal before the State Personnel Board.

In the amended charge, you assert that the March 16, 2005, letter from the union to DPA somehow substantiates your allegation that the union did not process your grievance satisfactorily. However, even if the matter grieved occurred within the six month statute of limitations, the letter demonstrates that the union did, in fact, file a grievance on your behalf and represent you at least to the third level of review. It is unclear how this conduct constitutes a violation of the Act.

For these reasons stated above, 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 August 16, 2005, I shall dismiss your charge.

If you have any questions, please call me at the above telephone number.

Sincerely,



Jerilyn Gelt
Labor Relations Specialist

JAG