

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JERRY MAGNER,

Charging Party,

v.

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

Respondent.

Case No. SA-CE-1547-S

PERB Decision No. 1862-S

October 4, 2006

Appearances: Kodam & Associates by Daniel S. Kodam, Attorney, for Jerry Magner; State of California (Department of Personnel Administration) by Nalda L. Keller, Labor Relations Counsel, for State of California (Department of Forestry & Fire Protection).

Before Duncan, Chairman; Shek and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case comes before the Public Employment Relations Board (Board) on appeal by Jerry Magner (Magner) 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)<sup>1</sup> by violating Magner's Weingarten<sup>2</sup> rights.

The Board has reviewed the entire record, including, but not limited to, the unfair practice charge, the amended unfair practice charge, the warning and dismissal letters, Magner's appeal and the State's opposition. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as a decision of the Board itself.

<sup>1</sup>The Dills Act is codified at Government Code section 3512, et seq.

<sup>2</sup>National Labor Relations Board v. Weingarten (1975) 420 U.S. 251 [88 L.R.R.M. 2689].

ORDER

The unfair practice charge in Case No. SA-CE-1547-S is hereby DISMISSED  
WITHOUT LEAVE TO AMEND.

Members Shek and Neuwald joined in this Decision.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

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



May 30, 2006

Daniel S. Kodam, Attorney  
Kodman Associates  
41880 Kalmia Street, Suite 115  
Murrieta, CA 92562

Re: Jerry Magner v. State of California (Department of Forestry & Fire Protection)  
Unfair Practice Charge No. SA-CE-1547-S  
**DISMISSAL LETTER**

Dear Mr. Kodam:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 21, 2006. Jerry Magner alleges that the State of California (Department of Forestry & Fire Protection) violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by violating his Weingarten Rights.

I indicated to you in the attached Warning Letter dated May 22, 2006, 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 May 30, 2006, the charge would be dismissed.

I received a First Amended Charge on May 30, 2006.

You allege that the Department violated Mr. Magner's Weingarten Rights. However, you did not provide any evidence that an investigatory interview was held at which Mr. Magner was denied representation. As stated in the Warning Letter, the interview planned for February 13, 2006, was ended once Mr. Magner requested representation and was unable to find any. Thus, this unfair practice charge is dismissed for failure to state a prima facie violation.

Right to Appeal

Pursuant to PERB Regulations,<sup>2</sup> 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

<sup>1</sup> 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](http://www.perb.ca.gov).

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

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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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also 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.)

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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 Carolyn J. Kubish  
Carolyn J. Kubish  
Regional Attorney

Attachment

cc: Nalda L. Keller



**PUBLIC EMPLOYMENT RELATIONS BOARD**

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



May 22, 2006

Daniel S. Kodam, Attorney  
Kodman Associates  
41880 Kalmia Street, Suite 115  
Murrieta, CA 92562

Re: Jerry Magner v. State of California (Department of Forestry & Fire Protection)  
Unfair Practice Charge No. SA-CE-1547-S  
**WARNING LETTER**

Dear Mr. Kodam:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 21, 2006. Jerry Magner alleges that the State of California (Department of Forestry & Fire Protection) violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by violating his Weingarten Rights.

An investigatory interview was scheduled with Mr. Magner on February 13, 2006. Mr. Magner appeared for the interview without representation. At the beginning of the, Department Prevention Officer, Eric Wood, informed Mr. Magner that he was being questioned as part of a formal investigation regarding (1) the status of his prehospital trauma life support card between March 1 and August 17, 2005; (2) the origin of the PHTLS card provided to CDF and San Mateo County Fire and the San Mateo County Emergency Medical Services Authority showing a valid date of March 3, 2003, to February 2006; and (3) the lack of supporting documentation for overtime charged while attending paramedic continuing education training from January to December, 2005. Next, Mr. Wood informed Mr. Magner of his rights during the interview, including his "right to be represented by an individual of [his] choice." Mr. Magner stated that he was not giving up his right to representation. Mr. Wood called a recess in the interview in order for Mr. Magner to obtain representation. After the recess, Mr. Wood adjourned the interview until Mr. Magner obtained representation. That was the end of the February 13, 2006, interview.

An investigatory interview was held on February 14, 2006. Mr. Magner was represented by Moses Sarinana at this interview.

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<sup>1</sup> 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](http://www.perb.ca.gov).

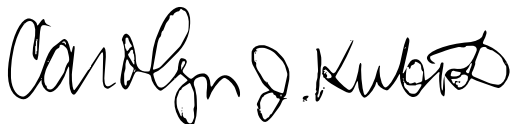
Discussion

An employee required to attend an investigatory interview with the employer is entitled to union representation where the employee has a reasonable basis to believe discipline may result from the meeting. PERB adopted the Weingarten<sup>2</sup> rule in Rio Hondo Community College District (1982) PERB Decision No. 260. In order to establish a violation of this right, the charging party must demonstrate: (a) the employee requested representation, (b) for an investigatory meeting, (c) which the employee reasonably believed might result in disciplinary action; and (d) the employer denied the request. (See Redwoods Community College District v. Public Employment Relations Board (1984) 159 Cal.App.3d 617.; Fremont Union High School District (1983) PERB Decision No. 301.)

Here, the Department did not deny Mr. Magner's request for representation. The February 13, 2006, interview ended once Mr. Magner requested representation and he was unable to obtain any. Mr. Magner was represented at the February 14, 2006, interview.

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 **Tuesday, May 30, 2006**, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Carolyn J. Kubish  
Regional Attorney

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<sup>2</sup>In National Labor Relations Board v. Weingarten (1975) 420 U.S. 251 (Weingarten), the Court granted employees the right to representation during disciplinary interviews.