

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KOFI OPONG-MENSAH,)
)
 Charging Party,) Case No. SA-CE-1074-S
)
 v.) PERB Decision No. 1290-S
)
 STATE OF CALIFORNIA (DEPARTMENT) October 8, 1998
 OF FOOD AND AGRICULTURE),)
)
 Respondent.)
 _____)

Appearance: Kofi Opong-Mensah, on his own behalf.

Before Caffrey, Chairman; Dyer and Jackson, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by Kofi Opong-Mensah (Opong-Mensah) of a Board agent's dismissal (attached) of his unfair practice charge. In the charge, Opong-Mensah alleged that the State of California (Department of Food and Agriculture) violated section 3519 of the Ralph C. Dills Act (Dills Act)¹ by denying his requests for information, and by discriminating against him for his participation in protected activity.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the Board agent's warning and dismissal letters and Opong-Mensah's appeal. The Board finds the warning and dismissal letters to be

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

free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-1074-S is
DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Jackson joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



July 16, 1998

Kofi Opong-Mensah

Re: Kofi Opong-Mensah v. State of California (Department of Food and Agriculture)

Unfair Practice Charge No. SA-CE-1074-S

DISMISSAL LETTER

Dear Mr. Opong-Mensah:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on January 13, 1998. The charge alleges that the State of California (Department of Food and Agriculture) violated the Ralph C. Dills Act, Government Code section 3519, by denying your requests for information.

I indicated to you, in my attached letter dated May 11, 1998, 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 19, 1998, the charge would be dismissed.

At your request, the charge was placed in abeyance on May 26, 1998. I met with you on June 30, 1998, to discuss the status of this charge. On July 1, 1998, the charge was withdrawn from abeyance and you were notified that you should file an amended charge by July 14, 1998. On July 13, 1998, I received an amended charge.

The amended charge does not respond to the determination in the attached warning letter that the Department's alleged failure to provide you with requested information fails to state a prima facie case. Accordingly, for the reasons stated in the warning letter, the allegation concerning the Department's failure or refusal to provide requested information is dismissed.

The amended charge does, however, allege for the first time that the Department discriminated against you for participating in

protected activity. On July 15, 1998, we discussed the allegations in this charge. You contend that the Department wrongly terminated your employment in April 1996 based on a charge that you were absent without leave. You further allege that the Department falsely accused you of certain incidents which occurred prior to your dismissal, such as, accusing you of placing chemicals in a rest room at your work place, improperly storing frozen samples and improperly shipping items to other labs. You assert that the Department terminated your employment and made false accusations against you in retaliation for your attendance at union meetings held at your worksite.

Based on the facts stated above your charge fails to state a prima facie violation of the Dills Act.

Dills Act section 3514.5 (a) states that PERB "shall not . . . 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."

PERB has held that the six month statutory limitations period begins to run when the charging party knew or should have known of the conduct giving rise to the alleged unfair practice. (Regents of the University of California (1983) PERB Decision No. 359-H.) The amended charge was filed on July 13, 1998, alleging for the first time that the Department discriminated against you for engaging in protected conduct. The statute of limitations period for this allegation began to run on January 13, 1998. Accordingly, only alleged unfair practices which occurred on or after January 13, 1998 are timely filed.

Your charge alleges that the Department discriminated against you by terminating your employment in April 1996. This action by the Department is well outside the statutory limitations period and, thus, is untimely filed. Accordingly, PERB is without jurisdiction to consider this allegation and your charge must be dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself

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before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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. (Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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.

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. (Cal. Code of Regs., tit. 8, sec. 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
Deputy General Counsel

Robin E. Wright
Regional Attorney

Attachment

cc: Warren C. Stracener

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



May 11, 1998

Kofi Opong-Mensah

Re: Kofi Opong-Mensah v. State of California (Department of Food and Agriculture)
Unfair Practice Charge No. SA-CE-1074-S
WARNING LETTER

Dear Mr. Opong-Mensah:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on January 13, 1998. The charge alleges that the State of California (Department of Food and Agriculture) violated the Ralph C. Dills Act, Government Code section 3519, by denying your requests for information.

Investigation of the charge revealed the following information. You were employed by the Department of Food and Agriculture as an Agricultural Chemist II. In April 1996, you were notified that you had been separated from your employment based on a charge that you were absent without leave. Your charge states:

Employer (Calif. Dept. of Food & Agriculture/Dept. of Personnel Administration) has consistently denied me access to documents (and falsified records) that would assist me in my defense against wrongful termination under the guise of absent without leave (AWOL).

Attached to your charge is a list of documents you requested that the department provide to you and the date you requested these documents. You made approximately 13 requests for information beginning on July 1, 1996 and continuing to January 2, 1998. You indicate that the department provided a very limited amount of information in response to your requests. You allege that for the most part your requests were denied or you did not receive a response.

Based on the facts stated above your charge fails to demonstrate a prima facie violation of the Dills Act by failing to provide you with requested information.

Dills Act section 3514.5(a) states that PERB "shall not . . . 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."

PERB has held that the six month statutory limitations period begins to run when the charging party knew or should have known of the conduct giving rise to the alleged unfair practice.

(Regents of the University of California (1983) PERB Decision No. 359-H.) Your charge was filed with PERB on January 13, 1998. Therefore, the statute of limitations period began to run on July 13, 1997. Accordingly, only alleged unfair practices which occurred on or after July 13, 1997 are timely filed.

Your charge alleges that several of your information requests were made prior to July 13, 1997. Those requests that were denied by the department prior to July 13, 1997 are outside the statutory limitations period and, thus, are untimely filed.

Several of your information requests to the department appear to be timely filed. Concerning these allegations, PERB has held that an employer has an obligation to provide to the exclusive representative all information that is necessary and relevant to collective bargaining and administration of the contract, including grievance processing. (Stockton Unified School District (1980) PERB Decision No. 143.) However, under the Dills Act, an employer's duty to provide information does not extend to individual employee requests. (Regents of the University of California (1996) PERB Decision No. 1148-H.)¹ Therefore, the State does not violate the Dills Act when it denies information requested by individual employees.² Accordingly, this allegation fails to state a prima facie case and must be dismissed.

Based on the facts you provided and the above discussion, the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be

¹Although this case arises under the Higher Education Employer-Employee Relations Act, the Dills Act imposes a similar duty on the State employer to meet and confer in good faith with the exclusive representative. This rule is, therefore, equally applicable under the Dills Act.

²This letter addresses only the State's obligations to provide information under the Dills Act. PERB is without jurisdiction to enforce other statutory rights or obligations arising under other information request statutes, such as the California Public Records Act or the Freedom of Information Act.

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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 May 19, 1998, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, ext. 305.

Sincerely

Robin E. Wright
Regional Attorney