

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



HAROLD R. SCHUMAN, )  
 )  
Charging Party, ) Case No. LA-CO-86-S  
 )  
v. ) PERB Decision No. 1372-S  
 )  
UNION OF AMERICAN PHYSICIANS )  
AND DENTISTS, ) February 17, 2000  
 )  
Respondent. )  
\_\_\_\_\_ )

Appearance; Harold R. Schuman, on his own behalf.  
Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of Harold R. Schuman's (Schuman) unfair practice charge. Schuman's charge alleges that the Union of American Physicians and Dentists breached its duty of fair representation, in violation of section 3519.5 of the Ralph C. Dills Act (Dills Act),<sup>1</sup> by deducting union dues from his paycheck after he became

<sup>1</sup>The Dills Act is codified at Government Code section 3512 et seq. Section 3519.5 provides:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the state to violate Section 3519.

(b) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

a part-time retired annuitant.

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

ORDER

The unfair practice charge in Case No. LA-CO-86-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

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(c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

(d) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

## PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office  
177 Post Street, 9th Floor  
San Francisco, CA 94108-4737  
(415) 439-6940



October 8, 1999

Harold R. Schuman

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**  
Harold R. Schuman v. Union of American Physicians and  
Dentists  
Unfair Practice Charge No. LA-C0-86-S; First Amended Charge

Dear Dr. Schuman:

The above-referenced unfair practice charge, filed June 29, 1999, alleges the Union of American Physicians and Dentists (UAPD) breached its duty of fair representation by deducting union dues from Charging Party's paycheck. Charging Party alleges this conduct violates Government Code section 3517.5 of the Ralph C. Dills Act (Dills Act or Act) .

I indicated to you, in my attached letter dated September 28, 1999, 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 October 5, 1999, the charge would be dismissed. I later extended this deadline to October 12, 1999.

On October 5, 1999, I received a first amended charge via facsimile. The first amended charge adds the following facts.

Charging Party asserts his membership in UAPD ended in March 1993, when he ceased working as a full-time Physician. Facts provided demonstrate UAPD deducted membership dues from Charging Party's Retired Annuitant paycheck from 1993 through June 1998.

On August 10, 1998, Charging Party wrote a letter to UAPD President, Robert L. Weinmann, requesting a refund on membership dues from 1993 to 1998. Mr. Weinmann failed to respond to this letter. After consulting with an attorney, Charging Party filed a claim in Small Claims Court, alleging a violation of the duty of fair representation. In April 1999, the claim was dismissed

as the court lacked jurisdiction over violations of the duty of fair representation. It was at this time that Charging Party-learned of PERB's exclusive jurisdiction over the matter.

Based on the above-stated facts, and those provided in the original charge, the charge still fails to state a prima facie violation of the duty of fair representation.

Government Code section 3514.5(a)(1) prohibits the Board from issuing 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. Charging Party alleges the UAPD unlawfully deducted union dues from March 1994 through June 1998. As this charge was filed on June 29, 1999, more than a year after the last deduction, the charge is untimely and must be dismissed.

Although not specifically stated, it appears Charging Party is alleging the statute of limitations should be tolled, as he was pursuing the claim in another venue. However, PERB does not recognize the doctrine of "equitable tolling," under which a charging party will not be precluded from proceeding on an untimely charge if he or she has pursued an alternative legal remedy in good faith. (San Diego Unified School District (1991) PERB Decision No. 885.) Further, UAPD does not have any obligation to notify an employee that a noncontractual remedy exists, and as such, cannot be liable for failing to inform Charging Party of PERB's jurisdiction prior to the filing in Small Claims court. (University Council, AFT (Ning-Ping Chan) (1994) PERB Decision No. 1062-H.) As such, the charge is time barred and 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 Regs., tit. 8, sec. 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 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. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

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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 Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 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. (Cal. Code 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 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. (Cal. Code Regs., tit. 8, sec. 32132.)

#### Final Date

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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  
Deputy General Counsel

By  
Kristin L. Rosi  
Regional Attorney

Attachment

cc: Gary Robinson

## PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office  
177 Post Street, 9th Floor  
San Francisco, CA 94108-4737  
(415)439-6940



September 28, 1999

Harold R. Schuman

Re: **WARNING LETTER**

Harold R. Schuman v. Union of American Physicians and  
Dentists  
Unfair Practice Charge No. LA-C0-86-S

Dear Dr. Schuman:

The above-referenced unfair practice charge, filed June 29, 1999, alleges the Union of American Physicians and Dentists (UAPD) breached its duty of fair representation by deducting union dues from Charging Party's paycheck. Charging Party alleges this conduct violates Government Code section 3517.5 of the Ralph C. Dills Act (Dills Act or Act) .

Investigation of the charge revealed the following. Charging Party is employed by the State of California, Department of Social Services (State) as a Part-time Retired Annuitant. More specifically, Charging Party retired from State service in December 1993, and returned immediately to work as a Part-time Annuitant. As a Physician with the State, Charging Party is exclusively represented by the UAPD.

In March 1994, Charging Party received his first paycheck as a Retired Annuitant, and noticed that UAPD dues had been deducted. Charging Party immediately telephoned the UAPD office and was informed by UAPD representative Joe Bader, that union dues were a mandatory deduction for union members.

From March 1994, through June 1998, UAPD dues were deducted from Charging Party's paycheck. In June 1998, Charging Party resigned his membership with UAPD, and thus dues could no longer be deducted.

Based on the above stated facts, the charge as presently written fails to state a prima facie violation of the Dills Act, for the reasons provided below.

Government Code section 3514.5(a)(1) prohibits the Board from issuing a complaint in respect of any charge based upon an

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alleged unfair practice occurring more than six months prior to the filing of the charge. Charging Party alleges the UAPD unlawfully deducted union dues from March 1994 through June 1998. As this charge was filed on June 29, 1999, more than a year after the last deduction, the charge is untimely and 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 which 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 October 5, 1999, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi  
Regional Attorney