

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CARLOS A. VELTRUSKI,

Charging Party,

v.

STATE OF CALIFORNIA (UNEMPLOYMENT
INSURANCE APPEALS BOARD),

Respondent.

Case No. LA-CE-564-S

PERB Decision No. 1480-S

May 2, 2002

Appearance: Carlos A. Veltruski, on his own behalf.

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on appeal by Carlos A. Veltruski (Veltruski) from a Board agent's partial dismissal (attached) of his unfair practice charge. The charge alleged that the State of California (Unemployment Insurance Appeals Board) violated section 3519(a)¹ of the Ralph C. Dills Act (Dills Act) by discriminating against him for engaging in protected activities and refusing to consider his application for employment on its merits.

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519(a) provides, in part:

It shall be unlawful for the state to do any of the following:

- (a) 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. For

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge and attachments, the partial warning and partial dismissal letters, and Veltruski's appeal. Veltruski's appeal does not address at all the rationale utilized by the Board agent in dismissing a portion of his charge or provide any basis to support a prima facie case regarding the dismissed portion of his charge. The Board finds the Board agent's partial dismissal letter to be free from prejudicial error and adopts it as the decision of the Board.

ORDER

The partial dismissal of the unfair practice charge in Case No. LA-CE-564-S is hereby AFFIRMED.

Members Baker and Whitehead joined in this Decision.

purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



September 24, 2001

Carlos A. Veltruski

Re: Carlos A. Veltruski v. State of California (Unemployment Insurance Appeals Board)
Unfair Practice Charge No. LA-CE-564-S
PARTIAL DISMISSAL

Dear Mr. Veltruski:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 5, 2001. You allege that the State of California violated the Ralph C. Dills Act (Dills Act)¹ by discriminating against you for engaging in protected activities by refusing to consider your application for employment on its merits.

I indicated to you, in my attached letter dated September 10, 2001, that certain allegations contained in the 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 allegation to state a prima facie case or withdrew them prior to September 21, 2001, the allegations would be dismissed.

You state in your amended charge dated September 20, 2001, that you approached Ms. Labady with concerns about the treatment you received from Judge Knipe of the UIAB. Her response to you was that you would not be able to prove the charges against Judge Knipe, and that you should just marry an American citizen if you wanted to become eligible to work in the United States. Your amended charge also states that Ms. Woodruff and Mr. White were Ms. Labady's supervisors, and were aware of her conduct toward you. However, your amended charge does not contain a showing that Anny Labady, Lottie Woodruff, and Steve White exercised decision-making authority over hiring decisions in the Department of Fair Employment and Housing. Therefore, I am dismissing the allegation based on the facts and reasons contained in my September 10, 2001 letter.

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.

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.

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. (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. (Regulation 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).)

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

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
Deputy General Counsel

By:
Alicia A. Clement
Board Agent

Attachment

cc: Linda Nelson, Labor Relations Counsel

AAC:ckp

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-7242
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September 10, 2001

Carlos A. Veltruski

Re: Carlos A. Veltruski v. State of California
Unfair Practice Charge No. LA-CE-564-S
PARTIAL WARNING LETTER

Dear Mr. Veltruski:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 5, 2001. You allege that the State of California violated the Ralph C. Dills Act (Dills Act)¹ by discriminating against you for engaging in protected activities by refusing to consider your application for employment on its merits.

On February 28, 2001, you requested employment from Annie Labady, Lottie Woodruff, and Steve White at the Department of Fair Employment and Housing. You repeated this request in March, April, and May of 2001. You allege that in a conversation with Ms. Labady, she refused to consider hiring you because of the charges you had filed against previous employers and because of her stated fear that if she hired you, you would only file charges against her as well. This statement demonstrates knowledge on the part of Ms. Labady of your protected conduct, and an animus toward you on the basis of that protected conduct. Ms. Labady does not make decisions about personnel or hiring. She is a Counselor for the Department of Fair Employment and Housing. Ms. Woodruff and Mr. White are similarly without hiring responsibilities, though they each have a title of District Administrator.

To demonstrate a violation of Dills Act section 3519(a), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor (North Sacramento School District (1982) PERB Decision No. 264), it does not, without more, demonstrate the necessary connection or

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.

"nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (Santa Clara Unified School District (1979) PERB Decision No. 104.); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; (6) employer animosity towards union activists (Cupertino Union Elementary School District) (1986) PERB Decision No. 572.); or (7) any other facts which might demonstrate the employer's unlawful motive. (Novato; North Sacramento School District, supra, PERB Decision No. 264.)

Evidence of adverse action is also required to support a claim of discrimination or reprisal under the Novato standard. (Palo Verde Unified School District (1988) PERB Decision No. 689.) In determining whether such evidence is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Ibid.) In a later decision, the Board further explained that:

Your charge contains allegations that you engaged in protected activities by asserting your rights and the rights of similarly situated employees by attempting to organize other interpreters who contracted their services to the Department of Motor Vehicles. Your charge also contains allegations that because of that protected activity, you were injured when you were not considered for employment at the Department of Fair Employment and Housing on the merits of your application. What your charge fails to allege is the nexus between statements made by Anny Labady, Lottie Woodruff, or Steve White and the Department's decision not to consider your application. Because Ms. Labady, Ms. Woodruff, and Mr. White do not make hiring decisions, any bias they may have shown against your protected activities cannot be imputed to the employer. You must produce facts which tend to show that the bias of these employees influenced the employer's decision not to consider your application, in order to sustain a charge of discrimination.

For these reasons the allegation that the Department of Fair Employment and Housing discriminated against you, 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 September 17, 2001, I shall dismiss the above-

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September 10, 2001
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described allegation from your charge. If you have any questions, please call me at the telephone number listed above.

Sincerely,

Alicia Worcester Clement
Board Agent