

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KAREN SUE SANDBERG,

Charging Party,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Respondent.

Case No. SA-CO-265-S

PERB Decision No. 1694-S

September 24, 2004

Appearance: Karen Sue Sandberg, on her own behalf.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on appeal by Karen Sue Sandberg (Sandberg) from a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act)¹ by breaching its duty of fair representation.

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

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

ORDER

The unfair practice charge in Case No. SA-CO-265-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377



October 14, 2003

Karen Sue Sandberg

Re: Karen Sue Sandberg v. California State Employees Association
Unfair Practice Charge No. SA-CO-265-S
DISMISSAL LETTER

Dear Ms. Sandberg:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 20, 2003.¹ You allege that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act)² by interfering with your attempts to exercise rights and by failing to properly represent you. This conduct is alleged to violate the Dills Act at section 3519.5(b).³

I indicated to you in my attached letter dated September 4 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 September 15 the charge would be dismissed.

On September 15, you submitted additional information and argument in support of your charge by letter dated September 14 and sent via certified mail. Though your submission was not served on CSEA until September 19 (and the proof of service received at PERB on September 22), the additional information and argument is deemed timely filed.

¹ All dates referenced herein are in calendar year 2003 unless otherwise indicated.

² The Dills Act is codified at Government Code section 3512 et seq. and PERB Regulations are found at California Code of Regulations, title 8, section 31001 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

³ The charge also makes reference to Dills Act section 3519.5(c) and PERB Regulation 32604, subsections (b) and (c). Dills Act section 3519.5(c) involves the duty owed by an exclusive representative to the employer to bargain in good faith, and an employee lacks standing to allege a violation of that section. PERB Regulation 32604 is applicable to employee organizations subject to the Meyers-Milias-Brown Act rather than, as is the case here, the Dills Act. Thus, the alleged violations of Dills Act section 3519.5(c) and PERB Regulation 32604 shall be dismissed.

In your September 15 filing, you focus on CSEA's alleged breach of the duty of fair representation by their failure to make an effort to determine the merit of complaints you made that you believed could be pursued as grievances under the collective bargaining agreement. You assert that you asked CSEA to "review a number of incidences and a hostile work environment that are contained in the Collective Bargaining Contract" and to provide information on how to proceed with filing a grievance.

You attach an email, dated May 1 and addressed to Laura Strand, CSEA Labor Relations Representative, by which you made a "formal request to file a grievance (and/or action or whatever the appropriate terminology may be necessary) to seek relief" on your behalf against the Department of Justice "for wrongs inflicted" during your six month probationary period of employment by that department.⁴ Your email attached a document summarizing the alleged causes of action for a grievance as including your being hired by the Department in "less than good faith," wrongful rejection on probation, "bullying" by staff, harassment by staff, hostile work environment, defamation of character, libel and slander, misrepresentation by management, and punitive actions that compromised your ability to transfer to other state agencies, including serving you with "odious papers . . . as a final notice of rejection on probation."

You also sent an email dated May 2 to Ms. Strand, in which you posed a number of questions relating to the structure and direction of staff work within CSEA, as well as concerning the appeal of your rejection on probation and other issues with the employer. On May 7, you sent an email to Jerry Woutat, a CSEA manager, seeking assistance because you had received a response from Ms. Strand.

Mr. Woutat responded on May 8 to indicate that Ms. Strand would contact you. Ms. Strand sent two emails on May 9, responding to both the May 1 and May 2 emails from you. Her message responding to your formal request for filing a grievance did not address the grievance procedure but did respond substantively to at least some of the issues, such as parking fee charges, and her efforts to resolve those with the employer.

On July 23, you sent a letter to Anna Kammerer, CSEA Civil Service Division Administrator, in which, inter alia, you made a "follow-up request" for CSEA to file a grievance against the Department of Justice, attaching a copy of your May 1 email to Ms. Strand. Prior to that, by letter dated July 17, Ms. Kammerer had responded to a letter of complaint you filed concerning Ms. Strand and Mr. Woutat. Included in Ms. Kammerer's letter is the following:

As to your final grievance about Ms. Strand and Mr. Woutat withholding information about how to file a grievance against the Department of Justice, a grievance requires that a Contract violation has occurred. A grievance must be filed within Twenty-One days of the violation of a Contract Article. A rejection

⁴ Your employment at the Department of Justice commenced in August 2002 and your Notice of Rejection on Probation was served February 11, 2003.

during probation is not a Contract violation, thus, your case is not grievable. I suggest that you draft a letter of complaint and address it to the Attorney General as head of the Department. Only Justice can direct the work of its employees including the Attorney Ms. Strand has tried to negotiate with.

Discussion

In your response to my September 4 letter, you assert that, prior to May 2003, you made "repeated verbal requests" to CSEA for information on how to proceed with filing a grievance. You also state in part that:

My main contention has been that CSEA failed to respond to my repeated requests to file a grievance based on harassment, bullying, and a hostile work environment, etc. CSEA failed to investigate the merits of my complaint/grievance, counsel me or interview anyone at the Department of Justice in any effort to determine the merits of these allegations. CSEA's actions have been focused on the issue of Rejection on Probation, which is an entirely separate matter.

Neither your charge nor your September 14 letter identify either the dates of your verbal requests that CSEA file a grievance or the dates of the alleged contract violations. Perhaps more important, the charge does not identify what contract provisions were allegedly violated. These two problems are apparently referenced by Ms. Kammerer's July 17 letter where she states that "a grievance requires that a Contract violation has occurred" and a "grievance must be filed within Twenty-One days of the violation of a Contract Article." Without specific facts demonstrating that your request for the filing of a grievance was timely made under the contract and based on alleged violations of that contract,⁵ it is not reasonable to conclude that CSEA's conduct constitutes a breach of its statutory duty.

Your September 14 letter states that "CSEA's actions have been focused on the issue of Rejection on Probation." A review of the correspondence between yourself and CSEA, and the allegations in the charge, supports this conclusion, but also supports a conclusion that your communication with CSEA focused on the same issue and the appeals of probation reports that led to the rejection. While, as discussed in my September 4 letter, the duty of fair representation does not extend to matters such as an appeal of a rejection on probation (California State Employees Association (Bradford) (2001) PERB Decision No. 1421-S), it is

⁵ In reviewing the contract myself, I am unable to locate any provision addressing "hostile work environment," libel and slander, or "bullying." There are provisions prohibiting sexual harassment (Section 5.8) and the use of electronic monitoring for the purpose of harassment (Section 21.2), but it is not clear that your complaints of harassment involve either of these types of prohibited conduct.

also not reasonable to conclude that CSEA's "focus" on efforts to assist you in that forum would itself form a basis for finding CSEA in breach of the duty of fair representation.

In sum, the charge fails to allege facts establishing that CSEA showed bad faith or acted in a discriminatory or arbitrary manner with respect to its actions, or inaction, concerning any grievance filed, or any matter subject to being filed, under the collective bargaining agreement. Thus, the charge fails to state a prima facie violation of the duty of fair representation by CSEA. (California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.)

Therefore, I am dismissing the charge based on the facts and reasons discussed above as well as those contained in my September 4, 2003 letter.

Right to Appeal

Pursuant to PERB Regulations,⁶ 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. (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

⁶ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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
Les Chisholm
Regional Director

Attachment

cc: Mark DeBoer

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
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September 4, 2003

Karen Sue Sandberg

Re: Karen Sue Sandberg v. California State Employees Association
Unfair Practice Charge No. SA-CO-265-S
WARNING LETTER

Dear Ms. Sandberg:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on August 20, 2003. You allege that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act)¹ by interfering with your attempts to exercise rights and by failing to properly represent you. This conduct is alleged to violate the Dills Act at section 3519.5(b).²

Your charge sets forth in considerable detail problems you experienced during your employment by the Department of Justice (Department). A state employee for 18 years, you commenced employment in the Department's Civil Division, False Claims Section, in August 2002. On November 27, 2002, you met with Kerri Matsubara and Connie Vanenburg, Staff Services Management Auditors, regarding your first probationary report. In part, you were informed by management staff that former employees receiving a similar report rating to yours were later returned to their former positions. You asked about submitting information to attach to the report but were directed, including by Kevin Chan, Audit Chief, that you should not submit a rebuttal.

Despite the directive, you later submitted rebuttals both to the first probationary report, in January 2003, and to the second, in March 2003. The Department did not respond to the rebuttals and did not include them in your personnel file.

¹ The Dills Act is codified at Government Code section 3512 et seq. and PERB Regulations are found at California Code of Regulations, title 8, section 31001 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 The charge also makes reference to Dills Act section 3519.5(c) and PERB Regulation 32604, subsections (b) and (c). Dills Act section 3519.5(c) involves the duty owed by an exclusive representative to the employer to bargain in good faith, and an employee lacks standing to allege a violation of that section. PERB Regulation 32604 is applicable to employee organizations subject to the Meyers-Milias-Brown Act rather than, as is the case here, the Dills Act. Thus, the alleged violations of Dills Act section 3519.5(c) and PERB Regulation 32604 shall be dismissed.

On January 27, 2003, you met with Larry Raskin, Supervising Deputy Attorney General, Michele Olsen, Staff Services Manager I, and Laura Strand, a CSEA staff representative. This meeting concerned directives you had received earlier in the month to resubmit work, your report of these directives, and your belief that your words in earlier, related conversations had been taken out of context and that you had not been treated with respect and dignity.

Your charge alleges that you “requested of CSEA to file a grievance/action/complaint, etc.” against the Department based on several causes of action but that CSEA “refused and/or failed to provide requested assistance in this matter.” The causes of action you cite include your being hired by the Department in “less than good faith,” wrongful rejection on probation, “bullying” by staff, harassment by staff, hostile work environment, defamation of character, libel and slander, misrepresentation by management, and punitive actions that compromised your ability to transfer to other state agencies, including serving you with “odious papers . . . as a final notice of rejection on probation.” More specifically, you requested that CSEA file a public notice complaint and/or an unfair practice charge against the Department, due to the Department’s refusal to meet and confer in good faith with CSEA. CSEA did not file either a public notice complaint or an unfair practice charge based on your request.³

Your charge, in addition to listing multiple improper personnel actions you experienced itemized by Department representatives, also lists alleged improper personnel actions you experienced that are attributed to CSEA representatives. The charge specifically names General Manager Frank Giulelmino, Manager Jerry Woutat, Assistant to CSD Administrator Anna Kammerer, and Labor Relations Representative Laura Strand. With respect to Giulelmino and Woutat, the charge simply asserts that they “took ineffective actions in resolving this matter.” Kammerer is likewise charged with taking ineffective actions but also as failing to assist you after suggesting that you pursue the matter with the Department.

With regard to Laura Strand, you allege she:

Chose to have in [her] possession the “Notice of Rejection During Probation” package served to employee and not provide said documentation to employee until the morning of the Skelly Hearing, leaving no reasonable amount of time for employee to review the documentation, gather facts to refute the purported documentation fabricated by the Department, and prepare a response.

³ On July 24, 2003, you filed both an unfair practice charge (Case No. SA-CE-1411-S) and a public notice complaint (SA-PN-7-S) against the Department. Both were withdrawn on August 5, 2003, following telephone discussions with you concerning deficiencies in the filings.

Chose to prepare and mail a negotiation/settlement agreement without notice given to employee of the nature of the negotiation/settlement agreement.

Before consulting with the employee, chose to submit to the Department a negotiation/settlement stipulation without verifying with the employee that all employee demands had been addressed.

Even after CSEA directed the employee to pursue a claim against the Department, CSEA failed to provide support as requested by the employee in pursuing a claim against the Department.

Discussion

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by Dills Act section 3515.7(g) and California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S and thereby violated section 3519.5(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of the Dills Act, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Board stated:

Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]

A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

". . . must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (Emphasis added.)" [Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers

Professional Association (Romero) (1980) PERB Decision
No. 124.]

However, the allegations in the instant charge concern alleged failings in CSEA's representation in the Skelly hearing and the appeal process before the State Personnel Board (SPB) concerning your rejection on probation. The Board has long held that the duty of fair representation does not extend to extra-contractual matters, including appeals from rejection during probation before the SPB (California State Employees Association (Bradford) (2001) PERB Decision No. 1421-S) or Skelly-type hearings (California Association of Professional Scientists (Opong-Mensah) (1998) PERB Decision No. 1288-S; Service Employees International Union, Local 99 (Wardlaw) (1997) PERB Decision No. 1219).

Further, the Board has also held that the duty of fair representation does not extend to the filing of unfair practice charges with PERB, and thus an exclusive representative has no obligation to file a charge on an employee's behalf. (Fremont Unified District Teachers Association, CTA/NEA (Turney) (2001) PERB Decision No. 1443; California State Employees Association (Fox) (1995) PERB Decision No. 1099-S.)

The charge fails to allege facts establishing that CSEA showed bad faith or acted in a discriminatory or arbitrary manner with respect to its actions, or inaction, concerning any grievance filed under the collective bargaining agreement. Further, since the duty of fair representation is inapplicable to the matters raised by the charge, involving requests to file complaints with PERB and the appeal process with SPB on a rejection from probation, the charge must be dismissed.

The test for whether a respondent has interfered with the rights of employees under the Dills Act does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. The Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S, citing Carlsbad Unified School District (1979) PERB Decision No. 89; Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106.)

Under the above-described test, a violation may only be found if the Dills Act provides the claimed rights. In this case, the charge does not allege facts to establish that CSEA interfered with Charging Party's exercise of any rights protected by the Dills Act.

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

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September 4, 2003
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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 15, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Regional Director