

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



KARIN CHEN,

Charging Party,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Respondent.

Case No. LA-CO-113-S

PERB Decision No. 1749-S

February 7, 2005

Appearance: Karin Chen, on her own behalf.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Karin Chen (Chen) of a Board agent's dismissal (attached) of her unfair practice charge. The unfair practice charge alleged that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act)¹ by failing to respond to a request for reasonable accommodation and thus violating the duty of fair representation.

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

DISCUSSION

Chen stated the basis for her appeal as follows:

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

The transmission for my request was not failed. I also sent certified mail with return receipt. It shows the bad faith of CSEA.

I never asked CSEA to receive an accommodation for a disability. . . . My request for a reasonable accommodation was based on my doctor's recommendation plus the violations of rules and regulations in the Office of Engineering Services. All I asked was to transfer to another office and work in a reasonable condition.

Chen asserts that she sent the request to CSEA Representative Alexandra Tieu by certified mail. This is new information raised on appeal. PERB Regulation 32635(b)² requires good cause to allege new supporting evidence on appeal. It is presumed that Chen knew that she sent the request for accommodation by certified mail at the time she filed her charge, and certainly after receiving the warning letter but before the charge was dismissed.³ Yet Chen did not file an amended charge to provide this information. Chen also has not provided any other information showing good cause to raise this information on appeal. Therefore, the Board did not consider this new information in rendering its decision.

Otherwise, Chen's appeal does not respond to the issues raised in the warning letter. The Board agrees that the charge does not state facts demonstrating that CSEA breached the duty of fair representation.

ORDER

The unfair practice charge in Case No. LA-CO-113-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

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

³However, Chen did not indicate a date for when the request was sent by certified mail to Tieu.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377



November 8, 2004

Karin Chen

Re: Karin Chen v. California State Employees Association
Unfair Practice Charge No. LA-CO-113-S
DISMISSAL LETTER

Dear Ms. Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 14, 2004. Karin Chen alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)¹ by violating its duty of representation.

I indicated to you in my attached letter dated October 25, 2004, 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 November 4, 2004, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my October 25, 2004, letter.

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. (Regulations 32135(a) and 32130.) A document is also

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.

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

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

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.)

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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 -
Tammy Samsel
Regional Attorney

Attachment

cc: Catherine Kennedy

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377



October 25, 2004

Karin Chen

Re: Karin Chen v. California State Employees Association
Unfair Practice Charge No. LA-CO-113-S
WARNING LETTER

Dear Ms Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 14, 2004. Karin Chen alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)¹ by violating its duty of representation. My investigation revealed the following information.

CSEA exclusively represents Unit 4, which includes Karin Chen. On March 11, 2004, Chen filed a Reasonable Accommodation Request form with her employer. The employer did not respond. On September 16, 2004, Chen sent a facsimile copy of the Request to CSEA Representative Alexandra Tieu. The confirmation report regarding this facsimile transmission indicates the transmission failed. On October 11, 2004, Chen sent an email to Tieu indicating she had not heard anything from Tieu in response to the facsimile and asking whether Tieu was still her union representative.

The above-stated facts fail to state a prima facie violation for the reasons that follow.

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 Public Employment Relations Board stated:

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.

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.]

It appears Chen would like CSEA's help with receiving an accommodation for a disability. However, the duty of representation is limited to contractually-based remedies under the union's exclusive control. (See California School Employees Association (De Lauer) (2003) PERB Decision No. 1523.) The charge does not provide facts demonstrating that this issue is covered by the parties' collective bargaining agreement. Instead, the form refers to the Americans with Disabilities Act. As the charge does not demonstrate this matter is within CSEA's exclusive control, CSEA does not owe Chen a duty of fair representation in this matter.

Even if CSEA's duty of fair representation was applicable to this matter, Chen's facsimile transmission failed. As the charge does not even demonstrate Tieu received the facsimile, the charge fails to state a prima facie violation 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 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

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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 November 4, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney

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