

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MICHAEL M. BURNETT,

Charging Party,

v.

SEIU LOCAL 1000,

Respondent.

Case No. SA-CO-368-S

Administrative Appeal

PERB Order No. Ad-377-S

February 25, 2009

MICHAEL M. BURNETT,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
GENERAL SERVICES),

Respondent.

Case No. SA-CE-1634-S

MICHAEL M. BURNETT,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
GENERAL SERVICES AND DEPARTMENT OF
HOUSING AND COMMUNITY
DEVELOPMENT),

Respondents.

Case No. SA-CE-1626-S

MICHAEL M. BURNETT,

Charging Party,

v.

SEIU LOCAL 1000,

Respondent.

Case No. SA-CO-367-S

Appearances: Alex Sandoval, Representative, for Michael M. Burnett; Paul E. Harris III, Chief Counsel, for SEIU Local 1000; State of California (Department of Personnel Administration) by Ronald R. Pearson, Legal Counsel, for State of California (Department of General Services and Department of Housing and Community Development).

Before McKeag, Rystrom and Dowdin Calvillo, Members.

DECISION

RYSTROM, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by Michael M. Burnett (Burnett) of dismissals by Board agents of four unfair practice charges. Two of the dismissed charges alleged violations of the Ralph C. Dills Act (Dills Act)¹ by SEIU Local 1000 (Local 1000), Case Nos. SA-CO-367-S and SA-CO-368-S. The remaining two charges alleged violations of the Dills Act by the State of California (Department of General Services and Department of Housing & Community Development) (State), Case Nos. SA-CE-1626-S and SA-CE-1634-S.

Burnett filed two appeals of these dismissals, both of which are based on the failure of the Board agents dismissing the cases to disqualify themselves. We have found that the first appeal, the February 3, 2008 affidavit filed on February 4, 2008 (February 3, 2008 affidavit), must be dismissed as to all cases for Burnett's failure to comply with PERB regulations delineating the procedural steps a party must take to disqualify a Board agent. The second

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

appeal, which is the February 14, 2008 “Appeal for Special Permission to Appeal the Decision of Board Agents” (February 14, 2008 appeal), is dismissed as to Case Nos. SA-CO-368-S and SA-CE-1634-S because of untimeliness. The February 14, 2008 appeal is dismissed as to Case Nos. SA-CO-367-S and SA-CE-1626-S for failure to comply with PERB’s procedural requirements for disqualification of Board agents.

BACKGROUND

Unfair Practice Charges and Dismissals

Case No. SA-CO-367-S (Burnett v. SEIU Local 1000)²

Burnett alleged in his first amended charge that Local 1000 had breached its duty of fair representation by failing: to process grievances filed by Burnett; to communicate with Burnett regarding these grievances; and to set up a telephone conversation. The amended charge also alleged that Burnett was excluded from “SBAC meetings”³ and was not granted union leave.⁴ This unfair practice charge was dismissed by letter dated January 24, 2008, because it failed to state a prima facie case that Local 1000 violated Burnett’s rights under the Dills Act.

Case No. SA-CO-368-S (Burnett v. SEIU Local 1000)

The original charge alleged that Local 1000 breached its duty of fair representation by failing to file a charge against the State on behalf of Burnett. In a warning letter dated December 19, 2007, Burnett was informed that the charge failed to state a prima facie

²The original charge was also filed against California State Employees Association (CSEA) and the United Auto Workers Local Union 2350 (UAW). In his December 5, 2007 warning letter the Board agent dismissed the allegations against CSEA and UAW on the basis that they are not the exclusive representatives of the charging party.

³The amended charge did not specify what “SBAC meetings” were.

⁴The allegations do not explain how what involvement, if any, Local 1000 had in the alleged failure to grant union leave.

violation. Burnett failed to timely file an amended charge resulting in a dismissal of the unfair practice charge on January 8, 2008, for the reasons contained in the warning letter.

Case No. SA-CE-1626-S (Burnett v. State of California (Department of General Services and Department of Housing & Community Development))

Burnett's amended charge alleged that the State failed to bargain in good faith with Burnett and Local 1000. The Board agent dismissed this unfair practice by letter dated January 24, 2008, for failure to state a prima facie case.

Case No. SA-CE-1634-S (Burnett v. State of California (Department of General Services))

The amended charge in this case alleged that the State violated the Dills Act by delaying the scheduling of meetings and bypassing an employee's chosen representative to discuss the resolution of a grievance. By letter dated January 10, 2008, the unfair practice charge was dismissed for failure to state a prima facie case, Burnett's lack of standing to file unilateral change violations, and because the charge alleged violations outside of the Dills Act's six-month statute of limitations.

Burnett's Appeals

1. February 3, 2008 Affidavit Appeal

On February 4, 2008, Burnett faxed filed his February 3, 2008 affidavit regarding Case Nos. SA-CO-367-S, SA-CO-368-S, SA-CE-1626-S and SA-CE-1634-S. He was informed by PERB on February 4, 2008, that this affidavit would be handled by the Board and could be used as his appeal.

This affidavit was limited to requesting that in accordance with PERB Regulation 32155,⁵ the Board agents who dismissed Burnett's referenced charges should have recused themselves and that PERB's General Counsel should recuse herself from dealing with any of Burnett's cases.

2. February 14, 2008 Appeal

On February 14, 2008, Burnett filed an appeal for special permission to appeal the decision of Board agents regarding Case Nos. SA-CO-367-S, SA-CO-368-S, SA-CE-1626-S and SA-CE-1634-S. This appeal was also limited to arguing that the Board agents dismissing Burnett's unfair practice charges should have disqualified themselves.

Local 1000's Opposition to Burnett's Appeals of Case Nos. SA-CO-367-S and SA-CO-368-S

Local 1000 contends that the charges in Case Nos. SA-CO-367-S and SA-CO-368-S were properly dismissed for failure to state a prima facie case.

State's Opposition

The State contends Burnett's appeal of Case No. SA-CE-1626-S should be denied because it is vague and uncertain, fails to comply with PERB Regulation 32635, and fails to address the November 15, 2007 position statement by the State submitted to the Board agent.

Burnett's February 14, 2008 appeal of Case No. SA-CE-1634-S is challenged by the State as being untimely pursuant to PERB Regulation 32635(a). The State also argues that the appeal does not refute arguments made in the State's December 6, 2007, position statement and that instead of refuting the basis of the dismissal, Burnett argues on appeal that the unfair practice charge was improperly dismissed because the Board agent was unduly influenced by another Board agent assigned to other charges filed by Burnett.

⁵PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

DISCUSSION

1. February 3, 2008 Affidavit Appeal

Burnett's February 3, 2008 affidavit is timely as to the four cases it purports to be appealing: Case Nos. SA-CO-367-S, SA-CO-368-S, SA-CE-1626-S and SA-CE-1634-S.⁶ Therefore, we address Burnett's arguments that the Board agents who dismissed these charges should have been disqualified in accordance with PERB Regulation 32155.

PERB Regulation 32155 sets forth the procedures for disqualification of a Board agent. Subsection (c) of PERB Regulation 32155 provides that any party may request the Board agent to disqualify himself or herself but that such request shall be in writing, under oath and shall specifically set forth all the facts supporting it.⁷ In order to file an appeal based on a Board agent's failure to disqualify himself or herself, this written request must first be made to the Board agent. (PERB Reg. 32155(c) and (d).)

⁶Although it is questionable that Burnett intended his affidavit to be an appeal, the PERB Appeals Office informed Burnett he could use his letter affidavit as an appeal if he provided a proof of service. He did so on February 14, 2008. We therefore consider this filing as an appeal.

⁷PERB Regulation 32155(c) provides, in pertinent part:

Any party may request the Board agent to disqualify himself or herself whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned. Such request shall be written or if oral, reduced to writing within 24 hours of the request. The request shall be under oath and shall specifically set forth all facts supporting it. The request must be made prior to the taking of any evidence in an evidentiary hearing or the actual commencement of any other proceeding.

If such Board agent admits his or her disqualification, such admission shall be immediately communicated to the General Counsel or the Chief Administrative Law Judge, as appropriate, who shall designate another Board agent to hear the matter.

Burnett claims on appeal that his letters dated October 30, 2007, to the Board regarding Case Nos. SA-CO-367-S and SA-CE-1626-S and his November 16, 2007 response to Local 1000's position statement in Case No. SA-CO-367-S requested that the Board agent in those cases disqualify himself.⁸

Our review of the October 30, 2007, letter to the Board provided by Burnett on appeal indicates it does not comply with PERB Regulation 32155(c) because it is not under oath.⁹ Burnett's November 16, 2007, response to Local 1000's position statement suffers from the same deficiency.

Burnett does not assert that he made any written requests pursuant to PERB Regulation 32155(c) in Case Nos. SA-CO-368-S and SA-CE-1634-S.

Based on these facts, we find that Burnett has failed to follow the procedures in PERB Regulation 32155(c) as to each of his dismissed charges. Accordingly, we dismiss Burnett's February 3, 2008, affidavit appeal.

2. February 14, 2008 Appeal

Burnett's February 14, 2008, appeal of the dismissals in Case Nos. SA-CO-367-S, SA-CO-368-S, SA-CE-1626-S and SA-CE-1634-S states that it is based on Burnett's February 3, 2008 affidavit discussed above. This affidavit, along with the October 30, 2007 letter and the November 16, 2007 response are provided with the February 14, 2008 appeal. In addition to the grounds stated in his February 3, 2008 affidavit appeal, Burnett contends that the Board agents in these cases deliberately ignored everything Burnett presented to them, that

⁸Burnett has provided copies of these letters as attachments stapled to his February 14, 2008 appeal.

⁹We need not address whether the letter meets the other requirements of PERB Regulation 32155(c) given this failure.

they acted with affinity towards the representatives of the State and Local 1000, and that the Board agents displayed a rude behavior and demeanor towards Burnett. The remainder of the appeal is devoted to criticism of PERB and accusations against the State and Local 1000 not related to the dismissals of Burnett's unfair practice charges.

This appeal is untimely as to Case Nos. SA-CO-368-S and SA-CE-1634-S. PERB Regulation 32635 requires that an appeal of a dismissal must be filed within twenty days of service of the dismissal. PERB Regulation 32130 allows an extension of five days to respond to dismissals served by mail. The dismissals in these cases were served by mail on January 8 and 10, 2008, respectively, therefore Burnett's deadline to file his appeal was February 4, 2008, in both cases. Accordingly, his February 14, 2008 appeal of these cases is untimely.

The February 14, 2008, appeal in Case Nos. SA-CO-367-S and SA-CE-1626-S is timely filed.¹⁰ However, it is dismissed because Burnett has failed to comply with PERB Regulation 32155(c) as discussed above regarding Burnett's February 3, 2008 affidavit appeal: i.e., Burnett's failure to request in writing, under oath, that the Board agent in these cases should disqualify himself. PERB Regulation 32155(d) does not allow an appeal on the basis of a Board agent's failure to disqualify himself or herself without the party first seeking disqualification of the Board agent as delineated in PERB Regulation 32155(c).

¹⁰The February 14, 2008 appeal was filed within 20 days of the dismissals in Case Nos. SA-CO-367-S and SA-CE-1626-S and before responses were filed by Local 1000 or the State. PERB Regulation 32635 does not address whether a party can supplement the arguments made in its appeal if such supplemental filing is within the 20 days allowed to appeal and does not contain any new evidence. Given the written representations by PERB to Burnett that he could file an appeal in addition to his February 3, 2008 affidavit in Case Nos. SA-CO-367-S and SA-CE-1626-S, we will review Burnett's February 14, 2008 appeal on the merits.

For the above reasons, we hold that the February 3, 2008 affidavit appeal and the February 14, 2008, appeal in Case Nos. SA-CO-367-S, SA-CO-368-S, SA-CE-1626-S and SA-CE-1634-S are dismissed.

ORDER

The unfair practice charges in Case Nos. SA-CO-367-S, SA-CO-368-S, SA-CE-1626-S, and SA-CE-1634-S, are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Dowdin Calvillo joined in this Decision.