

9 PERC ¶ 16064

CALIFORNIA EMPLOYMENT DEVELOPMENT DEPARTMENT

California Public Employment Relations Board

Laura Patino, Charging Party, v. State of California, Employment Development Department, Respondent.

Docket No. S-CE-233-S

Order No. 483-S

January 18, 1985

Before Hesse, Chairperson; Tovar and Jaeger, Members

Unfair Practice Procedures -- Refusal To Issue Complaint -- General Counsel's Request For Remand -- 71.21, 71.77 Where General Counsel requested remand with respect to unfair practice charge, which was deferred to contractual grievance arbitration, for further investigation in light of union's subsequent amendment to charge, matter was remanded.

APPEARANCES:

Patricia L. Campbell, Attorney for Laura Patino; Christine A. Bologna and Edmund K. Brehl, Attorneys for the State of California, Employment Development Department.FL

DECISION AND ORDER

JAEGER, Member: Laura Patino appeals the dismissal by a regional attorney of the Public Employment Relations Board of her charge that the California Employment Development Department violated Government Code sections 3519(a) and (b) by terminating her because of her participation in activities protected by the State Employer-Employee Relations Act. The Board recently adopted a procedure calling for a review by the General Counsel of cases on its docket which involve dismissal of charges and refusal to issue a complaint.

On December 26, 1984, the General Counsel requested that this case be remanded for further investigation and evaluation of an amendment to the original charge.

Clearly, underlying the Board's adoption of the remand procedure was the desire to minimize, and hopefully eliminate, appellate litigation prompted by inadequacies in the processing of unfair practice charges. Presumably a request by the General Counsel for such Board action is predicated on a conclusion that further investigation is likely to achieve that desirable result.

Barring those instances where a charge unequivocally falls to state a prima facie case, or conversely, where it clearly requires issuance of a complaint, there would be little purpose to the Board's policy if the General Counsel's request for remand were given short shrift. Here, based on the General Counsel's report, we conclude that his request should be honored. Therefore, upon review of the entire record, we find that the case is appropriately remanded to the General Counsel for further investigatory proceedings. It is so ORDERED.

Member Tovar joined in this Decision.

HESSE, Chairperson, dissenting: This charge was properly dismissed by the regional attorney because of our policy of deferral. The failure of CSEA's attorney to name CSEA as a charging party, and to allege a violation of ERRA section 3519 (b), cannot be remedied by this Board, either by reversing the dismissal or permitting an amended charge to be filed, without good cause.

CSEA, however, gives no adequate grounds to warrant reversal. Thus, no remand is necessary for further investigation.

The undisputed facts are: CSEA filed the original charge on behalf of Patino; CSEA was aware prior to the dismissal that the charge did not address the issue of CSEA's rights (Appeal pp. 7-8); and CSEA did not amend the charge in a timely manner. The reasons advanced by CSEA for its failure to amend are merely attempts to exculpate itself for its own failure to abide by our Regulations.

By remanding this case to the General Counsel, the majority does two things: it gives life to a charge that should be before an arbitrator instead of PERB, and, more importantly, it ignores the *charged* party's rights completely. As a neutral agency, we are to safeguard the rights of *all* parties. Here, CSEA was given every opportunity to protect itself by filing an accurate charge. The employer is equally protected under our statute from defending itself against stale claims. Thus, I believe a remand is inappropriate and that the dismissal of the charge was correct on grounds of deferral to arbitration.
