

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ROBERT BURKS,	)	
	)	
Charging Party,	)	Case No. LA-CO-53-S
	)	
v.	)	PERB Decision No. 1021-S
	)	
CALIFORNIA ASSOCIATION OF	)	October 22, 1993
HIGHWAY PATROLMEN,	)	
	)	
Respondent.	)	

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Appearance: Robert Burks, on his own behalf.

Before Hesse, Caffrey and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Robert Burks (Burks) of a Board agent's dismissal (attached) of his unfair practice charge which alleged that the California Association of Highway Patrolmen (CAHP) violated section 3519.5 of the Ralph C. Dills Act (Dills Act).<sup>1</sup> Burks alleged that the CAHP violated its duty of fair representation when it failed to negotiate with the State

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<sup>1</sup>The Dills Act is codified at Government Code section 3512 et seq. Section 3519.5 states, in pertinent part:

It shall be unlawful for an employee organization to:

(b) 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.

employer over a contract provision specifically requested by Burks.

The Board has reviewed the warning and dismissal letters and the appeal filed by Burks. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

#### DISCUSSION

On appeal, Burks makes several new allegations involving CAHP's violation of its duty of fair representation. However, PERB Regulation 32635(b)<sup>2</sup> prohibits the introduction of new allegations on appeal absent a showing of good cause. Burks has not shown good cause to justify presenting his new allegations on appeal.

#### ORDER

The unfair practice charge in Case No. LA-CO-53-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Hesse and Garcia joined in this Decision.

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<sup>2</sup>PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32635 states, in pertinent part:

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

## PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office  
3530 Wilshire Blvd., Suite 650  
Los Angeles, CA 90010-2334  
(213)736-3127



February 22, 1993

Robert Burks

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair  
Practice Charge No. LA-C0-53-S, Robert Burks v.  
California Association of Highway Patrolmen

Dear Mr. Burks:

In the above-referenced charge, you allege that the California Association of Highway Patrolmen (CAHP) failed to represent you fairly in negotiations with the State of California. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act.

I indicated to you, in my attached letter dated January 26, 1993, 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 February 5, 1993, 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 January 26 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is;

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Public Employment Relations Board  
1031 18th Street  
Sacramento, CA 95814

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. (Cal\* Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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.

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. (Cal. Code of Regs., tit. 8, sec. 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  
Deputy General Counsel

By \_\_\_\_\_  
THOMAS J. ALLEN  
Regional Attorney

Attachment

cc: Jon H. Hamm

## PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office  
3530 Wilshire Blvd., Suite 650  
Los Angeles, CA 90010-2334  
(213)736-3127



January 26, 1993

Robert Burks

Re: WARNING LETTER, Unfair Practice Charge No. LA-CO-53-S,  
Robert Burks v. California Association of Highway  
Patrolmen

Dear Mr. Burks:

In the above-referenced charge, you allege that the California Association of Highway Patrolmen (CAHP) failed to represent you fairly in negotiations with the State of California. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act.

My investigation of this charge reveals the following facts.

You are employed by the California Highway Patrol as a State Traffic Officer, in a unit for which the CAHP is the exclusive representative. For more than a year, and most recently in April 1992, you requested that the CAHP negotiate a collective bargaining agreement with the State that would "make race discrimination/retaliation complaints a part of the grievance process." The CAHP negotiated and ratified a new agreement, effective July 1, 1992, that did not comply with your request.

You allege that CAHP's failure to negotiate in accordance with your request was "arbitrary" and "irrational." In response, the CAHP points out that the agreement it negotiated is similar to other State agreements in not subjecting race discrimination issues to the grievance process. It also points out that there are other legal avenues for race discrimination cases, including the Highway Patrol's internal Equal Employment Opportunity program, the State Personnel Board, the California Department of Fair Employment and Housing, and the United States Equal Employment Opportunity Commission.

Based on the facts stated above, the charge does not state a prima facie violation of the Ralph C. Dills Act, for the reasons that follow.

The CAHP's duty of fair representation extends to negotiations, but it does not establish an obligation to negotiate as to any specific subject. Rocklin Teachers Professional Association

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(Romero) (1980) PERB Decision No. 124, at p. 11. In order to state a prima facie violation, a Charging Party must show "by virtue of specific factual circumstances" that a failure to negotiate was arbitrary. Id.

It is not enough for a Charging Party to allege the conclusion that a failure to negotiate was "arbitrary" or "unreasonable." 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.]

In Oxnard Educators Association (1988) PERB Decision No. 664, the Charging Parties stated a prima facie case by alleging in part that the exclusive representative knowingly bargained away the Charging Parties' statutory rights to pay equity. In the present case, it does not appear that the CAHP "bargained away" statutory rights to nondiscrimination. It appears rather that the CAHP simply failed to negotiate for an additional contractual procedure for the vindication of statutory rights. The present case is thus more similar to Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, in which the Charging Party failed to state a prima facie case when he alleged that the exclusive representative had negotiated an agreement that denied individual employees the right to redress grievances.

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 which 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 be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before February 5, 1993, I

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shall dismiss your charge. If you have any questions, please  
call me at (213) 736-3127.

Sincerely,

✓  
Thomas J. Allen  
Regional Attorney