

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



OLGA V. PETRELLA,)
)
 Charging Party,) Case No. SF-CE-142-S
)
 v.) PERB Decision No. 1139-S
)
 STATE OF CALIFORNIA (DEPARTMENT OF) February 21, 1996
 MOTOR VEHICLES),)
)
 Respondent.)
 _____)

Appearance: Olga V. Petrella, on her own behalf.

Before Caffrey, Chairman; Garcia and Johnson, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by Olga V. Petrella (Petrella). In her charge, Petrella alleged that the State of California (Department of Motor Vehicles) violated section 3519(a) of the Ralph C. Dills Act (Dills Act)¹ by denying her a retroactive pay increase and various other benefits.

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in pertinent part:

It shall be unlawful for the state to do any of the following:

- (a) 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

The Board has reviewed the entire record in this case, including Petrella's unfair practice charge, the warning and dismissal letters and Petrella's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error² and adopts them as the decision of the Board itself.

The unfair practice charge in Case No. SF-CE-142-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Garcia and Johnson joined in this Decision.

²The dismissal letter incorrectly notes the filing date of Petrella's charge as October 20, 1995. Prejudicial error does not result, however, because the discussion in the warning letter correctly reflects the actual September 29, 1995 filing date of Petrella's unfair practice charge.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 27, 1995

Olga V. Petrella

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. SF-CE-142-S, Olga V. Petrella v. State of
California (Department of Motor Vehicles)

Dear Ms. Petrella:

On October 20, 1995, you filed an unfair practice charge alleging the Department of Motor Vehicles violated the Ralph C. Dills Act section 3519(a) by denying you a retroactive wage increase and various other benefits.

I indicated to you, in my attached letter dated October 20, 1995, 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 October 31, 1995, the charge would be dismissed.

During a telephone conversation on October 27, 1995, you expressed your intention not to amend the above-referenced charge, and indicated your intention to appeal if I dismissed your charge after October 31, 1995. You requested information regarding the appeal process and indicated a preference to proceed immediately. To further that end, I acknowledge that you do not wish to amend by October 31, 1995, and I am dismissing the charge based on the facts and reasons contained in my October 20, 1995, 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.)

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
Tammy L. Samsel
Board Agent

Attachment

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 20, 1995

Olga V. Petrella

Re: Unfair Practice Charge No. SF-CE-142-S, Olga V. Petrella v.
California State Employees Association
WARNING LETTER

Dear Ms. Petrella:

The above-referenced unfair practice charge alleges that the Department of Motor Vehicles violated the Ralph C. Dills Act (Dills Act or Act) section 3519(a) by denying you a retroactive wage increase and various other benefits. My investigation revealed the following facts.

In December of 1990, you were a Range B employee and completed computer training. Approximately one month later your supervisor, Ray Eirilch, reassigned you from computer duties to phone duties.

In September of 1992, you returned to work on the computer under the direction of a new supervisor. You continued to work on the computers until the date of your retirement on or about December 31, 1994. Your charge alleges employees working with computer training should be paid at the Range C level.

On April 21, 1994, the Department of Motor Vehicles (DMV) issued a Notice of Personal Action Report of Miscellaneous Change. The report indicated,

"you have been paid less than eleven working days in the 4/94 pay period . . . due to an unpaid absence. Therefore the pay period does not qualify for credit toward seniority, merit salary increases, sick leave and vacation earnings, higher vacation earnings category, and service awards."

On August 24, 1994, the DMV corrected your balance and returned 56 hours of sick leave and 465 hours of vacation leave after receiving approval from the PMSS/Worker's Compensation Unit.

Dills Act section 3514.5(a) provides the Public Employment Relations Board shall not, "issue a complaint in respect of any charge based upon an unfair practice occurring more than six months prior to the filing of the charge." You filed this charge on September 29, 1995, and therefore PERB cannot issue a complaint based on conduct prior to March 29, 1995.

This charge does not allege any conduct by the DMV within the six months' statute of limitations period. It appears from the charge that you were denied your Range C increase either in December of 1990, when you completed your computer training or in September of 1992, when you actually began working on the computer. Even assuming you should have been elevated to Range C in 1992, rather than in 1990, the conduct falls several years outside of the appropriate six-month period. The denial of any credits due to your absence in April of 1994, also falls outside of the appropriate six-month period.

In addition to the statute of limitations problem discussed above, this charge also fails to describe a prima facie case of discrimination by the Department of Motor Vehicles. To demonstrate a discrimination violation of the Dills Act section 3519(a), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employer had knowledge of the exercise of those rights; and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S; California State University (Sacramento) (1982) PERB Decision No. 211-H.)

Although the timing of the employer's adverse action in close temporal proximity to the employee's protected conduct is an important factor, it does not, without more, demonstrate the necessary connection or "nexus" between the adverse action and the protected conduct. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee; (2) the employer's departure from established procedures and standards when dealing with the employee; (3) the employer's inconsistent or contradictory justifications for its actions; (4) the employer's cursory investigation of the employee's misconduct; (5) the employer's failure to offer the employee justification at the time it took action or the offering of exaggerated, vague, or ambiguous reasons; or (6) any other facts which might demonstrate

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the employer's unlawful motive. (Novato Unified School District. supra; North Sacramento School District (19 82) PERB Decision No. 264.) As presently written, this charge fails to demonstrate any of these factors and therefore does not state a prima facie violation of Dills Act section 3519(a).

Your charge does not present any facts establishing that you had been engaged in any activities protected under the Dills Act. In fact, your letter to Marilyn Sardonis dated November 5, 1994, indicates your belief that the DMV's actions were prompted because of your age, not because of any union affiliation or the like.

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 October 31, 1995. I shall dismiss your charge. If you have any questions, please call me at (213) 736-7508.

Sincerely,

Tammy L. Samsel
Board Agent