

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

ARMOND DOVAL BRADFORD,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
GENERAL SERVICES),

Respondent.

Case No. SA-CE-1276-S

PERB Decision No. 1420-S

February 26, 2001

Appearance: Armond Doval Bradford, on his own behalf.

Before Amador, Baker and Whitehead, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (Board) on appeal by Armond Doval Bradford (Bradford) from the Board agent's dismissal (attached) of his unfair practice charge.

The charge alleged that the State of California (Department of General Services) violated section 3519(a) of the Ralph C. Dills Act (Dills Act)¹ by refusing to provide requested information and taking reprisals against Bradford.

¹ Dills Act is codified at Government Code section 3512 et seq. Dills Act section 3519 provides, in relevant 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

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

ORDER

The unfair practice charge in Case No. SA-CE-1276-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Whitehead joined in this Decision.

purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

September 29, 2000

Armond Bradford
PO Box 1156
Davis, California 95617-1156

Re: Armond Doval Bradford v. State of California, Department of General Services
Unfair Practice Charge No. SA-CE-1276-S
DISMISSAL LETTER

Dear Mr. Bradford:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 21, 2000. Your charge alleges that the State Of California, Department Of General Services (DGS or employer) violated the Ralph C. Dills Act (Dills Act)¹ by refusing to provide requested information and taking reprisals against you. On September 21, 2000, we discussed this charge.

I indicated to you in my attached letter dated September 22, 2000, 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 September 29, 2000, 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 September 22, 2000 letter.

Right to Appeal

Pursuant to PERB Regulations², 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

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. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

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 or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also 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

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September 29, 2000
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each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 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 _____
Bernard McMonigle
Regional Attorney

Attachment

cc: Wendi Ross, Esquire

BMC:cke

September 22, 2000

Armond D. Bradford
P O Box 1156
Davis, California 95617-1156

Re: Armond Doval Bradford v. State of California, Department of General Services
Unfair Practice Charge No. SA-CE-1276-S
WARNING LETTER (DEFERRAL TO ARBITRATION)

Dear Mr. Bradford:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 21, 2000. Your charge alleges that the State Of California, Department Of General Services (DGS or employer) violated the Ralph C. Dills Act (Dills Act)¹ by refusing to provide requested information and taking reprisals against you. On September 21, 2000, we discussed this charge.

In your charge you state that Ms. Lois Kugelmass of the California State Employees Association (CSEA or union), who was representing you, requested certain documents from the employer on March 31, 2000. On April 10, 2000, Donald Cady, senior staff counsel for DGS replied to Ms. Kugelmass denying a significant part of her information request and instructing Ms. Kugelmass how she might obtain the information that the employer was willing to share with CSEA. On April 19, 2000, Mr. Cady sent another letter to Ms. Kugelmass advising her "that CSEA, not Mr. Bradford alone, should contact OPSC [Office of Public School Instruction] concerning the documents records request. CSEA, not Mr. Bradford alone, will be allowed to inspect the relevant documents."

Among the attachments to your charge is a June 2, 2000 letter to you from Judy Otis, a labor relations analyst with the employer, denying your request for a waiver of time limits in order to file a grievance. The letter of June 2, 2000, does not state the substance of the grievance. On June 10, 2000, you made a public records request of the employer for a significant number of documents. On June 28, 2000, that request was granted in part and denied in part.

During our discussion on September 21, you indicated that the thrust of your charge is that the employer improperly rejected the information requested by CSEA. In addition, you allege that the employer improperly directed CSEA not to release information to you. You believe that in this manner, the employer improperly interfered with your right to the information requested and also improperly discriminated against you.

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.

PERB has held that it is an obligation of the employer to provide exclusive representatives with requested information necessary and relevant to perform their representational duties; a failure to do so constitutes a refusal to bargain in good faith. (Stockton Unified School District (1980) PERB Decision No. 143.) However, the duty to bargain in good faith is not owed to employees and an individual employee therefore lacks standing to bring a charge regarding a failure to bargain. (Oxnard Educators Association (Gorcey and Tripp) (1988) PERB Decision No. 664.)

As demonstrated, there is no obligation under the Dills Act that the employer provide you with the information requested by the union.

However, you have also alleged that the employer's directions to CSEA not to release the information to you was an illegal reprisal. Article 5.5 of the MOU between CSEA and the State employer reads as follows:

The State and the Union shall be prohibited from imposing or threatening to impose reprisals by discriminating or threatening to discriminate against employees, or otherwise interfering with, restraining, or coercing employees because of the exercise of their rights under the Ralph C. Dills Act or any right given by this Contract. The principles of agency shall be liberally construed.

Section 3514.5(a) of the Dills Act states, in pertinent part, that PERB shall not:

Issue a complaint against conduct also prohibited by the provisions of the [collective bargaining] agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

In Lake Elsinore School District (1987) PERB Decision No. 646, PERB held that section 3541.5(a) of the Educational Employment Relations Act, which contains language identical to section 3514.5(a) of the Dills Act, established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Regulation 32620(b)(5)² (Regulation 32620(b)(5)) also requires the investigating Board agent to dismiss a charge where the allegations are properly deferred to binding arbitration.

² PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Copies of the Regulations may be purchased from PERB's Publications Coordinator, 1031 18th Street, Sacramento, CA 95814-4174, and the text is available at www.perb.ca.gov.

These standards are met with respect to this case. First, the grievance machinery of the MOU covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge that DGS has taken a reprisal against you is arguably prohibited by Article 5.5 of the MOU. That Article provides that the State employer is prohibited from taking reprisals against employees because of the exercise of their rights under the Dills Act.

Accordingly, this charge must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)

If there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one 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 filed with PERB. If I do not receive an amended charge or withdrawal from you before September 29, 2000, I shall dismiss your charge without leave to amend. If you have any questions, please call me at the above-referenced telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:cke