

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

CARLOS A. VELTRUSKI,

 Charging Party,

 v.

STATE OF CALIFORNIA,

 Respondent.

Case Nos. LA-CE-556-S
 LA-CE-562-S
 LA-CE-564-S
 LA-CE-566-S

PERB Decision No. 1484-S

June 6, 2002

Appearances: Carlos A. Veltruski, on his own behalf; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Carlos A. Veltruski (Veltruski) to an administrative law judge's (ALJ) proposed decision (attached) dismissing his unfair practice charge. The charge alleged that various departments of the State of California (State) violated section 3519(a)¹ of the Ralph C. Dills Act (Dills Act) by denying him employment because of his protected conduct.

After reviewing the entire record in this case, including the proposed decision, Veltruski's exceptions, and the State's response, the Board adopts the decision of the ALJ as the decision of the Board itself in accordance with the following discussion.

¹The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

DISCUSSION

In his exceptions to the proposed decision Veltruski argues that he was denied the opportunity to present additional evidence and make additional arguments and contends that the ALJ erred in finding that he was not a civil service employee.

A review of the record reveals that Veltruski was given ample opportunity to present documentary and testimonial evidence. The ALJ repeatedly assisted Veltruski with information about the hearing process, distinguishing between the different stages of the hearing including the marking of evidence, Veltruski's testifying about the evidence and oral or written argument. The ALJ admitted into evidence 34 of Veltruski's exhibits, most over the State's relevance objections. The ALJ facilitated Veltruski's testimony about each of the charges at issue in this matter, asking Veltruski questions to focus his attention and educe testimony on the matters contained in the four separate complaints.

Veltruski's claim in his exceptions that he identified three witnesses to testify on his behalf is not supported by the record. The three names that he identified in his exceptions as witnesses he wished to call on his behalf are not mentioned in the transcript. At the end of his case-in-chief, he was not able to identify any appropriate additional witnesses. However, he did suggest three other witnesses, including two interpreters' union representatives and one attorney with whom he shared the details of his case. Neither of the union representatives represented Veltruski in any way in his dealings with the State. Similarly, the attorney simply reviewed his file for three weeks and apparently called PERB on Veltruski's behalf. The ALJ correctly ruled the testimony of these individuals would be irrelevant to the issues in this case.

Veltruski was not denied due process before the ALJ. In the proposed decision, the ALJ correctly found that as the charging party who introduced the exhibits into the record, Veltruski had or should have had copies of the exhibits. Further, the ALJ noted that Veltruski was informed at the beginning of the hearing, on November 27, 2001, that to review the transcript he would be required to purchase it, apply for a waiver of costs, or review the transcript at the PERB office in Los Angeles if he set up an appointment to do so. Veltruski took no steps to review the transcript until February 11, 2002, three days after the due date of his brief. There is nothing in the record to indicate Veltruski attempted to purchase the transcript or ever applied for a waiver.

Veltruski was not denied due process before the Board itself. From the record in this case and based on his assertions, it is clear that Veltruski has many cases on appeal with this Board and has had a number of contacts with PERB staff by telephone and e-mail. It is difficult to determine when or in what manner he has requested to review the tapes or transcript in the case before us. Upon review, it is apparent Veltruski included a request to review the transcript and tapes within the text of a document he labeled as a “request for reconsideration” of the proposed decision which was received by the Board’s Appeals Office on March 6, 2002.

Even if Veltruski reviewed the transcript, he could make no argument which would cure his failure to state a prima facie case. It appears Veltruski has confused the opportunity to present “evidence” with the opportunity to present “argument.” Although Veltruski disputes it, the Board finds he was given ample opportunity to present evidence. Veltruski has also been given an opportunity to present argument. He claims his ability to present argument has been hampered by not having access to PERB’s files. The Board agrees with the ALJ that as the

charging party, he has, or should have, each piece of documentary evidence submitted as each piece was submitted by him. As to the transcript, the normal method is to purchase a copy of the transcript. He chose not to do so. He also chose not to file a request for a waiver of costs to obtain a transcript. His attempts to review the transcript at PERB's Los Angeles Regional Office appear to have come in such an awkward manner that they never resulted in his review of the transcript.

Upon careful review and consideration, the Board concludes that any claim Veltruski was denied access to the file would not alter the outcome of this case. His failure to present evidence to establish a prima facie case cannot be cured through further argument whether that argument refers to the transcript or not. As his charge was dismissed for failure to state a prima facie case, on appeal the Board assumes that the essential facts alleged in the charge are true. (San Juan Unified School District (1977) EERB Decision No. 12.²) Further argument may be useful to help the Board decide what weight to give to evidence in this case, but it is not necessary here. Even when all the evidence presented by Veltruski is viewed in the light most favorable to his case, he has not established that he was a proper applicant or an employee protected by the Dills Act.

The record as a whole makes it clear that Veltruski was not a civil service employee. He did not take any civil service examinations and was not on any civil service lists. The State correctly points out that on cross-examination, Veltruski conceded he was not on any civil service lists. Veltruski's contention that he was appointed to various civil service positions

² Prior to January 1978, PERB was known as the Educational Employment Relations Board or EERB.

and that “even if they did not have all the formalities, those appointments were permanent after 1 year” under civil service rules is rejected.

ORDER

The unfair practice charges in Case Nos. LA-CE-556-S, LA-CE-562-S, LA-CE-564-S and LA-CE-566-S are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CARLOS A. VELTRUSKI,
Charging Party,
v.
STATE OF CALIFORNIA,
Respondent.

UNFAIR PRACTICE
CASE NOS. LA-CE-556-S
LA-CE-562-S
LA-CE-564-S
LA-CE-566-S

PROPOSED DECISION
(2/25/02)

Appearances: Carlos A. Veltruski, on his own behalf; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California.

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PROCEDURAL HISTORY

It is alleged in four consolidated complaints that five state agencies throughout Southern California on eleven separate occasions denied employment to an applicant because of his protected conduct. The state employer responds that it has never denied charging party employment because of his protected conduct, and the complaints should be dismissed.

Carlos A. Veltruski (Veltruski) commenced the action in Case No. LA-CE-556-S on June 23, 2000, by filing an unfair practice charge against the State of California (State). After several amendments, the general counsel of the Public Employment Relations Board (PERB or Board) issued a complaint on February 22, 2001.¹ The complaint alleges that Veltruski was

¹ Among the respondent agencies in the initial complaint were the California Department of Justice (DOJ) and the California Unemployment Insurance Appeals Board (UIAB). Veltruski's motion to amend the initial unfair practice charge to include additional

an applicant for employment who engaged in protected conduct. Thereafter, the complaint asserts, three State agencies retaliated against him on five separate occasions by denying him employment. First, the complaint alleges, Veltruski, among other things, filed a lawsuit against the California Department of Motor Vehicles (DMV) and the UIAB "to secure economic benefits for prior employment." In response, the complaint asserts, the DOJ, which represented the agencies in the lawsuit, denied Veltruski employment. Second, the complaint alleges that Veltruski filed unidentified actions with the UIAB and informed the presiding judge of the Los Angeles office of the UIAB "that he was an applicant for employment and that when he became employed he would attempt to unionize employees for better working conditions." It is alleged that the presiding judge later denied Veltruski employment with the Los Angeles office of the UIAB. Third, the complaint alleges that Veltruski filed complaints "against the [UIAB] before administrative agencies for employment benefits" and later informed the presiding judge of the Orange County office of the UIAB "that he was an applicant for employment" and "upon employment he would be active organizing employees for better working conditions." It is alleged that the presiding judge later denied Veltruski employment with the Orange County office of the UIAB. Fourth, the complaint alleges that Veltruski "[tried] to improve salary and working conditions for himself and interpreters at the [DMV] by filing actions against the [DMV] that included, but were not necessarily limited to; claims before the [UIAB] and the State Personnel Board." It is alleged that the State later retaliated against Veltruski by denying him employment in the City of Commerce office of

allegations against DOJ and UIAB was denied by the regional attorney and the denial was upheld by the Board. (State of California (2001) PERB Decision No. 1459-S.) In addition, the regional attorney dismissed as untimely several allegations that occurred outside the statute of limitations period. Veltruski appealed the dismissal and the Board rejected the appeal as untimely. (State of California (2001) PERB Order No. Ad-309-S.)

the DMV. Fifth, the complaint alleges, Veltruski was denied employment in the San Bernardino office of the DMV in retaliation for the conduct described above. The complaint alleges that the State's actions violated the Ralph C. Dills Act (Dills Act) section 3519(a).²

Veltruski commenced the action in Case No. LA-CE-562-S on March 20, 2001, by filing an unfair practice charge against the State. The general counsel issued a complaint on April 26, 2001, alleging that Veltruski was denied employment by the State on two occasions because of his protected conduct. First, the complaint alleges, Veltruski engaged in protected conduct by filing an unfair practice charge, Case No. LA-CE-556-S, and by "trying to improve salary and working conditions for himself and interpreters at the [DMV] by filing actions against the [DMV] that included, but were not necessarily limited to claims before the [UIAB] and the [SPB]." Thereafter, the complaint alleges, Veltruski was denied employment by the DMV office in San Bernardino, in violation of section 3519(a). Second, the complaint alleges that Veltruski informed the presiding judge in UIAB's Los Angeles office that he was "an applicant for employment" and when he became employed he "would attempt to unionize

² The Dills Act is codified at Government code section 3512 et seq. Unless otherwise indicated, all statutory references are to the Government Code. In relevant part, section 3519 states:

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.

employees for better working conditions." As evidence of further protected conduct, the complaint alleges that Veltruski filed actions against the UIAB before other administrative agencies for "employment benefits," and he filed Unfair Practice Charge LA-CE-556-S. In retaliation for this conduct, the complaint asserts, Veltruski was denied employment with the UIAB office in Los Angeles, in violation of section 3519(a).

Unfair practice Case No. LA-CE-564-S was filed by Veltruski on June 5, 2001, and the general counsel issued a complaint on September 24, 2001. As protected conduct, the complaint alleges that Veltruski filed "actions with the [UIAB] for recovery of money and benefits allegedly owed to him by the [DMV]." In retaliation, the complaint continues, the presiding judge of the UIAB office in Inglewood refused to "consider his application for employment," in violation of section 3519(a).³

The fourth consolidated complaint, Case No. LA-CE-566-S, was filed by Veltruski on July 1, 2001, and similarly asserts that he suffered retaliation because of his protected conduct. The complaint issued by the general counsel on September 10, 2001, alleges that Veltruski engaged in protected conduct by filing unfair practice charges against various State agencies, including the UIAB and the DMV. Thereafter, the complaint continues, Veltruski suffered discrimination on three occasions when the UIAB office in La Palma, the California Employment Development Department (EDD) and the California Labor Commissioner's

³ The regional attorney dismissed similar allegations in LA-CE-564-S that the California Department of Fair Employment and Housing (DFEH) violated the Dills Act when it refused to hire Veltruski because of his protected conduct. The regional attorney also dismissed an allegation that a representative of the DFEH told Veltruski that he could not prove certain allegations against UIAB, and he should marry a United States citizen if he wanted to become eligible to work in the United States. (See regional attorney letters to Veltruski dated September 10 and 24, 2001.) The dismissal has been appealed to the Board and there has been no decision to date.

Office (Labor Commissioner) in Los Angeles refused to consider his application for employment. These actions, the complaint alleges, violated section 3519(a).⁴

The State filed timely answers to all complaints, generally denying all allegations and asserting a number of affirmative defenses. Defenses and denials will be addressed below, as necessary. A settlement conference was conducted in LA-CE-556-S on April 10, 2001, but the matter was not settled. Apparently because settlement prospects seemed dim, no further settlement conferences were held.

Meanwhile, during the course of the procedural history in these cases, Veltruski petitioned the State Personnel Board (SPB) for a determination of his status as a civil service employee and/or his status as a qualified applicant for employment. On August 21, 2001, the State moved to place these consolidated cases in abeyance pending the outcome of the SPB action. Among other things, the State argued that Veltruski's employment status has a direct bearing on the complaints at issue here. Veltruski opposed the motion. In a ruling on August 27, 2001, the undersigned denied the motion because it is not clear that the SPB petition would be determinative of the issues raised by the complaints in this proceeding, and placing the complaints in abeyance would result in unnecessary delay.

⁴ The regional attorney dismissed other allegations in Case No. LA-CE-566-S that the State retaliated against Veltruski when it refused to investigate charges that his private employer, Kelly Services, discriminated against him for filing a worker's compensation claim. The regional attorney also dismissed an allegation that the State violated the Dills Act when it failed to process his application for permanent residency with the Immigration and Naturalization Service (INS). (See regional attorney letters to Veltruski dated August 16 and September 10, 2001.) This matter is currently before the Board as an appeal of a denial of an extension of time to appeal the dismissal.

Two days of formal hearing were held in Los Angeles on November 27-28, 2001. During the second day, the hearing was adjourned because Veltruski was unable to continue.⁵ At the time of adjournment, Veltruski had been given the opportunity to call witnesses and present documentary evidence. He had completed his direct testimony, introduced documents, and was unable to identify other witnesses who had relevant testimony to present on his behalf. He was cross-examined for a short time by the State. Thus, it is determined that Veltruski's case-in-chief had ended at the time the hearing was adjourned.

In a January 7, 2002, letter to the parties, the undersigned requested written argument regarding whether Veltruski had established a prima facie case on some or all of the allegations. The State submitted its argument on January 31, 2002. Veltruski submitted a series of arguments, the last of which was received on February 11, 2002.

FINDINGS OF FACT

Background

From the early 1990s to approximately 1997, Veltruski performed services as an interpreter for several State agencies, including the DMV, UIAB and EDD. Evidence concerning the conditions under which Veltruski worked is limited. However, documentary evidence of payment by the State for his services to EDD in 1991-1992 and 1996-1997 indicates that he was compensated based on submitted "invoices" or "billing forms;" he performed services only on specified dates; and he was considered a "vendor" who received

⁵ During a brief cross-examination, Veltruski said he had difficulty breathing and complained of a rapid heartbeat and a dry mouth. A recess was taken and he called the paramedics. The paramedics came to the hearing site, examined Veltruski and attributed his symptoms to stress. They offered to take Veltruski to an emergency room, but he declined. When the parties returned to the hearing room, the undersigned observed Veltruski and concluded that he continued to exhibit similar symptoms of stress and out of an abundance of caution adjourned the hearing.

payment under a "vendor's" number. Other documentary evidence indicates that Veltruski received a Form 1099, miscellaneous income, from the DMV in 1996. The Form 1099 contains no deductions for federal income tax or health benefits. It states that payment was for "nonemployee compensation." Indeed, the State has always considered Veltruski an independent contractor. On June 29, 1999, Candy Wohlford (Wohlford), deputy director of DMV's communication programs division, responded to an inquiry Veltruski sent to Governor Gray Davis: "As far as the DMV is concerned, you were an independent contractor, not an employee of the department as you claim. Two separate [EDD] hearings were held in which it was ruled that you were not an employee of the DMV." Veltruski's position on his employment status has not been consistent in these proceedings. He has repeatedly insisted he was an employee while performing services as an interpreter for the State. However, at other times he has conceded that he was not a civil service employee. By the end of 1997, the State had stopped using his services as an interpreter.

During his service with the State, Veltruski became involved in numerous employment-related disputes with various agencies. Although these actions need not be addressed here in detail, a brief summary of his claims provides a background for the allegations in the consolidated complaints. For example, he filed several claims with the UIAB. In a November 1996 UIAB claim, he sought benefits for a period in 1990-1991 when he worked for a private employer, Mexican American Video Company. In February 1997, a UIAB administrative law judge (ALJ) ruled that Veltruski could pursue the claim retroactively and that he was entitled to benefits for the period in question. On April 30, 1997, Veltruski received another favorable ruling from the UIAB when an ALJ reversed an earlier determination denying him services because he had not provided sufficient proof of

legal status to establish his right to work. Other UIAB claims involved DMV and UIAB as employers. Further, in 1998, Veltruski submitted a claim to then Governor Pete Wilson alleging that DMV owed him payment for work performed from 1990 to 1997. On behalf of the Governor's office, Wohlford responded on November 10, 1998. She wrote that Veltruski had been fully compensated, and any further contention that he had not been fully compensated should be pursued at the State Board of Control. Veltruski next filed a complaint with the Board of Control, but it was rejected. In late 1999 or early 2000, Veltruski filed a complaint against the DMV with the U.S. Department of Justice, Civil Rights Division, and the matter was transferred to the U.S. Department of Labor, Wage and Hours Division. The precise issue in the complaint is not clear in the record, nor is the final disposition of the claim clear. At about the same time, Veltruski filed a lawsuit in federal court against the DMV and the UIAB. Asked what the issue was in that case, Veltruski responded, "[i]t was the retirement issue, employee issue, the immigration issue, the \$1 million damages." Apparently, the suit primarily involved issues related to Veltruski's effort to acquire a designated immigration status. In a February 29, 2000, letter to Veltruski regarding the lawsuit, Deputy Attorney Matthew Botting (Botting) responded that immigration matters are beyond the authority of the State; whether the State submits necessary forms on Veltruski's behalf to INS in support of his petition for employment-based immigration is discretionary under federal law and no State agency has elected to do so; Veltruski has at all times been an independent contractor with the State and has never been an employee of the State; and Veltruski's personal injury and civil rights claims are beyond the statute of limitations. Also in 1999, Veltruski filed claims for benefits with the UIAB against the DMV and the UIAB.

UIAB administrative law judges dismissed the matters as moot, and the UIAB upheld the rulings on appeal.⁶

Unfair Practice Charge Number LA-CE-556-S

In or about February 2000, Veltruski testified that he spoke with Sylvia Diaz (Diaz), a supervising attorney with DOJ, and "asked her to give me a job" as an interpreter or "expert," "an MBA," "terminology researcher," "accountant," or "expert auditor" assisting in the preparation of cases for trial. Later in his testimony, he said he gave Diaz several "possibilities." "I applied for the job, I requested the job, a position." According to Veltruski, Diaz refused his request on "several occasions," and said she would not hire him because his lawsuit was pending. Veltruski testified that at the time he spoke to Diaz, DOJ was in the process of interviewing "[f]or attorneys, for assistants, for secretaries, for different positions."

In addition, Veltruski testified that at about the same time, he spoke to Botting and Tom Shearer (Shearer), another DOJ attorney: "I explained to them that we could resolve this issue for whatever amount of money, but I could go and work on their side. I could work in favor of the State of California and prosecute other cases, instead of litigating with them in state, federal court, or with other State Personnel Board, or PERB, whatever. And they refused to hire me." According to Veltruski, Botting and Shearer said they would not hire him because of the pending lawsuit. Veltruski said he responded, "[w]hat's wrong with that, I said? What's wrong? I'm filing papers with you. I want to be your friend, just let's resolve

⁶ Although Veltruski filed other administrative claims, it is unnecessary to set forth the details of each of these claims to resolve the issues presented by the consolidated complaints. In addition, as more fully addressed below, the allegation that Veltruski's various claims and lawsuits are protected conduct under the Dills Act need not be addressed here. Suffice it to say that many claims were filed and Veltruski testified that his conduct in this regard was well known.

this other issue, support me with the immigration. Precisely, I want you to hire me so we can resolve the immigration issue at the same time, since you didn't do the right thing since 1991, June 23, 1991.”

On cross-examination, however, Veltruski became loud and evasive when questioned about whether he actually applied for a position with DOJ. He was admonished on several occasions to lower his voice and respond to questions. He testified that he spoke with Diaz only on the telephone and left his resume with a secretary and Shearer. Asked if he had ever taken a test for a civil service appointment, Veltruski responded that he considered his work experience as an interpreter to be the equivalent of one thousand oral and written tests. Veltruski also testified that Diaz told him there were vacancies in her office, but it was later established that the only vacancies were for attorney positions.

Ricardo Munoz (Munoz) is the presiding ALJ at the UIAB's Los Angeles office. He has known Veltruski since approximately 1996. At all relevant times, Veltruski testified, Munoz was familiar with many of his various appeals, including his claim that he was an employee, pay disputes, and the immigration issue. Munoz also was aware that Veltruski had served as an interpreter for the UIAB in its Inglewood office. In fact, Veltruski testified, at the time he "was on good terms" with Munoz, although Munoz "doesn't speak to me anymore, he's avoiding talking to me, lately." According to Veltruski, in a discussion in or about June 2000, Munoz said he would not hire him as an interpreter because he (Veltruski) would then claim employee status with UIAB and try to unionize interpreters. Veltruski also testified that Munoz said he preferred other interpreters who work as independent contractors and do not complain about lack of employee status.

In June 2000, Hazel Cash (Cash) was the presiding judge at the UIAB office in Orange County. Cash knew Veltruski because he worked in the Orange County office and was involved in an incident where he disagreed with another judge about the method of interpreting testimony of an employee who spoke limited English. In brief, the judge and Veltruski disagreed about whether he should interpret certain parts of the hearing or the entire hearing. Veltruski's position was that he should interpret the entire hearing, even if the employee spoke some English and the process took longer. Veltruski was opposed to the judge's position. He testified: "Either I am ordered to interpret the whole session or not hired as an interpreter, because I am put in a position where I am the expert, I am responsible for not translating the whole context of the hearing."

After this incident, Veltruski testified, he told Cash he wanted to unionize the interpreters and continue working in the Orange County office and any other office she would recommend. He said he also asked to be hired as an "auditor" who observed hearings and "give [his] opinion as an expert translator/interpreter about the quality of interpreting services provided to non-English speaking persons." Veltruski said Cash called him a troublemaker and refused to employ him again. "And from then on I was not hired again, I was not given a job," Veltruski said.

Jimmy Gomez (Gomez) is a supervisor in the DMV's City of Commerce field office. Veltruski testified that he went to that office on several occasions in June and October of 2000 and told Gomez he wanted to work as an interpreter, driver safety officer, auditor or investigator. According to Veltruski, Gomez refused to hire him because of his past experience and "all this filings that I made in the past." Veltruski testified further that Gomez suggested he (Veltruski) was wrong about the scope of his rights, and that he (Veltruski) was

“barking up the wrong tree.” Therefore, Veltruski concluded, Gomez refused to hire him because of his protected activities.

Ruben Beauchamp (Beauchamp) is a supervisor at the DMV field office in San Bernardino. Veltruski said he worked for Beauchamp when he was the supervisor in the Irvine office, and Beauchamp knew him “quite well.” At about the same time he spoke to Gomez, Veltruski apparently had a similar conversation with Beauchamp. Veltruski said he asked Beauchamp for a job as an interpreter, undercover agent, investigator, support services aide, and administrative assistant to the driver safety officers. According to Veltruski, Beauchamp told him he would not hire him because of Veltruski’s various complaints and “all this violence” that you have created.

Unfair Practice Charge Number LA-CE-562-S

Kim Johnson (Johnson) is a manager in the San Bernardino DMV office. Veltruski has known him for several years. In fact, Johnson hired Veltruski during the mid-1990s in the West Covina office, and Veltruski said he trained under Johnson at various times during the 1990s. Veltruski said he informed Johnson on several occasions that he wanted to become a State employee with full benefits.

In or about March 2001, Veltruski testified, he went to the San Bernardino office and told Johnson, "I'm here to work, I want to work, and you know me, and I'm applying for a job with you." According to Veltruski, Johnson said he would not hire him because of complaints he filed against Beauchamp.⁷

⁷ The precise charges filed against Beauchamp are not clear in the record. Veltruski testified only that he had filed "charges or allegations" against Beauchamp.

Another incident involving Munoz occurred during a discussion on February 28, 2001. Veltruski said he went to Munoz's office and during a discussion he (Veltruski) mentioned organizing interpreters. When the discussion turned to the possibility of employment for Veltruski in the UIAB office in Los Angeles, Veltruski testified, Munoz again said he would not hire him because he would then insist on receiving employee status. Veltruski further testified that Munoz said he would block any attempt to hire Veltruski from a third party provider of interpreters. According to Veltruski, he asked Munoz to sponsor him in his attempt to acquire immigration status with the INS, but Munoz suggested he marry an American citizen as a way to address his immigration status. Veltruski further testified that Munoz suggested he marry Hillary Clinton and become famous as the spouse of a senator. That afternoon, Veltruski said he went to the DFEH to file a complaint against Munoz, but he was advised he would have difficulty proving Munoz made the statement attributed to him. Veltruski said a DFEH representative also suggested he pay an American citizen to marry him so he could get his "papers."

Unfair Practice Charge Number LA-CE-564-S

Francis Knipe (Knipe) is the presiding judge in the UIAB office in Inglewood. Veltruski worked in that office during 1996-1997. Knipe knew Veltruski and they spoke to each other on many occasions. According to Veltruski, Knipe generally was aware of the various actions he filed against State agencies, and Veltruski had discussed at least one of the cases with him. During a conversation, Veltruski testified, he told Knipe he wanted to be hired as an independent contractor, organize interpreters, and acquire employee status.

At some point, Veltruski was asked to listen to and transcribe a tape of a hearing held on May 4, 2000, in the Inglewood office. Veltruski did so and was not satisfied with the way

the hearing had been conducted. In a June 15, 2000, memo to Knipe explaining his dissatisfaction with the proceeding, Veltruski wrote, "I have found serious problems with the process, the way the interpreter Lucy Perez was asked to perform her job, the way the [ALJ] conducted the hearing. I want to be appointed a state employee and be assigned to auditing these types of cases to write a report on how interpreters can better perform their services, obtain appointments of interpreters as State employees with all benefits and permit me to unionize interpreters, work on improving their performance and continued training. I have been fighting for interpreters rights for some time and I want to request your support" It appears that Veltruski's dissatisfaction with the way the hearing was conducted related to his view that the issue under litigation had an impact on national security matters. At the hearing, he testified that he wants to be an auditor "and coordinate between state and federal what [Director of Homeland Security] Tom Ridge is doing now, or should be doing. I mean, he should hire me as an expert here."

According to Veltruski, during a later conversation with Knipe, he (Knipe) advised Veltruski that he should accept the fact that he is an independent contractor, and indicated he would not hire him because he would immediately claim employee status. Veltruski continued to seek work as an interpreter/auditor. Eventually, Veltruski said, Knipe wrote him a brief letter stating that there were no openings for interpreters at the time.

Unfair Practice Charge Number 566-S

Blanca Mercado (Mercado), according to Veltruski, works for EDD and is in charge of determinations regarding the status of individuals who are applying for employment and unemployment benefits. Veltruski said Mercado knows "very well who I am, and the expertise that I have in financial matters, accounting matters, and immigration issues."

Veltruski testified that he asked Mercado for a job, and she refused to hire him or consider his application on the merits. Apparently, Veltruski had a conversation with Mercado in which he explained various options to address his employment status as far as the INS is concerned. It appears that he told Mercado that an employer could submit an INS form in support of an "alien labor certification" or he could receive a "national interest waiver" to establish the requisite status. Throughout these proceedings Veltruski has insisted that his work as an interpreter, undercover investigator, accountant and stock market specialist is in the national interest and his immigration status could be resolved on that basis with assistance from the State. Still, Veltruski said, Mercado denied his request for employment.

Lisa Cook (Cook) is the personnel manager in the La Palma field office of the UIAB. According to Veltruski, she too knew him "very well." Testimony about Cook is limited. Veltruski said only that she retaliated against him and declined to consider his request for employment on the merits. Referring to Mercado and Cook, Veltruski testified that "there is a conspiracy against me, and it is very well mounted, and these people don't realize that I am very stubborn."

A.V. Ortenzi (Ortenzi) is a senior deputy labor commissioner in the discrimination unit of the Division of Labor Standards. On several occasions, Veltruski said, he visited Ortenzi's office in Los Angeles to pursue a salary claim he had against the DMV and the UIAB. Veltruski testified that Ortenzi refused to entertain his claims, and he told Ortenzi, "I know more than what you know, why are you taking seven months to make a decision on this, and then you are short staffed, in Los Angeles you don't have people, qualified people."

In or about June 2001, Veltruski said he asked Ortenzi "for a job," informing him that "I can help because I like conducting research and investigation, I am bilingual, I am perfectly

qualified to help you in this discrimination complaint unit." Veltruski said Ortenzi refused to consider his application on the merits. Veltruski also said Ortenzi was aware of his protected conduct because he had informed him earlier that he was trying to unionize interpreters and he was "fighting for the rights of interpreters."

ISSUE

Did the State discriminate against Veltruski as an applicant for employment, in violation of section 3519(a)?

CONCLUSIONS OF LAW

The consolidated complaints allege that the State discriminated against Veltruski as an applicant for employment when various agencies refused to hire him because of this protected activity. The State alleges in its motion to dismiss that Veltruski does not qualify as an applicant for employment under the Dills Act. There is no evidence, the State contends, that Veltruski was ever on a civil service list that made him eligible to be hired, nor is there evidence that he even applied for a civil service position or has ever taken a civil service examination. Therefore, the State contends, Veltruski has not shown that he has suffered harm and thus he has not established a prima facie case. Assuming that the State refused to hire Veltruski, the State continues, federal law provides an absolute defense to its actions; that is, Veltruski was "out of legal status" and the State lawfully could not hire him until he acquired such status.

In response, Veltruski reiterates his claim that he has suffered discrimination as an applicant for employment under the Dills Act. He further contends he has been denied a number of due process rights. Among other things, he contends he has not been informed of the weight the undersigned has assigned to evidence presented at hearing. He contends he has

not been given the opportunity to review documentary evidence and transcripts of the hearing. He contends he has not been given the opportunity to cross-examine the State's witnesses. He contends he has not been permitted to present additional documents and testimony; he contends he was not been permitted to present an oral argument at the hearing. He contends the State has not complied with a directive to produce documents relevant to his service with the State. And he contends PERB should complete the formal hearing. In addition, Veltruski offers a lengthy narrative of events that are irrelevant to this proceeding. They range from references to the so-called ENRON scandal to Arab terrorists to issues surrounding his immigration status. These matters will not be considered here. Finally, Veltruski writes, "I propose that I be compensated with \$50,000 cash by the CA State to resolve all the cases before PERB, and that the CA agencies and officers involved apologize [to] me and write letters to INS about my ample experience in the various areas as an investigator, auditor, court and administrative assistant and that my services in the future will continue to serve the National Interest."

The right to challenge employer practices as discriminatory is not without its limits. The Dills Act provides that only "employees" or "applicants" for employment enjoy its protections. Section 3519(a) provides that it is unlawful for the State to

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 theory advanced by the consolidated complaints is that Veltruski suffered discrimination as an applicant for employment.

To prevail on a charge of discrimination, Veltruski must establish that he engaged in protected conduct, his activity was known to the various individuals in the agencies alleged to have discriminated against him, and these individuals took adverse action against him because of such activity. (Novato Unified School District (1982) PERB Decision No. 210 (Novato.) Unlawful motivation is essential to establish a prima facie case of discrimination. In the absence of direct evidence, an inference of unlawful motivation may be drawn from the record as a whole, as supported by circumstantial evidence. (Carlsbad Unified School District (1979) PERB Decision No. 89.) From Novato and a number of subsequent cases, it has been recognized that a variety of circumstances may justify an inference of unlawful motivation on the part of the employer. (See e.g., Oakdale Union Elementary School District (1998) PERB Decision No. 1246, p. 15.)

Once unlawful motive is established, the burden of proof shifts to the State to establish that it would have taken the action complained of even in the absence of protected activities. (Novato; Martori Brothers Distributors v. Agricultural Labor Relations Board (1981) 29 Cal.3d 721 [175 Cal.Rptr. 626] (Martori.) The State's action should not be deemed an unfair practice unless the Board determines that "but for" Veltruski's protected conduct he would have been employed. (Ibid.)

Adverse action is a key element in establishing a prima facie case of discrimination. Absent evidence of an adverse action, there is no need to follow a Novato analysis even where the employer's action resulted from an employee's protected conduct. (Palo Verde Unified School District (1988) PERB Decision No. 689, p. 13 (Palo Verde.) In that case the Board followed federal precedent holding that "a bad motive without effect is no more an unfair labor practice than an unexecuted evil intent is a crime." (Palo Verde at p. 8, relying on

NLRB v. Wright Line, a Division of Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1179], enforcement granted (1st Cir. 1981) 662 F.2d 899 [108 LRRM 2513, 2516], cert. den. (1982) 455 U.S. 989 [109 LRRM 2779] (Wright Line.) The test to determine if an employee suffered an adverse action is an objective one: "[t]he test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment." (Newark Unified School District (1991) PERB Decision No. 864, pp. 11-12 (Newark.)

I am aware of no PERB case that involves the application of these rules to an alleged discriminatory refusal to hire an applicant for employment. However, the National Labor Relations Board (NLRB) has addressed the issue.⁸ Applying a Wright Line analysis to a discriminatory refusal to hire an individual who submitted an employment application and a test questionnaire, and identified himself as a union business agent who was seeking a job "in order to organize its employees," the NLRB stated: "[t]he elements of a discriminatory refusal-to-hire case are the employment application . . . the refusal to hire . . . a showing that [the applicant] was or might be expected to be a union supporter or sympathizer, and further showings that the employer knew or suspected such sympathy or support, maintained an animus against it, and refused to hire the applicant because of such animus." (Aneco, Inc. (1998) 325 NLRB 400 [157 LRRM 1177] (Aneco); citing Big E's Foodland (1979) 242 NLRB

⁸ Although the language of the Dills Act is not identical to the National Labor Relations Act (NLRA), the Board looks to the NLRB's construction of the NLRA for guidance in interpreting the various statutes it administers. (See e.g., Oakdale, pp. 18-19, fn. 8, citing McPherson v. PERB (1987) 189 Cal.App.3d 293, 311 [234 Cal.Rptr. 428]; State of California (Department of Corrections) (2001) PERB Decision No. 1435-S.)

963, 968 [101 LRRM 1422].) There was no dispute in Aneco that jobs were available and the charging party actually applied for them.

The requirement that an applicant actually submit an application for an available position is an important factor in establishing a prima facie case under a discriminatory refusal to hire theory. In Irwin Industries (1998) 325 NLRB 796 [158 LRRM 1218] (Irwin), the NLRB upheld an administrative law judge's finding that an employer did not discriminate against applicants who applied for jobs and designated themselves as "volunteer union organizer[s]." In agreeing with the judge, the NLRB relied on the judge's finding that at the time of the application, the employer "was not in a hiring mode," "there was no work immediately available for [the applicants]," and the employer's established practice was not to hire employees simply on the basis of the submission of applications with no follow up contacts with the employer. (Irwin at p. 798.) In dismissing a similar case, the NLRB stressed that the general counsel failed to establish that there were jobs available for new hires at the time of the applications. (Bay Control Services (1994) 315 NLRB 30, fn. 2 [147 LRRM 1212] (Bay Control).)

Applying these cases to the allegations in the consolidated complaints, I conclude that Veltruski has not established the elements of a prima facie case because there is no evidence that he suffered an adverse action. There is no evidence that he submitted an application for employment in accordance with civil service requirements. There is no evidence that he was interviewed or competed in any way for a position in accord with civil service requirements. There is no evidence that he was on an eligibility list. There is no concrete evidence that any of the various State agencies named in the complaints even had vacant civil service positions at the time Veltruski indicated he wanted to be hired as a State employee. Nor is there

evidence that other applicants were hired in place of Veltruski for any position in State civil service.

The record shows only that Veltruski, on several occasions, merely indicated his desire to work as a civil service employee and requested such a position in the context of his various encounters with representatives of the charged agencies. The picture painted by Veltruski in his testimony is that he had contact with various State agencies as a result of his work as an interpreter and his numerous complaints, and he aggressively made it known to all that he wanted to work for the State. But his testimony fails to establish that vacancies for positions covered by the Dills Act existed, or that he formally applied for any such vacancy in accord with established civil service procedures.

For example, it appears that Veltruski asked Diaz in a telephone conversation for employment in settlement of a lawsuit. He testified that he told Diaz, "we can solve this [lawsuit] and you can give me a job." Veltruski first said DOJ was interviewing for attorneys, assistants, and "different positions," but his later testimony suggests that the only vacancies were for attorneys. And there is no evidence that he was qualified for any position at DOJ or that he took the necessary step of submitting an employment application, as is required under established civil service procedures.

The same is true of Munoz's alleged refusal to hire Veltruski. Munoz knew Veltruski as a result of his work as an interpreter in the past. It appears that the two men were well acquainted and it was not uncommon for them to engage in wide-ranging discussions. Munoz's suggestion that Veltruski marry Hillary Clinton is one indication of the kind of discussions that occurred. In the context of these wide-ranging discussions, Veltruski said, he made it known to Munoz that he wanted to work as a civil service employee with full benefits.

However, Veltruski has identified no vacant civil service position at UIAB, nor has he established that he submitted an application for employment.⁹

Veltruski's discussions with Cash similarly were not in the form of a formal application for employment. It appears that they occurred on the heels of a disagreement between Veltruski and a judge about whether Veltruski should interpret the entire hearing or only relevant parts of it. The incident prompted Veltruski to tell Cash he wanted to continue working in the UIAB Orange County office and any other office she could recommend. Veltruski viewed his work highly and was motivated by a desire to be an "expert translator/interpreter" and audit hearings to evaluate the quality of interpreting in the office. Against this background he merely asked Cash for such a job or a referral. There is no evidence that a vacant position existed in the UIAB Orange County office, or that Veltruski applied for a position for which he met minimum qualifications.

Veltruski requested a similar position (as that requested of Cash) from Gomez in the DMV City of Commerce office. It appears from Veltruski's own testimony that he merely went to that office on several occasions and told Gomez he wanted to work there. Gomez may have told Veltruski that he was wrong about the scope of his rights and he was barking up the wrong tree, but such comments are not unlawful. Once again, there is no evidence that he formally applied for a vacant position.

The circumstances surrounding events in the San Bernardino office of the DMV are similar. Beauchamp and Johnson served as supervisors in that office, and they were well acquainted with Veltruski. According to Veltruski's testimony, he simply went to the San Bernardino office and on different occasions informed Beauchamp and Johnson that he

⁹ The alleged refusal to hire Veltruski as an interpreter is addressed below.

wanted to work there. There is no evidence that a vacancy existed or that Veltruski submitted an application.

Veltruski's request for employment in the UIAB Inglewood office came after he transcribed a tape of a hearing. He found problems with the process and the way the interpreter was asked to perform her duties. Accordingly, he testified, he told Knipe he wanted to be appointed a State employee and assigned to auditing cases with the goal of improving service. Although Veltruski said Knipe refused to hire him out of a concern that he would argue for employee status for interpreters, he also testified that Knipe advised Veltruski to accept his status as an independent contractor and eventually sent him a letter saying there were no vacancies in the office at the time. There is no evidence that Veltruski actually applied for a vacant position with Knipe.

Veltruski testified that Mercado refused his request for a job at EDD and Cook refused to consider him for employment with the UIAB in La Palma. There is little evidence surrounding these requests, except that he testified Mercado and Cook had mounted a conspiracy against him. Once again, evidence that Veltruski applied for a vacant position is lacking.

Veltruski's requests for employment at the Labor Commissioner's office came in the context of a visit to pursue salary claims against the DMV and UIAB. When Ortenzi rejected the claims, Veltruski asserted that he knew more than Ortenzi, rejection of the claims was untimely, and the office was short-staffed and lacked quality people. Veltruski then asked Ortenzi for a job, claiming that he could help the situation. But Veltruski has not established that a vacancy existed in Ortenzi's office or, even if it did, that he submitted an application.

Based on the foregoing, it is clear that Veltruski asked several people in various agencies for employment as a State employee. In some instances, he merely requested employment during conversations with agency representatives because he wanted to work as a State employee with full benefits. On other occasions, he considered the staffing of certain State agencies inadequate and viewed the performance of certain State employees as sub-standard. In yet other circumstances he volunteered that he had advanced skills as an interpreter, auditor, investigator, undercover agent, or accountant and announced his availability for employment.

However, a key element of a discriminatory refusal to hire case has not been established because there is no evidence that Veltruski ever formally submitted an “employment application” for a civil service position in any of the State agencies named in the consolidated complaints. (Aneco at p. 400.) There is no evidence that any of the agencies were “in a hiring mode” at the time Veltruski claims he applied. (Irwin at p. 798.) Nor is there evidence that the agencies had “jobs available for new hires” at the time Veltruski says he applied. (Bay Control at p. 30, fn. 2.) The process for hiring State employees is a formal one. Ordinarily, a position must be announced, applications must be submitted, and other well-established competitive steps must be followed. None of these events occurred here. Nor is there evidence that other applicants were hired in positions for which Veltruski was qualified.

Therefore, I conclude that Veltruski has failed to establish that he was a bona fide applicant for a vacant civil service position within the meaning of section 3519(a). It is further concluded that a reasonable person would not conclude on this record that Veltruski

has suffered an adverse action and thus he has not established an essential element of a prima facie case of discrimination in hiring.¹⁰ (Palo Verde at p. 12; Newark at pp. 11-12.)

Although it is true that the State ceased to use Veltruski's services as an interpreter, the decision to do so does not effect the outcome here. Veltruski has not shown that he is covered by the Dills Act as a result of his work as an interpreter, nor has he presented evidence that other interpreters are covered by the Act.

For Veltruski to fall under the Dills Act, he must establish that he was a State employee. Section 3513(c) defines State employee as follows.

"State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

The only category in this definition under which Veltruski arguably falls is that of "civil service employee."

¹⁰ This conclusion is not intended to establish a strict requirement that every applicant for employment must, at minimum, establish the existence of a vacant position for which he is qualified and a submission of a formal application as a prerequisite for protection under the Dills Act. I would not rule out the possibility that an employer may run afoul of section 3519(a), even absent these factors. Based on the evidence presented here, however, it is concluded that Veltruski was not a bona fide applicant for employment under section 3519(a).

PERB cases that have addressed the question of employee status under section 3513(c) argue against a finding that Veltruski is a State employee by virtue of his work as an interpreter. In a case determining whether seasonal lifeguards are civil service employees, the Board observed:

. . . The State of California "purchases" the services of individuals in one of two ways: (1) contracting for needed services, special skills and/or background; and (2) hiring an individual as an employee. In none of the petitions before the Board is there a contract between the individual and the state. Rather, the individual is placed on the state payroll, in a state civil service classification with a classification code number. The individual may contribute to the retirement system, may be eligible for a variety of employee benefits, is subject to state discipline, and has a variety of employee rights. Therefore, all of the individuals in the contested classifications are state employees. [State of California (Department of Personnel Administration) (1990) PERB Decision No. 787-S, p. 13 (DPA I); underlining in original.]

In DPA I, the Board also noted that the determination of civil service employee status within the meaning of the California Constitution and the Dills Act must take other factors into account.¹¹

. . . All personnel appointments other than the specific exempt appointments are therefore part of the civil service system and have some form of civil service status, whether it be seasonal, limited term, permanent, part-time, or any other type. [DPA I at p. 14; see also State of California (Department of Personnel Administration) (1991) PERB Decision No. 871-S (DPA II).]

The Board has observed further that a personnel "appointment" is defined by section 18525, as an "offer to and acceptance by a person of a position in state civil service . . ." (State of

¹¹ The Constitution Article VII, section 1, provides that the "civil service includes every officer and employee of the state except as otherwise provided in Article VII, section 4." Section 4 lists 13 exemptions, none of which are relevant here.

California (Department of Corrections (1997) PERB Decision No. 1224-S, pp. 6-7

(Department of Corrections).)

Although Veltruski provided services to the State as an interpreter and was paid for his work, there is no evidence in the record to suggest that he ever held a civil service position. There is no evidence, for example, that he was hired into a civil service classification with a classification code number. There is no evidence that he applied for an announced vacancy and participated in civil service testing procedures. There is no evidence that he was paid as a civil service employee. There is no evidence that he received health and other benefits, as do civil service employees. There is no evidence that retirement or social security contributions were deducted from his paycheck. There is no evidence that federal or state taxes were withheld from his paycheck. When the various State agencies decided to no longer use his services, there is no evidence that he was terminated with any of the applicable due process procedures ordinarily provided to civil service employees; he simply was not asked to serve as an interpreter any longer. Factors such as these argue against a finding that Veltruski was a civil service employee within the meaning of section 3513(c). (DPA I at p. 13; see Unit Determination for the State of California (1981) PERB Decision No. 110d-S, p. 5, adopting recommendation of hearing officer.)

On the other hand, there is evidence that the State purchased Veltruski's services as an independent contractor. Documentary evidence from 1996 indicates that Veltruski was assigned a vendor's number and received payment based on invoices he submitted to EDD for his services. Evidence related to his payment from DMV in 1996 shows that he received a Form 1099, miscellaneous income. The form shows that Veltruski was paid for his services, but it contains no deductions for taxes or medical and health care premiums. Further, despite

Veltruski's claims, the State has always considered him an independent contractor. On June 29, 1999, for example, Wohlford responded to an inquiry sent to the Governor, explaining to Veltruski that "as far as DMV is concerned, you were an independent contractor, not an employee of the department as you claim." Factors such as these argue in favor of a finding that Veltruski provided services to the State as an independent contractor. As the Board observed in DPA I, contracting for services is one way for the State to purchase such services, but an independent contractor does not necessarily acquire civil service employee status by virtue of the contract. (DPA I at p. 13.)

In addition, Veltruski has not established that he ever received an appointment from the State. Only "personnel appointments . . . are . . . part of the civil service system and have some form of civil service status, whether it be seasonal, limited term, permanent, part-time, or any other type." (DPA I at p. 14.) As noted above, a personnel "appointment" is defined by section 18535, as an "offer to and acceptance by a person of a position in state civil service." (See also Department of Corrections at pp. 6-7.) There is no evidence that Veltruski received such an appointment.

Based on the foregoing, I conclude that Veltruski has not shown that he was a civil service employee within the meaning of section 3513(c) during the time he provided services to the State as an interpreter. Because there is virtually no evidence in the record regarding the conditions under which other interpreters provided services to the State, their employment status cannot be determined here. Therefore, Veltruski has not established that the decisions made by various agencies to no longer purchase his services as an interpreter were covered by the Dills Act.

Veltruski's Due Process Claims

Veltruski argues that he has not been permitted to present additional documents and testimony. However, a review of the record here shows that the opposite is true. At each stage of the hearing process he was advised on the appropriate way to proceed. In a series of prehearing letters from the undersigned to the parties, the elements of a prima facie case and related matters were explained. During the hearing, Veltruski was given the opportunity to present testimonial evidence, documentary evidence, and an inordinate amount of “background” evidence of marginal relevance. On several occasions during his presentation he was directed to focus the presentation of evidence on the specific allegations in the complaints. For example, at the outset of the hearing, the process was explained and he was informed that he needed to present evidence to support the allegations in the complaints.¹² Throughout the first day of hearing he was again informed that he needed to present evidence to support the allegations in the complaints.¹³ On the second day of hearing, he insisted on presenting marginally relevant evidence that was cumulative, and he was informed again of the need to address issues raised by the complaints.¹⁴ Late on the second day of hearing, he was again invited to present additional evidence that related to the allegations in the complaints.¹⁵ At the end of his testimony, he could identify no other witnesses who had relevant testimony to present.¹⁶

¹² Reporter's transcript (RT) Vol. I, pp. 7, 10.

¹³ RT Vol. I, pp. 29, 64, 49-50, 94-95, 122-123.

¹⁴ RT Vol. II, p. 25.

¹⁵ RT Vol. II, p. 81.

¹⁶ RT Vol. II, pp. 74-80.

In addition, Veltruski contends the State has unlawfully refused to provide him with documents related to the complaints. Prior to the hearing, Veltruski filed a defective subpoena duces tecum (SDT). Rather than attempt to have Veltruski cure the numerous defects, the undersigned directed the State to provide “any available documents relating to Mr. Veltruski’s employment.” The directive was designed to expedite the hearing process.¹⁷ At the hearing, counsel for the State provided limited documents and made a good faith representation that a search was conducted and no other documents could be found because Veltruski was an independent contractor and the State does not maintain documents for more than two years.¹⁸ Although Veltruski contests the State’s representation, I find no reason to do so.

Veltruski also contends that he was not permitted to cross-examine the State’s witnesses or present an oral argument. It is true that the undersigned ALJ informed Veltruski that he would be permitted to present an oral argument at the end of the proceeding. However, the right to cross-examine the State’s witnesses or present an oral closing argument assumes that the charging party presents a prima facie case and the proceeding moves beyond its case-in-chief. As explained elsewhere in this proposed decision that has not happened here.

Finally, Veltruski argues that he has not been permitted access to the hearing transcript or the exhibits. As the charging party who introduced the exhibits into the record, Veltruski has or should have copies of the exhibits. Further, Veltruski was informed at the beginning of the hearing, on November 27, 2001, that to review the transcript he would be required to

¹⁷ See August 27, 2001, letter from ALJ to the parties.

¹⁸ RT Vol. I, pp. 11, 17.

purchase it, apply for a waiver of costs, or review the transcript at the PERB office in Los Angeles “if [he] set up an appointment to do that.”¹⁹ Veltruski took no steps along these lines until on or about February 11, 2002, when he requested that he be permitted to review the transcript. The request was more than two months after he was informed that he would have to make an appointment to review the transcript; it was after an extension granted at Veltruski’s request from January 30 to February 8 to submit written argument; and it was after the extended date for submission of written argument had passed. Based on these circumstances, I conclude that Veltruski’s request is untimely and, if granted, would serve only to delay the proceeding.

PROPOSED ORDER

Based on the foregoing findings of fact and conclusions of law, it is ordered that the consolidated complaints and the underlying unfair practice charges in Case Nos. LA-CE-556-S, LA-CE-562-S, LA-CE-564-S and LA-CE-566-S, Veltruski v. State of California, are hereby dismissed.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

¹⁹ RT Vol. I, p. 8.

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

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. (Cal. Code Regs., tit. 8, secs. 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 California Code of Regulations, title 8, section 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. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

FRED D'ORAZIO
Administrative Law Judge