STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

KARIN CHEN, Charging Party, v. CALIFORNIA STATE EMPLOYEES ASSOCIATION, Respondent.	Case No. LA-CO-114-S PERB Decision No. 1750-S February 7, 2005

Appearance: Karin Chen, on her own behalf.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Karin Chen (Chen) of a Board agent's dismissal (attached) of her unfair practice charge. The unfair practice charge alleged that the California State Employees Association (CSEA) violated the Ralph C. Dills Act (Dills Act)[1] by breaching its duty of fair representation.

The Board has reviewed the entire record in this matter, including the unfair practice charge, CSEA's response to the charge, the Board agent's warning and dismissal letters, and Chen's appeal. As a result, the Board finds the warning and dismissal letters to be free of prejudicial error and adopts the dismissal as a decision of the Board itself.

DISCUSSION

The entire basis for Chen's appeal reads as follows:

[1]The Dills Act is codified at Government Code section 3512, et seq.

> I sent a copy of grievance again to Ms. Alax Tieu. She did not schedul (sic) to meet me in person on Oct. 5, 2004. She did not scheduled (sic) to meet me on Nov. 15, 2004 either. I never meet her in person. It showed the bad faith of CSEA.
>
> Ms. Tieu never went further with me about my Grievance.

These are new details stated for the first time in Chen's appeal. Under PERB Regulation 32635(b)[2], a charging party must show good cause to present new items on appeal. Chen knew of these facts from CSEA's response to the charge and the Board agent's warning letter but she failed to file an amended charge to provide these facts to the Board agent. Chen does not provide any additional basis for accepting these new allegations in her appeal. Therefore, the Board finds that Chen has not shown good cause to present these new allegations on appeal.

ORDER

The unfair practice charge in Case No. LA-CO-114-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Shek joined in this Decision.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377

December 1, 2004

Karin Chen

Re: Karin Chen v. California State Employees Association
Unfair Practice Charge No. LA-CO-114-S
DISMISSAL LETTER

Dear Ms. Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 21, 2004. Karin Chen alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)[1] by denying her its duty of fair representation.

I indicated to you in my attached letter dated November 17, 2004, 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 November 29, 2004, 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 November 17, 2004 letter.

Right to Appeal

Pursuant to PERB Regulations,[2] 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. (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.

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[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.

A document is considered "filed" when actually received before the close of business (5 p.m.) on 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 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
General Counsel

By _____
Tammy Samsel
Regional Attorney

Attachment

cc: Catherine Kennedy

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916)327-8384
Fax: (916) 327-6377

November 17, 2004

Karin Chen

Re: Karin Chen v. California State Employees Association
Unfair Practice Charge No. LA-CO-114-S
WARNING LETTER

Dear Ms. Chen:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 21, 2004. Karin Chen alleges that the California State Employees Association violated the Ralph C. Dills Act (Dills Act)[1] by denying her its duty of fair representation.[2] My investigation revealed the following information.

The text of the charge provides, in its entirety:

> I filed a grievance with CSEA on Aug. 15. 2004 that my employer violated Union contract article 5 General Provisions 5.11 dignity clause + 5.6 Supersession 20 incompatible activities. Aug. 31. 2004 CSEA Manager John Delloro told me he will follow up and he did not. Oct 3, 2004 I also faxed the copy of Grievance to CSEA Representative Alexandra Tieu. she did not respond. Unit now I have not got any answer from CSEA. [sic.]

The charge also includes approximately forty pages of documents. These documents include a fax cover sheet to CSEA for a grievance form dated August 15, 2004, and supporting documents for that grievance. The supporting papers document the behavior of Chen's immediate supervisor, Paul Thakur, and her coworkers Vanessa Bow and Michael Swanson.

On August 15, 2004 Chen signed a grievance form alleging her employer, CalTrans violated various contract provisions on June 18, 2004. It is unclear from the charge with whom Chen filed this grievance. On August 25, 2004, CSEA Manager John Delloro received a telephone call from CSEA's Sacramento Office indicating that they had received a complaint form from Chen. CSEA Representative Alexandra Tieu contacted Chen regarding the complaint form and

[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] Chen has also filed the following unfair practice charges against CSEA, LA-CO-111-S, and LA-CO-113-S.

indicated grievances should be filed at the local level, in Los Angeles, not in Sacramento. On August 25, 2004, Tieu sent Chen an email to the same effect.

On September 3, 2004, Tieu sent Chen a certified letter requesting that she fill out a grievance with her local steward. Tieu also sent Chen an email to the same effect.

On September 7, 2004, Chen emailed Delloro indicating that CSEA was being unresponsive. Tieu responded to this email on the same day. On September 22, 2004, and September 23, 2004, and September 24, 2003 Chen and Tieu exchanged emails and agreed to meet in person. On October 5, 2004, Tieu sent Chen an email to schedule a meeting. On October 6, 2004, Chen responded to Tieu's email with complaints regarding CSEA's service. On October 6, 2004, Chen faxed Tieu and Delloro a copy of a grievance. The fax cover sheet provides:

> I am sending you the copy of the Employee Contract Grievance again. I sent it to CSEA 08-19-2004 and I did not hear anything from CSEA. You said that you will follow up and I did not hear the result from you. Are you still my union representative?

On October 27, 2004, Tieu scheduled a November 15, 2004 meeting with Chen.[3]

The above-stated information fails to state a prima facie violation for the reasons that follow.

Charging Party has alleged that the exclusive representative denied Charging Party the right to fair representation guaranteed by Dills Act section 3515.7(g) and California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S and thereby violated section 3519.5(b). The duty of fair representation imposed on the exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258.) In order to state a prima facie violation of this section of the Dills Act, Charging Party must show that the Respondent's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

> Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty. [Citations omitted.]
>
> A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

[3] This conduct occurred after Chen filed the charge on October 22, 2004.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a Charging Party:

> ". . . must at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. (Emphasis added.)" [Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

The facts indicate Chen filed paperwork with CSEA's Sacramento Office, rather than with her local union steward. Tieu contacted Chen to explain the proper procedure to filing a grievance. Tieu has also continued to communicate with Chen throughout September and October, including scheduling a meeting with Chen in November. The facts do not support Chen's conclusion that CSEA is not following up on her concerns. The charge does not demonstrate CSEA acted in an arbitrary, discriminatory, or bad faith manner. Thus, this charge must be dismissed.

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 that 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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before November 29, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Tammy Samsel
Regional Attorney

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