

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



JESSE VICKERS,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS),

Respondent.

Case No. LA-CE-595-S

PERB Decision No. 1540-S

June 30, 2003

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

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Jesse Vickers (Vickers) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the State of California (Department of Corrections) (Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by discriminating against him for his activities as a job steward and for filing grievances. Vickers alleged that this conduct constituted a violation of Dills Act section 3519(a).² The Board agent deferred to

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

²Section 3519(a) states, in pertinent part:

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

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or

arbitration and dismissed the charge because the issues underlying the charge met the standards set forth in Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81, State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.

After review of the entire record including the unfair practice charge and amended charge, Corrections' position statement, the warning and dismissal letters, and Vickers' appeal, the Board adopts the Board agent's dismissal.

ORDER

The unfair practice charge in Case No. LA-CE-595-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Neima and Baker joined in this Decision.

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.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



December 20, 2002

Jesse Vickers
P O Box 7506
La Verne, CA 91750

Re: Jesse Vickers v. State of California (Department of Corrections)
Unfair Practice Charge No. LA-CE-595-S
NOTICE OF DISMISSAL AND DEFERRAL TO ARBITRATION

Dear Mr. Vickers:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 14, 2002. Jesse Vickers alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by discriminating against him because of his activities as a job steward.

I indicated in the attached letter dated December 11, 2002, that this charge was subject to deferral to arbitration. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, the charge should be amended. You were further advised that unless the charge was amended or withdrawn prior to December 18, 2002, it would be deferred to arbitration and dismissed.

I received your amended charge by fax on December 16, 2002. You attached a document that you state demonstrates that it is futile to attempt to proceed on your grievances. That document is a summary that you wrote of a meeting with CCPOA officials in January 2001. You state that the document demonstrates that CCPOA will not proceed to arbitration on your grievances.

However, the January 2001 meeting did not address grievances that contain the allegations in your current unfair practice charge. The issues involved in this charge occurred from June through September 2002. As we have discussed, you may be able to demonstrate that you have exhausted the grievance procedure should CCPOA determine not to take the current issues to arbitration. At that time, you may again file your unfair practice charge.

Your amended charge also states that management at the California Department of Corrections chose not to process your current grievances and allowed the timelines to expire in violation of the MOU between the State employer and CCPOA.

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.

As explained in my letter of December 11, PERB will not defer an unfair practice charge to the grievance and arbitration procedure unless an employer has agreed to waive procedural defenses. In this case, the employer has so agreed and you have received a written copy of that commitment. Accordingly, the employer must be provided an opportunity to allow you to proceed under the grievance procedure. Should the employer not waive procedural procedures as it has committed, you may again file your unfair practice charge.

Based on the facts and reasons described in this letter and contained in my letter of December 11, this unfair practice charge must be dismissed.

As I explained in the attached letter, Government Code section 3514.5(a) and PERB Regulation 32620(b)(5) require a Board agent to dismiss a charge where the dispute is subject to final and binding arbitration pursuant to a collective bargaining agreement. (Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81; State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.) The charge alleges that your employer has discriminated against you because of your activity as a union job steward. This conduct is covered by the parties' collective bargaining agreement, the Respondent has agreed to waive any procedural defenses, and there is no evidence that the dispute arises in other than a stable collective bargaining environment. Accordingly, the charge must be dismissed and deferred to arbitration. Following the arbitration of this matter, the Charging Party may 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.)²

Right to Appeal

Pursuant to PERB Regulations,³ 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.

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.)

² Pursuant to Government Code section 3514.5(a), the six-month limitation on the filing of a charge is tolled during the time required to exhaust the grievance machinery where that procedure ends in binding arbitration.

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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.)

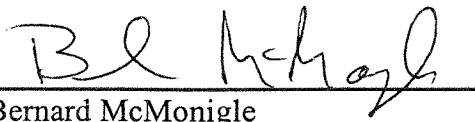
Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

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December 20, 2002
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Sincerely,

ROBERT THOMPSON
General Counsel

By 
Bernard McMonigle
Regional Attorney

Attachment

cc: Linda Nelson

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
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December 11, 2002

Jesse Vickers
P O Box 7506
La Verne, CA 91750

Re: Jesse Vickers v. State of California (Department of Corrections)
Unfair Practice Charge No. LA-CE-595-S
WARNING LETTER (DEFERRAL TO ARBITRATION)

Dear Mr. Vickers:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 14, 2002. The Jesse Vickers alleges that the State of California (Department of Corrections) violated the Ralph C. Dills Act (Dills Act)¹ by discriminating against you because of your activities as a job steward.

Your charge alleges that between June and September 2002, the Department of Corrections took several actions against you in retaliation for your activities as a job steward for the California Correctional Peace Officers Association.

The current collective bargaining agreement between CCPOA and the state is effective 2001 to 2006. That agreement, at section 5.03 prohibits the employer from taking reprisals against employees because of their union activity. At section 5.03.A the contract states, "The State and the Union shall not impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate..." against employees "because of their exercise of rights guaranteed by the Ralph C. Dills Act". Article VI of that agreement contains a grievance procedure that ends in binding arbitration.

Based on these facts and Dills Act section 3514.5, this charge must be deferred to arbitration under the MOU and dismissed in accordance with PERB Regulation 32620(b)(5).

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.

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.

In Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a, the Board explained that:

While there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations.² EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector.³ [Fn. 2 omitted; fn. 3 to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.]

Although Dry Creek was decided under the Educational Employment Relations Act² the NLRB deferral standard has also been applied to the Dills Act. (State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.)

In Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] and subsequent cases, the National Labor Relations Board articulated standards under which deferral to the contractual grievance procedure is appropriate in prearbitral situations. These requirements are: (1) the dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

These standards are met with respect to this case. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by the attached letter from its representative, Linda Nelson, dated December 9, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issue raised by this charge that the employer illegally discriminated against you directly involves an interpretation of section 5.3 of the MOU.

Accordingly, this charge must be deferred to arbitration and will be dismissed. Following the arbitration of this matter, the Charging Party may 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, supra.)³

² The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

³ Pursuant to Government Code section 3514.5(a), the six-month limitation on the filing of a charge is tolled during the time required to exhaust the grievance machinery where that procedure ends in binding arbitration.

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 December 18, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Bernard McMonigle". The signature is written in a cursive, somewhat stylized font.

Bernard McMonigle
Regional Attorney

Attachment