

BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA

In the Matter of the Appeal by) Case No. 28001
)
 PAMELA L. MARTIN) **BOARD DECISION**
) (Precedential)
 From dismissal from the position of)
 of Food Service Worker at the) **NO. 91-03**
 Stockton Developmental Center,)
 Department of Developmental Services) November 5, 1991

Appearances: Valerie Olson, Staff Counsel, for Department of Developmental Services; no appearance for Pamela Martin.

Before Stoner, Vice-President; Burgener, Ward and Carpenter, Members.

DECISION

On September 3, 1991, the State Personnel Board (SPB or Board), after extensive briefing, heard oral argument on whether or not the proposed settlement submitted in this case ought to be approved pursuant to Government Code section 18681.

FACTUAL SUMMARY

The present dismissal action contains serious allegations involving theft from a co-worker at the State work place. In the proposed settlement, the appellant, Pamela L. Martin, agrees to "voluntarily resign" (para. 3) and "not seek further employment with [the] Stockton Developmental Center" (para. 4). The settlement also permits "full disclosure of the circumstances leading to her separation" to other facilities of the Department of Developmental Services (Department) which may request an employment reference (para. 5). Nevertheless, paragraph 6 of the settlement

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contains a so-called "muzzle clause" which provides that other prospective employers, including other state agencies, shall simply be informed that "she voluntarily resigned from her position". In effect, while the Department insists on full disclosure to its own facilities, the Department is willing to conceal from other prospective employers (including other State agencies) the circumstances surrounding appellant's separation in exchange for Appellant's "voluntary" resignation.

ISSUE

May the Board, in reviewing a settlement under Government Code section 18681, take into consideration the interests of other state agencies and state applicants who may be adversely affected by the "muzzle clause" contained in paragraph 6?

DISCUSSION

The SPB has broad constitutional responsibility to enforce and protect the State's merit civil service system. (Cal. Const. Art. VII, secs. 1-3.) One aspect of this responsibility is to "review disciplinary actions". (Cal. Const. Art. VII, sec. 3.)

In many instances, disciplinary actions are resolved through voluntary settlements. The Board encourages settlements. However, the parties to a settlement do not represent all interests affected by a settlement within the State's civil service system. The interests of other State employees, agencies, and job applicants are not represented at the settlement table. The law recognizes

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the limited scope of parties' interests when it provides that settlements require Board approval before they "become final and binding upon the parties". (Gov. Code sec. 18681.) Thus, in reviewing a settlement, the Board must not only be satisfied that the disposition is voluntarily agreed to by the parties but that it is also consistent with other interests protected by the State's merit civil service system (Cal. Const. Art. VII, secs 1-3.).

Government Code section 18935, subdivision (i) provides that the Board may refuse to permit the examination or appointment of anyone who, among other things, "[h]as resigned from any position not in good standing or in order to avoid dismissal." Accordingly, on the standard State "Examination Application" (STD 678), the Board requires all State applicants to answer, among other basic questions, the following: ". . . have you ever been requested to resign or resigned under unfavorable circumstances from any employment?" Thus, the State's merit system recognizes that State agencies and State applicants should be protected from persons with questionable work histories.

As indicated, the present dismissal action contains serious allegations involving theft from a co-worker. The resignation pursuant to settlement reflects a careful attempt by the Department and the employee to protect their own core interests. It permits the Department to be free of Appellant and it permits the appellant a fresh start without either having to

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address the truth or falsity of the allegations. If only the interests of the two parties were at stake, the Board - as it does normally - would defer to the judgment of the parties. Nevertheless, the Board - given its responsibility under Government Code section 18935, subdivision(i) - cannot ignore the legitimate interests of other State employers and other applicants for State employment who may be directly affected by the "muzzle clause" contained in paragraph 6 of the settlement.

The problem with the "muzzle clause" is obvious: it results in the suppression of information which might be relevant under Government Code section 18935, subdivision (i). If Appellant applies for a job at another state agency and the other State agency asks the Department whether or not Appellant "resigned from . . . [her] position not in good standing or in order to avoid dismissal", the "muzzle clause" would prevent the Department from providing its version of what transpired. Obviously, Appellant might disagree with the Department's answer. That is not the point. The point is that all relevant information ought to be available so that a correct determination can be made. The Board cannot sanction the concealment of information which the statute deems relevant.

CONCLUSION

The Board disapproves the settlement because paragraph 6 could result in another State agency making a hiring decision

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(adversely affecting other applicants) without the ability to obtain information from the Department which might be relevant to the appellant's eligibility for subsequent State employment appointment under Government Code section 18935, subdivision (i).

ORDER

1. For the reasons stated above, this settlement is not approved.

2. The matter is remanded to the parties for whatever action they deem appropriate.

3. This decision is certified for publication as a precedential decision (Government Code section 19582.5).

STATE PERSONNEL BOARD*

Clair Burgener, Member
Alice Stoner, Member
Lorrie I. Ward, Member
Richard Carpenter, Member

*President Richard Chavez did not participate in this decision.

* * * * *

I hereby certify that the State Personnel Board made and adopted the foregoing Decision and Order in at its meeting on November 5, 1991.

GLORIA HARMON
Gloria Harmon, Executive Officer
State Personnel Board