

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



GEORGE S. STEWART, })
 })
Charging Party, }) Case No. S-CO-42-S
 })
V. }) PERB Decision No. 539-S
 })
UNION OF AMERICAN PHYSICIANS }) December 5, 1985
AND DENTISTS, })
 })
Respondent. })

Appearances: George S. Stewart, on his own behalf.

Before Hesse, Chairperson; Morgenstern and Porter, Members.

DECISION

HESSE, Chairperson: George S. Stewart, D.D.S., charging party, appeals a Public Employment Relations Board (PERB or Board) regional attorney's dismissal of his unfair practice charge against the Union of American Physicians and Dentists (UAPD). For the purpose of determining whether a *prima facie* case has been stated, we presume the factual assertions to be true.¹

DISCUSSION

Charging party is a dentist who works at Folsom Prison. In 1981, he joined UAPD, and paid his yearly dues from then henceforth. He paid his dues in a lump sum at the beginning of the fiscal year (FY).

¹San Juan Unified School District (1977) EERB Decision No. 12. Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

In 1983, he learned that UAPD members who paid their dues by an automatic deduction from their monthly paychecks were charged less than members who paid their annual dues in a lump sum or on a quarterly basis.²

In response to this knowledge, charging party sought a refund from UAPD for the difference between the \$340 he paid and the \$222 paid by those members who used the payroll deduction plan. Charging party was unsuccessful in receiving a refund, so he sued UAPD in small claims court and won.³

Charging party and UAPD have continued to disagree over the amount owed by charging party as a "direct dues payor." Because charging party would not tender the full amount owed by him according to UAPD's calculations, UAPD requested that the State of California place charging party on a "fair share payor" status. That is, an amount equivalent to the dues paid by the "automatic deduction" member-payors was withheld from charging party's paycheck from June 1984 to present.⁴

Charging party has vigorously protested UAPD's action in making him a "fair-share payor." In September 1984, charging

²In FY 1982-83, the former paid \$222, the latter \$340. By FY 1984-85, the amounts were \$282 and \$360, respectively.

³The judgment was for \$120 damages plus \$20 in costs, and was entered April 1984.

⁴Authority for the union to require a fair share from non-members is found at Government Code section 3515.7. Authority for the state to deduct such payments from employee paychecks at the union's request is found at section 3515.7(b).

party attempted to pay UAPD dues for the year, albeit with an amount less than the union charged "direct dues" payors.⁵ In November 1984, charging party paid the difference, under protest, between what he had already paid (\$282) and what UAPD charged (\$360). UAPD has refused to accept the full amount tendered and has refused to remove charging party from "fair-share payor" status. Charging party filed an unfair practice charge in February 1985 alleging that the union was retaliating against him, in violation of the State Employer-Employee Relations Act (SEERA) section 3519.5.⁶

We note that, as a rule, the Board will not insert itself into disputes between unions and their members that are "strictly internal." (Service Employees International Union, Local 99 (1979) PERB Decision No. 106.) Whether the union may

⁵Charging party, relying upon the small claims judgment he received that implied he could not be charged more than those who paid by automatic deduction, paid \$282.

⁶SEERA is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519.5 reads, in relevant part, as follows:

It shall be unlawful for an employee organization to:

* * * * *

(b) 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.

have a dual dues structure that charges some members more than others is not a dispute for this Board to resolve, absent an allegation that the dues schedule discriminates against certain members for an impermissible reason. Rather, we confine ourselves to an examination of allegations that support a charge of violation of SEERA section 3519.5.⁷

Charging party alleges in his charge that he has been denied membership in UAPD because of his successful small claims action against the union concerning membership dues. In support of that allegation, we note that, as of November 1984, charging party has tendered the full amount due but that the union has refused to accept it, presumably because charging party has not signed a membership form. Because charging party was permitted to pay dues in 1981, 1982 and 1983 without signing such a form, UAPD may have instituted a new requirement for membership as to the charging party.

We do not know if the alleged changes in UAPD's membership policies were instituted in order to keep charging party in a "fair share payor" status and thus a non-member of UAPD, notwithstanding charging party's efforts to remain a member. But, in any event, an employee organization may not

⁷Furthermore, we confine ourselves to an examination of allegations that occurred within the six months preceding the filing of this charge. (Gov. Code sec. 3514.5.)

unreasonably interfere with an employee's right to be a member.⁸

Therefore, we will reverse the dismissal and request that the general counsel issue a complaint as to the issue of whether the union has violated SEERA by denying charging party membership in UAPD despite the tender of the full "direct dues" amount required. We affirm the dismissal as to the other allegations.

ORDER

The dismissal of the regional attorney in Case No. S-CO-42-S is hereby REVERSED and the general counsel is ORDERED to issue a complaint consistent with the above discussion.

⁸Section 3515 of SEERA provides, in relevant part, that:

. . . state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

The right to join an employee organization is qualified by section 3515.6, which provides, in relevant part, that:

. . . employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. (Emphasis added.)

The alleged denial of membership, if in fact precipitated by charging party's small claims court suit, is at least arguably not "reasonable." Thus, such denial could constitute unlawful interference with the right to join an employee organization pursuant to section 3519.5(b), cited above.

alleging interference with the charging party's right to
membership in the Union of American Physicians and Dentists.

Members Morgenstern and Porter joined in this Decision.