

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA UNION OF SAFETY)
EMPLOYEES,)
)
Charging Party,) Case No. S-CE-425-S
)
v.) PERB Decision No. 769-S
)
STATE OF CALIFORNIA (DEPARTMENT)
OF PERSONNEL ADMINISTRATION),)
)
Respondent.)
_____)

Appearances: Sam A. McCall, Jr., Chief Legal Counsel, for the California Union of Safety Employees; Roy J. Chastain, Labor Relations Counsel, for the State of California (Department of Personnel Administration).

Before Craib, Shank and Camilli, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (Board) on appeal by the charging party, California Union of Safety Employees (CAUSE), of a Board agent's dismissal (attached hereto) of its charge for failure to state a prima facie case. CAUSE alleged that the respondent, State of California (Department of Personnel Administration) violated section 3519(a) and (b) of the Ralph C. Dills Act (Act) (Government Code section 3512 et seq.). The Board agent provided CAUSE with the opportunity to amend its charge, and CAUSE alleged that the same conduct violated section 3519(d) of the Act.

After reviewing the dismissal, along with the appeal filed by the charging party, we find the dismissal to be free of prejudicial error, and adopt it as the Decision of the Board itself.

ORDER

The unfair practice charge in Case No. S-CE-427-S is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

Members Craib and Camilli joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



July 24, 1989

Sam A. McCall, Jr.
Chief Legal Counsel
CAUSE
915 20th Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California
(Department of Personnel Administration),
Unfair Practice Charge No. S-CE-425-S

Dear Mr. McCall:

On June 5, 1989, the California Union of Safety Employees (CAUSE) filed a charge against the Department of General Services alleging violations of Government Code sections 3515.5(a) and (b). Specifically, CAUSE charged that the Department of General Services (DGS) and the Department of Personnel Administration (DPA) discriminated and interfered with the rights of CAUSE members who appeared as CAUSE witnesses in a unit modification hearing. You have further alleged that the State interfered with the rights of CAUSE under the Dills Act.

I indicated to you in my attached letter dated June 28, 1989 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 that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to July 13, 1989, the charge would be dismissed.

I received your amended charge on July 5, 1989. I am dismissing the charge based on the facts and reasons contained in my July 13, 1989 letter and the reasons given here.

In your initial charge you alleged that the employer violated Government Code section 3519(a) and (b) by its actions. My letter of July 13 addresses those allegations. You now allege that the employer's refusal to pay travel expenses and per diem for your witnesses is a violation of Government Code section

3519(d) because it interferes with the administration of an employee organization (CAUSE).

Section 3519(d) makes it unlawful for the state to "dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another." This section prohibits employers from controlling the form and actions of an employee organization. (See Antelope Valley Community College District (1979) PERB Decision No. 97.) However, you have submitted no facts which show the employer to be controlling the actions of your organization. You are merely asserting that participation in a unit modification hearing creates a financial burden for your organization. As with Government Code 3519 subsections (a) and (b), subsection (d) creates no employer obligation to subsidize a union when it exercises its right to represent employees under the Dills Act. Accordingly, your allegation of a violation of Government Code section 3519(d) must also be dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Administrative Code, title 8, section 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Administrative Code, title 8, section 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 calendar days following the date of service of the appeal (California Administrative Code, title 8, section 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

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with the Board itself. (See California Administrative Code, title 8, section 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.

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 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 (California Administrative Code, title 8, section 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,

CHRISTINE A. BOLOGNA
General Counsel

By _____
Bernard McMonigle
Staff Attorney

Attachment

cc: Roy Chastain

PUBLIC EMPLOYMENT RELATIONS BOARD



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1031 18th Street, Room 102
Sacramento, CA 95814-4174
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June 28, 1989

Sam A. McCall, Jr.
Chief Legal Counsel
CAUSE
915 20th Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California
(Department of Personnel Administration),
Unfair Practice Charge No. S-CE-425-S
WARNING LETTER.

Dear Mr. McCall:

On June 5, 1989, the California Union of Safety Employees (CAUSE) filed a charge against the Department of General Services alleging violations of Government Code sections 3515.5(a) and (b). Specifically, CAUSE charges that the Department of General Services (DGS) and the Department of Personnel Administration (DPA) discriminated and interfered with the rights of CAUSE members who appeared as CAUSE witnesses in a unit modification hearing. You have further alleged that the State interfered with organizational rights of CAUSE under the Dills Act.

Investigation reveals the following. DGS and DPA filed a unit modification petition to remove State Police Sergeants, State Fair police sergeants from unit 7. CAUSE is the exclusive representative for unit 7. CAUSE is opposed to this modification of the bargaining unit. Several days of hearing have been held on the unit modification matter. More hearing days are scheduled. DPA has called management personnel and sergeants as witnesses. DPA is paying the travel expenses and per diem for its witnesses. DPA has denied a CAUSE request for travel expenses and per diem payment for any witnesses called by CAUSE. DPA did approve release time for CAUSE witnesses.

To demonstrate a violation of Government Code section 3519(a), the Charging Party must show that: (1) employee exercised rights under the Dills Act, (2) the employer had knowledge of the exercise of those rights, and (3) the employer imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced

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employees because of the exercise of those rights. Novato Unified School District (1982) PERB Decision No. 210; Carlsbad Unified School District (1979) PERB Decision No. 89; Department of Developmental Services (1982) PERB Decision No. 228-S. In this case, employees are exercising their rights under the Dills Act to participate with the union in a unit modification procedures. There is no evidence that the employer has threatened the employees for their participation in the hearing, discriminated against them or otherwise interfered because of their participation in the hearing. There is no obligation under the Dills Act for an employer to pay the expenses for individuals to exercise their rights under that Act. Accordingly, this allegation must be dismissed.

You've also alleged that the denial of travel expenses and per diem interferes with the rights of CAUSE under the Dills Act. Government Code section 3519(b) states that it shall be an unfair labor practice for an employer to "deny to employee organizations rights guaranteed to them by this chapter." However, you have not shown that the employee organization has been denied any rights. The facts show CAUSE to be exercising its right to participate in the unit modification hearing. No interference with the union's participation in the unit modification hearings has been shown. You have merely asserted that participation in the unit modification hearing puts a financial burden on CAUSE. However, the employer is under no obligation to subsidize the union when it exercises its right to represent employees under the Dills Act. Accordingly, this allegation 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 any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. 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 must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do

June 28, 1989
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not receive an amended charge or withdrawal from you before July 13, 1989, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Staff Attorney