

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION,)
)
Charging Party,) Case No. LA-CE-331-S
)
v.) PERB Decision No. 1210-S
)
STATE OF CALIFORNIA (DEPARTMENT) June 23, 1997
OF CALIFORNIA HIGHWAY PATROL),)
)
Respondent.)
_____)

Appearances: Ebernezer Stamps, Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Marguerite D. Shea, Labor Relations Counsel, for State of California (Department of California Highway Patrol).

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California State Employees Association (CSEA) to a PERB administrative law judge's (ALJ) proposed decision (attached). In the proposed decision, the ALJ dismissed the unfair practice charge and complaint which alleged that the State of California (Department of California Highway Patrol) (Department) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)¹ by

¹The Dills Act is codified at Government Code section 3512 et seq. Dills Act section 3519 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

denying an employee the right to CSEA representation in meetings with Department officials.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the ALJ's proposed decision, CSEA's appeal and the Department's response thereto. The Board finds the proposed decision² to be free of prejudicial error and hereby adopts it as the decision of the Board itself.

The unfair practice charge and complaint in Case No. LA-CE-331-S are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

discriminate against employees, or 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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

²State of California (Department of Parks and Recreation) (1990) PERB Decision No. 810-S cites Rio Hondo Community College District (1982) PERB Decision No. 272, not Rio Hondo Community College District (1983) PERB Decision No. 292. In addition, Rio Hondo Community College District (1982) PERB Decision No. 260 states that no right to representation attaches to a meeting held merely to inform an employee of previously predetermined discipline.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION,)
)
Charging Party,) Unfair Practice
) Case No. LA-CE-331-S
v.)
)
STATE OF CALIFORNIA (DEPARTMENT) PROPOSED DECISION
OF CALIFORNIA HIGHWAY PATROL),) (2/7/97)
Respondent.)
_____)

Appearances: Ebernezer Stamps, Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Marguerite Shea, Attorney, for State of California (Department of California Highway Patrol).

Before Gary M. Gallery, Administrative Law Judge.

PROCEDURAL HISTORY

This case involves the alleged denial of union representation for a clerical employee at meetings called by department managers. The proposed decision follows an unfair practice charge filed on January 23, 1996, by the California State Employees Association (CSEA) against the State of California (Department of California Highway Patrol) (Department). An amended charge was filed on March 6, 1996.¹ After investigation, and on June 20, 1996, the Office of the General Counsel of the Public Employment Relations Board (Board or PERB) issued a complaint against the Department. The

¹On June 14, 1996, CSEA withdrew portions of its unfair practice charge relating to alleged denial of representation at meetings on August 17, 1995, and February 9, 1996, and an alleged reprisal on February 9, 1996, relating to notice that disciplinary action was being considered against Connie Armstead.

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

complaint alleged that Connie Armstead (Armstead) is an employee of the Department and a CSEA job steward. It alleged that on three separate occasions, August 8, 15, and November 22, 1995, Armstead was required to meet with Department officials during which she had reasonable belief that the interview would result in disciplinary action, or in the alternative, posed highly unusual circumstances. On each occasion, Armstead requested the presence of a CSEA representative, and on each occasion, the request was denied. Each denial of request for representation was alleged to violate the Ralph C. Dills Act (Dills Act) section 3519(a) and (b).²

The Department's answer, filed July 11, 1996, made factual admissions and denials, denied any violation of the Dills Act and raised affirmative defenses that will be set forth in other parts of this decision.

A settlement conference did not resolve the dispute. Formal hearing was held before the undersigned on November 13, 1996, in

²The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. In relevant part, section 3519 provides that it is unlawful for the state to:

(a) 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

San Diego, California. At the conclusion of CSEA's case-in-chief, the Department moved for dismissal of the complaint on the grounds that CSEA had failed to prove a prima facie violation of the Dills Act. The motion was taken under consideration to be addressed in this decision. The parties waived transcript preparation and the filing of post-hearing briefs. The matter was deemed submitted for proposed decision at the conclusion of the formal hearing.

FINDINGS OF FACT

CSEA is a recognized employee organization of an appropriate unit of employees and the Department is an employer, both with the meaning of the Dills Act. Armstead is an employee and a member of the bargaining unit represented by CSEA. She also serves as a job steward for CSEA.

Prior to July 1, 1995, Armstead was an office assistant II for the California State Police Department. On that date, all employees of the California State Police Department became employees of the California Highway Patrol (CHP) by state, legislation merging the former into the latter.

The San Diego area office of the CHP is a para-military setting, with an area commander, lieutenants, sergeants and supporting clerical staff.

In August 1995³ Frank Kramer (Kramer) was acting commander, the highest ranking officer in the office. Vince Calderon

³All date references hereafter, unless otherwise noted, are to calendar year 1995.

(Calderon) was the executive officer while Larry Duncan (Duncan) was absent. The executive officer is in charge of clerical personnel and reports to the commander.

In early August, the clerical supervisor, Camille Morgan (Morgan), went on vacation for three weeks. Ericha Cook (Cook), an office assistant II, was designated acting supervisor in Morgan's absence.

There was a meeting on August 8.⁴ Armstead did not ask for representation at this meeting. Calderon, Donna Blum (Blum), Cook and Kramer were present. Armstead did not know Kramer, she said.

Armstead's version is in conflict with the other persons present.

Armstead testified that her insubordination to Cook was discussed. She further testified that Kramer tried to grab her because the meeting had got so "riled up." Everybody was yelling, she said, and she was going to walk out. Kramer told her she was not to leave the meeting until the issue was resolved.

Kramer testified that he and Calderon were meeting in the latter's office with Cook and Blum. Armstead knocked on the door and announced she was ill and going home. Calderon told her he wanted to resolve the issue of her failure to follow Cook's direction. Kramer testified that as Calderon commenced that

⁴As noted, the complaint alleged an August 8 meeting, but CSEA requested amendment of the complaint to substitute August 10 for August 8. That request was granted.

discussion, he reached around Armstead and closed the office door.

Cook said there was no physical contact. Cook said that Armstead said she was ill and wanted to go home. Kramer closed the door and said they needed to resolve the issue.

While the August 8 meeting is not a part of this complaint I make a credibility finding against Armstead regarding Kramer's alleged effort to "grab" her based upon the overall record, Armstead's demeanor at hearing and the testimony of the other parties.

Most of the evidence regarding Armstead's experience with the office came from leading questions. Most importantly, memos Armstead subsequently wrote to her superiors reflected a highly focused viewpoint at odds with management about Cook's authority and the chain of command. On August 15, Armstead wrote to Kramer complaining of his treatment of her. She stated his first action against her was on August 10. Given her apparent propensity for taking umbrage at every event, her failure to mention Kramer's alleged "grab" of August 8 renders the assertion unbelievable.

In addition, Cook, at the time of the hearing was no longer an office assistant in the CHP office. She had no interest in the case. This lack of interest rendered her testimony that there was no effort to "grab" Armstead during the meeting more believable.

Finally, Kramer's description of the events, including his denial of Armstead's assertion was consistent with Cook's, and is

the more probable fact. Asserting that an area commander tried to "grab" an employee is a serious charge. The fact that Armstead did not allude to this charge in later memos leads me to conclude Kramer made no effort to grab Armstead.

The August 10 Meeting

On August 10, Calderon, serving as the executive officer, issued a memorandum, styled "Assignment Memorandum" to Armstead which noted her assignment to the San Diego CHP office and gave instructions on her position at that office.

The memo stated:

Your assignment to the San Diego Area will require training in the various work stations within the Area's Clerical section. Training at different desks is necessary in order that a back up is readily available whenever the individual assigned to a particular desk is absent for whatever reason. Your immediate supervisor is Ms. Camille Morgan, OSS II; when she is absent, her back up is Ms. Ericha Cook, or Ms. Donna Blum, both OA Us, they will assist you in successfully completing your training period.

The memo described Armstead's hours of work and then, in some detail, specific duty instructions, including training at the clerical work stations, and three hours daily training at the telephone reception desk.

Under the heading "interpersonal skills" Calderon noted the office had a large number of visiting citizens and that it was important for Armstead to perform her work in a professional and friendly manner and with teamwork. The memo noted that on August 8, she had been directed to work the telephone reception desk and was overheard using curt and abrasive language with

callers. After one hour she told Cook that she could not handle the telephone, and refused to return to the telephone when Cook ordered her to. She was advised that "insubordination and discourteous behavior would not be tolerated."

The memo directed Armstead to become familiar with the chain of command and to abide by it. If she had a problem she was directed to first contact her immediate supervisor to attempt to resolve the matter. If the matter could not be resolved, Armstead was to request permission to go to the next level of command. She was directed not to contact any higher level of command without first obtaining permission from her supervisor.

The memo then noted the aged condition of the facility and likelihood that things might go wrong and the difficulty the Department had in keeping the facility maintained. If Armstead discovered a deficiency or hazard she was to report the matter to her immediate supervisor. On August 8, Armstead had contacted the Department of General Services about a condition in the women's restroom without notifying her supervisor. She had erroneously stated that the janitor had not worked the previous day. She was directed to refrain from contacting outside agencies to request services unless directed to do so by her supervisor.

The memo closed with the following:

As I previously stated, you will be subject to an extensive learning experience. You will also experience a new way of doing things. I urge you to accept constructive criticism well and utilize it to learn and make this time a positive one. Please do not

hesitate to seek assistance from your supervisor in answering any questions you may have regarding the above assignments/procedures.

This memo was presented to Armstead at a meeting that same day that had been requested by Calderon. Present at the meeting was Calderon, Kramer, Cook and Armstead. Kramer said there was no intent to discipline Armstead at this meeting.

Calderon testified that he wanted Armstead to understand her responsibilities. He went through the points of the memo. He did not ask Armstead any questions.

Armstead said the word "insubordination" was used several times, although she was not asked her version of the events. Calderon read the memo to her and stated that he had reviewed her personnel file and stated that she had no "bad history here, and I would hate to have something happen to you." Armstead's request for representation was denied.

Armstead wrote to Calderon on August 11 responding to the memo. She styled it as a "rebuttal" to the memo. She stated that Cook was a rank and file employee and "therefore cannot give me direct orders." She noted that fact did not preclude Cook from assisting her in the prescribed training or making appropriate suggestions. The same was true, she stated, for Blum or any other rank and file person in the office.

Armstead took umbrage at the three-hour telephone assignment when others were only assigned one hour to that task. She asked when the telephone training would end and why was she being treated differently. She requested, "as soon as possible",

written instructions on answering the telephone to prevent any confusion in the event she was accused of doing the chore improperly.

With regard to interpersonal skills, she asked to be consulted in the future to allow her side of the story to be presented, and stated she was offended by the "fabricated" statement that she was curt with callers. She asked why she was not consulted before he wrote the memorandum. Armstead reiterated her denial that she refused to return to the telephone duty. She then wrote:

. . . Regarding the issue of insubordination, I cannot be insubordinate to Ms. Cook or to Ms. Blum. At no time have I been discourteous to any staff member in this office.^[5]

Regarding "chain of command," Armstead stated her preference for following chain of command in solving problems, but, she wrote:

. . . However, when the chain of command is the problem I have every right to proceed to whatever level of this Department I think that is appropriate to address my concerns. I have no intentions of being insubordinate to you or anyone in the California Highway Patrol. However, you cannot deny me my right to go directly to your superiors.

⁵At hearing Armstead testified that she could not be insubordinate to Cook or Blum, and that she was not discourteous to any staff member. The reason that she could not be insubordinate, according to her memos to management, was that Cook and Blum were rank and file employees. Her contention that she was not discourteous is disingenuous in light of her very hard position on their standing to supervise.

Regarding the facility incident referenced in the memo, Armstead complained that she had not been asked about the incident and explained her version of the incident.

Armstead closed with the following:

Finally, I think that it was highly inappropriate for you to have two rank and file individuals in a meeting with me when discussing my performance. I am requesting that information or letters to you be held in the strictest of confidence and not be shared with any rank and file individual.

Armstead testified that she told Calderon that she wanted to go up the chain of command because she thought his memo was unfair.

The August 15 Meeting

Armstead was called to a meeting on August 15 at which Kramer presided. Armstead said that Kramer said he was the next in command and "wanted to hear my side of the story." She arrived at his office at the appointed time, she said, expecting a one-on-one meeting.⁶ Instead, Kramer told her that Cook and Duncan, who had returned by this time and replaced Calderon, would be there.

Kramer verbally reviewed the letter Armstead had written and told her she had some misconceptions he wanted to clear up. He

⁶I do not accept Armstead's version of the purpose of the meeting. Her letter to Kramer of the same date, after the meeting, makes no reference to such a purpose. Kramer wrote to Armstead on August 16 noting the meeting of August 15 was to "address misconceptions" in her letter to Calderon. Armstead responded to this memo on August 18, discussed below. Again, she said nothing of the purpose of the meeting, nor did she take issue with Kramer's description of the meeting's purpose.

testified the meeting was instructional. There was no intent to impose discipline on Armstead.

Kramer asked Armstead if she had any questions, but he did not pose any questions to her about the issues involved.

Armstead wrote to Kramer on August 15 regarding the meeting. She professed her disturbance by his conduct at the meeting stating:

. . . As oppose to you addressing me in a professional and courteous tone, you have continued to try and intimidate and demean me in your conversations. The first incident occurred on Aug. 10. I am respectfully asking that this type of conduct towards me stop immediately.

Someone told her at the meeting that Cook was her supervisor. She wrote:

. . . May I reiterate that I don't believe that another rank and file person can be my supervisor. However, I am sure that this issue will be resolved in the coming weeks.

Armstead confirmed that at the meeting Kramer stated that she was to initiate problems to be addressed with her "alleged 'supervisor' Ms. Cook another rank and file person." Once again, she wrote, "I will reiterate that your directions constitute a breach of confidentiality, and a denial of my personal rights as a California State employee."

The response continued:

Finally, you have denied me my right to go beyond your acting command to have my problems addressed by someone other than yourself. As I stated in the meeting with you, I don't feel comfortably discussing my problems with you because they are personal and confidential. Additionally, there is no

written rule with the California Highway Patrol that says I cannot address my problems directly to the Commissioner or to the Governor of California for that matter.

Armstead stated that since she had been charged with insubordination at the meeting, she was requesting that she be allowed a CSEA representative in all future meetings. She noted that she had asked for representation in the last meeting but he had denied the request.

On August 16, 1995, Armstead was given a "memorandum of direction," from Kramer. This memo reiterated initial directions that Morgan had designated Cook or Blum as acting office supervisors. Kramer cited the incident with Cook on August 8 outlined in the August 10 memo, and reiterated Armstead's contentions in her August 11 memo.

Kramer noted that Armstead had asked for representation at the August 15 meeting and that it was explained that the purpose of the meeting "was not disciplinary," but "only to correct some misconceptions" in her letter to Calderon. She had been advised at the meeting that the acting supervisors had all the authority of supervisors, and that she stated she had been confused and now understood.

Kramer discussed the chain of command rule and that the grievance/complaint procedure had been explained to her. She was instructed that she could not personally contact Department personnel above the level of her area commander.

Kramer then reviewed Armstead's contentions in her August 16 memo and stated:

First, whether you wish to accept it or not, Management does have the right to designate a rank and file employee as an Acting Supervisor. While acting as a Supervisor this employee has the same authority as any other supervisor, and will be treated accordingly.

Secondly, when addressing employment or job related issues within the Chain-of-Command, and including the Business and Transportation Agency and the State Personal Board, you do not have the right to make personal contact with individuals above your local level. This does not prohibit you from contacting anyone outside these agencies if you so desire.

Thirdly, in regard to your request to have a CSEA representative present at meetings between us. You have the right to have a representative present only if the meeting may lead to Adverse Action, or you wish to discuss a matter concerning a grievance or complaint.

Kramer then referred to the manner of her presenting her memos by placing them in envelopes and taped to his desk. On the Monday she had left a message informing Calderon that she had been unable to have her photograph taken. Kramer wrote:

. . . This is an unacceptable practice. In the future you will either deal with your immediate supervisor, whomever that my [sic] be, or make a request through your supervisor to see your Lieutenant.

Armstead was advised that she had a right to file a written response to the memo that would accompany the memo to her personnel file.

There was another meeting on August 17 about which there is no evidence.

Armstead wrote a "rebuttal" on August 18, regarding the August 16 memo and the meeting of August 17. She told Kramer that she had stated that the alleged supervisory personnel could give her direction, but not "direct orders." She expressed having no control over what he "may perceive as a direct order." She told him that this was the last time she would address that particular issue.

Armstead wrote at length about her problems with Cook and a confrontation she had with "Elaine" who was rude to her in training sessions. She closed with the notation that before the meeting of August 17, she had requested union representation but that the request was denied.⁷ At the meeting, she said, he again threatened her with insubordination.

The November 22 Meeting

An incident occurred in the office at the front counter between an Officer Bohm (Bohm) and a female citizen. The citizen told Sergeant Dennis Brunette (Brunette) that she wanted to file a complaint against the officer. Duncan assigned Brunette, Bohm's immediate supervisor, to investigate the matter. Brunette interviewed several witnesses.

Armstead was requested to meet with Brunette on November 22, 1995. Brunette wanted to interview her about the incident. Brunette testified that information from the complainant included Armstead's contention that she had seen the incident and that the

⁷CSEA stated this evidence was for background purposes only. As noted, before hearing CSEA had withdrawn allegations of denial of representation on August 17.

officer was wrong. Because Armstead was a potential witness, Brunette testified, he needed to interview her about the complaint.

Armstead told him that she did not want to talk to him without a CSEA representative present. Brunette said it was not that type of interview.

Armstead said every time she had a meeting with the CHP there were others for the CHP present and she was always alone.

They met in the sergeant's office which contains a number of desks.

Armstead testified "once again, there was someone there to listen to me."

A Sergeant Langford was also in the room. He did not participate in the interview.⁸

Brunette asked Armstead what she had witnessed. Armstead replied, "not very much" and then left the room, because she said, she saw Langford trying to listen to what she had to say. Then, she returned and explained what she had heard from the "heated discussion."

Armstead testified that during the incident, Cook gave her some tissue which Armstead gave to the citizen.

⁸Langford was actually at his own desk in the room where several other sergeants desks are located. Brunette thought that Langford was talking to another officer. Armstead said Langford was in back of her. Langford therefore was not a part of the interview.

Armstead was asked if she had traded telephone numbers with the citizen. Armstead said she had exchanged numbers during her break when she went outside and the citizen was there, crying.

Duncan later interviewed Armstead. Armstead said the questions at this meeting were the same as the November 22.

During this interview Duncan observed some inconsistencies between Armstead's responses that day and those to Brunette's interview.

CSEA introduced evidence of a interview of December 4, 1995, whereat Duncan questioned Armstead about her responses to Brunette's questioning of Armstead at the November 22, 1995, meeting.

Later, disciplinary action was initiated against Armstead for her interaction with the citizen.⁹

Duncan testified that the disciplinary proceeding related not to the discrepancy in her testimony, but rather to the interaction Armstead had with the complaining witness.

Government Code section 19572(e) provides that insubordination is cause for discipline.

ISSUES

The issues in this case are whether the Department violated the Dills Act when it denied Armstead CSEA representation at the August 10, 15 or November 22, 1995, meetings?

⁹As noted in footnote 1, CSEA withdrew its allegation of reprisal on the discipline issue before the hearing.

CONCLUSIONS OF LAW

PERB has held that the right to representation attaches at an employer-conducted investigatory interview where an employee reasonably believes that discipline may occur or in other highly unusual circumstances. (State of California (Department of Parks and Recreation) (1990) PERB Decision No. 810-S, citing Rio Hondo Community College District (1983) PERB Decision No. 292 (Rio Hondo).)

The right to representation arises out of employee rights protected by section 3515 of the Dills Act. That section provides in pertinent part:

Except as otherwise provided by the Legislature, 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. . . .

PERB has further ruled that, "an employee organization has a concurrent right to represent employees at such investigations." (State of California (Department of Parks and Recreation), supra, PERB Decision No. 810-S.)

Where, however, a meeting is held merely to inform the employee of previously pre-determined discipline, no right of representation exists. (Rio Hondo; State of California (Department of Transportation) (1994) PERB Decision No. 1049-S.) In the latter case, an employee was called to a meeting to notify the employee of a previously determined discipline. (See also

Baton Rouge Water Works Company (1979) 246 NLRB 995 [103 LRRM 1056].)

In NLRB v. Weingarten, Inc. (1975) 420 U.S. 251 [88 LRRM 2689] (Weingarten), the court stated:

[NLRB] would not apply the rule [of representation at individual employee-management interviews] to such run-of-the-mill shop-floor conversations as, for example, the giving of instructions or training or needed corrections of work techniques. In such cases there cannot be any reasonable basis for an employee to fear that an adverse impact may result from the interview, and thus we would then see no reasonable basis for him to seek the assistance of his representative. . . .

In Redwoods Community College District v. Public Employment Relations Board (1984) 159 Cal.App.3d 617 [205 Cal.Rptr. 523] (Redwoods), the court of appeal reviewed PERB's decision regarding the right to representation in an interview on the employee's performance review. PERB held that, even where the employee could not anticipate discipline, representation was warranted in an interview on the employee's performance. The court disagreed and stated:

. . . Regardless of their importance, such interviews are an accepted part of personnel management in any well-run operation, and bear no significant threatening or derogatory connotation. Nor is it wholly satisfactory to make the right of representation in an employee-management conversation turn on whether the conversation might in some abstract sense be deemed "investigatory," or on the degree of formality attending the interview, or on a perceived similarity to a grievance or appeal procedure, without more. Even in combination these elements might, in a given case, suggest no more than routine business communication. On the other hand,

in most if not all cases the discipline element will have a direct and rational tendency to narrow the inquiry to manageable dimensions. Although the precedents do not compel a conclusion that the discipline element is invariably essential to a right of representation, under EERA and other California labor statutes representation should be granted, absent the discipline element, only in highly unusual circumstances.

The August 10 Meeting

Presumably, CSEA argues that since reference to Armstead's alleged "insubordination" was made at the August 10 meeting, and "insubordination" is cause for the imposition of discipline under the Government Code, she was entitled to representation at the August 10 meeting.

The record shows the August 10 meeting was not investigatory nor did the employer make a determination, as a result of the meeting, that Armstead had been insubordinate. Rather, the meeting was a presentation of a memo directed at Armstead and giving her instructions regarding her work assignment. Her work-time and duties were described as well as the line of authority of Morgan, Cook and Blum.

In addition, the employer cited what it determined to be unacceptable behavior, and that curt and abrasive language would not be tolerated. Refusal to heed to Cook's orders regarding work assignments would be considered "insubordination."

The memo outlined the chain of command and directed Armstead to abide by it, along with the requirement that she report conditions of the facility to her supervisor.

During the meeting no questions were directed at Armstead. Management's determinations about the propriety of her conduct with regard to her behavior on the telephone, an order from Cook to return to the phone duty, and her conduct regarding the report on the facility had already been determined.

Thus, the meeting was not investigatory. It was a meeting at which Armstead was given work performance direction.

CSEA presented no evidence or argument on how this meeting presented "highly unusual circumstances" as used in Redwoods. Under the authority of Weingarten and Redwoods, the meeting was not investigative, but rather an instructive session to clarify Armstead's reporting responsibilities. In this setting it is found that Armstead had no right to representation.

The August 15 Meeting

The August 15 meeting was called by management to clarify "misconceptions" reflected in Armstead's August 11 "rebuttal" memo to Calderon.

Armstead's memo challenged Cook's authority by flatly stating that Cook was a rank and file employee and could not give Armstead direct orders. This was a direct challenge to Calderon's August 10 order that Cook was her supervisor in Morgan's absence. That order was put in writing and given to Armstead orally. Yet, she was telling CHP that Cook could not give her orders.

It is clear that Armstead's perceived limitation on Cook's authority was a threat to the chain of command operation within

the office. It is also clear that the August 15 meeting was designed by CHP to clarify that Cook was Armstead's supervisor and that she was to abide by the chain of command system of reporting.

Again, at this meeting, no questions were asked of Armstead. No determination was made by management that, as a result of this meeting, Armstead had been insubordinate. The meeting was not an investigatory meeting, but rather a setting where Armstead was directed to report to Cook and to abide by the chain of command.

Again, there is no evidence that presented "highly unusual circumstances" to which, under Redwoods, representation rights might have attached.

The November 22 Meeting

The November 22 meeting was totally unrelated to Armstead's work performance. An incident at the front counter had occurred between Officer Bowen and a female citizen, resulting in a complaint against Bowen. Armstead had spoken to the complainant after the incident, and the complainant thereafter told CHP that Armstead was to be a witness.

In response to the complaint, Duncan directed Bowen's supervisor, Brunette to investigate the matter. Armstead was one of several office employees interviewed about the incident.

While the meeting was investigatory, the investigation was unrelated to Armstead's work performance. The investigation was focused upon the incident between Bohm and the complaining party, to which Armstead was a witness. CSEA advances no argument that

suggests that representation rights should attach when an employee is being interviewed for this type of investigation. Nor is there anything "highly unusual" about the interview.

That Armstead was later subjected to possible discipline for her interaction with the citizen does not relate back to her meeting with Brunette. CSEA presented no evidence that questions to Armstead at the Brunette interview related to her interaction with the citizen. Accordingly, no right of representation arose at the interview.

It has been concluded that Armstead had no right of representation at any of the meetings, therefore, the Department's motion at hearing should be granted and those portions of the complaint should be dismissed.

Since in all three settings, it has been found that Armstead had no right to representation, there can be no violation of CSEA's right to represent Armstead. Accordingly, the Department's motion to dismiss should be granted and that part of the complaint should also be dismissed.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, unfair practice charge LA-CE-331-S, California State Employees Association v. State of California (Department of Highway Patrol) and companion PERB complaint are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless

a party files a request for an extension of time to file exceptions or a statement of exceptions with the Board itself.

This Proposed Decision was issued without the production of a written transcript of the formal hearing. If a transcript of the hearing is needed for filing exceptions, a request for an extension of time to file exceptions must be filed with the Board itself (Cal. Code of Regs., tit. 8, sec. 32132). The request for an extension of time must be accompanied by a completed transcript order form (attached hereto). (The same shall apply to any response to exceptions.)

In accordance with PERB regulations, the statement of exceptions must be filed with the Board itself within 20 days of service of this Decision or upon service of the transcript at the headquarters office in Sacramento. The statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (Cal. Code of Regs., tit. 8, sec. 32135; Cal. Code of Civ. Proc, sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy

served on a party or filed with the Board itself. (Cal. Code of
Regs., tit. 8, secs. 32300, 32305 and 32140.) '.

Gary M. Gallery
Administrative Law Judge