STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SA-CE-1065-S
v.	)	PERB Decision No. 1297-S
STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS),	)	October 22, 1998
Respondent.	)	

Appearances: Anna Kammerer, Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Timothy G. Yeung, Labor Relations Counsel, for State of California (Department of Corrections).

Before Johnson, Dyer and Amador, Members.

DECISION

JOHNSON, Member: This case comes before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (CSEA) to a Board administrative law judge's (ALJ) proposed decision (attached). The ALJ dismissed the charge and complaint, which alleged that the State of California (Department of Corrections) (State) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)[1] by

[1]The Dills Act is codified at Government Code section 3512 et seq. 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 discriminate against employees, or otherwise to interfere with, restrain, or coerce

interfering with protected rights when a State manager refused to allow a CSEA representative to ask a question regarding the new sick leave policy or otherwise participate in a meeting.

The Board has reviewed the entire record, including the proposed decision, the hearing transcript, CSEA's exceptions and the State's response. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge and complaint in Case No. SA-CE-1065-S are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.

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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.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent.	)	Unfair Practice Case No. SA-CE-1065-S PROPOSED DECISION (6/29/98)

Appearances: Anna Kammerer and Jeffrey Young, Labor Relations Representatives, for California State Employees Association; Timothy G. Yeung, Labor Relations Counsel, and Kim M. Smith, Graduate Legal Assistant, for State of California (Department of Corrections).

Before Ronald E. Blubaugh, Administrative Law Judge.

PROCEDURAL HISTORY

At issue here is the question of whether an employee's right to union representation was denied when a manager refused to answer a union representative's question at a meeting between the employee and the manager. The union argues that the meeting was an investigatory interview regarding the employee's sick leave record and her use of a State of California (State) telephone for personal business. By denying the representative the ability to ask a question, the union asserts, the State interfered with both the employee's and the union's protected rights.

The State asserts that the meeting was not an investigatory interview and presented no possibility of disciplinary action against the employee. As such, the State contends, the employee did not have a right to the presence of a union representative,

although the State manager permitted one to attend. Moreover, the State argues, the representative did not attempt to ask a question until after the meeting was over and then, sought to inquire about a subject not discussed at the meeting.

The California State Employees Association (CSEA or Union), filed the unfair practice charge at issue on December 22, 1997. The Union followed with a first amended charge on February 11, 1998. Both unfair practice charges were filed by Anna Kammerer, the CSEA labor relations representative who accompanied the complaining employee to the meeting on November 11, 1997.

As filed on December 22, the charge set out two causes of action: (1) that the State was attempting to unilaterally implement a new sick leave policy at Folsom Prison for employees in State bargaining unit 4, and (2) that the State interfered with protected rights when the State manager refused to allow Ms. Kammerer to ask "a question regarding the new sick leave policy." The first amended charge provided elaboration on the allegation that the State had unilaterally changed the sick leave policy for unit 4 employees working at Folsom Prison.

On February 13, 1998, the Sacramento director of the Public Employment Relations Board (PERB), acting on behalf of the Office of the General Counsel, issued a partial dismissal of the charge. Dismissed was the portion of the charge that alleged a change in the sick leave policy at Folsom Prison. On the same date, the regional director on behalf of the Office of the General Counsel issued a complaint against the State. The complaint alleges that

the State interfered with the right of employee Gina Garcia to be represented by an employee organization when the State permitted the representative to be present at an interview but refused to permit the representative to ask questions or otherwise participate. The complaint alleges that Ms. Garcia had a reasonable belief that the interview would result in disciplinary action or, in the alternative, posed highly unusual circumstances.

By this conduct, the complaint alleges, the State violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act).[1] The State answered the complaint on March 4, 1998, admitting the jurisdictional facts but denying any violation of the Dills Act. A hearing was conducted in Sacramento on June 23, 1998. The parties elected to argue the matter orally at the conclusion of the presentation of evidence whereupon the case was submitted for decision. No written briefs were filed.

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[1]Unless otherwise indicated, all statutory references are to the Government Code. The Dills Act is codified at section 3512 et seq. In relevant part, section 3519 provides as follows:

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

FINDINGS OF FACT[2]

The respondent is the State employer within the meaning of the Dills Act. The Department of Corrections is an appointing authority of the State employer. At all times relevant CSEA has been the exclusive representative of nine State employee bargaining units, including unit 4 (office and allied) where Ms. Garcia, the complaining witness, is employed. The collective bargaining agreement covering unit 4 expired on June 30, 1995. Although the parties have been in negotiations continuously since that date, they had not entered a successor agreement as of the completion of the hearing.

At all times relevant Ms. Garcia has been employed by the State as an office technician at Folsom State Prison. Beginning on or about September 8 or 9, 1997,[3] Associate Warden Karim E. Noujaim commenced a series of meetings with Ms. Garcia regarding what he considered to be certain deficiencies in her job performance. The subject of the September meeting is not revealed in the record but it was followed on October 15, by a counseling meeting regarding Ms. Garcia's use of sick leave and her use of the State telephone.

The day after the October meeting, Mr. Noujaim sent Ms. Garcia a memo that summarized his concerns. In the memo,

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[2]These findings of fact were written on the basis of notes taken at the hearing by the undersigned, the written exhibits introduced by the charging party and a review of certain portions of the tape recording made at the hearing.

[3]Unless otherwise indicated, all references to dates are for the year 1997.

Mr. Noujaim asserted that Ms. Garcia was averaging nine hours of sick leave a month. "This is a high average that needs to be decreased," he wrote. Regarding telephone usage, Mr. Noujaim's memo states that a print-out of telephone calls made to and from Ms. Garcia's private State line "reflected substantial phone activities that did not appear to be work related." Mr. Noujaim states that Ms. Garcia had agreed to verify whether a telephone call to Reno was charged to the State instead of to her personal calling card. The memo concludes with the following statement:

> For the next three months, we will meet at the beginning of each month to discuss your progress in these two areas. I expect you to minimize your sick leave usage and to have more control over your private telephone line. If you suspect that other staff use your line, I shall discontinue it.

Ms. Garcia responded by memo of October 24. In her memo, Ms. Garcia acknowledges that her sick leave balance "is not what it should be" and promises to be more careful in the use of sick leave. However, she also asserts that she does not believe her usage of sick leave has been excessive. Regarding the telephone calls made from her private State line, Ms. Garcia states that she is not the only person who uses the phone. She also states that she makes many work-related long-distance calls each day and has no way to identify or remember those telephone numbers when they appear on the bill. She said she did make a call to Reno but believed she had charged it to her personal calling card. Nevertheless, she offered to pay for the call that appeared on

the State bill. She also requested that Mr. Noujaim discontinue her personal phone line.

Ms. Garcia's memo concludes with the following statement:

> I do not feel that a review is warranted of my progress for the next three months. Now that I am aware of what your expectations are, I will make all attempts to meet them. I personally believe all of the meetings we have had lately and issues brought before me since Monday, September 8, 1997, are a personal attack. I would only hope that you might re-evaluate your request to monitor my performance, due to the fact that all previous appraisals within my eight (8) years of State service have been favorable. Also, in the future, should you request any additional meetings of this nature with me, I am requesting advance notice, so that I may have a CSEA Union Representative and/or EEO Counselor present. That is my right as a State employee....

On November 8, Mr. Noujaim told Ms. Garcia that he wanted to conduct a follow-up meeting on the sick leave and telephone usage matters. Ms. Garcia replied that she wished to have a CSEA representative present and Mr. Noujaim agreed to that request. Ms. Garcia contacted Ms. Kammerer of CSEA who arranged with Mr. Noujaim to conduct the meeting on November 11.

There were four participants at the meeting: Ms. Garcia, Ms. Kammerer, Mr. Noujaim and Rose Del Valle, the purchasing officer at the prison. Ms. Del Valle is a manager and was requested to attend by Mr. Noujaim so he would have a witness. The four participants were generally consistent in their testimony about what transpired at the meeting. However, there were some critical differences as will be seen in the following summary of their testimony.

Ms. Garcia testified that prior to the meeting Mr. Noujaim told her that the purpose of the meeting was to follow up on her sick leave and phone usage. Ms. Garcia testified that she feared the meeting could result in discipline because he already had given her a memo about those subjects and wanted to go into them again. When the meeting began, she testified, Mr. Noujaim told her that the discussion on sick leave would be postponed until a later time. She said he then asked her questions about her use of the State telephone and whether she had made personal long distance calls.

Ms. Garcia testified that she had anticipated there would be such questions and brought the telephone bill from her home to show she had charged calls made from a State phone to her personal calling card. When asked on cross-examination if she recalled Mr. Noujaim stating that he considered the telephone call matter to be closed, Ms. Garcia stated that she recalled no such comment. When the meeting ended, she testified, Ms. Kammerer attempted to ask a question. However, she testified, Mr. Noujaim told Ms. Kammerer that she could not speak and that the meeting was over.

Ms. Kammerer testified that at the November 11 meeting, Mr. Noujaim stated that he would reserve the sick leave discussion until a later date. She said he asked Ms. Garcia between three and six questions about her use of the State telephone, including whether she had made the call to Reno.

Ms. Kammerer testified that during the discussion she took notes but did not attempt to ask any questions.

Ms. Kammerer testified that when Mr. Noujaim was finished he asked Ms. Garcia if she had any questions. Ms. Garcia replied that she did not. Ms. Kammerer testified that she (Ms. Kammerer) then stated that she had "a couple of questions" but was immediately cut off by Mr. Noujaim. She said that Mr. Noujaim stated that it was his meeting and that he would accept no questions from Ms. Kammerer. Ms. Kammerer testified that she was cut off before she was able to voice the subject of her questions. She made no further comment. Ms. Kammerer testified that it was her intent to ask for clarification of the status of the sick leave issue and whether the telephone issue was closed.

Mr. Noujaim testified that he considered the November 11 meeting to be a follow-up to his earlier discussion with Ms. Garcia and that it presented no potential for discipline. Nevertheless, he said, he agreed she could bring a union representative because his relationship with Ms. Garcia was strained and he wanted her to be comfortable. He said he commenced the meeting by stating that he had not seen any further evidence of telephone abuse and that he had removed Ms. Garcia's personal phone line in any event. He said he did not ask any questions about Ms. Garcia's use of the State telephone.

Mr. Noujaim testified that he then addressed the issue of sick leave by stating that not enough time had passed since the October meeting to show a pattern of improvement. He said he

would postpone the discussion about that subject until a future meeting. Mr. Noujaim testified that he asked Ms. Garcia if she had any questions and she said, no. Mr. Noujaim said that Ms. Kammerer then stated that she had a question about sick leave. Mr. Noujaim testified that he replied that the meeting was over and he would accept no questions. He said Ms. Kammerer had not attempted to speak any time during the meeting and did not attempt to speak after he refused her question. Mr. Noujaim said the meeting lasted about 10 minutes.

Ms. Del Valle testified that the November 11 meeting commenced with a statement by Mr. Noujaim that he wanted to discuss a couple of issues regarding Ms. Garcia's work performance. She said he addressed the subject of personal telephone calls and stated that he would request another print-out of her phone bills. Ms. Del Valle said that Mr. Noujaim did not ask any questions, that she could remember, regarding the telephone. She said that Mr. Noujaim addressed the subject of sick leave by stating that he would wait another 30 days to see if there was a decrease in Ms. Garcia's sick leave usage. Ms. Del Valle said that Ms. Kammerer had not spoken to that point of the meeting.

Mr. Noujaim then closed the meeting by asking Ms. Garcia if she had any questions. Ms. Del Valle quoted Ms. Garcia as replying, "no." However, Ms. Del Valle testified, Ms. Kammerer then stated that she had a question regarding the "sick leave policy." Ms. Del Valle testified that Mr. Noujaim responded that

he would not take any questions. Ms. Del Valle estimated the length of the meeting at 15 to 20 minutes.

LEGAL ISSUES

1. Was the meeting between Mr. Noujaim and Ms. Garcia an investigatory interview that reasonably might have led to discipline and/or was conducted in highly unusual circumstances?

2. If so, did the State interfere with the rights of Ms. Garcia and CSEA when Mr. Noujaim denied Ms. Kammerer the right to ask questions at the conclusion of the meeting?

CONCLUSIONS OF LAW

State employees have the right under the Dills Act 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."[4] Under section 3519(a), it is unlawful for the State employer "to interfere with, restrain, or coerce employees because of their exercise of" protected rights. In an unfair practice case involving an allegation of interference, a violation will be found where the employer's acts interfere or tend to interfere with the exercise of protected rights and the employer is unable to justify its actions by proving operational necessity. (Carlsbad Unified School District (1979) PERB Decision No. 89.)[5] In an

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[4]Section 3515.

[5]The Carlsbad test for interference provides, in relevant part, as follows:

> 2. Where the charging party establishes that the employer's conduct tends to or does

interference case, it is not necessary for the charging party to show that the respondent acted with an unlawful motivation. (Regents of the University of California (1983) PERB Decision No. 305-H.)

It is well-settled that one way an employee may exercise protected rights is to request union representation at any investigatory interview the employee reasonably believes might result in discipline. This rule has been adopted in both the private sector[6] and the public sector[7] and is known generally as the Weingarten rule. The PERB has adopted the Weingarten rule

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> result in some harm to employee rights granted under the EERA, a prima facie case shall be deemed to exist;
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> 3. Where the harm to the employees' rights is slight, and the employer offers justification based on operational necessity, the competing interest of the employer and the rights of the employees will be balanced and the charge resolved accordingly;
>
> 4. Where the harm is inherently destructive of employee rights, the employer's conduct will be excused only on proof that it was occasioned by circumstances beyond the employer's control and that no alternative course of action was available;
>
> 5. Irrespective of the foregoing, a charge will be sustained where it is shown that the employer would not have engaged in the complained-of conduct but for an unlawful motivation, purpose or intent.

[6]NLRB v. J. Weingarten, Inc. (1975) 420 U.S. 251 [88 LRRM 2689] (Weingarten).

[7]Civil Service Assn. v. City and County of San Francisco (1978) 22 Cal.3d 552 [150 Cal.Rptr. 129]; Robinson v. State Personnel Board (1979) 97 Cal.App.3d 994 [159 Cal.Rptr. 222]; Marin Community College District (1980) PERB Decision No. 145.

for cases involving the State. (See State of California (Department of Forestry) (1988) PERB Decision No. 690-S.) Thus, the State will violate section 3519(a) if it interferes with an employee's protected right to union representation at an investigatory interview which reasonably might lead to discipline.

In Weingarten situations, the key inquiry is whether the interview was investigatory and of the type that might lead to disciplinary action. This "is an objective inquiry based upon a reasonable evaluation of all the circumstances, not upon the subjective reaction of the employee." (Alfred M. Lewis, Inc. v. NLRB (9th Cir. 1978) 587 F.2d 403 [99 LRRM 2841, 2845].) In situations where the employee faces an investigatory interview, the employer must inform the employee of the nature of any charge of impropriety before the meeting. This is so the employee can meaningfully exercise the right to representation.[8]

There is no right to representation where the purpose of the meeting is simply to deliver notice of the discipline and not to "elicit damaging facts" or possibly modify the discipline.[9] (See State of California (Department of California Highway Patrol (1997) PERB Decision No. 1210-S adopting decision of administrative law judge.) However, where the employer comes to

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[8]Pacific Telephone and Telegraph Co. v. NLRB (9th Cir. 1983) 711 F.2d 134 [113 LRRM 3529] .

[9]Rio Hondo Community College District (1982) PERB Decision No. 260. See also, NLRB v. Certified Grocers of California, Ltd. (9th Cir. 1978) 587 F.2d 449 [100 LRRM 3029]; Baton Rouge Water Works Co. (1979) 246 NLRB 995 [103 LRRM 1056].

the meeting prepared to discuss modification of the discipline the right to representation re-attaches.[10]

An employee also a right to representation in nondisciplinary situations presenting "highly unusual circumstances." (Redwoods Community College District v. PERB (1984) 159 Cal.App.3d 617 [205 Cal.Rptr. 523] (Redwoods).) In Redwoods highly unusual circumstances were found where an evaluation review meeting was "investigatory and relatively formal" in an "atmosphere [that] was intimidating." It made no difference that an administrator had assured the participating employee that the meeting had "no aspect or overtones for discipline." (Id. at 625.)

CSEA argues that the November 11 meeting was an investigatory interview conducted in an atmosphere that was intimidating. CSEA points out that there was a previous meeting where the issues were fully discussed and a subsequent exchange of memoranda that further clarified matters. If, as Mr. Noujaim testified, the issue of telephone usage had been fully resolved previously why, CSEA asks, was the follow-up meeting conducted at all? CSEA challenges Mr. Noujaim's testimony that all he said about telephone usage on November 11 was that the issue was resolved. If that is all he said, CSEA asks, how could have the meeting lasted as long as 10 minutes, a time calculation to which Mr. Noujaim himself testified?

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[10]Rio Hondo Community College District, supra, PERB Decision No. 260.

What actually happened, CSEA argues, is that Mr. Noujaim asked questions about the telephone usage, which is what Ms. Garcia had anticipated would happen and why she asked for a representative. When Ms. Kammerer was denied the right to ask questions, CSEA concludes, Ms. Garcia was denied the right to representation.

The State rejects the contention that the meeting was an investigatory interview that had the possibility of discipline. There was no possibility of discipline, the State argues, and at most the meeting was to be a discussion. The State accuses CSEA of attempting to advance the position that an employee has a right to representation at every meeting with a supervisor, something the Dills Act plainly does not contemplate. Moreover, the State continues, even if it be assumed that Ms. Garcia had the right to a union representative she in fact had one. The State points out that Ms. Kammerer sat silently through the entire meeting and did not ask a question until the meeting was over. Moreover, the State argues, the question posed by Ms. Kammerer involved sick leave, a subject not covered at the meeting. Since the question did not involve any subject discussed, the State concludes, Mr. Noujaim's refusal to permit it could not have interfered with protected rights.

The first question presented by these facts is whether Ms. Garcia had a right to representation at the November 11 meeting. Phrased another way, was the meeting either an investigatory interview that reasonably could have resulted

in discipline (Weingarten), or a meeting conducted under highly-unusual circumstances (Redwoods)?

The State takes a rather benign view of the November 11 meeting. All that happened, according to the State, is that the discussion of sick leave usage was postponed and Ms. Garcia was told that the question of misuse of the State telephone had been permanently put to rest. I share CSEA's view that this account of the meeting seems highly unlikely. One wonders, why would Mr. Noujaim call the meeting at all if that is all he had planned for November 11?

I conclude that the issue regarding the alleged misuse of the State telephone was unresolved prior to the meeting. Ms. Garcia came to the November 11 meeting expecting to be asked more questions about her use of the telephone. Indeed, she brought with her a copy of her home telephone bill in order to prove her contention that she had used her personal calling card to make calls from her State telephone line. Misuse of a State telephone is conduct which could indeed lead to discipline.

What actually occurred at the meeting bore out Ms. Garcia's pre-meeting concerns. Both Ms. Garcia and Ms. Kammerer testified that Ms. Garcia was asked questions about her telephone usage. I credit their testimony and reject Mr. Noujaim's testimony that all he said regarding the telephone usage was that he considered the matter to be closed. He may have said this at the end of the meeting but this was not his position at the beginning.

I find it far more likely that Ms. Garcia was asked questions than that she was not. Mr. Noujaim testified that the meeting lasted 10 minutes. The other witness for the State, Ms. Del Valle, estimated the length of the meeting at 15 to 20 minutes. It could not possibly have taken 10 to 20 minutes for Mr. Noujaim to simply advise Ms. Garcia that the phone issue was closed and that he was not going to discuss the sick leave question that day. Something else occupied that time. I conclude that what occupied the time were questions by Mr. Noujaim to Ms. Garcia regarding her use of the State telephone and her response to those questions.

For this reason, I conclude that the meeting of November 11 was indeed investigatory in nature. I further conclude that Ms. Garcia reasonably anticipated that the meeting would include investigatory questions about her use of the State telephone. Thus, Ms. Garcia reasonably could have inferred the possibility that discipline could result from her answers to questions about the use of the State telephone. I conclude, therefore, that Ms. Garcia had the right to union representation at the meeting of November 11.

This conclusion leads to the final question, whether Ms. Garcia was denied the right to representation when Ms. Kammerer was barred from asking a question. Representation is denied if a union representative present at a meeting is prohibited from speaking. (Redwoods.) The question here, however, is whether Ms. Kammerer's attempt to ask a question at

the end of the meeting was an attempt to represent Ms. Garcia. For the reasons that follow, I conclude that it was not.

Ms. Del Valle testified that what Ms. Kammerer attempted to ask was a question about the "sick leave policy." Ms. Kammerer testified that she did not disclose the subject of her pending question because she was cut off by Mr. Noujaim as soon as she stated she had "a couple of questions." I credit Ms. Del Valle's testimony about what Ms. Kammerer attempted to ask.

It is clear from the text of the unfair practice charge filed here by Ms. Kammerer that her original focus in these events was what she considered to be a newly imposed sick leave policy. In the text of the unfair practice charge, which was signed by Ms. Kammerer, she sets out the following description of the question she posed to Mr. Noujaim at the end of November 11 meeting:

> . . . When Mr. Noujaim asked Ms. Garcia if she had any questions, Ms. Garcia stated she did not however, Ms. Kammerer stated that she had a question regarding the new sick leave policy. Mr. Noujaim stated to Ms. Kammerer, 'I will not allow you (Ms. Kammerer) to ask any questions nor will I entertain any comments from you.' . . . . [Emphasis supplied.]

Ms. Kammerer wrote this description of her question on or about December 22, a date much closer in time to the event at issue than was her testimony of June 23, 1998. It is a description virtually identical to the testimony of Ms. Del Valle. I find Ms. Kammerer's statement in the charge to be more reliable than her testimony. I conclude, therefore, that what

Ms. Kammerer was barred from asking on November 11 was "a question regarding the new sick leave policy."

Based on this conclusion, it is apparent that Ms. Kammerer was not attempting to represent Ms. Garcia when she posed a question to Mr. Noujaim at the conclusion of the November 11 meeting. She was, instead, attempting to engage in a discussion about what she saw as a unilateral change by the State in a negotiable subject. This was an issue far afield from the use of the State telephone, the only matter discussed on November 11. I conclude, therefore, that in refusing to permit the question Mr. Noujaim did not interfere with Ms. Garcia's right to representation or with CSEA's right to represent its member. Accordingly, I conclude that the charge and complaint must 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 SA-CE-1065-S, California State Employees Association v. State of California (Department of Corrections) 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 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 Regs., tit. 8, sec. 32300.) 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 sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . ." (Cal. Code 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 Regs., tit. 8, secs. 32300, 32305 and 32140.)

Ronald E. Blubaugh

Ronald E. Blubaugh
Administrative Law Judge