

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION, PERRY KENNY, STEVEN)
K. ALARI AND BARBARA GLASS,)
)
Charging Parties,) Case No. SA-CO-216-S
)
v.) PERB Decision No. 1399-S
)
STATE EMPLOYEE CAUCUS FOR A) August 4, 2000
DEMOCRATIC UNION, AND ITS AGENTS)
JIM HARD, CATHY HACKETT AND)
DOES 1-100,)
)
Respondents.)
_____)

Appearance: Michael P. White, Attorney, for California State Employees Association.

Before Dyer, Amador and Baker, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from a Board agent's dismissal (attached) of an unfair practice charge filed by the California State Employees Association, Perry Kenny, Steven K. Alari and Barbara Glass (CSEA). CSEA alleges that the State Employee Caucus for a Democratic Union and its agents, Jim Hard, Cathy Hackett and Does 1-100 (CDU), engaged in unfair practices in violation of the Ralph C. Dills Act (Dills Act), Government Code sections 3515.5,¹ 3519(b) and (d),² and 3519.5 (a) and (b).³

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

Section 3515.5 provides:

Employee organizations shall have the right

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the

to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

²Section 3519 provides, in pertinent part:

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

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

(d) 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.

³Section 3519.5 provides, in pertinent part:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the state to violate Section 3519.

(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.

warning and dismissal letters and CSEA's appeal.⁴ The Board hereby adopts the dismissal letter and pages 1-10 of the warning letter as the decision of the Board itself. The Board does not adopt the remainder of the warning letter.⁵

ORDER

The unfair practice charge in Case No. SA-CO-216-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

⁴CSEA's request for consolidation of this case with PERB Case Nos. SA-CO-199-S and SA-CO-201-S is hereby denied.

⁵In the adopted portion of the warning letter, the Board agent rejected CSEA's claim that CDU is a "competing organization" within the meaning of the Dills Act. Based upon the facts presented, the Board agrees with this conclusion. However, each case must turn on its own facts.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 15, 1999

Michael P. White, Attorney
Law Offices of Michael Philip White
2230 "L" Street
Sacramento, CA 95816

Re: NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
California State Employees Association, Perry Kenny, Steven
K. Alari, and Barbara Glass v. State Employee Caucus for a
Democratic Union (CDU), and its Agents, Jim Hard, Cathy
Hackett and Does 1-100
Unfair Practice Charge No. SA-CO-216-S

Dear Mr. White:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 6, 1999, and amended on May 21, 1999. Charging Parties in this matter are the California State Employees Association (CSEA), and Perry Kenny, Steven K. Alari and Barbara Glass, CSEA's president, executive vice president and secretary-treasurer, respectively. The named Respondents are the State Employee Caucus for a Democratic Union (CDU) "and its agents, Jim Hard, Cathy Hackett and Does 1-10 0 . "

I indicated to you, in my attached letter dated June 15, 1999, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to June 25, 1999, the charge would be dismissed. An extension of time to July 15, 1999, was later granted.

I have not received either an amended charge or a request for withdrawal. On July 14, 1999, you informed me that the charge would not be amended or withdrawn. Therefore, I am dismissing the charge based on the facts and reasons contained in my June 15, 1999 letter.

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. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain

Dismissal Letter
SA-CO-216-S
Page 2

the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

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 mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, sec. 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 with the Board itself. (See Cal. Code Regs., tit. 8, sec. 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

Dismissal Letter
SA-CO-216-S
Page 3

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 (3) 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. (Cal. Code Regs., tit. 8, sec. 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,

ROBERT THOMPSON
Deputy General Counsel

Les Chisholm
Regional Director

Attachment

cc: Christopher W. Katzenbach
Bradley G. Booth

PUBLIC EMPLOYMENT RELATIONS BOARD



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



June 15, 1999

Michael P. White, Attorney
Bradley G. Booth, Attorney
2230 "L" Street
Sacramento, CA 95816

Re: WARNING LETTER
California State Employees Association, Perry Kenny, Steven
K. Alari, and Barbara Glass v. State Employee Caucus for a
Democratic Union (CDU), and its Agents, Jim Hard, Cathy
Hackett and Does 1-100
Unfair Practice Charge No. SA-CO-216-S

Dear Messrs. White and Booth:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 6, 1999, and amended on May 21, 1999. Charging Parties in this matter are the California State Employees Association (CSEA), and Perry Kenny, Steven K. Alari and Barbara Glass, CSEA's president, executive vice president and secretary-treasurer, respectively. The named Respondents are the State Employee Caucus for a Democratic Union (CDU) "and its agents, Jim Hard, Cathy Hackett and Does 1-100." As more fully explained below, Jim Hard and Cathy Hackett are also officers of CSEA.

CSEA is a large employee organization that represents nine bargaining units of the State pursuant to the Ralph C. Dills Act,¹ and several units of the California State University (CSU) under the Higher Education Employer-Employee Relations Act (HEERA).² CSEA's membership also includes State employees who are excluded from coverage of the Dills Act, and retired employees. Organizationally, CSEA is divided into four parts. The Civil Service Division (CSD), comprising the rank and file employees in state bargaining units; the Retirees Division; the Supervisors Affiliate; and the State University Division. CSEA is governed by its General Council, a delegate body with representation from all divisions and affiliates which meets once a year, and by a Board of Directors. The Board of Directors includes four officers elected at large, two officers elected by and from each division/affiliate, and regional directors elected at large.

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

²HEERA is codified at Government Code section 3560 et seq.

The CSD is governed by the Civil Service Division Council (Council or CSDC). Hard is currently the director of the CSD and Hackett is the deputy director. By virtue of their election to these positions, Hard and Hackett also occupy seats on the Association Board of Directors. Both have held these positions since 1996 and were reelected in 1998. Kenny, the former CSD director, has served as CSEA president since 1996. Hackett and Hard are also among the founders and leaders of the CDU.

The relationship between Hard, Hackett and other CDU adherents, on the one hand, and Kenny and other leaders of CSEA, on the other, has been a contentious one in recent years. The two factions have contended for elective office within CSEA, internal charges have been filed within CSEA, civil litigation has been pursued, and various unfair practice charges have been filed with PERB.

The Instant Charge

Charging Parties summarize the issues and allegations in their charge as follows:

- a) CDU is an "employee organization" with one of its primary purposes to represent state employees in their employment relations with the state and is therefore unlawfully competing with CSEA and is subject to the Dills Act and PERB sanction for violation of the same;
- b) Hard and Hackett have admitted their founding member role and continued agency on behalf of the CDU;
- c) CDU and its agents Hard, Hackett and others have intentionally and continually misrepresented the purposes of CDU to the state employer and CSEA so as to fraudulently induce the state to violate Government Code section 3519(b)(d) and thereby allow CDU to unlawfully compete against CSEA from within and to dominate CSEA and interfere with its exclusive rights under Government Code section 3515.5 to its detriment, harm which is irreparable and harm which will continue unless and until enjoined by PERB;
- d) CDU and its agents Hard, Hackett and others have admittedly usurped CSEA's

resources for their illegal purposes of interfering with and/or dominating CSEA by organizing CDU at CSEA's expense and to CSEA's detriment, harm which is irreparable and harm which will continue unless and until enjoined by PERB [reference to attached evidence omitted];

e) CDU and its agents Hard, Hackett, the CDU controlled Civil Service Division Council and others are using the unfair labor practice charging apparatus of the State of California, Public Employment Relations Board to perpetrate unlawful retaliation against charging parties CSEA and it's [sic] Board of Directors, many of whom are state bargaining unit employees covered by the Dills Act, and CSEA members Perry Kenny, Steven Alari and Barbara Glass for exercising their respective protected rights to participate in their union's activities and disagree with CDU and its agents Hard, Hackett and others in the manner in which they have insisted upon administering the Civil Service Division (CSD) of the CSEA, in large part in violation of CSD policies;

f) CDU and its agents Hard, Hackett, the CDU controlled Civil Service Division Council and others are taking unlawful acts of reprisals against the lawfully elected and currently empowered Civil Service Division Bargaining Unit Negotiation Committee (BUNC) members because of their exercise of rights guaranteed to them under the Dills Act to participate in CSEA's collective bargaining activities and because of their dissent against the political ideology of the CDU and its agents, Jim Hard, Cathy Hackett and Does
1 - 100. . . .

Charging Parties also plead their charge allegations in four parts³ as follows:

³Charge One, Two and Three were contained in the original charge; Charge Four was added in the amended charge.

Charge One. On March 5, 1999, Hard issued a notice convening a special meeting of the CSDC for March 21, 1999, ostensibly to discuss postponing the election of district bargaining unit representatives in order to avoid an interruption of contract negotiations.⁴ However, at the CSDC meeting, the elections were not postponed but instead the schedule was accelerated. In addition, the CSDC approved a motion to suspend funding for negotiations by the BUNCs until after the election of new BUNCs.

Charging Parties allege that the CSDC actions were instigated and carried out by CDU, through its agents Hard and Hackett and other members holding membership both in CSEA and CDU, as reprisals against those BUNC chairs and members who do not agree with CDU's approach to negotiations. Charging Parties further contend that Respondents have thus interfered with CSEA members' protected activities related to carrying out negotiations with the State employer, subjected CSEA to potential claims of bad faith bargaining by the State employer, and interfered with CSEA's representation of its members.

In addition, Charging Parties allege that CDU, by "unlawfully" competing with CSEA (from within CSEA), has caused or attempted to cause the state to violate the Dills Act by allowing a competing employee organization to exist within CSEA which dominates and/or interferes with CSEA. With respect to this latter allegation, it is understood that, by reference to the "state," Charging Parties refer to PERB itself.

Charge Two. Following the conclusion of negotiations on the short term interim agreements, Hard and Hackett, and others, participated in contract ratification meetings at CSEA work sites around the state. These meetings, and the travel required, utilized CSEA resources.

Charging Parties allege that CDU's agents, including Hard and Hackett, "encouraged bargaining unit members to join CSEA for the sole, limited and temporary purpose of voting to reject the proposed MOU's." This conduct is also alleged to constitute retaliation against CSEA and those of its members and officers who disagree with CDU and interference with protected activity. Further, the conduct is alleged to subject CSEA to bad faith

⁴After a period of nearly four years without an agreement, the State employer and CSEA had reached agreement on short term interim contracts, effective March through June 1999. Negotiations on behalf of CSEA are carried out by elected bargaining unit negotiations councils (BUNCs).

bargaining charges by the State employer and sanctions by PERB for failure to bargain in good faith.

Charge Three. Charging Parties allege that, on September 24, 1998, Hard, Hackett, "the CDU controlled Civil Service Division Council and others" violated CSEA bylaws by making public confidential internal CSEA documents concerning a personnel transaction between Kenny and CSEA. They further allege that, by the same conduct, Respondents violated Kenny's privacy rights and defamed Kenny by falsely accusing him of a crime. This conduct is alleged to have been undertaken as a reprisal against Kenny because of his opposition to CDU. In support of this claim, Charging Parties cite various publications and letters which refer to Kenny as a criminal and as "anti-union." Charging Parties also note that the September 24 distribution of documents occurred just prior to the election of statewide CSEA officers.

On December 4, 1998, Alari and Glass filed charges within CSEA against Hard because he had failed to prevent the distribution of the above-described confidential documents at the September 24 CSDC meeting.

A separate violation was committed, according to Charging Parties, when Hard and Hackett attached the same confidential internal CSEA documents to their unfair practice charge in PERB Case No. SA-CO-211-S, which was filed on January 20, 1999, and did so without first seeking a protective order from PERB to seal these confidential records. The filing of SA-CO-211-S also constitutes a violation of the Dills Act, according to Charging Parties, because Hard and Hackett allege therein that Alari and Glass, acting as agents of CSEA, were engaged in retaliatory conduct when they filed the December 4 internal charges. Thus, under the theory being pursued by Charging Parties, Hard and Hackett engaged in unlawful retaliation against Alari and Glass when they filed a charge alleging retaliation by CSEA.

Charge Four. Charging Parties allege that, following the filing of the instant charge, Hard, Hackett and CDU further retaliated against and interfered with CSEA and its BUNCs by stripping the BUNC members of all authority to continue to negotiate with the State employer, and by communicating with the State employer with the intent to cause the State employer to violate CSEA's Dills Act rights.

On May 6, 1999, the CSDC took action regarding the powers and responsibilities of BUNCs during the period between the ratification of a contract and the election of new BUNC members. The policy adopted by the CSDC provides that BUNC members continue in office until the election of new members and have the

authority to negotiate tentative agreements, but subject to certain restrictions, as follows:

- a. The CSD Director or Deputy Director (Finance), or the Director's designee, must be present at any negotiations.
- b. All bargaining proposals or other correspondence relating to negotiations must have the prior approval of the CSD Director, and only the CSD Director or designee has the authority to schedule bargaining meetings.
- c. All tentative agreements must be submitted to the CSD Director and approved by the "Division Committee" before any further action may be taken. The Division Committee may defer action until election of new BUNC members and resubmit the tentative agreement for approval by the new BUNCs.

There followed an exchange of correspondence between Hard and the State employer, with Kenny also writing to the State employer concerning the relative authority of the BUNCs. In brief, Hard communicated the policies described above and the requirement that his designee attend any bargaining sessions held, and Hard also suggested postponing further bargaining sessions until new BUNC members were elected (which he indicated would occur by May 21, 1999). The State employer wrote expressing concerns that CSEA was attempting to unilaterally change certain mutually-agreed to ground rules and potentially was proposing to send negotiators to the table without the requisite authority, asking that CSEA communicate a unified position concerning the composition and authority of CSEA's bargaining teams, and expressing its willingness to meet and negotiate with CSEA's bargaining teams. Kenny wrote indicating that the existing BUNCs still have full authority to negotiate and denying that CSEA was seeking to change any ground rules.

Over the same time period, Hard also appointed persons to various committees, such as joint labor-management safety committees, over the opposition of certain BUNC chairs, and also informed certain BUNC members that they had not been properly appointed under CSEA policies.

Status of Named Parties as Respondent

As discussed above, Charging Parties filed the instant charge against CDU and certain named individual state employees (Jim Hard and Cathy Hackett, as well as "Does 1 - 100"). However, the Dills Act only defines unlawful actions by the state (section 3519) and unlawful actions by employee organizations (section

3519.5), and nowhere defines unlawful actions by an individual state employee. Thus, to the extent this charge is filed against Hard, Hackett and Does 1 - 100 as individuals, the charge must be dismissed.

Further, the charge may be treated as a proper filing against CDU only if it is determined that CDU is an "employee organization" within the meaning of the Dills Act. The Dills Act defines "employee organization" at section 3513(a) as meaning "any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state."

In State of California (Department of Developmental Services) (1982) PERB Decision No. 228-S (often referred to as Monsoor, after the name of the charging party), the Board held that, in applying the statutory definition of "employee organization," it is "unnecessary for a group of employees to have a formal structure, seek exclusivity, or be concerned with all aspects of the employment relationship." The central focus in the Monsoor analysis, and all other Board decisions which address the definition of employee organization, is whether the group in question exists "for the purpose of furthering the interests of employees by dealing with the employer on a matter of employer-employee relations." (Id. ; emphasis added.)

Charging Parties first argue that PERB has previously determined that CDU is an employee organization within the meaning of the Dills Act, citing California State Employees Association (Hackett, et al.) (1995) PERB Decision No. 1126-S (Hackett). This argument appears to be based on a misreading of the Board's decision. Therein, the Board did determine that Hackett, Hard and others had engaged in protected conduct when engaged on behalf of CDU, but the decision clearly relies on facts demonstrating that Hackett and Hard were thereby participating in CSEA. As the hearing officer observed in his proposed decision:

What Ms. Hackett, Mr. Hard and others have underway is an attempt to take over CSEA, not destroy it. What they seek to do is to convert CSEA to their view of unionism.

The Board concurred, noting that Hard and Hackett (not yet elected to their current offices in CSEA) were involved in a challenge to the then-current leadership of CSEA and not to CSEA itself. (Id.) Thus, Charging Parties' assertion that the Board has previously found CDU to be an employee organization within the meaning of the Dills Act is not supported by applicable precedent. In fact, Hackett supports a finding that CDU

constitutes a political faction within CSEA and not a separate employee organization.⁵ For these reasons, an analysis of the first prong of Charging Parties' argument results in the conclusion that the instant charge is improperly filed for lack of a properly-named respondent.

DPA's Designation of CDU

The second prong of Charging Parties' argument on this point asserts that the Department of Personnel Administration (DPA), exercising its exclusive authority under Dills Act section 3520.7, has already determined that CDU is an "employee organization." Section 3520.7 provides as follows:

The state employer shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (c) of Section 1150, and bona fide associations, as defined by subdivision (d) of Section 1150.

(b) Determining the status of organizations and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

⁵This analysis is consistent with that of Administrative Law Judge (ALJ) D'Orazio, who issued a proposed decision on April 12, 1999, in the consolidated matter of Paul Gonzalez-Coke v. CSEA (SA-CO-199-S) and Jim Hard and Cathy Hackett v. CSEA (SA-CO-201-S). ALJ D'Orazio, whose decision is now on appeal to the Board itself, considered and rejected CSEA's argument that CDU is an unlawful employee organization competing with CSEA in a way that undercuts CSEA's right to represent its members, finding "no support in the record" and finding the argument "squarely at odds with PERB case law, and ultimately is unconvincing. PERB has never ruled that CDU is an employee organization under the Dills Act. Quite the opposite is true." Although ALJ decisions are not precedential (see PERB' Regulation 32320), such findings are instructive.

Government Code section 1150, which deals with issues relating to salary and wage deductions for state employees, includes the following definitions:

(c) "Employee organization" means an organization which represents employees of the state or the California State University in their employer-employee relations, and which is registered with the Department of Personnel Administration or the Trustees of the California State University, or which has been recognized or certified by the Public Employment Relations Board.

(d) "Bona fide association" means an organization of employees and former employees of an agency of the state and the California State University, and which does not have as one of its purposes representing these employees in their employer-employee relations.

DPA, acting pursuant to its authority under Government Code sections 3520.7 and 19815.4(d), has adopted a regulation which defines a bona fide association as an "organization of employees and former employees of the State including affirmative action advocacy groups and professional organizations which do not have as one of their purposes the representing of employees in their relations with the State."⁶ DPA's regulations require bona fide associations to file a registration statement that certifies the organization does not have as a purpose the representation of state employees on matters within the scope of representation, does not have an affiliation with an employee organization or recognized employee organization, and is not acting as an employee organization by filing unfair practice charges or competing to be an exclusive representative.⁷

In 1995, Hard wrote to DPA on behalf of CDU seeking designation of CDU as a bona fide association, in order to enable CDU to obtain payroll deduction of its members' dues. Hard asserted that CDU does, not have as a purpose the representation of employees, is not affiliated with CSEA, and does not file unfair practice charges or seek to become an exclusive representative.

⁶California Code of Regulations, title 2, section 599.866.

⁷California Code of Regulations, title 2, section 599.867.

CDU's application was denied, by letter dated October 30, 1995, based on DPA's "findings" that CDU has as a primary purpose representation of rank and file employees and that CDU is affiliated with CSEA. DPA's letter further noted that it matters not whether CDU exists to take over CSEA from within or to decertify CSEA, as both purposes are inconsistent with the "fraternal" type of organization envisioned as a bona fide association, and thus CDU's goals were not consistent with the "spirit" of such an association.

DPA's "findings", as noted above, were made pursuant to the provisions of Government Code section 1150, and not section 3513(a) of the Dills Act. Charging Parties cite no authority for the proposition that such a finding is controlling on PERB's exercise of its exclusive initial jurisdiction to interpret the Dills Act. Moreover, the evidence submitted with this charge supports the Board's earlier conclusion that CDU constitutes a political faction within CSEA.⁸ For these reasons, and based on Monsoor and Hackett, I conclude that CDU is not an employee organization within the meaning of Government Code section 3513(a). Thus, the instant charge must be dismissed as improperly filed.

⁸For example, in a letter dated November 18, 1993, Hard referred to CDU as a "reform movement in CSEA" (Exhibit C); CDU's publication titled Union Spark from July 1997 likewise described CDU as "a reform movement inside CSEA" and stated that CDU's "object is to strengthen [CSEA] from within" (Exhibit E); and CDU's membership application form describes CDU as a "reform movement within" CSEA, asks the applicant whether he/she is a member of CSEA or eligible to be one, and contains a slogan as follows: "Dedicated to restoring the rights, authority, power, and dignity of our Union's rank and file membership." (Exhibit N.)