

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



MICHAEL SAMUEL PITTMAN,

Charging Party,

v.

CDF FIREFIGHTERS,

Respondent.

Case No. SA-CO-258-S

PERB Decision No. 1814-S

February 7, 2006

Appearances: Driscoll and Associates by Thomas J. Discoll, Jr., Attorney, for Michael Samuel Pittman; Carroll, Burdick & McDonough by Gregg McLean Adam, Attorney, for CDF Firefighters.

Before Duncan, Chairman; Whitehead and McKeag, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Michael Samuel Pittman (Pittman) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the CDF Firefighters (Firefighters) violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by: then-President Tom Gardner (Gardner) interfering with Pittman's right to pay dues, telling Pittman that the Firefighters were unable to process Pittman's membership unless deductions were made from his paycheck, and canceling Pittman's membership during the appeal of his termination; current-President Bob Wolf interfering with Pittman's pursuit of unfair practice charges against Gardner and allowing the Hearing Committee to retaliate against Pittman for filing an unfair practice charge; the Hearing Committee interfering with Pittman's rights by removing Pittman as a

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<sup>1</sup>The Dills Act is codified at Government Code section 3512, et seq.

Director of the San Benito-Monterey Chapter and expelling Pittman from membership for filing internal charges against Gardner.

The Board has reviewed the entire record in this matter, including the original unfair practice charge, the first, second, and third amended unfair practice charges, the warning and dismissal letters of the Board agent, Pittman's appeal and supplemental documents,<sup>2</sup> and the Firefighters responses.

The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CO-258-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag joined in this Decision.

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<sup>2</sup>The supplemental documents were not relied upon in making our decision because the documents were not timely filed.

**PUBLIC EMPLOYMENT RELATIONS BOARD**

Office of the General Counsel  
1031 18th Street  
Sacramento, CA 95814-4174  
Telephone: (916) 327-8381  
Fax: (916) 327-6377



December 31, 2004

Michael Samuel Pittman

Re: Michael Samuel Pittman v. CDF Firefighters  
Unfair Practice Charge No. SA-CO-258-S  
**DISMISSAL LETTER – 3<sup>rd</sup> Amended Charge**

Dear Mr. Pittman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 24, 2003. Michael Samuel Pittman alleges that the CDF Firefighters violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by discriminating against him and failing to follow their internal bylaws. This conduct is alleged to violate Dills Act sections 3515.5 and 3519.5.

I indicated to you in my attached letter dated May 24, 2004, 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 4, 2004, the charge would be dismissed.

On June 4, I received a letter from Thomas J. Driscoll Jr., indicating that he was representing you in this case and to reconsider my May 24 letter. On June 14, Mr. Driscoll filed a notice of appearance on your behalf and you filed a third amended charge.

In the third amended charge you allege that: 1.) President Gardner on an unspecified date violated Dills Act section 3515.5 by telling you that the CDF Firefighters was unable to process your membership unless deductions were made from your paycheck. This was inconsistent with your experience of paying dues out of pocket during 2000. You were unaware of Mr. Gardner's interference until you received his letter of July 24, 2002 2.) President Gardner violated Dills Act section 3519.5(b) by expelling you from membership in February 2000. 3.) President Wolf violated Dills Act section 3515.5 by interfering with your right to pursue charges against Mr. Gardner and allowing the hearing committee to expel you from membership. 4.) The hearing committee violated Dills Act sections 3515.5 by expelling

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<sup>1</sup> The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at [www.perb.ca.gov](http://www.perb.ca.gov).

you from membership and 3519.5(b) by interfering with your membership for filing internal charges against President Gardner.

Each allegation will be reviewed in order.

#### Allegation 1

The July 24, 2002, letter to you from President Gardner is Exhibit 6 to your First Amended Charge. That letter states in its entirety:

Although you submitted the necessary authorization for CDF Firefighters to deduct a portion of your salary as payment of dues, we have not yet been able to collect for the months that followed your reinstatement.

In order for you to maintain your membership status, we must receive a dues payment from you as soon as possible. It is necessary that we set up a payment system until such time that the state controller reflects you as being on the payroll.

This letter does not support your allegation that President Gardner refused to accept dues payments other than through payroll deduction. Thus, there is no evidence that he interfered with your right to pay dues. This allegation is dismissed.

#### Allegation 2

The allegation that President Gardner expelled you from membership in CDF Firefighters in February 2000 is untimely. This charge was originally filed on January 24, 2003. Thus, conduct that occurred prior to July 24, 2002 would be untimely. (Dills Act section 3514.5(a).) This allegation is dismissed.

#### Allegation 3

This allegation focuses on a violation of Dills Act section 3515.5 by President Wolf when he interfered with your right to pursue charges against Mr. Gardner and allowing the hearing committee to expel you from membership.

You pursued charges against President Gardner in September 2002. The Witesman hearing committee assigned to these charges communicated with you, requesting additional information regarding certain charges and eventually dismissed some of the charges on October 11, 2002. You and Mr. Maldonado attended the hearing on your allegations on November 13, 2002. After losing your motions made to the hearing committee, you left the hearing without presenting evidence or calling witnesses. Even after considering your claims that the hearing panel was biased, it is unclear how CDF Firefighter's conduct related to your

charges against President Gardner is a violation of Dills Act section 3515.5. Thus, this allegation is dismissed.

You were suspended for one year from CDF Firefighters on March 3, 2003, based on the Witesman hearing committee's determination. On November 23, 2003, a hearing committee consisting of Steven Barrett, Dan Todd, and Rich Garcia issued its decision in the Bywater v. Maldonado and Bywater v. Pittman charges. The Barrett committee dismissed several charges and found violations in others. The penalties assessed in the tentative decision against Mr. Maldonado and Mr. Pittman were identical: expulsion from membership and 30% of the total costs of the Region IV trusteeship. It is not clear what involvement President Wolf had in these two hearing committees' decisions. The charge alleges: "Mr. Wolf ignored a complaint against the hearing committee allowing the complaint to expire beyond the time limits set in the By-laws. Mr. Wolf stonewalled my request for an appeal of the hearing committee's dismissal of my charges against Mr. Gardner to the State Board Directors. This action allowed the hearing committee to taint the internal appeal process by providing misrepresented information concerning the charge against Tom Gardner."

These allegations do not specify how CDF Firefighters enforced either an unreasonable membership provision or unreasonably applied a provision to this particular case. Without such information, the allegations must be dismissed. (California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S.)

#### Allegation 4

The hearing committee violated Dills Act section 3515.5 by expelling you from membership and 3519.5(b) by interfering with your membership for filing internal charges against President Gardner.

A review of the Witesman hearing committee decision of March 5, 2003 that ordered your suspension from membership does not indicate that it applied unreasonable rules to your case or that it applied rules in an unreasonable manner. A review of the Barrett hearing committee decision of November 23, 2003 likewise does not indicate that it applied unreasonable rules to your case or that it applied rules in an unreasonable manner. Accordingly, your allegation that CDF Firefighters violated Dills Act section 3515.5 is dismissed.

The claim that CDF Firefighters interfered with your membership because you filed internal charges against President Gardner also fails to state a prima facie violation of the Dills Act. To demonstrate a violation of section 3519.5(b) you must have engaged in protected activity. As explained in the warning letter, internal union activity such as filing internal charges against a union officer is not considered protected activity under the Dills Act unless it had an impact on employer-employee relations. (California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S.) You have not demonstrated how the filing of internal union charges against the union president had any impact on your relationship with the employer. Thus this allegation is dismissed.

Therefore, I am dismissing the charge based on the facts and reasons contained in this letter and my May 24, 2004 letter.

Right to Appeal

Pursuant to PERB Regulations,<sup>2</sup> 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. (Regulation 32635(a).) Any document filed with the Board must contain 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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. (Regulation 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 Regulation 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. (Regulation 32135(c).)

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<sup>2</sup> PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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. (Regulation 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  
General Counsel

Attachment

cc: Ronald Yank, Attorney  
Thomas J. Driscoll, Jr., Attorney





## PUBLIC EMPLOYMENT RELATIONS BOARD



Office of the General Counsel  
1031 18th Street  
Sacramento, CA 95814-4174  
Telephone: (916) 327-8381  
Fax: (916) 327-6377



May 24, 2004

Michael Pittman

Re: Michael Samuel Pittman v. CDF Firefighters  
Unfair Practice Charge No. SA-CO-258-S  
**WARNING LETTER – 2<sup>nd</sup> Amended Charge**

Dear Mr. Pittman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 24, 2003. Michael Samuel Pittman alleges that the CDF Firefighters violated the Ralph C. Dills Act (Dills Act)<sup>1</sup> by discriminating against him and failing to follow their internal bylaws. This conduct is alleged to violate Dills Act sections 3515.5 and 3519.5.

The following information was gathered from this unfair practice charge and related charges.<sup>2</sup> Mr. Pittman began service with the California Department of Forestry and Fire Protection in 1975 as a seasonal firefighter. In August 1986 he was promoted to Firefighter I and in 1994 was permanently promoted to Fire Captain. On January 17, 2000, he was terminated from state employment for disciplinary reasons. After appeal, the State Personal Board on December 18, 2001 reduced the penalty to a thirty-day suspension with full back pay.

In February 2000, Mr. Pittman and Tom Gardner, the President of CDF Firefighters, were involved in a dispute over Mr. Pittman's access to the union's web site. In 2000, 2001, and 2002, Mr. Pittman corresponded with the union regarding his membership. Although he was reinstated by the SPB and submitted the necessary authorization for the union dues deduction, the State failed to make such deductions. On August 1, 2002, Mr. Gardner wrote to the State complaining about the State's failure to correct Mr. Pittman's payroll status. He asked that Mr. Pittman be considered a regular employee receiving a regular payroll check with appropriate deductions.

On September 12, 2002, Mr. Pittman filed a written internal union complaint regarding misconduct by Mr. Gardner. On September 13, 2002, Mr. Pittman's representative, Richard

<sup>1</sup> The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at [www.perb.ca.gov](http://www.perb.ca.gov).

<sup>2</sup> Pittman v. CDF Firefighters, case no. SA-CO-262-S, Maldonado v. CDF Firefighters, case nos. SA-CO-263-S and SA-CO-264-S and Darrington v. CDF Firefighters case no. SA-CO-261-S.

Maldonado, the union's Region IV Director, filed a motion to disqualify the complete hearing committee assigned to hear Pittman's complaint. The motion was denied by Vice President Bob Wolf on September 24, 2002. By letter dated September 26, 2002 Michael Witesman, chairman of the hearing committee, requested Mr. Pittman provide additional verification and information regarding the complaint. By letter dated October 11, 2002, Mr. Witesman informed Mr. Maldonado that six of 13 allegations in Mr. Pittman's complaint were untimely and therefore dismissed.

On November 12, 2002, Larry German, Supervisor Representative for Region IV and Fresno Chapter of the union, filed an internal complaint with the union against Mr. Pittman and others. This complaint alleged that Mr. Pittman and Mr. Maldonado changed the Region IV bylaws to state that: "Region IV would not allow Assistant Chiefs and above to be elected as Delegates to Convention." By letter dated November 13, Mr. Witesman requested further information regarding the allegations. The letter also indicated that the hearing committee would seek a waiver of Operating Procedures Handbook section 413.03 B (hearing to occur no less than 30 days from receipt of the charge) in order to conduct the hearing prior to the beginning of the union convention on December 4, 2002.

On November 12, 2002 Mr. Maldonado requested a continuance of the Pittman hearing that was scheduled for November 13. Mr. Maldonado made several other motions in other letters dated November 12. Mr. Pittman and Mr. Maldonado attended the hearing on November 13 and made several motions to the committee, all of which were denied. After losing their motions they did not present evidence or call witnesses but left the hearing without completing their presentation because of their belief that they could not receive a fair hearing. By letter dated November 20, Mr. Maldonado requested that the hearing be reconvened on December 4 prior to the beginning of the union convention.

On November 21, 2002, Darla Mills filed a union complaint against Mr. Pittman, Mr. Maldonado, and others.

By letter dated December 4, 2002, Byron Darrington, CDF Firefighters Region Supervisor Representative – Region IV filed a formal complaint with the union on behalf of Mr. Maldonado, Mr. Pittman and Ken Craw against Mr. Gardner, Mr. Witesman and the other hearing committee members.

At the union's convention in December 2002, Region IV representatives submitted nineteen resolutions, most of which were directed at reducing the authority of managers and retired members from holding office in the union and making decisions that affect rank and file members.

On January 22, 2003, the CDF Firefighters held a regularly scheduled executive board meeting. Region IV's Director and member of the executive board, Richard Maldonado was excluded from the meeting by union attorney Ron Yank. Mr. Yank stated that the Board was in executive session and that no one would be allowed to attend on behalf of Region IV. The open Board meeting resumed at 1:00 p.m. and Mr. Maldonado was allowed to attend.

The Board's retiree representative made a motion to adopt a written by-law change entitled, "Authority to Impose Trusteeship". Mr. Maldonado objected because he had not had an opportunity to examine the by-law change and it was not listed as an agenda item. Mr. Yank stated the change was discussed during executive session and that Mr. Maldonado had no right to know the issues. Mr. Yank then stated that "nothing prior to or during executive session was to be disclosed or discussed." The Board approved the by-law change with Mr. Maldonado voting no. The Board then voted to allow for immediate administrative enforcement of the addition to the by-laws. Mr. Maldonado was then asked to leave as the Board returned to executive session. Region IV did not have a representative at the session.

During the meeting the Board returned to executive session to discuss past president Tom Gardner's destruction of computer files after losing the election to Bob Wolf. Mr. Gardner and Region IV alternative representative Don Saether were allowed to remain for the session. However, Mr. Saether was excluded from the session when Region IV issues were discussed. After returned to general session the Board announced that Region IV was placed in trusteeship and that Mr. Maldonado, Mr. Pittman, Mr. Saether and Ken Craw were no longer officers of the union.

By letter dated January 23, 2003, Mr. Wolf notified "all Managers and Chiefs of CDF, Financial Institutions, and others who do business or interact with CDF Firefighters or any Region or Chapter thereof" that he had imposed a trusteeship upon Region IV of the union and the Fresno-Kings Chapter, Tulare Chapter and San Benito-Monterey Chapter. The letter also appointed trustees who are responsible for conducting all business involving these entities.

By letter dated January 23, 2003, Mr. Maldonado and Mr. Pittman were informed by the hearing committee that they had pursued the charges against Mr. Gardner without reasonable basis, in bad faith and/or by improper malice which is prohibited by the union's Operating Procedures Handbook section 413.03.H. They were given an opportunity to respond to this allegation.

By Mr. Wolf's letter dated January 28, 2003, Mr. Maldonado and Mr. Pittman were notified that Ron Bywater had filed charges against them. The charges were improper use of union assets in their charge against Mr. Gardner and Mr. Pittman's secret tape recording of a conversation between him and Mr. Gardner on March 8, 2000.

On February 10, 2003, Carol Jolley, Chair of the union Investigative Committee, issued a written Summary of Investigation concerning the allegation that Mr. Pittman violated Penal Code section 632 by secretly tape recording a discussion he had with Mr. Gardner and Eric Sargent on or about March 8, 2000. The report stated in summary that all elements of Penal Code section 632 appear to have been met.<sup>3</sup>

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<sup>3</sup> Penal Code section 623(a) prohibits an individual from recording a confidential communication without the consent of all parties. Violation may be punished by a fine or imprisonment.

On February 12, 2003 the hearing committee chaired by Mr. Barrett commenced the hearing in the charges filed by Mr. German against Mr. Pittman and Mr. Maldonado.

On February 13, 2003, Mr. Pittman attempted to tape record a membership meeting at a hotel in Fresno. Mr. Pittman received approval of the recording from all members present in the meeting. The Fresno Police Department was called by Hearing Committee Chair Steve Barrett but they did not arrest Mr. Pittman for tape recording.

On February 18, 2003, President Wolf informed members of the San Benito-Monterey Chapter of the union that the trusteeship was lifted.

On March 3, 2003, the Witesman hearing committee held a hearing on the charges that had been filed against Mr. Pittman and Mr. Maldonado and found both guilty. They expelled both from the union, Mr. Maldonado for life.

On March 5, 2003, the Witesman hearing committee issued its decision that found Mr. Pittman 40% liable for the violation of prosecuting charges against Mr. Gardner without reasonable basis and in bad faith. He was ordered to reimburse Mr. Gardner, his representative and the union for the costs and he was suspended from the union for a one year period beginning April 1, 2003. Mr. Maldonado was found 60% liable and ordered to reimburse the same parties for costs and expelled from the union effective April 1, 2003.

On March 6, 2003, Mr. Bywater amended his charges against Mr. Pittman to include a charge of failure to exhaust internal union procedures prior to filing a unfair practice charge with PERB. This allegation was withdrawn on March 10, 2003.

On March 14, 2003, Mr. Yank wrote to Mr. Darrington requesting that his clients, Mr. Maldonado and Mr. Pittman return to the union all minutes and financial records of union meetings as well as a computer.

On April 15, 2003, Mr. Yank filed charges against Mr. Maldonado with the Fresno Police Department for felony grand theft of union property. After Mr. Maldonado produced evidence to the contrary the police did not prosecute.

On November 23, 2003, a union Hearing Committee consisting of Steven Barrett, Dan Todd, and Rich Garcia issued its decision on the Bywater v. Maldonado and Pittman charges. The committee dismissed several charges and found violations on others. The penalties assessed in the tentative decision against Mr. Maldonado and Mr. Pittman were identical: expulsion from membership and 30% of the total costs of the Region IV trusteeship.

Based on the above information, this charge does not state a prima facie violation of the Dills Act for the reasons that follow.

This charge alleges that the CDF Firefighters violated the Dills Act by: 1. President Gardner violated section 3515.5 when he interfered with Mr. Pittman's right to pay dues to CDF Firefighters, 2. President Gardner violated section 3519.5(b) by canceling Mr. Pittman's membership during the appeal of his termination, 3. President Wolf violated section 3515.5 by interfering with Mr. Pittman's pursuit of charges against Mr. Gardner and allowing the hearing committee to take reprisals against Mr. Pittman for filing an unfair practice charge, 4. the hearing committee violated section 3515.5(b) by removing Mr. Pittman as a Director of the San Benito-Monterey Chapter.

PERB has long held that the standard applied in cases involving employer discrimination is appropriate in cases alleging discrimination by an employee organization. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S; California Faculty Association (Hale, et al.) (1988) PERB Decision No. 693-H; California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S.) To demonstrate a violation of Dills Act section 3519.5(b), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employee organization had knowledge of the exercise of those rights; and (3) the employee organization imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

In discrimination charges filed against employee organizations based on internal union activity by the charging party, the charge must demonstrate that the internal union conduct had an impact on employer-employee relations. (California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S.) In addition, the adverse action taken by the employee organization must have some impact on employer-employee relations. (California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S.)

The allegations of discrimination here do not demonstrate that Mr. Pittman's internal union activities had any impact on his relationship to the State employer. There is no information that states how the filing of internal charges against CDF Firefighter members or the attempts to change internal bylaws had an impact of the State employer. Nor did the alleged adverse actions by CDF Firefighters hearing committee or President Gardner have an impact on the relationship between Mr. Pittman and the State. Accordingly, these allegations must be dismissed.

With respect to the alleged violations of Dills Act section 3515.5. That section reads:

Employee organizations shall have the right 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.

In California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S the Board stated:

PERB's authority to determine the reasonableness of a membership provision must include not just the reasonableness of the provision itself, but the reasonableness of the provision as it was applied in the case pending before the Board. (California Correctional Peace Officers Association (Colman) (1989) PERB Decision No. 755-S, p. 21.) Here, even if the Board were to find that the summary suspension procedures were reasonable, a violation of the Dills Act will be found if their application in this case was not reasonable.

The test under Dills Act section 3515.5 only applies to an employee who has been suspended or expelled from union membership. (California State Employees Association (Barker & Osuna) (2003) PERB Decision No. 1551-S.)

The charge alleges President Gardner violated section 3515.5 when he interfered with Mr. Pittman's right to pay dues to CDF Firefighters. This conduct occurred while Mr. Pittman was terminated and waiting for a decision from the State Personnel Board on his appeal. He was reinstated in December 2001. During 2002 there was an ongoing question concerning the State's deduction of Mr. Pittman's dues which appears to have culminated in President Gardner's August 1, 2002 electronic mail message to the State.

Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The statute of limitations is an affirmative defense which has been raised by the respondent in this case. (Long Beach Community College District (2003) PERB Decision No. 1564.) Therefore, charging party now bears the burden of demonstrating that the charge is timely filed. (cf. Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

Based on the January 24, 2003 filing of this charge, any conduct prior to July 24, 2002 is outside the statute of limitations and therefore must be dismissed. The August 1 e-mail is within the statute of limitations period but does not indicate any attempt to interfere with Mr. Pittman's right to have dues deducted. Rather the e-mail urges the State to correct the problem

and treat Mr. Pittman as a regular employee. Therefore no violation based on this theory has been presented.

The charge also alleges that President Wolf violated section 3515.5 by interfering with Mr. Pittman's pursuit of charges against Mr. Gardner and allowing the hearing committee to take reprisals against Mr. Pittman for filing an unfair practice charge. It appears that the hearing committee was prepared to hear Mr. Pittman's evidence on November 13, 2003 but that Mr. Pittman and his representative chose to leave the hearing without presenting any evidence. The hearing committee then proceeded to determine that Mr. Pittman and Mr. Maldonado had proceeded against Mr. Gardner without reasonable basis and in bad faith in violation of CDF Firefighters Operating Procedures Handbook section 413.03.H.

The information presented in the charge does not describe specifically why the hearing procedure or its application in these circumstances is unreasonable. Without such information, this allegation must be dismissed.

The charge finally alleges that the hearing committee violated section 3515.5(b) by removing Mr. Pittman as a Director of the San Benito-Monterey Chapter. Because this allegation does not concern suspension or expulsion from membership, it does not meet the threshold test for stating a violation of section 3515.5 and must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled Third Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before June 4, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson  
General Counsel