

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



ALEX HERNANDEZ,

Charging Party,

v.

SEIU LOCAL 1000,

Respondent.

Case No. SA-CO-371-S

PERB Decision No. 2049-S

July 3, 2009

Appearances: Alex Hernandez, on his own behalf; Brooke D. Pierman, Attorney, for SEIU Local 1000.

Before McKeag, Neuwald and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (Board) on appeal by Alex Hernandez (Hernandez) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that SEIU Local 1000 violated the Ralph C. Dills Act (Dills Act)¹ by suspending Hernandez's union membership in retaliation for his protected activities and interfering with his right to union membership.

The Board has reviewed the dismissal and the record in light of Hernandez's appeal, SEIU Local 1000's response and the relevant law. Based on this review, the Board finds the Board agent's warning and dismissal letters to be a correct statement of the law and well reasoned, and therefore adopts them as the decision of the Board itself.

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

ORDER

The unfair practice charge in Case No. SA-CO-371-S is hereby DISMISSED
WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-7242
Fax: (916) 327-6377



June 5, 2008

Alex Hernandez

Re: Alex Hernandez v. SEIU Local 1000
Unfair Practice Charge No. SA-CO-371-S
DISMISSAL LETTER

Dear Mr. Hernandez:

The above-referenced unfair practice charge (original charge) was filed with the Public Employment Relations Board (PERB or Board) on January 24, 2008 and amended on April 25, 2008 (First Amended Charge). Alex Hernandez alleges that the SEIU Local 1000 (SEIU or Union) violated the Ralph C. Dills Act (Dills Act or Act)¹ by: (1) suspending his union membership in retaliation for protected activities; and (2) interfering with his right to union membership.

I informed you in the attached letter April 24, 2008 (hereafter, Warning Letter), that the above-referenced charge did not state a prima facie case.² You were advised that, if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to May 1, 2008, the charge would be dismissed. On April 25, 2008, a First Amended Charge was filed with PERB.

The First Amended Charge alleges the following new factual allegations. On September 13, 2007, Mr. Hernandez assisted Barbara Powers, founder of CSEUnited, to file an unfair practice charge against SEIU. On December 24, 2007, SEIU filed a complaint in the Sacramento County Superior Court seeking removal of Mr. Hernandez as a director of SEIU. On January 23, 2008, SEIU sent a newsletter to members titled "Leaders sue to remove anti-union board member."

On April 10, 2008, SEIU sent a letter to Mr. Hernandez that stated in part:

Effective January 18, 2008, you are no longer a member of SEIU Local 1000. You are no longer entitled to represent the Union or its members in any way. Specifically, you may not hold yourself

¹ 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.

² On April 24, 2008, the Warning Letter was e-mailed to Charging Party per his request.

out as an agent of the Union, you may not file an unfair practice charge in the Union's name. You are ineligible to run for office and will not be permitted release time to conduct any Union business.

Within the next several days, your employer and the State Controller's office will be notified that you are no longer a member of the Union. You will no longer pay dues to the Union, but will pay an agency fee like any other non-member of the Union employed in Bargaining Unit 01. Finally, the Union will notify CSEA that you are no longer a member of Local 1000 and that, as a result, your membership in CSEA should be terminated.

According to the existing record in this case, every four years SEIU holds an international convention at which more than 3,500 leaders and activists gather to conduct union business. This year, the 24th Quadrennial International Convention will occur May 31 through June 5 in Puerto Rico. During the International Convention, delegates from all over North America will elect SEIU national officers and executive board members and vote on resolutions and amendments to the SEIU Constitution. The SEIU membership elected 63 delegates (referred to as "International Delegates") who are eligible to attend the International Convention. Mr. Hernandez is not among the 63 delegates.

DISCUSSION

A. Retaliation

Although not clear from the record, it appears Mr. Hernandez is alleging that SEIU initiated a disciplinary process (that ultimately resulted in Mr. Hernandez losing his SEIU membership rights) in retaliation for assisting Ms. Powers to file an unfair practice charge. In addition, Mr. Hernandez repeats the same allegations made in the original charge, i.e., that SEIU also retaliated against him because he engaged in the following protected activities: (1) requesting corporate documents and financial statements; (2) making statements about SEIU that were published in the Sacramento Bee; and (3) being involved with CSEUnited.

The disciplinary hearing launched by SEIU is an internal union matter. (See, e.g., *California State Employees Association (Gonzalez-Coke, et al.)* (2000) PERB Decision No. 1411-S at p. 22-23 [union filed internal union complaints against elected officers, seeking their removal from union office and withdrawal of their membership privileges].) In *California State Employees Association (Hard, et al.)* (1999) PERB Decision No. 1368-S, the Board affirmed that it will not intervene in disputes that involve only the internal union activities of an employee organization, unless those activities impact employer-employee relations. (*Id.* at p. 28; see also, *California State Employees Association (Hutchinson, et al.)* (1998) PERB Decision No. 1304-S and *California State Employees Association (Gonzalez-Coke, et al.)* (2000) PERB Decision No. 1411-S [the charging party must demonstrate that the internal union activities have a substantial impact on employer-employee relations].)

Herein, the First Amended Charge fails to provide sufficient facts demonstrating that SEIU's internal actions in this matter have a substantial impact on Mr. Hernandez's relationship with his employer, the State Employment Development Department. As such, the charge fails to demonstrate a prima facie retaliation violation under the Act.

B. Violation of Policy File and Hearing Officer Training Manual

Mr. Hernandez alleges that SEIU did not follow their own Policy File and Hearing Officer Training Manual (Manual) in suspending his membership.

Dills Act section 3515.5 provides in pertinent part:

Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

Courts will interfere in an expulsion by a union only where the union has not followed its own rules, or rudimentary rights of defense have not been granted. (Cason v. Glass Bottle Blowers Assn. (1951) 37 Cal.2d 134.) In general, the courts apply the "fundamental principle of justice that no man may be condemned or prejudiced in his rights without an opportunity to make his defense." (Id. at 143.)

As worded, Dills Act section 3515.5 only provides the Board with authority to determine the reasonableness of a union's restrictions regarding who may join and rules for the dismissal of individuals from membership.

In California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S (CSEA Hard), the Board addressed a violation of section 3515.5. The Board found that CSEA failed to follow its own procedures in suspending a member, and that the suspension occurred during the nomination period for CSEA office and prevented the member from seeking office. The Board concluded that CSEA's conduct violated Dills Act section 3515.5, which in turn interfered with the member's rights thereby also violating section 3519.5(b). (Ibid.)

But CSEA Hard differs from the instant case because, unlike the member in CSEA Hard, Mr. Hernandez was not summarily dismissed by SEIU. Mr. Hernandez was afforded the "rudimentary rights of defense" as he took part in SEIU's disciplinary process under the SEIU Policy File. Mr. Hernandez was given notice of the date and time of the disciplinary hearing. Mr. Hernandez was also granted an extension on October 30, 2007 to attend the hearing. In addition, as noted in the Hearing Panel's decision, Mr. Hernandez had five of his own witnesses participate in the process, and there is no evidence to suggest that SEIU sought to exclude such evidence. Therefore, it simply does not follow that SEIU's denial of a second request by Mr. Hernandez to extend the hearing demonstrates an unreasonable application of the Policy File or that Mr. Hernandez was denied an opportunity to present his defense.

Mr. Hernandez argues that SEIU also violated the Manual when it issued its decision regarding his suspension. The Manual states: “The charged party does not have to testify and the lack of testimony should not be held against him or her.” Mr. Hernandez alleges that SEIU failed to abide by the Manual since the Hearing Panel’s decision stated, “The choice of [Mr.] Hernandez to not testify and be subject to cross-examination compromised the credibility of his written exhibits & his assertion of facts made in his opening & closing oral arguments.” According to Mr. Hernandez, this statement “contradicts” the provisions of the Manual. Mr. Hernandez assumes that SEIU’s decision to suspend his membership hinged entirely on the Panel Hearing’s statement in its decision. However, the record demonstrates that the factual findings were made based on hearing testimony of nearly eight witnesses and by examining nearly two dozen supporting documents.

In any event, Mr. Hernandez cites California School Employees Association and its Shasta College Chapter #381 (1983) PERB Decision No. 280 (Parisot) to support his claim that SEIU’s failure to abide by the Manual unreasonably denied him his membership right. In Parisot the association barred the member from membership and from holding office. The member claimed that the association’s procedures used to remove him were unreasonable. The Board held in Parisot that an association may not suspend a member on pre-hearing charges that are “unreasonably vague or ambiguous.” (*Id.* at p. 10.) But Parisot is distinguishable from the instant case because Mr. Hernandez was granted a hearing and there is no evidence that the charges against him were vague or ambiguous.

Mr. Hernandez also alleges that SEIU violated its Policy File when the Hearing Panel failed to submit its findings/recommendation regarding Mr. Hernandez’s suspension to the SEIU President within the permitted 10-day timeframe. Mr. Hernandez’s disciplinary hearing was held on December 8, 2007 and the Hearing Panel’s findings/recommendation were submitted to the President on January 12, 2008. Although SEIU Policy File section 9CSDO.06(j) provides that the Hearing Panel has 10 days to report its findings to the President, section 9CSDO.06(d) of the Policy File provides that the Hearing Panel may on its own motion grant its own extensions for good cause. Because the Hearing Panel was unable to issue its findings/recommendation within the 10-day period—due to not receiving a transcript of the hearing and subsequently being short one panel member—it found good cause and granted its own motion to extend the timeframe. Based on the current record, the charge fails to demonstrate that SEIU unreasonably applied the Policy File against Mr. Hernandez.

In sum, despite his allegations, Mr. Hernandez has not shown that he was deprived of a protected right to reasonable internal disciplinary procedures or the reasonable application of those procedures.

C. International Convention

Although not clear from the charge, it appears Mr. Hernandez is alleging that SEIU engaged in an unfair labor practice by preventing him from attending the SEIU International Convention.

Pursuant to article IV, section 3 of the SEIU International Constitution and Bylaws, only “delegates duly elected in accordance with all applicable statutes and the provisions of this Constitution and Bylaws shall be eligible to represent any Local Union at the International Convention and shall be entitled to vote” The International Constitution and Bylaws further states:

No person shall be eligible for nominations as an officer, member of the Executive Board, delegate, or any other office in a Local Union who has not been a member in a continuous good standing in the Local Union for at least two years immediately preceding the nomination and has, during all of that time, paid all full dues required for working members of the Local Union within each month when due.

(SEIU’s International Constitution and Bylaws, article XV, section 2.)

A union has the right to discipline a member in a non-discriminatory fashion for improper conduct. (Anderson v. Los Angeles County Employee Relations Comm. (1991) 229 Cal.App.3d 817, 826 [an organization has the natural right of self preservation, and may with propriety expel members who show their disloyalty by joining a rival organization].) Furthermore, in Price v. N.L.R.B. (9th Cir.1967) 373 F.2d 443 (Price), the Ninth Circuit Court of Appeals held that the union was entitled to suspend a member pursuant to its constitution. Price, like Mr. Hernandez, was involved in a decertification campaign against his own union. The union charged Price with violating article XII, section 1(d) of its constitution, which prohibited members from “advocating or attempting to bring about the withdrawal from the International Union of any Local Union or any member or group of members” (Id. at p. 445.) The union constitution further provided that the consequences for such action(s) could be a fine, suspension, or expulsion.

Similarly here, SEIU’s International Constitution and Bylaws include membership rules to exclude participation in events such as the International Convention. Mr. Hernandez has not been a member in good standing since his membership was suspended on January 18, 2008, and he therefore is not eligible pursuant to the International Constitution and Bylaws to act as a delegate for SEIU at the International Convention.

Based on above, the charge fails to demonstrate that SEIU committed an unfair practice by precluding Mr. Hernandez from participating in the International Convention.

CONCLUSION

For the reasons set forth above and in the Warning letter of April 24, 2008, the charge fails to state a prima facie violation of the Act. Accordingly, this case is dismissed.

Right to Appeal

Pursuant to PERB Regulations,³ 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 during a regular PERB business day. (Regulations 32135(a) and 32130; see also Government Code section 11020(a).) A document is also considered "filed" when received by facsimile transmission before the close of business 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 95811-4124
(916) 322-8231
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.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

³ 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,

TAMI R. BOGERT
General Counsel

By _____

Yaron Partovi
Regional Attorney

Attachment

cc: Brooke D. Pierman

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
Telephone: (916) 327-7242
Fax: (916) 327-6377



April 24, 2008

Alex Hernandez

Re: Alex Hernandez v. SEIU Local 1000
Unfair Practice Charge No. SA-CO-371-S
WARNING LETTER

Dear Mr. Hernandez:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 24, 2008. Alex Hernandez alleges that the SEIU Local 1000 (SEIU or Union) violated the Ralph C. Dills Act (Dills Act or Act)¹ by: (1) suspending his union membership in retaliation for protected activities; and (2) interfering with his right to union membership.

Investigation of the charge revealed the following information. SEIU is the exclusive representative of multiple bargaining units in the State of California, including Unit 1. Mr. Hernandez is employed at the Employment Development Department (EDD) in Sacramento. On January 18, 2008, SEIU passed a motion to suspend Mr. Hernandez's union membership for one year. Mr. Hernandez is currently the District Labor Council (DLC) 785 President and a member of SEIU's Board of Directors. Mr. Hernandez is not suspended from holding these two positions. Mr. Hernandez is also an organizer of California State Employees United (CSEUnited), a grassroots movement group dedicated to reforming both California State Employees Association (CSEA) and SEIU.

DLCs are the subgroups through which members and stewards carry out SEIU's programs within their jurisdictional boundaries. (SEIU Policy File section 4CSD0.01(a).)² The structure of the DLC is divided into membership based on work location, community of interest, and geographic region. Each DLC may elect a President who is responsible for the activities of the DLC, including implementation of SEIU's policies and administration of the DLC. (SEIU Policy File section 4CSD0.04(a).)

¹ 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.

² The SEIU Policy File is a document that specifies, among other things, the following: (1) the authority and purpose of SEIU; (2) the criteria used for SEIU membership; (3) the purposes and responsibilities of SEIU's DLCs and Job Stewards; and (4) SEIU's disciplinary procedures.

SEIU's Policy File section 9CSD0.06 contains procedures for disciplinary action and states in relevant part:

- (a) A disciplinary action is initiated when a member files specific charges in writing on a Form HR1.
- (b) Upon receipt of the completed Form HR1, the President [of SEIU] . . . shall review the charges and if he/she finds the charges to be frivolous, he/she will immediately notify the charging party and no further action shall be taken. If the charges are determined to be valid, a hearing shall be held within thirty (30) days before a hearing panel or hearing officer. The hearing officer or panel shall conduct an investigation, if the facts are not in dispute or the recommendation is to reject the charges, no hearing is necessary.
- (e) The individuals involved in the hearing shall be personally notified in writing at least fifteen days prior to the meeting.
- (g) The parties to the hearing shall have the right to be represented at their own cost, to introduce evidence supporting or refuting the charges and to cross-examine witnesses.
- (j) The hearing panel or hearing officer shall report to the President . . . [t]he findings of the hearing Such report shall include recommendation for action.
 - (1) Rejection of the charges;
 - (2) Reprimand;
 - (3) Suspension from Office;
 - (4) Removal from Office or any other position they hold in the union; and
 - (5) Recommend to the Local 1000 Council that the member be suspended from privileges of membership except those required by law.
- (k) The Local 1000 Council shall act on the report in executive session no later than its next regularly-scheduled meeting. Disciplinary action requires a three-fourths vote of the council. The council must make immediate disposition of the case as follows:
 - (1) The council shall first determine whether the charges are sustained.

- (2) If sustained, the council shall then determine the appropriate penalty.
- (3) All action shall be by a three-fourths vote of the council.

On June 21, 2007 and September 27, 2007, Mr. Hernandez made requests for access to review and make copies of certain internal union documents, including SEIU corporate and financial documents and specifically bank statements and summary statements concerning the SEIU Legal Defense Fund. SEIU agreed to disclose some but not all of the requested documents.

SEIU alleges that, on October 1, 2007, it received a completed HR1 form³ from a Unit 1 member alleging that Mr. Hernandez advocated for the decertification of SEIU and started a website [<http://www.dumpseiu.com>] in violation of SEIU's Policy File section 9CSD0.02(f) and (k).⁴ The website encourages Unit 1 employees to decertify SEIU and thereafter to create a new union.

On October 3, 2007, Mr. Hernandez's attorney advised SEIU that Mr. Hernandez is entitled to access all records in accordance with California Corporations Code section 8334. Mr. Hernandez's attorney also threatened to file a lawsuit against SEIU and to seek attorneys' fees.

On October 6, 2007, Mr. Hernandez was quoted in a Sacramento Bee newspaper article criticizing SEIU's endorsement of a motion pending before CSEA's General Council regarding altering the balance of power between CSEA and SEIU.

On or about October 11, 2007, SEIU notified Mr. Hernandez that an HR1 complaint had been filed against him and that a disciplinary hearing would be set in the matter.

On October 15, 2007, the Sacramento Bee published another article regarding the Unit 1 fair share fee rescission campaign quoting Mr. Hernandez stating, "[t]he solution is to remove the current elected officers, not weaken our Union."

³ HR1 forms are complaints filed by bargaining unit members.

⁴ Section 9CSD0.02 states in relevant part:

Disciplinary action may be taken for the following reasons:

(f) Taking an active part in promoting another organization which is undermining the objectives or the existence of the Association, is seeking its decertification, or which directly competes with the Association in the areas covered by the Ralph C. Dills Act;

(k) Behavior which is determined by the hearing panel or officer to be of such a nature that it causes discredit to the Association or [SEIU], the DLCs, the BUNCs, or any of its members

On October 17, 2007, SEIU requested that Mr. Hernandez appear at a disciplinary hearing on October 22, 2007, to respond to the charges in the HR1 complaint.

On October 17, 2007, Mr. Hernandez cautioned SEIU that legal action would follow if SEIU did not grant Mr. Hernandez's access to the records sought on October 3, 2007.

On October 18, 2007, Mr. Hernandez requested that SEIU reschedule the disciplinary hearing for a later date because SEIU did not give him the 15-day notice required by SEIU's Policy File section 9CSD0.06(e). The hearing was rescheduled for November 5, 2007 as requested. However, on November 5, 2007, SEIU notified Mr. Hernandez that the hearing would be rescheduled again because SEIU's sole witness could not attend. On November 29, 2007, SEIU called Mr. Hernandez to advise him that the hearing was set for December 8, 2007. Mr. Hernandez requested that the hearing again be rescheduled because his representative would not be available to attend a hearing until January 2, 2008. SEIU denied Mr. Hernandez's request and reiterated that the hearing was set for December 8, 2007. Mr. Hernandez alleges that the November 29, 2007 call did not comply with the notice provision of SEIU Policy File section 9CSD0.06(e) requiring written notification.

On December 8, 2007, Mr. Hernandez attended the disciplinary hearing conducted by a Hearing Panel consisting of three SEIU members. Pursuant to SEIU Policy File section 9CSD0.06(j), the Hearing Panel is permitted 10 days to report their findings along with their recommendation for action to the SEIU President.

On December 10, 2007, Mr. Hernandez filed a writ of mandate in the Sacramento Superior Court alleging that SEIU failed to disclose the records he requested in the October 3, 2007 letter. In or around late December 2007/early January 2008, Mr. Hernandez ran for SEIU International Delegate.

On January 12, 2008, the SEIU International Delegate election ballots were counted. Among the 221 delegates who ran for office, Mr. Hernandez was ranked eighth in terms of the number of votes received. Mr. Hernandez did not win the election.

On January 12, 2008, the SEIU Hearing Panel issued its decision recommending suspension of Mr. Hernandez's union membership for one year.

On January 18, 2008, the SEIU Council held a meeting that included, among other things, taking disciplinary action based on the recommendation of the Hearing Panel. According to the SEIU Policy File, such disciplinary action "requires a three-fourths vote of the Council." (Policy File section 9CSD0.06(k).) There is no dispute that the entire Council is comprised of 63 members. The question before the Council was whether SEIU should suspend Mr. Hernandez's union membership for one year.

The motion passed by three-fourths of those Council members present and voting, and Mr. Hernandez's discipline was upheld and his union membership was suspended for one year.

DISCUSSION

A. Retaliation

State employees have the right to participate in the activities of employee organizations for the purpose of representation on matters of employer-employee relations. (Gov. Code, § 3515.) The Board has not interpreted the Dills Act as protecting all participation in employee organization activities, or as providing PERB with unlimited authority to review the internal affairs of employee organizations. In California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S, the Board affirmed that it will not intervene in disputes that involve only the internal union activities of an employee organization, unless those activities impact employer-employee relations. (*Id.* at p. 28; see also, California State Employees Association (Hutchinson, et al.) (1998) PERB Decision No. 1304-S and California State Employees Association (Gonzalez-Coke, et al.) (2000) PERB Decision No. 1411-S [the charging party must demonstrate that the internal union activities have a substantial impact on employer-employee relations].) Accordingly, Mr. Hernandez has failed to provide sufficient evidence demonstrating that SEIU's internal actions in this matter have a substantial impact on his relationship with EDD.

Mr. Hernandez alleges that the suspension of his membership bars him from receiving union leave time under the provision of the Unit 1 MOU to perform the following activities: (1) participating in Joint Labor Management Committee meetings; (2) representing members in Skelly hearings or PERB mediations; (3) assisting members in filing a grievance and representing them in grievance meetings; and (4) participating in SEIU Council quarterly meetings or host worksite meetings. But the charge fails to demonstrate how Mr. Hernandez's involvement in these acts specifically impacts the employer-employee relationship.

In California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S, the Board reviewed whether the exclusive representative engaged in unlawful retaliation by suspending the membership of a member who engaged in numerous organizing and bargaining efforts in a reform group within the exclusive representation. The Board noted that:

[A]ny act undertaken to improve employees wages and working conditions, including participation in rallies, distributing literature, wearing buttons or t-shirts, could be seen as [impacting the employer-employee relationship]. However, as the Board made clear in [California State Employees Association (Hard, et al.), *supra*, PERB Decision No. 1368-S], that is not the case. (*Id.* at p. 23.)

In light of the Board's analysis in California State Employees Association (Hard, et al.), *supra*, PERB Decision No. 1479-S, Mr. Hernandez's union-related activities described above also fail to support his theory that there is an impact on his employment relationship with EDD.

Mr. Hernandez argues that he will have to use his annual leave time to conduct the above-described activities, because “per [Article 2.6 of the parties MOU] Mr. Hernandez is no longer a member or steward of [SEIU]. . . .” When his annual leave has been depleted, he argues, EDD could discipline him if he takes absence without leave (AWOL) time to perform such activities.

It appears that Mr. Hernandez is alleging that he is somehow cloaked with a duty to represent members and participate in union functions for the benefit of the members within his DLC membership because he retained his status as DLC President and member of SEIU’s Board of Directors. The duty of fair representation is a duty the exclusive representative owes to members of the bargaining unit. (California School Employees Association & its Chapter 8 (Thorpe, et al.) (2002) PERB Decision No. 1476.) That duty does not apply to Mr. Hernandez, and his failure to perform union-related activities can only be attributable as a breach of the representational duty to SEIU. Therefore, Mr. Hernandez’s argument on this point fails to demonstrate that SEIU’s disciplinary action impacts his employment relationship with EDD.

For the above reasons, the charge fails to demonstrate a prima facie violation of the Dills Act under a retaliation theory.

B. Right to Union Membership

Dills Act section 3515.5 provides in pertinent part:

Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

In California State Employees Association (Hard, et al.), supra, PERB Decision No. 1479-S, the union suspended the charging parties during an election period, in which the charging parties were running for union office. The Board found a violation of Dills Act section 3515.5 based on the union’s violation of its own bylaws in its implementation of summary suspension procedures against the charging parties. (Id. at p. 22.)⁵ In applying the holding of this case here, the key question is not whether SEIU was right or wrong in disciplining Mr. Hernandez, but whether SEIU acted reasonably in disciplining him.

⁵ It is also worth noting that in interpreting section 3515.5, the Board has held that employee organizations have latitude to make decisions about their internal management, including discretion to strip an organizational representative of authority to act on behalf of the organization, so long as such action is not unlawfully motivated. (California State Employees Ass’n. O’Connell) (1989) PERB Decision No. 753-H; California School Employees Association and its Shasta College Chapter #381 (Parisot) (1983) PERB Decision No. 280 at p. 10 [suspension of member for circulating decertification petition is reasonable]; California State Employees Association (Hackett, et al.) (1993) PERB Decision No. 979-S[suspension of members for distributing fliers and in other ways criticizing and opposing ratification of MOUs for other bargaining units].)

According to Mr. Hernandez, since only 44 members voted “yes” [to take action against him], the vote did not satisfy the three-fourths majority requirement of Policy File section 9CSDO.06(k). Accepting as true Mr. Hernandez’s statement that 44 members voted “yes” to suspend his membership (Golden Plains Unified School District (2002) PERB Decision No. 1489 [PERB must assume the truth of the essential facts alleged in deciding whether to issue an unfair practice complaint]) Mr. Hernandez nevertheless alleges—without any supporting facts—that Policy File section 9CSDO.06(k) should be interpreted to require a three-fourths vote of the *entire* Council membership for a motion to suspend his membership. PERB has held that where, as here, a charge contains a legal conclusion, but other factual allegations contained in the charge do not support such a legal conclusion, the Board is not required to accept the legal conclusion as true. (Charter Oak Unified School District (1991) PERB Decision No. 873.) Based on the current record, in particular evidence from SEIU that SEIU’s Bylaws and Policy File are governed by the Roberts Rules of Order,⁶ which require only three-fourths of the votes cast—not three-fourths of the entire Council membership—Mr. Hernandez has not established that SEIU acted other than reasonably when disciplining him. Accordingly, the facts fails to demonstrate a prima facie violation that SEIU has unlawfully interfered with Mr. Hernandez’s union membership rights under Dills Act section 3515.5.

CONCLUSION

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 First 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 an amended charge or withdrawal is not received in this matter from you before May 1, 2008, your charge shall be dismissed. If you have any questions, please call me at the above telephone number.

⁶ RONR provides in relevant part:

By modifying the concepts of a majority vote and a two-thirds vote, other bases for determining a voting result can be defined and are sometimes prescribed by rule. Two elements enter into the definition of such bases for decision: (1) the proportion that must concur – as a majority, two thirds, three fourths, etc.; and (2) the set of members to which the proportion applies – which (a) when not stated is always the number of members *present and voting* (assuming there are no illegal voters), but (b) can be specified by rule as the number of members present, the total membership, or some other grouping. [Emphasis in original.] (*Id.* at p. 389, line 20.)

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Sincerely,

Yaron Partovi
Regional Attorney

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