STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

WILLIAM ARMANTROUT, Charging Party, v. CALIFORNIA STATEWIDE LAW ENFORCEMENT ASSOCIATION, Respondent.	Case No. LA-CO-132-S PERB Decision No. 2386-S June 30, 2014

Appearances: Thomas A. Hoffman, Attorney, for William Armantrout; Carroll, Burdick & McDonough, by Jason H. Jasmine, Attorney, for California Statewide Law Enforcement Association.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by William Armantrout (Armantrout) to the proposed decision (attached) of a PERB administrative law judge (ALJ). The complaint issued by PERB's Office of the General Counsel alleged that the California Statewide Law Enforcement Association (CSLEA) violated sections 3515.5 and 3519.5 of the Ralph C. Dills Act (Dills Act)[1] when it: (1) brought charges against and suspended Armantrout from CSLEA without providing Armantrout with complete copies of CSLEA's Constitution and Standing Rules; (2) failed to serve Armantrout with a copy of the charges against him, signed by the CSLEA member bringing the charge, when CSLEA served Armantrout with a notice of intent to take disciplinary action; (3) failed to hold Armantrout's disciplinary hearing before a neutral decision maker; and (4) threatened Armantrout's representative—who was also a member of

[1] The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise noted, all statutory references are to the Government Code.

CSLEA—with discipline if he advocated in support of severance as Armantrout's representative.

The ALJ concluded that CSLEA's Constitution (Constitution) and Standing Rules (Standing Rules), Article X, pertaining to internal disciplinary procedures, were both reasonable and reasonably applied to Armantrout as required by section 3515.5 of the Dills Act. The ALJ also concluded that Armantrout failed to exhaust his administrative remedies, as required by CSLEA Standing Rules, Article X, Section D, before filing an unfair practice charge before PERB and therefore dismissed his charges.

We have reviewed the entire record in this matter including the proposed decision, the hearing record, Armantrout's exceptions and CSLEA's response thereto. We conclude that the ALJ's proposed decision is supported by the record and in accordance with applicable law. Accordingly, we adopt the ALJ's proposed decision as the decision of the Board itself, subject to our discussion below of Armantrout's exceptions.

PROCEDURAL HISTORY

On June 11, 2009, Armantrout filed his initial unfair practice charge alleging that CSLEA violated section 3519.5 of the Dills Act by retaliating against him for exercising his rights under the Dills Act and by denying him due process in suspending his union membership. On June 18, 2009, CSLEA filed its position statement.

On February 23, 2010, PERB's Office of the General Counsel dismissed Armantrout's retaliation claim, but issued a complaint alleging that CSLEA had violated section 3515.5 of the Dills Act by failing and/or refusing to apply reasonable provisions for the dismissal of individuals from membership and also violated section 3519.5 by interfering with employee rights guaranteed by the Dills Act.

On March 11, 2010, CSLEA filed an answer to the complaint admitting most of the factual allegations except for those alleging it violated its Constitution, Standing Rules or section 3515.5 of the Dills Act in its disciplinary proceeding against Armantrout. CSLEA denied any violation of sections 3515.5 and 3519.5 of the Dills Act and noted that PERB has recognized an employee organization's right to discipline its members for violations of the organization's rules (*CDF Firefighters (Pittman)* (2006) PERB Decision No. 1815-S), while California courts have also recognized an employee organization's right to discipline a member for "dual unionism" (*Anderson v. Los Angeles County Employee Relations Com.* (1991) 229 Cal.App.3d 817).

An informal conference was scheduled for March 26, 2010, and subsequently rescheduled for April 12, 2010. A formal hearing was scheduled for August 9 and 10, 2010. On August 4, 2010, the formal hearing was cancelled and placed in abeyance. The formal hearing was subsequently rescheduled for November 29 and 30, 2010.

On November 29, 2010, the formal hearing was again placed in abeyance pending execution of a settlement agreement. On June 24, 2011, Armantrout, through his attorney, requested that the case be restored to PERB's active calendar. A second informal conference was scheduled for October 18, 2011, with a formal hearing scheduled for February 9 and 10, 2012.

On December 20, 2011, Armantrout filed a motion with the ALJ to defer the matter to arbitration. On December 28, 2011, CSLEA filed its opposition to the motion to defer to arbitration. The motion was denied and the formal hearing was held on February 9 and 10, 2012. The ALJ issued his proposed decision on October 15, 2012. On November 28, 2012, Armantrout filed his exceptions to the ALJ's proposed decision.

FACTUAL SUMMARY

Since we adopt the ALJ's findings of fact, we shall only summarize the facts briefly here. Armantrout is a state employee whose exclusive representative is CSLEA. In September of 2007, a rival employee organization, the Peace Officers of California (POC), was conducting a campaign to sever the peace officer members of CSLEA into a separate bargaining unit represented by POC. (Proposed Dec., p. 3.) On or about September 22, 2008, Armantrout sent an e-mail to CSLEA bargaining unit members which arguably supported the severance campaign. (*Ibid.*)

On or about October 16, 2008, CSLEA Senior Vice President Richard Carrillo (Carrillo) sent Armantrout a notice of intent to take disciplinary action. (Proposed Dec., p. 3.) Carrillo's notice alleged that Armantrout had violated Article XX, Section 2(e) of the CSLEA Constitution by assisting or intending to assist a competing organization within the jurisdiction of CSLEA. The notice informed Armantrout of his right to request a hearing before CSLEA's disciplinary hearing committee and included "the relevant provisions" of the Constitution and Standing Rules.

On October 27, 2008, Armantrout sent CSLEA a letter requesting a hearing and, in addition, several documents, viz.: the charges against Armantrout; the name(s) of the member(s) who filed the charges; the name of the disciplinary hearing committee members who were assigned to the matter; a complete copy of the CSLEA Constitution, and a complete copy of the CSLEA Standing Rules. (Proposed Dec., p. 4.)

On November 15, 2008, Armantrout, through his representative fellow CSLEA member Allan Irish (Irish), sent CSLEA a letter reiterating the request for the documents requested in the October 27, 2008 letter. (Proposed Dec., pp. 4-5.) On November 17, 2008, CSLEA responded by e-mail that the October 16, 2008, notice was the complete copy of the charges

against Armantrout and included a copy of Armantrout's September 22, 2008 e-mail which CSLEA maintained was the basis for the charges. (*Id.* at p. 5.) The November 17, 2008, e-mail also stated that the charges were filed by the CSLEA disciplinary hearing committee and named the six members of the committee.

The November 17, 2008, e-mail further warned Irish that his representation of Armantrout could subject Irish to sanctions by CSLEA and the California Association of Criminal Investigators (CACI)[2] if, on behalf of Armantrout, Irish took the position that support of the POC severance campaign was appropriate conduct for a CSLEA member. (Proposed Dec., p. 5.) On November 20, 2008, CSLEA General Manager and Chief Counsel Kasey Clark (Clark) further clarified the union's position regarding Irish's representation of Armantrout:

> [A]lthough it is permissible under the CSLEA Constitution and Standing Rules to represent Mr. Armantrout, it is impermissible for you as a CSLEA member and officer of a CSLEA affiliate to advocate the propriety of severance. . . . Should you advocate this position on behalf of Mr. Armantrout, you do so at the risk of sanction by the CSLEA Disciplinary Hearing Committee and CACI.

(*Ibid.* Quoting Clark's November 20, 2008 e-mail.)

On December 9, 2008, Armantrout and Irish appeared before the disciplinary hearing committee. (Proposed Dec., p. 6.) Irish objected to the proceeding on the basis that the charges filed against Armantrout did not comply with Article X of CSLEA's Standing Rules regarding the procedure for filing a charge. (*Ibid.*) The disciplinary hearing committee gave Armantrout the option to waive the procedural defect and proceed with the hearing or, alternatively, to suspend the hearing until CSLEA cured the procedural defect. Armantrout chose to suspend the process. (*Ibid.*)

[2] CACI is an affiliate of CSLEA. Irish is a member and officer of CACI.

On December 10, 2008, CSLEA obtained a charge signed by CSLEA member Shelley Bishop, who had first brought Armantrout's e-mail to the attention of CSLEA, and which thereby complied with Article X. (Proposed Dec., p. 6.) On December 15, 2008, CSLEA reissued the notice of intent to take disciplinary action. (*Ibid.*) The disciplinary hearing was rescheduled for January 16, 2009. (*Id.* at p. 7.) On January 20, 2009, Armantrout was suspended from CSLEA for two years. (*Id.* at p. 8.) Armantrout did not appeal the disciplinary hearing committee's decision. (*Id.* at p. 9.)

PROPOSED DECISION

The ALJ framed the issue thusly: "Did CSLEA fail to follow reasonable procedures in suspending Armantrout?" (Proposed Dec., p. 10.) The ALJ determined that section 3515.5 of the Dills Act entitled state employees who are members of employee organizations "a right to reasonable internal disciplinary procedures and reasonable application of those procedures." (*Ibid.*)

Therefore, according to the ALJ, the case turns on the reasonableness, and the reasonable application, of CSLEA's Standing Rules, Article X, Section E (Exhaustion of Remedies within CSLEA), which states:

> No officer or member of CSLEA shall resort to judicial proceedings of any kind, before any forum, with regard to any matter pertaining to this organization or its Affiliates, or his/her office, until all remedies provided for within the Constitution and Standing Rules have been fully exhausted, provided the foregoing shall not apply where the action was initiated to prevent the loss of rights under an applicable statute of limitations and the member of officer has diligently pursued his or her internal remedies.

(*Id.* at p. 11.) Armantrout did not appeal the disciplinary hearing's decision to the CSLEA board of directors as required by Standing Rules, Article X, Section D.[3] The ALJ thus

[3] CSLEA Standing Rules, Article X, Section D "Appeals" states:

determined that CSLEA's Constitution and Standing Rules were both reasonable and reasonably applied to Armantrout and dismissed Armantrout's charges.

POSITIONS OF THE PARTIES

Although not explicitly stated as such, Armantrout appears to take three exceptions to the ALJ's proposed decision: (1) that CSLEA presumably violated due process by suspending Armantrout without first providing him with a complete copy of the CSLEA Constitution and Standing Rules; (2) that the ALJ erred in finding that Irish did not testify that CSLEA's conduct interfered with his representation of Armantrout; and (3) that the ALJ erred in dismissing Armantrout's charges for failure to exhaust administrative remedies.

CSLEA responds that Armantrout's exceptions fail to comport with PERB Regulation 32300[4] and that Armantrout fails to point to any error in law or fact by the ALJ. CSLEA further argues that: (1) Armantrout failed to demonstrate how or why the failure to provide him with a copy of the CSLEA Constitution and Standing Rules constitutes a violation of the Dills Act or any other law, rule or regulation; (2) Armantrout, as the charging party, bore the burden of proving that CSLEA's conduct interfered with Irish's representation of Armantrout and cannot rely on his own failure to elicit evidence from his witness as evidence of CSLEA's interference; (3) Armantrout was offered and failed to take the opportunity to appeal the decision of CSLEA's disciplinary hearing committee; and (4) Armantrout failed to

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1. The appeal body shall be the CSLEA Board of Directors, excluding the Accused if on the CSLEA Board of Directors.

2. Either party may, within thirty (30) days following receipt of the decision, file an appeal. The appeal shall be filed to the appeal body and the opposing party simultaneously.

[4] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

present any evidence at the PERB hearing that CSLEA's disciplinary hearing committee was not a neutral decision maker.

DISCUSSION

CSLEA's Failure to Provide Armantrout with the Constitution and Standing Rules

As an initial matter, we note that Armantrout's first exception does not point to an error of law or fact in the ALJ's proposed decision. In addition, even assuming that Armantrout was never provided with a full and complete copy of CSLEA's Constitution and Standing Rules, Armantrout's first exception does not point to a specific law, regulation or provision of CSLEA's own Constitution or Standing Rules that was violated by CSLEA's failure to provide those documents. Therefore, we conclude that Armantrout's first exception lacks merit.[5]

CSLEA's Interference with Irish's Representation of Armantrout

To state a prima facie case of interference, a charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under the Dills Act. (*State of California (Department of Developmental Services)* (1983) PERB Decision No. 344-S; *Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*); *Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106 (*Kimmett*).) The test for whether a respondent has interfered with the protected rights of employees under the Dills Act does not require that unlawful motive or intent be established, but only that at least slight harm to employee rights results from the conduct. (*Omnitrans* (2009) PERB Decision No. 2030-M; *Sacramento City Unified School*

[5] Armantrout failed to explain why the "relevant provisions" of the CSLEA Constitution and Standing Rules supplied to him by CSLEA with the October 16, 2008, notice of intent to take disciplinary action was deficient and violated his due process rights. Neither did Armantrout explain why due process necessitated that CSLEA supply him with the provisions of the CSLEA Constitution and Standing Rules not supplied in the October 16, 2008 notice.

District (1982) PERB Decision No. 214.) If harm to employee rights is slight and the employer offers justificiation based on operational necessity, the competing interests are balanced. (*Carlsbad, supra,* PERB Decision No. 89.) Section 3519.5 (b) of the Dills Act makes it unlawful for an employee organization "to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter."

While it is conceivable that Clark's November 20, 2008, e-mail to Irish could have negatively impacted Irish's representation of Armantrout, the charging party must prove its case and introduce persuasive evidence. As the ALJ found, "Irish did not testify that CSLEA's conduct interfered with his representation of Armantrout." (Proposed Dec., p. 10.) Armantrout argues, on appeal, that Irish's testimony "shows that he was never asked, either on direct or cross-examination, any questions concerning interference with his representation by CSLEA" and therefore, there was no factual basis for the ALJ's finding. (Armantrout's Exceptions, p. 3.)

We conclude that the ALJ's finding is correct. Irish did not testify that CSLEA's conduct interfered with his representation of Armantrout. If CSLEA's conduct had interfered with Irish's representation of Armantrout, it was incumbent upon Armantrout, as the charging party, to elicit such testimony from Irish. He did not. We conclude that Armantrout failed to prove that CSLEA's conduct interfered with Irish's representation of Armantrout.

Failure to Exhaust Administrative Remedies

The ALJ dismissed the remainder of Armantrout's allegations because Armantrout failed to appeal the decision of the disciplinary hearing committee to the CSLEA board of directors, as required by CSLEA's Standing Rules, Article X, Section E, before proceeding to another forum. The ALJ determined that the CSLEA Constitution and Standing Rules Article X, Section E were reasonable and reasonably applicable to Armantrout as required by

Dills Act section 3515.5. Therefore, the ALJ determined that Armantrout's charges should be dismissed for failure to exhaust administrative remedies before he initiated the unfair practice charge at PERB.

Armantrout argues that: (1) failure to exhaust administrative remedies is an affirmative defense which must be raised in the answer or it is waived; and (2) administrative exhaustion is not required where it is futile.

Jurisdiction v. Affirmative Defense

Armantrout urges that exhaustion is an affirmative defense and waived if not raised in the answer. We disagree. The requirement to exhaust internal union remedies is plainly stated in CSLEA's Standing Rules and thus became part of Armantrout's burden to prove. Armantrout failed to prove he had exhausted the internal union remedies contained in Article X, Section E. Moreover, California courts have long held that "exhaustion of the administrative remedy is a jurisdictional prerequisite to resort to the courts." (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 293 (*Abelliera*) [emphasis added]; see also *Morton v. Superior Court* (1970) 9 Cal.App.3d 977, 981 [exhaustion of an available administrative remedy is a condition precedent to obtaining judicial relief, and a court violating the rule acts in excess of its jurisdiction]; *Rojo v. Kliger* (1990) 52 Cal.3d 65, 84 [exhaustion of the administrative remedy is a jurisdictional prerequisite].) Finally, the doctrine of failure to exhaust administrative remedies may be raised at any point in the proceedings, even if it was not raised in the answer. (*People v. Coit Ranch, Inc.* (1962) 204 Cal.App.2d 52, 57 [jurisdiction of a court over the subject matter may be challenged at any stage of the proceeding and it is immaterial that the doctrine of non-exhaustion was not reserved in the pretrial order or raised prior to trial]; contra *Green v. City of Oceanside* (1987)

194 Cal.App.3d 212, 220-222 [exhaustion does not implicate subject matter jurisdiction, but is a procedural prerequisite which may be waived if not properly raised].)

Failure to Exhaust Internal Union Remedies

The rule that administrative remedies must be exhausted before seeking judicial relief has long been applied also in the context of exhaustion of internal union remedies.

> It is the general and well established jurisdictional rule that a plaintiff who seeks judicial relief against an organization of which he is a member must first invoke and exhaust the remedies provided by that organization.

(*Holderby v. International Union of Operating Engineers* (1955) 45 Cal.2d 843, 846 (*Holderby*).) The Court in *Holderby* analogized the exhaustion of internal union remedies to the exhaustion of administrative remedies as a condition precedent to resorting to the courts and the exhaustion of the grievance machinery in a collective bargaining agreement before seeking judicial relief. (*Ibid.*)

In *Holderby*, *supra*, 45 Cal.2d 843, the Court stated:

> It is only when the organization violates its rules for appellate review or upon a showing that it would be futile to invoke them that the further pursuit of internal relief is excused.

(*Holderby*, at p. 847.) In contrast, the U.S. Supreme Court established a three-part test for excusing failure to exhaust internal union remedies in cases arising under section 301 of the Labor Management Relations Act. Under the test established by the Supreme Court:

> [C]ourts have discretion to decide whether to require exhaustion of internal union procedures. In exercising this discretion, at least three factors should be relevant: first, whether union officials are so hostile to the employee that he could not hope to obtain a fair hearing on his claim; second, whether the internal union appeals procedures would be inadequate either to reactivate the employee's grievance or to award him the full relief he seeks under [section] 301; and third, whether exhaustion of internal procedures would unreasonably delay the employee's opportunity to obtain a judicial hearing on the merits of his claim. If any of

> these factors are found to exist, the court may properly excuse the employee's failure to exhaust.

(*Clayton v. International Union* (1981) 451 U.S. 679, 689 (*Clayton*).)

The *Holderby, supra*, 45 Cal.2d 843 exhaustion rule was subsequently applied to unfair labor practice proceedings under the California Agricultural Labor Relations Act (ALRA):

> A union member must in the usual case avail himself of all appropriate intraunion remedies before seeking judicial relief.

(*Pasillas v. Agricultural Labor Relations Bd.* (1984) 156 Cal.App.3d 312, 356 (*Pasillas*).) In *Pasillas*, the Agricultural Labor Relations Board (ALRB) had applied the entire three-part *Clayton, supra,* 451 U.S. 679 test in determining that several of the charging parties were excused from exhausting internal union remedies before filing their unfair practice charges. The ALRB's application of the *Clayton* test was challenged by the United Farm Workers which argued that the *Holderby, supra*, 45 Cal.2d 843 exhaustion rule should have been applied. In determining that some of the plaintiffs were excused from exhausting the union's internal remedies, the *Pasillas* court reviewed the various rules courts had applied in determining whether the failure to exhaust internal union procedures before seeking judicial relief would be excused.

The *Pasillas, supra,* 156 Cal.App.3d 312 court declined to decide whether the entire three-part *Clayton, supra,* 451 U.S. 679 test should be applied. Instead, the *Pasillas* court determined that the second prong of the *Clayton* test—inadequacy of remedy—is firmly established in California law. (See *Tiernan v. Trustees of California State University & Colleges* (1982) 33 Cal.3d 211, 217 [the rule requiring exhaustion of administrative remedies does not apply where an administrative remedy is unavailable or inadequate].) The *Pasillas, supra,* 156 Cal.App.3d 312 court then determined that the ALRB did not abuse its discretion in applying the inadequacy of remedy standard to some of the employees in *Pasillas*.

A crucial distinction exists between *Pasillas, supra,* 156 Cal.App.3d 312 and the case before us. The charging parties in *Pasillas* were subject to a contract which contained a union security agreement which conditioned employment on union membership.[6] Because in that case the loss of union membership was the equivalent of loss of employment, in *Pasillas*, internal union discipline implicated the employees' employment. In the case before us, there is no such security agreement and no evidence was offered to suggest that Armantrout's suspension from CSLEA had any impact on his employment. The Board generally declines jurisdiction where internal union affairs and procedures are alleged to violate the duty of fair representation except where it can be shown that the internal union activity has "a substantial impact on the relationships of unit members to their employers." (*Kimmett, supra,* PERB Decision No. 106.) Absent such impact, the duty of fair representation does not extend to internal union activities. (*California State Employees Association (Hard, et al.)* (1999) PERB Decision No. 1368-S.)

We conclude that the ALJ properly analyzed CSLEA's internal disciplinary procedures under the only restriction applied to them under section 3515.5 of the Dills Act, that they be reasonable and reasonably applied. We agree with the ALJ that CSLEA's procedures, including the requirement under CSLEA's Standing Rules, Article X, Section E, that a member fully exhaust internal union remedies before resorting to external proceedings, are reasonable. As the ALJ pointed out, Article X, Section E does not prevent a member from resorting to judicial proceedings, it merely requires that he exhaust union remedies and give CSLEA a full opportunity to reach an internal resolution of any dispute regarding its members. Armantrout has failed to demonstrate that CSLEA's procedures were not reasonable or not reasonably applied to him.

[6] California Labor Code section 1153(c) permits such agreements in employer-union agreements under the ALRA.

Futility

Lastly, Armantrout contends that he should be excused from exhausting CSLEA's internal union remedies because it would have been futile to do so. We disagree. The evidence at hearing indicated that the disciplinary proceedings that arose out of the POC severance campaign resulted in 45 actions being taken by CSLEA, and five or six appeals being taken from those actions. CSLEA did not grant any of the five or six appeals. However, the fact that an administrative body has decided other cases involving other plaintiffs on similar facts against plaintiff's position does not make an administrative appeal futile nor do such facts excuse a litigant from exhausting available administrative remedies (*Abelleira, supra,* 17 Cal.2d 280, 301.) We find the evidence regarding CSLEA's denial of the other appeals unpersuasive on the futility claim. Armantrout adduced no details regarding those other cases or how CSLEA's actions in those cases were unreasonable. Accordingly, we do not accept Armantrout's futility claim.

CONCLUSION

We affirm the ALJ's determinations that CSLEA's internal disciplinary proceedings are reasonable and were reasonably applied to Armantrout and also affirm the ALJ's determination that Armantrout's charges should be dismissed for failure to exhaust CSLEA's internal union remedies.

ORDER

The unfair practice charge in Case No. LA-CO-132-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

WILLIAM ARMANTROUT, Charging Party, v. CALIFORNIA STATEWIDE LAW ENFORCEMENT ASSOCIATION, Respondent.	UNFAIR PRACTICE CASE NO. LA-CO-132-S PROPOSED DECISION (October 15, 2012)

Appearances: Thomas A. Hoffman, Attorney, for William Armantrout; Carroll, Burdick & McDonough by Jason H. Jasmine, Attorney, for California Statewide Law Enforcement Association.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, an employee alleges that his union failed to follow reasonable procedures in suspending his membership, in violation of the Ralph C. Dills Act (Dills Act).[1] The union denies any violation.

William Armantrout (Armantrout) filed an unfair practice charge against the California Statewide Law Enforcement Association (CSLEA) on June 11, 2009. The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint against CSLEA on February 23, 2010. CSLEA filed an answer to the complaint on March 11, 2010.

PERB held an informal settlement conference on April 12, 2010, and (after a period of abeyance) on October 18, 2011, but the case was not settled. PERB held a formal hearing on February 9-10, 2012. With the receipt of the final post-hearing brief on May 2, 2012, the case was submitted for decision.

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

FINDINGS OF FACT

Armantrout is a state employee under the Dills Act, and CSLEA is a recognized employee organization under the Dills Act.

The PERB complaint alleges, in part:

> 3. From approximately June 2000 to February 1, 2009, Charging Party [Armantrout] was a member of Respondent [CSLEA].
>
> 4. On or about October 16 and again on or about December 15, 2008, Respondent served Charging Party with Notice of Intent to Take Disciplinary Action against him, each time for allegedly violating its Constitution and Standing Rules.
>
> 5. On or about January 20, 2009, Respondent, acting through its Disciplinary Hearing Committee, suspended Charging Party from membership in Respondent effective February 1, 2009, for a period of two years.

In its answer, CSLEA admits these allegations. The complaint further alleges:

> 6. Contrary to Respondent's Constitution and Standing Rules and/or Government Code section 3515.5, Respondent:
>
> a. Charged Charging Party and suspended Charging Party from membership in Respondent for violating its Constitution and Standing Rules despite never previously providing Charging Party with a complete copy of its Constitution and Standing Rules;
>
> b. Failed to serve a copy of the charge signed by the member or members bringing the charge against Charging Party that resulted in Respondent serving Charging Party with the October 16, 2008 Notice of Intent to Take Disciplinary Action;
>
> c. Failed to litigate the October 16, 2008 disciplinary action before a neutral decision maker;
>
> d. Threatened Charging Party's chosen representative, Allan Irish, with discipline if he advocated on behalf of Charging Party; and

e. Failed to provide Charging Party with a written decision within 30 days of the disciplinary hearing on the October 16, 2008 disciplinary action.

CSLEA denies these allegations. It is worth noting that the PERB complaint alleges procedural defects, not substantive defects, in Armantrout's suspension.

On October 16, 2008, CSLEA Senior Vice President Richard Carrillo (Carrillo) issued Armantrout a notice of intent to take disciplinary action stating, in part:

> Please be advised pursuant to Article XX of the Constitution of the California Statewide Law Enforcement Association (CSLEA) and Article X of the Standing Rules to the CSLEA Constitution, the following charges have been filed with the CSLEA Disciplinary Hearing Committee for consideration of imposition of penalties for acts in contravention to the CSLEA Constitution and Standing rules. The charges are based on the following:
>
> In approximately September 2007, an organization known as the Peace Officers of California (POC) initiated a campaign to sever the peace officer members of Bargaining Unit 7 who are currently represented by CSLEA. On or about October 4, 2007, the CSLEA Board of Directors expressed in writing CSLEA's opposition to the severance and determined it would diminish the bargaining strength of CSLEA on behalf of Unit 7 peace officers and non-peace officers.
>
> On September 22, 2008, you disseminated an e-mail message to other CSLEA/CASI members encouraging support for the POC severance campaign.
>
> Your acts in furtherance of the severance are deemed to violate Article XX, Section 2 (e) of the CSLEA Constitution which prohibits: "Any activity which assists or intended to assist a competing organization within the jurisdiction of CSLEA."

The letter further informed Armantrout of his right to request a hearing before the CSLEA Disciplinary Hearing Committee. A copy of "the relevant provisions" of the Constitution and Standing Rules were enclosed.

It is stipulated that CSLEA has no record of providing Armantrout with copies of the CSLEA Constitution and Standing Rules prior to October 16, 2008. The Constitution and

Standing Rules do not themselves require their distribution to all CSLEA members. There is no evidence, however, that Armantrout did not have copies of the Constitution and Standing Rules.

On October 27, 2008, Armantrout sent CSLEA a letter requesting both a formal hearing and the following documents:

> 1. A full and complete copy of the original actual charges filed against me, including copies of whatever supporting documents were provided with the initial complaint, as well as copies of any other supporting documents [that] were subsequently obtained or provided to CSLEA.
>
> 2. The name(s) of the member(s) who filed these charges against me.
>
> 3. The names of all members of the Disciplinary Hearing Committee who are assigned to hearing this matter.
>
> 4. A full and complete copy of the current CSLEA Constitution, as well as a copy or copies of the CSLEA Constitution that was in force during the period of September, 2007 to present (if different). [Note: Only excerpts were provided with Carrillo's letter.]
>
> 5. A full and complete copy of the current CSLEA Standing Rules, as well as a copy or copies of the CSLEA Standing Rules that was in force during the period of September, 2007 to present (if different). [Note: only excerpts were provided with Carrillo's letter.]

(Bracketed notes in the original.) Armantrout requested that the documents be provided by November 14, 2008.

On November 5, 2008, Carrillo sent Armantrout a letter advising him that he was scheduled to appear before the Disciplinary Hearing Committee on December 9, 2008. CSLEA had not responded to Armantrout's request for documents.

At some point, Armantrout asked CSLEA member Allan Irish (Irish) to represent him. On November 15, 2008, Irish sent an e-mail message to CSLEA General Manager and Chief

Counsel Kasey Clark (Clark) reasserting Armantrout's request for documents. By e-mail on November 17, 2008. Clark responded, in part:

> The October 16, 2008 letter to Mr. Armantrout is the complete copy of the charges against him. I am also attaching the e-mail that formed the basis of the charges which should have been accessible to Mr. Armantrout. The charges were filed by the CSLEA Disciplinary Hearing Committee which is comprised of the three CSLE[A] Vice Presidents, Richard Carrillo, Bruce Hotchkiss and Tina Brazil, and CSLEA President Alan Barcelona and CSLEA Controller Ricardo Sanchez.

Irish replied by e-mail on November 19, 2008, without objecting to the composition of the Disciplinary Hearing Committee. Irish did object that the disciplinary committee itself could not have brought the charges against Armantrout, because none of the members "were parties to the e-mail string in question." Irish asked for the identity of the person "who provided this e-mail to CSLEA." By e-mail on November 20, 2008, Clark identified the individual as Shelly Bishop (Bishop).

In his e-mail message of November 17, 2008, Clark also told Irish:

> To the extent you, as Mr. Armantrout's advocate, take the position that support of the POC severance campaign is appropriate conduct for a CSLEA member, you are opening yourself up to sanctions by both CSLEA and CACI.

The California Association of Criminal Investigators (CACI) is a CSLEA affiliate of which Irish is a member and an officer. In his e-mail message of November 20, 2008, Clark told Irish:

> I stand behind my original opinion that although it is permissible under the CSLEA Constitution and Standing Rules to represent Mr. Armantrout, it is impermissible for you as a CSLEA member and officer of a CSLEA affiliate to advocate the propriety of severance in contravention to the stated position of the CSLEA Board of Directors. Such advocacy could create the impression of credence to conduct which is clearly violative of the CSLEA Constitution. Should you advocate this position on behalf of Mr. Armantrout, you do so at the risk of sanction by the CSLEA Disciplinary Hearing Committee and CACI.

There is no evidence that Irish further replied at that time.

On December 9, 2008, Armantrout and Irish appeared before the Disciplinary Hearing Committee. Irish objected to the proceedings on the basis of CSLEA's Standing Rules, Article X, Section A (Procedure for Filing Discipline Charge Defined), Paragraph 1, which states:

> Charges shall be in writing and shall be signed by the member or members bringing the charge. The charges shall be specific, citing in detail the nature, the date, and the circumstances of the alleged offense and, where violation of a Constitution or Standing Rules provision is alleged, the specific sections shall be cited, along with the specific act or omission which constitutes the alleged violation. The charge shall be filed with the President of CSLEA or, if he/she is a directly interested party, the Senior Vice President of CSLEA. Such officer shall forward such charge to members of the Hearing Committee.

The objection was that there was no such charge filed by Bishop. At the PERB hearing, Clark opined that no such charge was necessary, because Armantrout knew that his own e-mail message (of September 22, 2008) was at issue.

According to Clark's testimony at the PERB hearing, the Disciplinary Hearing Committee gave Armantrout and Irish an option:

> And so the option was afforded to either waive the procedural defect that they were alleging existed and proceed at that time on the merits of the allegations, or we would suspend the hearing process and reconvene after obtaining the written complaint to back the allegations that had already been made.

According to Clark, Armantrout and Irish chose to suspend the process and reschedule it once CSLEA obtained a written charge from Bishop.

On December 10, 2008, at Clark's request, Bishop submitted a written charge against Armantrout. On December 15, 2008, Carrillo issued Armantrout another Notice of Intent to Take Disciplinary Action. On December 23, 2008, Carrillo sent Armantrout a letter advising

him that he was scheduled to appear before the Disciplinary Hearing Committee again on January 16, 2009.

On January 1, 2009, Irish, who was still representing Armantrout, sent Clark an e-mail message, stating in part:

> 1. I find it somewhat disconcerting that the "Complaint Letter" which is the basis of the action is dated exactly one day after Armantrout's previous disciplinary hearing, wherein it was pointed out that the previous proceeding was initiated and prosecuted in direct violation of the CSLEA Standing Rules in regard to disciplinary proceeding. . . . The only conclusion that I can reach is that CSLEA is trying to re-litigate a matter which was addressed in the previous hearing, which is clearly a violation of the doctrine of double jeopardy, as well as the basic principles of fairness inherent in due process. Finally, the initiation of a new action-based on the same material, while disposition of the first action is still pending, is clearly double jeopardy and a violation of Armantrout's due process, as well as designed simply to intimidate, harass and threaten Armantrout.
>
> . . .
>
> 4. Your previous communications to myself and CACI regarding my representation of Armantrout, threatening CSLEA disciplinary action against me if I asserted certain defenses, was both violative of Armantrout's due process rights as well as a violation of Rule 5-100 of the Rules of Professional Conduct of the State Bar. Please be advised that any future threats along those lines to any party may be referred to the State Bar of California. . . .

Irish urged CSLEA to "drop this entire matter," which CSLEA did not do.

On January 16, 2009, Armantrout and Irish appeared before the Disciplinary Hearing Committee via Skype. At the PERB hearing, Clark was questioned and testified in part as follows:

> Q. Did Mr. Armantrout offer any substantive defense to the charge?
>
> A. No. and I believe he admitted that he had authored the emails in question. Again, this focus was procedural primarily. The contention, you know, this time was that CSLEA

had, you know, now fabricated a complaint that everybody knew would be forthcoming as a result of a last -- as the first hearing on this case. And that somehow we were barred [by] double jeopardy from disciplining Mr. Armantrout at the second hearing because we, I guess, didn't discipline him at the conclusion of the first hearing.

Q. But you had indicated that you didn't consider that the first hearing had ever completed that disciplinary action.

A. The hearing on the appropriateness of Mr. Armantrout's conduct was not complete as of that first day.

The Disciplinary Hearing Committee ultimately decided to impose a two-year suspension on Armantrout, a decision communicated to him in writing on January 20, 2009.

Meanwhile, Armantrout had filed a complaint against Bishop and the Disciplinary Hearing Committee. On January 20, 2009, CSLEA responded by letter:

> Please be advised on January 17, 2009, the CSLEA Board of Directors reviewed your updated complaint against the CSLEA Disciplinary Hearing Committee and CASI President Shelley Bishop.
>
> The Board of Directors views the allegations you have raised as criticism of the procedures relative to the disciplinary action pending against you. As you are aware, the CSLEA Board of Directors is the body which reviews any appeal from the imposition of discipline by the CSLEA Disciplinary Hearing Committee. It would not be appropriate at this time for the Board to rule on the issues you have raised as no appeal has yet been filed. To the extent you elect to appeal the disciplinary action imposed, you may raise these issues on appeal.

CSLEA's Standing Rules, Article X, Section D (Appeals), states in part:

> 1. The appeal body shall be the CSLEA Board of Directors, excluding the Accused if on the CSLEA Board of Directors.
>
> 2. Either party may, within thirty (30) days following receipt of the decision, file an appeal. The appeal shall be filed to the appeal body and the opposing party simultaneously. The appeal shall be in writing and shall be accompanied by a copy of the original charge and of the decision which is being appealed. The appeal shall set forth in substance

the appellant's reasons for believing the Hearing Committee was in error and the nature of the error. The appeal shall be limited to the evidence which was presented to the Disciplinary Hearing Committee. No evidence which was reasonably available at the time of hearing by the Disciplinary Hearing Committee shall be considered on appeal. The appeal shall be served by registered mail, return receipt requested, or in person, upon the appeal body and the opposing party. The opposing party shall have thirty (30) days in which to respond to the appeal.

3. The appeal body shall determine the matter, if reasonably possible and after allowing for the time frames for a response from the opposing party, at the next scheduled meeting of the CSLEA Board of Directors. The decision of the appeal body shall be effective immediately.

4. If the appeal body grants the appeal, the matter shall be remanded to the Disciplinary Hearing Committee who shall conduct further proceedings which are consistent with the decision of the appeal body.

Armantrout never filed an appeal under this section.

CSLEA's Standing Rules, Article X, Section E (Exhaustion of Remedies Within CSLEA), states:

> No officer or member of CSLEA shall resort to judicial proceedings of any kind, before any forum, with regard to any matter pertaining to this organization or its Affiliates, or his/her office, until all remedies provided for within the Constitution and Standing Rules have been fully exhausted, provided the foregoing shall not apply where the action was initiated to prevent the loss of rights under an applicable statute of limitations and the member or officer has diligently pursued his or her internal remedies.

As stated above, Armantrout filed his unfair practice charge on June 11, 2009, some four months after his suspension became effective (on February 1, 2009).

Because of ill health, Armantrout himself did not testify at the PERB hearing. Irish testified, but not in any detail about his representation of Armantrout before the Disciplinary

Hearing Committee. More specifically, Irish did not testify that CSLEA's conduct interfered with his representation of Armantrout

ISSUE

Did CSLEA fail to follow reasonable procedures in suspending Armantrout?

CONCLUSIONS OF LAW

Dills Act section 3515.5 states, in part:

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

State employees who are members of employee organizations have a right to reasonable internal disciplinary procedures and the reasonable application of those procedures. (*California School Employees Association and its Shasta College Chapter #381 (Parisot)* (1983) PERB Decision No. 280; *California Correctional Peace Officers Association (Colman)* (1989) PERB Decision No. 755-S (*Colman*); *California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479-S (*Hard, et al.)*; *SEIU Local 1000 (Hernandez)* (2009) PERB Decision No. 2049-S.)

These reasonable internal disciplinary procedures include granting the accused "substantial justice" and the "elements of a fair trial," the right to notice of the charges, to confront and cross-examine accusers, and to refute evidence. "Technical legal niceties" are not required. (*Colman*, adopting administrative law judge's proposed decision, p. 24.) Additionally, the application of these internal disciplinary rules must be reasonable. For instance, applying summary suspension proceedings in the midst of an election period when there was not an immediate threat to the welfare of the employee organization was found to be an unreasonable application of an internal disciplinary procedure. (*Hard, et al.*, at pp. 20-22.)

In my view, this case turns on the reasonableness and the reasonable application of CSLEA's Standing Rules, Article X, Section E (Exhaustion of Remedies Within CSLEA). As quoted above, this section states:

> No officer or member of CSLEA shall resort to judicial proceedings of any kind, before any forum, with regard to any matter pertaining to this organization or its Affiliates, or his/her office, until all remedies provided for within the Constitution and Standing Rules have been fully exhausted, provided the foregoing shall not apply where the action was initiated to prevent the loss of rights under an applicable statute of limitations and the member or officer has diligently pursued his or her internal remedies.

In its post-hearing brief, CSLEA argues in part that Armantrout's failure to appeal his suspension (under Article X, Section D, also quoted above) "constitutes a failure to exhaust administrative remedies and precludes any finding in favor of Armantrout in this matter."

On its face, Article X, Section E, appears reasonable. It does not bar a member from any forum; it only requires that a member first exhaust internal remedies (or at least pursue them diligently) before proceeding to another forum. It is reasonable that CSLEA have an opportunity to review its own procedures internally before having to defend them elsewhere. Furthermore, it is reasonable to apply Article X, Section E, to the present case, in which Armantrout proceeded to PERB's quasi-judicial forum without first appealing his suspension, even after being reminded of his appeal rights by CSLEA's letter of January 20, 2009.

In his post-hearing brief, Armantrout argues in part:

> The Constitution and Standing Rules constitute an adhesion contract under California law. Together they, as applied in this case, result in an unenforceable, unconscionable result for punishment and forfeitures that are arbitrary, capricious and contrary to the reasonable expectations of CSLEA member ARMANTROUT as the adhering party.

I disagree. CSLEA's Constitution and Standing Rules, as they apply to the present case, are not a "contract." To the extent that they concern membership and are reasonable, they are

rules that CSLEA was specifically authorized to establish by Dills Act section 3515.5. Because I find them both reasonable and reasonably applicable to this case, I must dismiss Armantrout's charge before PERB.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. LA-CO-132-S, *William Armantrout v. California Statewide Law Enforcement Association*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. 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

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (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 PERB 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. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Thomas J. Allen
Administrative Law Judge