STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

KENNETH L. PARISOT, JR.,	)	
Charging Party,	)	Case No. S-CO-62
v.	)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION and its SHASTA COLLEGE CHAPTER #381,	)	PERB Decision No. 280
Respondent.	)	January 31, 1983

Appearances; Edward L. Mann, Attorney (Tillman, Beasley & Mann) for Kenneth L. Parisot, Jr.; Madalyn J. Frazzini, Attorney for California School Employees Association and its Shasta College Chapter #381.

Before Gluck, Chairperson; Tovar and Morgenstern, Members.

DECISION

GLUCK, Chairperson: Kenneth L. Parisot excepts to a hearing officer's refusal to issue a complaint upon his charge that the California School Employees Association and its Shasta College Chapter #381 (CSEA) violated subsection 3543.6(b) of the Educational Employment Relations Act (EERA)[1] by

[1]The EERA is codified at Government Code section 3540 et seq. All references will be to the Government Code unless otherwise indicated.

Subsection 3543.6(b) provides:

> It shall be unlawful for an employee organization to:
>
> (b) impose or threaten to impose reprisals

suspending him from membership in the organization for four years and barring him from holding office for twelve years because he worked to decertify the organization.

The charge alleges the following facts.[2] On April 28, 1980, five members of Chapter 381 wrote to CSEA asking that Parisot, a member and a past chapter president, be expelled, claiming he had:

1. circulated a decertification petition, an act they considered disloyal;

2. used his past presidency in the decertification effort;

3. circulated false reports among membership concerning Association activities;

4. represented members in a manner which violated CSEA's agreement with the District; and

5. failed to give members important information about chapter services, weakening the chapter.

The letter provided no details of these alleged acts.

On May 20, CSEA notified Parisot that charges had been brought against him, that it had reasonable cause to believe they were true, that Parisot had 10 days to respond and that, if he did not respond or if his response was inadequate, CSEA

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on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

[2]Parisot filed his unfair practice charge on February 20, 1981. His pleading consisted of the official charge form and copies of his correspondence with CSEA.

would select a trial committee and hold a hearing. The charges were not included in the notice but were sent to Parisot a week later and he was given an additional 10 days to respond.

On July 29, CSEA wrote Parisot that a hearing had been scheduled for August 16, 1980 at CSEA's San Jose headquarters, that he would have the right to be represented by counsel, and to cross-examine witnesses. Parisot, who lived in Redding, did not appear at the hearing. Subsequently, CSEA notified him that he had been found guilty of all charges except the allegation that he had represented members in violation of the contract, and that he was therefore suspended from membership for four years and barred from holding office for twelve years. Each charge brought a one-year suspension and a three-year prohibition from holding office. He was further informed that he would have to pay service fees to the local chapter and to CSEA.

On November 6, 1980, Parisot's attorney wrote CSEA claiming that:

> . . . the [suspension] charges, the procedures through which the charges were pursued and the penalties imposed . . . would seem to constitute the imposition of reprisals on Mr. Parisot in the exercise of his statutorily protected right to form, join, and participate in an employee organization of his own choosing and, further, would seem to present a threat of reprisals to any other employee who seeks to exercise such rights.

The letter also stated that the provisions of CSEA's constitution and bylaws under which Parisot was disciplined and

the procedures CSEA followed were unreasonable under EERA subsection 3543.1(a) since:

1. The constitution and by-laws do not state that using the office of past president to attempt decertification is a chargeable offense;

2. The hearing was held in San Jose although Parisot and the witnesses live in Shasta County;

3. Parisot was not informed prior to hearing of the evidence against him;

4. The August 22 notice of suspension did not indicate what evidence was produced at the hearing.

In response to the hearing officer's demand that he particularize his charge, Parisot restated most of the allegations made in the November 6, 1982 letter. He did add that, contrary to Article II, section VI, 613.5 of the CSEA constitution and bylaws, the charges did not: (1) "specify the offenses and the sections of the association and/or chapter constitution and bylaws alleged to have been violated under section .4 above," or (2) "outline, specifically, the dates, times, places, and witnesses involved in each offense charged." He did not provide a copy of the constitution and bylaws with his charges.

The hearing officer dismissed the charges relying on Los Angeles Community College District (Kimmett) (10/19/79) PERB Decision No. 106 and two cases decided under the National Labor Relations Act (NLRA), Tawas Tube Products, Inc. (1965)

151 NLRB 46 [58 LRRM 1330] and Price v. NLRB (9th Cir. 1967) 373 F.2d 443 [64 LRRM 2495].

He found that under Kimmett, PERB will not interfere in the internal affairs of employee organizations unless those affairs have a substantial impact on the members' relationship with their employer. He concluded that Parisot had failed to demonstrate that CSEA's internal disciplinary procedures had "any impact, let alone substantial impact, on his relationship with his employer." Specifically, he found that his suspension restricted his rights within the union, but had no effect on his job or employment status.

Moreover, he concluded that, even if Kimmett were not controlling and did not mandate dismissal of the charge, federal precedent would since the National Labor Relations Board (NLRB) and federal courts have held respectively that it is not an unfair labor practice for a union to expel or suspend members who are involved in decertification attempts. Tawas Tube Products, Inc., supra, 151 NLRB 46 and Price v. NLRB, supra, 373 F.2d 443. He found that these federal cases are controlling since the NLRA and EERA are similar; that the last sentence of subsection 3543.1(a)[3] read together with

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3Subsection 3543.1(a) provides:

> Employee organizations shall have the right to represent their members in their employment relations with public school

subsection 3543.6(b), is the equivalent of the proviso language in section 8(b)(1)(A) of the federal act.[4]

In his exceptions to the dismissal, Parisot contends that his charge does state a prima facie violation and that the PERB and federal cases relied upon by the hearing officer are not controlling. He argues that the charge alleges facts that, if substantiated, support a finding that Parisot was engaged in protected activity guaranteed by section 3543[5] when he

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> employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

[4]Section 8(b)(1)(A) of the NLRA states:

> It shall be an unfair labor practice for labor organization or its agents -
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> (1) to restrain or coerce (a) employees in the exercise of rights guaranteed in section 7: provided, that this paragraph should not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein . . .

5Section 3543 states in relevant part:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of

attempted to decertify CSEA; that CSEA took punitive discipline against him in reprisal for his conduct; that the discipline was discriminatory and interfered with, restrained, and coerced him in the exercise of his rights. He contends that the Board should apply the Carlsbad test to subsection 3543.6(b) charges and either balance the harm caused to employee rights against the organization's legitimate business justification or determine whether the organization had unlawful motive and would not have taken the action it did but for such a motive.

He maintains that the cases decided under the NLRA are not analogous to the facts here because subsection 3543.6(b) does not have proviso language protecting the employee organization's right "to prescribe its own rules with respect to the acquisition or retention of membership therein." Moreover, he argues that the NLRB and courts have limited the organization's right to fashion such rules, holding that it may only be done for defensive or protective purposes. He concludes that CSEA suspended him solely for punitive reasons and not for self-protection.

Finally, he contends that the holding in Kimmett, supra, was limited to charges alleging a violation of the duty of fair representation and not to charges of reprisal.

> their own choosing for the purpose of representation on all matters of employer-employee relations . . . .

In its response to Parisot's exceptions, CSEA supports the hearing officer's interpretation and application of Kimmett, supra, and federal precedent.

DISCUSSION

In deciding whether the charge states a prima facie case requiring a hearing on the merits, we deem the "essential facts alleged in the charge are true." San Juan Unified School District (3/10/77) EERB Decision No. 12, at p. 4.6

The facts presented in Parisot's charge raise the following issues: (1) did CSEA violate subsection 3543.6(b) by suspending Parisot from membership and holding office because of his decertification activity, and (2) was CSEA obligated to have reasonable provisions covering its disciplinary actions and, if so, did it act accordingly?

Under section 3543, which guarantees employees the right "to form, join and participate in the activities of employee organizations of their own choosing," Parisot had the right to engage in decertification activities. It is undeniable that CSEA's decision to bring charges against Parisot was motivated by his activity and tended to interfere with his and other employees' right to engage in such activity. See Price v. NLRB, supra, 373 F.2d 443. However, subsection 3543.1(a) grants to employee organizations the right to "establish

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6prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

reasonable provisions for the dismissal of individuals from membership." Certainly, a provision for suspension from membership, a lesser form of discipline, must be deemed to be sanctioned by the Act.

A provision which permits suspension of a member who is engaged in decertification activities against the organization is reasonable. The right to represent employees as an exclusive representative is an essential objective and purpose of a labor organization. See Chaffey Joint Union High School District (3/26/82) PERB Decision No. 202. An act by its own members which is directed against this purpose threatens the very existence of the organization and is of sufficient seriousness to justify a self-protective response. Tawas Tube Products, supra, 151 NLRB 46; Price v. NLRB, supra, 373 F.2d 443. See NLRB v. Allis-Chalmers (1967) 388 US 175 [65 LRRM 2449]; see also Davis v. International Alliance of Theatrical Stage Employees (2d Dist. 1943) 60 Cal. App. 2d 713.

The record does not indicate whether CSEA, prior to its action, had adopted a specific disciplinary policy covering a member's participation in a decertification effort. The omission is not fatal to CSEA's defense as to this aspect of the charge. In Smetherham v. Laundry Workers' Union (1941) 44 Cal.App.2d 131 [111 P.2d. 948], the court held that a labor organization has authority to expel a member who had (1) violated some provision of the association's constitution

and bylaws which creates the offense charged and prescribes expulsion as a penalty, or (2) committed offenses against a member's duty to the organization. A member has an inherent obligation to his organization to be loyal, and for him to engage in conduct, such as a decertification drive, which attempts to thwart the fundamental objectives of that organization is a breach of his duty. See Smith v. Kern County Medical Association (1942) 14 C.2d 263 [120 P.2d 874].

Our finding that it is permissible for an employee organization to suspend a member for his decertification activities, however, does not dispose of this case. CSEA found Parisot guilty of other charges and based its disciplinary action on all findings. It is beyond dispute that two of these charges — that he circulated false reports among membership concerning Association activities and failed to give members important information about chapter services which weakened the chapter — are unreasonably vague and ambiguous. Moreover, Parisot's charge presents facts which allege that all of the accusations by CSEA did not specify the sections of the constitution which had been violated or the dates, times, places, and witnesses involved in each of the charged offenses, and that he was never notified of the evidence produced against him at the hearing. He further argues that holding the hearing in San Jose was unreasonable. CSEA does not deny these allegations and acknowledges that the suspension was based on

all four accusations with Parisot being suspended for one year from membership and three years from holding office for each charge.

In view of our finding that Parisot has raised questions about the reasonableness of the procedures followed by CSEA in dealing with all of the charges, and that several of the charges were unreasonably vague and ambiguous, but yet the basis for discipline, we conclude that the hearing officer erred in dismissing the charge.

Finally, the hearing officer erred in his application of Kimmett, supra. There we stated that we will not interfere in matters concerning the relationship of members to their union unless they have had a substantial impact on the relationship of the employees to their employer. This does not require a demonstrable impact on the employees wages, hours or terms and conditions of employment. The relationship of employees to their employer can be manifested through and conditioned by the selection or rejection of a bargaining representative. In Kimmett, we did not intend to abdicate our jurisdictional power to determine whether an employee organization has exceeded its authority under subsection 3543.1(a) to dismiss or otherwise discipline its members.

We find that the filed charge satisfied the requirements of a prima facie case and remand to the General Counsel to issue a complaint and to proceed to a hearing in accordance with the foregoing discussion.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that the General Counsel issue a complaint based on the charges filed by Kenneth L. Parisot against the California School Employees Association and its Shasta College Chapter #381 and proceed with a hearing on the issues presented in accordance herewith.

Members Tovar and Morgenstern joined in this Decision.