

ORDER

The Board agent's partial dismissal in Case No. S-CE-238-S is hereby AFFIRMED.

Chairperson Hesse and Member Porter joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 93814
(916) 322-3198



November 28. 1984

William L Williams, Jr.
Staff Counsel
Peace Officers Research Association
of California
1911 F Street
Sacramento. CA 95814

Re: California Union of Safety Employees v. State of California. Department of Developmental Services
Unfair Practice Charge No. S-CE-238-S

Dear Mr. Williams:

The above-referenced charge alleges that the State of California. Department of Development Services (State) retaliated against Mr. Cross, and five other employees of the Stockton State Hospital. This conduct is alleged to violate section 3519(b) of the State Employer-Employee Relations Act (SEERA).

I indicated to you in my letter dated November 9, 1984 that certain allegations contained in the above-referenced charge did not state a prima facie case, and that unless you amended these allegations to state a prima facie case, or withdrew them prior to November 16. 1984. they would be dismissed. More specifically. I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

On November 16 you requested additional time to amend the charge and it was granted. On November 26, rather than amending the charge you submitted a letter (Exhibit 1) which argued: (1) that there are facts which demonstrate that Cross' termination had an adverse effect on non-supervisory employees and. (2) employees Jernigan. Dull. Lee and Rocero engaged in protected activity by doing "numerous things to accommodate the organizational activities of these two gentlemen (Cross and Pimentel)."

The allegations that the State retaliated against Mr. Cross. Mr. Jernigan. Mr. Dull, Mr. Lee and Ms. Rocero are dismissed based on the facts and reasoning contained in the November 9 letter (Exhibit 2) as supplemented below.

William L. Williams. Jr.
November 28, 1984
Page 2

My November 9 letter indicated that a prima facie case regarding the termination of Mr. Cross did not exist unless there were sufficient facts to show that his termination adversely influenced employees in the exercise of their rights. Charging Party has not provided facts which show that these employees would have exercised rights under SEERA but for the termination of Mr. Cross. Charging Party responds that other employees in Mr. Cross' department have also been terminated. The only connection between these terminations and Mr. Cross' termination is the vague reference to the employees accommodating Mr. Cross' organizational activity. These facts do not show that Mr. Cross' termination adversely influenced employees in their exercise of SEERA guaranteed rights.

With regard to employees Jernigan, Dull. Lee, and Rocero, my November 9 letter stated that there has been no demonstration that these employees participated in conduct protected by SEERA and that the Respondent was aware of the employees' participation. Charging Party argues that these employees were members of Hospital Police Association of California and accommodated the organizational activities of Mr. Cross and Pimentel. Membership in an employee organization and vague assertions of accommodation without dates or other specifics are insufficient to show protected conduct, let alone employer knowledge of these activities and the required nexus. Los Angeles Unified School District (10/4/84) PERB Decision No. 412. This response comes after several requests from the Regional Attorney for specific information on this subject, and was not made, as directed in an amended charge submitted under penalty of perjury.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on December 19, 1984. or sent by telegraph or certified United States mail postmarked not later than December 19, 1984 (section 32135). The Board's address is:

William L. Williams, Jr.
November 28. 1984
Page 3

Public Employment Relations Board
1031 18th Street
Sacramento. CA 95814

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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 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 the document filed with the Board itself (see section 32140 for the required contents and a sample form). The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

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 (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours.

DENNIS M. SULLIVAN
General Counsel

By
Robert Thompson
Regional Attorney

November 26, 1984

Robert Thompson
Public Employment Relations Board
1031 - 18th Street, Suite 102
Sacramento, California 95814

RE: CALIFORNIA UNION OF SAFETY EMPLOYEES VS. STATE OF CALIFORNIA,
DEPARTMENT OF DEVELOPMENTAL SERVICES, UNFAIR PRACTICE CHARGE
NUMBER S-CE-238-S

Dear Mr. Thompson:

This will respond to your letter of November 9, 1984 regarding the above matter. With respect to those portions of the charge dealing with Mr. George Cross, you accurately point out that most of his conduct on behalf of CAUSE and HPAC occurred during the time which he was a supervisory employee. You further state that the unfair practice charge procedures of PERB are not available to enforce the rights of supervisory employees under SEERA. You go on to state that a violation of the rights of supervisory employees may not be enforced by an assertion of a violation of employee organization rights under Section 3519(b) unless there are sufficient facts from which to draw a "reasonable inference that the conduct had an adverse effect on non-supervisory employees in the exercise of their rights" You go on to state that CAUSE has failed to demonstrate the existence of such evidence from which a reasonable inference could be drawn. With all due respect, I would point out that not only have non-supervisory employees been adversely effected by the Department's retaliation against Mr. Cross, they have been similarly terminated from their employment.

You further state with regard to Messrs. Jernigan, Dull, Lee and Ms. Rocero that the charging parties failed to demonstrate that these employees participated in conduct protected by the SEERA. Again, this analysis ignores the fact that these employees expressed their loyalty to Mr. Cross and Mr. Pimentel and did numerous things to accommodate the organizational activities of these two gentlemen. Moreover, this analysis fails to recognize that an unprecedented action in terminating not only Mr. Cross and Mr. Pimentel, but everybody employed in the Protective Services Department of Stockton Developmental Center. There can be no doubt that this action will not only intimidate other employees

EXHIBIT I

Robert Thompson
November 26, 1984
Page 2

of the Department from being active officers within CAUSE and HPAC, but also intimidate them from mere membership in CAUSE and/or cooperation in achieving the goals and aims of CAUSE and HPAC.

We believe that the facts as stated in the charges currently written adequately support the above points and that there is no further need for an amendment of the charge. We request that you reconsider your current position in this matter with respect to the partial dismissal of the allegations contained in the charge.

Please feel free to call me should have any questions or comments regarding this matter.

Sincerely,

William L. Williams, Jr.,
Staff Counsel

cc: G. Cross
G. Lee
M. Rocero
S. Pimentel
J. Dull
B. Jernigan
Bill Curtis

WLW/deb/417

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 15TH STREET, SUITE 103
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



November 9, 1984

William L Williams, Jr.
Staff Counsel
Peace Officers Research Association
of California
1911 F Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California, Department of Developmental Services
Unfair Practice Charge No. S-CE-238-S

Dear Mr. Williams:

The above-referenced charge alleges that the State of California, Department of Development Services (State) retaliated against Mr. Cross, and five other employees of the Stockton State Hospital. This conduct is alleged to violate section 3519(b) of the State Employer-Employee Relations Act (SEERA).

My investigation revealed the following uncontested facts. Mr. Cross was a Hospital Peace Officer II (HPO II) with the State until he was demoted on December 7, 1983 to a Hospital Peace Officer I (HPO I). HPO II is not in the bargaining unit while HPO I is in the unit. During the period February 1981 to December 1983 Mr. Cross served as a representative on the California Union of Safety Employees (CAUSE) Board of Directors and was the vice-chairman of the CAUSE legislative committee. In addition, Mr. Cross was on the Hospital Police Association of California (HPAC) Board of Directors from its inception. On February 7, 1984, Mr. Cross's notice of demotion was amended and on July 26, 1984, Mr. Cross was notified that he would be terminated from employment with the State effective August 16, 1984.

Mr. Pimentel, Ms. Rocero, Mr. Jernigan, Mr. Dull, and Mr. Lee are all HPO I's working with Mr. Cross. From February 1981 to December 1983, Mr. Pimentel served as the president of HPAC. Mr. Pimentel, Mr. Jernigan, Mr. Dull and Ms. Rocero were among the original members of HPAC. On June 14, 1984, Mr. Pimentel was notified that he would be terminated from employment with the State effective June 20, 1984. This notification was subsequently amended on August 8, 1984. Mr. Lee was notified of his dismissal on November 10, 1983, which was subsequently

William L Williams, Jr.
November 9, 1984
Page 2

amended on January 1, 1984 and again at a later date. Mr. Jernigan was terminated on August 2, 1984. Ms. Rocero was terminated on August 8, 1984, Mr. Dull was terminated on June 14, 1984. All the terminations were in part based on alleged dishonesty by the employees in filling out their timesheets.

The allegations that Mr. Cross, Ms. Rocero, Mr. Jernigan, Mr. Dull and Mr. Lee have been discriminated against because of their exercise of rights protected by SEERA do not state a prima facie case for the reasons which follow.

~~Although~~ Although Charging Party alleges only that section 3519(b) of SEERA has been violated, this case is more properly analyzed as primarily a violation of section 3519(a). Violation of that section requires allegations that: (1) an employee has exercised rights under the SEERA; (2) the employer has imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employee because of the exercise of rights guaranteed by the SEERA. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; Novato Unified School District (4/30/82) PERB Decision No. 210; State of California (Department of Developmental Services) (7/18/82) PERB Decision No. 228-S.

With respect to Mr. Cross the bulk, if not all, of his conduct on behalf of CAUSE and HPAC and protected by the SEERA occurred during the time in which he was a supervisory non-bargaining unit employee. Thus, any violation of SEERA would be grounded in section 3522.3 rather than section 3515. The Public Employment Relations Board (PERB) determined in State of California, Department of Health (1/10/79) PERB Decision No. 86-S that section 3522.3 is not enforceable through PERB's unfair practice mechanism. Thus, no prima facie violation of 3519(a) is made out. Based on similar reasoning, PERB ruled in State of California (3/19/80) PERB Decision No. 118-S that an employee organization could not enforce the rights of supervisory employees by assertion of a violation of section 3519(b). However, an unfair practice charge would be stated if there were sufficient facts from which to draw a "reasonable inference that the conduct had an adverse effect on nonsupervisory employees in the exercise of their rights," State of California, supra. In this case, Charging Party has failed to demonstrate the existence of such evidence from which a reasonable inference could be drawn.

William L Williams, Jr.
November 9, 1984
Page 3

With regard to Mr. Jernigan, Mr. Dull, Mr. Lee, and Ms. Rocero, Charging Party has failed to demonstrate that these employees participated in conduct protected by the SEERA. Without such evidence no nexus exists. Thus, no prima facie violation of section 3519(a) is present. In the same way, Charging Party has failed to present evidence which would show that the disciplining of these employees has interfered with the rights of the employee organization. Thus, no violation of section 3519(b) exists.

For these reasons, the allegation that Mr. Cross, Mr. Jernigan, Mr. Dull, Mr. Lee, and Ms. Rocero were retaliated against by the State contained in charge number S-CE-238-S, as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before November 16, 1984, I shall dismiss the above-described allegation from your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours,

Robert Thompson
Regional Attorney