STATE OP CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BARBARA LYNN MILLER,	)	
	)	
Charging Party,	)	Case No. S-CO-109-S
	)	
v.	)	PERB Decision No. 819-S
	)	
CALIFORNIA STATE EMPLOYEES" ASSOCIATION,	)	June 25, 1990
	)	
Respondent.	)	
	)	

Appearances: Barbara L. Miller, on her own behalf; Howard Schwartz, Attorney, for California State Employees' Association.

Before Hesse, Chairperson; Shank and Cunningham, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Barbara Lynn Miller (Miller) of a Board agent's dismissal of her charge that the California State Employees' Association (CSEA or Association) violated section 3519.5(b) of the Ralph C. Dills Act (Dills Act),[1] by not informing her of the limitation on

[1]Ralph C. Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519.5(b) provides:

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

withdrawal of membership rights available under the collective bargaining agreement. For the reasons that follow, we find the charge was properly dismissed.

In April 1989 Miller joined CSEA in order to become eligible for group disability insurance.[2] The prior collective bargaining agreement between the State of California and CSEA expired on June 30, 1988, and the parties entered into a new agreement effective May 17, 1989. Therefore, at the time Miller joined CSEA there was no collective bargaining agreement in effect. The insurance company rejected Miller's application for disability insurance on June 2, 1989.

Within one to four weeks after receiving a rejection from the insurance company, Miller wrote to CSEA requesting withdrawal from membership. The Association responded by informing her that she was required to maintain membership until June 1991, when the current collective bargaining agreement expires.[3]

> employees because of their exercise of rights guaranteed by this chapter.

[2]For purposes of reviewing the appeal, we assume that the essential facts alleged in the charge are true. (San Juan Unified School District (1977) EERB Decision No. 12.) (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.)

[3]Section 3515 of the Dills Act states, in pertinent part:

> State employees also shall have the right to refuse to join or participate in the activities of employee organizations, except that nothing shall preclude the parties from agreeing to a maintenance of membership provision, as defined in subdivision (h) of Section 3513 . . . .

Miller filed a charge with the Board alleging the above-recited facts. She claimed the Association violated its duty of fair representation pursuant to section 3519.5(b) of the Dills Act.[4] Ordinarily, the Board will not review internal union affairs unless the activities involved in the charge "have a substantial impact on the relationship of unit members to their employers." (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106.) Only those union activities that have a substantial impact on the relationships of unit members to their employers are subject to the duty of fair representation. (Id. at p. 8.) Miller has put forth no facts to indicate that CSEA's alleged activities in connection with membership requirements had a substantial impact on her relationship with her employer. Therefore, as CSEA's conduct is not subject to the duty of fair representation, no prima facie violation of section 3519.5(b) has been established under that theory.

Maintenance of membership as defined in section 3513(h) states, in pertinent part:

> . . . all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of such employee organization in good standing for a period as agreed to by the parties . . . .

[4]The duty of fair representation under the Dills Act is not specifically set forth, but a charging party may appropriately allege a violation of that duty under section 3519.5(b). (California State Employees' Association (Norgard) (1984) PERB Decision No. 451-S, fn. 1.) This was apparently Miller's intent as evidenced by her original unfair practice charge to the Board,

Notwithstanding a party's failure to allege facts sufficient to show a substantial impact on the employment relationship and thus a violation of the duty of fair representation, if the factual allegations would support a finding under section 3519.5(b) of retaliation, discrimination, or interference by an employee organization, the Board has statutory authority to inquire into the internal activities of the employee organization. (California State Employees' Association (O'Connell) (1989) PERB Decision No. 753-H.)[5] However, in order to state an interference or discrimination claim, the charging party must, at a minimum, allege a respondent's action was motivated by an unlawful intent to either interfere with or otherwise discriminate against an employee because of the exercise of rights guaranteed by the statute. (Novato Unified School District (1982) PERB Decision No. 210.) Miller presented no facts alleging that the maintenance of membership provision was discriminatory or had been applied in a discriminatory manner or that the Association singled her out by discriminatorily refusing to provide her with notice of the provision. Furthermore, there was no indication the Association had otherwise interfered with the exercise of Miller's rights under

[5]In O'Connell, the Board, in determining whether the allegations constituted a violation of the Higher Educational Employer-Employee Relations Act section 3571.1(b), analyzed the limitations of Service Employees International Union, Local 99 (Kimmett), supra. In Kimmett, the Board addressed section 3543.6(b) of the Educational Employment Relations Act. These two sections contain language identical to section 3519.5(b) of the Dills Act.

the Dills Act. Thus, Miller failed to state a prima facie discrimination/retaliation violation.

ORDER

Based on the entire record in this case, and consistent with the discussion above, it is hereby ORDERED that the unfair practice charge in Case No. S-CO-109-S be DISMISSED WITH PREJUDICE.

Members Shank and Cunningham joined in this Decision.