

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA UNION OF SAFETY)
EMPLOYEES,)
)
Charging Party,) Case No. S-CE-527-S
)
v.) PERB Decision No. 920-S
)
STATE OF CALIFORNIA (OFFICE OF THE) January 14, 1992
LIEUTENANT GOVERNOR),)
)
Respondent.)
_____)

Appearances: Sam A. McCall, Jr., Chief Legal Counsel, for California Union of Safety Employees; Department of Personnel Administration by Paul M. Starkey, Labor Relations Counsel, for State of California, Office of the Lieutenant Governor.

Before Camilli, Carlyle and Caffrey, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California Union of Safety Employees (CAUSE) of a Board agent's dismissal, attached hereto, of its charge that the State of California, Office of the Lieutenant Governor (State), violated section 3519(d) of the Ralph C. Dills Act (Dills Act)¹ by unlawfully supporting an employee organization during a decertification effort. We have reviewed the dismissal and, finding it to be free of prejudicial error, adopt it as the decision of the Board itself.

In its opposition to the appeal, the State requests that the Board order CAUSE to reimburse the State's attorneys' fees

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

expended in defending this matter. The Board will award attorneys' fees and costs where a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or otherwise an abuse of process. (Chula Vista City School District (1990) PERB Decision No. 834, pp. 73-74; United Professors of California (Watts) (1984) PERB Decision No. 398-H; El Dorado Union High School District (1985) PERB Decision No. 495, dismissal letter, p. 2.)

In support of its request, the State claims CAUSE'S argument on appeal is without merit. On appeal, CAUSE maintains that the appearance of authority on the part of the Lieutenant Governor provides the requisite link to the Governor such that the Lieutenant Governor should be considered to be an employer, for the purposes of this case, as defined in the Dills Act.

In the present case, the State has not alleged that this case was frivolous, vexatious, dilatory, pursued in bad faith, or otherwise an abuse of process. Therefore, although the Board herein dismisses CAUSE'S charge for failure to state a prima facie case, thereby rejecting CAUSE'S argument on appeal, the Board finds there is insufficient grounds upon which to award attorneys' fees in this matter.

The unfair practice charge in Case No. S-CE-527-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Carlyle and Caffrey joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



November 13, 1991

Mr. Sam A. McCall, Jr.
California Union of Safety Employees
2029 "H" Street
Sacramento, CA 95814

Re: California Union of Safety Employees (CAUSE) v. State of California (Office of Lieutenant Governor)
Unfair Practice Charge No. S-CE-527-S
DISMISSAL LETTER

Dear Mr. McCall:

In the above-referenced case, the California Union of Safety Employees (CAUSE) has alleged a violation of Government Code section 3519(d). Specifically, CAUSE has alleged that the Lieutenant Governor's Office has unlawfully supported an employee organization during a decertification effort.

I indicated to you in my attached letter dated November 5, 1991 that the above-referenced charge did not state a prima facie case. 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 accordingly. You were further advised that unless you amended the charge to state a prima facie case, or withdrew it prior to November 12, 1991, the charge would be dismissed.

I received your letter of November 7, 1991. In that letter you stated in part, "During the time collective bargaining has been progressing, the Governor has, in fact, traveled out of state; and by constitutional mandate, the Lt. Governor was the temporary representative of the employer." You point out that this event occurred after the Lieutenant Governor had sent the letter at issue. However, you have supplied no information which would establish that, at the time of the alleged violation, Leo McCarthy was the acting Governor or had been designated the Governor's designated representative for labor relations purposes. Accordingly, I am dismissing your charge for the reasons contained in my November 5 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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 (California Code of Regs., tit. 8, sec. 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Code of Regs., tit. 8, sec. 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

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 copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regs., tit. 8, sec. 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 California Code of Regs., tit. 8, sec. 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 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 (California Code of Regs., tit. 8, sec. 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,

JOHN W. SPITTLER
General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: M. Jeffrey Fine
Deputy Chief Counsel
Department of Personnel Administration
Legal Division
1515 "S" Street
North Building, Suite 400
Sacramento, CA 94244

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
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Sacramento, CA 95814-4174
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November 5, 1991

Mr. Sam A. McCall, Jr.
California Union of Safety Employees
2029 "H" Street
Sacramento, CA 95814

Re: California Union of Safety Employees (CAUSE) v. State of California (Office of Lieutenant Governor)
Unfair Practice Charge No. S-CE-527-S
WARNING LETTER

Dear Mr. McCall:

In the above-referenced case, the California Union of Safety Employees (CAUSE) has alleged a violation of Government Code section 3519(d). Specifically, CAUSE has alleged that the Lieutenant Governor's Office has unlawfully supported an employee organization during a decertification effort.

On or about March 7, 1991, Leo McCarthy, Lieutenant Government of the State of California, sent a letter to Vic Trevisanut, a primary organizer in the decertification effort in a bargaining unit in which CAUSE is the exclusive representative. The letter congratulated Trevisanut for his recent certification by PERB to proceed with a representational election and noted that the Laborer's union has "an excellent record of fighting for the safety employees they represent." McCarthy saluted the accomplishments of the California State Counsel of Laborers and looked forward to continuing to work with them on important issues.

Government Code section 3519(d) states:

It shall be unlawful for the state to do any of the following:

- (d) Dominate or interfere with the formation or administration of any employee organization, or

contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Government Code section 3513 defines certain terms used in the Dills Act. Section 3513(j) states:

(j) "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

Accordingly, Government Code section 3519(d) may only be violated by the Governor or his designated representative.

You contend in your charge that "As Lieutenant Governor, Mr. McCarthy is but a heart beat away from being the Governor. At times, he has been and continues to be acting Governor whenever the Governor is out of the state." You contend in your letter of October 8, that "Because the Lieutenant Governor in his constitutionally-elected office is a representative of the employer, his actions are attributed to the employer." However, you have supplied no information which would indicate that, at the time the letter was written by the Lieutenant Governor, he was the acting Governor of the State of California. Nor, have you supplied any information that, at the time the letter was written, the Lieutenant Governor had been designated a representative of the Governor for labor relations purposes. Because Government Code, section 3519(d) can only be violated by the Governor or his designated representative, your charge must be dismissed.

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 any additional facts that 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 must 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 12, 1991, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney