STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CATHY R. HACKETT, ET AL.,	)	
	)	
Charging Parties,	)	Case No. S-CO-147-S
	)	
v.	)	PERB Decision No. 979-S
	)	
CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	March 10, 1993
	)	
Respondent.	)	
	)	

Appearances: Carlos M. Alcala, Attorney, for Cathy R. Hackett, et al; Howard Schwartz, Attorney, for California State Employees Association.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

HESSE, Member: This case is before the Public Employment Relations Board (Board) on appeal by Cathy R. Hackett, et al. (Hackett) of a Board agent's dismissal (attached hereto) of the unfair practice charge. Hackett alleged that the California State Employees Association (CSEA) violated sections 3512, 3515.5, 3519.5(b) and 3515.6 of the Ralph C. Dills Act (Dills Act)[1] by discriminating and imposing reprisals against members of

[1]The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Sections 3512 and 3515.6 of the Dills Act set forth the purposes of the Dills Act and the right of employee organizations to have membership dues, initiation fees, membership benefit programs and general assessments deducted. Section 3515.5 states:

> Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of

the Unit 1 Bargaining Unit Committee. It is also alleged that CSEA violated its duty of fair representation.

The Board has reviewed the charge and the appeal. We find that no prima facie case has been stated. Finding the Board agent's warning and dismissal letters to be free of prejudicial error, the Board adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CO-147-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Caffrey joined in this Decision.

> an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

Section 3519.5 states, in pertinent part:

> 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 guaranteed by this chapter.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

September 22, 1992

Cathy Hackett

Re: Cathy Hackett et al. v. California State Employees Association. Case No. S-C0-147-S
DISMISSAL LETTER

Dear Ms. Hackett:

On June 23, 1992, you filed a charge in which you allege that the California State Employees Association (CSEA) violated Government Code sections 3512, 3515.5, 3519.5 and 3515.6 (the Dills Act). On June 30, 1992, you filed an amended charged alleging that CSEA violated sections 3515, 3515.5 and 3519.5(b) of the Dills Act by discriminating and imposing reprisals against members of the Unit 1 Bargaining Unit Committee (BUNC). Specifically, you allege that CSEA violated its duty of fair representation by suspending the CSEA memberships of Cathy R. Hackett, Jim Hard, David J. Weston, Sam Jurado and Doyle Harris and denying Hackett and Weston the right to run for CSEA Civil Service Division offices. In addition, your charge alleges that CSEA violated section 3519.5(b) of the Dills Act by mailing out the last, best and final offer from the State of California (State) to rank and file members of Bargaining Unit 1 without the approval of the BUNC. You also allege that CSEA, by suspending the memberships of Hackett, Hard, Weston, Jurado and Harris for ten (10) days without a hearing and without an expedited procedure, imposed an unreasonable membership provision on them in violation of section 3515.5 of the Dills Act.

I indicated to you, in my attached letter dated July 9, 1992, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual

•"•Sections 3512 and 3515.6 of the Dills Act respectfully, set forth the purposes of the Dills Act and the right of employee organizations to have membership dues, initiation fees, membership benefit programs and general assessments deducted. Charging Parties original and amended charges fail to contain any allegations which demonstrate violations of these sections.

inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. On July 20, 1992, you filed a Second Amended Charge containing 45 Exhibits. I have thoroughly reviewed your Amended Charge and all the Exhibits which contained additional material regarding the protected nature of the Charging Parties' conduct. However, even assuming the Charging Parties engaged in protected activity, there are insufficient facts contained in your Amended Charge to demonstrate a nexus between the protected activity and the adverse actions taken by the Association against Charging Parties. Accordingly, this charge must be dismissed for the reasons contained in this letter and my July 9, 1992 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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. 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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. 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 (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. (Cal. 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 Michael E. Gash
Michael E. Gash
Regional Attorney

Attachment

cc: Carlos Alcala

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

July 9, 1992

Cathy Hackett

Re: Cathy Hackett et al. v. California State Employees Association. Case No. S-CO-147-S

WARNING LETTER

Dear Ms. Hackett:

On June 23, 1992, you filed a charge in which you allege that the California State Employees Association (CSEA) violated Government Code sections 3512, 3515.5, 3519.5 and 3515.6 (the Dills Act).[1] On June 30, 1992, you filed an amended charged alleging that CSEA violated sections 3515, 3515.5 and 3519.5(b) of the Dills Act by discriminating and imposing reprisals against members of the Unit 1 Bargaining Unit Committee (BUNC). Specifically, you allege that CSEA violated its duty of fair representation by suspending the CSEA memberships of Cathy R. Hackett, Jim Hard, David J. Weston, Sam Jurado and Doyle Harris and denying Hackett and Weston the right to run for CSEA Civil Service Division offices. In addition, your charge alleges that CSEA violated section 3519.5(b) of the Dills Act by mailing out the last, best and final offer from the State of California (State) to rank and file members of Bargaining Unit 1 without the approval of the BUNC. You also allege that CSEA by suspending the memberships of Hackett, Hard, Weston, Jurado and Harris for ten (10) days without a hearing, and without an expedited procedure imposed an unreasonable membership provision on them in violation of section 3515.5 of the Dills Act. My investigation revealed the following facts.

[1]Sections 3512 and 3515.6 of the Dills Act respectfully, set forth the purposes of the Dills Act and the right of employee organizations to have membership dues, initiation fees, membership benefit programs and general assessments deducted. Charging Parties' original and amended charges fail to contain any allegations which demonstrate violations of these sections.

CSEA is a recognized employee organization that is the exclusive representative for state employees in Bargaining Units 1, 3, 4 11, 14, 15. 17, 20 and 21. Charging Parties are elected members of the BUNC. Hackett is the elected Chairperson and Hard is the elected Vice President of Bargaining Unit 1.

On or about May 25, 1992, CSEA reached a tentative agreement with the State for new MOUs in Bargaining Units 4 and 15. Shortly thereafter, tentative agreements for new MOUs were reached in Bargaining Units 20 and 21. In accordance with its ground rules and internal procedures, CSEA commenced a contract ratification vote and recommended that these agreements be accepted by the membership of the respective units.[2]

On June 23, 1992, CSEA temporarily suspended the memberships of Hackett, Hard, Weston, Jurado and Harris in accordance with CSEA Policy File Section 1001.04.[3] On June 29, 1992, the CSEA Civil Service Division met in Burbank, California to conduct elections for Civil Service Division officers. Hackett and Weston were

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[2]Paragraph 14 of the ground rules states

> If the parties reach tentative agreement on the total agreement the Union, including its paid staff and negotiating team members, shall recommend acceptance to its membership.

[3]CSEA Policy File Section 1001.04 states

> Suspension of Member of the Association
>
> When, in the opinion of the president, the actions of a member are such as to pose an immediate threat to the welfare of the Association, the president may summarily suspend the member until the procedure established in Policy File Section 1001.06 or 1001.07 is concluded. If written charges are not filed within 10 days, the suspension is terminated.
>
> However, if the suspension is brought within 90 days immediately prior to General Council, the written charges must be ratified by a majority of the officers, and filed within 10 days or the suspension is terminated.

ineligible to participate in these elections due to their suspended status.

On July 2, 1992, CSEA filed formal charges against Hackett, Hard, Weston, Jurado and Harris and they were informed that their suspensions would remain in effect until the conclusion of CSEA's disciplinary proceedings. Based upon the above facts I find that you have failed to establish a prima facie case that CSEA has violated its duty of fair representation.

Your charge challenges CSEA's internal disciplinary procedures. Generally, the Public Employment Relations Board (PERB or Board) has not read the Dills Act as authorizing PERB to intervene in internal union affairs. In Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106, at pp. 15-17, the Board explained as follows:

> The EERA gives employees the right to "join and participate in activities of employee organizations" (sec. 3543) and employee organizations are prevented from interfering with employees because of the exercise of their rights (sec. 3543.6(b)). Read broadly, these sections could be construed as prohibiting any employee organization conduct which would prevent or limit employee's participation in any of its activities. The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. There is nothing in the EERA comparable to the Labor-Management Reporting and Disclosure Act of 1959, which regulates certain internal conduct of unions operating in the private sector. The EERA does not describe the internal working or structure of employee organization nor does it define the internal rights of organization members. We cannot believe that by the use of the phrase "participate in the activities of employee organizations . . . for the purpose of representation on all matters of employer-employee relations" in section 3543, the

> Legislature intended this Board to create a regulatory set of standards governing the solely internal relationship between a union and its members. Rather, we believe that the Legislature intended in the EERA to grant and protect employees' rights to be represented in their employment relations by freely chosen employee organizations. [Footnotes omitted.][4]

At the same time, PERB has recognized an exception to the general principle of non-intervention, where the internal activities of an employee organization have such a substantial impact on employees' relationship with their employer as to give rise to the duty of fair representation. The present charge fails to allege or demonstrate that the internal activities of CSEA have such a substantial impact on Charging Parties' relationship with their employer as to give rise to the duty of fair representation.

PERB has also recognized two other exceptions to the principle of non-intervention. In California School Employees Association and its Shasta College Chapter #381 (Parisot) (1983) PERB Decision No. 280, at p. 11, PERB recognized its "jurisdictional power to determine whether an employee organization has exceeded its authority under subsection 3543.1(a) to dismiss or otherwise discipline its members." That subsection of the EERA provides in relevant part as follows:

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

Thus, in questions of membership, PERB will examine the reasonableness of restrictions or dismissals. See also Union of American Physicians and Dentists (Stewart) (1985) PERB Decision No. 539-S and California Correctional Peace Officers Association (Colman) (1989) PERB Decision No. 755-S.

In this case, CSEA suspended Charging Parties for ten (10) days pending the filing of formal charges. On July 2, 1992, formal charges were filed and Charging Parties were informed that their suspensions would remain in effect pending the completion of

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[4]EERA Section 3543.6(b) is identical to section 3519.5(b) of the Dills Act.

CSEA's disciplinary procedures, which includes the right to a hearing, the right to be represented, the right to introduce evidence and the right to cross-examine witnesses. Charging Parties have failed to demonstrate that CSEA's procedures for suspending members and filing charges, under this situation, was unreasonable.

In California State Employees' Association (O'Connell) (1989) PERB Decision No. 753-H, at p. 9, PERB also explicitly recognized its statutory authority to inquire into the internal activities of an employee organization when it is alleged that the organization has imposed reprisals on employees because of their exercise of protected rights. This decision was based on the statutory authority of Government Code section 3571.1(b) of the Higher Education Employer-Employee Act. The same statutory language appears in section 3519.5(b) of the Dills Act. See also California Association of Psychiatric Technicians (Long) (1989) PERB Decision No. 745-S and California School Employees Association (Petrich) (1989) PERB Decision No. 767.

In California State Employees' Association (O'Connell), supra, the Board stated that

> An inquiry must go forth under Carlsbad Unified School District (1979) PERB Decision No. 89 and/or Novato Unified School District (1982) PERB Decision No. 210, as to whether the actions were motivated by a charging party's exercise of protected activity. (At pp. 9-10.) (Emphasis in original.)

Under Novato, a charging party must show an engagement in protective activity, that the respondent had knowledge of such activity and that the respondent's harmful action against the charging party was motivated by an unlawful intent. The respondent then must put forward a defense as to whether there was any legitimate business concern sufficient to cause the action against the charging party. If there is both a lawful and an unlawful motive present, the Board will determine whether the respondent would have taken its action had the charging party not engaged in protected activity.

Charging Parties have failed to demonstrate that CSEA's conduct was motivated by protected activity. Charging Parties' amended charge alleges that they have been discriminated against and have

been subject to reprisals for dissenting against the proposed contract. Charging Parties were requested to set forth clearly and concisely the protective activity they engaged in and the nexus between CSEA's conduct and their protective activity. Charging Parties' Supplemental Authorities merely states

> As is shown by the Declaration of Cathy Hackett (Ex 1) the activity that she was involved in was protected by the Act. The Nexus that is present here is the same alluded to In Novato Unified School District (1982) Perb 210. In novato the Board found there must be a nexus between the protected activity and the suspension, (sic)

Charging Parties' statement fails to provide sufficient facts to demonstrate that Charging Parties engaged in protected activity or that CSEA's action was motivated by protected activity.

Even assuming Charging Parties engaged in protected activity, Charging Parties have failed to demonstrate that CSEA's actions were motivated by protected conduct. CSEA contends that Charging Parties were suspended because they, after being warned not to interfere with the ratification votes for other bargaining units, distributed fliers, criticized the agreements that had been reached in other bargaining units and disrupted ratification meetings in an effort to discourage Bargaining Units 4, 15, 20 and 21 members from voting to accept and ratify the tentative agreements in their respective bargaining units.

Expect for one sentence in Hackett's Declaration of July 3, 1992, Charging Parties have failed to mention that flyers were published and distributed by them.[5] Furthermore, Charging Parties have not alleged that this conduct is protected activity, nor have they cited any legal authority which suggests that this conduct is protected activity. Therefore, Charging Parties have failed to demonstrate the elements of a prima facie case.

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[5]Sackett's Declaration states on p.5, at paragraphs 24-27

> Unit 1 did publish flyers that communicated in the same way CSEA did with workers in from [sic] of buildings but these flyers were identified as Bargaining Unit 1 flyers.

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 additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled Second 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 **July 16, 1992,** I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Michael E. Gash

Michael E. Gash
Regional Attorney

cc: Carlos Alcala