STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LINDA ROBERTS,	)	
	)	
Charging Party,	)	Case No. S-CO-154-S
	)	
v.	)	PERB Decision No. 1009-S
	)	
CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	August 18, 1993
	)	
Respondent.	)	

Appearances; Linda Roberts, on her own behalf; Howard Schwartz, Attorney, for California State Employees Association.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION AND ORDER

CARLYLE, Member: This case is before the Public Employment Relations Board (Board) on appeal by Linda Roberts (Roberts) of a Board agent's dismissal (attached hereto) of her unfair practice charge. In her charge, Roberts alleged that the California State Employees Association (CSEA) violated section 3519.5(b) of the Ralph C. Dills Act (Dills Act)[1] by engaging in numerous acts in violation of her employee rights.

[1]The Dills Act is codified at Government Code section 3512 et seq. 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.

The Board has reviewed the warning and dismissal letters, the original and amended charge, Roberts' appeal and CSEA's response thereto. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself.

The unfair practice charge in Case No. S-CO-154-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Caffrey joined in this Decision.

STATE OF CALIFORNIA PETE WILSON. *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

June 11, 1993

Linda Roberts

Re: Linda Roberts v. California State Employees Association
Unfair Practice Charge No, S-C0-154-S
DISMISSAL LETTER

Dear Ms. Roberts:

On February 23, 1993, you filed a charge in which you allege that the California State Employees Association (CSEA), violated section 3519.5(b) of the Government Code (the Dills Act) by prohibiting you from running for bargaining representative at the State Bargaining Advisory Committee (SBAC) meeting held on February 27, 1993, by holding the Bargaining Unit 4, SBAC in Southern California in violation of CSEA internal rules, by refusing to allow bargaining representatives to contact each other directly and arranging to control the issuance of candidates statements. On February 26, 1993, you filed an amended charge.

I indicated to you, in my attached letter dated March 9, 1993, 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 which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 18, 1993, the charge would be dismissed.

On March 18, 1993, you requested an extension of time to file an amended charge and we agreed to an extension until March 24, 1993, for you to filed an amended charge. On March 24, 1993, you filed an amended charge. The statement of facts contained in your amended charge filed on March 24, 1993, states in its entirety:

> In his written statement (received by me 3-17-93), in response to interogatories [sic] filed in regards to his law against me,

> Jeffrey Young, CSEA staff, stated that he was acting as CSEA's agent in this suit. Yolanda Solari, president of CSEA elected from a group including supervisors, confronted me in the hall way on 3-21-93 during a CSEA-PAC meeting. She said that I should be quiet about my case. I told her that she had harmed me & that my credit had been ruined. She said that she hadn't and I responded that her staff person, Jeff Young, had sued me. She said that he didn't work for her. I asked who he did work for then. She said for Bob Zenz, the general manager, who only worked under her direction. All staff is hired and only accountable to Bob Zenz, who is by the board of directors, [sic] which has supervisors in it. Since I could not be a candidate for bargaining council unit 4, as Jeff filed charges on me, then dominance controls who bargains for unit 4. Many of these actions, like the refusals to deal with any of the charges against Yolanda's clique, happened after my original unfairs so this new unfair is timely. See Attached examples of staff and other bargaining unit interferance [sic] in bargaining council and ratification elections. Perry Kenny, unit 3 Division director, just informed the new unit 4 bargaining council that they couldn't meet with members. CSEA had a steward training planning meeting 3-20-93, and didn't let the DLC presidents know about it and only let some chiefs know about it over the phone and at the last minute.

The above statement of facts contained in your amended charge do not contain clear and concise statements of the facts and conduct by CSEA alleged to constitute an unfair practice as required by PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615). In the absence of a clear statement of facts and conduct constituting an unfair practice your charge fails to state a prima facie violation of section 3519.5(b) of the Dills Act. Accordingly, your charge will be dismissed. (See Apple Valley Unified School District (1992) PERB Decision No. 963.)

In the declaration attached to the amended charge you filed on March 24, 1993, you appear to allege that CSEA staff lied about the personal leave program (cash out) in an attempt to get the

contract ratified. Your original charge filed on February 23, 1993, stated in pertinent part:

> During June of 1992 Bill Sweeney and other CSEA staff and officers Stated [sic] in writting [sic] and in person to hundreds of members including at the SBAC meeting at the Raddison [sic] April 1992, that the personal leave package that they aggreed [sic] to 6-16-92 as part of unit 4's MOU would allow special fund agencies to cash out every month. My agency in July 1992 stated that finance agency had to approve such cash outs so CSEA lied about our ability to cash out with just department approval. . .

As I previously informed you in my letter of March 9, 1993, in order to state a prima facie case a Charging Party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge. San Dieguito Union High School District (1982) **PERB** Decision **No.** 194.

Government Code section 3514.5(a) states in relevant part:

> Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, . . .

This charge was filed with PERB on February 23, 1993, which means that to be timely any alleged unfair practice by the Association should have occurred during the six-month statutory period which began on August 23, 1992.

The six month limitation period runs from the date the charging party knew or reasonably should have known of the alleged unfair practice, if the knowledge was obtained after the conduct occurred. Fairfield Suisun Unified School District (1985) PERB Decision No. 547. The statement contained in your original charge indicates that you knew about CSEA's conduct as early as July 1992. Therefore, this allegation must be dismissed.

Therefore, I am dismissing your charge based on the facts and

reasons contained in this letter and my March 9, 1993 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,

ROBERT THOMPSON
Deputy General Counsel

By _____
Michael E. Gash
Regional Attorney

Attachment

cc: Bob Zenz, General Manager

PUBLIC EMPLOYMENT RELATIONS BOARD

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

March 9, 1993

Linda Roberts

Re: Linda Roberts v. California State Employees Association
Unfair Practice Charge Case No. S-C0-154-S
WARNING LETTER

Dear Ms. Roberts:

On February 23, 1993, you filed a charge in which you allege that the California State Employees Association (CSEA), violated section 3519.5(b) of the Government Code (the Dills Act) by prohibiting you from running for bargaining representative at the State Bargaining Advisory Committee (SBAC) meeting held on February 27, 1993, by holding the Bargaining Unit 4, SBAC in Southern California in violation of CSEA internal rules by refusing to allow bargaining representatives to contact each other directly and arranging to control the issuance of candidates statements. On February 26, 1993, you filed an amended charge. My investigation revealed the following facts.

CSEA is a recognized employee organization that is the exclusive representative for an appropriate unit of employees in Bargaining Unit 4. Charging Party, Linda Roberts was the former President of District Labor Council (DLC) 789.[1]

On or about June 27, 1992, Roberts was decertified as a job steward for a period of one year commencing April 1992. On or about October 15, 1992, Charging Party was elected to the position of bargaining representative for Bargaining Unit 4 for DLC 789. When this was discovered by CSEA Civil Service Division Director Perry Kenny, a letter was directed to DLC 789 President

[1]On June 18, 1992, Charging Party filed a charge, Linda Roberts v. California State Employees Association, Unfair Practice Charge No. S-C0-146-S, alleging that CSEA violated its duty of fair representation by removing Charging Party from office as President of DLC 789 and decertifying her as a steward. That charge was dismissed on October 21, 1992. Roberts has appealed the dismissal to the Board and it is currently under consideration.

Walter Rice clarifying Roberts' status and ineligibility to hold local office.[2] On or about October 30, 1992, Roberts was notified of her ineligibility to hold office.

On February 27, 1993, in Manhattan Beach, California, the Bargaining Unit 4, SBAC met to elect its bargaining representatives for the next two (2) years. Charging Party planned to run for the office of bargaining representative and Chair. Charging Party has served on the SBAC twice before.

PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615) requires that your charge contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice. Your amended charge includes the following paragraphs which contain vague allegations, states insufficient facts and conclusions:

> Perry is the division director for CSEA and is in bargaining unit 3. Charges were filed on Perry Kenny 2-4-92 and an index was included to details, and the policy file sections matched those details. The charges used to remove me from office were not indexed and did not match the detail at all. This way [sic] pointed out to CSEA several times starting 3-10-92. At my appeal 6-30-92, Perry refused to answer the DLCs presidents, voting on my appeal, as to what the charges against me were. He repeatedly refused to tell me who the review panel on my case was the last refusal was June 1992; when he again refused to specify the charges against me. He also refused to state the charges 5-1-92. I had hearing officers on my panel who had connections to the charging parties (Georgie Trammel to Maury Hicks and to Michael Miller). I also had staff, Jeff Young file, chaRGESs [sic] on me which Yolanda Solari, president on [sic] CSEA, said was against the rules 6-10-92. Perry Kenny

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[2]CSEA Civil Service Policy File section 3CSD2.02(6) states,

> All district labor council officers and district labor council bargaining unit representatives must be members of the Association in the Division, and be certified stewards. (CSD 12/87)

never had a hearing at all, Yolanda, who is elected by a group that includes supervisors, canceled his hearing. His hearing and review panel included members of his clique and dropped his charges claiming that I had not responded to their request for more detail which I had. 5-12-92 + 5-21-92, 6-10-92 (8-17-92) (8-28-92) I was not informed when the hearing report was issued. Perry was aware of who was on his review panel. Barbara Glass, assistant division director, had charges filed against her by me 5-18-92, got to know who was on her review panel was. I was not informed as to her report from the hearing panel. At her hearing 10-8-92 she stated that she had not ordered me to pay certain expence [sic] claims and had *no* intention of causing me to be removed from office. I asked then, why I was removed from office? They didn't have an answer for me. Her hearing report, 12-11-92, was very late and therefore missed its required date, and it did not include much of what went on at the hearing and inaccurately quoted me as to what was said. Yolanda refused to have a hearing on Barbara 5-21-92. I requested charges from Yolanda 4-9-92 on Georgie Trammel, Al Metzler, and Jack Woodard, who are my hearing panel, and she refused to have a hearing. Charges were brought against Michael Miller and Anna Kamerrer and no hearing was held.

. . .The by-laws state that we have to be willing to take steward training with 2 months in order to be a DUR. I AM Eligible even per Perry and Yo to be a steward 4-6-93. This is less than 2 months from now. Perry had no legal basis for his letter to me 10-30-93 [sic] and CSEA's letter to me 11-16-92 to say that I couldn't be a DBUR.[3] I had already been funded by CSEA for the Dbur meeting and was already there. I have never been notified that they put MaE Randolph in my place but Rudy Bustillos and

[3]DBUR is the acronym for District Bargaining Unit Representative.

> Virginia Gaudiana (staff hired by the BOD) tried to get her to say that she was the DBUR over the phone, they put her name on the list that I saw last week even though they were told by her that I was the DBUR and not her. The Board of Directors includes supervisors.

In the absence of a clear statement of facts and conduct constituting an unfair practice, these allegations fail to state a prima facie violation of section 3519.5 of the Dills Act and will be dismissed. (See Apple Valley Unified School District (9192) PERB Decision No. 963.

The remaining allegations contained in Charging Party's amended charge state,

> Walter Rice was declared president of DLC 789, Mae Randolph, DBUR. I was elected president again of DLC 789, 5-7-92, was elected bargaining rep. for unit 4 employees of DLC 789 10-15-92.
>
> Perry Kenny refused to reinstate me to be eligible for my original Position of President of 789, 5-7-92, after violating the policy file sections 6CSD3.01 a, b, c, and d, and 6CSD9.02 by removing me from office 4-6-92. A totally different procedure was used to handle the charges filed against me than used to handle charges against people in Perry's clique. . . .
>
> . . .On 5-13-92 Yolanda refused in writting [sic] to make Perry Kenny abide by the rules.
>
> Jeff Young has stated that CSEA is supporting him in his law suit against me, (5-4-92 letter of Doug Foster stating that Jeff Young, "of CSEA" is going to sue me). I appealed this to Yolanda and she took no action 5-8-92. Bill Cook's letter regarding my charges of Jeff harrassing [sic] one of my co-workers, show that he knew about the law suit and supported Jeff. 6-29-92.
>
> The differences in how the discipline prodedures [sic] were applied to me and how that they were applied to the Perry Clique shows that CSEA does not uses [sic].

> reasonable rules to allow members' participation. Rules were violated (see above) to kick me out of office and keep them in. Rules that are applied unequally cannot be reasonable. During June of 1992 Bill Sweeney and other CSEA staff and officers Stated [sic] in writting [sic] and in person to hundreds of members including at the SBAC meeting at the Raddison [sic] April 1992, that the personal leave package that they aggreed [sic] to 6-16-92 as part of unit 4's MOU would allow special fund agencies to cash out every month. My agency in July 1992 stated that finance agency had to approve such cash outs so CSEA lied about our ability to cash out with just department approval. They dropped a greivance [sic] on this recently (they have not told us when).
>
> Bill Sweeney has stated in the proposed agenda for the uncomming [sic] unit four bargaining meeting that the addresses for bargaining representatives are private and that we have to submitt [sic] our candidates statements through CSEA (him). This is not in the rules and has never hAPPENDED [sic] before during these elections.
>
> The unit 4 by laws state that meetings have to move around the state. The last SBAC for unit 4 was in Long Beach this upcoming one is in Manhattan Beach (10-30-92, 2-27-93) The rules state and it was voted at the last SBAC meeting that this meeting would be in Northern California where the vast majority of unit 4 works and lives. She may not substitute closed meetings for the Nothern [sic] Ca. meeting. . . .

In order to state a prima facie case a Charging Party must allege and ultimately establish that the conduct complained of either occurred or was discovered within the six-month period immediately preceding the filing of the charge. San Dieguito Union High School District (1982) PERB Decision No. 194.

Government Code section 3514.5 (a) states in relevant part:

> Any employee, employee organization, or

> employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, . . .

This charge was filed with PERB on February 23, 1993, which means that to be timely any alleged unfair practice by CSEA should have occurred during the six-month statutory period which began on August 23, 1992.

The six-month limitation period runs from the date the charging party knew or reasonably should have known of the alleged unfair practice, if the knowledge was obtained after the conduct occurred. Fairfield Suisun Unified School District (1985) PERB Decision No. 547.

The following allegations, contained in Charging Party's amended charge, indicate that Charging Party had knowledge that CSEA may have engaged in unfair labor practices prior to August 23, 1992:

> Perry Kenny refused to reinstate me to be eligible for my original Position of President of 789, 5-7-92, after violating the policy file sections 6CSD3.01 a, b, c, and d, and 6CSD9.02 by removing me from office 4-6-92.
>
> On 5-13-92 Yolanda refused in writting [sic] to make Perry Kenny abide by the rules.
>
> Jeff Young has stated that CSEA is supporting him in his law suit against me, (5-4-92 letter of Doug Foster stating that Jeff Young, "of CSEA" is going to sue me). I appealed this to Yolanda and she took no action 5-8-92. Bill Cook's letter regarding my charges of Jeff harrassing one of my co-workers, show that he knew about the law suit and supported Jeff. 6-29-92.
>
> During June of 1992 Bill Sweeney and other CSEA staff and officers Stated [sic] in writting [sic] and in person to hundreds of members including at the SBAC meeting at the Raddison April 1992, that the personal leave package that they aggreed [sic] to 6-16-92 as

> part of unit 4's MOU would allow special fund agencies to cash out every month. My agency in July 1992 stated that finance agency had to approve such cash outs so CSEA lied about our ability to cash out with just department approval....

Since the conduct Charging Party complained of in these allegations and the receipt of knowledge of that conduct by Charging Party occurred outside the six-month limitation period, these allegations are untimely and must be dismissed.

The present charge also challenges CSEA's internal procedures for declaring Charging Party ineligible to hold office as the DLC bargaining representative on October 30, 1992, and thus ineligible to run at the February 27th meeting for a position on the SBAC.

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]

PERB has also recognized an exception to the general principle of non-intervention. In questions of membership, PERB will examine the reasonableness of restrictions or dismissals. See 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.

CSEA previously declared Charging Party ineligible to hold office as President in the DLC as a result of her being decertified as a job steward. In October 1992, Charging Party was elected to the position of bargaining representative for DLC 789. When this was discovered, CSEA notified DLC 789 President Rice of Roberts' status and ineligibility to hold local office. On or about October 30, 1992, Roberts was notified of her ineligibility to hold local office, making her ineligible to run for the SBAC on February 27, 1993. Although Charging Party's amended charge states:

> The differences in how the discipline prodedures [sic] were applied to me and how that they were applied to the Perry Clique shows that CSEA does not uses [sic] reasonable rules to allow members' participation. Rules were violated (see above) to kick me out of office and keep them in. Rules that are applied unequally cannot be reasonable.

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

Charging Party's amended charge fails to state sufficient facts to demonstrate that CSEA's enforcement of its rule that a member must be certified to run for the SBAC is unreasonable. Thus, Charging Party has failed to establish a prima facie case that CSEA has violated the Dills Act by declaring her ineligible to run for the SBAC.

Charging Party's amended charge also alleges that CSEA is discriminating against her by failing to allow her to run for bargaining representative of the SBAC at the meeting scheduled for February 27, 1993. Charging Party's amended charge states:

> A totally different procedure was used to handle the charges filed against me than used to handle charges against people in Perry's clique. . . .

When allegations of reprisal for protected activity are present, if the allegations state facts supporting retaliation by an employee organization, internal union activities may be reviewed. Such 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 employee organization's actions were motivated by a charging party's exercise of protected rights. California State Employees' Association (O'Connell) (1989) PERB Decision No. 753-H.

In this case, Charging Party has not demonstrated that CSEA, by prohibiting her from running for bargaining representative of the SBAC, has treated her differently than other bargain unit members, or that CSEA engaged in this conduct in retaliation for her having engaged in protected rights.

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 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 March 18, 1993, I

shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Regional Attorney
Michael E. Gash