

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CATHY R. HACKETT,)
)
 Charging Party,) Case No. S-CO-153-S
)
 v.) PERB Decision No. 1012-S
)
 CALIFORNIA STATE EMPLOYEES)
 ASSOCIATION,) September 8, 1993
)
 Respondent.)
 _____)

Appearances: Cathy R. Hackett, on her own behalf; Howard Schwartz, Attorney, for California State Employees Association.

Before Caffrey, Carlyle, and Garcia, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Cathy R. Hackett (Hackett) of a Board agent's dismissal (attached hereto) of her charge that the California State Employees Association (CSEA) violated section 3519.5(b) of the Ralph C. Dills Act (Dills Act)¹ by interfering with the rights of union members to participate in an employee organization.

¹The 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, Hackett's appeal, CSEA's response and the entire record in this case. The Board finds the Board agent's dismissal to be free of prejudicial error and adopts it as the decision of the Board itself along with the following discussion.

DISCUSSION

On appeal, Hackett presents additional evidence concerning CSEA's alleged misrepresentation to its members. However, PERB Regulation 32635(b)² prohibits the introduction of new evidence on appeal absent a showing of good cause. Hackett has provided no explanation which would constitute good cause to allow the Board to consider the new evidence on appeal.

ORDER

The unfair practice charge in Case No. S-CO-153-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Carlyle and Garcia joined in this Decision.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32635 states, in pertinent part:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 5, 1993

Cathy R. Hackett

Re: Cathy R. Hackett v. California State Employees Association
Unfair Practice Charge No. S-CO-153-S
DISMISSAL LETTER

Dear Ms. Hackett:

On December 23, 1992, 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 **interfering** with the rights of union members to participate in an **employee** organization.

I indicated to you, in my attached letter dated April 27, 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 May 4, 1993, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my April 27, 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 95 814

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: Howard Schwartz
Assistant Chief Counsel
California State Employees Association
1108 "O" Street
Sacramento, CA 95814

PUBLIC EMPLOYMENT RELATIONS BOARD



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



April 27, 1993

Cathy R. Hackett

Re: Cathy R. Hackett v. California State Employees Association
Unfair Practice Charge No. S-CO-153-S

WARNING LETTER

Dear Ms. Hackett:

On December 23, 1992, 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 interfering with the rights of union members **to participate** in an employee organization. Specifically, **you** allege CSEA has **violated** its own rules and regulations by **submitting to the members** for ratification a proposal not **approved by their** elected rank and file officers from Bargaining Unit 1; CSEA has **violated** its obligation to fairly represent its membership by suspension of the five member bargaining team on June 23, 1992; the membership was not given adequate information to make an informed vote; the membership was not given a secret ballot; and the membership was not given any choice on the ballot but to ratify it or strike. My investigation revealed the following facts.

CSEA is a recognized employee organization that is the exclusive representative for state employees in Bargaining Unit 1. On or about June 23, 1992, CSEA suspended the memberships of Charging Party and other members of the Unit 1 Bargaining Unit Negotiating Committee. During July, 1992 CSEA submitted the state employer's proposal to the membership of Unit 1 for ratification.

On or about July 28, 1992 a formal protest was filed with CSEA regarding the ratification vote. The basis of this protest was that CSEA did not have authority to mail out the Unit 1 ballot,

the ratification process did not follow the procedures outlined in the Civil Service Division Policy File and the ballot was not secret.

Your charge challenges CSEA's internal procedures regarding its ratification process in July 1992 for Bargaining Unit 1. Your charge alleges that CSEA violated its duty of fair representation by submitting to members a proposal for ratification which was not approved by elected rank and file officers from Bargaining Unit 1; the membership was not given a secret ballot; and the membership was not given any choice on the ballot but to vote for ratification or strike.

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 (Kimmitt) (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.]

Thus, the duty of fair representation extends only to union activities that have a substantial impact on the relationship of the unit members to their employer. Your charge fails to demonstrate that the internal activities of CSEA regarding the ratification process has a substantial impact on the relationship of unit members to their employer as to give rise to the duty of fair representation.

Therefore, your allegations that CSEA violated its duty of fair representation by submitting to members a proposal for ratification which was not approved by rank and file officers from Bargaining Unit 1; by not giving the membership a secret ballot; and by failing to give the membership **any choice on the ballot but to vote for ratification or strike will be dismissed.**

However, PERB has recognized two 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.²

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.

¹EERA Section 3543.6(b) is identical to section 3519.5(b) of the Dills Act.

²Section 3515.5 of the Dills Act contains identical language.

In this case, you allege that CSEA violated its obligation to fairly represent its Unit 1 membership by suspending the five member bargaining team on June 23, 1992. However, your charge fails to allege or demonstrate that CSEA's procedures were 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 Government Code 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, 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. Your present charge **fails** to allege that CSEA has imposed reprisals on employees because of their exercise of protected rights.

Therefore, your allegation regarding the suspension of the five member bargaining team on June 23, 1992, fails to state a prima facie violation and will be dismissed.

Your charge also alleges that CSEA violated its duty of fair representation by not giving the membership adequate information to make an informed vote. As previously discussed, a union is allowed substantial leeway in its internal procedures for developing negotiations strategy, selection of a negotiating team

and final contract ratification. See SEIU. Local 99 (Kimmett), supra. In California State Employees Association (O'Connell) (1986) PERB Decision No. 596-H, the Board stated at p. 4:

. . . we believe that a prima facie case of a breach of the duty of fair representation has been stated where it is alleged that the exclusive representative knowingly misrepresented a fact in order to secure from its constituents their ratification of a contract.

Your charge states that CSEA did not give the membership adequate information to make an informed vote, it **does** not allege that CSEA knowingly misrepresented a fact in order to secure ratification of the contract. Therefore, **this** allegation shall also 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 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 **May 4, 1993**, I shall dismiss your charge. If you **have any questions**, please call me at (916) 322-3198.

Sincerely,

Michael E. Gash
Regional Attorney