

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



JUDY K. GARCIA,	)	
	)	
Charging Party,	)	Case No. S-CO-150-S
	)	
v.	)	PERB Decision No. 1014-S
	)	
CALIFORNIA STATE EMPLOYEES	)	September 21, 1993
ASSOCIATION,	)	
	)	
Respondent.	)	
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Appearance: Judy K. Garcia, on her own behalf.

Before Caffrey, Carlyle and Garcia, Members.

DECISION

CARLYLE, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal of a Board agent's dismissal of an unfair practice charge filed by Judy K. Garcia (Garcia). The Board agent found the charge, alleging that the California State Employees Association (CSEA) violated Government Code sections 3515, 3515.5 and 3519.5(b) of the Ralph C. Dills Act (Dills Act), did not state a prima facie case.<sup>1</sup>

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<sup>1</sup>The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3515 states:

Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. 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

## FACTS

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. Garcia is an elected member

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maintenance of membership provision, as defined in subdivision (i) of Section 3513, or a fair share fee provision, as defined in subdivision (k) of Section 3513, pursuant to a memorandum of understanding. In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

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 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.

of the Bargaining Unit Negotiating Committee (a job steward for Caltrans). Garcia filed an unfair practice charge on September 18, 1992, alleging that CSEA violated sections 3519(b), 3515, and 3515.5 of the Dills Act when: 1) CSEA funds were misappropriated for personal use; 2) an election for District Labor Council 782 was not conducted according to CSEA's rules and regulations; and 3) Garcia was improperly suspended as job steward.

#### Misappropriation of Funds

Garcia alleges that CSEA misappropriated funds by paying the cellular phone bills of a CSEA official without the necessary receipts being submitted. Further, it was alleged that CSEA members did not have the opportunity to vote on the CSEA budget and that CSEA failed to file charges against two members.

Relying on Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106, the Board agent determined that the expenditure of union funds is an internal matter and that internal union affairs and procedures are largely immune from PERB administrative scrutiny.

PERB has recognized an exception to the general principle of non-intervention, where the internal activities of the employee organization have such an impact on the employees' relationship with their employer as to give rise to the duty of fair representation. However, the Board agent concluded that no such impact was demonstrated by Garcia.

### CSEA Election

Garcia alleged that several memos sent by CSEA officers concerning an upcoming District Labor Council (DLC) election, violated CSEA's constitution. To discuss this matter, a meeting was organized by CSEA to address the issues raised. However, complaints continued to be raised as to the notification process for the meeting and its location. After an election protest was filed on these issues, a CSEA hearing panel determined that there was insufficient evidence to support the allegations of the election process.

The Board agent dismissed this allegation finding that it was strictly an internal union matter and the facts did not demonstrate a substantial impact on Garcia's relationship with her employer.

### Garcia's Suspension

Garcia contended that she was suspended from her job steward position in retaliation for engaging in protected activity. Garcia claimed that she lost her steward position for handing out flyers recommending that members vote against ratifying CSEA's proposed agreement. Garcia also alleged CSEA did not give her a five-day notice before suspending her. Finally, Garcia contends that CSEA also failed to give her a hearing under CSEA's bylaws as a result of her filing an unfair practice charge with PERB.

The Board agent concluded that the Board has 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 protected activities. (California State Employees' Association (O'Connell) (1989) PERB Decision No. 753-H.)

However, the Board has recognized that certain actions taken by a union may be reasonable where they are motivated by self-protection, rather than retaliation. The Board agent concluded that CSEA suspended Garcia as steward to prevent further interference by Garcia of CSEA's right to properly represent its members. This conduct was concluded not to be unreasonable.

#### Garcia's Appeal

On appeal, Garcia argues that CSEA suspended her based upon allegations that were never presented in a hearing and that members were denied representation because of her suspension as steward. Further, Garcia argues that she has been denied a hearing on her suspension because she filed an unfair practice charge with PERB.

#### DISCUSSION

Ordinarily, the Board will not review internal union matters 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), supra. 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.) Garcia has put forth no facts to indicate that CSEA's alleged activities in connection with telephone costs,

election irregularities, and her suspension 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 Dills Act section 3519.5(b) has been established under that theory.

However, one issue that was not addressed in the Board agent's dismissal letter was Garcia's allegation in her amended complaint that she was denied a hearing on her steward suspension as a result of her filing an unfair practice charge with the Board.

When the Board is deciding whether to dismiss an unfair practice charge on the ground that it fails to state a prima facie case, the factual allegations contained in the charge are considered true. (San Juan Unified School District (1977) EERB Decision No. 12.<sup>2</sup>)

In a July 27, 1992 letter from CSEA Director Perry Kenny, Garcia was notified of charges filed against her for various activities, among them: handing out flyers contrary to CSEA's position; and payment of money for flyers announcing an unapproved DLC meeting. Further, Garcia was informed in the same letter that a hearing would be held and, "You [Garcia] will be contacted in the near future and provided the specific date and time for this hearing."

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<sup>2</sup>Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

In a July 29, 1992 letter from CSEA, Garcia was suspended from stewardship pending review by a hearing panel. This was filed in accordance with CSEA Civil Service Division Policy sections 6CSD9.00 et al. and 6CSD3.01(c) (3)b. Section 6CSD3.01(b) (1) states:

The civil service division administrator or his/her designee shall immediately notify the civil service division director who shall convene a hearing panel and/or may place steward/senior steward/chief steward in suspended status. That steward shall be notified by the division director in writing within five calendar days of receiving the complaint. The hearing panel shall consist of an appropriate chief steward and two certified stewards appointed by the civil service division director. Staff shall be assigned to provide technical assistance. The hearing panel shall investigate and conduct a hearing and determine the validity of the complaint or problem and shall make a determination within 30 days of receipt of the complaint on: (CSD 18/87/2)

- a. Rejection of the complaint; or (BD 142/85/5)
- b. Decertification. (BD 142/85/5)

On September 1, 1992, in response to CSEA's letters, Garcia wrote back to CSEA complaining of her suspension and confusion as to the reasons for her suspension. Garcia stated that a hearing had not been held concerning the charges and concluded:

If I do not hear from you by Friday, September 4, 1992 regarding my reinstatement, I will pursue the legal recourses available to me.

On September 18, 1992, Garcia filed the instant unfair practice charge with PERB.

On October 30, 1992 in a memo to Garcia regarding her suspension as a steward, CSEA Civil Service Division Director Perry Kenny wrote:

It is my understanding that you have taken the course of action you spoke of in your September 1, 1992 letter. It would be inappropriate for me to make any response at this time pending your Unfair Labor Practice charge decision by PERB.

Notwithstanding a party's failure to allege facts sufficient to show a substantial impact on the employment relationship and thus a duty of fair representation, if the factual allegations would support a finding under Dills Act section 3519.5(b) of retaliation, discrimination, or interference by an employee organization, the Board has the statutory authority to inquire into the internal activities of the employee organization.

(California State Employees' Association (O'Connell): supra: PERB Decision No. 753-H.<sup>3</sup>)

As to the issue of "protected activity," section 3515.5 clearly permits and protects conduct such as filing an unfair practice charge.

Further, section 3514.5 provides, in relevant part:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge . . . .

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<sup>3</sup>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 contained language identical to section 3519.5(b) of the Dills Act.



Garcia informed CSEA that she would look into another course of action if CSEA did not respond to her letter concerning her suspension. CSEA's October 30 letter indicates its awareness that Garcia chose to file an unfair labor practice charge with PERB and that it would not hold a hearing on Garcia's claim until her unfair practice charge was resolved by the Board.

Accordingly, we find that Garcia has stated a prima facie violation of Dills Act section 3519.5(b) by alleging that CSEA retaliated against her by refusing to grant a hearing on her suspension in response to filing the unfair labor practice with the Board.

#### ORDER

Based on the reasons set forth above, the Board REVERSES the Board agent's dismissal of the charge and REMANDS the case to the general counsel for issuance of a complaint consistent with this decision.

Members Caffrey and Garcia joined in this Decision.