STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

VIC TREVISANUT, et al.,	)	
	)	
Charging Parties,	)	Case No. S-CO-132-S
	)	
v.	)	PERB Decision No. 1029-S
	)	
CALIFORNIA UNION OF SAFETY EMPLOYEES,	)	December 13, 1993
	)	
Respondent.	)	
	)	

Appearances: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for Vic Trevisanut, et al.; Sam A. McCall, Jr., Attorney, for California Union of Safety Employees.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California Union of Safety Employees (CAUSE) to a PERB administrative law judge's (ALJ) proposed decision. The ALJ found that CAUSE unlawfully interfered with State Bargaining Unit 7 (Unit 7) employees' rights in violation of sections 3513(i) and 3515 of the Ralph C. Dills Act (Dills Act)[1] by refusing to honor signed withdrawal

[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. Section 3513(i) states:

> "Maintenance of membership" means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of such employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance

forms and letters that the union admittedly received. The Board has reviewed the entire record in this case and finds that CAUSE violated sections 3531(i) and 3515 of the Dills Act.

FACTUAL BACKGROUND

In June 1991, Vic Trevisanut (Trevisanut) launched a campaign against CAUSE by soliciting Unit 7 members to withdraw from CAUSE. The parties' agreement permitted employees to withdraw 30 calendar days prior to the expiration of the contract.[2] Additionally, Dills Act section 3513 (i) requires

> of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the State Controller's office.

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 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.

[2]Article 3.1 of the 1988-91 contract between CAUSE and the state provided:

the employee to send a signed withdrawal letter to the employee organization and a copy to the State Controller's office. The CAUSE/state contract was to expire on June 30, 1991, which would have made the window period for withdrawals from June 1 to June 30. However, the parties agreed to extend the contract one month to July 30. Thereafter, the contract expired before the parties reached agreement on a successor contract.

Trevisanut solicited members to withdraw their membership by sending them a form entitled "Request to Terminate CAUSE Membership." He then forwarded the withdrawal forms to CAUSE. Other Unit 7 employees mailed their requests directly to CAUSE. Some withdrawals were received by CAUSE during the month of June, some were received in July, and some were received in August.

Upon receipt of the withdrawal forms CAUSE sent an acknowledgment form to the members. In addition to this form, CAUSE included a flyer advising that services and benefits available to nonmembers would be reduced effective July 1. Employees who submitted written withdrawals to CAUSE, but did not return the acknowledgment forms to CAUSE were not removed

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> A written authorization for CAUSE dues deductions in effect on the effective date of this Contract or thereafter submitted shall continue in full force and effect during the life of this Contract; provided, however, that any employee may withdraw from CAUSE by sending a signed withdrawal letter to CAUSE within thirty (30) calendar days prior to the expiration of this Contract. Employees who withdraw from CAUSE under this provision shall be subject to paying a CAUSE Fair Share fee as provided above.

from the membership rolls and dues continued to be deducted from their pay checks.

On August 20, Trevisanut filed a charge with PERB alleging that CAUSE violated the Dills Act by refusing to honor withdrawal letters that it received during the window period. In addition, Trevisanut sent another form to Unit 7 employees who had returned their withdrawals to him. This form asked the members to authorize legal action requiring CAUSE to refund the difference between membership dues and fair share fees. Ninety-seven (97) employees returned the authorization form. Those individuals were named as charging parties in this unfair practice charge.

Position of the Parties

The charging parties contended that employees who submitted withdrawal forms in June had complied with the contract window period and the Dills Act requirements. They further contended that CAUSE improperly added the requirement that employees return the acknowledgment form to confirm their withdrawal and that the refusal to honor withdrawal requests that did not include the additional form violated the employees' statutory right to refuse to participate in CAUSE activities. They stated that July withdrawals were valid because California State Employees' Association (Fry) (1986) PERB Decision No. 604-S (CSEA (Fry)) prohibits the parties from extending the contract without also extending the window period. They claim that August withdrawals were valid because there is no requirement of maintenance of membership in the absence of a contract. (Ibid.)

At the beginning of the hearing the charging parties moved to amend the complaint and certify it as a class action. The ALJ denied class action status.

CAUSE contended that the requirement that members return the acknowledgment form, which confirmed that they were aware of the impact of withdrawing, was reasonable. CAUSE stated that it reasonably presumed that individuals who did not return the acknowledgment had changed their minds in light of the new information contained in the flyer, and that its intention was to insure that no member was unwittingly harmed by withdrawing.

CAUSE further contended that, although the window period would have been during the month of June, once the parties agreed to extend the contract for another month, the window period shifted forward to the month of July. Thus, withdrawals that were submitted in June were premature and untimely.

ALJ'S DECISION

The ALJ framed the issue as whether CAUSE violated the Dills Act by interfering with charging parties' rights to withdraw from union membership.

She states that an alleged interference with the exercise of protected rights by either an employer or an employee organization is analyzed under Carlsbad Unified School District (1979) PERB Decision No. 89.[3] She notes that Carlsbad does not

[3]The Board has held that the standard applied to cases involving employer misconduct is appropriate in cases involving employee organization misconduct. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S.

require that the respondent act with unlawful motive.

As to the window period, the ALJ notes that PERB has held that under CSEA (Fry) an exclusive representative and employer are prohibited from extending the agreement without also extending the time within which a union member could resign. Therefore, any signed withdrawals that were received by CAUSE during both June and July 1991 were timely filed.

The ALJ determined that withdrawal requests received after the expiration of the contract were also valid. She states that maintenance of membership provisions are creatures of contract. Therefore, absent a valid contract, members cannot be forced to maintain their membership. Thus, withdrawal requests received by CAUSE in June, July or August were valid.

As to the acknowledgment form, the ALJ states that although CAUSE was entitled to send out the notices advising members that their services would be cut if they withdrew, CAUSE was not entitled to require employees to submit an additional form in order to make their withdrawals effective.

The ALJ determined that the appropriate remedy was to compensate all employees who made timely withdrawal requests in the amount of the dues wrongly withheld from their paychecks. This remedy was granted to all employees who had properly submitted requests to withdraw, whether or not they had joined as parties in this unfair practice charge. Thus, in addition to the 97 named charging parties, the remedy was granted to an unknown number of other employees.

EXCEPTIONS

In its appeal, CAUSE excepts to the ALJ's finding of a 60-day window period for withdrawal, arguing that once the contract was extended the window period merely shifted forward so that it was still the final 30 days of the contract. CAUSE bases this argument on the contention that the contract does not anticipate or authorize a window period longer than 30 days.

Further, CAUSE contends that employees who subsequently retired or were separated from state employment lack standing to file an unfair practice charge (because they are not employees) and thus are not entitled to a remedy.

CAUSE contends that the class of employees to whom the remedy was granted is too broad. CAUSE states that harm could result if employees who had decided not to withdraw once they learned they would lose benefits--and for that reason chose not to join as charging parties--were involuntarily withdrawn from membership.

The charging parties agree with the ALJ's decision, adding that no harm will result from nonparties being granted the remedy as there is nothing to prevent them from refusing to accept the refunded dues.

DISCUSSION

Validity of Requests to Withdraw

We agree with the ALJ's finding that CAUSE violated the charging parties' right to withdraw from membership.

We disagree with CAUSE'S argument that withdrawals submitted

in June were premature. When the contract (including section 3.1) was written, there was a date certain upon which the contract would expire. That date established the last day of the window period. Based on the circumstances of this case, the 30-day window period established by the terms of that contract cannot be changed. When the parties agreed to a contract extension, they created a new contract expiration date which results in a different window period by operation of Dills Act section 3513(i). If the extension is for 30 days or less, the window period is open during the entire extension. If the extension is longer than 30 days, the window period is open during the final 30 days of the extension. We cannot permit the contracting parties to use contract extensions to deprive members of their right to withdraw from union membership. It is unreasonable to require an employee who withdrew during the original window period to comply with a new window period. In this case, the window period would be akin to a moving target. Contrary to CAUSE'S assertion, there is nothing in the contract which suggests that the window period is strictly limited to 30 days if the parties agree to extend the contract. Therefore, withdrawals received in June are valid as they complied with the original contract window period. Withdrawals received in July are valid because they complied with the additional window period required when the contract was extended. Withdrawals filed in August were valid because, as the ALJ explained, no contract was in force and thus no maintenance of membership agreement was in

force.

Standing of Retired and Separated Employees

In regard to employees who retired or were separated from state service after the unlawful denial of their withdrawal requests, we believe that they have standing. CAUSE contends that former employees have no standing to bring a charge because they were not employees at the time of filing. Dills Act section 3514.5(a) states, in pertinent part:

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

We interpret this section to mean that, in order for a person to have standing to file an unfair practice charge, that person must have been an employee at the time the unfair practice occurred. To require a charging party to have the status of an employee at any time after that could have undesirable results. For example, such a rule would prevent an unlawfully terminated employee from filing a charge because that person would not be an employee at the time he/she came to PERB to file. Thus, there is only one reasonable interpretation of when a person's status as an employee is to be examined--at the time that the alleged unlawful conduct occurred.

Finding that a violation has occurred, we must now determine who is entitled to a remedy.

Remedy

We believe that only named parties should be granted a remedy. To grant a remedy to employees not named as parties

amounts to amending the complaint.

Here, the complaint lists the names of 97 charging parties. At the beginning of the hearing the charging parties made a request that the case be certified as a class action and the ALJ denied the request. The case was litigated with all parties understanding that the case involved only the 97 named charging parties. No subsequent determination was made as to whether this case met the requirements of a class action. However, in her proposed decision the ALJ essentially treated the case as. a class action by granting the remedy not only to the 97 named charging parties, but also to nonparties who made timely requests to withdraw which were not honored. After denial of the motion for a class action the parties proceeded on the basis that the case was limited to the 97 named charging parties. It would be inappropriate to change this fact at this stage of the proceedings.

For the foregoing reasons, we grant the remedy only to the named charging parties.

CONCLUSION

We affirm the ALJ's findings that withdrawals submitted in June, July or August were valid and that CAUSE'S additional requirement that employees return the acknowledgment form was unlawful. We grant the remedy only to the named charging parties.

REMEDY

We find that the charging parties who submitted valid

withdrawal requests are entitled to be reimbursed in the amount of the money wrongfully withdrawn from their paychecks, with interest.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the Board finds that the California Union of Safety Employees (CAUSE) violated the Ralph C. Dills Act (Dills Act), Government Code section 3513(i) and 3514.5(c) by unlawfully interfering with State Bargaining Unit 7 employees' rights.

Pursuant to section 3514.5(c) of the Dills Act, it is hereby ORDERED that CAUSE and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unlawfully interfering with State Bargaining Unit 7 employees' rights to withdraw from union membership.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT:

1. Make whole all charging parties who filed timely written withdrawals from membership in CAUSE. CAUSE will refund to each qualifying charging party the amount of dues unlawfully deducted from his/her paychecks beginning with the date on which the withdrawal request should have been given effect. The amount due each charging party shall include interest at the rate of ten (10) percent per annum pursuant to Code of Civil Procedure section 685.010.

2. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at

all work locations where notices to employees are customarily placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

3. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions.

Member Caffrey joined in this Decision.

Member Hesse's concurrence begins on page 13.

Hesse, Member, concurring: I concur only in the result of the majority decision. I write separately because I wish to affirmatively distance myself from the majority discussion of "Standing of Retired and Separated Employees," particularly the reference to undesirable results.

Relying upon San Leandro Unified School District (1984) PERB Decision No. 450 (San Leandro); Hacienda La Puente Unified School District (1988) PERB Decision No. 685 (Hacienda LaPuente) and its progeny, Los Angeles Unified School District (1988) PERB Decision No. 686, the California Union of Safety Employees argues that since some of the charging parties separated or retired from state service prior to the Public Employment Relations Board (Board) complaint being issued and some parties departed after the complaint was issued, those individuals who are no longer actively employed with the state have no standing to bring an unfair practice charge and consequently, have no standing to obtain relief.

In San Leandro, the Board held that the charging party, the retired employees association was not an employee association within the meaning of the Educational Employment Relations Act (EERA or Act) and none of the retired employees association members were employees within the meaning of the Act. Furthermore, the charging party lacked standing to challenge the collective bargaining agreement as the association did not represent any employees who had retired or would retire under the

new collective bargaining agreement which was the issue in the unfair practice charge before the Board.

In Hacienda La Puente,[1] the Board held first that a former employee's denial of a leave of absence and resignation occurred outside the Board's jurisdictional six-month statute of limitations and secondly, that the charging party now an applicant lacked standing to file a charge to subsequent alleged discriminatory conduct because he was not an employee within the meaning of the Act at the time the alleged misconduct took place.

In both San Leandro and Hacienda La Puente, the charging parties were not an employee organization or employees at the time the alleged unlawful conduct occurred. Under California civil procedure, the cause of action accrues when the wrongful act is done. (See 3 Witkin, Cal. Procedure (3d ed. 1985) Actions, sec. 351, p. 380.) Regardless of the employment status of the charging parties subsequent to the filing of the charges, the charging parties in this case were employees at the time the unlawful conduct occurred. Therefore, I conclude that the charging parties had standing to file charges and were entitled to relief.

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[1]**EERA** is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code. A 1989 amendment to EERA section 3543.5 extends EERA protection to applicants against the actions of an employer. No parallel protection exists for applicants against the actions of an employee organization.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An agency of the State of California

After a hearing in Unfair Practice Case No. S-CO-132-S, California Union of Safety Employees v. Vic Trevisanut, et al., in which all parties had the right to participate, it has been found that the California Union of Safety Employees (CAUSE) violated the Ralph C. Dills Act (Dills Act), Government Code sections 3513(i) and 3515 by unlawfully interfering with State Bargaining Unit 7 (Unit 7) employees' rights.

As a result of this conduct, we have been ordered to post this notice and we will:

A. CEASE AND DESIST FROM:

1. Unlawfully interfering with Unit 7 employees' rights to withdraw from union membership.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT:

1. Make whole all charging parties who filed timely written withdrawals from membership in CAUSE. CAUSE will refund to each qualifying charging party the amount of dues unlawfully deducted from his/her paychecks beginning with the date on which the withdrawal request should have been given effect. The amount due each charging party shall include interest at the rate of ten (10) percent per annum pursuant to Code of Civil Procedure section 685.010.

Dated: _____

CALIFORNIA UNION OF SAFETY EMPLOYEES

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.