

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA CORRECTIONAL PEACE)
OFFICERS ASSOCIATION,)
)
Charging Party,) Case No. LA-CE-482-S
)
v.) PERB Decision No. 1308-S
)
STATE OF CALIFORNIA (DEPARTMENT) January 27, 1999
OF CORRECTIONS),)
)
Respondent.)
_____)

Appearance: Rudy E. Jansen, Attorney, for California
Correctional Peace Officers Association.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public
Employment Relations Board (Board) on appeal by the California
Correctional Peace Officers Association (CCPOA) of a Board
agent's dismissal (attached) of its unfair practice charge. In
the charge, CCPOA alleged that the State of California
(Department of Corrections) (State) violated section 3519(d) of
the Ralph C. Dills Act (Dills Act)¹ by interfering with the

¹The Dills Act is codified at Government Code section 3512
et seq. Section 3519 states, in pertinent part:

It shall be unlawful for the state to do any
of the following:

(d) Dominate or interfere with the formation
or administration of any employee
organization, or contribute financial or
other support to it, or in any way encourage
employees to join any organization in
preference to another.

administration of CCPOA.

The Board has reviewed the entire record in this case, including CCPOA's unfair practice charge, the Board agent's warning and dismissal letters and CCPOA's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, consistent with the following discussion.

DISCUSSION

CCPOA and the State are parties to a collective bargaining agreement (CBA) which was in effect at the time of the alleged unlawful conduct in this case. Article 5.03 of that CBA prohibits discrimination against employees and interference with CCPOA because of their exercise of rights guaranteed by the Dills Act, and provides that alleged violations of the provision are subject to the contractual grievance and arbitration procedure. The Board notes that, to the extent that CCPOA's charge describes conduct by the State which constitutes allegations of discrimination and interference prohibited by CBA Article 5.03, the charge must be dismissed and deferred to the contractual grievance and arbitration procedure in accordance with the standard described by the Board in Lake Elsinore School District (1987) PERB Decision No. 646 and State of California, Department of Youth Authority (1989) PERB Decision No 749-S.

ORDER

The unfair practice charge in Case No. LA-CE-482-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940



October 28, 1998

Rudy E. Jansen
California Correctional Peace
Officers Association
10722 Arrow Route, Suite 316
Rancho Cucamonga, CA 91730

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**
California Correctional Peace Officers Association v. State
of California (Department of Corrections)
Unfair Practice Charge No. LA-CE-482-S

Dear Mr. Jansen:

The above-referenced unfair practice charge, filed July 7, 1998, alleges the State of California, Department of Corrections (State or Department) denied union members representation during personnel investigations. The California Correctional Peace Officers Association (CCPOA) alleges this conduct violates Government Code section 3519(d).

I indicated to you, in my attached letter dated October 13, 1998, 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 October 20, 1998, 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 October 13, 1998, 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

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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.)

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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
Kristin L. Rosi
Regional Attorney

Attachment

cc: Linda M. Nelson

PUBLIC EMPLOYMENT RELATIONS BOARD



San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415)439-6940



October 13, 1998

Rudy E. Jansen
California Correctional Peace
Officers Association
10722 Arrow Route, Suite 316
Rancho Cucamonga, CA 91730

Re: **WARNING LETTER**

California Correctional Peace Officers Association v. State
of California (Department of Corrections)
Unfair Practice Charge No. LA-CE-482-S

Dear Mr. Jansen:

The above-referenced unfair practice charge, filed July 7, 1998, alleges the State of California, Department of Corrections (State or Department) denied union members representation during personnel investigations. The California Correctional Peace Officers Association (CCPOA) alleges this conduct violates Government Code section 3519(d).

Investigation of the charge revealed the following. CCPOA is the exclusive representative of State Bargaining Unit 6, which includes Correctional Officers at the Chuckawalla Valley State Prison (CVSP) in Blythe. The State and CCPOA are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1998.¹ Article 5.03 of the Agreement states in pertinent part:

A. The State and the Union shall not 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 the Ralph C. Dills Act.

¹ The Agreement expiration date was later extended to July 10, 1998. However, the extension of the expiration date has no bearing on analysis of this charge.

B. The State shall not impose or threaten to impose reprisals on the Union, to discriminate against the Union, or otherwise to interfere with, restrain, or coerce the Union because of the exercise of rights guaranteed to it by the Ralph C. Dills Act.

C. The requested remedy for alleged violations of this section shall be through the grievance and arbitration procedure contained in the MOU.

On May 6, 1998, Officer Marques Jones, a CCPOA Board Member and Job Steward, was ordered by the Department's Internal Affairs Office (IA) to answer questions as a "witness" in an IA investigation. The investigation apparently concerned Officer John Flaharty, CCPOA Chapter President. Officer Jones was questioned about Officer Flaharty statements made during a Union meeting, the internal workings of CCPOA, and the relationship between CCPOA and the administration at CVSP. Officer Jones was not provided representation during this meeting.

On May 19, 1998, Officer Flaharty was contacted by IA Agents regarding the investigation. Officer Flaharty was also ordered to report for questioning on May 22, 1998. On May 22, 1998, Officer Flaharty received written notice of the scope of the investigation. The Notice states as follows:

This inquiry is being conducted regarding allegations that you, through threats and intimidation, discouraged others from running for president in CCPOA chapter elections at CVSP; initiated "attacks" against administrative staff at CVSP by placing advertisements on a local television channel and burned in effigy, dummy representations of administrators; condoned "Battery on a Peace Officer" by an inmate, and impeded the investigative process by "telling" staff what to say to investigators during an investigation.

Additionally, it is alleged that over the past two years, during CCPOA union meetings, you have made racially charged and boastful statements that offended people who were present at the meetings.

CCPOA representatives and Officer Flaharty objected to the scope of the investigation, stating that such inquiry interfered with

CCPOA's right to represent its members, and questioned Officer Flaharty's protected activity. IA investigators stated they had received an anonymous letter complaining about Officer Flaharty's actions. CCPOA again objected to the investigation, and stated that Officer Flaharty would answer questions only under threat of losing his job.

On June 4, 1998, Officer Dawn Baker, CCPOA Chapter Vice-President, was ordered to report to IA investigators in conjunction with the investigation of Officer Flaharty. Officer Baker requested written notice of the charges against her, and was informed that she was only a "witness." Officer Baker was denied representation during this interview. Officer Baker was questioned along the same lines as Officer Jones.

Based on the above stated facts, the charge as presently written, fails to state a prima facie violation of Government Code section 3519(d), for the reasons provided below.

Government Code section 3519(d) states in its entirety:

It shall be unlawful for the state to do any of the following:

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

The threshold test in analyzing such allegations is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or another." (Santa Monica Community College District (1979) PERB Decision No. 103.)

In the instant charge, CCPOA attempts to make an end run around the contractual grievance procedure by alleging unlawful domination. However, Government Code section 3519(d) does not address interference with Union activities or discrimination based on protected activities. Those allegations are properly analyzed under Section 3519(a), (b) and (c). Government Code section 3519(d) prohibits the State from interfering **with the formation or administration of any employee organization**. It does not prohibit the State from discriminating or interfering with protected rights. CCPOA fails to present any facts demonstrating the State urged employees to support another employee organization or attempted to financially support another employee organization. Moreover, CCPOA fails to provide any support for its contention that questioning employees about their

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union activities constitutes unlawful interference with the administration of the union. As such, the charge fails to state a prima facie case.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before October 20, 1998. I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney