

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

DISCUSSION

On September 4, 1998, Hutchinson and Laosantos filed the instant unfair practice charge alleging that the Association interfered with the internal Association election process and thereby discriminated against them for their exercise of protected rights in violation of the Dills Act. Specifically, it is alleged that the Association conducted elections outside of the timeframe required by internal Association bylaws; mailed election ballots in violation of internal Association bylaws; improperly validated ballots in violation of internal Association bylaws; failed to properly distribute election results in violation of internal Association bylaws; and improperly installed Association officers.

On June 7, 1999, a Board agent issued a partial dismissal of the unfair practice charge,² which Hutchinson appealed on June 25, 1999.

guaranteed by this chapter.

²A complaint alleging a violation of the Dills Act based on other allegations contained within the unfair practice charge was also issued by the Board agent on June 7, 1999.

The Board has long held that it will not intervene in matters involving the solely internal activities or relationships of an employee organization which do not impact employer-employee relations. (Service Employees International Union, Local 99 (Kimmett) (19 79) PERB Decision No. 106 at pp. 15-16; California State Employees Association (Hutchinson, et al.) (1998) PERB Decision No. 1304-S.) In California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S, the Board reiterated this policy, stating:

. . . the Dills Act does not protect solely internal union participation and activities of employees which do not impact employer-employee relations. The burden of proof is on the charging party to demonstrate the existence of such an impact.

The Board also noted that it retains the authority to assess the reasonableness of a union's membership restrictions pursuant to Dills Act section 3515.5.³

Applying this policy to this case, it is clear that the allegations involve solely internal union activities. However, Hutchinson and Laosantos have not demonstrated that those internal union activities have any impact on employer-employee relations. Therefore, they have failed to meet their burden and the Board concludes that the Dills Act does not protect the

³Dills Act section 3515.5 states, in pertinent part:

Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

internal union activities and participation in which the charging parties were engaged and which form the basis of the dispute in this case. Therefore, the partial dismissal of the unfair practice charge must be affirmed on that basis.

ORDER

The partial dismissal of the unfair practice charge in Case No. SF-CO-37-S is hereby AFFIRMED.

Members Dyer and Amador joined in this Decision.

PUBLIC [EMPLOYMENT RELATIONS BOARD



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



June 7, 1999

Cessaly Hutchinson

Re: **PARTIAL DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**

Cessaly Denise Hutchinson v. California State Employees Association

Unfair Practice No. SF-CO-37-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on September 4, 1998, alleges that the California State Employees Association (Association) interfered with the election processes for Civil Service Division officers and delegates, as well as positions for regional officers. This conduct is alleged to violate Government Code section 3519.5(b) of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated May 26, 1999, that certain allegations contained in the 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 these allegations to state a prima facie case or withdrew them prior to June 3, 1999, the allegations would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my May 26, 1999 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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case-name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common

Partial Dismissal Letter
SF-CO-37-S
June 7, 1999
Page 2

carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135 (a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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.

Partial Dismissal Letter
SF-CO-37-S
June 7, 1999
Page 3

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 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

DONN GINOZA

Regional Attorney

Attachment

cc: Mark DeBoer

PUBLIC EMPLOYMENT RELATIONS BOARD



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



May 26, 1999

Cessaly Hutchinson

Re: **PARTIAL WARNING LETTER**

Cessaly Denise Hutchinson v. California State Employees
Association

Unfair Practice No. SF-CO-37-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on September 4, 1998, alleges that the California State Employees Association (Association) interfered with the election processes for Civil Service Division officers and delegates, as well as positions for regional officers. This conduct is alleged to violate Government Code section 3519.5(b) of the Ralph C. Dills Act (Dills Act).

Investigation of the charge revealed the following. Cessaly Denise Hutchinson and Jean Laosantos are members of the Association. They are, or were, officers in the Association, each holding the office of president of a District Labor Council (DLC). The Association is comprised of several major membership sections. The Civil Service Division, one such section, is composed of current state employees. The DLCs are representative bodies of the Civil Service Division's geographic subdivisions within the state. The Association itself is governed by its Board of Directors, which is composed of elected representatives from the various divisions.

By letter dated September 4, 1998, Hutchinson and Laosantos filed a protest with Jim Hard, Director of the Civil Service Division, and Perry Kenny, President of the Association. The letter is attached to the charge and constitutes a contemporaneous statement of the facts supporting the charge. The letter alleges that Hutchinson and Laosantos are members of the Association who are not affiliated with a grouping within the Association known as the Caucus for a Democratic Union (CDU). The letter states that the charges are filed against Board of Directors Executive Vice-President Paul Gonzalez-Coke, Civil Service Division Officers Jim Hard and Kathy Hackett, and others, as well as the CDU. These individuals are alleged to have been part of a concerted effort to seize control of the Civil Service Division, principally through gerrymandering the districts in favor of CDU candidates. The letter refers to a civil court action filed against the same officers for violating internal Association policies relating to officer elections.

Partial Warning Letter
SF-CO-37-S
May 26, 1999
Page 2

In the spring of 1998, a superior court judge found in the action that the first elections were not held in compliance with "normal rules applicable to such activities."

Charging Parties allege that presidents and other officers were installed from DLCs not found by the court to have been affected by the unlawful election procedures and that this was improper nonetheless because it stemmed from the "wrongful attempt to illegally realign [i.e., gerrymander] the [districts] to rid the [Civil Service Division] of 'non-CDU' DLC presidents." Charging Parties allege that the votes and candidacies of members in districts not realigned might have been different but for the realignment because members may have viewed differently their chances for success and reasons for voting under those circumstances. Charging Parties therefore claim that the elections should have been redone across the board and that none of the officers should be installed at the present time.

Charging Parties further claim that the second elections were illegally held. They claim that CDU members were allowed union leave or "lost timer status" to campaign in the DLC elections against non-CDU candidates. CDU members used Association resources to the detriment of non-CDU candidates, such as themselves. These resources included phonebanking, postcard mailings, and business meetings (held as a pretext for soliciting support for CDU members).

Charging Parties also claim there were irregularities in the ballot count based on the conduct of John J. Jelinicic, Jr., Alternate Vice-Chair of the Unit 1 Bargaining Unit Negotiating Committee.

Finally, Charging Parties allege that there were violations of internal election policies with regard to ballots for regional delegates.

Based on the facts stated above, the allegations that the Association (1) improperly installed officers from DLC elections in DLCs not realigned, (2) improperly counted ballots and (3) violated policies regarding regional delegate ballots, as presently written fail to state a prima facie violation of the Dills Act for the reasons that follow.

Improper Installation of Officers

In order to state a violation involving interference, the charging party must demonstrate that the respondent's conduct resulted in at least slight harm to the rights of the charging party to engage in activities protected by the Dills Act.

Partial Warning Letter
SF-CO-37-S
May 26, 1999
Page 3

(Carlsbad Unified School District (1979) PERB Decision No. 89; California Faculty Association (Hale) (1988) PERB Decision No. 693-H.) There must be a showing of a nexus -- or cause-and-effect -- between the respondent's conduct and the harm to employee rights. (Id.) In this case, Charging Parties have failed to demonstrate how the failure of the Association to provide the remedy of new elections throughout the state, as opposed to only those in the DLCs that had been improperly realigned, caused actual harm to their rights to participate in the Association. They contend that some candidates might have chosen not to run in a non-realigned DLC because of realignment in another DLC. They cite no instances of this. They themselves do not contend that their decision whether or not to run was so affected.

They also contend that some members may have voted differently in non-realigned DLCs had realignment not taken place in other DLCs. Again, they cite no instances.

In sum, they have made no showing of the necessary cause-and-effect in their charge; it appears to rest purely on speculation. Furthermore, even if such showing could be made, Charging Parties have failed to allege that their own quality of participation in the Association was affected in some measurable way by the failure to re-run these elections. (See Riverside Unified School District (1986) PERB Decision No. 562a [requirement of standing to file a charge] .)

Improperly Counted Ballots

The charge alleges that Hutchinson observed an individual counting ballots who either duplicated or counted a ballot that had a "bite-sized" piece missing. Prior to that time some irregular ballots had been rejected. Charging Parties make no showing that one erroneously counted ballot would have caused even slight harm to their ability to participate in the Association. (Carlsbad Unified School District, supra, PERB Decision No. 89.) They make no showing that any other ballot counting irregularities occurred.

Regional Delegate Elections

The charge alleges that the regional delegate ballots were mailed in the second election in August 1998. The Association's internal policy manual requires these ballots to be mailed no later than April 20. However, it appears that the reason the ballots were not mailed until August was that the second elections were being repeated and therefore did not follow the traditional election schedule contemplated in the normal election

Partial Warning Letter
SF-CO-37-S
May 26, 1999
Page 4

cycle. Such a situation suggests that the procedure would not have amounted to an actionable violation of policy. Hence, there is no evidence suggesting a discriminatory intent to act against the interests of non-CDU members.¹ (See California State Employees Association (O'Connell) (1989) PERB Decision No. 753-H.)

For these reasons the allegations that the Association (1) improperly installed officers from DLC elections not realigned, (2) improperly counted ballots and (3) violated policies regarding regional delegate ballots, as presently written, do 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 **June 3, 1999**, I shall dismiss the above-described allegations from your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

DONN GINOZA
Regional Attorney

¹The charge also refers to the failure to announce election results in the re-run elections on the date specified in the policy. For the same reasons, this allegation is without merit.