

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA UNION OF SAFETY
EMPLOYEES,

Charging Party,

v.

STATE OF CALIFORNIA (CALIFORNIA
HIGHWAY PATROL),

Respondent.

Case No. LA-CE-583-S

PERB Decision No. 1574-S

December 30, 2003

Appearances: Sam A. McCall, Jr., Chief Legal Counsel, for the California Union of Safety Employees; State of California (Department of Personnel Administration by Linda M. Nelson, Labor Relations Counsel, for the State of California (California Highway Patrol).

Before Baker, Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case was brought before the Public Employment Relations (PERB or Board) on appeal by the California Union of Safety Employees (CAUSE) of a Board agent's dismissal (attached) of an unfair practice charge. The charge alleged that the State of California (California Highway Patrol) (CHP) violated the Ralph C. Dills Act (Dills Act)¹ by denying William Jackson union representation at a meeting in which he was questioned regarding allegations that he had engaged in misconduct. CAUSE alleged that CHP's conduct constituted a violation of employee rights under Dills Act section 3519(a), and employee organization rights under Dills Act sections 3519(b) and 3515.15.²

¹The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

²Section 3519 states, in pertinent part:

The Board agent determined that all of the charge allegations were subject to deferral to the grievance arbitration procedure negotiated by CHP and CAUSE and that CHP had waived procedural defenses. (See State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.) The Board agent therefore dismissed all charge allegations.

On appeal, CAUSE did not challenge dismissal of the Section 3519(a) allegation, but argued that the Sections 3519(b) and 3515 allegations should have been bifurcated and remained before PERB for adjudication. CAUSE argued that the parties' agreement did not

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

(a) 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

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.

prohibit violation of employee organizations' statutory rights and did not empower an arbitrator to impose remedies for such violations traditionally utilized by PERB and the National Labor Relations Board, so deferral was inconsistent with the purposes of the Dills Act.

During the Board's review of this appeal, CAUSE submitted a request to withdraw its charge in this case and CHP did not oppose that request.

A party's request to withdraw a case that is pending on appeal before the Board itself is subject to the Board's discretion. The Board recently issued decisions discussing issues similar to those presented by the parties' arguments herein. (State of California (Department of Parks and Recreation) (CAUSE) (2003) PERB Decision No. 1566-S; State of California (Department of Mental Health) (CAUSE) (2003) PERB Decision No. 1567-S.) The Board, therefore, finds that allowing withdrawal of the charge and appeal in this case would promote the interests of the Dills Act and would be in the best interest of the parties. Therefore, the request is granted.

ORDER

The request of the California Union of Safety Employees to withdraw the unfair practice charge in Case No. LA-CE-583-S is hereby GRANTED. The appeal and unfair practice charge are WITHDRAWN WITH PREJUDICE.

Members Baker and Whitehead joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377



September 10, 2002

Sam A. McCall, Jr., Chief Legal Counsel
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (California Highway Patrol)

Unfair Practice Charge No. LA-CE-583-S

NOTICE OF DISMISSAL AND DEFERRAL TO ARBITRATION

Dear Mr. McCall:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2002. The charge was amended on July 2, 2002. The California Union of Safety Employees alleges that the State of California (California Highway Patrol) violated the Ralph C. Dills Act (Dills Act)¹ by interfering with an employee's right to union representation.

I indicated in the attached letter dated September 3, 2002, that this charge was subject to deferral to arbitration. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, the charge should be amended. You were further advised that unless the charge was amended or withdrawn prior to September 10, 2002, it would be deferred to arbitration and dismissed.

I received your letter of response on September 9, 2002. In that letter you requested that I reconsider deferral of this matter to the contractual grievance procedure. You contend that the denial of union representation is not covered by the "No Reprisal" provision. You argue that provision only addresses issues of illegal discrimination and does not cover illegal interference with (or denial of) employee rights.

Article 2.7 of the CAUSE contract with the State employer is title "No Reprisals" and states.

The State and CAUSE shall not impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

employees because of the exercise of their rights under the Ralph C. Dills Act or any right given by this Contract.

The contractual language is nearly identical to language which appear in the Dills Act at Government Code section 3519 which states, in relevant part, that it shall be a violation to,

(a) 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.

Government Code section 3519(a) has long been interpreted to prohibit interference with protected rights as well as discrimination because of the exercise of protected rights. (See California Public Sector Labor Relations (May 2002) section 15.02, p. 15-6.) Section 3519(a) protects an employee's right to union representation and prohibits improper denial thereof. State of California (Department of Forestry) (1988) PERB Decision No. 690-S

Accordingly, it appears appropriate to defer your charge under the "No Reprisal" section of the collective bargaining agreement.

As I explained in the attached letter, Government Code section 3514.5(a) and PERB Regulation 32620(b)(5) require a Board agent to dismiss a charge where the dispute is subject to final and binding arbitration pursuant to a collective bargaining agreement. (Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81; State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.) The charge alleges that an employee was improperly denied union representation. This conduct is covered by the parties' collective bargaining agreement, the Respondent has agreed to waive any procedural defenses, and there is no evidence that the dispute arises in other than a stable collective bargaining environment. Accordingly, the charge must be dismissed and deferred to arbitration.

Following the arbitration of this matter, the Charging Party may seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)²

Right to Appeal

Pursuant to PERB Regulations,³ 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

² Pursuant to Government Code section 3514.5(a), the six-month limitation on the filing of a charge is tolled during the time required to exhaust the grievance machinery where that procedure ends in binding arbitration.

³ PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

dismissal. (Regulation 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 carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 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. (Regulation 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 Regulation 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. (Regulation 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. The request must indicate good cause for and, if known, the position of

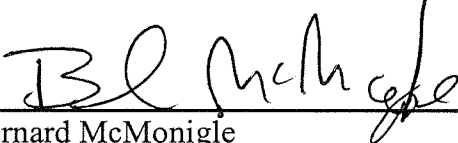
each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

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
General Counsel

By 
Bernard McMonigle
Regional Attorney

Attachment

cc: Linda Nelson

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
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September 3, 2002

Sam A. McCall, Jr., Chief Legal Counsel
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (California Highway Patrol)
Unfair Practice Charge No. LA-CE-583-S
WARNING LETTER (DEFERRAL TO ARBITRATION)

Dear Mr. McCall:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on June 20, 2002. The charge was amended on July 2, 2002. The California Union of Safety Employees alleges that the State of California (California Highway Patrol) violated the Ralph C. Dills Act (Dills Act)¹ by interfering with an employee's right to union representation.

Your charge states the following. On May 16, 2002, Motor Carrier Specialist William Jackson was informed that he was to be interviewed the next day regarding a citizen complaint of misconduct. He was informed that he could not have union representation. Mr. Jackson contacted CAUSE to seek representation at the interview. On May 16, a CAUSE Labor Representative contacted CHP Chief Lykins who confirmed that he was denying Mr. Jackson's request for union representation at the meeting. On May 17, Mr. Jackson was questioned without union representation about the complaint. On May 20, Mr. Jackson was issued a counseling memorandum.

CAUSE and the State employer are parties to a collective bargaining agreement effective July 1, 2001 to July 2, 2003. That agreement contains a grievance procedure that ends in binding arbitration. Article 2.6 of that agreement is titled "No Reprisals" and states,

The State and CAUSE shall not impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees because of the exercise

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

of their rights under the Ralph C. Dills Act or any right given by this Contract.

Based on these facts and Dills Act section 3514.5, this charge must be deferred to arbitration under the MOU and dismissed in accordance with PERB Regulation 32620(b)(5).

Section 3514.5(a) of the Dills Act states, in pertinent part, that PERB shall not:

Issue a complaint against conduct also prohibited by the provisions of the [collective bargaining] agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

In Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a, the Board explained that:

While there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations.² EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector.³ [Fn. 2 omitted; fn. 3 to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.]

Although Dry Creek was decided under the Educational Employment Relations Act² the NLRB deferral standard has also been applied to the Dills Act. (State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.)

In Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] and subsequent cases, the National Labor Relations Board articulated standards under which deferral to the contractual grievance procedure is appropriate in prearbitral situations. These requirements are: (1) the dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

These standards are met with respect to this case. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship.

² The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

Second, by the attached letter from its representative, Linda Nelson, dated July 8, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses³. Finally, the issue raised by this charge that employee rights were interfered with by the denial of union representation directly involves an interpretation of Article 2.6 of the MOU.

Accordingly, this charge must be deferred to arbitration and will be dismissed. Following the arbitration of this matter, the Charging Party may seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District, supra.)⁴

If there are any factual inaccuracies in this letter or additional facts that 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 September 10, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,



Bernard McMonigle
Regional Attorney

Attachment

³ The letter is titled "Confidential Response", however, DPA Labor Relations Counsel Linda Nelson waived confidentiality by telephone conversation on August 26, 2002.

⁴ Pursuant to Government Code section 3514.5(a), the six-month limitation on the filing of a charge is tolled during the time required to exhaust the grievance machinery where that procedure ends in binding arbitration.