STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MICHAEL SAMUEL PITTMAN, Charging Party, v. CDF FIREFIGHTERS, Respondent.	Case No. SA-CO-262-S PERB Decision No. 1815-S February 7, 2006

Appearances: Driscoll and Associates by Thomas J. Discoll, Jr., Attorney, for Michael S. Pittman; Carroll, Burdick & McDonough by Gregg McLean Adam, Attorney, for CDF Firefighters.

Before Duncan, Chairman; Whitehead and McKeag, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (Board) on appeal by Michael Samuel Pittman (Pittman) of a Board agent's dismissal (attached) of his unfair practice charge. The charge alleged that the CDF Firefighters (Firefighters) violated the Ralph C. Dills Act (Dills Act)[1] by imposing an illegal trusteeship; having Ron Bywater file internal charges against Pittman; having the Barrett Committee ignore facts and impose inappropriate penalties; having its attorneys file false police reports against Pittman; and having Region IX Director Carol Jolley submit a report alleging a violation of Penal Code 632(a).

The Board has reviewed the entire record in this matter, including the original unfair practice charge, the first and second amended unfair practice charge, the warning and dismissal

[1]The Dills Act is codified at Government Code section 3512, et seq.

letters of the Board agent, Pittman's appeal and supplemental documents,[2] and the Firefighters responses.

The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CO-262-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member McKeag joined in this Decision.

[2]The supplemental documents were not relied upon in making our decision because the documents were not timely filed.

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
Fax: (916) 327-6377

December 31, 2004

Michael Samuel Pittman
1941 Sweetwater Court
Cool, CA 95614

Re: Michael S. Pittman v. CDF Firefighters
Unfair Practice Charge No. SA-CO-262-S
DISMISSAL LETTER – 2nd Amended Charge

Dear Mr. Pittman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on July 17, 2003. It was amended on January 30, 2004. Michael S. Pittman alleges that the CDF Firefighters violated Ralph C. Dills Act (Dills Act)[1] sections 3515.5 and 3519.5(b) by imposing an illegal trusteeship, having Ron Bywater file internal charges against Mr. Pittman, having the Barrett committee ignore facts and impose inappropriate penalties, having its attorneys file false police reports against Mr. Pittman, and having Region IX Director Carol Jolley submit a report alleging a violation of Penal Code 632(a).

I indicated to you in my attached letter dated May 24, 2004, 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 June 4, 2004, the charge would be dismissed.

On June 14, 2004, I received a notice of appearance designating Thomas Driscoll as your representative and your second amended charge.

The second amended charge alleges that following violations: 1.) Dills Act sections 3515.5 and 3519.5(b) by imposing an illegal trusteeship, 2.) Dills Act section 3519.5(b) by having Ron Bywater file internal charges against Mr. Pittman, 3.) Dills Act sections 3515.5 and 3519.5(b) by having the Barrett committee ignore facts and impose inappropriate penalties, 4.) Dills Act sections 3515.5 and 3519.5(b) having attorneys giving false information to the CDF Firefighters Board of Directors to convince them to impose a trusteeship, 5.) Carol Jolley's submitting a report without inclusion of the other committee members violated the hearing

[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.

process. 6.) Dills Act section 3518.7 by electing Ray Snodgrass, a confidential managerial employee as a CDF Firefighters delegate to affiliate conventions.

These allegations are based on the following information that has been gathered from this unfair practice charge and related charges.[2] Mr. Pittman began service with the California Department of Forestry and Fire Protection in 1975 as a seasonal firefighter. In August 1986 he was promoted to Firefighter I and in 1994 was permanently promoted to Fire Captain.

On September 12, 2002, Mr. Pittman filed a written internal union complaint regarding misconduct by then-President of CDF Firefighters Tom Gardner. On September 13, 2002, Mr. Pittman's representative, Richard Maldonado, the union's Region IV Director, filed a motion to disqualify the complete hearing committee assigned to hear Pittman's complaint. The motion was denied by Vice President Bob Wolf on September 24, 2002. By letter dated September 26, 2002 Michael Witesman, chairman of the hearing committee, requested Mr. Pittman provide additional verification and information regarding the complaint. By letter dated October 11, 2002, Mr. Witesman informed Mr. Maldonado that six of 13 allegations in Mr. Pittman's complaint were untimely and therefore dismissed.

On November 12, 2002, Larry German, Supervisor Representative for Region IV and Fresno Chapter of the union, filed an internal complaint with the union against Mr. Pittman and others. This complaint alleged that Mr. Pittman and Mr. Maldonado changed the Region IV bylaws to state that: "Region IV would not allow Assistant Chiefs and above to be elected as Delegates to Convention." By letter dated November 13, Mr. Witesman requested further information regarding the allegations. The letter also indicated that the hearing committee would seek a waiver of Operating Procedures Handbook section 413.03 B (hearing to occur no less than 30 days from receipt of the charge) in order to conduct the hearing prior to the beginning of the union convention on December 4, 2002.

On November 12, 2002, Mr. Maldonado requested a continuance of the Pittman hearing that was scheduled for November 13. Mr. Maldonado made several other motions in other letters dated November 12. Mr. Pittman and Mr. Maldonado attended the hearing on November 13 and made several motions to the committee, all of which were denied. After losing their motions they did not present evidence or call witnesses but left the hearing without completing their presentation because of their belief that they could not receive a fair hearing. By letter dated November 20, Mr. Maldonado requested that the hearing be reconvened on December 4 prior to the beginning of the union convention.

On November 21, 2002, Darla Mills filed a union complaint against Mr. Pittman, Mr. Maldonado, and others.

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[2] Pittman v. CDF Firefighters, Case No. SA-CO-258-S, Maldonado v. CDF Firefighters, Case Nos. SA-CO-263-S and SA-CO-264-S and Darrington v. CDF Firefighters Case No. SA-CO-261-S.

By letter dated December 4, 2002, Byron Darrington, CDF Firefighters Region Supervisor Representative – Region IV filed a formal complaint with the union on behalf of Mr. Maldonado, Mr. Pittman and Ken Craw against Mr. Gardner, Mr. Witesman and the other hearing committee members.

At the union's convention in December 2002, Region IV representatives submitted nineteen resolutions, most of which were directed at reducing the authority of managers and retired members from holding office in the union and making decisions that affect rank and file members.

On January 22, 2003, the CDF Firefighters held a regularly scheduled executive board meeting. Region IV's Director and member of the executive board, Richard Maldonado was excluded from the meeting by union attorney Ron Yank. Mr. Yank stated that the Board was in executive session and that no one would be allowed to attend on behalf of Region IV. The open Board meeting resumed at 1:00 p.m. and Mr. Maldonado was allowed to attend.

The Board's retiree representative made a motion to adopt a written by-law change entitled, "Authority to Impose Trusteeship". Mr. Maldonado objected because he had not had an opportunity to examine the by-law change and it was not listed as an agenda item. Mr. Yank stated the change was discussed during executive session and that Mr. Maldonado had no right to know the issues. Mr. Yank then stated that "nothing prior to or during executive session was to be disclosed or discussed." The Board approved the by-law change with Mr. Maldonado voting no. The Board then voted to allow for immediate administrative enforcement of the addition to the by-laws. Mr. Maldonado was then asked to leave as the Board returned to executive session. Region IV did not have a representative at the session.

During its executive session the Board discussed past president Tom Gardner's destruction of computer files after losing the election to Bob Wolf. Mr. Gardner and Region IV alternative representative Don Saether were allowed to remain for the session. However, Mr. Saether was excluded from the session when Region IV issues were discussed. After returned to general session the Board announced that Region IV was placed in trusteeship and that Mr. Maldonado, Mr. Pittman, Mr. Saether and Ken Craw were no longer officers of the union.

By letter dated January 23, 2003, Mr. Wolf notified "all Managers and Chiefs of CDF, Financial Institutions, and others who do business or interact with CDF Firefighters or any Region or Chapter thereof" that he had imposed a trusteeship upon Region IV of the union and the Fresno-Kings Chapter, Tulare Chapter and San Benito-Monterey Chapter. The letter also appointed trustees who were responsible for conducting all business involving these entities.

By letter dated January 23, 2003, Mr. Maldonado and Mr. Pittman were informed by the hearing committee that they had pursued the charges against Mr. Gardner without reasonable basis, in bad faith and/or by improper malice which is prohibited by the union's Operating Procedures Handbook section 413.03.H. They were given an opportunity to respond to this allegation.

By Mr. Wolf's letter dated January 28, 2003, Mr. Maldonado and Mr. Pittman were notified that Ron Bywater had filed charges against them. The charges were improper use of union assets in their charge against Mr. Gardner and Mr. Pittman's secret tape recording of a conversation between him and Mr. Gardner on March 8, 2000.

On February 10, 2003, Carol Jolley, Chair of the union Investigative Committee, issued a written Summary of Investigation concerning the allegation that Mr. Pittman violated Penal Code section 632 by secretly tape recording a discussion he had with Mr. Gardner and Eric Sargent on or about March 8, 2000. The report stated in summary that all elements of Penal Code section 632 appear to have been met.[3]

Ms. Jolley had been appointed by President Wolf to chair a committee with two other committee members chosen by former President Gardner and Mr. Pittman. The committee was to investigate the issue of whether Mr. Pittman secretly tape recorded then-President Gardner at a State Board Meeting on March 8, 2000. A transcript of this tape recording was an exhibit to charges filed by Mr. Pittman against Mr. Gardner on September 12, 2002. Ms. Jolley's committee was to report to the State Board. Ms. Jolley did not include the other committee members in preparing her report and gave her report to Ken Hale, the hearing officer for the trusteeship hearing, rather than the State Board. The report was also considered by the Barrett hearing committee.

On February 12, 2003 the hearing committee chaired by Mr. Barrett commenced the hearing in the charges filed by Mr. German against Mr. Pittman and Mr. Maldonado.

On February 13, 2003, Mr. Pittman attempted to tape record a membership meeting at a hotel in Fresno. Mr. Pittman received approval of the recording from all members present in the meeting. The Fresno Police Department was called by Hearing Committee Chair Steve Barrett but they did not arrest Mr. Pittman for tape recording.

A hearing regarding the imposition of the trusteeship was held before hearing officer Ken Hale on February 13, 2003. A CDF Firefighters Board representative presented the justification for trusteeship. Mr. Pittman and others also appeared at the hearing. On February 18, 2003, President Wolf informed members of the San Benito-Monterey Chapter of the union that the trusteeship was lifted. Mr. Hale's decision upholding the trusteeship issued on February 24, 2003.

On March 3, 2003, the Witesman hearing committee held a hearing on the charges that had been filed by Mr. Pittman and Mr. Maldonado. The purpose of the hearing was to determine whether Mr. Pittman and Mr. Maldonado had violated Operating Procedures Handbook sections in pursuing their charges against Mr. Gardner. On March 5, 2003, the Witesman hearing committee issued its decision that found Mr. Pittman 40% liable for the violation of

[3] Penal Code section 623(a) prohibits an individual from recording a confidential communication without the consent of all parties. Violation may be punished by a fine or imprisonment.

prosecuting charges against Mr. Gardner without reasonable basis and in bad faith. He was ordered to reimburse Mr. Gardner, his representative and the union for the costs and he was suspended from the union for a one year period beginning April 1, 2003. Mr. Maldonado was found 60% liable and ordered to reimburse the same parties for costs and expelled from the union effective April 1, 2003.

On March 6, 2003, Mr. Bywater amended his charges against Mr. Pittman to include a charge of failure to exhaust internal union procedures prior to filing a unfair practice charge with PERB. This allegation was withdrawn on March 10, 2003.

On March 14, 2003, Mr. Yank wrote to Mr. Darrington requesting that his clients, Mr. Maldonado and Mr. Pittman return to the union all minutes and financial records of union meetings as well as a computer.

On April 15, 2003, Mr. Yank filed charges against Mr. Maldonado with the Fresno Police Department for felony grand theft of union property. After Mr. Maldonado produced evidence to the contrary the police did not prosecute.

On November 23, 2003, a union Hearing Committee consisting of Steven Barrett, Dan Todd, and Rich Garcia issued its decision on the Bywater v. Maldonado and Pittman charges. The committee dropped one charge, deferred another one to a separate hearing, dismissed one charge and found violations in three others. The penalties assessed in the tentative decision against Mr. Maldonado and Mr. Pittman were identical: expulsion from membership and 30% of the total costs of the Region IV trusteeship.

Mr. Maldonado and Mr. Pittman were given 15 calendar days in which to present additional documents. After neither did, the union adopted the tentative decision. Neither defendant appealed the decision to the CDF Firefighters' State Board during the 30 day period for presenting such an appeal. A complaint for damages was filed by CDF Firefighters against Mr. Maldonado and Mr. Pittman in Fresno Superior Court on June 16, 2004.

With respect to allegations 1 through 4, the second amended charge does not provide information that is sufficient to correct the deficiencies described in my May 24, 2004 letter regarding the alleged acts of discrimination under Dills Act section 3519.5(b). Therefore, these allegations are dismissed based on the rationale contained in that letter.

The 2nd amended charge alleges several violations of section 3515.5. The CDF Firefighters violated this provision by: 1.) imposing an illegal trusteeship, 2.) having the Barrett committee ignore facts and impose inappropriate penalties, 3.) having attorneys giving false information to the CDF Firefighters Board of Directors to convince them to impose a trusteeship, 5.) Carol Jolley's submitting a report without inclusion of the other committee members violated the hearing process.

The first amended charge alleges that CDF Firefighters imposed an illegal trusteeship over Region IV and its three chapters. To support this, the charge states:

> The State Board Of Directors passed a change to the By-Laws allowing the imposition of a trusteeship over a region or chapter on or about January 22, 2003. The Board then imposed a trusteeship over region IV and all three of its chapters. The trusteeship is based on four complaints filed against me as a chapter director and member of the union. The Board unreasonably imposed the trusteeship before allowing the hearing process previously established by the bylaws to commence. CDF Firefighters then used the trusteeship to interfere with my protected rights as a member to restrain me from participating in my elected union office.

Further information on this issue is contained in the Bywater Answer.Doc attached to the first amended charge. At page 4, it states:

> The trusteeship was imposed unlawfully as it was applied retroactively to my Region and Chapter. The change to the OPH allowing trusteeship was voted in on January 22, 2003. The actions that President Wolf and the state Board of Directors used to impose an "emergency" trusteeship occurred before the adoption of the OPH change. The trusteeship was imposed on Region IV and my chapter on January 23, 2003. At the trusteeship hearing it was clear the bulk of the chargers (sic) were against Mr. Maldonado and me. CDF Firefighters never officially noticed the affected chapters of trusteeship and refused to make requests in a written format. Mr. Rice was given illegal orders as the trusteeship was illegally imposed. No member of the Association is compelled to following an illegal order.

In addition, the charge states that Region IV's representative was excluded from the January 22, 2003 executive meeting of the Board of Directors during which the Board discussed a by-law change entitled "Authority to Impose Trusteeship." Although Region IV representative Maldonado was present for the vote on the by-law change, he was informed by the Board's attorney that he was not entitled to know what was discussed during his absence. Mr. Maldonado voted no on the change but was outvoted. The Board then voted for immediate administrative enforcement of the new by-law. Mr. Maldonado and the Region IV alternate were then excluded from the executive sessions concerning Region IV. Upon returning to general session the Board announced that Region IV had been placed in trusteeship.

Dills Act section 3515.5 reads 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.

In California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S the Board found:

> PERB's authority to determine the reasonableness of a membership provision must include not just the reasonableness of the provision itself, but the reasonableness of the provision as it was applied in the case pending before the Board. (California Correctional Peace Officers Association (Colman) (1989) PERB Decision No. 755-S, p. 21.) Here, even if the Board were to find that the summary suspension procedures were reasonable, a violation of the Dills Act will be found if their application in this case was not reasonable.

The test under Dills Act section 3515.5 only applies to an employee who has been suspended or expelled from union membership. (California State Employees Association (Barker & Osuna) (2003) PERB Decision No. 1551-S.)

Exclusion of Region IV representatives from executive sessions concerning that Region does not appear consistent with commonly accepted democratic principles. At the very least the Board was deprived of a contrary voice on the issue of Region IV trusteeship. However, such exclusion without more does not mean that the trusteeship was illegal or illegally imposed. The Region IV representative was present for the vote on changing the by-law and the immediate administrative enforcement of it. It is not clear whether a Region IV representative participated in the vote on whether the trusteeship should be imposed on Region IV. In addition, all interested parties were allowed to participate in a hearing on the imposition of the trusteeship shortly after the Board vote. The hearing officer upheld the Board's decision. More importantly, the imposition of the trusteeship did not cause a member to be suspended or expelled from membership. Accordingly, I do not find that imposition of the trusteeship on Region IV states a prima facie violation of Dills Act section 3515.5.

This finding would also apply to the allegation that section 3515.5 was violated by having attorneys giving false information to the CDF Firefighters Board of Directors to convince them to impose a trusteeship. This allegation is also dismissed.

The second alleged violation of section 3515.5 is based on the Barrett committee ignoring facts and imposing inappropriate penalties. In summary, the union hearing committee of Steven Barrett, Dan Todd, and Rich Garcia issued a tentative decision on November 23, 2003 finding three violations by Mr. Maldonado and Mr. Pittman. The penalties assessed against the two men were identical: expulsion from membership and a fine of 30% of the total costs of the Region IV trusteeship. Neither man presented additional documents during the 15 calendar days provided for such. After the union adopted the tentative decision, neither defendant appealed the decision to the CDF Firefighters' State Board.

Although charging party filed voluminous materials regarding the Barrett committee, there is little to indicate that committee's determination was based on anything other than the

information presented to it.[4] Nor is it patently unreasonable for a union to expel and fine members that violate its rules and require it to incur expenses. In Scofield v. National Labor Relations Board (1969) 394 U.S. 423, the Supreme Court recognized that union fines and expulsion from membership did not by themselves violate provisions of the National Labor Relations Act similar to Dills Act section 3515.5.[5] Based on the information presented, I do not find that the CDF Firefighters Operating Procedures Handbook enforced by the Barrett committee were unreasonable or that they unreasonably applied them to the case of Mr. Maldonado and Mr. Pittman.

Similarly, the allegation that Carol Jolley submitted a report without inclusion of the other committee members and violated the hearing process does not state a prima facie violation of section 3515.5. Although Ms. Jolley did not follow the State Board's instructions regarding the investigation of the secret tape recording incident, it is not clear that this behavior directly resulted in the expulsion of Mr. Maldonado and Mr. Pittman. The Barrett hearing committee considered the document along with others. In the section of its report on this incident, the hearing committee does not reference the Jolley report. Rather, they focus on Mr. Pittman's testimony and written presentations as well as other information. Mr. Jolley's behavior appears to be unreasonable given the State Board's directions. However, based on the totality of circumstances, I find that her conduct is sufficiently remote from the committee's determination that it does not violate section 3515.5.

In his letter of July 7, 2004, charging party's representative argues that the Hearing Committee investigated the allegations, drafted the allegations for submission to it by Mr. Bywater and formally presented additional allegations of its own. This assertion is based on paragraphs 2-8 of the Complaint for Damages (attached to the letter) filed by the CDF Firefighters against Mr. Pittman and Mr. Maldonado in Fresno Superior Court. A review of the Complaint indicates that the Hearing Committee consisting of chair Mike Witesman, and members Woody Allshouse and Jim Rissmiller investigated charges filed by Mr. Pittman against then-President Tom Gardner. The Witesman committee informed President Wolf that in the course of its investigation into Mr. Pittman's charges, they found evidence that Mr. Pittman and Mr. Maldonado had violated the union's OPH. The Witesman committee then "formally presented these allegations to Wolf in the form of a January 23, 2003 letter of allegation by member Ron Bywater."

The Bywater complaints were heard by a hearing committee chaired by Steven Barrett, Dan Todd, and Rich Garcia. None of these individuals participated in the Witesman hearing committee.

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[4] In Regents of the University of California (2004) PERB Decision No. 1592-H, the Board found that a charge containing a brief conclusory statement alleging violations of the statute and referencing approximately 300 pages of attached documents did not meet the requirements of PERB Regulation 32615(a)(5).

[5] When interpreting state labor relations statutes, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and other California labor relations statutes with parallel provisions. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

The July 7, 2004 letter thus asserts unreasonable conduct by the Witesman committee regarding the Bywater complaint. It appears that the Bywater complaint had its genesis in the investigation done by the Witesman hearing committee. However, this fact is not an unreasonable application of the union's rules. A review of the hearing committee's responsibilities under OPH section 413 does not indicate that there is a limit on the committee's ability to investigate. Nor does the OPH prohibit the committee from presenting the results of its investigation to the President. Finally, the Witesman committee did not sit in review of the Bywater complaint. This was done by the hearing committee chaired by Steven Barrett. Thus, there is no prima facie violation of section 3515.5.

The second amended charge asserts for the first time that CDF Firefighters violated Dills Act section 3518.7 by electing Ray Snodgrass, a managerial employee, as a CDF Firefighter's delegate to affiliate conventions. Section 3518.7 states:

> Managerial employees and confidential employees shall be prohibited from holding elective office in an employee organization which also represents "state employees," as defined in subdivision (c) of Section 3513.

The charge states that Mr. Snodgrass was promoted in July 2003 to the position of Chief Deputy Director of the California Department of Forestry and Fire Protection. He was the second in command to the Director and as such sets policy. The charge states that he met the definition of Government Code sections 3513(e) and (f).[6] In January 2004, Mr. Snodgrass was elected by the CDF Firefighter's convention to represent CDF Firefighters at the 2004 California Professional Firefighters and International Association of Firefighters conventions. In its June 22, 2004 response to the second amended charge, CDF Firefighters stated that Mr. Snodgrass was selected as a delegate to the conventions of these affiliates, but that he "never took or held that delegate position, even for a scintilla." There is no information in the charge or provided by charging party to indicate to the contrary.

Managerial and confidential employees are excluded from the definition of state employee and thus coverage of the Dills Act. (Government Code section 3513 (c).)

In Mendocino County Office of Education (2002) PERB Decision No. 1505, the Board reviewed exclusion of confidential employees under EERA:

> Under [that act], the Legislature denied confidential employees their rights for the sole purpose of guaranteeing the orderly and equitable development of employer-employee relations. (Sierra Sands Unified School District (1976) EERB Decision No. 24 at p.

[6] The charge references sections 3513(d) and (f). However, given the surrounding text of the charge, it is presumed that the correct reference is to 3513(e) and (f). Section 3513(d) is a definition of mediation and appears to have no relevance to this matter.

> 2.) The Board thus assumes that the employer should be allowed a "small nucleus" of individuals to assist the employer in developing the employer's positions in matters of employer-employee relations; that nucleus of individuals must maintain the confidentiality of those matters because if they are made public, it would jeopardize the employer's ability to negotiate from an equivalent position. (Id.)

Similarly, the employer is entitled to a group of managers whose undivided loyalty is to the employer. Dills Act section 3518.7 prevents a manager from acting in a union position that might cause him or her to have divided loyalties. Similarly it protects unions from being overly influenced by elected officials that are managerial employees. However, merely being selected to be a delegate to an affiliate union's convention without more does not appear to significantly jeopardize the arrangement envisioned by the Act. Here, there is nothing to indicate that Mr. Snodgrass acted as a delegate or filled that role in any way. To the contrary, the union stated that Mr. Snodgrass has not so acted. Based on these facts, there is no prima facie violation of Dills Act section 3518.7.

Therefore, I am dismissing the charge based on the facts and reasons contained in this letter and my May 24. 2004 letter.

Right to Appeal

Pursuant to PERB Regulations,[7] 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. (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. (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

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

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

Attachment

cc: Ronald Yank, Attorney
Thomas J. Driscoll, Jr., Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
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May 24, 2004

Michael S. Pittman
1941 Sweetwater Court
Cool, CA 95614

Re: Michael S. Pittman v. CDF Firefighters
Unfair Practice Charge No. SA-CO-262-S
WARNING LETTER

Dear Mr. Pittman:

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The following information was gathered from this unfair practice charge and related charges.[2] Mr. Pittman began service with the California Department of Forestry and Fire Protection in 1975 as a seasonal firefighter. In August 1986 he was promoted to Firefighter I and in 1994 was permanently promoted to Fire Captain.

On September 12, 2002, Mr. Pittman filed a written internal union complaint regarding misconduct by Mr. Gardner. On September 13, 2002, Mr. Pittman's representative, Richard Maldonado, the union's Region IV Director, filed a motion to disqualify the complete hearing committee assigned to hear Pittman's complaint. The motion was denied by Vice President Bob Wolf on September 24, 2002. By letter dated September 26, 2002 Michael Witesman, chairman of the hearing committee, requested Mr. Pittman provide additional verification and information regarding the complaint. By letter dated October 11, 2002, Mr. Witesman informed Mr. Maldonado that six of 13 allegations in Mr. Pittman's complaint were untimely and therefore dismissed.

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[2] Pittman v. CDF Firefighters, case no. SA-CO-262-S, Maldonado v. CDF Firefighters, case nos. SA-CO-263-S and SA-CO-264-S and Darrington v. CDF Firefighters case no. SA-CO-261-S.

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On November 21, 2002, Darla Mills filed a union complaint against Mr. Pittman, Mr. Maldonado, and others.

By letter dated December 4, 2002, Byron Darrington, CDF Firefighters Region Supervisor Representative – Region IV filed a formal complaint with the union on behalf of Mr. Maldonado, Mr. Pittman and Ken Craw against Mr. Gardner, Mr. Witesman and the other hearing committee members.

At the union's convention in December 2002, Region IV representatives submitted nineteen resolutions, most of which were directed at reducing the authority of managers and retired members from holding office in the union and making decisions that affect rank and file members.

On January 22, 2003, the CDF Firefighters held a regularly scheduled executive board meeting. Region IV's Director and member of the executive board, Richard Maldonado was excluded from the meeting by union attorney Ron Yank. Mr. Yank stated that the Board was in executive session and that no one would be allowed to attend on behalf of Region IV. The open Board meeting resumed at 1:00 p.m. and Mr. Maldonado was allowed to attend.

The Board's retiree representative made a motion to adopt a written by-law change entitled, "Authority to Impose Trusteeship". Mr. Maldonado objected because he had not had an opportunity to examine the by-law change and it was not listed as an agenda item. Mr. Yank stated the change was discussed during executive session and that Mr. Maldonado had no right to know the issues. Mr. Yank then stated that "nothing prior to or during executive session was to be disclosed or discussed." The Board approved the by-law change with Mr. Maldonado voting no. The Board then voted to allow for immediate administrative

enforcement of the addition to the by-laws. Mr. Maldonado was then asked to leave as the Board returned to executive session. Region IV did not have a representative at the session.

During the meeting the Board returned to executive session to discuss past president Tom Gardner's destruction of computer files after losing the election to Bob Wolf. Mr. Gardner and Region IV alternative representative Don Saether were allowed to remain for the session. However, Mr. Saether was excluded from the session when Region IV issues were discussed. After returned to general session the Board announced that Region IV was placed in trusteeship and that Mr. Maldonado, Mr. Pittman, Mr. Saether and Ken Craw were no longer officers of the union.

By letter dated January 23, 2003, Mr. Wolf notified "all Managers and Chiefs of CDF, Financial Institutions, and others who do business or interact with CDF Firefighters or any Region or Chapter thereof" that he had imposed a trusteeship upon Region IV of the union and the Fresno-Kings Chapter, Tulare Chapter and San Benito-Monterey Chapter. The letter also appointed trustees who are responsible for conducting all business involving these entities.

By letter dated January 23, 2003, Mr. Maldonado and Mr. Pittman were informed by the hearing committee that they had pursued the charges against Mr. Gardner without reasonable basis, in bad faith and/or by improper malice which is prohibited by the union's Operating Procedures Handbook section 413.03.H. They were given an opportunity to respond to this allegation.

By Mr. Wolf's letter dated January 28, 2003, Mr. Maldonado and Mr. Pittman were notified that Ron Bywater had filed charges against them. The charges were improper use of union assets in their charge against Mr. Gardner and Mr. Pittman's secret tape recording of a conversation between him and Mr. Gardner on March 8, 2000.

On February 10, 2003, Carol Jolley, Chair of the union Investigative Committee, issued a written Summary of Investigation concerning the allegation that Mr. Pittman violated Penal Code section 632 by secretly tape recording a discussion he had with Mr. Gardner and Eric Sargent on or about March 8, 2000. The report stated in summary that all elements of Penal Code section 632 appear to have been met.[3]

On February 12, 2003 the hearing committee chaired by Mr. Barrett commenced the hearing in the charges filed by Mr. German against Mr. Pittman and Mr. Maldonado.

On February 13, 2003, Mr. Pittman attempted to tape record a membership meeting at a hotel in Fresno. Mr. Pittman received approval of the recording from all members present in the meeting. The Fresno Police Department was called by Hearing Committee Chair Steve Barrett but they did not arrest Mr. Pittman for tape recording.

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[3] Penal Code section 623(a) prohibits an individual from recording a confidential communication without the consent of all parties. Violation may be punished by a fine or imprisonment.

On February 18, 2003, President Wolf informed members of the San Benito-Monterey Chapter of the union that the trusteeship was lifted.

On March 3, 2003, the Witesman hearing committee held a hearing on the charges that had been filed against Mr. Pittman and Mr. Maldonado and found both guilty. They expelled both from the union, Mr. Maldonado for life.

On March 5, 2003, the Witesman hearing committee issued its decision that found Mr. Pittman 40% liable for the violation of prosecuting charges against Mr. Gardner without reasonable basis and in bad faith. He was ordered to reimburse Mr. Gardner, his representative and the union for the costs and he was suspended from the union for a one year period beginning April 1, 2003. Mr. Maldonado was found 60% liable and ordered to reimburse the same parties for costs and expelled from the union effective April 1, 2003.

On March 6, 2003, Mr. Bywater amended his charges against Mr. Pittman to include a charge of failure to exhaust internal union procedures prior to filing a unfair practice charge with PERB. This allegation was withdrawn on March 10, 2003.

On March 14, 2003, Mr. Yank wrote to Mr. Darrington requesting that his clients, Mr. Maldonado and Mr. Pittman return to the union all minutes and financial records of union meetings as well as a computer.

On April 15, 2003, Mr. Yank filed charges against Mr. Maldonado with the Fresno Police Department for felony grand theft of union property. After Mr. Maldonado produced evidence to the contrary the police did not prosecute.

On November 23, 2003, a union Hearing Committee consisting of Steven Barrett, Dan Todd, and Rich Garcia issued its decision on the Bywater v. Maldonado and Pittman charges. The committee dismissed several charges and found violations on others. The penalties assessed in the tentative decision against Mr. Maldonado and Mr. Pittman were identical: expulsion from membership and 30% of the total costs of the Region IV trusteeship.

Based on the above information, this charge does not state a prima facie violation of the Dills Act for the reasons that follow.

This charge alleges that the CDF Firefighters violated the Dills Act 1.) at section 3519.5(b) by imposing an illegal trusteeship, 2.) at section 3519.5(b) having Ron Bywater file internal charges against Mr. Pittman, 3.) at sections 3519.5(b) and 3515.5 by having the Barrett committee ignore facts and impose inappropriate penalties, 4.) by having its attorneys file false police reports against Mr. Pittman, and 5.) at section 3519.5(b) by having Region IX Director Carol Jolley submit a report alleging a violation of Penal Code 632(a).

PERB has long held that the standard applied in cases involving employer discrimination is appropriate in cases alleging discrimination by an employee organization. (State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S; California Faculty Association (Hale, et al.) (1988) PERB Decision No. 693-H; California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S.) To demonstrate a violation of Dills Act section 3519.5(b), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employee organization had knowledge of the exercise of those rights; and (3) the employee organization imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained or coerced the employees because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato); Carlsbad Unified School District (1979) PERB Decision No. 89.)

In discrimination charges filed against employee organizations based on internal union activity by the charging party, the charge must demonstrate that the internal union conduct had an impact on employer-employee relations. (California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S.) In addition, the adverse action taken by the employee organization must have some impact on employer-employee relations. (California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S.)

The allegations of discrimination here do not demonstrate that Mr. Pittman's internal union activities had any impact on his relationship to the State employer. Thus Mr. Pittman's activities within the CDF Firefighters are not protected activities. In addition, there is no information that states how the CDF Firefighters imposing an illegal trusteeship, having Ron Bywater file internal charges against Mr. Pittman, having the Barrett committee ignore facts and impose inappropriate penalties, having its attorneys file false police reports against Mr. Pittman, or having Region IX Director Carol Jolley submit a report alleging a violation of Penal Code 632(a) had an impact on Mr. Pittman's relationship to the State employer. Without an impact, the union's actions do not qualify as adverse actions.

The charge states that the action of the CDF Firefighters will creat a hostile working environment for Mr. Pittman and hinder his ability to perform his duties. He fears that union members in positions of authority will use their position to file a false adverse action against him. The charge also states that Mr. O'Donoghue defamed Mr. Pittman in front of a CDF manager on February 13, 2003.

The statements in the charge are based on speculation. Although Mr. Pittman fears that the CDF Firefighters will attempt to impact his employment, there is nothing to indicate that the union's actions to date have had such an impact. Accordingly, these allegations must be dismissed.

With respect to the alleged violations of Dills Act section 3515.5. That section reads:

> 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.

In California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S the Board stated:

> PERB's authority to determine the reasonableness of a membership provision must include not just the reasonableness of the provision itself, but the reasonableness of the provision as it was applied in the case pending before the Board. (California Correctional Peace Officers Association (Colman) (1989) PERB Decision No. 755-S, p. 21.) Here, even if the Board were to find that the summary suspension procedures were reasonable, a violation of the Dills Act will be found if their application in this case was not reasonable.

The test under Dills Act section 3515.5 only applies to an employee who has been suspended or expelled from union membership. (California State Employees Association (Barker & Osuna) (2003) PERB Decision No. 1551-S.)

The charge alleges that CDF Firefighters Barrett hearing committee violated section 3515.5 by failing to follow established rules. Mr. Pittman was denied a continuance, the hearing committee disallowed Mr. Pittman the use of union assets to defend himself, employed unreasonable methods for determining facts, Mr. Barrett attempted to have Mr. Pittman arrested for tape recording a union meeting in Fresno, and the penalties are grossly inappropriate to the violations found by the committee.

The Barrett committee issued it decision on November 23, 2003. It found that Mr. Pittman violated OPH Section 413.01.C when he requested Mr. Maldonado to cause a check to be issued from Region IV funds to pay for transcripts. Related causes of action in charge 1 were dismissed. Charge 2 relating to inappropriate use of release time to pursue charges against Mr. Gardiner was dismissed because the language on release time does not preclude its use for representation in internal union issues. The committee upheld Charge 3 finding that Mr. Pittman violated OPH Sections 413.01.A and 413.01.M by secretly tape recording a private conversation with Mr. Gardiner on March 8, 2000. Regarding Charge 4, the committee found violations of OPH Sections 413.01.A, F, H, I, and M based on Mr. Pittman and Mr. Maldonado's refusal to carry out orders of the Board of Directors regarding the Regional 4 trusteeship.

Based on these findings the committee determined the penalty to be expulsion from membership and payment of 30% of the costs of the Region 4 trusteeship for Mr. Maldonado and Mr. Pittman individually.

The information presented in the charge does not describe specifically why the hearing procedure or its application in these circumstances is unreasonable. Without such information, this allegation must be dismissed.

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 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 Second 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 4, 2004, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson

Robert Thompson
General Counsel