

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1000,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS & REHABILITATION),

Respondent.

Case No. SA-CE-1694-S

PERB Decision No. 2285-S

September 17, 2012

Appearances: J. Felix de La Torre, Senior Staff Counsel, for Service Employees International Union Local 1000; State of California (Department of Personnel Administration) by Che I. Johnson, Labor Relations Counsel, for State of California (Department of Corrections & Rehabilitation).

Before Martinez, Chair; Dowdin Calvillo and Huguenin, Members.

DECISION

MARTINEZ, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Service Employees International Union, Local 1000 (SEIU) from the proposed decision of a PERB administrative law judge (ALJ). The complaint alleged that the State of California (Department of Corrections and Rehabilitation) (CDCR), acting through its agent, ordered a job steward to “cease and desist” a union investigation into alleged misconduct by a supervisor for a potential grievance and advised the job steward that employees could be “walked off the job for things like this.” The complaint alleged that by this conduct, CDCR interfered with employee rights in violation of section 3519, subdivision (a), of the Ralph C. Dills Act (Dills Act)¹ and denied SEIU its right

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

to represent employees in violation of section 3519, subdivision (b), of the Dills Act.² The ALJ dismissed the complaint, and underlying unfair practice charge, having concluded that SEIU failed to discharge its burden of proving by a preponderance of the evidence that CDCR interfered with employee or derivative union rights. SEIU filed a timely statement of exceptions. CDCR filed a timely response.

The Board has reviewed the entire record in this matter and given its full consideration to the issues raised in SEIU's statement of exceptions and CDCR's response thereto. Based on this review, the Board reverses the proposed decision for the reasons discussed below.

SUMMARY OF FACTS

SEIU is the exclusive representative for employees in bargaining unit 17, which includes registered nurses (RN), and bargaining unit 20, which includes licensed vocational nurses (LVN), at the Kern Valley State Prison (KVSP), a facility within CDCR. Bargaining units 17 and 20 are covered by separate memoranda of understanding between SEIU and the State of California effective July 1, 2005 through June 30, 2008.

On Monday, June 23, 2008, misconduct by a supervisor in the form of extorting meal tickets from subordinates was reported to KVSP administration. By memorandum dated June 24, 2008, RN Helen Tuhin (Tuhin) reported to Sharon Zamora (Zamora), KVSP's Health Care Manager, and to KVSP's Investigative Services Unit (ISU)³ that her supervisor, Supervising RN II, Darcel Moore (Moore), had been taking her meal tickets, and the meal

² Section 3519, subdivision (a), makes it unlawful for the state to "[i]mpose 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." Section 3519, subdivision (b), makes it unlawful for the state to "[d]eny to employee organizations rights guaranteed to them by this chapter."

³ ISU appears to operate within the CDCR's Office of Internal Affairs.

tickets of her coworkers LVN Elvis Negre (Negre), LVN Marilyn Torricer (Torricer), LVN Marieta Camia (Camia) and LVN Micu. Similar memoranda were submitted to KVSP, also on June 24, 2008, by LVN Camia, LVN Negre and LVN Torricer.⁴

By memorandum to KVSP Chief Deputy Warden J. Castro dated June 25, 2008, Zamora requested that CDCR initiate an investigation into the alleged misconduct by Moore (ISU Moore investigation).⁵ By memorandum dated June 26, 2008, KVSP Director of Nursing Cyndi L. Scott advised Moore that she was immediately being redirected from her regular assignment and placed on a special assignment until further notice.

Zamora received allegations that Moore was contacting nursing staff about the ISU Moore investigation. According to the grievances filed by SEIU on behalf of the members whose meal tickets were taken by Moore, sometime during this general timeframe, a male person identifying himself as with ISU spoke to some of the LVNs by telephone. During one conversation, Moore came on the line and began questioning the LVNs herself. Moore also directly called the LVNs at home. The LVNs were informed by ISU that ISU had not contacted them. As a consequence of Moore's unprofessional conduct in contacting staff, by memorandum dated June 30, 2008, Zamora issued Moore a "cease and desist" order, instructing Moore to avoid contact with rank and file nursing staff, to conduct herself in a professional manner and to stop inquiring into pending investigation issues.

⁴ These facts are supplied through the grievances filed by Union Representative Bertha Sanchez (Sanchez) on behalf of affected members in bargaining units 17 and 20 on July 22, 2008, copies of which were marked for identification at the PERB formal hearing as Joint Exhibits 1 and 2 and entered into evidence. The grievances alleged that Moore violated various provisions of the collective bargaining agreement, beginning in March 2008, by "demanding through extortion" that certain subordinate employees give Moore their meal tickets for her to use to purchase food at Take Ten, the cafeteria at KVSP.

⁵ KVSP did not inform SEIU of the ISU Moore investigation.

On Wednesday, July 2, 2008, SEIU was holding a pre-authorized union meeting on the issue of “LVN realignment” at KVSP’s Take Ten cafeteria. During the meeting, LVN Torricer, LVN Camia, LVN Negre and RN Tuhin approached Sonia Martinez (Martinez), the union job steward and SEIU District Bargaining Unit Representative,⁶ about the meal ticket controversy involving Moore.⁷ They wanted the union’s help as they were fearful that Moore would retaliate against them for reporting her to the authorities. They asked Martinez to file a grievance. Also present were Sanchez, SEIU Vice-president Marc Bautista (Bautista) and SEIU Resource Center Representative JoAnne Juarez-Salazar.

Bautista instructed Martinez to initiate fact-finding for a potential grievance, specifically to find out how the meal ticket system worked. After questioning the four members of the nursing staff who had approached her at the union meeting, Martinez was instructed by Bautista to ask the snack bar cashier about the meal ticket process. The snack bar, which is operated by an independent contractor, is located at the Take Ten cafeteria where the meeting was being held, so Martinez broke from the meeting to carry out Bautista’s instruction. Martinez ended up talking to the manager of the snack bar. Martinez did not state that she was investigating a possible grievance, nor did she mention Moore’s name or refer to

⁶ Martinez became a job steward in or around February 2008, and the SEIU District Bargaining Unit Representative on June 30, 2008.

⁷ Sanchez testified that she found out about the meal ticket controversy when she was called by another job steward on her cell phone on her way to Sacramento on Sunday, June 29, 2008, and that she and Martinez talked about it when they were both in Sacramento the next day, which would have been Monday, June 30, 2008. Sanchez also testified that her discussion with Martinez about the meal ticket controversy occurred on Friday, Saturday or Sunday, which would imply that she told Martinez prior to finding out herself. Given the difficulty of creating a reliable timeline based on Sanchez’s testimony, it remains unclear whether Martinez first became aware of the meal ticket controversy on July 2, 2008, as she testified, or at an earlier time, as Sanchez appeared to testify.

the ISU Moore investigation. She instead asked what happened when meal tickets arrived, and where they went once collected.

Dina Alcalá (Alcalá), KVSP Labor Relations Advocate, received a call that Martínez was asking questions at the snack bar. Alcalá testified as follows as to what the caller reported: “They stated that she was asking about how to process meal tickets.” Alcalá called ISU, which she knew to be investigating Moore, and spoke with Sergeant Karen Williams (Williams), a correctional civil service class sergeant with ISU, because she felt Martínez’s questions created a problem with “the integrity of that investigation.” Alcalá did not tell Sergeant Williams that she believed Martínez was interfering with the investigation. Sergeant Williams then called Zamora for direction. Zamora was aware that Martínez was a job steward. Zamora was not aware that Martínez was collecting information for a potential grievance, but that information would not have made any difference to her because they “were protecting the integrity of the . . . investigation.” According to Zamora, Sergeant Williams reported to her that Martínez was questioning snack bar staff regarding Moore and the meal ticket controversy. Zamora admitted that Martínez’s questioning did not constitute actual interference, just potential interference. Zamora instructed Sergeant Williams to verbally order Martínez to cease and desist conducting her own investigation into the meal ticket controversy.⁸ Sergeant Williams testified that talking to witnesses constitutes interference with an ISU investigation because of the potential for learning something the questioner is not entitled to know.⁹

⁸ Zamora testified that cease and desist orders are “rarely” issued and are typically delivered by an Employee Relations Officer (ERO) but that, on this particular occasion, the ERO, Sara Smith, was on vacation.

⁹ As of the date of the PERB formal hearing, the snack bar manager had not yet been interviewed for the ISU Moore investigation.

On July 3, 2008, the day after the union meeting, Martinez was redirected to work at a different clinic than her regularly assigned clinic. She was approached by Sergeant Williams, who asked Martinez to follow her into an empty office. Sergeant Williams was dressed in uniform, and Martinez knew that Sergeant Williams was with ISU.¹⁰ Sergeant Williams asked Martinez to sit down. Sergeant Williams stood between Martinez and the door, with her hand on the handle of the door, and told her to “cease and desist” her investigation. Martinez testified that Sergeant Williams then came very close to her and said that she seemed like a nice person, that she had seen people walked off for activities like this and that she would hate to have that happen to her. Sergeant Williams testified that she told Martinez it was fine for her to do union business but that she needed to cease and desist questioning staff because that was interfering with the ISU Moore investigation. While Sergeant Williams testified that she did not tell Martinez that people could be “walked off” the job for doing what Martinez was doing, she did admit the following: “I also told her, I said that she could find herself under investigation as well for impeding our investigation.”

Martinez found Sergeant Williams’s tone to be aggressive. Martinez was frightened by the encounter. After Sergeant Williams left the office, Martinez reached Sanchez on Sanchez’s cell phone. Sanchez’s testimony corroborates Martinez’s account that Martinez called Sanchez after her encounter with Sergeant Williams and was scared, upset and crying.¹¹ Sanchez testified that Martinez told her that she had been threatened by Sergeant Williams. According to Sanchez, Martinez was concerned about staying on as job steward for fear of losing her

¹⁰ ISU’s job is to investigate misconduct. According to Alcalá, “they’re kind of like I guess the police of the institution.”

¹¹ Martinez testified only as to one phone call to Sanchez, though Sanchez recalled that Martinez had called her earlier that morning to tell her that ISU was looking for her, and that she did not understand why and was scared.

job.¹² Alcala's testimony also corroborates Martinez's account. Martinez spoke with Alcala a few days later and, according to Alcala, Martinez "was upset at what had taken place." Alcala could visibly see that Martinez was upset. Alcala told her that the appropriate way to discover the information was to file an information request.

After her encounter with Sergeant Williams, Martinez was too scared to take any further steps in the union investigation into the potential grievance related to the meal ticket controversy. The investigation was completed by others in the union and a grievance was ultimately filed on July 22, 2008, first on one grievance form combining both bargaining units, which was rejected, then on two separate forms.

¹² According to Sanchez:

A. That day she was scared, she was crying. I can't – you know, she's telling me she can't do this, you know, I can't lose my job, I can't afford to lose my job. You know, here we're told that when we're doing things as a Job Steward that, you know, we – this will not happen to us. And so here I'm talking to her and saying – I don't have a lot of Job Stewards at Kern Valley, and so I couldn't afford to leave – lose any. I'm talking to Sonja, Marc's talking to Sonja, you know, saying what they're doing is wrong and, you know, we will –

Q. Was there a discussion about her keeping on as a Job Steward?

A. Yeah.

.....

THE WITNESS: Okay. Yes, there has been a discussion. There was a discussion that day her keeping on because Sonja's a – you know, she's – has to work, has children, has a family. And she thought all this was threatened the day that Sergeant Williams came in and did this. Because, you know, you're always told you could be walked off here. So ... I have had to have many conversations about staying a Job Steward.

(Transcript, PERB formal hearing.)

ALJ DECISION

The ALJ concluded that neither the issuance of the cease and desist order nor the threat by Sergeant Williams that Martinez could be “walked off the job for things like this” constituted interference. Regarding the latter, the ALJ credited the testimony of Sergeant Williams, who testified that she did not make the statement, over the testimony of Martinez. Regarding the former, the ALJ concluded that “not even slight harm to employee rights” resulted from the issuance of the cease and desist order, citing to the fact that, although Martinez did not further participate in the preparation of the meal ticket grievance after she received the cease and desist order, the grievance was nonetheless filed and Martinez remained on as job steward.

The ALJ also concluded that employer operational necessity and legitimate business justification were established by the fact that CDCR/KVSP was rightfully concerned about maintaining the integrity of the ISU Moore investigation. The ALJ did, however, reject “[a]ny contention that filing a request for information with KVSP Labor Relations Advocate about policies and procedures for meal tickets and awaiting a response would provide a reasonable alternative to the union.”

DISCUSSION

The central issue in this case is whether CDCR/KVSP violated section 3519, subdivision (a), of the Dills Act, which makes it unlawful for the state to, among other things, “interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.” As the ALJ noted, the test for whether a respondent has interfered with the protected rights of employees under the Dills Act does not require that unlawful motive or intent be established, but only that at least slight harm to employee rights results from the conduct. (*Omnitrans* (2009) PERB Decision No. 2030-M (*Omnitrans*); *Sacramento City*

Unified School District (1982) PERB Decision No. 214.) If the harm to employee rights is slight and the employer offers justification based on operational necessity, the competing interests are balanced. (*Carlsbad Unified School District* (1979) PERB Decision No. 89 (*Carlsbad*); *State of California (Department of Personnel Administration)* (2011) PERB Decision No. 2106a-S.) Only when the interference with employee rights outweighs the business justification for the respondent's conduct will a violation be found. (*Omnitrans; Carlsbad.*)¹³ Courts have described the standard in the following way:

All [a charging party] must prove to establish an interference violation . . . is: (1) That employees were engaged in protected activity; (2) that the employer engaged in conduct which tends to interfere with, restrain or coerce employees in the exercise of those activities; and (3) that the employer's conduct was not justified by legitimate business reasons.

(*Public Employees Association of Tulare County v. Board of Supervisors of Tulare County* (1985) 167 Cal.App.3d 797, 807.)

I. Protected Activity

Section 3515 of the Dills Act protects union members' right to participate in union activities.¹⁴ Encompassed within this right to participate in the organizational activities of a union is the right to represent members in grievance proceedings. (See *Clovis Unified School District* (1984) PERB Decision No. 389 (*Clovis*)). An employee organization's ability to independently investigate a potential grievance is an essential tool for determining whether the grievance has any merit and, if it does, for providing effective representation in grievance

¹³ If the harm is inherently destructive of employee rights, the employer's conduct will be excused only on proof that it was caused by circumstances beyond its control and no alternative course of action was available. (*Carlsbad.*)

¹⁴ Section 3515 of the Dills Act guarantees state employees "the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations."

proceedings. Therefore, the investigation of grievances is protected organizational activity. Martinez had a protected right to engage in fact-finding for the purpose of determining whether a grievance concerning the meal ticket controversy should be filed on behalf of aggrieved members.

II. Interference with Employee Rights

The conduct by CDCR/KVSP alleged to constitute interference with employee rights is comprised of two acts, the statement by Sergeant Williams to Martinez about being walked off the job and the issuance by Sergeant Williams to Martinez of the cease and desist order.

A. Statement About Being Walked Off

Sergeant Williams testified that she did not make the statement about being walked off. Relying on Evidence Code section 780, the ALJ credited the testimony of Sergeant Williams over the testimony of Martinez.¹⁵ As a general rule, credibility determinations grounded in an ALJ's impressions of witnesses gained firsthand while observing testimony are accorded deference. (*Santa Clara Unified School District* (1979) PERB Decision No. 104; *Clovis*.) Here, the ALJ's credibility determination was based on a different type of rationale. The ALJ opined that "gratuitous comments would not be volunteered by an experienced investigator." Further, the ALJ stated that "an experienced law enforcement officer would not make the expansive statement that all . . . could be walked off." These opinions are more in the nature of speculative generalizations about the character of law enforcement officers than they are a product of firsthand observations by the ALJ of Sergeant Williams's testimony. It makes no difference what experienced investigators or law enforcement officers would do in Sergeant

¹⁵ Evidence Code section 780 sets forth the following standards for evaluating witness testimony: demeanor; character of testimony; capacity to perceive, recollect or communicate; bias, interest or motive; prior consistent or inconsistent statements; attitude; admissions of untruthfulness; and existence or nonexistence of facts testified to.

Williams's shoes. What matters is what Sergeant Williams did, in fact, do. Accordingly, we accord the ALJ's credibility determination no particular deference.

The Board has found no record evidence corroborating Sergeant Williams's testimony that she did not make the statement about being walked off the job. On the other hand, Martinez's testimony is corroborated by Sanchez who spoke to Martinez immediately following Martinez's encounter with Sergeant Williams. Sanchez testified as follows: "And she thought all this was threatened the day that Sergeant Williams came in and did this. Because, you know, you're always told you could be walked off here."

It is not, however critical for the Board to determine whether Sergeant Williams made the statement to Martinez about being walked off. Regardless of whether Sergeant Williams used the phrase "walked off," she admitted that she told Martinez "that she could find herself under investigation as well for impeding our investigation."¹⁶ This statement was made by the equivalent of the prison police in a room with the door closed during an impromptu meeting in which Martinez was being rebuked for conduct undertaken on behalf of the union. As the ALJ pointed out: "Her closed door contact with a uniformed agent of the ISU, charged with investigating criminal and administrative/disciplinary matters, within days of her elevation to

¹⁶ Although this specific statement was not alleged in the complaint, it nonetheless supports a violation. (*State of California (Department of Social Services)* (2009) PERB Decision No. 2072-S [unalleged violations can be used to support an unfair practice charge where: (1) adequate notice and opportunity to defend has been provided the respondent; (2) the acts are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the unalleged violation has been fully litigated; and (4) the parties have had the opportunity to examine and be cross-examined on this issue].) Sergeant Williams's meeting with Martinez on July 3, 2008, was a primary focus of the PERB formal hearing. The specific statement at issue, which was made during the meeting, is intimately related to the subject matter of the complaint and part of the same course of conduct. Both witnesses, Sergeant Williams and Martinez, were examined and cross-examined about what occurred during this meeting and what was said. Moreover, the statement is not disputed. Accordingly, we conclude that although unalleged, the making of this statement was properly included within the scope of the hearing and fully litigated, and therefore can be used to support an unfair practice charge.

higher union office, understandably caused apprehension.” As a direct consequence of the encounter between Martinez and Sergeant Williams, Martinez felt frightened and worried about her job security, and considered stepping down from her position as job steward.

Sanchez and Bautista had many conversations with Martinez to persuade her to stay on as job steward, as there were not many job stewards at KVSP and they could not afford the loss.

Even days later, according to Alcalá, Martinez was still visibly upset.

CDCR/KVSP asserts that Sergeant Williams’s statement was merely a factually correct restatement of the CDRC Operations Manual (DOM), citing section 31140.5.1, which states that “[a]ny employee who knowingly gives false evidence, withholds evidence, or interferes in any way during such an investigation, or requests or encourages another to do so, may be subject to disciplinary action.” To accept CDCR/KVSP’s contention that Sergeant Williams’s statement was no more than a factually correct restatement of the rules requires that we ignore that it was being applied to Martinez in a specific factual setting; it also requires that we agree that Martinez was in fact knowingly interfering with the ISU Moore investigation.

Considering the totality of the circumstances, we reject CDCR/KVSP’s characterization of Sergeant Williams’s statement to Martinez. Instead, we find the statement to be threatening, intimidating and coercive, constituting at least “slight harm” to employee organizational rights for purposes of the interference analysis.

B. Cease and Desist Order

In issuing the cease and desist order, Sergeant Williams explicitly instructed Martinez to stop conducting her own investigation into the meal ticket controversy. As a result of the cease and desist order, Martinez stopped all fact-finding activities related to the potential grievance about the meal ticket controversy. Also as a result of the cease and desist order, Martinez questioned whether she should remain on as job steward, as she was worried about

losing her job and not being able to support her family. That SEIU reallocated union resources to get the grievances filed and persuaded Martinez to overcome her doubts about staying on as job steward does not nullify the wrong. An employee organization's ability to recover from a harm that is inflicted by the state on an employee exercising her protected right to engage in organizational activities cannot serve as the basis for absolving the state of responsibility for its actions in the first instance. Accordingly, we conclude that the issuance of the cease and desist order resulted in at least "slight harm" to employee organizational rights for purposes of the interference analysis. In so concluding, we agree with the ALJ that allowing Martinez to file with the state a request for information is not a reasonable alternative to conducting an independent investigation into the merits of a potential grievance.

The CDCR/KVSP argues that SEIU failed to establish "actual harm." Relying on *State of California (Franchise Tax Board)* (1992) PERB Decision No. 954-S (*FTB*), the CDCR/KVSP asserts that "PERB has decided that when alleging a claim of interference the Charging Party must establish an actual harm derived from a denial of rights, mere theoretical impact is insufficient." The CDCR/KVSP's characterization of the holding in *FTB* is inaccurate. In *FTB*, the Board rejected the union's argument that where a violation of section 3519, subdivision (a), occurs and involves a union official, a violation of section 3519, subdivision (b), is presumed. The Board held that "[t]o establish a violation of 3519(b) under these circumstances, a charging party must show actual denial of the union's rights under the Dills Act. A showing of theoretical impact is insufficient." As is evident from reviewing the entire passage in context, the Board's discussion was limited to (b), not (a), violations.

In sum, we conclude that SEIU has proven by a preponderance of the evidence at least "slight harm" to employee organizational rights.

III. Legitimate Business Reason

The next inquiry is whether CDCR/KVSP's conduct was justified by a legitimate business reason. We agree that, as a general rule, investigations into employee misconduct such as the ISU Moore investigation serve a legitimate business purpose. Here, however, CDCR/KVSP's justification is undermined for the following reasons.

First, issuance of the cease and desist order was precipitated by a call received by Alcala from someone claiming that Martinez was asking questions at the snack bar. Martinez was not questioning snack bar staff about Moore and Alcala did *not* tell Sergeant Williams that she believed Martinez *was* interfering with the investigation. The entirety of what Alcala was told, according to her own testimony, was that Martinez "was asking about how to process meal tickets." Although the ALJ found that everyone involved in this case overreacted to the situation, it was Sergeant Williams who inaccurately reported to Zamora that Martinez was questioning Snack Bar staff about Moore. And it was Zamora who, without verifying the caller's report by talking to Martinez or the snack bar staff, determined that Martinez was interfering with the ISU Moore investigation and had to be stopped.

Second, CDCR/KVSP's reliance on article 14, section 31140.5.1 of the DOM governing Internal Affairs Investigations is unpersuasive.¹⁷ It provides in pertinent part:

Each employee of the CDCR is required to comply and cooperate as follows:

- Employees shall not take any action which would interfere with, delay, distort, or unduly influence any official investigation conducted by the Department or any other government agency. Any employee who knowingly gives false evidence, withholds evidence, or interferes in any way

¹⁷ Moreover, as SEIU points out, another section of the DOM appears to contemplate that witnesses otherwise bound by confidentiality are permitted to discuss an investigation/inquiry with their employee representative and legal counsel without approval by CDCR/KVSP. (See Respondent's Exh. 2, DOM, art. 14, § 31140.38.)

during such an investigation, or requests or encourages another to do so, may be subject to disciplinary action.

Zamora admitted that Martinez's questioning did not constitute actual interference, just potential interference. There is no evidence that Martinez's question about how to process a meal ticket interfered with, delayed, distorted or unduly influenced the ISU Moore investigation. She did not give false evidence, withhold evidence or interfere with the ISU Moore investigation in any other way.¹⁸ Moreover, it is undisputed that SEIU was never informed by CDCR/KVSP of the ISU Moore investigation, not that CDCR/KVSP was under any obligation to do so. Therefore, there is no reason supplied by the record evidence to discredit Martinez's testimony that she was unaware of the existence of the ISU Moore investigation. It follows that Martinez could not knowingly have impeded the ISU Moore investigation if she had no knowledge of it to begin with.

Third, CDCR/KVSP appears to suggest that because it was justified in issuing a cease and desist order to Moore, it was equally justified in issuing a cease and desist order to Martinez. The cease and desist order given to Moore was precipitated by contacts she and an associate had with the supervisee victims, calling them at home and attempting to impersonate ISU personnel. The cease and desist order given to Martinez was precipitated by her question to the snack bar staff about how meal tickets are processed. The harassing behavior of Moore, the alleged perpetrator of the extortion scheme, does not compare to the grievance-related inquiry made by Martinez on behalf of Moore's supervisee victims.

¹⁸ Sergeant Williams testified that talking to witnesses constitutes interference with an investigation because of the potential that the questioner could learn something that he or she is not entitled to know. The method in which meal tickets are processed, however, appears to be general information, rather than information that is considered sensitive, classified or confidential in nature.

Last, testimony by witnesses for CDCR/KVSP concerning the scope and effect of the cease and desist order was inconsistent. Alcalá testified that Martínez was allowed to talk with the nursing staff who filed the complaints against Moore, but she was not allowed to talk with non-state employees, like those who staffed the snack bar. Zamora testified that the cease and desist order did not apply to the union members who had approached Martínez at the union meeting to complain about the meal ticket controversy and that it primarily applied to the snack bar staff. But on cross-examination Zamora testified: “I do not recall specifically if we limited it to snack bar employees or all employees.”¹⁹ Williams testified that she was there to convey Zamora’s message and Zamora did not narrow the cease and desist order to any specific group of employees. Without a coherent and consistent explanation of the scope and effect of the cease and desist order, it is difficult to credit CDCR/KVSP’s determination that Martínez’s questioning concerning the meal ticket process implicated the integrity of the ISU Moore investigation.

In sum, we conclude that the legitimacy of the state’s justification for interfering with employee organizational rights is undermined for the following reasons: the inaccurate way in which information from the unidentified caller was reported up the chain of command and acted upon without verification; CDCR/KVSP’s reliance on a section of the DOM that does not appear to support the action taken; CDCR/KVSP’s proffering of a false equivalency between the cease and desist order given to Moore and the cease and desist order given to Martínez; and the inconsistent understanding among witnesses for CDCR/KVSP regarding the scope and effect of the cease and desist order.

¹⁹ By way of comparison, the cease and desist order issued against Moore prohibited her from talking to employees supervised by Moore, but did not prohibit her from talking to snack bar staff.

Given the above, in balancing the competing interests of the parties, we conclude that interference with employee organizational rights outweighs the business justification proffered by CDCR/KVSP for its conduct. (See *Omnitrans*, p. 23 [“the mere fact that a union communication addresses controversial subject matter does not justify a prohibition absent evidence that the communication actually impairs the employer’s operations”]; *Hilmar Unified School District* (2004) PERB Decision No. 1725, p. 14 [in the context of negotiations for a new collective bargaining agreement, an interference violation was found in a school district’s attempt to bar a union from independently obtaining health plan information directly from the health plan administrator and to require instead that inquiries be made through district officials; the Board held that an exclusive representative is “entitled to information sufficient to enable it to understand and intelligently discharge its duty to represent bargaining unit members,” citing *Chula Vista City School District* (1990) PERB Decision No. 834].)

CONCLUSION

We hold that CDCR violated the Dills Act, section 3519, subdivision (a), by interfering with employee rights to participate in the organizational activities of SEIU. We further hold that, by this same conduct, the CDCR concurrently and derivatively violated section 3519, subdivision (b) by denying SEIU its right to represent its members in their employment relations with the state.

Pursuant to the Dills Act, section 3514.5, subdivision (c), PERB is given the authority to:

[I]ssue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including, but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the State of California (Department of Corrections & Rehabilitation) (CDCR) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519, subdivisions (a) and (b). Therefore, pursuant to the Dills Act, Government Code section 3514, subdivision (c), it is hereby ORDERED that CDCR, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with protected employee rights.
2. Denying Service Employees International Union, Local 1000 (SEIU) its

right to represent bargaining unit members as guaranteed by the Dills Act.

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

1. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all locations where notices to employees are customarily posted, copies of the notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CDCR, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. CDCR shall provide reports, in writing, as directed by the General

Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on SEIU.

Members Dowdin-Calvillo and Huguenin joined in this Decision.

