

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



CHARLES RACHLIS,

Charging Party,

v.

CALIFORNIA ASSOCIATION OF
PROFESSIONAL SCIENTISTS,

Respondent.

Case No. SA-CO-464-S

PERB Decision No. 2417-S

March 24, 2015

Appearances: Charles Rachlis, on his own behalf; Blanning & Baker by Gerald James, Attorney, for California Association of Professional Scientists.

Before Martinez, Chair; Winslow and Banks, Members.

DECISION

WINSLOW, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions by the California Association of Professional Scientists (CAPS) to a proposed decision by an administrative law judge (ALJ). The complaint alleged that CAPS violated sections 3515.5 and 3519.5(b) of the Ralph C. Dills Act (Dills Act)¹ by failing to reasonably apply disciplinary procedures when it terminated Charles Rachlis' (Rachlis) union membership based on allegations that he advocated and supported the decertification of CAPS.

The ALJ concluded that CAPS failed to reasonably apply its disciplinary procedures and ordered CAPS to reinstate Rachlis' membership. The Board has reviewed the formal hearing record in its entirety in its consideration of CAPS' exceptions and Rachlis' response thereto. Based on that review, the Board has determined that Rachlis did not meet his burden of

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

proving that CAPS failed to reasonably apply its disciplinary procedures. We therefore overturn the ALJ's proposed decision and dismiss the complaint.

FACTUAL SUMMARY

Rachlis is an employee within the meaning of Dills Act section 3513(c), and CAPS is a recognized employee organization within the meaning of Dills Act section 3513(b), representing Bargaining Unit 10, the Professional Scientific Unit.

CAPS Bylaws, Article II, Membership, Section 5 – Termination of Membership, states, in relevant part:

(b) The Board may terminate the membership, and all rights arising there from, of any member. A two-thirds majority of the entire Board must approve such expulsion and the grounds therefore.

CAPS Policy Manual, Section K, Termination of Membership, states, in relevant part:

Under the CAPS Bylaws, the Board may terminate membership of any CAPS member by a two-thirds majority vote of the entire Board as outlined in Article II, Section 5. The process and procedure to propose and rescind CAPS membership is as follows:

1. Due Process. Any CAPS member against whom charges are brought shall be afforded due process as defined in this policy. Due process shall consist of having the opportunity to see the written charge(s) and all the supporting material, to respond to those charges, to present a defense, and to get a timely response.
2. Final Determination. A decision by the CAPS Board of Directors concerning the validity of charge(s) for violating this policy, and the penalty imposed, if any, shall be final and binding.
3. Member Discipline Review Committee. The Member Discipline Review Committee shall consist of the CAPS President and Vice President, and three additional members appointed by the President. The President shall chair the committee. If the president is unavailable for any reason, the Vice-President shall chair the Committee.

[¶ . . . ¶]

5. Causes for Discipline

- a. Advocating decertification of CAPS, supporting an effort to decertify CAPS as the exclusive bargaining agent for state bargaining unit 10, or signing any document with the goal of decertifying CAPS.

[¶ . . . ¶]

6. Administrative Procedure

- a. Filing Charges. Any CAPS member(s) may file a charge against another CAPS member for violating this policy. Charges shall be in writing and may be filed with any member of the Membership Discipline Review Committee (Committee) or the CAPS Sacramento Office. . . .

[¶ . . . ¶]

- d. Recusal. A member of the Committee shall recuse him or herself from deliberations in any review proceeding when, in his or her view, individual bias or prejudice for any reason make impartiality, or the appearance of such, difficult or impossible. In the event a member recuses himself or herself, the President may appoint a replacement on the committee for the matter under consideration.
- e. Challenge for Cause. The charged party may challenge a member of the Committee for cause. Disqualification is appropriate when it is made to appear probable that, by reason of bias or prejudice of a member of the Committee, a fair and impartial hearing cannot be held before him or her. The bias or prejudice must be sufficient to impair the Committee member's impartiality, and the charged party must allege concrete facts that demonstrate the challenged Committee member is contaminated with bias or prejudice. The determination regarding disqualification shall be made by the other Committee members by majority vote.

[¶ . . . ¶]

- i. Board Decision. Within 10 days following the conclusion of the hearing or the charged party's final written

response, the Committee shall make its written findings. If the written findings include at least three of the five Committee members recommending suspension or dismissal of membership from CAPS, the written findings shall be placed before the Board of Directors as a recommendation to suspend or dismiss the charged party from membership. A two-thirds (2/3) majority vote of the entire Board must approve such a recommendation.

(Emphasis added.)

Termination of Rachlis' Union Membership

Pursuant to CAPS Policy Manual Section K(6), CAPS Member John Budroe filed a charge against Rachlis on September 14, 2012, alleging that Rachlis had advocated the decertification of CAPS.²

Rachlis was notified of the charge on September 21, 2012, and informed that a disciplinary hearing would be held by the Member Discipline Review Committee (Committee) on October 9, 2012. The notice identified the members of the Committee as CAPS President David Miller (Miller), Chair; and CAPS Executive Board Members Patty Velez (Velez), Marty Berbach (Berebach), Margarita Gordus (Gordus), and Ryanne Mason (Mason). Rachlis responded to the charge in writing on October 4, 2012.

Immediately prior to the October 9, 2012, hearing Rachlis asked the Committee which of its members had served on the Board of Directors prior to the revision of CAPS bylaws in

² This was not the first time internal charges had been filed against Rachlis. His membership had been previously terminated on January 20, 2012, after he was charged with advocating and supporting decertification of CAPS, being verbally and physically aggressive with a CAPS consultant, and sending unsolicited e-mails to members at their work addresses in his campaign for CAPS office. His membership was reinstated after he successfully pursued an unfair practice charge. In PERB Case No. SF-CO-60-S, the ALJ concluded that CAPS unreasonably delayed Rachlis' disciplinary hearing in violation of its policies and bylaws. Official notice is taken of PERB case file No. SF-CO-60-S/HO-U-1064-S.

February 2011, which eliminated the provision for an annual membership meeting.³ This inquiry reflected Rachlis' contention, frequently raised with the CAPS Board of Directors and in other settings, that members of the Board of Directors who were not installed at annual meetings had no authority to serve on the Board. Rachlis claimed that CAPS had not held an annual membership meeting in 12 years prior to the bylaws revision eliminating such meetings.⁴

In response to his inquiry, Rachlis was informed that four Committee Members, Miller, Velez, Berbach and Gordus, were elected to the Board of Directors prior to February 2011. Rachlis responded that these individuals should be disqualified from serving on the Committee because annual meetings had not been held and they therefore had no authority to serve on the Board of Directors. Rachlis assumed the Committee members were aware of his prior objections regarding the lack of annual membership meetings. He claimed no other basis for disqualifying Committee members, even though Miller was one of the individuals who filed the first charge seeking expulsion of Rachlis earlier in 2012.

The Committee construed Rachlis' statement as a motion to challenge for cause all Committee members except Mason. Mason moved to reject the challenge for cause because Rachlis had not met the requirement under Section K(6)(e) of the CAPS Policy Manual for

³ This bylaws revision also clarified the business to be conducted at regular and special meetings of the Board of Directors.

⁴ CAPS excepts to the ALJ's finding that it had in fact not held an annual membership meeting in 12 years on the ground that no evidence supported such a finding. The record on this point consists of Rachlis declaring in his opening statement that no membership meeting had occurred in 12 years. CAPS President Miller, admitted that there had not been annual membership meetings during at least a portion of that time. This is a sufficient basis for the ALJ's finding, even if the time period is unclear. In any event, whether CAPS held annual membership meetings in the 12 years prior to Rachlis' disciplinary hearing is irrelevant to the issue we must decide here, i.e., whether CAPS applied its membership rules unreasonably in Rachlis' disciplinary hearing.

“concrete facts that demonstrate the challenged Committee member is contaminated with bias or prejudice.” The motion was seconded by Gordus, and the Committee unanimously voted to reject Rachlis’ challenge for cause.

The Committee then proceeded to consider the merits of the charges brought against Rachlis. Appearing by telephone, Rachlis had the opportunity to present evidence, call and cross-examine witnesses, and generally respond to the charges. On October 12, 2012, the Committee issued a written determination that Rachlis violated the CAPS Code of Professional Conduct by advocating and supporting the decertification of CAPS. The Committee recommended termination of Rachlis’ union membership.

On October 17, 2012, the CAPS Board of Directors approved the Committee’s recommendation and terminated Rachlis’ union membership based on its finding that he advocated and supported the decertification of CAPS. Rachlis filed this charge approximately two weeks later.

ALJ’S PROPOSED DECISION

The ALJ framed the issue as whether CAPS reasonably applied its CAPS Policy Manual’s challenge for cause provisions. Noting that Dills Act section 3515.5 and *California School Employees Association and its Shasta College Chapter #381 (Parisot)* (1983) PERB Decision No. 280 (*Parisot*) confer jurisdiction on PERB to determine whether an employee organization has exceeded its authority to discipline members, the ALJ determined that CAPS failed to follow its rule regarding challenges to Committee members. According to the ALJ, the provision in question (“The determination regarding disqualification shall be made by the other Committee members by majority vote”) requires that a claim of bias must be heard by unchallenged Committee members. Because the entire committee discussed and voted on

Rachlis' challenge, CAPS disregarded its own rules and thereby deprived Rachlis of a fair disciplinary hearing, according to the ALJ.

According to the ALJ, CAPS established the procedure to ensure a fair disciplinary hearing, and regardless of the sufficiency of any claim of bias or prejudice, Rachlis was entitled to consideration of his challenge for cause that followed the requirements of the procedure. When the four challenged Committee members deliberated and voted on their own disqualification, CAPS failed to reasonably apply its disciplinary procedures in the ALJ's view.

The ALJ noted that in his post-hearing brief, Rachlis provided numerous reasons why four of the five Committee members were biased, including the fact that Miller, the CAPS president, filed the prior charge against Rachlis. Velez ran against Rachlis in an election for Board of Directors and chaired the prior Committee that terminated his membership, according to Rachlis. He did not raise these claims before the Committee as a ground for bias, either in his pre-hearing motion or during the disciplinary proceeding. The ALJ however, believed that Velez and Miller, who had both served on the Committee that considered the earlier charge against Rachlis, should have refrained from discussing the sufficiency of Rachlis' "bias claim" in the disciplinary proceeding.⁵

As a remedy, the ALJ ordered Rachlis to be reinstated to active membership status.

POSITIONS OF THE PARTIES

CAPS excepts to the proposed decision, arguing that its termination of Rachlis' membership for supporting decertification of CAPS was reasonable, regardless of any legal

⁵ Rachlis' objection raised to the Committee was not that it was biased but that it was improperly constituted, because the Board members appointed to the Committee had not been installed on the Board of Directors at an annual membership meeting.

technicalities over rejecting Rachlis' challenge for cause to the members of the Committee. According to CAPS, Rachlis' challenge to the four committee members failed to meet the requirements of Section K(6)(e) of the CAPS Policy Manual because it was unspecific, lacked factual support, and did not allege a concrete showing of prejudice or bias as required for a challenge for cause.

CAPS also objects to the fact that the proposed decision explicitly relies on material included in Rachlis' post-hearing brief describing the alleged bias of the discipline committee members. CAPS notes that these claims of bias were not raised in the union discipline hearing before the Committee, and were not presented at the formal hearing before the ALJ.

CAPS further argues that the proposed decision interferes with the internal judgment of CAPS to remove from membership an individual who advocated the decertification of CAPS.

CHARGING PARTY'S RESPONSE

Rachlis asserts in his response to the exceptions that the ALJ was correct in concluding that CAPS had not had a regular membership meeting for over 10 years. Although not framed as exceptions, Rachlis also argues that CAPS is a "captive organization" run in the interests of an outside company, and that all acts by the CAPS board have been null and void during the period when no annual meetings took place.

DISCUSSION

Section 3515.5 of the Dills Act states, in relevant part:

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

Dills Act section 3519.5(b) provides that it shall be an unfair practice for an employee organization to "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.”

PERB has held that these provisions confer on the Board jurisdiction to determine whether an employee organization has exceeded its authority to discipline its members by expelling or suspending them from membership.⁶ As the Board held in *California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479-S (*CSEA (Hard)*):

Under [*Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106 (*Kimmitt*)], PERB will not interfere in purely internal union matters that do not impact the employer-employee relationship. (*Kimmitt*, p. 16; [*California State Employees Association (Hard, et al.)* (1999) PERB Decision No. 1368-S (*Hard*)], p. 28) However, even in those cases where the Board has found it does not have authority to intercede in internal union matters which do not impact the employer-employee relationship, it has been careful to note that there are other union matters over which the Legislature has given it the power to act. One such area is that of “reasonable restrictions regarding who may join” unions and “reasonable provisions for the dismissal of individuals from membership.” . . . [T]he Board has consistently recognized that the Legislature conferred this area upon PERB as a separate and distinct grant of jurisdiction

(*CSEA (Hard)*, *supra*, PERB Decision No. 1479-S, p. 14-15.)

In *CSEA (Hard)*, *supra*, PERB Decision No. 1479-S, the Board established two principles: (1) members of employee organizations have a protected right to reasonable disciplinary procedures and the reasonable application of those procedures, and (2) a union’s failure to establish or to follow reasonable disciplinary procedures violates Dills Act

⁶ PERB has held Dills Act section 3515.5 and its analog, Educational Employment Relations Act (EERA) section 3543.1(a), do not give PERB the authority to determine the reasonableness of an employee organization’s discipline of members other than suspension or expulsion from membership. (EERA is codified at Government Code section 3540 et seq.) (*California State Employees Association (Barker & Osuna)* (2003) PERB Decision No. 1551-S, p. 8 (removal from bargaining team); *Antelope Valley College Federation of Teachers (Stryker)* (2004) PERB Decision No. 1624, p. 5.)

section 3515.5 and thus interferes with members' rights under Dills Act section 3519.5(b). (*CSEA (Hard)*, p. 5; see also, *California Correctional Peace Officers Association (Colman)* (1989) PERB Decision No. 755-S, p. 21 (*Colman*).)

PERB looks to the fairness of a union proceeding to expel or suspend a member to determine its reasonableness. In *Colman, supra*, PERB Decision No. 755-S, PERB upheld the ALJ's determination that the union failed to give charging party a fair hearing because it considered evidence of charging party's conduct at a chapter meeting held nearly two months after charges were filed. Hence, charging party was given no notice that he would be tried for his conduct at the chapter meeting. "Basic fairness would require notice to Colman that such conduct would be considered so that he could prepare a defense." (*Id.* at pp. 3-4.)

Colman, supra, PERB Decision No. 755-S noted:

California courts review dismissals from private organizations under the common law requirement of "fair procedure." . . .

In cases involving unions, the courts interfere in an expulsion only where the organization has not followed its own rules, or rudimentary rights of defense have not been granted. Cason v. Glass Bottle Blowers Assn. (1951) 37 Cal.2d 134. In general, the courts apply the "fundamental principle of justice that no man may be condemned or prejudiced in his rights without an opportunity to make his defense." *Id.* at 37 Cal.2d 143. However, "the refined and technical practices which have developed in the courts cannot be imposed upon the deliberations of workmen and the form of the procedure is ordinarily immaterial if the accused is accorded a fair trial." *Id.*

What the courts do require is that the union's procedure grant the accused "substantial justice." The elements of a fair trial "will be imposed even though the rules of the union fail to provide therefor." *Id.* This includes "the right to notice of the charges, to confront and cross-examine the accusers and refute the evidence." *Id.* at 37 Cal.2d 144. The judicial requirements are thus consistent with the PERB holding in Parisot that a union may not suspend a member on pre-hearing charges that are "unreasonably vague and ambiguous."

(*Id.* at Proposed Dec., pp. 23-24; citations partially omitted; emphasis added.)

In *Parisot, supra*, PERB Decision No. 280, PERB determined that the charging party, a suspended member, stated a prima facie case for violation of EERA section 3543.1(a)⁷ by alleging that some charges brought against him in support of his suspension from membership were unreasonably vague and ambiguous and failed to specify the sections of the union constitution which had been violated or the dates, times, and witnesses involved in the charged offenses. Parisot, who lived in Redding, also complained that the hearing was held in San Jose. He did not attend the hearing and was not informed of the evidence produced against him at the hearing. These allegations raised sufficient questions about the reasonableness of union's procedures for PERB to order that a complaint issue.

Not every deviation from a union's procedural rules will result in PERB overturning the union's disciplinary decision. Thus, where the alleged deviation or unreasonable application of procedures was sufficiently removed from the union's determination of the merits of charges resulting in expulsion from membership, PERB refused to overturn the union's decision. (*CDF Firefighters (Pittman)* (2006) PERB Decision No. 1815-S, Dismissal Ltr., p. 8.)

Under the foregoing authority, the primary question before the Board is whether the union utilized a fair procedure that granted Rachlis substantial justice in its proceedings to expel Rachlis from membership.

Unlike cases in which a member was deprived of basic due process such as reasonable notice of the charges and evidence against him, or a reasonable opportunity to attend the hearing, in this case the asserted violation of CAPS' procedures was of a much more technical

⁷ EERA section 3543.1 parallels the language of Dills Act section 3515.5 in authorizing employee organizations to establish reasonable provisions for the dismissal of individuals from membership.

nature. For reasons that we explain below, we conclude that CAPS did not unreasonably apply its rules in responding to Rachlis' assertion that four of the five Committee members should be disqualified. Assuming arguendo, that the Committee did not comply with its own policy in the way it responded to Rachlis' challenge to its legitimacy, there is no evidence that Rachlis was deprived of a fair hearing on the merits of the charges against him as a result.

As noted above, the CAPS procedure for challenging a member of the Committee for cause requires that "the charged party must allege concrete facts that demonstrate the challenged Committee member is contaminated with bias or prejudice." Rachlis failed to do this, but instead merely asked which Committee members served on the Board of Directors during the period of time when CAPS did not hold annual meetings as provided in its former bylaws. When he was supplied with the answer to his inquiry, he asserted that those four Committee members should be disqualified from serving on the Committee because annual meetings had not been held and, therefore, the four individuals presumably had not been properly installed as board members. Rachlis never claimed at any time relevant to the disciplinary hearing that the Committee members were biased or "contaminated with prejudice."

Thus, Rachlis' claim that four of the five Committee members were unauthorized to serve did not comply with CAPS Policy Manual Section K(6)(e). He did not assert to the Committee that any particular member should be disqualified on the grounds of bias or prejudice and that an impartial hearing could therefore not be held before any particular member of the Committee. Neither did he allege "concrete facts that demonstrate the challenged Committee member is contaminated with bias or prejudice" as Section K(6)(e) requires. Since Rachlis did not assert bias or prejudice as grounds for disqualifying the four Committee members, the Committee would have been acting fully within CAPS policy to

dismiss his challenge outright or to simply ignore it. Instead, the Committee used an allegedly imperfect method to dismiss the challenge—a motion by the one unchallenged Committee Member Mason, and a subsequent vote by the remaining Committee members. In the absence of concrete facts demonstrating that the Committee members were “contaminated with bias or prejudice,” we will not presume bias, especially where, as here, the member failed to comply with the reasonable rules and procedures established by the union. (*Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 792.)

We disagree with the ALJ that the challenged Committee members’ vote on Mason’s motion tainted a procedure that Rachlis had no right to invoke in the first place. The fact that the Committee gave him the benefit of the doubt by treating his assertion as a motion to challenge for cause does not convert its ruling into a violation of fair procedure. The Committee’s rejection of the challenge for cause was an appropriate exercise of its authority under the bylaws and CAPS Policy Manual.

Nor can we conclude that Rachlis was deprived of a fair hearing on the merits of the charges against him, because some of the Committee members had not been installed as Board members at an annual meeting. Rachlis does not assert that these Board/Committee members were not legitimately elected to their office, but instead relies on the technicality of when and how they were installed after their election.⁸

CAPS’ Policy Manual declares that due process consists of providing the charged party with an opportunity to see written charges and all supporting material, the opportunity to respond, present a defense (presumably at a hearing before the Committee) and to receive a timely response. These principles comport with those articulated

⁸ CAPS dispensed with the requirement of an annual meeting in February 2011, nearly 18 months prior to these charges being filed against Rachlis.

by the court in *Cason v. Glass Bottle Blowers Assn.* (1951) 37 Cal.2d 134, 143: “[N]o man may be condemned or prejudiced in his rights without an opportunity to make his defense.” There was no evidence that Rachlis was prevented from defending himself on the merits to the charge that he supported and advocated decertification of CAPS.

Consequently we hold that no harm to Rachlis’ rights resulted from CAPS’ actions, since CAPS’ rules and the application of those rules were fair and did not deprive him of substantial justice.

The ALJ disregarded the fact that Rachlis did not allege any concrete examples of bias or prejudice on the part of the Committee members at the time he asserted his challenge, as the union’s CAPS Policy Manual requires in order to challenge a Committee member. Instead, the ALJ relied on Rachlis’ post hoc allegations of bias that only appeared in his post-hearing brief, and on which he did not present evidence at the formal hearing. The ALJ’s reliance was clear error, as was the ALJ’s presumption that two Committee Members Miller and Velez, both of whom participated in the prior disciplinary Committee hearing involving Rachlis, were biased because of that participation.

In sum, CAPS did not unreasonably apply its policy regarding challenges to Committee members for cause when it rejected Rachlis’ attempt to disqualify four of the five Committee members. Rachlis’ failure to allege bias or prejudice at the time he challenged the four Committee members failed to comply with CAPS’ reasonable policy, and the Committee was not required to entertain his challenge. Having nevertheless considered and rejected the challenge, the Committee’s determination did not deprive Rachlis of a fair hearing.

For these reasons, we overturn the ALJ’s proposed decision and dismiss the charge.

ORDER

Upon the foregoing Decision and the record as a whole, the Public Employment Relations Board hereby ORDERS that the proposed decision be set aside, and that the complaint and underlying unfair practice charge in Case No. SA-CO-464-S are hereby DISMISSED WITH PREJUDICE.

Chair Martinez and Member Banks join in this Decision.