



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LINDA ROBERTS,)	
)	
Charging Party,)	Case No. S-CO-146-S
)	
v.)	PERB Decision No. 1005-S
)	
CALIFORNIA STATE EMPLOYEES)	June 25, 1993
ASSOCIATION,)	
)	
Respondent.)	

Appearances: Linda Roberts on her own behalf; James W. Milbrandt for California State Employees Association.

Before Blair, Chair; Hesse and Carlyle, Members.

DECISION AND ORDER

HESSE, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Linda Roberts (Roberts) of a Board agent's dismissal (attached hereto) of the unfair practice charge alleging that the California State Employees Association (CSEA) violated section 3519.5 of the Ralph C. Dills Act (Dills Act or Act).¹ Roberts alleges that CSEA

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519.5 states, in pertinent part:

It shall be unlawful for an employee organization to:

- (b) 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.

violated its duty of fair representation and otherwise interfered with her rights granted by the Dills Act.

The only issue raised on appeal that is not addressed by the Board agent's warning letter or dismissal letter concern Roberts' claim that CSEA conducted bargaining in a way that adversely affected members of Bargaining Unit 4. Roberts asserts, generally, that the bargain struck by CSEA was not the best that could have been obtained and that the organization should have returned to the table to get a better contract rather than seek employee ratification.

The union is allowed substantial leeway for developing negotiating strategy and final contract ratification; it is not required to justify every decision at the bargaining table. (See Redlands Teachers Association(Faeth, et al.) (1978) PERB Decision No. 72; Rocklin Teachers Professional Association(Romero) (1980) PERB Decision No. 124.) In this case, Roberts' conclusive allegations are insufficient to demonstrate that CSEA's

Section 3515.7 states, in part:

(g) An employee who pays a fair share fee shall be entitled to fair and impartial representation by the recognized employee organization. A breach of this duty shall be deemed to have occurred if the employee organization's conduct in representation is arbitrary, discriminatory, or in bad faith.

The Dills Act does not expressly impose a broad based duty of fair representation on employee organizations, however, PERB has held that a duty to all employees is implied in the Act as a quid pro quo for the granting of exclusive representation rights to employee organizations. (See California State Employees' Association(Norgard) (1984) PERB Decision No. 451-S.)

negotiating conduct breached its duty of fair representation. Nor does the charge contain facts demonstrating that CSEA knowingly misrepresented the contract meaning or intent at the time of contract ratification in order to secure approval.

The Board has reviewed the charge and the appeal. Consistent with the discussion above, we find that no prima facie case has been stated. Finding the Board agent's dismissal letters (which includes the warning letter) to be free of prejudicial error, the Board adopts them as the decision of the Board itself.

The unfair practice charge in Case No. S-CO-146-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 21, 1992

Linda Roberts

Re: Linda Roberts v. California State Employees Association.
Case No. S-C0-146-S

DISMISSAL LETTER

Dear Ms. Roberts:

On June 18, 1992, you filed a charge alleging that the California State Employees Association (Association) violated Government Code section 3519.5 (the Dills Act). Specifically, you allege that CSEA violated its duty of fair representation by removing you from office as President of District Labor Council (DLC) 789 and decertifying you as a steward.

I indicated to you, in my attached letter dated July 9, 1992, 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. On July 20, 1992, you filed your First Amended Charge, and on September 30, 1992 you filed a Second Amended Charge.

I have thoroughly reviewed your amended charges and all the documents you submitted. The majority of statements contained in your amended charges are conclusionary and do not contain clear and concise statements of the facts and conduct by the Association alleged to constitute an unfair practice as required by PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615). Accordingly, those allegations are dismissed.

I have summarize the following allegations contained in your amended charges and find that they also fail to state a prima

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facie case that the Association violated its duty to fairly represent you:

1. The Association violated its duty of fair representation by removing you from your office as District Labor Council 789 President and decertifying you as a steward.
2. The Association violated its duty of fair representation by not holding hearings for Barbara Glass or Perry Kenny on the charges you filed against them.
3. The Association violated its duty of fair representation by engaging in reprisals against you for engaging in protected activities.

Your allegations that the Association violated its duty of fair representation by removing you from your office as District Labor Council 789 and decertifying you as a steward, and by failing to hold hearings for Barbara Glass or Perry Kenny on the charges you filed against them refer to activities which are strictly internal union matters and do not have a substantial impact on the relationships of unit members to their employers. The duty of fair representation extends only to union activities that have a substantial impact on the relationships of unit members to their employers and does not apply to those activities which do not directly involve the employer or which are strictly internal union matters. Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106; Rio Hondo College Faculty Association, CTA/NEA (1986) PERB Decision No. 583. Accordingly, those allegations are dismissed.

Finally, your amended charges allege that the Association violated its duty of fair representation by engaging in reprisals against you for engaging in protected activities. The duty of fair representation does not apply to those activities which are strictly internal union matters. See, Service Employees International Union, Local 99 (Kimmett). supra. However when allegations of reprisal for protected activity are present, if the allegations state facts supporting retaliation by an employee organization, internal union activities may be reviewed. Such an inquiry must go forth under Carlsbad Unified School District (1979) PERB Decision No. 89 and/or Novato Unified School District

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(1982) PERB Decision No. 210, as to whether the employee organization's actions were motivated by a charging party's exercise of protected rights. California State Employees' Association (O'Connell) (1989) PERB Decision No. 753-H. Although your amended charges contain allegations that you engaged in protected activity and the Association had knowledge of such activity, your amended charges fail to demonstrate that the Association's actions were motivated by your exercise of protected rights. Therefore, those allegations must also be dismissed.

Therefore, I am dismissing your charges based on the facts and reasons contained in this letter and my July 9, 1992 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8,

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sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed.

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. (Cal. Code of Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
Michael E. Gash
Regional Attorney

Attachment

cc: Bob Zenz
CSEA
1108 O Street
Sacramento, CA 95814

PUBLIC EMPLOYMENT RELATIONS BOARD



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



July 9, 1992

Linda Roberts

Re: Linda Roberts v. California State Employees Association,
Case No. S-CO-146-S

WARNING LETTER

Dear Ms. Roberts:

On June 18, 1992, you filed a charge in which you allege that the California State Employees Association (CSEA) violated Government Code section 3519.5 (the Dills Act). Specifically, you allege that CSEA violated its duty of fair representation by removing you from office as President of District Labor Council 789 (DLC 789) and decertifying you as a steward. My investigation revealed the following facts.

In 1984, Charging Party became a steward with CSEA. In 1990, Charging Party became President of DLC 789. In 1990, Jeff Young, on staff with CSEA, was assigned to Charging Party.

The former president of DLC 789 and Charging Party began documenting Young for not performing his duties regarding employee representation. Charging Party contends Young responded to the attempts to get him to do his job with interference in the internal and external politics of the union. Charging Party contends Young encouraged other members of the DLC to misuse DLC money, not do their assigned duties as officers, engage in undemocratic activity, and engage in discriminatory activity.

Charging Party repeatedly went to the CSEA Civil Service Division officer for help and received none. On or about August 2, 1991, Charging Party filed charges against Jeff Young. Charging Party contends CSEA took no action. In about December 1991, Walter Rice filed charges against Michael Miller. Charging Party contends CSEA took no action on Miller.

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Charging Party also contends officers took the advice of Jeff Young and spent DLC money on going to restaurants repeatedly and unnecessarily, and Miller wrote himself stipend checks for the time period when he was not doing his duties. Charging Party wrote these officers letters telling them to resubmit their expense claims with explanations of expenses and correctly filled out expense forms.

In December 1991, Young filed charges against Charging Party. Young used a member vs. member form. Charging Party contends Perry Kenny allowed a hearing to be held on March 10, 1992, despite numerous policy file violations which had been pointed out to him regarding the charges and the process.

On or about April 6, 1992, Charging Party was notified by letter that she was removed from office as President of DLC 789 and decertified as a steward and would not be recertified for a period of one year. On or about April 7, 1992, Charging Party received the hearing panel report. On or about May 7, 1992, Charging Party was notified by letter that she would not be eligible to run for DLC President, at this time, because she had been decertified as a steward on April 6, 1992.

Based upon the above facts I find that you have failed to establish a prima facie case that CSEA has violated its duty of fair representation.

Although your charge does not contain a clear and concise statement of the facts and conduct alleged to constitute an unfair practice as required by PERB Regulation 32615 (California Code of Regs., tit. 8, sec. 32615), from my review of your statement of charge and the seventy-three (73) pages of attached materials, it appears that you are alleging that CSEA has violated its duty to fairly represent you by removing you from office as President of DLC 789 and decertifying you as a steward.

Your charge appears to essentially challenge the internal procedures of CSEA. Generally, the Public Employment Relations Board (PERB or Board) has not read the Dills Act as authorizing PERB to intervene in internal union affairs. In Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106, at pp. 15-17, the Board explained as follows:

The EERA gives employees the right to "join and participate in activities of employee organizations" (sec. 3543) and employee

organizations are prevented from interfering with employees because of the exercise of their rights (sec. 3543.6(b)). Read broadly, these sections could be construed as prohibiting any employee organization conduct which would prevent or limit employee's participation in any of its activities. The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. There is nothing in the EERA comparable to the Labor-Management Reporting and Disclosure Act of 1959, which regulates certain internal conduct of unions operating in the private sector. The EERA does not describe the internal working or structure of employee organization nor does it define the internal rights of organization members. We cannot believe that by the use of the phrase "participate in the activities of employee organizations . . . for the purpose of representation on all matters of employer-employee relations" in section 3543, the Legislature intended this Board to create a regulatory set of standards governing the solely internal relationship between a union and its members. Rather, we believe that the Legislature intended in the EERA to grant and protect employees' rights to be represented in their employment relations by freely chosen employee organizations. [Footnotes omitted.]¹

PERB has recognized an exception to the general principle of non-intervention, where the internal activities of an employee organization have such a substantial impact on employees' relationship with their employer as to give rise to the duty of fair representation. Your charge fails to allege or demonstrate an impact on Charging Party's relationship with the employer so as to give rise to the duty of fair representation.

¹EERA section 3543.6(b) is identical to section 3519.5(b) of the Dills Act.

PERB has also recognized two other exceptions to the principle of non-intervention. In California School Employees Association and its Shasta College Chapter #381 (Parisot), (1983) PERB Decision No. 280, at p. 11, PERB recognized its "jurisdictional power to determine whether an employee organization has exceeded its authority under subsection 3543.1(a) to dismiss or otherwise discipline its members." That subsection of the EERA provides in relevant part as follows:

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

Thus, in questions of membership, PERB will examine the reasonableness of restrictions or dismissals. See also Union of American Physicians and Dentists (Stewart), (1985) PERB Decision No. 539-S and California Correctional Peace Officers Association (Colman) (1989) PERB Decision No. 755-S.

Similarly, in California State Employees' Association (O'Connell) (1989) PERB Decision No. 753-H, at p. 9, PERB explicitly recognized its statutory authority to inquire into the internal activities of an employee organization when it is alleged that the organization has imposed reprisals on employees because of their exercise of protected rights. This decision was based on the statutory authority of Government Code section 3571.1(b) of the Higher Education Employer-Employee Act. The same statutory language appears in section 3519.5(b) of the Dills Act. See also California Association of Psychiatric Technicians (Long) (1989) PERB Decision No. 745-S and California School Employees Association (Petrich) (1989) PERB Decision No. 767.

Your charge fails to demonstrate that CSEA's procedures for filing charges and removing you from office were unreasonable. Furthermore, your charge fails to allege that you suffered any reprisal because of any exercise of protected rights.

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 which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and

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be signed under penalty of perjury by the Charging Party. The amended charge must be served on the Respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before **July 16, 1992**, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Michael E. Gash
Regional Attorney