STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

DONNA LYNN HUFF,	)	
	)	
Charging Party,	)	Case No. LA-CO-82-S
	)	
v.	)	PERB Decision No. 1382-S
	)	
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO,	)	May 2, 2000
	)	
Respondent.	)	
	)	

Appearances: Donna Lynn Huff on her own behalf; Levy, Stern & Ford by Lewis N. Levy, Attorney, for International Union of Operating Engineers,. Local 501, AFL-CIO.

Before Dyer, Amador and Baker, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on appeal from an administrative law judge's (ALJ) proposed decision (attached) dismissing Donna Lynn Huff's (Huff) unfair practice charge. Huff's charge alleges that the International Union of Operating Engineers, Local 501, AFL-CIO breached its duty of fair representation in violation of the Ralph C. Dills Act (Dills Act).[1]

The Board has reviewed the entire record in this case, including the unfair practice charge, the briefs of the parties, the ALJ's proposed decision and Huff's appeal. The Board finds the proposed decision to be free from prejudicial error and adopts it as the decision of the Board itself.

---

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

ORDER

The unfair practice charge in Case No. LA-CO-82-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

DONNA LYNN HUFF, Charging Party, v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 501, AFL-CIO, Respondent.	Unfair Practice Case No. LA-CO-82-S PROPOSED DECISION (8/26/99)

Appearances: Donna Lynn Huff and Jim Cole, for Donna Lynn Huff; Levy, Stern & Ford, by Lewis N. Levy, Attorney, for International Union of Operating Engineers, Local 501, AFL-CIO.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a state employee alleges her exclusive representative violated its duty of fair representation. The exclusive representative denies any violation.

On August 24, 1998, Donna Lynn Huff (Huff) filed an unfair practice charge against the International Union of Operating Engineers, Local 501, AFL-CIO (IUOE). On December 30, 1998, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint against IUOE, which filed an answer on January 20, 1999. PERB held an informal conference on February 18, 1999, and a formal hearing on May 18-19, 1999. With the filing of post-hearing briefs on August 16, 1999, the case was submitted for decision.[1]

---

[1]Huff's post-hearing briefs include some references to matters outside the record, including settlement discussions. Such references shall be disregarded in this decision.

FINDINGS OF FACT

Huff is a state employee under the Ralph C. Dills Act (Dills Act).[2] IUOE is a recognized employee organization under the Dills Act and is Huff's exclusive representative.

Huff is employed by the State of California (Department of Corrections) (State), at the Ironwood State Prison (Prison), in the position of Material Stores Supervisor I.[3] She seems to have been a controversial figure at the Prison, liked by some of her fellow employees and disliked by others.

The complaint alleges IUOE failed to represent Huff on three occasions: in February-March 1998, in April-May 1998, and in July 1998.[4] Each of these occasions shall be discussed in turn.

February-March 1998

The complaint alleges in part:

> On or about February 25, 1998 and March 16, 1998, Charging Party [Huff] learned she was required to attend an investigatory interview for having allegedly created a hostile work environment in professional areas of Ironwood State Prison in Blythe, CA on or about November 3, 1997. Charging Party left messages requesting representation for IUOE Job Steward Weldon Saul [sic], but he failed to return any of her telephone messages. The interview was conducted on March 20, 1998

---

[2]The Dills Act is codified at Government Code section 3512 and following. Unless otherwise indicated, all statutory references herein are to the Government Code.

[3]Despite her position title, Huff is not a "supervisory employee" within the meaning of Dills Act section 3513(g).

[4]During the hearing, Huff withdrew allegations of a fourth occasion, in March-April 1998. Before the complaint was issued, she withdrew allegations in her charge of occasions prior to February 1998.

> without the attendance of any representative of the Respondent [IUOE].

The IUOE steward referred to is actually named Weldon Sewell (Sewell).

The evidence showed that on February 25, 1998, Huff received a written advisory from the Prison's Investigative Services Unit that she "must appear" for an investigatory interview on February 27, 1998. The advisory explained:

> You have been scheduled for this interview due to the Investigative Services Unit receiving information on or about November 3, 1997, alleging that you created a hostile working environment in professional offices/areas of Ironwood State Prison.
>
> If you choose, you have the right to have a representative of your choice present at the interview, provided that the representative you choose is not a subject of this inquiry.

On or about March 16, 1998, Huff received a second advisory, rescheduling the investigatory interview to March 20, 1998.

Huff testified that when she received the advisories in February-March 1998 she "called Weldon Sewell on the work site three to four times from the UPS cage" and left messages, but she received no reply. She did not testify as to exactly what she said in the messages.

In his testimony, Sewell seemed to deny receiving any of these messages from Huff. A close examination of the questions to which he responded, however, makes the denial seem less clear. Sewell testified he did not receive telephone messages from Huff, but the question he answered was "[w]ith regard to January of 1998" (before Huff received the advisories). He also testified

Huff did not make a request during February 1998, but the question was only about a request "to file any sort of grievance." He appeared to volunteer there was "no communication whatsoever" from Huff, but the question was only about March 1998, not February. He later testified he "had no contact with Ms. Huff" with regard to the investigatory interview, but it is not clear whether he would count a mere telephone message as "contact." Sewell's testimony was thus not necessarily inconsistent with the possibility he did receive one or more telephone messages from Huff in February 1998 (when she received the first advisory).

Sewell's testimony was clearer on another point: that he did not know Huff was facing an investigatory interview. He credibly testified he had no knowledge of the advisories Huff received. He also testified that, to his knowledge, Huff never advised him she had been notified she was the subject of an investigatory interview. If Sewell is to be believed, any messages he received from Huff did not include that information. I do believe Sewell on that point, but I also find he did receive one or more (unspecific) telephone messages from Huff in February 1998, to which he then failed to respond.

Huff and Sewell had a history of previous dealings. The evidence at hearing dated back to late 1995, when another IUOE steward, Michael Murphy (Murphy), represented Huff at a pre-disciplinary hearing. Murphy testified Sewell told him before the hearing that Huff was a "troublemaker" and a "dumb bimbo,"

that Murphy should not represent her, and that Sewell was not going to represent her. In his testimony, Sewell denied advising Murphy not to represent Huff, but he did not deny or explain the other comments attributed to him.

A few months later, however, Sewell was involved in providing representation to Huff. In early *1996,* Huff contacted Sewell and informed him she had been threatened with rejection on probation. Sewell contacted IUOE representative Chris Brown (Brown) and set up a meeting with the warden. Sewell attended the meeting, at which Brown was successful in defending Huff, in part because Huff had actually already completed her probation.

Later in 1996, Huff called Sewell about what she regarded as a hostile work environment, and he agreed to stop by her home after work to talk about it. When he did stop by, she showed him "all this printed matter she had printed up." He thought the material needed to be "better organized" and "more professionally done," and he offered to try to have someone work on it, but he was unable to find anyone willing to get involved. Apart from that, he felt the issue "was way beyond what I could do within my scope as a shop steward."

Sometime in 1996 or 1997, the Prison's business services office called Sewell to assist with a unit member who was very upset. Sewell went to the office, where the unit member in question was Huff. She had an appointment to see the warden, but Sewell advised her to reschedule the appointment to a time when she would not be so upset. He thought she tentatively agreed,

but five minutes later she met with the warden anyway. Sewell testified that "after that point, I felt real reluctant to offer any advice," because he thought Huff "was in charge of her own destiny." Sewell discussed the matter with Brown, who advised Sewell to refer Huff to him (Brown), and on one occasion Sewell did tell Huff just to call Brown.

Later in 1997, Huff called Sewell on another matter. He investigated and "found out that only her supervisors were making inquiries about her pay." He then left "a couple of messages" for Huff at work, but it is not clear Huff actually received these messages. Later, in December 1997 or January 1998, Sewell wished Huff a "better and happier" new year. Sewell described his ensuing conversation with Huff as follows:

> And she said, well, it's funny you would say that. I says, why? She says, well, you never had the decency to get back to me after I asked you to do something for me. I says well, Donna, upon those words like that I says, you need to learn about interpersonal relationships and how to communicate with people. All you do is alienate people and make them dislike you, and I says, you need to improve. And I says, your dealing with people is really bad. And I says, if you -- if you'd've really wanted to know about this you should've got back to me and I would've told you your supervisor has to make the initial pay inquiries. And if they refuse to pay you, then we could take a look at it. And that is the way.

As far as the evidence goes, this was the last conversation between Sewell and Huff before the advisories.

In February-March 1998, Huff told people that IUOE was refusing to represent her in the upcoming investigatory

interview. Among others, she told Linda Sue Moore-Halliday (Moore-Halliday), a fellow employee who was a steward for the California Correctional Peace Officers Association (CCPOA). Moore-Halliday testified she heard Huff's side of a telephone conversation with someone Moore-Halliday understood was an IUOE representative. Moore-Halliday also testified she understood from what she heard that IUOE would not be representing Huff in the investigatory interview. Whatever Moore-Halliday heard, it was apparently not a conversation between Huff and Sewell, who agree they never had such a conversation.[5]

Moore-Halliday advised Huff she had the right to have any representative of her choice at the investigatory interview. Moore-Halliday referred Huff to another CCPOA steward, George Finely (Finley), who did represent Huff at the March 20 interview.

April-May 1998

The complaint further alleges:

> On April 25, 1998 Charging Party wrote to Frank Hanley, Respondent's General President, Washington, D.C. requesting representation, in part, for being relieved of duty and being prevented from returning to work even with a doctor's release; and for alleged retaliation by the institution. The Respondent failed to respond, and on May 12, 1998, Charging Party learned from a secretary under Mr. Hanley that her matter had been sent to James

[5]Despite Moore-Halliday's testimony, Huff never testified she had any actual conversation with an IUOE representative in February-March 1998. Huff did testify she made other efforts to obtain IUOE representation for the investigatory interview, but such efforts were not mentioned in her charge or the complaint, and I have therefore not included them in these findings of fact.

> McLaughlin, Business Manager, Local 501. He failed to respond.

It was stipulated at hearing that on or about April 25, 1998, Huff did send IUOE general president Frank Hanley (Hanley) a letter, stating in relevant part:

> My name is Donna Huff, Material Stores Supervisor I. I am a state employee for the department of corrections, in Blythe Ca., at Ironwood State Prison.
>
> I have encountered many trials at this institution. One being denied proper union representation.
>
> I have corresponded with the following Union agents, Weldon Sual [sic], Kriss [sic] Brown, Larry Dolson, James Mclaughlin [sic], Don Mear, Ron Glick.
>
> April 3, 1998 Ron Glick just confirmed to me that the Union, (Larry Dolson) was refusing to represent me in any of my request's concerning the appeal hearing for correctional officer. Wrongful dismissal and retaliation brought on by the institution.
>
> Currently I have been relieved of my job duties and unable to return. This pending a doctor's deposition for a work related Injury. The doctor has released me full duty but the Institution is denying me the right to return. They have also took it upon themselves to enter a resignation on another part time job that I maintain at the institution as a self-help sponsor.
>
> I have requested union representation from September 1997 until current. I have been denied on all occasion's.
>
> Mr. Hanley I am sending you a chronological of past incident's that has occurred against me. I truly hope you can help me make thing's write [sic] with the proper representation and or counsel.

It was further stipulated that Hanley received the letter.

Huff testified she received no reply to her April 25 letter, so she called and spoke to a secretary, who told her that "that packet was sent back." According to Huff, she still never received a reply. IUOE offered no evidence as to what happened to the April 25 letter after Hanley received it.

Enclosed with the April 25 letter was a five-page chronology, covering the period September 17, 1997, to April 22, 1998. In this chronology, Huff provided some additional information about the issues mentioned in the letter.

With regard to "the appeal hearing for correctional officer" mentioned in the April 25 letter, the enclosed chronology indicated that on September 17, 1997, Huff had been rejected for a correctional officer position, apparently on both physical and psychological grounds. The chronology later included the following entry for April 22, 1998:

> I have a hearing for appealing my Correctional Officer Job that I was denied on September 17, 1997. The appeal is held per the State Personnel Board in Rancho Cucamonga. It's suppose[d] to be impartial. To date I have turned over the original denial on the physic but there [sic] still denying me per the psychological examiner. The union refused to represent me.

The chronology further indicated that when Huff appeared for the hearing she was told it had been taken off calendar, and that Huff had requested another hearing be scheduled.

The position of correctional officer is outside the IUOE bargaining unit. The IUOE bargaining agreement does not give unit members rights with regard to positions outside the unit.

With regard to the "wrongful dismissal" mentioned in the April 25 letter, the chronology does not appear to provide any-more information. It does not indicate Huff was dismissed from employment or threatened with dismissal. The IUOE bargaining agreement does not address "wrongful dismissal" in general.

With regard to the "retaliation brought on by the institution" mentioned in the April 25 letter, the chronology indicated Huff felt the Prison was "retaliating against me for filing with outside agency's [sic]." It appears from the chronology that the outside agencies in question included the State Compensation Insurance Fund, the State Labor Commissioner and the federal Equal Employment Opportunity Commission. Although the IUOE bargaining agreement (in Article 21, section 21.3) prohibits reprisals against employees "because of the exercise of their rights under the Dills Act or any right given by this Agreement," it does not generally protect the right of employees to file with outside agencies (other than their right under the Dills Act to file with PERB).

With regard to Huff being "relieved of my job duties and unable to return," as mentioned in the April 25 letter, the chronology indicated Huff was relieved of her job duties on March 20, 1998, because of a doctor's report dated March 16, 1998. This doctor's report was generated in connection with a worker's compensation case Huff had brought against the State, in which Huff was represented by an attorney. On March 20, 1998, Huff's application for benefits was amended to include an allegation

that "[o]n or about 20 March 1998 applicant [Huff] was not allowed to work." The matter was eventually settled.

The issue of Huff's relief from her duties and inability to return to work was the focus of allegations in the complaint that Huff withdrew during the hearing. Huff's post-hearing brief states the "Worker Comp . . . part of the complaint was dropped." I conclude Huff has abandoned this issue, and I shall make no further findings or conclusions regarding it.

With regards to Huff's "resignation on another part time job . . . as a self-help sponsor," the chronology indicated that when Huff was not allowed to return to work "[t]his also cost me another job that I sponsor every Thursday night on the minimum yard for AA/NA (Alcohol and Narcotic's anonymous)." The entry for April 22, 1998, indicated Huff received a personnel notice from the Prison that "stated that they have resigned me" from the part-time job, to which Huff responded "that at no time did I resign from any job" at the Prison.

Huff's part-time position as a self-help sponsor was outside the IUOE bargaining unit. As previously noted, the IUOE bargaining agreement does not give unit members rights with regard to positions outside the unit.

July 1998

The complaint finally alleges:

> On or about July 6, 1998, Charging Party contacted IUOE Union Representative Chris Brown and requested representation for an investigatory interview by management scheduled for July 9, 1998 concerning allegations that Electronics Technician, Mike

> Murphy's life had been threatened by other staff at Ironwood State Prison. The Respondent did not respond to Charging Party's message to call her. The interview occurred without the attendance of any representative of the Respondent.

The evidence showed that on June 30, 1998, the Prison's Investigative Services Unit did send Huff an advisory of an investigatory interview scheduled for July 9, 1998. The advisory explained:

> You have been scheduled for this interview due to the Investigative Services Unit receiving information that you made false allegations that Michael Murphy's, Electronics Technician, life had been threatened by others at Ironwood State Prison.

The advisory also told Huff she had "the right to have a representative of your choice present at the interview."

Huff testified she received the advisory in "the first part of July" and then "made an attempt" to call IUOE to request representation. Because she believed IUOE was refusing to return her calls, she had someone else on the line with her as a witness. According to that witness, on July 6, 1998, at approximately 12:15 to 12:30 in the afternoon, Huff called the voice mail of IUOE representative Brown and left a message about why she was calling, when and where the "hearing" would be, and how Brown could call Huff back. Huff's testimony was substantially similar: that she called Brown's voice mail and "stated my request and the urgency of the representation that I needed." Huff got no return call, so she asked CCPOA steward Finley to represent her at the July 9 interview, which he did.

Brown specifically testified he did not receive a message from Huff on July 6, 1998. He did not specifically testify whether he received a message from Huff on some other date in early July. He did testify, however, that he checked his messages "periodically, during the daytime, . . . a few times a day." If, as Huff's witness testified, Huff called Brown's voice mail on July 6, 1998, at approximately 12:15 to 12:30 in the afternoon, Brown should have checked his voice mail later that same day, and he therefore should have received Huff's message that same day, if ever.

Furthermore, Brown credibly testified that whenever he checked his voice mail he used a personal calendar to make a note of each message, including the name of each person who left a message. Brown's calendars for 1996 and 1997 list Huff as one of the people who left messages for Brown on various dates. Brown's calendar for July 1-9, 1998, however, does not list Huff, although it lists several other people who left messages on those dates (including July 6, 1998).

I find Huff did call Brown on July 6, 1996, and did attempt to leave a message on his voice mail. I also find, however, that for some reason Brown did not receive the message.

Huff and Brown had a history of previous dealings, dating back to early 1996, when Brown successfully defended Huff against a threat of rejection on probation. There was a turning point in their relationship in September 1997, when Huff contacted Brown about being rejected for a correctional officer position. Brown

testified he asked Huff if she supposed the rejection had anything to do with a petition complaining about her that had been signed by some of her fellow employees. This was the first time Huff had heard of such a petition. According to Brown, Huff became argumentative and demanded a copy of the petition. Brown was reluctant to give it to her, because he felt an obligation to protect the employees who had signed it. After checking with his supervisors, he told Huff he could not and would not give it to her.

Huff called Brown again in October and November 1997, again demanding a copy of the petition, but Brown again refused. According to Brown, Huff became "very abusive, screaming at me," and thereafter the communication between the two of them stopped.

At all relevant times, the IUOE bargaining agreement has provided in part (in Article 5, section 5.1) that the State "recognizes and agrees to deal with IUOE-designated stewards" on various matters, including employee adverse actions and matters before the State Personnel Board (SPB). The agreement does not otherwise address employee adverse actions in general, or matters before the SPB.

ISSUE

Did IUOE violate its duty of fair representation?

CONCLUSIONS OF LAW

As the charging party in this case, Huff has alleged that her exclusive representative, IUOE, violated its duty of fair representation under the Dills Act. The duty of fair

representation imposed on an exclusive representative extends to grievance handling. (Fremont Teachers Association (King) (1980) PERB Decision No. 125; United Teachers of Los Angeles (Collins) (1982) PERB Decision No. 258 (Collins).) In order to establish a violation of the duty, a charging party must show the exclusive representative's conduct was arbitrary, discriminatory or in bad faith. In Collins, PERB stated in part:

> Absent bad faith, discrimination, or arbitrary conduct, mere negligence or poor judgment in handling a grievance does not constitute a breach of the union's duty.

In order to state a prima facie case of arbitrary conduct violating the duty of fair representation, a charging party:

> [M]ust at a minimum include an assertion of sufficient facts from which it becomes apparent how or in what manner the exclusive representative's action or inaction was without a rational basis or devoid of honest judgment. [Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

In order to prevail, a charging party must then prove such facts.

In the present case, the complaint alleges IUOE violated its duty of fair representation by failing to respond to three requests for representation:

1. Huff's telephone messages to Sewell in February-March 1998, concerning the investigatory interview of March 20, 1998.

2. Huff's letter to Hanley on April 25, 1998, concerning alleged retaliation and other issues.

3. Huff's telephone message to Brown on July 6, 1998, concerning the investigatory interview of July 9, 1998.

In its post-hearing brief, IUOE argues in part that these three requests for representation fell outside IUOE's duty of fair representation under the Dills Act. As previously noted, the duty of fair representation does extend to grievance handling. It does not extend, however, to an extracontractual forum, such as the SPB. (California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S (John).) In general, the duty does not apply when a forum is not connected with some aspect of negotiation or administration of a collective bargaining agreement, and the exclusive representative does not exclusively control the means to the particular remedy.[6] (John.)

In California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S (Coelho), PERB held the duty of fair representation did not apply to the State's internal investigation of a citizen's complaint against an employee. PERB held the exclusive representative had no obligation to represent the employee in that forum and did not violate its duty by refusing to represent him.

In the present case, IUOE argues that under Coelho its duty of fair representation did not extend to the investigatory interviews of March 20 and July 6, 1998. Huff points out that Coelho, unlike the present case, involved a "citizen's" complaint against an officer (a fish and game warden). It is not apparent,

---

Exclusive representatives may, of course, represent unit members before the SPB, and in other extracontractual forums, but whether they do so is outside the scope of the duty of fair representation.

however, why this would be a principled reason to distinguish the two cases.

Huff also points to the language in the IUOE bargaining agreement providing that the State "recognizes and agrees to deal with IUOE-designated stewards" on employee adverse actions and matters before the SPB. This language appears to give IUOE and its stewards a contractual right to represent unit members on these matters. The language does not, however, make these matters themselves contractual, as the agreement does not otherwise address them. Furthermore, the language apparently does not give IUOE exclusive control over investigatory interviews: the Prison informed Huff she had the right to a representative "of [her] choice," and it allowed her to be represented by CCPOA steward Finley, rather than by an IUOE steward.

Thus, as in Coelho, the investigative forum was apparently unconnected with any aspect of negotiation or administration of a collective bargaining agreement, and the exclusive representative apparently did not exclusively control the means to the particular remedy. I therefore conclude, as IUOE argues, that the allegations concerning Huff's requests for representation at the investigatory interviews must be dismissed, as falling outside IUOE's duty of fair representation under the Dills Act.

I would also dismiss the allegations concerning Huff's request for representation at the July 9 interview for the independent reason that Brown (as I have found) somehow did not

receive the message. Brown cannot reasonably be faulted for failing to respond to a message he did not receive.[7] Even if Brown or IUOE was somehow negligent in failing to receive Huff's message, such mere negligence would not constitute a breach of the duty of fair representation. (Collins.)

The only allegations in the complaint that remain are those concerning Huff's April 25 letter to Hanley. It was stipulated that Hanley received the letter, and it was apparently undisputed that IUOE did not respond. As previously noted, Huff has abandoned the issue raised in the letter of her inability to return to work after her worker's compensation claim. The question is whether the other issues raised in the letter fell within IUOE's duty of fair representation.

The issue of the "appeal hearing for correctional officer" raised in the letter clearly fell outside IUOE's duty of fair representation. The hearing was before the SPB, an extracontractual forum to which the duty does not extend. (John.) Furthermore, the IUOE bargaining agreement does not give unit members rights with regard to positions outside the bargaining unit, including correctional officer positions. The issue would thus appear to be unconnected with any aspect of negotiation or administration of a collective bargaining agreement.

---

[7]Sewell, on the other hand, could be faulted for not responding to the messages from Huff that I have found he did receive in February 1998. Perhaps IUOE was fortunate those (unspecific) messages turned out not to concern a matter within IUOE's duty of fair representation.

The same would seem to be true for the "wrongful dismissal" issue raised in the letter (although it is not clear exactly what Huff meant, as she apparently had not actually been dismissed). The IUOE bargaining agreement does not generally address "wrongful dismissal," which would also seem to be an issue for the SPB or some other extracontractual forum.

The issue of the "retaliation brought on by the institution" might have been within the duty of fair representation, if it appeared Huff was suffering reprisals "because of the exercise of [her] rights under the Dills Act or any right given by this [IUOE] agreement." Such reprisals are prohibited by the IUOE agreement, and the issue would thus be connected with the administration of the agreement. It appears, however, that Huff felt the Prison was retaliating against her for filing with outside agencies, such as the State Compensation Insurance Fund, the State Labor Commissioner and the federal Equal Employment Opportunity Commission. The IUOE agreement does not generally address this kind of retaliation, which would seem to be another issue for an extracontractual forum.

The final issue of Huff's involuntary "resignation on another part time job . . . as a self-help sponsor" likewise appears to be unconnected with any aspect of negotiation or administration of a collective bargaining agreement. The self-help sponsor position was outside the bargaining unit, and the IUOE agreement does not give unit members rights with regard to positions outside the unit.

As the charging party in this case, Huff has the burden of proof. (PERB Regulation 32178.[8]) I conclude that Huff has not met the burden of proving facts from which it appears that her April 25 letter to Hanley fell within IUOE's duty of fair representation. I therefore conclude the allegations concerning that letter must be dismissed, along with the other allegations.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is ordered that the complaint and the underlying unfair practice charge in Case No. LA-CO-82-S, Donna Lynn Huff v. International Union of Operating Engineers, Local 501, AFL-CIO, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

---

[8]PERB regulations are codified at California Code of Regulations, title 8, section 31001 and following.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 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 Cal. Code Regs., tit. 8, sec. 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. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

THOMAS J. ALLEN
Administrative Law Judge