

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

LEE M. MOORE,

Charging Party,

v.

CALIFORNIA CORRECTIONAL PEACE
OFFICER'S ASSOCIATION,

Respondent.

Case No. SF-CO-46-S

PERB Decision No. 1530-S

June 20, 2003

Appearances: Lee M. Moore, on his own behalf; Daniel M. Lindsay, Supervising Legal Counsel, for California Correctional Peace Officer's Association.

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Lee M. Moore (Moore) of a Board agent's dismissal of his unfair practice charge. The charge alleged that the California Correctional Peace Officer's Association (CCPOA) violated the Ralph C. Dills Act (Dills Act)¹ by refusing to bargain with supervisory staff, allowing the CCPOA chapter president, a supervisory employee, to represent non-supervisory employees, and threatening reprisal against Moore for challenging CCPOA's conduct. Moore alleged that this conduct constituted a violation of Dills Act sections 3519.5(b), (c) and 3529(c).²

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

²Section 3519.5 states, in pertinent part:

It shall be unlawful for an employee organization to:

After review of the entire record, including the unfair practice charge, the warning and dismissal letters, Moore's appeal and CCPOA's response to Moore's appeal, the Board affirms the Board agent's dismissal for the reasons expressed below.

BACKGROUND

In his charge, Moore alleges that Mike Biggs (Biggs) is a correctional lieutenant at Correctional Training Facility (CTF) and is also the CCPOA chapter president. Moore is also a correctional lieutenant at CTF who supervises the transportation office. On September 27, 2002, Moore was told to arrange for the transport of two inmates who needed medical treatment to the medical facility. Moore instructed his staff to assemble an emergency transport team for this purpose. Without first communicating with the transportation office, Biggs contacted the Employee Relations Officer, Jan Spears (Spears), complaining about the procedures used by the transportation office. As a result, CTF management contacted the transportation office about its procedures. According to Moore, this created a delay in implementing the emergency transport procedures for the two inmates. Later, Moore claims that he called Biggs to complain about his actions and Biggs responded by stating:

(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. It shall be unlawful for an employee organization to:

(c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

Section 3529(c) states:

(c) Excluded employees shall not participate in meet and confer sessions on behalf of nonexcluded employees. Nonexcluded employees shall not participate in meet and confer sessions on behalf of supervisory employees.

We will just change the policy so that your staff will be subjected to involuntary ordered over to work inside. We will disband the transportation team and assign the transports using staff from inside.

Moore alleges that Biggs' statement constituted a threat of reprisal against him and his staff, and explains that he had followed the appropriate procedures for an emergency transport. Moore further alleges that Biggs is supervisory, an excluded employee under the Dills Act, and so should not be representing unit employees.

DISCUSSION

The Board agent found that both Moore and Biggs are supervisory employees under Dills Act section 3513(g) and thus excluded employees under sections 3513(c) and 3527(b).³

³Section 3513 states, in pertinent part:

As used in this chapter:

(c) "State employee" means any civil service employee of the state, and the teaching staff of schools under the jurisdiction of the State Department of Education or the Superintendent of Public Instruction, except managerial employees, confidential employees, supervisory employees, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the office of the Inspector General, employees of the board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

(g) "Supervisory employee" means any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or

The Board agent also determined that Moore failed to state a prima facie case since the duty to bargain is owed to the State, not to individual employees. (Riverside County Office Teachers Association, CTA/NEA (McAlpine, et al.) (2000) PERB Decision No. 1401.)⁴ The Board agent further found that Moore's claim that Biggs was unlawfully serving as union president alleges a violation of the Bill of Rights for State Excluded Employees (EEBR) but PERB does not have jurisdiction over the EEBR. (California Correctional Peace Officers Association

effectively to recommend this action, if, in connection with the foregoing, the exercise of this authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Employees whose duties are substantially similar to those of their subordinates shall not be considered to be supervisory employees.

Section 3527(b) states:

As used in this chapter:

(b) "Excluded employee," means all managerial employees, as defined in subdivision (e) of Section 3513, all confidential employees, as defined in subdivision (f) of Section 3513 and all supervisory employees, as defined in subdivision (g) of Section 3513, and all civil service employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than the auditing staff, professional employees in the Personnel/Payroll Services Division of the Controller's office engaged in technical or analytical duties in support of the state's personnel and payroll systems other than the training staff, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, and intermittent athletic inspectors who are employees of the State Athletic Commission.

⁴The Board agent actually stated that the "duty of fair representation" is owed only to the State. That statement is an apparent error on the Board agent's part. Looking at the context of the Board agent's statement in the warning letter (at p. 2), it is clear that she meant instead that, under the Dills Act, the "duty to bargain" is owed only to the State, not to an individual employee.

(Smith, et al.) (1997) PERB Decision No. 1226-S.) Even assuming PERB had jurisdiction over this violation, the Board agent states that under EEBR, Biggs may serve as CCPOA president so long as he does not handle grievances. However, she explained that Biggs may protest potential violations or encourage filing of grievances.⁵ The Board agent did not address Moore's claim regarding Biggs' alleged threat of reprisal.

Moore's appeal objects to the Board agent's failure to analyze and resolve the allegation concerning Biggs' threat of reprisal. Moore further believes that the Board agent mischaracterized much of his charge and asserts that Biggs had a moral obligation to discuss the transport procedures with him, a fellow supervisor and excluded employee, before contacting Spears.

The key issue in this matter involves Moore's standing to file a charge. These concerns are similar to those addressed by the Board in California Correctional Peace Officers Association (Smith, et al.) (1997) PERB Decision No. 1226-S (CCPOA). In CCPOA, the charging parties, all managers and supervisors, alleged that the union violated its duty of fair representation by requesting that the State Personnel Board discipline the charging parties in retaliation for investigating union members. The Board, in adopting the Board agent's dismissal, found that, under the EEBR, supervisors and managers lacked standing to file charges with the Board and therefore must pursue vindication of their rights through another forum. (CCPOA, warning letter, p. 2.)

⁵Dills Act section 3529(b) provides:

Excluded employees shall not participate in the handling of grievances on behalf of nonexcluded employees. Nonexcluded employees shall not participate in the handling of grievances on behalf of excluded employees.

An exception to this rule might occur if CCPOA's conduct adversely impacted the rights of unit employees. (CCPOA.) Moore alleged that Biggs' threat of reprisal included unit members in the transportation office. Under State of California, Department of Health (1979) PERB Decision No. 86-S (Department of Health), an employer's action against supervisory employees could state a violation of the Dills Act if that action adversely impacted unit employees' rights. (Department of Health, p. 7 and fn. 9, citing National Labor Relations Board (NLRB) decisions covering this issue.) But the charge must be filed on behalf of unit employees. (Department of Health; see also, State of California, Department of Forestry (1980) PERB Decision No. 119-S.) The PERB and NLRB cases cited in Department of Health involve unfair practice charges filed by unions, which alleged that the employer's acts against supervisors infringed on the rights of unit employees. Since Moore neither is the exclusive representative nor purports to represent unit employees in this matter, he lacks standing to file this charge; and on that basis, this charge must be dismissed. The Board thus declines to address the merits of the charge.

ORDER

The unfair practice charge in Case No. SF-CO-46-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Neima and Baker joined in this Decision.