

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA CORRECTIONAL OFFICERS	)	
ASSOCIATION,	)	
	)	
Charging Party, <u>PETITIONER</u> ,	)	Case No. S-CE-3-S
	)	(78-79)
v.	)	
	)	PERB Order No. IR-5
STATE OF CALIFORNIA AND DEPARTMENT OF	)	
CORRECTIONS,	)	Administrative Appeal
	)	
Respondents.	)	September 12, 1978
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Appearances; Russell L. Richeda, Attorney (Carroll, Burdick & McDonough) for California Correctional Officers Association; Angela Pickett, Attorney (Governor's Office of Employee Relations) for California Department of Corrections.

Before Gluck, Chairperson; Cossack Twohey and Gonzales, Members.

DECISION

The California Correctional Officers Association (hereafter CCOA) by letter dated August 18, 1978, requests the Public Employment Relations Board (hereafter PERB) to seek injunctive relief against the California Department of Corrections to prevent it from implementing its decision to withdraw use of State office space, the telephone and inmate clerical assistance for which CCOA paid the prevailing institutional wage. An unfair practice charge alleging that the State violated section 3519(a), (b), (d)<sup>1</sup> of the State

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<sup>1</sup>Government Code section 3519(a), (b), (d) states:

It shall be unlawful for the state to:

- (a) Impose or threaten to impose reprisals

Employer-Employee Relations Act (hereafter SEERA)<sup>2</sup> and section 3530 of the Government Code<sup>3</sup> was filed by CCOA on

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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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

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(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Hereafter all references are to the Government Code unless otherwise indicated.

<sup>2</sup>The State Employer-Employee Relations Act is codified at section 3512 et seq.

<sup>3</sup>section 3530 states:

The state by means of such boards, commissions, administrative officers or other representatives as may be properly designated by law, shall meet and confer with representatives of employee organizations upon request, and shall consider as fully as such representatives deem reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

August 17, 1978. Authority for the request for injunctive relief is found in PERB policy adopted on July 5, 1978.<sup>4</sup>

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<sup>4</sup>Procedure for Filing Requests for Injunctive Relief, stating:

(a) A party who wishes the Board to seek injunctive relief pursuant to section 3541.3 (j) shall file an original and four copies of such request for injunctive relief with the Board itself at the headquarters office. The request shall contain the following:

(1) A copy of the underlying unfair practice charge;

(2) The date the unfair practice charge was filed;

(3) Affidavits and other appropriate evidence setting forth the specific facts upon which the request is based;

(4) A full description of the irreparable injury which the requesting party alleges it will suffer if the request is not granted;

(5) The basis for contending that the Board's normal processes and remedies are inadequate;

(6) The legal theory which supports the requesting party's belief that it will likely prevail on the merits of the underlying unfair practice charge; and

(7) A statement of the relief sought.

(b) In order to be considered filed, a copy of the request must have been actually served upon the charged party or parties prior to filing the request, and a statement of such service shall accompany the request. "Actual service" as used in this section means actual receipt by the party or its agent.

(c) The Executive Assistant to the Board will notify the respondent of their right to

PERB's authority to seek injunctive relief is found in section 3541.3(j) of EERA<sup>5</sup> and section 3513 (g) of SEERA<sup>6</sup>.

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file with the Board itself such evidence, including affidavits, as it may deem proper to rebut the request and the final date for said response to be actually received by the Executive Assistant to the Board at the Headquarters Office in Sacramento.

(d) The Board itself with the advice of its General Counsel shall, immediately upon expiration of the charged party's rebuttal period, consider the request for injunctive relief and shall determine whether or not to issue a complaint and seek injunctive relief. If the Board itself determines the request should be denied, it will so notify all parties in writing.

<sup>5</sup>The Educational Employment Relations Act is codified at section 3540 et seq. Section 3541.3 (j) states:

To bring an action in a court of competent jurisdiction to enforce any of its orders or decisions or rulings or to enforce the refusal to obey a subpoena. Upon issuance of a complaint charging that any person has engaged in or is engaging in an unfair practice, the board may petition the court for appropriate temporary relief or restraining order.

^Section 3513 (g) states:

"Board" means the Public Employment Relations Board. The Educational Employment Relations Board established pursuant to section 3541 shall be renamed the Public Employment Relations Board as provided in section 3540. The powers and duties of the Board described in section 3541.3 shall also apply, as appropriate, to this chapter.  
(Emphasis added.)

DISCUSSION

The request for injunctive relief is denied. Petitioner has failed to satisfy the prerequisites established in the PERB policy quoted above. Specifically, though it speculates on the matter, CCOA has failed to demonstrate a likelihood of irreparable harm if injunctive relief is not granted pending resolution of the unfair practice charge. On the gravamen of that charge, PERB takes no position by this action and none is to be inferred.

ORDER

On the basis of the request for injunctive relief, supporting affidavits and attached unfair practice charge before it, the Public Employment Relations Board denies the request by the California Correctional Officers Association for injunctive relief against the State of California and the Department of Corrections pending determination of said unfair practice charge.

By: Harry Gluck, Chairperson Raymond J. Gonzales, Member

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Jerilou Cossack Twohey, Member