STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JOYCE THOMAS, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent.	)	Case No. SF-CE-94-S PERB Decision No. 972-S February 9, 1993

Appearances: Stephanie Rubinoff and Martin M. Horowitz, Attorneys, for Joyce Thomas; State of California (Department of Personnel Administration) by Joan Branin, Labor Relations Counsel, for State of California (Department of Corrections).

Before Hesse, Chairperson; Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Joyce Thomas (Thomas) of a PERB administrative law judge's (ALJ) dismissal (attached hereto) of Thomas's complaint alleging that the State of California (Department of Corrections) violated section 3519(b) and (d) of the Ralph C. Dills Act (Dills Act).[1]

[1]The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519 provides, in pertinent part:

> It shall be unlawful for the state to do any of the following:
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or

The ALJ dismissed the complaint based on his conclusion that Thomas lacked standing to pursue the allegations at issue.

The Board has reviewed the dismissal, and finding it to be free of prejudicial error, adopts it as the decision of the Board itself.

DISCUSSION

On appeal, Thomas argues that good cause exists under PERB Regulation section 32635(b)[2] to allow her to present supporting evidence for the first time on appeal. The new evidence consists of declarations from a California State Employees Association (CSEA) official and from an attorney for Thomas which address the issues of Thomas's standing to pursue the alleged violations in this case.

Thomas argues that good cause exists to present new supporting evidence because she is "confined to legal argument and is provided with no vehicle for the introduction of evidence" in opposing the motion to dismiss filed by the respondent in this case. Contrary to this assertion, Thomas filed a brief in opposition to respondent's motion to dismiss in which she had the

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> other support to it, or in any way encourage employees to join any organization in preference to another.

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. Regulation 32635 states, in pertinent part:

> (b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

opportunity to submit the declarations which now are submitted on appeal. Thomas has not provided adequate explanation as to why she was unable to provide the declarations to the ALJ with her opposition brief. Therefore, the Board finds that no good cause exists to permit Thomas to present new supporting evidence on appeal.

The primary issue in this case involves the standing of an individual employee to pursue allegations of a violation of Dills Act section 3519(b) and (d), which protect the collective bargaining rights of employee organizations. This question is easily resolved. The undisputed fact in this case is that the complaint was amended, at Thomas's request, to remove CSEA, the exclusive representative, and substitute Joyce Thomas, an individual, as the charging party. This amendment must be taken at its face value.

The Board has held that an individual unit member does not have standing to pursue violations of rights of an employee organization. (Oxnard School District (1988) PERB Decision No. 667; Elk Grove Unified School District (1990) PERB Decision No. 856; Los Angeles Community College District (1984) PERB Decision No. 418; California State University (Pomona) (1988) PERB Decision No. 710-H.)

The rights at issue in this case, the right to represent and the right to be free from employer interference with internal union activities, are union rights which require that an alleged violation of these rights be prosecuted by the union. To grant

an individual standing to file charges of this nature would undermine stable labor-management relations existing between the employer and the exclusive representative. When CSEA withdrew from pursuing the alleged violations, the legal effect was the same as if the charges had been withdrawn. Therefore, Thomas does not have standing to pursue the alleged violations in this case.

ORDER

The unfair practice charge in Case No. SF-CE-94-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Carlyle joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

JOYCE THOMAS, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent.	)	Unfair Practice Case No. SF-CE-94-S

NOTICE OF DISMISSAL

NOTICE is given that the motion of the State of California (Department of Corrections) to dismiss the above charge and complaint is hereby granted. The complaint is dismissed because the charging party lacks standing to pursue the allegations at issue. The hearing scheduled to commence on September 8, 1992, is hereby cancelled.

The charge at issue was filed on May 28, 1991, by the California State Employees Association (CSEA) against the State of California (Department of Corrections). On June 25, 1991, the general counsel of the Public Employment Relations Board (PERB or Board) issued a complaint on part of the charge and dismissed the remainder. The complaint alleges that the State of California (State) violated section 3519(b) and (d) of the Ralph C. Dills Act.[1] The general counsel dismissed outright an allegation that

[1]Unless otherwise indicated, all statutory references are to the Government Code. The Ralph C. Dills Act (Dills Act) is codified at Government Code section 3512 et seq. In relevant part, section 3519 provides as follows:

It shall be unlawful for the state to do any of

the State had violated section 3519(c) and dismissed for deferral to arbitration an allegation that the State had violated section 3519(a).

On April 1, 1992, Joyce Thomas filed a motion to amend the complaint to substitute herself as charging party in place of CSEA.[2] In support of this request, counsel for Ms. Thomas filed a declaration which ascribed to counsel for CSEA the statement that "the position adopted by CSEA was in conflict with that of Ms. Thomas." This conflict was given as the basis for the withdrawal by counsel for CSEA. The motion also requested to amend into the complaint certain new allegations regarding events which occurred subsequent to the original complaint.

On May 5, 1992, the chief administrative law judge granted the motion to amend. He ordered that Joyce Thomas be substituted

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the following:

> (a) 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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (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.

[2]Ms. Thomas on April 1 also filed a notice of revocation of Robert L. Mueller, an attorney for CSEA, as her representative.

for CSEA as the charging party and he added new factual allegations. As amended, the complaint alleges that the State denied to CSEA the right to represent its members in violation of section 3519(b) when:

1. On or about April 2 and 5, 1991, it served notices of interrogation on Ms. Thomas and, on April 8, 1991, subjected Ms. Thomas to an interrogation at the Vacaville Police Department.

2. On or about May 10, 1991, it took adverse action against Judy Brooks, who had issued a statement defending Ms. Thomas, by terminating Ms. Brooks.

3. On or about October 29, 1991, it served a notice of adverse action on Ms. Thomas and subsequently placed a letter of reprimand in her personnel file.

The complaint alleges that the State interfered with the administration of CSEA in violation of section 3519(d) when:

4. Throughout April and May of 1991, it relied upon information supplied by a staff person employed by CSEA and known to be in a power struggle with Ms. Thomas when preparing the accusations against Ms. Thomas.

In its motion to dismiss, the State attacks the standing of Ms. Thomas to pursue these accusations. The State argues that section 3519(b) and (d) is enforceable only by an employee organization and not by an individual member. The State argues that Ms. Thomas clearly does not fall within the statutory

definition of "employee organization"[3] and is thus without standing to pursue her claim under the theories set out in the complaint. With the removal of CSEA as the charging party, the State argues, no party remaining in the case has standing to take the 3519(b) and (d) allegations forward.

Ms. Thomas replies that the removal of CSEA as charging party does not mean that an employee organization is removed from the case. She contends that CSEA's District Labor Council 747, of which she is president, constitutes as an employee organization under the Dills Act. As president, she argues, she has standing to assert violations of employee organization rights and is not bringing the action as an individual.

This argument is easily disposed of. Plainly the amendment to the complaint did not insert CSEA District Labor Council 747 as charging party. The amendment names Joyce Thomas, an individual person, as the charging party. That Ms. Thomas is an officer in the organization does not establish that the organization has filed the charge. The amendment substituted her as the charging party and must be accepted at its face value. On its face, the amendment does not permit the conclusion that CSEA District Labor Council 747 is the charging party.[4]

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[3]Section 3513(a) defines "employee organization as:

> . . . any organization which includes employees of the state and which has as one of its primary purposes representing these employees in their relations with the state.

[4]Even if the amendment had named the district council as charging party, the standing question could not be ignored. It

Under section 3514.5, "[a]ny employee, employee organization, or employer shall have the right to file an unfair practice charge. . . ." At one time, the Board interpreted this language as granting individual employees the right to file unfair practice charges against an employer based upon an employer's alleged violation of rights of the exclusive representative. (See South San Francisco Unified School District (1980) PERB Decision No. 112.)

However, the Board later explicitly overruled this conclusion in Oxnard School District (1988) PERB Decision No. 667.[5] There, the Board held that individual employees have no standing to file a failure to negotiate charge against a school district. The Board held that the employer's duty to negotiate in good faith is owed only to the exclusive representative. Allowing individual employees to challenge the employer's good faith in negotiations, the Board wrote, would of necessity interfere with the collective bargaining process. The Board reached the same result in Elk Grove Unified School District (1990) PERB Decision No. 856, a case cited by the State. Current Board decisions thus make it clear that section 3514.5 does not nullify the normal requirements of standing.

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is hard to see how a constituent part of an organization would have standing to go forward with a claim from which the parent chooses to remove itself. Such a rule would afford dissident rump organizations free hand to disrupt relations between an exclusive representative and an employer.

[5]The Educational Employment Relations Act, under which Oxnard was decided, contains language in section 3541.5(a) identical to that in section 3514.5(a) of the Dills Act.

Although the interests to be protected by section 3519(b) and (d) differ somewhat from the bargaining cases, Ms. Thomas has advanced no persuasive rationale that would afford her standing. The right of an employee organization to represent its members is not a right that an individual member can appropriately vindicate. Not only would an individual member have difficulty in developing the necessary evidence,[6] but permitting individuals to go forward on these theories might well produce litigation the union did not favor. Charges alleging employer denial of organizational rights and/or interference with internal union activities necessarily pit the union against the employer. For various strategic or tactical reasons, a union might conclude that it did not wish to pursue such claims. If a member had standing to go forward on his or her own volition, that member's activity could run counter to what the union believed to be in its best interests.

The Board has long held that an individual unit member may not use an unfair practice charge to insert himself or herself

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[6]To show a violation of section 3519(b) on this theory, a charging party must demonstrate that: 1) the employer retaliated against an individual employee for engaging in protected conduct and 2) the effect of this retaliation was a denial of protected rights to the employee organization. While Ms. Thomas might well be able to develop evidence about the first element, proof of the second requires a showing of actual impact upon the employee organization. Theoretical impact is not sufficient. Specific harm to the employee organization's ability to represent its members must be shown. A demonstration by Ms. Thomas that she was individually harmed because of her protected acts would not show that the organization was harmed. Since the evidence needed to establish the second element is uniquely within the control of the employee organization, it is not evidence to which Ms. Thomas necessarily would have access.

between the employer and the exclusive representative. Thus, the Board has denied standing to a unit member who asserted that the employer had failed to furnish information required for bargaining. (Los Angeles Community College District (1984) PERB Decision No. 418.)

Similarly, the Board has denied standing to a unit member who asserted that the employer had improperly denied him access to a bargaining session. (Los Angeles Community College District (1984) PERB Decision No. 417.) The Board held that the right to determine composition of the union's negotiating team was that of the union. Thus, when the union accepted the school district's acknowledgement that it should not have denied the member access, the unit member was left with no surviving interest. This is because "the real aggrieved party [had] accepted the explanation and assurance in settlement of the dispute."

The rights at issue here, the right to represent and the right to be free from employer interference with internal union activities, are those of the union. Although CSEA has not disclosed the nature of the "conflict" that led to its withdrawal, the complaint itself suggests the reason. The complaint alleges that Department of Corrections administrators prepared an accusation against Ms. Thomas based "upon information received from Diane Ayers, a staff person employed by [CSEA], who was known to be involved in a heated power struggle with Ms. Thomas." From this accusation, one might conclude that CSEA withdrew because it did not wish to publicly air the claims of a

CSEA officer against a CSEA employee. But whatever the reason, since CSEA was the aggrieved party, it had the right to make the judgment on pursuit of the charge. Ms. Thomas should not now be able to compel litigation on an issue that CSEA has chosen to avoid.

Since the rights at issue here are those of the union and not of an individual member, the action must be prosecuted in the name of the union. When the union withdrew from prosecuting the alleged violations of section 3519(b) and (d), the legal effect was the same as if the charges had been withdrawn. Accordingly, the State's motion to dismiss the alleged violations of section 3519(b) and (d) is granted.[7] This dismissal covers the new matter added by the May 5, 1992, amendment as a violation of 3519(b).[8]

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[7]The rights of Ms. Thomas under section 3519(b) and (d) are at most incidental to those of the union. By contrast, she has direct individual protection under section 3519(a). Since the contract between the parties incorporates the protections of the statute, Ms. Thomas can find redress for the alleged harm through the contractual grievance procedure. Ms. Thomas is not without a remedy.

[8]It should be noted that if Ms. Thomas had alleged the new material as a violation of section 3519(a), the charge still would have to be dismissed. As the general counsel wrote in letters of May 21 and June 25, 1991, there is contractual language culminating in binding arbitration which arguably prohibits the challenged conduct. Even though the amendment to the complaint pertains to an incident occurring after the expiration of the contract between the State and CSEA, the dispute remains arbitrable. In Anaheim City School District (1983) PERB Decision No. 364, the Board held that unless the parties to a contract expressly indicate a contrary intention, it is presumed that an arbitrator will resolve all disputes "arguably arising under the contract." Nothing in the agreement between these parties indicates that an arbitrator should not resolve all disputes "arguably arising under the contract."

Right to Appeal

Pursuant to Public Employment Relations Board regulations, the Charging Party 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 the Charging Party files 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, 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.

Ronald E. Blubaugh

RONALD E. BLUBAUGH
Administrative Law Judge

September 4, 1992