STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

WILLIAM F. HORSPOOL,	)	
	)	
Charging Party,	)	Case No. LA-CO-71-S
	)	
v.	)	PERB Decision No. 1217-S
	)	
CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION,	)	September 18, 1997
	)	
Respondent.	)	
	)	

Appearances: William F. Horspool, on his own behalf; Christine Albertine, Attorney, for California Correctional Peace Officers Association.

Before Caffrey, Chairman; Amador and Jackson, Members.

DECISION

JACKSON, Member: This case comes before the Public Employment Relations Board (PERB or Board) on William F. Horspool's (Horspool) appeal from a Board agent's dismissal (attached) of his unfair practice charge. As amended, the charge alleged that the California Correctional Peace Officers Association (Association) violated sections 3515.7(g) and 3519.5(b) of the Ralph C. Dills Act (Dills Act)[1] when it settled

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[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 3515.7 provides, in relevant 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.

a group of grievances, including one filed by Horspool, against the California Department of Corrections.

The Board has reviewed the entire record in this case, including Horspool's original and amended unfair practice charge, the warning and dismissal letters, Horspool's appeal, and the Association's response thereto. The Board finds the warning and dismissal letters to be free from prejudicial error and adopts them as the decision of the Board itself.

HORSPOOL'S APPEAL

On appeal, Horspool argues that the Board agent erred in dismissing his charge. Horspool contends that the expired 1992-95 collective bargaining agreement (CBA) between the Association and the state employer demonstrates that the Association's settlement was without rational basis and completely devoid of honest judgment.

ASSOCIATION'S RESPONSE

In its response, the Association contends that Horspool has not identified any basis for granting his appeal. The Association argues that the Board agent properly held that Horspool failed to allege facts sufficient to support a prima facie case for violation of the duty of fair representation.

Section 3519.5 provides, in relevant part:

> (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.

DISCUSSION

As the Board agent noted, the Board will find a violation of the duty of fair representation only if the exclusive representative's conduct is arbitrary, discriminatory, or in bad faith. (Dills Act section 3515.7(g); California State Employees' Association (Morrow) (1987) PERB Decision No. 614-S, proposed decision at p. 11.) On appeal, Horspool renews his argument that the CBA clearly and unequivocally supports his grievance. Horspool asserts that the Association acted arbitrarily and without rational basis when it settled his grievance in a manner which was not favorable to him. We disagree.

Although Horspool arguably suffered some harm due to the group settlement, the settlement has every appearance of an attempt to reconcile CBA language and longstanding past practice. As the Board agent noted, the Association has a responsibility to represent all the members of the bargaining unit. (California School Employees Association and its Chapter 107 (Marquez) (1995) PERB Decision No. 1097, warning letter at p. 4.) Accordingly, a good faith, rational, and nondiscriminatory settlement agreement which benefits some unit members and not others does not violate the duty of fair representation. (Sacramento City Teachers Association (Fanning, et al.) (1984) PERB Decision No. 428 at p. 8.)

ORDER

The unfair practice charge in Case No. LA-CO-71-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

June 27, 1997

William F. Horspool

Re: William F. Horspool v. California Correctional Peace Officers Association
Unfair Practice Charge No. LA-CO-71-S
DISMISSAL AND REFUSAL TO ISSUE A COMPLAINT

Dear Mr. Horspool:

The above-referenced unfair practice charge, alleges the California Correctional Peace Officers Association (CCPOA) violated its duty of fair representation by settling your grievance. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act (Dills Act or Act). On June 10, 1997, I issued a warning letter advising you that the above-referenced charge failed to state a prima facie case. On June 13, 1997, we spoke on the telephone regarding the warning letter. You amended the charge on June 17, 1997.

Your charge alleges that CCPOA violated its duty of fair representation when it settled a number of grievances which concerned the proper anniversary date for the granting of Merit Salary Adjustments (MSA).[1] The grievances alleged the anniversary date should be one year from the date the officer started at the Academy, rather than one year from the date the officer began working at an Institution. In its settlement agreement with the State of California, CCPOA stated:

> The parties agree that the intent of 16.03(d) and Appendix 13 is to describe how employees get moved from Range "A" to Range "C". Since Range "C" was created on June 1, 1989, the language of 16.03(d) and Appendix 13 only applies to employees hired between June 1, 1989 and October 1, 1992.

The amended charge alleges contrary to CCPOA's settlement, the creation of Range C does not justify CCPOA's settlement agreement with the State of California on the MSA issue. Attachment C to Article 16.01 of the 1988-1991 MOU included the following example of a salary movement:

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[1]On January 30, 1997, Victor X. Negrete filed Unfair Practice Charge LA-CO-72-S based on nearly identical facts.

Sample Salary Movement for New Hires:

Event	Hired Before 6/1/89	Hired After 6/1/89
Hire	1694	1694
Com. Acad.	2476	2336
Yr. after hire	2600	2600

You allege Attachment C demonstrates that employees hired both before and after the creation of Range C on June 1, 1989, were supposed to receive an increase a year after their hire date. Thus, you argue, the contract clearly indicates the creation of Range C is irrelevant to the determination of when MSAs should be given.

However, the language of Attachment C to the 1988-1991 MOU, does not demonstrate CCPOA acted arbitrarily. Although the sample cited seems to indicate employees hired both before and after June 1, 1989, would receive their MSA increase one year after being hired, this was apparently not the parties' intention. From 1982 to 1997, the proper date for awarding MSAs changed several times, and resulted in numerous grievances. The proper date to award MSAs was an ongoing issue. In fact, even the parties' 1992-1995 MOU made further attempts to clarify the MSA issue. Article 16.03(d) of the 1992-1995 MOU indicates:

> For employees hired prior to 10/1/92, MSA dates for Correctional Officers, . . . are calculated from initial appointment dates at the Academy and not when appointed to Range B at the institution.

Despite this new contract language, the confusion regarding the proper MSA dates continued until the parties signed the settlement agreement at issue here. It appears the parties did not intend for all employees hired prior to 10/1/92 to receive the MSA increase on the anniversary of when they started the Academy. Rather, the parties decided to incorporate the parties' past practices, so that the proper MSA dates for employees would be clearly defined. The settlement agreement delineates four separate groups of employees based on their hire dates, and reconciles the parties' concerns over the proper MSA dates of employees hired over a period of over twenty years.

Moreover, as stated in the June 10, 1997, warning letter, the exclusive representative is charged with representing the bargaining unit as a whole. CCPOA, as the exclusive representative has considerable discretion in the representation

of employees within the grievance procedure. (Los Rios College Federation of Teachers (1996) PERB Decision No. 1133.) CCPOA is not expected or required to satisfy all members of the unit it represents. Nor is CCPOA barred from making agreements which may have unfavorable effects on some members. (See California School Employees Association and its Chapter 107 (1995) PERB Decision No. 1097.) In the instant charge, 10 individual employees filed grievances against the State. CCPOA's settlement agreement with the State resulted in the compensation of six of those employees. It has not been established that this settlement was the result of arbitrary, discriminatory or bad faith behavior by CCPOA and as such violative of the Act. Thus, the charge does not demonstrate a prima facie violation and must be dismissed.

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 Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number. 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 Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Attention: Appeals Assistant
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 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 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 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 _____
Tammy L. Samsel
Regional Director

Attachment

cc: Christine Albertine

PUBLIC EMPLOYMENT RELATIONS BOARD

Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213) 736-3127

June 10, 1997

William F. Horspool

Re: William F. Horspool v. California Correctional Peace Officers Association
Unfair Practice Charge No. LA-CO-71-S
WARNING LETTER

Dear Mr. Horspool:

The above-referenced unfair practice charge, alleges the California Correctional Peace Officers Association (CCPOA) violated its duty of fair representation by settling your grievance. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act (Dills Act or Act). My investigation revealed the following information.

Your charge alleges that CCPOA violated its duty of fair representation when it settled a number of grievances which concerned the proper anniversary date for the granting of Merit Salary Adjustments (MSA). The grievances alleged the anniversary date should be one year from the date the officer started at the Academy, rather than one year from the date the officer began working at an Institution. Each officer typically spent six weeks being trained at the Academy prior to being assigned to an Institution.

You are employed as a Correctional Officer by the Department of Corrections (Department). You began training at the Academy on January 23, 1989, and reported to your institution on March 6, 1989.

The Department and CCPOA have been parties to a number of successive Memoranda of Understanding (MOUs), the last of which expired on June 30, 1995. Article VII of the parties 1982-1983 MOU stated the following with regard to Merit Salary Adjustments (MSA):

> The State employer will recommend including sufficient funds in the 1982-1983 Budget to enable employees, after completion of their first year in a position, to receive annual merit salary adjustments in accordance with Government Code Section 19832 and applicable

> Department of Personnel Administration's rules.

Article VII, Section 40 of the parties 1983-1985 and 1987-1988 MOUs contained the exact language above with regard to the granting of MSAs. None of these Agreements describe the anniversary date for MSA calculations. It appears however that from 1982 through May 31, 1989, MSAs were granted on the anniversary of the date an employee began working at the institution.

Article 16.01 and 16.03 of the parties July 1, 1988 thorough June 30, 1991, Agreement established a new Classification Range "C" for Correctional Officers. Prior to this Agreement, Correctional Officers could not advance beyond Range "B". However, the Agreement remained silent with regard to description of the anniversary date for MSAs.

During 1989, disputes arose regarding the proper anniversary date for MSAs. That is, whether the anniversary date was one year from the date the officer started at the Academy or one year from the date he/she started at the Institution. The parties 1992-1995 Agreement sought to resolve this dispute by noting in Section 16.03(d):

> For employees hired prior to 10/1/92, MSA dates for Correctional Officers, Group Supervisors, and Youth Counselors are calculated from initial appointment dates at the Academy and not when appointed to Range B at the institution.

This new contract language did not, alleviate all of the disputes regarding MSA calculation. More specifically, between 1989 and 1996, at least ten (10) grievances were filed by CCPOA regarding MSA anniversary dates. These grievances were filed, at least in part, concerning officers such as yourself who were promoted to Range C before the 1992-1995 agreement was settled. Due to the number of grievances filed, CCPOA attempted a large-scale settlement of the issue.

On October 18, 1995, you filed a grievance asserting the Department failed to calculate your MSA properly. Specifically, you allege the Department used your hire date at the institution rather than your start date at the Academy, in calculating your MSA anniversary date. You cited Article 16.03(d) above in support of your allegation.

On July 16, 1996, CCPOA and the Department entered into a settlement agreement regarding the ten MSA grievances. The settlement provided in relevant part:

> The parties agree that the intent of 16.03(d) and Appendix 13 is to describe how employees get moved from Range "A" to Range "C". Since Range "C" was created on June 1, 1989, the language of 16.03(d) and Appendix 13 only applies to employees hired between June 1, 1989 and October 1, 1992.

Due to this settlement, six of the ten grievances resulted in monies owed to bargaining unit members. You were one of the four employees who did not receive an award, as you were hired prior to June 1, 1989. CCPOA withdrew with prejudice your grievance as part of the settlement agreement. CCPOA informed you of this settlement by letter dated August 2, 1996. You are dissatisfied with CCPOA's responses to date.

Based on the facts stated above, the charge as presently written fails to state a prima facie violation of the duty of fair representation, for the reasons stated below.

You assert CCPOA violated its duty of fair representation in settling the MSA grievances. Specifically, you allege CCPOA failed to resolve the grievances in a timely manner and failed to give you a reasonable explanation as to their reasoning in settling your grievance.

The duty of fair representation imposed on the 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.) In order to state a prima facie violation of this section of EERA, Charging Party must show that the Association's conduct was arbitrary, discriminatory or in bad faith. In United Teachers of Los Angeles (Collins), the Public Employment Relations Board stated:

> 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. [Citations.]
>
> A union may exercise its discretion to determine how far to pursue a grievance in the employee's behalf as long as it does not

> arbitrarily ignore a meritorious grievance or process a grievance in a perfunctory fashion. A union is also not required to process an employee's grievance if the chances for success are minimal.

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

> ". . . must 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. (Emphasis added.)" [Reed District Teachers Association, CTA/NEA (Reyes) (1983) PERB Decision No. 332, p. 9, citing Rocklin Teachers Professional Association (Romero) (1980) PERB Decision No. 124.]

You assert the settlement agreement is arbitrary and devoid of any rational basis. However, facts presented fail to support such a finding. Prior to the 1992-95 MOU, contractual language failed to specify the anniversary date upon which an MSA was to be calculated. Such an omission resulted in a dispute regarding the appropriate anniversary date for Correctional Officers, who are required to attend an Academy.

From 1982 through June 1, 1989, Correctional Officers could move up the classification ladder to Range B. Range B was achieved after one year at the institution. On June 1, 1989, the State implemented a new salary range, Range C. With the implementation of this new salary range, employees hired between June 1, 1989, and October 1, 1992 elevate to Range B upon completion of the Academy (six weeks after employment), and then elevate to Range C upon the one year anniversary of the date the employee began the Academy. Employees hired after October 1, 1992, move to Range C on the anniversary of the date they started the institution.

CCPOA's settlement agreement attempts to address the creation of Range C, and the parties' intent in entering into the 1992-1995 MOU. Nothing in the facts presented demonstrates the parties settlement was arbitrary, or devoid of rational basis. While an employee may disagree with the exclusive representative's characterization, such dissatisfaction does not result in a violation of the duty of fair representation. The dates agreed upon and the settlement language are not ambiguous given the history of the MSA language, and the Article's failure to specify the MSA anniversary date.

In analyzing whether an "honest judgment" has been made, PERB does not judge whether the union's assessment was "correct," but only whether that judgment had a rational basis. (Sacramento City Teachers Association (1984) PERB Decision No. 428.) Moreover, the union is charged with representing the bargaining unit as a whole. Thus, a grievance with arguable merit may be rejected or settled by the union if the grievant's victory would damage the terms and conditions for the bargaining unit as a whole. (Castro Valley Unified School District (1980) PERB Decision No. 149.) As the charge fails to present any other facts demonstrating CCPOA acted in an arbitrary manner in settling the grievances, the charge as presently written fails to state a prima facie case.

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 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 June 17, 1997, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3008.

Sincerely,

Tammy L. Samsel
Regional Director