STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CESSALY D. HUTCHINSON AND JEAN LAOSANTOS, Charging Parties, v. CALIFORNIA STATE EMPLOYEES ASSOCIATION, Respondent.	)	Case No. SF-CO-35-S PERB Decision No. 1304-S December 11, 1998

Appearance; Cessaly D. Hutchinson, on behalf of Cessaly D. Hutchinson and Jean Laosantos.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Cessaly D. Hutchinson and Jean Laosantos (Charging Parties) of a Board agent's dismissal (attached) of their unfair practice charge. In the charge, Charging Parties alleged that the California State Employees Association (Association) engaged in conduct in violation of section 3519.5(a) and (b) 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 3519.5 states:

> It shall be unlawful for an employee organization to:
>
> (a) Cause or attempt to cause the state to violate Section 3519.

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the Board agent's warning and dismissal letters and Charging Parties' appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, consistent with the following discussion.

DISCUSSION

The specific actions by the Association which Charging Parties allege are in violation of the Dills Act include: spending Association resources on an organizing campaign which failed to result in a collective bargaining agreement; allowing the Association's Civil Service Division officers to use internal processes fraudulently; allowing supporters of the Caucus for a Democratic Union (CDU) to campaign to alter the Association's internal structure so as to provide CDU with greater control; abusing and coercing members who do not support CDU; and engaging in other related acts.

Under the Dills Act, state employees have the right to participate in the activities of employee organizations for the purpose of representation on matters of employer-employee relations (Dills Act sec. 3515). However, the Board has not interpreted the Dills Act as protecting all participation in

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(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.

employee organization activities, or as providing PERB with unlimited authority to review the internal affairs of employee organizations. In Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106 (Kimmett), the Board examined the identical right provided under the Educational Employment Relations Act (EERA)[2] to determine if employees have any protected right "to have an employee organization structured or operated in any particular way." The Board stated:

> The EERA gives employees the right to 'join and participate in the activities of employee organizations' (sec. 3543) and employee organizations are prevented from interfering with employees because of the exercise of their rights (sec. 3543.6(b)).[3] Read broadly, these sections could be construed as prohibiting any employee organization conduct which would prevent or limit employee's participation in any of its activities. The internal organization structure could be scrutinized as could the conduct of elections for union officers to ensure conformance with an idealized participatory standard. However laudable such a result might be, the Board finds such intervention in union affairs to be beyond the legislative intent in enacting the EERA. There is nothing in the EERA comparable to the Labor-Management Reporting and Disclosure Act of 1959, [Fn. omitted] which regulates certain internal conduct of unions operating in the private sector. The EERA does not describe the internal workings or structure of employee organizations nor does it define the internal rights of organization members. We cannot believe that by the use of the phrase 'participate in the activities of employee organizations . . . for the purpose of representation on all matters of employer employee relations' in

[2]EERA is codified at Government Code section 3540 et seq.

[3]Dills Act section 3519.5(b) is identical to EERA section 3543.6(b).

> section 3543, the Legislature intended this Board to create a regulatory set of standards governing the solely internal relationship between a union and its members. (Id. at pp. 15-16.)

Pursuant to Kimmett, the statutes administered by PERB provide employees with no protected rights in the organization or operation of their exclusive representative unless the internal activities of the employee organization have a substantial impact on the employees' relationship with their employer. (Kimmett at p. 17.)

In recent cases, the Board has reiterated that it will not intervene in matters involving the solely internal activities or relationships of an employee organization which do not impact employer-employee relations. In California State Employees Association (Hackett, et al.) (1993) PERB Decision No. 979-S, the Board dismissed a charge in which there was no showing that the disputed internal activities of the employee organization impacted the employment relationship. In rejecting the request for reconsideration of that decision, the Board specifically referred to a portion of the charge challenging internal procedures of the employee organization as "an area into which the Board will not intervene except where the internal activities of the employee organization have a substantial impact upon employees' relationships with their employer." (California State Employees Association (Hackett, et al.) (1993) PERB Decision No. 979a-S at p. 3, fn. 3.) In California State Employees Association (Hackett) (1993) PERB Decision No. 1012-S, the Board

dismissed charges involving the union's internal contract ratification process because it had not been demonstrated that the internal activities substantially impacted the relationship of employees to the, employer. Similarly, in California State Employees Association (Garcia) (1993) PERB Decision No. 1014-S, the Board dismissed charges relating to alleged union election irregularities and union discipline procedures because there was no showing of a substantial impact on the charging party's relationship with her employer.

As discussed below, the Board has intervened in the internal affairs of a union when alleged retaliation against members for their union participation went beyond solely internal union activities or relations and impacted the employment relationship. In other cases, the Board has reviewed internal union affairs to consider the reasonableness of a union's membership restrictions or dismissals.[4]

In California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S, the Board found a violation in the union's retaliatory filing with the employer of a citizen's complaint against an employee, and in its subsequent refusal to represent the employee in the resulting investigation conducted by the

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[4]Dills Act section 3515.5 and EERA section 3543.1(a) contain the following identical language concerning employee organization rights:

> Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

employer. The union's conduct directly impacted the employee's relationship with his employer and was beyond the solely internal relationship of the employee and union. In California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S, the Board found a violation in the union's retaliatory refusal to provide representation to a member in his appeal to the State Personnel Board of the employer's adverse action against him. Again, actions beyond the solely internal relationship of the employee and the union were involved. In California School Employees Association and its Shasta College Chapter #381 (Parisot) (1983) PERB Decision No. 280 and California State Employees Association (Hackett, et al.) (1995) PERB Decision No. 1126-s, the Board examined the propriety of the exclusive representative's action restricting the membership of individual employees.

These cases confirm that the Dills Act does not protect the solely internal union participation and activities of employees which do not impact employer-employee relations. However, the Board retains the authority to review internal union activities in order to examine allegations of retaliation against members for their union participation when the alleged misconduct impacts the employment relationship or employer-employee relations; or to assess the reasonableness of a union's membership restrictions.

As noted by the Board agent, Charging Parties' allegations involve the solely internal operations of the Association and the internal relationships between the Association and its members.

The allegations of abuse and coercion of members do not involve conduct which impacts the employment relationship, and there are no allegations relating to restrictions on employees' membership. This solely internal union activity is not protected by the Dills Act, and not subject to intervention or regulation by PERB.

ORDER

The unfair practice charge in Case No. SF-CO-35-S is DISMISSED WITHOUT LEAVE TO AMEND.

Member Dyer joined in this Decision.

Member Johnson's concurrence begins on page 8.

JOHNSON, Member, concurring: I concur in the dismissal of this charge because it contains no allegations of conduct by the California State Employees Association (Association) which fall under the Public Employment Relations Board's (PERB or Board) jurisdiction.

Cessaly D. Hutchinson and Jean Laosantos (Charging Parties) allege that the Association engaged in various acts which violate the Ralph C. Dills Act (Dills Act) section 3519.5(b). However, those acts involve purely internal union affairs. The Board has traditionally refrained from using Dills Act sections 3515 or 3519.5(b) as a vehicle for reviewing the internal affairs of unions. (See California State Employees Association (Hackett) (1995) PERB Decision No. 1126-S (Hackett, et al.), p. 19, proposed dec*, citing Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106 (Kimmett).)[1]

In the case at bar, the Board agent correctly determined that Charging Parties' allegations involve conduct by the Association which fall outside PERB's jurisdiction. Under Kimmett, this charge should be dismissed.

I am writing separately because the majority opinion contains dicta which suggests that Charging Parties' activities are not protected by the Dills Act. I am concerned that this

[1]However, the Board has been willing to review internal union activities for two other purposes: (1) to determine the "reasonableness" of disciplinary action under Dills Act section 3515.5; and (2) to determine whether a union's action against an employee constituted retaliation for engaging in protected conduct. (Hackett, et al., p. 19, proposed dec; citations.)

dicta casts doubt on the viability of an important rule expressly adopted by the Board in Hackett, et al.[2] I continue to support that standard.

[2]In that case, the Board affirmed the standard established earlier in California School Employees Association and its Shasta College Chapter #381 (Parisot) (1983) PERB Decision No. 280 (Parisot). (Hackett, et al. at p. 7.) Under Parisot, dissidents' conduct becomes unprotected when they engage in conduct that threatens the very existence of the employee organization. (See Hackett, et al., pp. 24-25, proposed dec.)

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(41 5) 439-6940

April 22, 1998

Cessaly D. Hutchinson, President
District Labor Council 750, Civil Service Division
595 Market Street, Suite 1700
San Francisco, California 94105

Re: **DISMISSAL OF UNFAIR PRACTICE CHARGE/REFUSAL TO ISSUE COMPLAINT**
Cessaly Hutchinson and Jean Laosantos v. California State Employees Association
Unfair Practice Charge No. SF-CO-35-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on November 25, 1997 and amended on January 15, 1998 and April 8, 1998, alleges that the California State Employees Association (Association) spent monies of the Association on an organizing campaign that failed to result in a successor Memorandum of Understanding (MOU), realigned the Association's District Labor Councils (DLCs) without complying with internal governing policies, allowed Civil Service Division officers to fraudulently use the delegate process, allowed sympathizers of a faction known as the Caucus for a Democratic Union (CDU) to continue a campaign to alter the organizational structure of the Association so as to gain greater control of the organization, and engaged in other related acts. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated March 30, 1998, that certain allegations contained in the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies in my letter or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended these allegations to state a prima facie case or withdrew them prior to April 7, 1998, the allegations would be dismissed.

By your letter dated April 7> 1998, Charging Parties withdrew the allegation that the Association violated the Dills Act by realigning the DLCs. That allegation was the only allegation contained in the charge that was not discussed in my letter.

On April 8, 1998, Charging Parties filed a second amended charge.

This amended charge raises new allegations based on the filing of a petition by members of the Civil Service Division who support CDU. Charging Parties allege that these individuals are attempting a "hostile takeover" of the Association by petitioning for an investigation of the Board of Directors who voted on March 29, 1998 to rescind the Civil Service Division's action realigning the DLCs (i.e., the subject referred to in the preceding paragraph). The amended charge asserts that CDU is not a reform group but a competing organization to the Association. The amended charge also alleges that CDU has taken office by abuse and coercion of its membership. This allegation repeats allegations identified in the March 30, 1998 letter as failing to state a prima facie violation because they are conclusory and likely time-barred. (Gov. Code, sec. 3514.5(a).)

The foregoing allegations fail to state a prima facie violation. For the reasons explained in the attached letter dated March 30, 1998, Charging Parties are raising conclusory allegations which fail to allege specific facts stating a prima facie violation. Moreover, the new allegations are premised on the claim that the entity or entities that were alleged to have committed unfair practices against Charging Parties in the original charge are in fact not representatives of the Association, but are an illegal competing employee organization. Since the named respondent in this case is the Association, the new allegations are not lodged against the named respondent in this case but against a competing organization or against individuals acting outside the scope of their authority as agents of the Association. The new allegations are thus subject to dismissal because they do not on their face allege unlawful conduct by the Respondent in this matter.

Since there are no allegations remaining from the original charge and first amended charge that state a prima facie violation and the new allegations also fail to state a prima facie violation, I am dismissing the charge based on the facts and reasons stated above as well as those contained in my March 30, 1998 letter.

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 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 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 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.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

By
DONN GINOZA
Regional Attorney

Attachment

cc: Mark DeBoer

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

March 30, 1998

Cessaly D. Hutchinson, President
District Labor Council 750, Civil Service Division
595 Market Street, Suite 1700
San Francisco, California 94105

Re: **PARTIAL WARNING LETTER**
Cessaly Hutchinson and Jean Laosantos v. California State Employees Association
Unfair Practice Charge No. SF-CO-35-S

Dear Ms. Hutchinson:

The above-referenced unfair practice charge, filed on November 25, 1997 and amended on January 15, 1998, alleges that the California State Employees Association (Association) spent monies of the Association on an organizing campaign that failed to result in a successor Memorandum of Understanding (MOU), realigned the Association's District Labor Councils (DLCs) without complying with internal governing policies, allowed Civil Service Division officers to fraudulently use the delegate process, allowed sympathizers of a faction known as the Caucus for a Democratic Union (CDU) to continue a campaign to alter the organizational structure of the Association so as to gain greater control of the organization, and engaged in other related acts. This conduct is alleged to violate Government Code section 3519.5 of the Ralph C. Dills Act (Dills Act).

Investigation of the charge revealed the following. The Association is a large employee organization that exclusively represents numerous bargaining units within the State. Organizationally, the Association is divided into four divisions. The Civil Service Division, comprising the rank and file employees in state bargaining units, consists of 42,000 members. The Retirees Division has 30,000 members. The Supervisors Division has 7,000 members. And the State University Division has 3,000 members. Thus, a significant number of members of the Association who are not presently employed in a state bargaining unit nevertheless have voting power within the organization.

The Civil Service Division is divided into 56 DLCs. A DLC is similar to a local union chapter. It elects a president and other officers. Each DLC president serves on the Association's Civil Service Division Council (Council). The Council governs the Division, although the Association Board of Directors has ultimate authority over the Division. There are 68 Association members on the Council and each has a vote. A Board of Directors (approximately 26 members) governs all of these divisions.

The CDU began in the early 1990s as a reform movement and has grown from a group of dissidents to the leadership group within the Civil Service Division. Its campaign has focused primarily on a more aggressive stance in bargaining and a desire to change the organizational structure so that Association policy is not dictated by the Board of Directors, where the Civil Service Division voice is diluted.

Charging Parties allege that the current bargaining strategy has left the units without a contract and agency fees, has cost the Association over $600,000, and brought it near to bankruptcy.

They allege that the current Civic Service Division officers took office "by a systematic pattern of abuse, coercion and misrepresentation to current and prospective members in obtaining their participation in the delegate process."

Charging Parties allege that the Association, through its Civil Service Division, has realigned the DLC voting members geographically so as to deprive Charging Party Laosantos of voting support that will likely result in her losing her presidency. Charging Party Hutchinson is a president of her DLC, but realignment has not affected her.

They allege that CDU supporters operate an illegal voting trust within the Association, that these officers have "systematically emotionally abused any dissidents within the organization," and they are moving toward incorporation of the Civil Service Division as an entity independent from the rest of the Association.

A CDU supporter, Executive Vice-President Paul Gonzales-Coke, is alleged to have physically assaulted a staff member during a June 27, 1997 rally at the State Capitol, while manning a CDU table.

Charging Parties further allege that CDU officers have "systematically attacked the President and the Association" by, for example writing slanderous articles in a CDU publication called the "Union Spark," and therefore "sullied the reputation" of these entities.

Charging Parties allege various financial improprieties as a result of the Civil Service Division voting money to fund campaigns backed by CDU.

Charging Parties allege that the CDU supporters have violated the Association membership code of ethics by failing to respect non-CDU supporters, especially retirees, and by engaging in

prohibited activities such as using Association resources for "private gain or advantage."

Finally, Charging Parties allege that CDU supporters are organizing a strike based on a survey that violates procedural requirements of the Civil Service Division governing policies.

Based on the facts stated above, all of the allegations described above, with the exception of the realignment of Laosantos's DLC, fail to state a prima facie violation of the Dills Act for the reasons that follow.

The Public Employment Relations Board (PERB) has traditionally refrained from reviewing the internal affairs of unions; that is, addressing alleged violations of one member's "rights" vis a vis another member or group of members. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106.) In that case, PERB warned that the statutory guarantee to "join and participate in the activities of employee organizations" under section 3543 of the Educational Employment Relations Act (analogue to Dills Act section 3515) should not be construed to prohibit "any employee organization conduct which would prevent or limit employee's participation in any of its activities."

Rejecting the notion that the Legislature had intended to grant PERB jurisdiction to regulate the internal relationship between a union and its members, PERB held that the right to participate in union activities should be no greater than the guarantee of protection granted by the duty of fair representation, which the Legislature had expressly embraced. (Ibid.)

In California State Employees Association (O'Connell) (1989) PERB Decision No. 753-H, PERB departed from this position to the extent that it found Legislative intent under section 3571.1(b) of the Higher Education Employer-Employee Relations Act (analogue to Dills Act section 3519.5(b)) to confer statutory authority to protect union members from retaliation for protected activities.

In California State Employees Association (Hackett) (1995) PERB Decision No. 1126-S, PERB extended the O'Connell rationale to "find that dissident union activity is protected under the Dills Act.

With the exception of the allegation that the Association realigned the DLCs so as to deprive Laosantos of a significant block of voting support in retaliation for her opposition to CDU

policies of the Association,[1] the remaining allegations fall under the category of internal union affairs outside the jurisdiction of PERB.

In addition, many of the allegations describe, in only the most conclusory fashion, that CDU supporters have attacked non-CDU supporters, and abused them verbally and/or physically. These allegations do not specify when the alleged conduct occurred and therefore fail to establish that the allegations are timely filed. (Gov. Code, sec. 3514.5(a).)

For these reasons the allegations in the charge, with the exception of the allegation that the Association realigned the DLCs so as to deprive Laosantos of a significant block of voting support in retaliation for her opposition to CDU policies of the Association, as presently written, do 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 April 7, 1998. I shall dismiss the above-described allegations from your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

DONN GINOZA
Regional Attorney

[1]Charging Party Hutchinson, a president of a DLC, admitted to the undersigned that the realignment had no adverse affect on her ability to retain her office. Therefore, to the extent the charge alleges that the realignment was a retaliatory act as to her, that allegation fails to state a prima facie violation. (Palo Verde Unified School District (1988) PERB Decision No. 689)