

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



SCOTT LIPSCOMB EDELEN,

Charging Party,

v.

CALIFORNIA STATEWIDE LAW
ENFORCEMENT ASSOCIATION,

Respondent.

Case No. SA-CO-434-S

PERB Decision No. 2088-S

December 31, 2009

CHRIS LEWIS,

Charging Party,

v.

CALIFORNIA STATEWIDE LAW
ENFORCEMENT ASSOCIATION,

Respondent.

Case No. SA-CO-437-S

Appearances: Chris Lewis and Scott Lipscomb Edelen, on their own behalf; Kasey Christopher Clark, Chief Counsel, for California Statewide Law Enforcement Association.

Before McKeag, Neuwald and Wesley, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California Statewide Law Enforcement Association (CSLEA) to a proposed decision (attached) of an administrative law judge (ALJ). The complaint alleged that CSLEA refused to honor the requests of Chris Lewis and Scott Lipscomb Edelen (Charging Parties) to withdraw from membership with CSLEA after the expiration of a collective bargaining agreement containing a “maintenance of membership”

clause. The complaint alleges that this conduct interfered with employee rights guaranteed by the Ralph C. Dills Act (Dills Act) in violation of sections 3513(i), 3515 and 3519.5(b).¹ The ALJ found that CSLEA violated the Dills Act by refusing to honor Charging Parties' requests to withdraw from membership.

We have reviewed the entire record in this case, and find the ALJ's proposed decision well-reasoned, adequately supported by the record and in accord with applicable law. Accordingly, the Board hereby adopts the ALJ's proposed decision as the decision of the Board itself, as supplemented by the discussion below.

CSLEA'S EXCEPTIONS

CSLEA makes four main arguments on appeal:

(1) The ALJ incorrectly failed to take administrative notice of a portion of the legislative history, attached to CSLEA's closing brief, related to the enactment of Dills Act section 3517.8.

(2) At the time of the attempted withdrawals from membership, there was a collective bargaining agreement in place, which, pursuant to Section 3517.8, required the parties to honor the window period for withdrawal of membership as though the agreement had not yet expired. CSLEA contends that the ALJ erred in relying on *California State Employees' Association (Fry)* (1986) PERB Decision No. 604-S (*Fry*) and *California Union of Safety Employees (Trevisanut, et al.)* (1993) PERB Decision No. 1029-S (*Trevisanut*) to permit withdrawals from membership upon expiration of the existing memorandum of understanding (MOU).

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.

(3) The proposed decision incorrectly holds that there is no requirement to establish unlawful intent in order to state a claim of unlawful interference with employee rights under the Dills Act.

(4) The proposed decision incorrectly determined that the controversy between the parties was not rendered moot by virtue of CSLEA's dismissal of Charging Parties from membership in CSLEA and that the controversy was ripe for adjudication.

DISCUSSION

Consideration of Legislative History Materials

This matter was submitted to the ALJ based upon a statement of stipulated facts and exhibits agreed to by the parties at the hearing. No further testimony was taken. Following the hearing, both parties submitted closing briefs. In its closing brief, CSLEA discussed and attached an analysis of SB 683 by the Assembly, relating to the 2000 legislation that enacted Dills Act section 3517.8. In his proposed decision, the ALJ did not consider this document because it was not submitted as a joint amendment to the stipulated facts. CSLEA asserts that the document should have been considered because it was not an exhibit, but rather a portion of the legislative history subject to administrative notice.

PERB has a longstanding practice of considering legislative history to aid it in interpreting the statutes it administers. (See, e.g., *State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2017-S; *City & County of San Francisco* (2009) PERB Decision No. 2041-M.) A legislative committee analysis is not factual, evidentiary material, but rather is relevant, publicly available information that was considered by the Legislature in enacting a statute. PERB has the authority to consider such materials

sua sponte. Accordingly, we grant CSLEA's exception and conclude that we may consider the legislative history of SB 683.

Impact of the Dills Act Section 3517.8

CSLEA asserts that Dills Act section 3517.8² overturned the Board's decision in *Travisanut* by requiring the parties to treat the expired contract as though it were in full force and effect. Thus, CSLEA argues, Charging Parties are bound by the window period specified in the contract, which permitted withdrawals from membership only during the 30 days prior to June 30, 2008. In *Travisanut*, the Board held that a union member could validly withdraw from membership following the expiration of a MOU containing a maintenance of membership clause because no contract was in force. Previously, in *Fry*, the Board had held that, where the parties agree to extend the terms of an expired contract on a day-to-day basis, the right to resign from union membership was also extended, such that the members were free to resign any time after expiration of the contract and prior to agreement on a successor contract.

Having reviewed the parties' arguments and the relevant law, we disagree with CSLEA's interpretation of the effect of Dills Act section 3517.8. Section 3517.8 requires the

² The Dills Act section 3517.8(a) provides:

If a memorandum of understanding has expired, and the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no strike provisions, any agreements regarding matters covered in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), and any provisions covering fair share fee deduction consistent with Section 3515.7.

parties to continue to abide by the terms of the expired contract until a successor agreement or an impasse in negotiations is reached. Section 3517.8 must be read in conjunction with Section 3513(i), which prohibits enforcement of a maintenance of membership provision during the 30 days prior to the expiration of an MOU. Both Sections 3517.8 and 3513(i), however, are silent on the question of how the maintenance of membership provision is to be applied following expiration of the MOU, but before the parties reach a successor agreement or an impasse in negotiations.³

In essence, CSLEA argues that, if a member did not exercise the right to withdraw from membership during the term of the contract, the member is precluded from doing so indefinitely until a successor agreement or impasse is reached.⁴ We do not read Dills Act section 3517.8 to so completely extinguish the right of union members to withdraw from membership following the expiration of a contract. Instead, we view this case as analogous to the situation in *Fry*, in which the parties agreed to extend the contract on a day-to-day basis until a new agreement was reached. By requiring the parties to continue to abide by the terms of the expired agreement until a new agreement or impasse is reached, Section 3517.8 effectively imposes the existing contractual terms on the parties on a day-to-day basis. As in *Fry*, we conclude that a request to withdraw received before the parties enter into a successor agreement, but while the existing terms are in effect on a day-to-day basis falls within the

³ Likewise, the legislative history of Section 3517.8 does not indicate that the legislation was directed at maintenance of membership provisions following contract expiration.

⁴ In its brief before the ALJ, CSLEA conceded that it could not prevent an employee from discontinuing membership for an “unreasonable” length of time, and suggested that if a collective bargaining agreement remained expired for a three-year period without impasse or a successor agreement, a member may then be permitted to withdraw from membership.

literal meaning of Section 3513(i) and is therefore valid. Accordingly, by refusing to honor Charging Parties' requests to withdraw after expiration of the MOU, CSLEA violated their rights under Dills Act sections 3513(i), 3515 and 3519.5(b).

Unlawful Interference

PERB has long held that the test for interference with the rights of employees under the Dills Act does not require that unlawful intent or motive be established, only that at least slight harm to employee rights results from the conduct. (See, e.g., *Los Angeles Unified School District (Weightman)* (2009) PERB Decision No. 2073 (*Weightman*).) In *State of California (Department of Developmental Services)* (1983) PERB Decision No. 344-S, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 and *Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106, the Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA.

Notwithstanding this authority, CSLEA asserts that the test for interference with employee rights under the Dills Act requires a showing of unlawful intent, citing *California State Employees' Association (Miller)* (1990) PERB Decision No. 819-S (*Miller*). In *Miller*, an employee sought to withdraw her union membership prior to the window period specified in the collective bargaining agreement containing a maintenance of membership clause. The employee filed a charge with PERB, alleging that the union's refusal to permit her to withdraw her membership violated the duty of fair representation. The Board dismissed the charge, finding that no facts had been alleged to indicate that the union's actions had a substantial impact on her relationship with her employer, the maintenance of membership provision had

been applied in a discriminatory manner, or any indication that the union had otherwise interfered with the exercise of rights under the Dills Act. Although the Board phrased the test as requiring a showing of unlawful intent to either interfere with or otherwise discriminate against an employee because of the exercise of rights guaranteed by the statute, citing *Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*), the Board in *Novato* and subsequent cases has made it clear that, while motive is an element of discrimination or retaliation, motive or intent is not an issue in interference cases, and that the charging party “need only make a prima facie showing that the respondent's conduct tends to or does result in harm to employee rights.” (*Novato*; *Weightman*.) Accordingly, we conclude that the ALJ correctly stated the applicable standard in this case.

Ripeness

On appeal, CSLEA argues that the ALJ failed to consider its affirmative defense asserting that this matter was not ripe for review because Charging Parties did not request to withdraw from membership until approximately four months after expiration of the contract. CSLEA asserts: “In order for the issue to be justiciable, CSLEA must be out of a contract for an extended period of time and then deny a request for withdrawal.” As indicated previously, CSLEA conceded that it could not prevent an employee from discontinuing membership for an unreasonable length of time, and suggested that, after a lapse of three years without reaching impasse or a successor agreement, a member might then be permitted to withdraw from membership. Until such time, CSLEA asserts, the issue is not ripe for adjudication.

CSLEA has offered no authority for its assertion that withdrawal of membership should be permitted only after a three-year lapse without a contract. As we have determined, continued membership in CSLEA can only be required until 30 days prior to the expiration of

the contract, and CSLEA was not free to refuse to honor requests to withdraw made after the expiration but prior to the effective date of a successor agreement. Therefore, we find this matter was ripe for adjudication.⁵

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that California Statewide Law Enforcement Association (CSLEA) violated the Ralph C. Dills Act (Dills Act), Government Code section 3512 et seq., by refusing to honor valid requests by State employees to withdraw from membership in violation of Sections 3513(i), 3515 and 3519(b).

Pursuant to Dills Act section 3514.5(c), it is hereby ORDERED that CSLEA and its representatives shall:

A. CEASE AND DESIST FROM:

Refusing to honor valid requests to withdraw from CSLEA membership;

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT:

1. Honor valid requests to withdraw from CSLEA membership.

2. Make Scott Lipscomb Edelen and Chris Lewis whole for the failure to honor their requests to withdraw from CSLEA membership in November 2008.

3. Rescind the dismissals from membership of Scott Lipscomb Edelen and Chris Lewis, in January and February 2009, and expunge all records thereof.

⁵ We agree with the ALJ that this matter was not rendered moot by virtue of the fact that, after refusing to permit Charging Parties to withdraw from membership, CSLEA subsequently expelled them from membership.

4. Within 10 workdays of the service of a final decision in this matter, post at all work locations where notices to CSLEA employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSLEA, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

5. Written notification of the actions taken to comply with this Order shall be made to the Office of the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. CSLEA shall provide reports, in writing, as directed by the General Counsel or designee. All reports regarding compliance with this Order shall be served on Scott Lipscomb Edelen and Chris Lewis.

Members McKeag and Wesley joined in this Decision.

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**



After a hearing in Unfair Practice Case No. SA-CO-434-S, *Scott Lipscomb Edelen v. California Statewide Law Enforcement Association*; and Case No. SA-CO-437-S, *Chris Lewis v. California Statewide Law Enforcement Association*, in which all parties had the right to participate, it has been found that the California Statewide Law Enforcement Association (CSLEA) violated the Ralph C. Dills Act (Dills Act), Government Code section 3512 et seq.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

Refusing to honor valid requests to withdraw from CSLEA membership.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT:

1. Honor valid requests to withdraw from CSLEA membership.
2. Make Scott Lipscomb Edelen and Chris Lewis whole for the failure to honor their requests to withdraw from CSLEA membership in November 2008.
3. Rescind the dismissals from membership of Scott Lipscomb Edelen and Chris Lewis, in January and February 2009, and expunge all records thereof.

Dated: _____

California Statewide Law Enforcement
Association

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SCOTT LIPSCOMB EDELEN,

Charging Party,

v.

CALIFORNIA STATEWIDE LAW
ENFORCEMENT ASSOCIATION,

Respondent.

CHRIS LEWIS,

Charging Party,

v.

CALIFORNIA STATEWIDE LAW
ENFORCEMENT ASSOCIATION,

Respondent.

PROPOSED DECISION
(June 25, 2009)

UNFAIR PRACTICE
CASE NO. SA-CO-434-S

UNFAIR PRACTICE
CASE NO. SA-CO-437-S

Appearances: Scott Lipscomb Edelen and Chris Lewis on their own behalf; Kasey Christopher Clark, Chief Counsel, and Lawrence J. Friedman, Senior Legal Counsel, for California Statewide Law Enforcement Association.

Before Bernard McMonigle, Chief Administrative Law Judge.

PROCEDURAL HISTORY

In these consolidated cases, two employees allege that their union improperly refused to permit them to withdraw from membership.

On November 25, 2008, Scott Lipscomb Edelen (Edelen) filed an unfair practice charge against the California Statewide Law Enforcement Association (CSLEA or Association). On December 8, 2008, the Office of the General Counsel for the Public Employment Relations Board (PERB or Board) issued a complaint alleging that CSLEA had violated the Ralph C.

Dills Act (Dills Act or Act)¹ when it refused to honor Edelen's November 10, 2008, request to withdraw from membership and become a fair share payer. On December 24, 2008, CSLEA answered the complaint, denying any violation of the Dills Act and asserting affirmative defenses.

On January 8, 2009, Chris Lewis (Lewis) also filed an unfair practice charge against CSLEA. A similar PERB complaint issued on January 20, 2009, regarding the November 13, 2008, denial of his request to withdraw from membership. On January 22, 2009, CSLEA filed an answer to the Lewis complaint, again denying any violation of the Act and stating affirmative defenses.

On January 27, 2009, a Board agent conducted an informal settlement conference that included both matters. However, no agreement was reached.

The two cases were consolidated for a formal hearing held on April 21, 2009. At the hearing the parties agreed to a stipulation of facts. With the receipt of briefs on May 21, 2009, the matter was submitted for proposed decision.

FINDINGS OF FACT

The parties to this proceeding stipulated that the following facts are true and correct:²

1. On January 1, 2002, Charging Party Lewis voluntarily chose to become a member of California Statewide Law Enforcement Association (CSLEA).
2. On July 1, 2006, Charging Party Edelen voluntarily chose to become a member of CSLEA.

¹ The Dills Act is codified at Government Code section 3512 et seq.

² With their briefs in this matter, both parties submitted exhibits to supplement the factual stipulation. Because they were not joint amendments to the stipulated facts, they were not considered for this proposed decision.

3. Pursuant to Article 3.1A1 of the Agreement Between the State of California and CSLEA covering Bargaining Unit 7, Protective Services and Public Safety, effective July 1, 2005 through June 30, 2007, a thirty (30) day window period from June 1, 2007 to June 30, 2007, existed which permitted CSLEA members to withdraw from membership.

4. Neither Edelen nor Lewis chose to withdraw from CSLEA membership during the June 2007 window period.

5. Pursuant to Article 3.1A1 of the Agreement Between the State of California and CSLEA covering Bargaining Unit 7, Protective Services and Public Safety, effective July 1, 2005 through June 30, 2008, a thirty (30) day window period from June 1, 2008 to June 30, 2008, existed which permitted CSLEA members to withdraw from membership.

6. Neither Edelen nor Lewis chose to withdraw from CSLEA membership during the June 2008 window period.

7. The most recent Agreement Between the State of California and CSLEA covering Bargaining Unit 7, Protective Services and Public Safety expired by its terms on June 30, 2008.

8. In May 2008, the Department of Personnel Administration (DPA) and CSLEA initiated negotiations for a successor agreement. To date, DPA and CSLEA continue to engage in negotiations and neither party has declared impasse.

9. On November 7, 2008, Edelen wrote CSLEA and requested to discontinue membership. On November 10, 2008, CSLEA Director of Member Services wrote Edelen and denied his request as untimely as it was not within the thirty (30) day window period prior to the expiration of the last collective bargaining agreement.

10. On November 10, 2008, Lewis wrote CSLEA and requested to discontinue membership. On November 13, 2008, CSLEA Director of Member Services wrote Lewis and denied his request as untimely as it was not within the thirty (30) day window period prior to the expiration of the last collective bargaining agreement.

11. Effective January 1, 2009, Edelen was expelled from CSLEA membership.

12. Effective February 1, 2009, Lewis was expelled from CSLEA membership.

ISSUE

Did CSLEA violate the Dills Act when it refused to honor Edelen's and Lewis's requests to withdraw from membership?

CONCLUSIONS OF LAW

The Dills Act permits a union that has been recognized as exclusive representative for a bargaining unit to negotiate with the State of California (State) for union security provisions in the form of fair share fees or maintenance of membership. The most recent memorandum of agreement (MOU) between CSLEA and the state employer, which expired June 30, 2008, contained both. The maintenance of membership provision is at issue here.

Section 3513(i) of the Dills Act states:

“Maintenance of membership” means that all employees who voluntarily are, or who voluntarily become, members of a recognized employee organization shall remain members of that employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective date of the memorandum of understanding. A maintenance of membership provision shall not apply to any employee who within 30 days prior to the expiration of the memorandum of understanding withdraws from the employee organization by sending a signed withdrawal letter to the employee organization and a copy to the Controller's office.

Thus, for 30 days prior to the expiration date for an MOU between a union and the State, employees have a 30 day window period to withdraw from union membership.³

PERB has addressed the right of an employee to withdraw from membership when the MOU containing a maintenance of membership agreement has expired but no successor agreement is in place.

In *California State Employees' Association (Fry)* (1986) PERB Decision No. 604-S (*Fry*), the Board reviewed a situation wherein an employee sought to resign from membership while a union and the State extended the expired agreement on a day-to-day basis during negotiations. The Board found that a request for withdrawal made after the 30 day window period, but before negotiations for the successor MOU conclude, "falls literally within the last 30 days prior to the expiration date of the agreement." The Board also determined that the Dills Act prohibits parties from extending an MOU without extending the time for withdrawal from membership.

In *California Union of Safety Employees (Trevisanut, et al.)* (1993) PERB Decision No. 1029-S (*Trevisanut*), both the MOU and an agreed extension of the MOU expired prior to agreement on a successor MOU. The Board found that all withdrawals from membership after the MOU expired were valid. (*Ibid.*) Considering the post-extension withdrawals, the Board found that maintenance of membership provisions are creatures of a valid contract, stating "no contract was in force and thus no maintenance of membership agreement was in force." (*Ibid.*)

Here, Edelen and Lewis submitted their withdrawals from membership during a time when "no contract was in force." Accordingly, the application of *Trevisanut* results in a

³ Under the subject MOU, an employee that withdraws from membership becomes a fair share payer required to financially support the employee organization.

determination that CSLEA unlawfully interfered with employee rights to withdraw from union membership. (*Trevisanut, supra*, PERB Decision No. 1029-S.)

CSLEA contends that *Fry* and *Trevisanut* were nullified by the Legislature's later addition of section 3517.8(a) to the Dills Act.⁴ (*Fry, supra*, PERB Decision No. 604-S; *Trevisanut, supra*, PERB Decision No. 1029-S.) It states:

If a memorandum of understanding has expired, and the Governor and the recognized employee organization have not agreed to a new memorandum of understanding and have not reached an impasse in negotiations, subject to subdivision (b), the parties to the agreement shall continue to give effect to the provisions of the expired memorandum of understanding, including, but not limited to, all provisions that supersede existing law, any arbitration provisions, any no strike provisions, any agreements regarding matters covered in the Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), and any provisions covering fair share fee deduction consistent with Section 3515.7.

According to the Association, "DPA and CSLEA are now required to give effect to the provisions of the expired Agreement until impasse or a successor agreement is reached" and the requests to withdraw from membership at issue here were untimely.

However, CSLEA misinterprets section 3517.8(a). It does not create a successor MOU. It requires that the status quo regarding terms and conditions of employment be maintained until the parties reach agreement or impasse. (*State of California (Board of Prison Terms)* (2005) PERB Decision No. 1758-S.) In both *Fry* and *Trevisanut*, the Board determined that the status quo for a maintenance of membership provision, at MOU expiration, permits withdrawals from union membership. (*Fry, supra*, PERB Decision No. 604-S; *Trevisanut, supra*, PERB Decision No. 1029-S.)

⁴Section 3517.8(a) was enacted in 2000.

The Board's conclusions in *Fry* and *Trevisanut* continue to be supported by plain language of the Act. (*Fry, supra*, PERB Decision No. 604-S; *Trevisanut, supra*, PERB Decision No. 1029-S.) The limitations on a maintenance of membership agreement were left unchanged when the Legislature amended the Act in 2000. The Section 3513(i) remained intact; employees who voluntarily become members of a recognized union shall remain members for the duration of the MOU. Continued membership can only be required from the "effective date" to "30 days prior" to the expiration of the MOU. (§ 3513(i).)

Thus, a maintenance of membership provision continues only for the term of a valid contract. During the last 30 days, and continuing until a successor agreement becomes effective, membership can be withdrawn.

CSLEA also argues that Edelen and Lewis cannot prevail here because they have not established an unlawful intent to interfere with their rights under the Dills Act. However, the test for whether a respondent has interfered with the rights of employees under the Dills Act does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. In *State of California (Department of Developmental Services)* (1983) PERB Decision No. 344-S, citing *Carlsbad Unified School District* (1979) PERB Decision No. 89 and *Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106, the Board described the standard as follows:

[I]n order to establish a prima facie case of unlawful interference, the charging party must establish that the respondent's conduct tends to or does result in some harm to employee rights granted under EERA.

Under the above-described test, a violation may only be found if the Dills Act provides the claimed rights. Section 3515 of the Act guarantees the right of an employee to refuse to join or participate in the activities of an employee organization. Section 3513(i) guarantees

that a union member may withdraw from membership at the expiration of an MOU containing a maintenance of membership agreement. Here, CSLEA interfered with those rights when it refused to honor the requests for withdrawal.

CSLEA also contends that this matter is moot because subsequent to the denial of their requests for withdrawal, Edelen and Lewis were expelled from membership. However, the Board has determined that an unfair practice case is not moot “when any material question concerning an alleged violation of the charging party’s rights remains to be answered.” The fact that conditions have changed and the original relief sought need not be granted “does not lead to a contrary result.” (*California School Employees Association and its Shasta College Chapter #381 (Parisot)* (1983) PERB Decision No. 280a.)

The central issue in this matter is whether the refusal to honor the withdrawal requests was lawful at a time when Edelen and Lewis were CSLEA members. The essential nature of the PERB complaint remains intact. This case is not moot.

For the reasons stated, I find that by refusing to honor the November 2008 request to withdraw from membership, CSLEA interfered with employee rights in violation of Government Code sections 3513(i), 3515 and 3519.5(b).

REMEDY

Pursuant to section 3514.5(c), PERB is given the authority to:

[I]ssue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

It has been found that CSLEA unlawfully interfered with employee rights when it refused to honor valid requests to withdraw from membership, in violation of Dills Act

sections 3513(i), 3515 and 3519.5(b). It is appropriate that CSLEA be ordered to cease and desist from refusing to honor valid requests for withdrawal from membership.

It is also appropriate that the charging parties be reimbursed in the amount of the money wrongfully withdrawn from their paychecks, with interest at 7 percent.

Additionally, because the membership withdrawals of Edelen and Lewis should have been honored in November 2008, their later dismissals from membership, in January and February 2009, are to be rescinded and all records thereof expunged.

It is also appropriate that CSLEA be required to post a notice incorporating the terms of the order at all work locations where notices to employees are customarily posted. Posting of such notice, signed by an authorized agent of CSLEA, will provide employees with notice that CSLEA has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of the Dills Act that employees are informed of the resolution of this controversy and CSLEA's readiness to comply with the ordered remedy. (*State of California (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization)* (1998) PERB Decision No. 1279-S.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that CSLEA violated the Ralph C. Dills Act (Dills Act), Government Code section 3512, et seq. by refusing to honor valid requests by State employees to withdraw from membership in violation of Government Code sections 3513(i), 3515 and 3519.5(b).

Pursuant to section 3514.5(c) of the Government Code, it is hereby ORDERED that CSLEA and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to honor valid requests to withdraw from Association membership.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Honor valid requests to withdraw from Association membership.
2. Make Scott Lipscomb Edelen and Chris Lewis whole for the failure to honor their requests to withdraw from Association membership in November 2008.
3. Rescind the dismissals from membership of Scott Lipscomb Edelen and Chris Lewis, in January and February 2009, and expunge all records thereof.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile

transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Bernard McMonigle
Chief Administrative Law Judge