STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION),	)	
Charging Party,	)	Case No. S-CO-62-S
v.	)	PERB Decision No. 609-S
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, PSYCH TECH LOCAL 11555,	)	January 9, 1987
Respondent.	)	

Appearance: Edmund K. Brehl, Attorney for State of California (Department of Personnel Administration).

Before Hesse, Chairperson; Porter and Craib, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal of a dismissal by a PERB regional attorney of a charge filed by the State of California (Department of Personnel Administration) (State or DPA) alleging that the Communications Workers of America, AFL-CIO, Psych Tech Local 11555 (CWA) caused or attempted to cause the State to violate section 3519 of the State Employer-Employee Relations Act (SEERA).[1] Specifically, the

[1]SEERA is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Section 3519 states, in pertinent part:

charge alleges that CWA caused the State to interfere with employee rights under SEERA by failing to comply with a State Controller's Office (SCO) policy which required requests for cancellation of union membership dues deductions to be submitted by employee organizations on behalf of withdrawing employees. CWA allegedly failed to submit such requests to the SCO, resulting in the denial of employees' right to withdraw from membership during the statutory "window period" provided by section 3513(h).[2] For the reasons that follow, we find that the charge states a prima facie case. Accordingly, we reverse the dismissal.

> It shall be unlawful for the state to:
>
> (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.

Section 3519.5 states, in pertinent part:

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

[2]Section 3513(h) 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 such employee organization in good standing for a period as agreed to by the parties pursuant to a memorandum of understanding, commencing with the effective

FACTUAL SUMMARY

On June 18, 1982, the SCO issued payroll letter 82-11. This letter states, in pertinent part:

> Effective July 1, 1982, the State Controller's Office will accept membership dues cancellation requests only from the sponsoring employee organization or a bona fide association. This office will not process dues cancellation requests submitted by employees. Such requests will be returned to employees along with instructions to contact the sponsoring organization.
>
> For several years this office accepted written requests to cancel various miscellaneous deductions. However, this policy is being modified to more efficiently administer our deduction cancellation process. If an employee contacts you and wants to cancel a dues deduction, the employee should be referred to the sponsoring organization.

On April 8, 1985, the SCO issued a letter to all exclusive representatives regarding deduction cancellations. That letter states, in pertinent part:

> The normal process will be used for cancellation of dues during the thirty day window period. The process requires the exclusive representatives to submit cancellation requests on behalf of

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> 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 State Controller's office. (Emphasis added.)

> withdrawing employees. However, we will also continue to honor cancellation requests from an employee if he/she can document an unsuccessful attempt to cancel through the exclusive representative. Because of the short time frame for the window period (30 days), an employee will only have to provide one piece of correspondence to justify these administrative cancellations.

The parties negotiated a maintenance of membership provision into their then-current contract, which read, in pertinent part:

> a. The written authorization for CWA dues deduction shall remain in full force and effect during the life of this Agreement; provided, however, that an employee may withdraw from CWA by sending a signed letter to CWA within thirty (30) calendar days prior to the expiration of this Agreement.

In June 1985, approximately 400 CWA members presented the SCO with withdrawal requests. The SCO refused to accept the requests because they had not been presented by the union as required by the above-noted SCO policies. At approximately the same time, copies of the requests were sent by the employees to CWA's national headquarters in Washington, D.C. The SCO contacted the CWA Local 11555 office in October 1985 to inquire about the withdrawal requests. Allegedly, CWA assured the SCO that the requests had been received from the national office and would be honored, but never forwarded the requests to the SCO. Having neither received the withdrawal forms from CWA, nor documentation from the employees showing an unsuccessful

attempt to request withdrawal through the union, the SCO apparently did not stop the deductions.[3]

DISCUSSION

In dismissing the charge, the regional attorney relied on the fact that the charge does not allege that CWA caused the State to adopt the allegedly unlawful policy or to reject the 400 dues deduction cancellation requests. The regional attorney apparently reasoned that, since it is the SCO policy itself and the State's adherence to it which is the subject of the charge against the State, this is the behavior CWA must have allegedly caused or attempted to cause. On appeal, the State readily concedes that CWA did not cause the policy to come into being, and instead explains that its charge alleges that it was CWA's continuing failure to comply with the policy that caused any denial of employee rights. We agree that the State's characterization of the charge is the more accurate one.

The regional attorney correctly focused his analysis on the potential outcome of Case No. S-CE-273-S.[4] He failed,

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[3]Three of the affected employees filed charges against both CWA and the State. The charge against CWA was settled and withdrawn before hearing. The charge against the State (Case No. S-CE-273-S) was set for hearing, but the hearing was stayed by the Board on November 10, 1986 (PERB Order No. Ad-160-S) to allow for the possibility of consolidation with the instant case.

[4]The charge against the State in Case No. S-CE-273-S calls into question the legality of the SCO's policy requiring that dues deduction cancellation requests be routed through the appropriate employee organization. Critical to that inquiry will be the interaction of section 3513(h), quoted in footnote 2 above, and section 1153, which authorizes the Controller to establish, by rule or regulation, procedures for the administration of payroll deductions.

however, to consider the one possible outcome that could allow the State to prevail in the instant charge against CWA. In its appeal, the State acknowledges that CWA could not have committed a violation if the SCO policy is found to be inherently unlawful. As the State aptly puts it, CWA could not be found to have violated SEERA by failing to live up to an unlawful policy. Similarly, if the SCO policy is lawful and the State's application of the policy was lawful (i.e., the State did nothing to interfere with employee rights), then there would be no violation of SEERA that CWA could have caused or attempted to cause.[5] All CWA could have caused or attempted to cause under this scenario was the State's lawful adherence to its established policy.

A third possible outcome would be a finding that the SCO policy was lawful, but that the policy was unlawfully applied in this instance. In other words, it could be determined that the policy is lawful if applied as intended but, in this case, the application of the policy went awry, thereby interfering with employee rights. It is this factual and legal possibility that the regional attorney, in our view, failed to consider, and that makes the State's allegations sufficient to state a

[5]While theoretically CWA could have caused or attempted to cause the State to commit a violation which is not alleged in S-CE-273-S, the State makes no such allegation.

prima facie case. The State in fact alleges that, if employee rights were interfered with, it was due to CWA's failure to abide by the policy and forward the dues deduction cancellation requests.

We view the State's theory as stating that, if employee rights were interfered with, the SCO was CWA's unwitting accomplice in such interference. If this was in fact the case, then indeed it could be found that CWA caused the State to commit a violation.[6]

We note that, irrespective of any finding that CWA interfered with employee rights, the State must establish a causal connection between CWA's behavior and any behavior by the State that is found to be unlawful.[7] In other words, the State must show that it was the unwitting accomplice of CWA and that the State's own unlawful behavior was not instead the

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[6]We feel compelled to note our dissenting colleague's creative argument that nothing cognizable as an unfair practice under SEERA has been alleged. We are unconvinced that actions of the Controller, at least when acting as an agent of DPA, are shielded from the jurisdiction of PERB. In any event, this issue may be raised by the parties at hearing. Though jurisdictional in nature, we are loath to determine such an issue without the benefit of factual findings concerning the alleged actions of the SCO and without giving the parties the opportunity to submit briefs. Therefore, it is appropriate that this case go to hearing.

[7]This is not true, of course, if the State relies on an attempt theory. Section 3519.5 speaks in terms of causing or attempting to cause the State to commit a violation, thus, it is also theoretically possible for the State to prove that CWA consciously attempted (but failed) to make the State its unwitting accomplice.

product of a conscious disregard for the impact (upon employee rights) of CWA's failure to honor the withdrawal requests.[8]

Consolidation With Case No. S-CE-273-S

Having concluded that a complaint should issue in this case, and in light of the close relationship to Case No. S-CE-273-S, we shall order that the two cases be consolidated for hearing. We do so in the interest of economy and for the convenience of all concerned. A parallel order shall issue pertaining to Case No. S-CE-273-S.

ORDER

The Public Employment Relations Board hereby ORDERS that the dismissal in Case No. S-CE-62-S be reversed and that a complaint issue consistent with the above discussion. It is further ORDERED that this matter be consolidated for hearing with State of California (Department of Personnel Administration) Case No. S-CE-273-S.

Chairperson Hesse joined in this Decision. Member Porter's dissent begins on page 9.

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[8]Our dissenting colleague apparently reads our decision as holding that CWA would be absolved of all liability if the State knew of CWA's alleged misconduct but continued to adhere to its policies despite an obvious potential for interference with employee rights. We, of course, make no such finding. To emphasize the importance of causation in proving a violation of section 3519.5(a), we merely note circumstances in which a causal link between CWA's actions and those of the State could be broken. CWA's liability to other parties, i.e., the employees, is not the subject of this charge.

Porter, Member, dissenting: I respectfully dissent and would affirm the regional attorney's dismissal of the charge, but for reasons unrelated to those set forth in the dismissal letter. In this case, DPA is alleging that CWA caused or attempted to cause the State employer to violate the Act by failing to adhere to the Controller's procedure for canceling dues deduction requests, resulting in the Controller's Office continuing to make such deductions after the employees had notified CWA of their desire to cease such deductions. Assuming this is what occurred, I fail to see how this scenario implicates either DPA or the "State employer." The Controller is not the State employer, as the Controller is a separate constitutional officer who is independently in control of the the expenditure of State funds, and not subject to the direction or control of DPA, the governor or the State employer. (Cal. Const., Art. V, sec. 11; McCauley v. Brooks (1860) 16 Cal. 11.) The Controller is authorized to enact regulations regarding payroll and is under certain Government Code duties regarding the payroll and deductions. (See Gov. Code secs. 1150-53, 12410, 12440, 12470-77.)

SEERA section 3519 states in part, "It shall be unlawful for the state to: . . . ." Section 3513(i), which is the provision in SEERA setting forth the definitions of the terms in SEERA, states:

> "State employer," or "employer," for the purposes of bargaining or meeting and conferring in good faith, means the Governor or his or her designated representatives.

Section 3514.5(a) states in part, "Any employee, employee organization, or employer shall have the right to file an unfair practice charge . . . ." Attempting to harmonize these various provisions of SEERA leads to the conclusion that the State employer, as envisioned by the Act, means the actual employer, such as the individual State department that employs the employees who are subject to the Act or, for purposes of collective bargaining, it is the Governor's designee, which is the Department of Personnel Administration (DPA). Obviously, when section 3519 (and, thus, section 3519.5) refers to the "state," it means the "State employer" (e.g., DPA or the actual employing entity). It does not mean the Controller, who is not the State employer (unless, of course, it is the Controller's employees who are involved). As stated in California State Employees Association v. Regents of the University of California (1968) 267 Cal.App.2d 667, 669:

> The meaning of certain words or phrases in a section of a statute may be limited or restricted by reference to surrounding statutes.

Given the above, it follows that when the Controller did not cease the dues deductions, he did not thereby commit an act cognizable as an unfair practice within PERB's jurisdiction.

Further, DPA and the State employer could not have committed an unfair practice based on the action of the Controller.[1] It is, therefore, axiomatic that CWA could not have caused or attempted to cause the State employer to violate the Act. For that reason, I would dismiss DPA's charge.

In addition, I disagree with that portion of the majority opinion that concludes that the State must establish a causal connection between CWA's behavior and any behavior by the State found to be unlawful. (Majority opinion, pages 7-8.) As discussed above, the Controller is empowered by law to establish rules and regulations governing payroll deductions. CWA agreed to abide by those rules. The majority opinion implies that the State employer must not only establish that CWA failed to follow the rules, but must also establish, as part of its case in chief, that it was unaware of CWA's conduct. The implication is that, should the State employer be unable to prove this latter point, it would be unable to prove CWA caused the State employer to violate the Act. This leads to the absurd result that an employee organization is free to

[1]The majority opinion refers to and would consolidate this case with a companion case, No. S-CE-273-S, in which the general counsel issued a complaint alleging that the State has interfered with the rights of employees. In that case, the charging parties are employees and the respondent is DPA. While that case is not before the Board itself, if the gist of the charge against DPA is the same as DPA alleges in this case, I question whether the other complaint states a prima facie case.

ignore lawfully established regulations, and thereby cause the State employer to violate the Act, so long as the State employer is made aware of that fact. Once the State employer has such knowledge, it can then be held to answer for a violation that results from or was caused by the employee organization's disregard of the regulations. Further, even if the majority opinion is correct in its finding of an "agency" relationship between the State employer and the Controller, its conclusion implies that, once the employer has knowledge that the employee organization is not abiding by lawfully established regulations, the employer may somehow instruct the Controller to act contrary to his own regulations. Such a conclusion is insupportable. I do not agree that the State was under any type of obligation to take steps to remedy the situation, and that failure to do so somehow eliminates the alleged wrongful act by CWA. If CWA's action in failing to comply with the Controller's regulation is determined to have caused or attempted to cause the State employer to violate the Act, then that liability is not alleviated because the State did not assume the responsibility to take corrective action.

For the above reasons, I respectfully dissent.