

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DANIEL SMITH, CRAIG FRANKLIN, MARK)
ROSSOPOULOS AND CHET MILLER,)
)
Charging Parties,) Case No. SA-CO-197-S
)
v.) PERB Decision No. 1226-S
)
CALIFORNIA CORRECTIONAL PEACE)
OFFICERS ASSOCIATION,)
)
Respondent.)
_____)

Appearance: Hagler and Nelson by Thomas M. Hagler, Attorney, for Daniel Smith, Craig Franklin, Mark Rossopoulos and Chet Miller.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case is before the Public Employment Relations Board (Board) on appeal by Daniel Smith, Craig Franklin, Mark Rossopoulos and Chet Miller (Charging Parties) to a Board agent's dismissal (attached) of their unfair practice charge for lack of standing. Charging Parties allege that the California Correctional Peace Officers Association (CCPOA) violated sections 3515 and 3519.5 of the Ralph C. Dills Act (Dills Act)¹ by wrongfully seeking disciplinary action against

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3515 provides, in part:

Except as otherwise provided by the Legislature, state employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. State employees also shall have the right to refuse to join or

them and failing to assist or represent them in the ensuing disciplinary actions.

The Board has reviewed the entire record in this case, including the Board agent's warning and dismissal letters, the original and amended unfair practice charge, 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

On appeal, Charging Parties renew their assertion that CCPOA violated its duty of fair representation when it filed its complaint with the State Personnel Board. It is well established that the duty of fair representation under the Dills Act derives from the exclusivity of the representational relationship.

(California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S at pp. 9-10; California State Employees Association

participate in the activities of employee organizations, . . . In any event, state employees shall have the right to represent themselves individually in their employment relations with the state.

Section 3519.5 provides, in pertinent part:

It shall be unlawful for an employee organization to:

(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.

(Parisi) (1989) PERB Decision No. 733-S at p. 9.) CCPOA is not the Charging Parties' exclusive representative. (Unit Determination for the State of California (1979) PERB Decision No. 110-S.) Since CCPOA owed no representational duty to the Charging Parties, they cannot state a prima facie cause of action for violation of that duty.

ORDER

The unfair practice charge in Case No. SA-CO-197-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916)322-3198



July 23, 1997

Thomas Hagler, Esq.
Hagler & Nelson
555 Mason Street, Suite 290
Vacaville, CA 95688

Re: Daniel Smith, Craig Franklin, Mark Rossopoulos, and Chet Miller v. California Correctional Peace Officers Association
Unfair Practice Charge No. SA-CO-197-S
DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT

Dear Mr. Hagler:

The above referenced unfair practice charge, filed June 12, 1997, alleges the California Correctional Peace Officers Association (Association) violated its duty of fair representation to Daniel Smith, Craig Franklin, Mark Rossopoulos, and Chet Miller (Charging Parties). Specifically, you allege that the Association requested that the State Personnel Board (SPB) discipline Charging Parties in retaliation for Charging Parties' investigation of Association members. You allege this conduct violated Government Code sections 3515 and 3519.5 of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated June 20, 1997, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies 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 the charge to state a prima facie case or withdrew it prior to June 30, 1997, the charge would be dismissed.

On June 30, 1997, I received a first amended charge. The amended charge alleges that the Association interfered with the rights of employees of the California Department of Corrections (CDC) by disclosing classified notes of investigations with CDC employees to the SPB in the Association's request for discipline against the Charging Parties and to the news media.

You claim that disclosing the notes violated California Penal Code sections 832.7 and 832.8, which prohibit the disclosure of peace officer personnel records, including "... complaints, or investigations of complaints, concerning an event or transaction in which he or she participated, or which he or she perceived, and pertaining to the manner in which he or she performed his or her duties." (California Penal Code section 832.8 subdivision (e))

SA-CO-197-S
Dismissal Letter
July 23, 1997
Page 2

You claim that the disclosure injured the rights of CDC employees to perform their duties and to participate in investigatory interviews. You allege this conduct violated Government Code sections 3515 and 3519.5 of the Ralph C. Dills Act (Dills Act) by interfering with the CDC employees because of their exercise of rights guaranteed by the Dills Act.

As noted in the June 20, 1997 letter, supervisors and managers do not have standing under the Dills Act to file unfair practice charges with the Public Employment Relations Board (PERB). The Charging Parties have no standing to file this charge.

Even if Charging Parties did have standing, the facts of the charge fail to state a prima facie case of interference by the Association. Assuming the investigatory notes were confidential, supplying the SPB with copies of the notes did not interfere with CDC employees' right to form, join, or participate in employee organizations. Although employees may be reluctant to participate in future investigations for fear of disclosure of confidential information, the Association has not interfered with any employees because they have exercised rights under the Dills Act. Nor does the disclosure of materials impair employees' ability to engage in future protected activity.

The facts in both the original and amended charges fail to state a prima facie violation of the duty of fair representation or interference with the rights of employees, and the charge is therefore 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

SA-CO-197-S
Dismissal Letter
July 23, 1997
Page 3

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:

RUSSELL NAYMARK
Board Agent

Attachment

cc: Joel Levinson

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3198



June 20, 1997

Thomas Hagler, Esq.
Hagler & Nelson
555 Mason Street, Suite 290
Vacaville, CA 95688

Re: Daniel Smith, Craig Franklin, Mark Rossopoulos, and
Chet Miller v. California Correctional Peace Officers
Association
Unfair Practice Charge No. SA-CO-197-S
WARNING LETTER

Dear Mr. Hagler:

On June 12, 1997, you filed the above captioned unfair practice charge on behalf of Daniel R. Smith, Craig Franklin, Mark Rossopoulos and Chet Miller. The charge alleges that the California Correctional Peace Officers Association (Association) violated Government Code sections 3515 and 3519.5 of the Ralph C. Dills Act (Dills Act). Specifically, the charge contends that the Association breached its duty of fair representation to the charging parties by wrongfully seeking disciplinary action against them by the Department of Correction, and by not providing or offering to provide representation to complainants or to assist complainants in the defense of the requested disciplinary action.

The Public Employment Relations Board (PERB) has no jurisdiction to hear this unfair practice charge under the Dills Act for the following reasons.

Government Code section 3513 subdivision (c) of the Dills Act defines "State employee" to exclude "managerial employees, confidential employees, (and) supervisory employees . . ." The charging parties hold job classifications of either Correctional Captain, Correctional Lieutenant, or Correctional Sergeant. These positions are supervisory or managerial as provided by the Certification of Representative between the State of California and the Association, which excludes these classifications from the bargaining unit. I faxed you a copy of this document on June 19, 1997. Since these employees are not protected by the Dills Act, PERB may not hear this unfair practice charge pursuant to that Act.

In addition, Government Code section 3514.5 of the Dills Act limits the filing of unfair practice charges to "any

SA-CO-197-S
Warning Letter
June 20, 1997
Page 2

employee, employee organization, or employer . . ." Since the charging parties are excluded from the definition of "State Employee" under the Dills Act, they may not file this charge.

The charging parties do fall under the protection of the Excluded Employees Bill of Rights (EEBRA) at Government Code section 3525. EEBRA covers "all managerial employees as defined in subdivision (e) of Section 3513 . . . and all supervisory employees, as defined in subdivision (g) of Section 3513 . . ." Since EEBRA contains no mechanism or administrative agency for resolving disputes that occur under its terms, PERB has no jurisdiction to hear a charge brought under EEBRA. Accordingly, this charge must be dismissed.

Before the passage of EEBRA, the Dills Act contained statutory language which PERB interpreted to exclude supervisors from the Act's protection. PERB held that "the statutory scheme evidenced a legislative intent that supervisors were to be excluded from PERB's jurisdiction and that any vindication of supervisors' rights must be through another forum." (California Department of Forestry (1980) PERB Decision No. 119-S, citing State of California, Department of Health (1979) PERB Decision No. 86-S). Although the statutory language PERB was interpreting has since been removed, EEBRA contains no language which would allow PERB to hear charges brought by supervisors or managers.

An exception to the above rule may exist where the rights of employees in the bargaining unit are injured by the union's actions against the excluded employees. PERB stated: "An employer's conduct against supervisors is generally not grounds for an unfair practice charge. However, if there is a reasonable inference that the conduct had an adverse effect on nonsupervisory employees in the exercise of their rights, an unfair practice charge will be entertained vis a vis the nonsupervisory employee." (State of California, Department of Health (1979) PERB Dec.No. 86-S). This unfair practice charge, however, makes no claim that the Association's actions harmed the rights of anyone other than the charging parties.

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

SA-C0-197-S
Warning Letter
June 20, 1997
Page 3

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 30, 1997, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198 ext. 354.

Sincerely,

RUSSELL NAYMARK
Board Agent