

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



PAUL GONZALEZ-COKE,
Charging Party,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Respondent.

Case No. SA-CO-199-S

PERB Decision No. 1411-S

October 10, 2000

JIM HARD AND CATHY HACKETT,
Charging Parties,

v.

CALIFORNIA STATE EMPLOYEES
ASSOCIATION,

Respondent.

Case No. SA-CO-201-S

Appearance: Michael P. White, Attorney, for California State
Employees Association.

Before Dyer, Amador and Baker, Members.

DECISION

DYER, Member: These cases come before the Public Employment Relations Board (PERB or Board) on appeal by the California State Employees Association (CSEA or Association) to an administrative law judge's (ALJ) proposed decision which found that CSEA had unlawfully retaliated against charging parties Paul Gonzales-Coke (Gonzales-Coke), Jim Hard (Hard) and Cathy Hackett (Hackett) by sustaining an internal union complaint filed against charging parties with CSEA. This complaint involved distribution of The Union Spark, the newspaper of an internal CSEA group widely known

as the Caucus for a Democratic Union (CDU), at a work site in San Jose. Charging parties allege that such action arose from their exercise of protected conduct, in violation of Ralph C. Dills Act (Dills Act) section 3519.5(b).¹

The Board has reviewed the entire record in this case, including the unfair practice charges, the briefs of the parties, the proposed decision, and CSEA's exceptions. The Board affirms the ALJ's denial of a protective order regarding the "Spy Memos."² The Board additionally affirms the ALJ's findings that PERB does not fall within the definition of "state," as that term is set forth in the Dills Act, and that CDU was not an employee organization under the provisions of the Dills Act. The Board reverses the proposed decision with regard to its finding that an unfair practice had occurred, and it dismisses the unfair practice charges and complaints.

¹The 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(b) states:

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.

²As will be discussed more fully below, the "Spy Memos" were a number of internal CSEA memoranda introduced as exhibits by charging parties at the time of the formal hearing.

PROCEDURAL HISTORY

Gonzalez-Coke commenced the action in Case No. SA-CO-199-S on October 16, 1997, by filing an unfair practice charge against CSEA. The charge, as amended, alleges that CSEA refused to reimburse Gonzalez-Coke for travel expenses in retaliation for his protected conduct. The charge also alleges that CSEA agents filed internal union complaints against Gonzalez-Coke in retaliation for protected conduct.

The PERB general counsel issued a complaint on March 19, 1998. The complaint alleges that Gonzalez-Coke engaged in protected activity in supporting a group seeking to reform CSEA. As retaliation, the complaint continues, CSEA agents filed internal union charges against him and CSEA refused to reimburse him for travel expenses. These actions, according to the complaint, violate Dills Act section 3519.5(b).

Hackett and Hard filed unfair practice charge Case No. SA-CO-201-S against CSEA on October 17, 1997. The charge, as amended, alleges that CSEA agents engaged in a pattern of harassment against Hard and Hackett in retaliation for their protected conduct.

The PERB general counsel issued a complaint on March 19, 1998. The complaint alleges that Hackett and Hard participated in protected activity through a group seeking to reform CSEA, and that several CSEA agents retaliated with a campaign of harassment by filing a number of internal union charges against them. The complaint alleges that these retaliatory acts violated Dills Act

section 3519.5(b).

CSEA filed answers to the complaints on April 8, 1998, generally denying the allegations and asserting a number of affirmative defenses. A settlement conference was conducted by a PERB ALJ, but the disputes were not resolved. A prehearing conference was conducted on May 29, 1998.

Prior to hearing, these complaints were consolidated for decision. A formal hearing was conducted in Sacramento between October 13 and October 27, 1998. With the receipt of the final brief on March 30, 1999, the cases were submitted for a proposed decision.

FACTUAL HISTORY

Charging parties in these consolidated cases are high elected officials in CSEA. Hard is the director of the Civil Service Division (CSD). Hackett is the CSD deputy director of finance. Gonzalez-Coke is the executive vice president of CSEA.³

At the same time, charging parties are supporters of CDU. The professed goal of CDU is to "reform" CSEA as an employee organization. In its brief, charging parties describe CDU as a

³Much of the testimony in this proceeding centered on the manner in which internal union complaints against charging parties were processed by CSEA. It was charging parties' contention that CSEA and its agents manipulated union procedures in a manner that suggested an unlawful motive and retaliation. The main contention in this regard was that the internal union complaints were wrongfully filed with the CSEA president and processed at the Association level by individuals who have openly opposed the protected conduct of charging parties, rather than at the division level, where Hackett and Hard serve as elected officials.

reform movement to "change the rules and promote progressive unionists for office, to build a militant Union run by elected rank and file members." CSEA in turn has long maintained that CDU is not a reform movement, but is in fact a competing employee organization under the Dills Act.⁴

In addition to their elected offices in CSEA, charging parties are among the principal activists in CDU. Hard is a founding member and former statewide coordinator of CDU. Hackett is also a founding member and a long time CDU activist. Gonzalez-Coke is a founding member of CDU and continues as a participant in CDU activities.

It can thus be seen that charging parties occupy unique positions. They serve as elected officials in the CSEA administration, while seeking to reform the administration using CDU as a vehicle to do so. An increasingly long line of PERB cases confirms that these circumstances have led to a highly contentious relationship between CSEA and CDU.

CSEA members who filed the internal union charges at issue here are members of a competing organization within CSEA known as

⁴As set forth below, CSEA renews this claim in the instant appeal. Section 3515.5 provides, in relevant part:

Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state.

the Advocates. The Advocates are made up of members whose philosophy about the direction of CSEA generally is at odds with that advanced by CDU. Members of the Advocates occupy elected and appointed positions in the CSEA hierarchy.

One witness who is a member of the Advocates testified that its purpose is to "develop leadership within CSEA." Another member of the Advocates testified that its purpose is to "push the union ahead, while keeping it together." The same witness said the purpose is to prevent the kind of fragmentation within CSEA divisions that has occurred with frequency in recent times.

ALJ's PROPOSED DECISION

During the hearing in October, 1998, evidence was received regarding eight different internal union complaints, which charging parties alleged were filed against them by union members acting as agents of CSEA. These complaints were designated by the ALJ in the proposed decision as the Ferrasci-Wilson, Robles, Monahan, Arbuckle, Kernan, Wilson, Arbuckle-Kernan and Ferrasci complaints, named for the various CSEA members who filed the internal union charges against Gonzales-Coke, Hard and Hackett.

During the course of the hearing, evidence was also received with regard to a number of so-called CSEA "Spy Memos." These were introduced by the charging parties over the objection of CSEA, in an attempt to show a history of CSEA animus towards CDU. The ALJ rejected a subsequent request by CSEA to seal the "Spy Memos" from public view, such request being made on the grounds that the memos were confidential, and that they constituted trade

secrets of CSEA.

The cases were submitted for decision on March 30, 1999, and the proposed decision issued on April 12, 1999. In his proposed decision the ALJ dismissed seven of the eight complaints: the Ferrasci-Wilson, Robles, Monahan, Arbuckle, Kernan, Wilson and Arbuckle-Kernan complaints. In these dismissals, the ALJ found that the charging parties had failed to carry their burden of showing that the individual union members who filed the complaints did so as agents of CSEA, or that CSEA ratified these actions in a manner that created an agency relationship between the union and the complainants.⁵

As to the eighth complaint, the Ferrasci complaint, the ALJ found that CSEA had unlawfully retaliated against charging parties by sustaining an internal union complaint filed against them. This internal complaint alleged that Ferrasci was the "focal point" in an article which appeared in The Union Spark, and that her work site was "targeted" for distribution.

The article, entitled "The Kangaroo Court of Perry and Company," begins with the following paragraph:

The Perry gang is up to their old tricks. Since they have only minimal support among state workers the anti-union group consisting of staff management, some rank-and-file staff and the likes of Marilyn Ferrasci . . . is thrashing about attempting to stem the tide of reform through administrative measures.

The article criticized an earlier internal grievance filed

⁵Included in these dismissals was the claim involving CSEA's refusal to reimburse Gonzalez-Coke for expenses he incurred while attending a union conference in Washington, D.C.

by Ferrasci and another member of CSEA, and accused them of lying. It stated that the majority of the CSD "repudiate [Ferrasci and her] anti-union whining." The Union Spark also criticized the hearing panel appointed in an earlier complaint involving Ferrasci. It stated, "[T]he charges were deemed valid by the chair of the Association Hearing Officer Panel . . . a long-time anti-CDU anti-reform individual. The Hearing Officer Panel, likewise, is made up of two long time anti-CDU individuals . . . Hard acknowledged that The Union Spark might damage Ferrasci's credibility with members and possibly have an adverse impact on her in a subsequent election. Asked if this was his intent, Hard responded, "that was the general hope."

Ferrasci is a CSEA member who has long opposed Hard, Hackett, and CDU in a number of internal union matters. Ferrasci had filed other internal union complaints against Hard and Hackett, seeking their removal from CSEA office and withdrawal of their membership privileges.

At the time of the distribution at Ferrasci's work site, Hard, Hackett, and Gonzalez-Coke were in San Jose as CSEA officials to attend the Western Conference of the Service Employees International Union. They distributed The Union Spark from 7 a.m. to 8 a.m., prior to the start of the conference. They also displayed The Union Spark on a table at the conference. In her initial letter of complaint, Ferrasci wrote, "I am sure my building was specifically targeted for this activity," and "I

have a right to expect members of the CSEA Board of Directors to be above reproach and not bring discredit to the Association, to a DLC President or to a member of this Association."

The Ferrasci complaint was referred to an investigative committee under provisions of the CSEA Policy File. Hard, Hackett and Gonzalez-Coke declined to respond specifically to written interrogatories put to them by the committee. Rather, they submitted a summary response which did not address the questions and instead claimed the investigation was an unlawful interference with their rights as union activists under PERB case law.

Following its investigation, the committee concluded Hard, Hackett, and Gonzalez-Coke had violated section 1A2.00 of the CSEA Policy File.⁶ The committee made the following findings:

⁶CSEA Policy File section 1A2.00 reads, in pertinent part:

LEADERSHIP CONDUCT

(a) The Association leader informs himself/herself of Association policies and procedures by reading Association publications and participating in training and informational meetings.

(b) The Association leader respects his/her fellow activists regardless of race, color, sex, religion, national origin, sexual orientation, ancestry, disability, age, occupation or job classification.

(c) The Association leader conducts himself/herself in a manner so as to bring respect to the Association.

For leaders^[7] in CSEA to publicly, intentionally and wilfully participate in an activity that is intended to embarrass, malign and defame a fellow member clearly violates the Association Policy File with respect to duties and responsibilities of leaders in CSEA. The distribution of the "Union Spark" in front of Ms. Ferrasci's building with defamatory material certainly has the appearance to embarrass, malign and defame the character of Ms. Ferrasci and is evidence of the violation. The documentation of travel expense claims shows the purpose of their presence in San Jose, and the letters of the two witnesses supports the claim filed by Marilyn Ferrasci.

The committee recommended that the charged officials be advised of their leadership roles in CSEA and directed to "cease and desist" from participating in activities that violate the CSEA Policy File. The recommendation concluded, "it should be made clear to each that any further violations of Policy File section 1A2.00 will result in more severe sanctions by the Association." On February 27, 1997, the Board of Directors adopted the recommendation.⁸

⁷CSEA policy file section 1A3.01 states that "Members that are considered leaders are those elected to positions in the Association."

⁸The Board notes that the CSEA investigative committee found that Hard, Hackett and Gonzales-Coke had violated two sections of the CSEA Policy File, section 1A2.00, supra, and section 1A3.03. Section 1A3.03, in relevant part, prohibits "incompatible activities," such as using an Association office or using Association "facilities, equipment or supplies" for private gain or advantage. However, a review of the exhibit which documents the action taken by the CSEA Board of Directors shows that the investigative committee found that charging parties should be admonished only for the section 1A2.00 violation. It was this finding that was adopted by the Board of Directors.

CSEA'S EXCEPTIONS

CSEA's excepted to the ALJ's proposed decision on the following grounds:

(1) that the ALJ erred in finding CSEA had identified no valid basis for a protective order sealing the "Spy Memos";

(2) that the ALJ erred in finding PERB is exempt from the Dills Act, and does not fall under the definition of "state," as set forth in section 3519;⁹

(3) that CDU is not an employee organization or subject to regulation under the Dills Act;

(4) that the unfair practice finding on the Ferrasci complaint was not supported by the record.

DISCUSSION

1. "Spy Memos"

At the hearing Hard testified that a packet of documents, referred to by Hard as the "Spy Memos," was delivered to him anonymously in his personal post office box. Charging parties contended that these documents showed a history of anti-CDU animus on the part of CSEA, and therefore supported their claim that CSEA had unlawfully retaliated against them.

⁹Section 3519 states, in pertinent part:

It shall be unlawful for the state to do any of the following:

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Teresa Squier (Squier) is an employee of the State of California (Board of Equalization) and a member of CSEA. Although she is no longer active in CSEA, she has been a CSEA steward, District Labor Council (DLC) President, and member of the CSD Policy File committee, as an appointee of current CSEA President Perry Kenny. Squier held these positions during the late 1980's and early 1990's.

Squier was called as a witness in connection with the "Spy Memos." She testified as to a series of events which took place in the early 1990's, while she was on union leave and paid by CSEA. It was during this general time frame, Squier testified, that CDU began to draw attention within CSEA and that rumors were circulating that CDU would attempt to decertify CSEA in Unit 1.

Squier participated in an effort with then CSEA General Manager Bob Zenz (Zenz) and Geri Conway (Conway), who worked for CSEA on special assignment from Zenz, to develop a newsletter to attack CDU. She said she was "put up" in the Clarion Hotel in Sacramento to work on the newsletter and given \$1500 "underneath the table, by [Zenz], in an envelope" to pay for it. In addition, she said, other newsletters attacking CDU were produced using DLC funds. These newsletters were written with the assistance and encouragement of CSEA staff.

One of Conway's special assignments, Squier testified, was to conduct surveillance on Hackett's personal residence. Squier said Conway showed her polaroid pictures of Hackett's residence. Pursuant to Conway's request, Squier said she went through

Hackett's and Hard's garbage cans.

At the time the "Spy Memos" were offered as evidence, the ALJ had not yet read them. The documents were received into evidence, over the objection of CSEA, subject to the ALJ assigning weight to the exhibit after fully considering it in the context of the record as a whole. Following his review, the ALJ concluded that the "Spy Memos" were not sufficiently probative of the issues before him, and they were not considered by him in reaching his proposed decision.

More than two months after the conclusion of the hearing, in its post-hearing brief, CSEA requested that the "Spy Memos" be sealed from public view. This request was based on the claim that the documents were the "confidential, proprietary, and trade secret property of CSEA, and that [CSEA] has a protectable property interest in keeping such documents from the public's view."

CSEA argued, inter alia, that the conduct reflected in the "Spy Memos" directly related to the fear that CDU represented an internal threat to decertify CSEA, and that CSEA's reaction to the threat was made in good faith and consistent with its right to do so under PERB case law. In response, charging parties argued that the memos show that CSEA improperly expended union resources to spy on its members, and that CSEA sought to seal them because they were an embarrassment to CSEA.

A. Confidentiality of the Memos

In ruling on the question of confidentiality, the ALJ

initially found that evidence of a number of events reflected in the "Spy Memos" came primarily through the testimony of witnesses, and not through the alleged confidential documents themselves. He then ruled that this testimony stood on its own, and that it would serve no purpose to issue a protective order for documents that had already been described in the testimony, especially where there was no request for a similar protective order regarding the testimony itself.

The ALJ went on to find the "Spy Memos" included documents that arguably tended to prove a pattern of harassment against CDU and surveillance of CDU activists, even though he gave them no weight. He also found that the documents represented the kind of relevant evidence that is routinely admitted in unfair practice hearings conducted by PERB, and that they were not deserving of a protective order in that they "cannot realistically be described as confidential in any way." CSEA now raises the same issue before the Board.

The Board has reviewed the "Spy Memos." They consist of 22 internal CSEA memoranda--seven of which are marked "confidential," plus one handwritten note and one handwritten union motion.

The Board agrees with the ALJ's denial of CSEA's claim that the "Spy Memos" are "confidential business information" that must be sealed from public view to permit CSEA to "maintain its membership base and competitive position in the labor representation market." The Board finds that CSEA has cited no

applicable caselaw, nor any statutory provisions, that would justify the sealing of these documents on the basis of confidentiality. Nor has the Board found any cases or statutes that would justify the protective order sought by CSEA.¹⁰ The ALJ properly found that the mere assertion of confidentiality is insufficient to compel the relief requested by CSEA in an unfair practice proceeding.

B. The Memos as Trade Secrets

The Board additionally agrees with the ALJ's rejection of CSEA's claim that the "Spy Memos" constitute a trade secret under the California Uniform Trade Secrets Act (UTSA), California Civil Code, section 3426 et seq. As defined in Civil Code section 3426.1:

(d) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

(2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

CSEA's claim that the "Spy Memos" fall under the UTSA is unconvincing. Initially, the Board observes that the documents contain no "formula, pattern, compilation, program, device,

¹⁰See e.g., California Evidence Code section 911 et seq. See also Witkin, B.E., Summary of California Law, Ninth Ed. (1990) 11 Equity, secs. 103-118, pp. 784-799.

method or process." Most of the documents are internal CSEA memoranda which address how CSEA should react to a perceived decertification attempt by CDU.

Furthermore, no evidence was presented that these documents have any economic value. Although CSEA claims that the memos could assist another union in its attempts to decertify CSEA, the Association does not explain how the memos would so benefit an opposing union. All that the documents reveal is how CSEA gathered and reacted to information regarding a group of individuals which CSEA was concerned would attempt to decertify it. Surely such a tactic or strategy is not peculiar to CSEA.

Finally, with regard to the efforts of CSEA to maintain secrecy, the Board notes that the memos, the first of which is dated in July of 1992, and the last of which is dated in January of 1994, appear to have been widely distributed prior to their introduction into evidence in October of 1998. Additionally, it was Hard, a member of CDU, who introduced the "Spy Memos" into evidence. The Board sees no protection from CDU which will inure to CSEA from the sealing of the Board's records. There is nothing in the memos which would constitute a trade secret.

The ALJ properly found that CSEA has identified no valid basis for a protective order covering the "Spy Memos" or the related testimony, and we affirm his denial of the request by CSEA to seal the documents.

2. PERB as "The State" Under the Dills Act

In addressing the unfair practice charges filed by Gonzales-

Coke, Hard and Hackett against CSEA, the ALJ noted:

. . . CSEA advances the novel claim that charging parties have purposely misled PERB and have attempted "to cause the state (PERB) to violate section 3519 against CSEA by dictating to CSEA how it will interpret and apply its own policies to charging parties, thereby dominating and interfering with CSEA's rights to form and administer itself pursuant to Govt. Code section 3519." It is true that section 3519(d), among other things, prohibits the State from interfering with the administration of an employee organization. However, because PERB is exempt from the Dills Act and does not fall under the definition of State employer, there can be no section 3519 violation on the theory advanced by CSEA.

The Board agrees with the findings of the ALJ. Section 3513 (j) confirms that, for purposes of the Dills Act, PERB itself was not intended by the legislature to be encompassed within the term "employer." As section 3513 (j) explains:

"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.

Nor does the Board agree with CSEA's claim that PERB is encompassed within the term "state," as set forth in section 3519. Section 3512 shows that the "state," for purposes of application of the Dills Act, pertains to the state as an employer.¹¹ It does not pertain to all agencies of the state,

¹¹Section 3512 states, in relevant part:

It is the purpose of this chapter to promote full communication between the state and its employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between the state and public employee

such as PERB, which may jurisdictionally interface with either the state as an employer or with state employee organizations.

3. CPU As An Employee Organization

In his proposed decision the ALJ, citing to California State Employees Association (Hackett, et al.) (1995) PERB Decision No. 1126-S (Hackett), found:

CSEA has advanced the novel argument that charging parties' conduct is not protected because CDU is an unlawful employee organization competing with CSEA in a way that undercuts CSEA's right to represent its members on an exclusive basis. This argument finds no support in the record, is squarely at odds with PERB case law, and ultimately is unconvincing. PERB has never ruled that CDU is an employee organization under the Dills Act. Quite the opposite is true. In concluding that activity of the type at issue here is protected, PERB in Hackett recognized that CDU is a reform organization only and found that Hard, Hackett, and CDU represent a challenge to the current leadership -- not the union itself. (Hackett at p. 6.) There is no basis in this record to reach a different conclusion.

Citing Hackett, CSEA again argues before the Board that PERB has previously determined CDU is an employee organization within the meaning of the Dills Act. This argument is based upon a misreading of the Board's decision in Hackett.¹² In that decision the Board, based upon the facts before it, determined that the conduct of Hackett, Hard and others demonstrated that

organizations.

¹²Following the filing of the proposed decision, exceptions and response in this case, Hackett was overruled on other grounds in California State Employees Association (Hard, et al.) (1999) PERB Decision No. 1368-S (Hard, et al.).

they were participating in CSEA. As the ALJ held in his proposed decision in Hackett, a holding which the Board recently cited with approval in California State Employees Association, et al. v. State Employee Caucus for a Democratic Union, et al. (2000) PERB Decision No. 1399-S (CSEA/CPU):

What Ms. Hackett, Mr. Hard and others have underway is an attempt to take over CSEA, not destroy it. What they seek to do is to convert CSEA to their view of unionism.

Thus, in both Hackett and CSEA/CPU, the Board found that Hard and Hackett were involved in a challenge to the then-current leadership of CSEA, and not to CSEA itself. CSEA's claim that the Board has previously found CPU to be an employee organization within the meaning of the Dills Act is unsupported by our caselaw. To the contrary, those decisions support a finding that CPU, based on the record presented in those cases, constituted a political faction within CSEA, and not a separate employee organization.

CSEA additionally claims that the State of California (Department of Personnel Administration) (DPA), exercising its exclusive authority under Pills Act section 3520.7,¹³ has

¹³Section 3520.7 provides as follows:

The state employer shall adopt reasonable rules and regulations for all of the following:

(a) Registering employee organizations, as defined by subdivision (c) of Section 1150, and bona fide associations, as defined by subdivision (d) of Section 1150.

(b) Determining the status of organizations

determined that CDU is an "employee organization." Such a determination, CSEA claims, is based on DPA's "findings" that CDU is not a bona fide association under Government Code section 1150,¹⁴ in that CDU has as a primary purpose "representation of rank and file employees on matters within the scope of bargaining" and that CDU is "in actual fact affiliated with CSEA." Contrary to the argument of CSEA, such findings by DPA are not inconsistent with the Board's conclusion in Hackett that CDU, at least at the time of the Hackett decision in 1995,

and associations as employee organizations or bona fide associations.

(c) Identifying the officers and representatives who officially represent employee organizations and bona fide associations.

¹⁴Government Code section 1150, which deals with issues relating to salary and wage deductions for state employees, includes the following definitions:

(c) "Employee organization" means an organization which represents employees of the state or the California State University in their employer-employee relations, and which is registered with the Department of Personnel Administration or the Trustees of the California State University, or which has been recognized or certified by the Public Employment Relations Board.

(d) "Bona fide association" means an organization of employees and former employees of an agency of the state and the California State University, and which does not have as one of its purposes representing these employees in their employer-employee relations.

constituted a political faction within CSEA.¹⁵

Based on the facts of this case, CSEA's current claim that CDU's nature and conduct were that of a competing employee organization was properly rejected by the ALJ.¹⁶ Future determinations of this question will turn on the conduct presented.

4. Allegations of Retaliation

Turning to the Ferrasci complaint, the ALJ found that CSEA retaliated against charging parties for distributing The Union Spark, a CDU newspaper, at a work site in San Jose. The ALJ determined that, unlike the other seven internal complaints which were dismissed, the CSEA Board of Directors ratified the Ferrasci complaint when it adopted the recommendation of the hearing panel which found charging parties in violation of CSEA policies. The ALJ concluded that this ratification violated Dills Act section 3519.5(b).

We disagree. Although the amended complaint alleges that the internal grievance was upheld because of charging parties' distribution of The Union Spark, the record fails to support this

¹⁵Nor does CSEA persuasively argue how the finding of DPA is binding upon PERB.

¹⁶The ALJ also properly denied CSEA's claim that CDU, as an employee organization, was subject to the prohibitions of section 3519.5, which states in relevant part:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause the state to violate Section 3519.

claim. The alleged retaliatory conduct by the CSEA Board of Directors on the Ferrasci complaint was not predicated upon distribution of The Union Spark. It was based upon disparaging remarks regarding another union member.

A review of the action taken by the CSEA Board of Directors shows that it adopted the recommendation of the investigative panel in this internal dispute. The recommendation was that Gonzales-Coke, Hard and Hackett be advised that they were "leaders" in CSEA, and that, as such, they had violated CSEA Policy File section 1A2.00 by distributing the disparaging remarks directed at Ferrasci in The Union Spark.¹⁷

The Board has reviewed a copy of The Union Spark in question. It is an eight page publication containing a number of articles. However, the article pertaining to Ferrasci only addresses matters of internal CSEA politics. (Service Employees International Union, Local 99 (Kimmett) (1979) PERB Decision No. 106 at pp. 15-17.) As a result, the underlying CSEA grievance, upon which the unfair practice charge before the Board is based, and upon which that charge must stand or fall, was a

¹⁷The Board finds it significant that one of the other internal union grievances filed against the charging parties in this matter, the Robles complaint, also concerned distribution of The Union Spark. In this grievance Robles and eighteen other CSEA members complained of an article in the CDU newspaper which had criticized the State of California's bargaining proposals as a form of "disrespect." Robles testified that it appeared "they were using our resources for their agenda, which I took objection to." At the CSEA hearing on this complaint, Hard and Hackett argued that the complaint interfered with their protected rights. The hearing panel recommended that the Robles complaint be dismissed for lack of evidence, and the Board of Directors adopted this recommendation.

purely internal union matter.

Since the time of the ALJ's ruling, the Board has had the opportunity to address its policy regarding cases which involve union disputes. In Hard, et al., the Board affirmed that it will not intervene in disputes which only involve the internal union activities of an employee organization, unless those activities impact employer-employee relations. (Id. at p. 28; see also, California State Employees Association (Hutchinson, et al.) (1998) PERB Decision No. 1304-S.) In California State Employees Association (Hutchinson) (1999) PERB Decision No. 1369-S, at p. 3, the Board, quoting Hard, et al., reiterated that:

. . . 'the Dills Act does not protect solely internal union participation and activities of employees, which do not impact employer-employee relations. The burden of proof is on the charging party to demonstrate the existence of such an impact.

The Board finds nothing to indicate that the Ferrasci complaint impacted the employer-employee relationship. No impact on employer-employee relations was alleged, no evidence was introduced to prove such an impact occurred, and no finding of such impact was made by the ALJ. Charging parties have therefore failed to meet their burden of proof on this threshold issue. As a result, the Board will not reach the merits of the charge. The proposed decision, insofar as it finds retaliation on the part of CSEA, is reversed, and the unfair practice charges are dismissed.

ORDER

The proposed decision finding the California State Employees Association unlawfully retaliated against the charging parties is hereby REVERSED, and the unfair practice charges in Case Nos. SA-CO-199-S and SA-CO-201-S are DISMISSED WITHOUT LEAVE TO AMEND.

Members Amador and Baker joined in this Decision.