STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95811-4124
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November 20, 2008

Guy Thomas Chrisos

Re: Guy Thomas Chrisos v. California Statewide Law Enforcement Association
Unfair Practice Charge No. SA-CO-431-S
WARNING LETTER

Dear Mr. Chrisos:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on October 30, 2008. Guy Thomas Chrisos (Chrisos or Charging Party) alleges that the California Statewide Law Enforcement Association (CSLEA or Respondent) violated section 3519.5(b) of the Ralph C. Dills Act (Dills Act)[1] by taking reprisals against him for activity related to a severance petition. The charge also alleges this conduct violates the memorandum of understanding (MOU) between CSLEA and the State of California.

Charging Party is employed by the California Department of Parks and Recreation as a State Park Ranger. His position is included in State Bargaining Unit 7 – Protective Services and Public Safety, and the bargaining unit is presently represented by CSLEA. On August 20, 2008, the Peace Officers of California (POC) filed a severance petition (PERB Case No. SA-SV-171-S), seeking both the establishment of a separate unit of various peace officer classifications, including State Park Ranger, and the certification of POC as the exclusive representative of those positions in place of CSLEA.[2] PERB determined that POC demonstrated sufficient proof of employee support for the petition in SA-SV-171-S, and the unit determination issue is scheduled for formal hearing before a PERB administrative law judge.

The statement of the charge reads in relevant part as follows:

> On 10/20/08 I received notice by certified and regular mail (postmarked 10/16/08) that CSLEA was seeking disciplinary

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

[2] Notice is taken of the official case files of PERB. POC filed similar petitions on November 30, 2007 (SA-SV-167-S) and July 1, 2008 (SA-SV-169-S). The earlier-filed petitions were dismissed by PERB on March 13, 2008 and August 13, 2008, respectively.

> action against me for contacting a fellow ranger in relation to the effort to create a new bargaining unit to represent state peace officers. The letter accuses me of statements to and requests of the aforementioned fellow ranger which are in no way factual. The letter mentions random approximate dates and also falsely accuses me of chastising the ranger.

Included amongst the attachments to the charge is a copy of a letter addressed to Charging Party, dated October 16, 2008, from Richard Carrillo, CSLEA Senior Vice-President and Chair, CSLEA Disciplinary Hearing Committee (Committee).

The subject of the letter from Carrillo is identified as "Notice of Intent to Take Disciplinary Action." The letter references the relevant provisions of the CSLEA Constitution, and recites facts pertaining to POC's efforts to represent positions now represented by CSLEA. The letter also alleges that:

> In approximately mid-August 2008, [Chrisos] contacted another Park Ranger by telephone at her home residence and chastised her for not signing a card in support of the POC severance campaign. In the conversation you stated words to the effect: "Only a fucking idiot would not support it [severance]." Days later you left the same Park Ranger a voice message inquiring why you had not received a signed severance card from her.

Carrillo's letter then asserts that Chrisos' "acts in furtherance of the severance are deemed to violate Article XX, Section 2(e) of the CSLEA Constitution." That section prohibits, "Any activity which assists or is intended to assist a competing organization within the jurisdiction of CSLEA." Carrillo's letter next informs Chrisos that the CSLEA Disciplinary Hearing Committee is authorized to conduct a hearing on the charges against Chrisos, and to determine whether to impose a penalty, with a formal reprimand, full or partial restitution, a fine of not less than $1,000 or more than $4,000, censure, removal from office, suspension from membership, or expulsion from membership as the possible penalties. Finally, the letter informed Chrisos that he could, not later than October 31, 2008, request to appear before the Committee or submit a written answer to the charges.

By letter dated October 23, 2008, Chrisos informed CSLEA of his request for a hearing before the Committee. Chrisos also responded to the charges against him, and requested information from CSLEA to assist in his preparation for a hearing.

Discussion

PERB Regulation 32615(a)(5)[3] requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." The charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

PERB has long held that the standard applied in cases involving employer discrimination is appropriate in cases alleging discrimination by an employee organization. (California School Employees Association & its Chapter 36 (Peterson) (2004) PERB Decision No. 1683; California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S; California Faculty Association (Hale, et al.) (1988) PERB Decision No. 693-H; State of California (Department of Developmental Services) (1983) PERB Decision No. 344-S.) Thus, in order to demonstrate a violation of Dills Act section 3519.5(b), the charging party must show that: (1) the employee exercised rights under the Dills Act; (2) the employee organization had knowledge of the exercise of those rights; (3) the employee organization took adverse action against the employee; and (4) the employee organization took the action because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210; Campbell Municipal Employees Assn. v. City of Campbell (1982) 131 Cal.App.3d 416; San Leandro Police Officers Assn. v. City of San Leandro (1976) 55 Cal.App.3d 553.) In determining whether evidence of adverse action is established, the Board uses an objective test and will not rely upon the subjective reactions of the employee. (Palo Verde Unified School District (1988) PERB Decision No. 689.) In a later decision, the Board further explained that:

> The test which must be satisfied is not whether the employee found the employer's action to be adverse, but whether a reasonable person under the same circumstances would consider the action to have an adverse impact on the employee's employment.

(Newark Unified School District (1991) PERB Decision No. 864; emphasis added; footnote omitted.)

In cases involving alleged discrimination by an employee organization, the alleged adverse action must affect the charging party's relationship with his or her employer, and not relate solely to the internal affairs of the employee organization. (California School Employees Association & its Chapter 36 (Peterson) (2004) PERB Decision No. 1733; California State

[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Employees Association (Barker & Osuna) (2003) PERB Decision No. 1551-S; California State Employees Association (Hard, et al.) (2002) PERB Decision No. 1479-S.)

In this case, the Carrillo letter contains allegations supporting the conclusion that Chrisos engaged in protected activity and that CSLEA had knowledge of the protected activity.[4] However, the charge does not establish that CSLEA has taken, or threatened to take, adverse action against Chrisos under the precedent discussed above. The Carrillo letter only discusses the possibility of internal union discipline such as a reprimand, fine, or suspension/expulsion from membership. The charge does not demonstrate that any of these actions, if taken, would have an effect on Chrisos' employment.[5] Thus, the alleged violation of Dills Act section 3519.5(b) under a discrimination theory must be dismissed, as written.

Chrisos also alleges that CSLEA's conduct violates the Unit 7 MOU, which bars either the State or CSLEA from imposing or threatening to impose reprisals on employees based on their exercise of rights under the Dills Act. This allegation must also be dismissed. Dills Act section 3514.5(b) specifies that PERB "shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice" under the Act. The Board has recognized this limitation on its jurisdiction under the Dills Act and similar collective bargaining statutes. (See, e.g., State of California (Department of Youth Authority) (2003) PERB Decision No. 1526-S; Sacramento City Unified School District (2001) PERB Decision No. 1461.)

The charge allegations may be considered, however, under a theory that Dills Act section 3515.5 is implicated. Section 3515.5 provides, in relevant part, that, "Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership." The Board has held that an employee organization's failure to establish or follow reasonable disciplinary procedures violates section 3515.5 and interferes with protected rights under section 3519.5(b). (California State Employees Association (Hard, et al.), supra, PERB Decision No. 1479-S.) A violation of section 3515.5 may only be found, however, where an employee has been suspended or expelled from union membership. (California State Employees Association

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[4] Notice is taken that Chrisos appears to dispute the accuracy of the allegations concerning the alleged protected activities. However, a retaliation violation can be found even where no protected activity occurred if adverse action is taken under a mistaken belief that the employee engaged in protected activity. (Simi Valley Unified School District (2004) PERB Decision No. 1714; California Union of Safety Employees (John) (1994) PERB Decision No. 1064-S.)

[5] The facts in this case differ significantly from those in California Union of Safety Employees (Coelho) (1994) PERB Decision No. 1032-S, in which the union filed a citizen's complaint against the charging party prompting the employer to investigate the claim.

(Barker & Osuna), supra, PERB Decision No. 1551-S.) As previously discussed, Chrisos has not been suspended or expelled from membership in CSLEA as of this writing.

Nor does the charge provide evidence to support finding that CSLEA's disciplinary rules or procedures in this case violate the Dills Act. The Board long ago determined that an employee organization's provision permitting suspension of a member engaged in decertification activities is reasonable. (California School Employees Association and its Shasta College Chapter #381 (Parisot) (1983) PERB Decision No. 280.) In that case, the Board considered language found in Government Code section 3543.1(a) that is identical to the section 3515.5 language found in the Dills Act and quoted above. (Ibid.)[6] Thus, PERB precedent does not support finding that CSLEA's rule, prohibiting members from engaging in conduct designed to assist a competing organization, is unreasonable. Likewise, the California courts have held that no violation of the Meyers-Milias-Brown Act (MMBA)[7] occurs where an employee organization denies reinstatement to a former member who was expelled for dual unionism. (Anderson v. Los Angeles County Employee Relations Commission; Professional Peace Officers Association (1991) 229 Cal.App.3d 817.) The Court, like PERB, held that an employee organization's action in defending itself is reasonable and not in violation of the MMBA, reasoning that "[o]ne of the primary obligations of the membership is not to seek the very destruction of the union by engaging in dual unionism." (Ibid.) The Court also noted that the federal courts have upheld fines and other disciplinary action against members who supported decertification efforts against their exclusive representative, citing, e.g., Price v. National Labor Relations Board (9th Cir. 1967) 373 F.2d 443.

While the cases cited above arose in circumstances involving a decertification petition, rather than a severance, the reasoning applied by the Board and the courts is still applicable. The major distinction between a severance petition and a decertification petition is that the severance petitioner seeks the determination of a new appropriate unit, while the decertification petitioner seeks to oust or replace the incumbent employee organization in the established unit. However, the severance petitioner also seeks to replace the incumbent organization as the exclusive representative of the employees in the petitioned-for unit, and is thus a "competing organization" vis-à-vis the incumbent.

Likewise relying in part on federal precedent, the Board also has held that it is not "patently unreasonable for a union to expel and fine members that violate its rules and require it to incur expenses." (CDF Firefighters (Pittman) (2006) PERB Decision No. 1815-S.) In Scofield v.

[6] The Board's decision in California School Employees Association and its Shasta College Chapter #381 (Parisot), supra, PERB Decision No. 280 was reached under the Educational Employment Relations Act (EERA), found at Government Code section 3540 et seq. EERA provides for the collective bargaining rights of public school employees.

[7] The MMBA, codified at Government Code section 3500 et seq., provides for collective bargaining rights for employees of cities, counties, and other local governmental units.

National Labor Relations Board (1969) 394 U.S. 423, the U.S. Supreme Court stated that union fines and expulsion from membership do not, by themselves, violate provisions of the National Labor Relations Act that are similar to Dills Act section 3515.5.[8]

Conclusion

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 that would correct the deficiencies explained above, Charging Party may amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by an authorized agent of Charging Party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If an amended charge or withdrawal is not filed on or before December 4, 2008, PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Division Chief

[8] Notice is taken, however, that in National Labor Relations Board v. International Molders & Allied Workers Union (7th Cir. 1971) 442 F.2d 92, the Court held that the assessment of a fine against a member who promoted decertification of the union was an unfair labor practice. The Court distinguished expulsion from membership from the assessment of a fine by holding that "because the assessment of a fine was not calculated to protect the threatened union, its only effect was to punish a member." (Ibid.) Here, although Carrillo's letter references the possibility of a fine under the CSLEA Constitution, the facts alleged do not demonstrate that a fine has actually been assessed.

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Public Employment Relations Board, 1031 18th Street, Sacramento, CA 95811-4124.

On November 20, 2008, I served the Letter regarding Case No. SA-CO-431-S on the parties listed below by

_X_ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid.

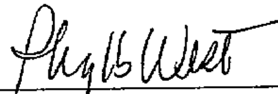
___ personal delivery.

___ facsimile transmission in accordance with the requirements of PERB Regulations 32090 and 32135(d).

Guy Thomas Chrisos
501 El Dorado Street
Auburn, CA 95603

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on November 20, 2008, at Sacramento, California.

(Type or print name)



(Signature)