

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

CALIFORNIA CORRECTIONAL PEACE
OFFICERS ASSOCIATION,

Plaintiff and Appellant,

v.

STATE OF CALIFORNIA et al.,

Defendants and Respondents.

A112311

(San Francisco County
Super. Ct. No. CPF-05-505640)

ORDER MODIFYING OPINION
AND DENYING REHEARING AND
REQUEST FOR JUDICIAL NOTICE

[NO CHANGE IN JUDGMENT]

THE COURT:

It is ordered that the opinion filed herein on August 23, 2006, be modified as follows:

1. On page 2, at the end of the second sentence in the first full paragraph, add the following footnote as new footnote 1:

¹ Government Code § 3513, subdivision (c) excludes supervisory employees from collective bargaining rights granted under the Ralph C. Dills Act (Gov. Code, §§ 3512–3524), which generally governs relations between the state and its employees. Supervisors nonetheless have limited rights of representation under the Bill of Rights for State Excluded Employees (Gov. Code, §§ 3525–3539.5). (See Gov. Code, §§ 3530, 3533.)

2. Existing footnote 1 on page 3 is deleted.

3. On page 3, the first sentence of the third paragraph is amended to read:

Also relevant is the primary agreement governing relations between the state and rank-and-file correctional officers, a Memorandum of Understanding (MOU) entered into on July 1, 2001 by the Union and the state.

4. On page 7, in the second to last sentence of the first full paragraph, the word “supervisors’ ” is changed to “Union’s” so that the sentence reads:

For the reasons discussed above, the Union’s grievances sought to enforce the state’s obligation to negotiate under section 27.01 of the MOU.

5. On page 8, at the end of the second complete sentence, add as footnote 5 the following footnote:

⁵ In a petition for rehearing, the Department argues for the first time that the proposed arbitration should not be allowed because it will require the arbitrator to rule on the employment rights of the supervisors, who are not parties to the MOU and whose bargaining rights are exclusively statutory. (See fn. 1, *ante*.) This argument misunderstands the basis for the Union’s grievances, which were filed on behalf of the rank-and-file under the MOU. The issue in the arbitration will be whether the state was permitted to refuse to bargain with representatives of the rank-and-file while a representative of the supervisors was in the room. The Union’s claim that observers must be permitted is not based on any legal right of the supervisors to observe but on the asserted right of the rank-and-file to invite observers into the room, after giving advance notice, presumably pursuant to the ground rules. This is an arbitrable grievance under the MOU that does not require the arbitrator to make any ruling with respect to the employment rights of the supervisors.

There is no change in the judgment.

Respondents’ petition for rehearing and request for judicial notice are denied.

Dated:

Marchiano, P.J.