

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES')
ASSOCIATION,)
)
Charging Party,) Case No. S-CE-275-S
)
v.) PERB Decision No. 585-S
)
STATE OF CALIFORNIA, DEPARTMENT OF)
PERSONNEL ADMINISTRATION,)
)
Respondent.)
_____)

Appearance: Jeffrey Fine, Attorney for California State
Employees' Association.

Before Hesse, Chairperson; Morgenstern and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board on appeal by the California State Employees' Association of the Board agent's partial dismissal, attached hereto, of its charge alleging that the State of California, Department of Personnel Administration, violated section 3519(a), (b) and (c) of the State Employer-Employee Relations Act (Gov. Code, sec. 3512 et seq.).

We have reviewed the dismissal and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

ORDER

This portion of the unfair practice charge in Case No. S-CE-275-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
1031 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



March 18, 1986

Jeffrey Fine. Esq.
California State Employees Association
1108 O Street. Suite 327
Sacramento, CA 95814

Re: California State Employees Association v. State of California. Department of Personnel Administration
Unfair Practice Charge No. S-CE-275-S

The above-referenced charge alleges that the state of California. Department of Personnel Administration (State) failed to bargain in good faith with and refused to provide relevant and necessary information to the California State Employees Association (Association). This conduct is alleged to violate sections 3519(a). (b) and (c) of the State Employer-Employee Relations Act (SEERA).

I indicated to you in my letter dated February 20, 1986 that allegations of surface bargaining contained in the charge did not state a prima facie case, and that unless you amended these allegations to state a prima facie case, or withdrew them prior to February 27, 1986, they would be dismissed. More specifically, I informed you that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge accordingly.

The deadline was extended and a first amended charge was filed on March 4, 1986. The first amended charge differs only slightly from the original charge. The first amended charge essentially alleges that class size was discussed on June 18 and 28 during which DPA made no movement from its previous position. Personal alarms were discussed on June 17 with statements by DPA that "appeared to be moving back from its earlier statements." And finally, the amended charge alleges that DPA was non-responsive during the mediation process, failed to offer any equity adjustments for members of bargaining unit three, and offered a cash out proposal for educational leave for which the Association only had 15 minutes to consider.

The offering of a proposal without allowing the other side adequate time to consider it is evidence of bad faith. S & M Manufacturing (1967) 165 NLRB 663; 65 LRRM 1350. However, such

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conduct is not a "per se" violation and even when coupled with the State's refusal to provide information does not constitute a prima facie case of bad faith bargaining.

The remaining facts in the amended charge concern the State's failure to compromise its positions on class size and inequity adjustments. Adamant insistence on a bargaining position is not necessarily a refusal to bargain in good faith. Oakland Unified School District (1982) PERB Decision No. 275. Nothing in the charge establishes that the state's maintenance of its positions on class size and inequity adjustments is evidence of bad faith bargaining. In light of the fact that the parties did reach agreement on a number of issues, there is insufficient evidence in the totality of the State's conduct to find a prima facie case of bad faith bargaining. For these reasons, as well as those stated in the February 20, 1986 letter (Exhibit 1), the allegations of surface bargaining are dismissed.

Pursuant to Public Employment Relations Board regulation section 32635 (California Administrative Code, title 8, part III), you may appeal the refusal to issue a complaint (dismissal) to the Board itself.

Right to Appeal

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 (section 32635(a)). To be timely filed, the original and five (5) copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) on April 7, 1986. or sent by telegraph or certified United States mail postmarked not later than April 7, 1986 (section 32135). The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento. CA 95814

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 (5) copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal (section 32635(b)).

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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 section 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 (section 32132).

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Very truly yours.

JEFFREY SLOAN
Acting General Counsel

By .
Robert Thompson
Regional Attorney

PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO REGIONAL OFFICE
103) 18TH STREET, SUITE 102
SACRAMENTO, CALIFORNIA 95814
(916) 322-3198



February 20, 1986

Jeffrey Fine, Esq.
California State Employees Association
1108 O Street, Suite 327
Sacramento, CA 95814

Re: California State Employees Association v. State of
California, Department of Personnel Administration
Unfair Practice Charge No. S-CE-275-S

Dear Mr. Fine:

The above-referenced charge alleges that the State of California, Department of Personnel Administration (State) failed to bargain in good faith with and refused to provide relevant and necessary information to the California State Employees Association (Association). This conduct is alleged to violate sections 3519(a), (b) and (c) of the State Employer-Employee Relations Act (SEERA).

The investigation of the charge revealed that the Association is the exclusive representative of employees in State bargaining unit number 3, Education and Library. Beginning in late 1984 the state and the Association entered into negotiations for a new memorandum of understanding (MOU) covering these employees to succeed an MOU which expired on June 30, 1985. The parties continued to meet and reached an agreement over a new MOU which took effect on July 1, 1985. The charge specifies a number of factual events which occurred during the first six months of 1985.

Based on the facts reviewed above, the allegation that the State surfaced bargained with the Association does not state a prima facie violation of the SEERA for the reasons which follow.

SEERA section 3514.5(a) states in pertinent part:

Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following:
(1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge; . . .

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This charge was filed on December 11. 1985, which means the earliest day of the statutory period was June 11. 1985. Almost all of the circumstances described in the charge occurred prior to June 11 and are thus outside the statutory period. Although these facts may be considered evidence to support a finding that Respondent's conduct after June 11 constitutes a violation of SEERA, the charge does not specify conduct by the Respondent after June 11 which would support the finding of a prima facie case based on surface bargaining.¹

For these reasons, the allegation that the State surface bargained with the Association contained in charge number S-CE-275-S. as presently written, does not state a prima facie case. If you feel that there are any factual inaccuracies in this letter or any additional facts which would correct the deficiencies explained above, please amend the charge accordingly. 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 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 February 27. 1986, I shall dismiss the above-described allegation from your charge. If you have any questions on how to proceed, please call me at (916) 322-3198.

Sincerely yours.

Robert Thompson
Regional Attorney

¹The following events are described in the charge as occurring after June 11: the State replied to the Association's proposal concerning the 2.5% service retirement formula which had been presented to the State on March 21; the parties discussed class size and salary.