

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL UNION OF OPERATING)
ENGINEERS,)
)
Charging Party,) Case No. S-CE-617-S
)
v.) PERB Decision No. 976-S
)
STATE OF CALIFORNIA (DEPARTMENT) February 23, 1993
OF GENERAL SERVICES),)
)
Respondent.)
_____)

Appearance: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for International Union of Operating Engineers.

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION AND ORDER

CAFFREY, Member: This case is before the Public Employment Relations Board (Board) on appeal by the International Union of Operating Engineers (IUOE) of a Board agent's dismissal (attached hereto) of its unfair practice charge. In the charge, IUOE alleged that the State of California (Department of General Services) violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)¹ by threatening to unilaterally impose a

¹The Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in pertinent part:

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

- (a) 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.

standby policy for employees of the Office of Telecommunications.

The Board has reviewed the dismissal, and finding it to be free of prejudicial error, adopts it as the decision of the Board itself.

The unfair practice charge in Case No. S-CE-617-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Hesse joined in this Decision.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

PUBLIC EMPLOYMENT RELATIONS BOARD

Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



October 9, 1992

Stewart Weinberg
Van Bourg, Weinberg, Roger
& Rosenfeld
875 Battery Street
San Francisco, CA 94111

Re: International Union of Operating Engineers v. State of California (Department of General Services); Unfair Practice Charge No. S-CE-617-S

DISMISSAL LETTER

Dear Mr. Weinberg:

I indicated to you, in my attached Warning letter dated October 2, 1992, 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 October 9, 1992, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my Warning letter.

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 of Regs., tit. 8, sec. 32635(a).) 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 of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

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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 copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code of 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 of 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 of 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 B. J. McMonigle
Bernard McMonigle
Regional Attorney

Enclosure

PUBLIC EMPLOYMENT RELATIONS BOARD



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



October 2, 1992

Stewart Weinberg
Van Bourg, Weinberg, Roger & Rosenfeld
875 Battery Street
San Francisco, CA 94111

Re: International Union of Operating Engineers v. State of
California (Department of General Services)
Unfair Practice Charge No. S-CE-617-S
WARNING LETTER

Dear Mr. Weinberg:

On July 2, 1992, you filed the above-referenced charge alleging violations of Government Code section 3519(a), (b) and (c). Specifically, you have alleged that "the employer threatens to unilaterally impose a stand-by policy."

Your charge reveals the following. On June 16, 1992, Department of General Services Labor Relations Officer Bill Denny met with Dennis Bonnifield of the International Union of Operating Engineers (IUOE). Mr. Denny informed Mr. Bonnifield that "due to operational needs, the Department of Telecommunications desired the ability to continue the stand-by policy." Mr. Denny also informed Mr. Bonnifield that he had sent a letter to the union on October 19, 1992, inviting the union to meet and confer regarding the stand-by policy. However, according to the IUOE, at no time prior to June 16 did the Respondent offer to meet and confer with regard to the stand-by policy. You state that in May 1991, ATAM, the former exclusive representative for this bargaining unit, entered into an agreement for a stand-by policy. That agreement became a part of the MOU then in effect and expired shortly thereafter. Since the expiration of the prior agreement, the IUOE and the state employer have negotiated a new agreement. According to your charge, the stand-by proposal has never been placed on the table nor made a part of the package voted on by the membership. You indicate that at no time during negotiations did Respondent make any proposals concerning stand-by policy or the continuation of the old stand-by policy. The stand-by policy was not part of the last, best and final proposal to the Charging Party by Respondent. You allege that "at the present time, the

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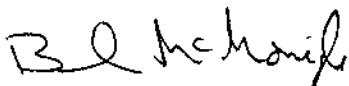
employer threatens to unilaterally impose a stand-by policy in the absence of a legitimate or valid meeting in conferring with the Charging Party, thus depriving the Charging Party the right to represent its members and depriving the members of the right to be represented by the exclusive representative."

I telephoned you on September 25, 1992, to discuss this charge. However, you were not in your office and I left a message. As of this date I have not received a telephone call from you.

A unilateral change occurs when the employer breaches or otherwise alters a party's collective bargaining agreement or its own established past practice and the employer does so without giving the exclusive representative notice and an opportunity to bargain. Grant Joint Union High School District (1983) PERB Decision No. 196. Your charge as written states no facts which demonstrate that the employer has in fact made a change or imposed a stand-by policy. Nor have you stated any facts which would indicate that the employer has made a definite decision to implement a stand-by policy and has presented the union with a fait accompli. The quote that you attribute to Mr. Denny indicates that the department "desired the ability to continue the stand-by policy." Such a statement appears to be less than an implementation of the policy. It appears that the union has also interpreted the policy as not yet being in effect as you have characterized the employer's action as a threat to make a unilateral change. I am aware of no case law which would support the finding of a violation for such a "threat." Accordingly, this charge should be dismissed.

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 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 **October 9, 1992**, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,



Bernard McMonigle
Regional Attorney