

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL UNION OF OPERATING)
ENGINEERS, CRAFT-MAINTENANCE)
DIVISION, UNIT 12,) Case No. SA-CE-881-S
)
Charging Party,) PERB Decision No. 1203-S
)
v.) June 18, 1997
)
STATE OF CALIFORNIA (PRISON)
INDUSTRY AUTHORITY),)
)
Respondent.)
_____)

Appearance; Van Bourg, Weinberg, Roger & Rosenfeld by William A. Sokol, Attorney, for International Union of Operating Engineers, Craft-Maintenance Division, Unit 12.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by the International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 (IUOE) to a Board agent's dismissal (attached) of the unfair practice charge. IUOE alleged that the State of California (Prison Industry Authority) violated section 3519(a) and (c) of the Ralph C. Dills Act (Dills Act)¹ by unilaterally changing 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.

term and condition of employment by hiring limited term employees instead of permanent employees.

The Board has reviewed the entire record in this case, including the Board agent's warning and dismissal letters,² the unfair practice charge, and IUOE's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and hereby adopts them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-881-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

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

²Although IUOE's appeal claims that the Board agent misinterpreted its charge allegations, we note that page 2 of the attached warning letter contains the standard language expressly inviting IUOE to clarify any misinterpretations by filing an amended charge. IUOE did not take advantage of that opportunity, and cannot do so now on appeal.

IUOE's belated attempt to clarify its charge constitutes "new charge allegations" being raised for the first time on appeal. PERB Regulation 32635 (b) (PERB regs, are codified at Cal. Code Regs., tit. 8, sec. 31001 et seq.), states:

(b) Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

IUOE offers no explanation or showing of good cause for submitting these allegations for the first time on appeal. Therefore, they may not be presented for the first time on appeal and have not been considered by the Board. (See State of California (State Teachers Retirement System) (1997) PERB Decision No. 1202-S.)

PUBLIC EMPLOYMENT RELATIONS BOARD



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



March 31, 1997

William A. Sokol, Esq.
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, CA 94612

Re: International Union of Operating Engineers, Craft-
Maintenance Division, Unit 12 v. State of California
(Prison Industry Authority)
Unfair Practice Charge No. SA-CE-881-S
DISMISSAL LETTER

Dear Mr. Sokol:

On September 8, 1996, you filed the above-captioned unfair practice charge on behalf of the International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 (IOUE). The charge alleges that the Prison Industry Authority (PIA) violated sections 3519(a) and (c) of the Ralph Dills Act. Specifically, the charge contends that PIA unilaterally changed a term and condition of employment at Corcoran State Prison by hiring limited term employees (employees hired for a specific period of time) instead of permanent employees (who are hired for an indefinite period).

You requested and received an extension of time until March 26, 1997, to either amend or withdraw the above-entitled charge. I have not heard from you as of today's date.

I indicated to you, in my attached letter dated March 6, 1997, 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 March 13, 1997 (extended to March 26, 1997), 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 March 6, 1997 letter.

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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:

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.)

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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
BERNARD MCMONIGLE
Regional Attorney

Attachment

cc: Gail Onodera, DPA Legal

BMC:eke

PUBLIC EMPLOYMENT RELATIONS BOARD



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1031 18th Street, Room 102
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(916) 322-3198



March 6, 1997

William A. Sokol, Esq.
Van Bourg, Weinberg, Roger & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, CA 94612

Re: International Union of Operating Engineers, Craft-
Maintenance Division, Unit 12 v. State of California
(Prison Industry Authority)
Unfair Practice Charge No. SA-CE-881-S
WARNING LETTER

Dear Mr. Sokol:

On September 8, 1996, you filed the above-captioned unfair practice charge on behalf of the International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 (IUOE). The charge alleges that the Prison Industry Authority (PIA) violated sections 3519(a) and (c) of the Ralph Dills Act. Specifically, the charge contends that PIA unilaterally changed a term and condition of employment at Corcoran State Prison by hiring limited term employees (employees hired for a specific period of time) instead of permanent employees (who are hired for an indefinite period).

You allege that IUOE was not notified of PIA's practice of hiring limited term employees until July 30, 1996, and that PIA did not meet and confer with IUOE in regards to this change in hiring practices.

Rick Kiger, of this office, spoke to you once on this matter on January 29, 1997. In response to this call, you gave permission for Mr. Kiger to speak with Mr. Carl Lombardo of IUOE. Mr. Kiger called Mr. Lombardo on January 29 and January 31, but received no answer. I called and left a voicemail message for you on this date.

Discussion

To establish a violation, it must be shown that the employer made a unilateral change in a existing work condition within the scope of bargaining without offering to bargain with the union. Pajaro Valley Unified School District (1978) PERB Decision No. 51; Rio Hondo Community College District (1983) PERB Decision No. 321.

You assert that PIA has made a unilateral change by hiring limited term employees and that IUOE was not notified of this

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change until July 30, 1996. However, investigation reveals that, in the fall of 1993, IUOE and PIA engaged in negotiations over downsizing. The IUOE negotiating team included Stewart Weinberg of your firm. At that time, there were discussions of existing limited term employees and a signed agreement that no limited term appointments would be made in the classifications affected by the layoff. Accordingly, the IUOE appears to have known of the PIA practice of hiring limited term employees at least as early as fall, 1993. This date is nearly three years prior to the date used in your charge.

Government Code section 3514.5 states, in relevant part, that PERB shall not "issue a complaint in respect of any charge based upon an unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. University of California (1990) PERB Decision No. 826-H, California State University (San Diego) (1989) PERB Decision No. 718-H. In the instant case, IUOE had actual knowledge of the limited term employment for nearly two and a half years prior to the statute of limitation date. Invoking the standard set forth in University of California, this charge must be considered filed outside the limitations period. Accordingly, this charge must 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 March 13, 1997, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, ext. 355.

Sincerely,

BERNARD MCMONIGLE
Regional Attorney