

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES)
ASSOCIATION,)
) Case No. SA-CE-1181-S
Charging Party,)
) PERB Decision No. 1381-S
v.)
) April 25, 2000
STATE OF CALIFORNIA (DEPARTMENT)
OF CORRECTIONS),)
)
Respondent.)
_____)

Appearances: Michael D. Hersh, Attorney, for California State Employees Association; State of California (Department of Personnel Administration) by Paul M. Starkey, Labor Relations Counsel, for State of California (Department of Corrections).

Before Dyer, Amador and Baker, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the State of California (Department of Corrections) (State) to an administrative law judge's (ALJ) proposed decision (attached). In the proposed decision, the ALJ found that the State violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)¹ when it eliminated the Saturday educational officer at the

¹The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. 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

California State Prison, Corcoran (Corcoran), thereby increasing security risks for certain California State Employees Association (CSEA) members employed at Corcoran.

The Board has reviewed the entire record, including the proposed decision, the State's exceptions and CSEA's response. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself consistent with the following discussion.

DISCUSSION

The State filed a brief statement of exceptions to the ALJ's proposed decision, and CSEA responded. In its exceptions, the State asserts that the proposed decision is based, at least in part, on unlawful, discriminatory criteria. Specifically, it excepts to references in the proposed decision to the age, gender and other physical characteristics of library workers.

The State argues that the ALJ's reference to such characteristics indicates that his ultimate finding of fact (i.e., that there had been a diminution of safety of library

discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(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.

workers) was based on unlawful criteria that are unsupported by the record. The State requests that those portions of the opinion be struck from the Board's consideration and that the decision be reviewed for correctness without its "stereotypical underpinnings."

We have reviewed the proposed decision and we are not persuaded that the proposed decision's physical descriptions of the library workers had an improper influence on the ALJ's analysis or conclusions. However, we emphasize that those descriptions played no part in our analysis of this case. In conclusion, we affirm the ALJ's finding of a violation, but we expressly note that any reference in the proposed decision to physical characteristics of any employees are not to be deemed as part of the Board's rationale in reaching this decision.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the State of California (Department of Corrections) (State) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(a), (b) and (c). Therefore, it is hereby ORDERED that the State, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and confer in good faith with its employees' recognized organization, the California State Employees Association (CSEA), regarding the effects upon the

safety of library workers of its staffing decision at the California State Prison, Corcoran (Corcoran).

2. Denying to its employees the right of representation when it refused to meet and confer in good faith on the subject referenced in paragraph 1 above.

3. Denying to CSEA the right to represent its members in the meet and confer process referenced in paragraph 1 above.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT.

1. Maintain custody staffing in all Corcoran libraries at the level in existence prior to September 1998 until a modification to such level is negotiated with and agreed to by CSEA or until such time as the parties have reached an impasse in negotiations and have completed the impasse procedures set forth in Dills Act section 3518.

2. Within ten (10) working days following the date this decision is no longer subject to appeal, post at all Corcoran offices, where notices are customarily placed for all employees, copies of the notice attached hereto as an Appendix. This notice must be signed by an authorized agent of the State, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional

Director of the Public Employment Relations Board in accordance with his instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on CSEA.

It is further ordered that all other aspects of the charge and complaint in Case No. SA-CE-1181-S are hereby DISMISSED.

Member Dyer and Member Baker joined in this Decision.



APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**

After a hearing in Unfair Practice Case No. SA-CE-1181-S, California State Employees Association v. State of California (Department of Corrections), in which all parties had the right to participate, it has been found that the State of California (Department of Corrections) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(a), (b) and (c).

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Refusing to meet and confer in good faith with its employees' recognized organization, the California State Employees Association (CSEA), regarding the effects upon the safety of library workers of its staffing decision at the California State Prison, Corcoran (Corcoran).

2. Denying to its employees the right of representation when it refused to meet and confer in good faith on the subject referenced in paragraph 1 above.

3. Denying to CSEA the right to represent its members in the meet and confer process referenced in paragraph 1 above.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT.

Maintain custody staffing in all Corcoran libraries at the level in existence prior to September 1998 until a modification to such level is negotiated with and agreed to by CSEA or until such time as the parties have reached an impasse in negotiations and have completed the impasse procedures set forth in Dills Act section 3518.

Dated: _____ STATE OF CALIFORNIA
(DEPARTMENT OF CORRECTIONS)

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED WITH ANY OTHER MATERIAL.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,)	
)	
Charging Party,)	Unfair Practice
)	Case No. SA-CE-1181-S
v.)	
)	PROPOSED DECISION
STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS),)	(9/29/99)
)	
Respondent.)	
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Appearances: Michael D. Hersh, Attorney, for California State Employees Association; Paul Starkey, Labor Relations Counsel, for State of California (Department of Corrections).

Before Allen R. Link, Administrative Law Judge.

INTRODUCTION

The California State Employees Association (CSEA) complains of the elimination of the Saturday educational officer, the correctional officer (CO) that patrols the building that houses the library, at the California State Prison, Corcoran (Corcoran). CSEA insists such elimination will greatly increase security risks for its members, the library workers.¹

The State of California (Department of Corrections) (CDC) disagrees, stating that its decision does not increase such risks to "a clear and present danger" level. CDC insists that this "clear and present danger" standard was agreed to by the parties in their memorandum of understanding (MOU). CDC points out that all library workers have personal alarms, as well as access to

¹The term "library worker", as used in this decision, refers to persons in the classification of staff librarian and library technical assistant (LTA). It does not include inmate library aides.

alarms built into their work locations. In addition, CDC states security will be increased by (1) a window being built between the library and the inmate recreational yard (yard), and (2) random semi-hourly library checks by roving custody personnel.

PROCEDURAL HISTORY

On October 14, 1998, CSEA filed an unfair practice charge and a request for injunctive relief with the Public Employment Relations Board (PERB or Board) against CDC. The charge alleged violations of the Ralph C. Dills Act (Dills Act).²

On October 26, 1998, the Office of the General Counsel of PERB, after an investigation (1) issued a complaint against CDC, alleging violations of subdivisions (a), (b) and (c) of section 3519,³ and (2) was given direction by the Board to

²The Dills Act is codified in the Government Code (commencing with section 3512). All section references, unless otherwise noted, are to the Government Code.

Subdivisions (a), (b) and (c) of section 3519, in pertinent part, state:

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.

(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.

request injunctive relief against CDC in Superior Court. On October 28, 1998, CDC agreed to maintain the status quo ante pending the outcome of this proceeding. On December 2, 1998, a conference was held in an unsuccessful attempt to settle the matter. On November 16, 1998, the respondent answered the complaint denying all material allegations and asserting affirmative defenses.

A formal hearing was held before the undersigned on February 22, 23 and March 17, 1999. At the conclusion of the hearing, transcripts were prepared, briefs were filed and the case was submitted for a proposed decision on August 10, 1999.

On February 23, 1999, during the formal hearing, charging party moved to amend the complaint to challenge the decision itself, not just its effects. The motion was placed in abeyance, pending the resolution of the entire matter.

FINDINGS OF FACT

Jurisdiction

The parties stipulated to the charging party being a recognized employee organization and the respondent being the state employer, within the meaning of the Dills Act.

History

CSEA is the recognized employee organization for State Bargaining Units 3 and 4, which include library workers. The parties' MOU expired on June 30, 1995. A successor agreement was negotiated for the period of April 1 through June 30, 1999, which has since been extended.

Corcoran is one of thirty-three prisons CDC maintains throughout the state. The inmates in these prisons are categorized according to their perceived level of danger to others. Level IV inmates have a much higher level of danger than Level I inmates. Corcoran has all levels of inmates. Within Corcoran there are four yards, designated A, B, C and D.

Inmate Use of Libraries

Inmates have a legal right to access a law library. In each of its yards, Corcoran has a library, which includes both legal and leisure materials. The libraries are available to the inmates at various times, but generally they are open Tuesday through Friday, from 6 a.m. to 3 p.m. The libraries on three yards are open on Saturdays. This is necessary to accommodate inmates who have weekday education or work assignments.

Each of these libraries is run by library workers, who are assisted by inmate aides. General population inmates are permitted to use the libraries under controlled circumstances. However, there is no physical or structural restraints between the inmates and the library workers.

Respondent's Decision to Eliminate the Educational Patrol Officer

On or about September 11, 1998, the California Correctional Peace Officers Association (CCPOA), the recognized representative of COs, reached an agreement with Corcoran's administration regarding an "institutional vacancy plan." The agreement designated thirteen positions as "vacancies," one of which was

the educational officer on C yard, third watch, Tuesday through Saturday.

CDC contends the elimination of this post was consistent with the prior elimination of educational officer coverage on A and B yards. However, despite this prior budgetary elimination, COs continued to be directed to staff these posts until an audit discovered the error. The educational officer on these two yards was filled by COs that had been redirected from other posts. When the administration and CCPOA reached agreement it was understood the educational officers on all three yards would be eliminated.

The elimination of these three posts was announced to the library workers by Warden George M. Galaza on Education Training Day at the end of September 1998.

Educational Officer

Traditionally, an educational officer has been assigned to a post that caused him/her to spend the entire shift in the education building. His/her primary responsibility, as defined in post orders, is "to provide direct supervision of inmates and be available to establish and maintain open lines of communication (between staff and inmates)." Other guidelines for educational officers included:

[I]n the event that a teacher must leave the classroom or the librarian leave the library for a short period of time, the officer(s) will be asked to supervise the area and maintain control.

During the week each educational officer is either patrolling the corridor or seated in his/her office which is located approximately 30 feet from the library door. On Saturday, this officer would usually be inside the library as that is the only program operating that day.

On each yard six officers, including the educational officer, are typically available, Monday through Friday, for emergency responses.

CSEA's Response to CDC's Elimination of Educational Officer

On October 7, 1998, John Veen (Veen), CSEA field representative, and Raymond VanZant (VanZant), a CSEA activist and a Corcoran teacher, met with Corcoran Employee Relations Officer Jeannie Nichols (Nichols), to discuss the announced termination of the educational officers. On October 8, 1998, Dava Nunes (Nunes), another CSEA activist and a Corcoran LTA, filed a grievance complaining of a unilateral change in working conditions, i.e., a diminution of safety in the work place. The grievance complained about CDC's failure to meet and confer over such change. Nunes never received a written response to her grievance.

On October 9 Veen wrote to Nichols, stating that the planned elimination of the educational officers put the librarian workers' safety at risk. He informed her that because of this, CSEA intended to file a charge with PERB and seek injunctive relief, unless the current level of security was maintained.

On October 14, 1998, when the parties met to discuss the matter, Nichols read from a memorandum that stated that Corcoran was going to immediately eliminate the educational officer posts, but only on Saturday. She indicated that "roving coverage" by custody staff would be provided at a minimum level of twice an hour. She also stated that a work order had been signed to put windows in the library walls abutting the yards. The memorandum continued: "If you still feel these precautionary security measures are inadequate for your personal protection, then the alternative is to be reassigned to the SHU^[4] law libraries on facilities IV-A and IV-B. . . ."

VanZant requested that the library workers be permitted to use vacation time in lieu of working the next day, Saturday, due to their safety concerns. Permission was granted and Nunes, VanZant, and Sherry Parks (Parks), a LTA assigned to C yard, all utilized vacation time that day.

On October 19, 1998, Veen wrote to Corcoran's administration, demanding to meet and confer over the effects of this staffing change. In early December, by mutual agreement, Nunes' October 8 grievance was placed in abeyance, pending the outcome of this proceeding.

⁴SHU refers to security housing units. In this unit an inmate is not permitted to leave his cell unless he is accompanied by a CO, on a one-to-one basis.

Libraries' Physical Description

The libraries are located in education buildings. Entrance to this building is through either of two locked doors off the yard. The yard lieutenant, sergeant, all COs, teachers and the library workers all have a key to these doors.

The education buildings are all constructed of cinder block and each abuts a yard.⁵ In each building there is a corridor in the shape of an inverted, but squared, "U" with each end leading to a locked door to the yard. The libraries have two or three large windows that run the width of the rooms. These windows look onto the corridor which starts at the yard door, passes the library and chapel, and proceeds past classrooms. Then it turns left and continues past glassed inmate restrooms. Once it passes the restrooms, it again turns left and proceeds past the offices of the yard's program office, which houses the yard's supervisory and clerical staff,⁶ ending at another yard door. The length of the corridor from each of the yard doors to the back corridor is 46 feet. The length of the back corridor is 55 feet. The entire length of the corridor is 147 feet.

There is little reason for the educational officer to patrol the 46 feet of the corridor abutting the program office. These offices house custody staff and any inmates in that area are

⁵The undersigned, along with the two attorneys and other interested persons toured some Corcoran libraries. There were assurances by all parties that the toured buildings were representative of all of the Corcoran libraries.

⁶There is no requirement that this office be maintained by any minimum level of custody personnel at any time.

under the direct supervision of such staff. The educational officer's "beat" consists of the 101 feet that constitute the other two legs of the corridor. Even within these 101 feet, there is a natural concentration on the 46 feet just outside of the library, classrooms and chapel. Even if the two legs of the corridor are taken into consideration, on average, the educational officer is less than 50 feet away from the library door.

There are no windows between the library and the yard. It is possible for a CO to look through a slit window⁷ in one of the yard doors and see a portion of the library, if the lighting conditions are favorable. However, in order to do this it would be necessary for the CO to press his/her face against this narrow window.

Efficacy of Available Alarms

The educational officer can respond in seconds to a problem in the library. However, yard officers are not assigned to a specific part of the yard. Therefore, they could be just outside the education building or more than one hundred yards away.

When a librarian activates the alarm, it results in a blue light flashing, as well as an audible alarm, on top of the

⁷The window is tall, but very narrow. Its purpose is not to facilitate a person on the outside looking in, but rather to allow a person inside to see who is immediately outside of the door prior to his/her opening the door.

building.⁸ However, it does not specify which part of the building has activated the alarm. Therefore, a CO responding from the yard, depending on the door accessed, could be required to check the program office, storage room, inmate restrooms, classrooms and chapel before s/he reached the library where the alarm was activated.

There are three types of alarms available to library employees: (1) personal electronic alarms⁹ which trigger the education building roof alarm; (2) an "off-hook" alarm which signals the prison's central security control if the library telephone is off-hook more than ten to thirty seconds; and (3) personal whistles. In addition, central security can become aware of a problem by the telephone dialing of "222."

The personal electronic alarms have a high rate of failure and do not activate in "dead spots" in the building. Both the personal electronic alarm and the whistles require freedom of arm movement. Nunes and VanZant conducted a test of the whistles. They learned that a whistle blown in the education building is not audible to the yard COs. Parks does not believe the whistle is audible in the program office, "if the door is closed."¹⁰

⁸The alarm also signals Corcoran's central security control, which has the capability of alerting other custody personnel by radio.

⁹This alarm looks like a garage door opener. It is worn on an employee's belt.

¹⁰It was unclear to which door the witness was referring.

Parks has been an LTA for ten years. For the first four or five years the library workers were not issued personal alarms. Since receiving such a device, she has used it three times. Once she was forced to use it because an incident occurred when the educational officer was not available. In another instance a library inmate aide threatened to kill her because she criticized his attire, stating it was inappropriate for his work assignment.

A lieutenant in the A yard, Gary Honest (Lt. Honest), stated in the twenty months he has been in that assignment's third watch he has responded to alarms in the education building four or five times.

Security Procedures In and Around the Library

Inmates are escorted to and from the library. Custody officers make random pat downs as inmates enter or leave the building. One educational officer, Anna Garcia (CO Garcia), would pat down every inmate before she let him into the building. At most, thirteen inmates, which includes three inmate workers, are permitted in the library at one time.¹¹

¹¹Library workers are given no information regarding the crimes for which specific inmates were incarcerated. However, CDC is sufficiently concerned about inmates "with histories of specific sex offenses" to the extent they are given a "R" suffix to their prison identification number. In addition, CDC has determined, in its operating manual, section 53130, such inmates shall not be permitted to work

in areas where they could have routine contact with the public or be a threat to an isolated staff member. [Emphasis added.]

However, library workers are not aware of "R" designated inmate status. Nor are the other yard officers, including lieutenants and sergeants aware of such designations, unless an

Preference is given to inmates desiring law book access. Leisure reading use is a secondary priority. There is a two-hour limit for any one inmate library visit. Law books are located in a restricted "out of bounds" area behind the desks of inmate aides and library workers. Parks stated that inmates often cross into the out-of-bounds area. When this occurs, she tells them to move. Often they do, but if they do not she explains they have to obey the rules or leave the library. If they still do not move, she calls the educational officer for assistance. Inmates wanting legal materials must approach an inmate aide one at a time. Staff have been instructed to position their desks so as to have unobstructed access to the door in case of an emergency and to leave the library if there is an altercation, or upon sounding or hearing an alarm.

The library workers themselves control the library environment¹² and use "progressive discipline" with inmates that act out or fail to follow rules. Serious incidents by inmates against library workers have been the exception, not the rule.

Alice Roberts (Roberts), supervisor of Corcoran's correctional education programs since May 1990 is aware of only one incident of physical assault against a library worker since

inmate is moved to a segregated housing unit, pursuant to the filing of a rules violation against him.

¹²Library workers receive forty hours of prison training upon their initial employment. Each subsequent year they receive an additional forty such hours. The topics covered in this training include disturbance control, escape procedures, inmate-staff relations, as well as other institutional policies and procedures.

she has been in that position. In that case, an inmate in a segregated housing unit, when permitted to go to the library in a supervised visit, spit at a library worker. Over the years, the number of alarm activations by library workers has been minimal.

Roberts also testified that the library on B yard had been located at the far end of the education building's back corridor when she first assumed her duties. When asked why she changed the location to a spot next to the yard door, she testified:

A. Because of security concerns that I had for the staff that were working in the library at that time, particularly . . . we did have evening library and the library staff was in there in the back area on their own, the officer would often be up at the front door, and there was no way of seeing what was going on back in that area. They were totally isolated in that area. I mean they could not be seen in any way shape or form.

CO Garcia worked as an educational officer for approximately one year, not more than five years ago. She said it would only take her "seconds" to respond to a problem in the library when she was assigned to that post. She remembers two assaults on teaching staff that occurred while she was assigned to that post.

CO Garcia, during her educational officer tenure, observed between five and ten incidents in which inmates were either fighting or throwing things. She mentioned one incident in which glass was broken. In searching inmates while in that post, she frequently found weapons and other contraband. The contraband took the form of metal pieces from tables, weapons in books and broken glass from windows.

CO Garcia said, when discussing the impact of the educational officer on inmate behavior, testified as follows:

Q. Can you describe how your presence would make a difference to incidents arising?

A. Anything that seemed abnormal, if there was a problem in the classroom between inmates, or if I felt that there was a problem in that classroom, that's where I'd be standing watching most of the time.

Q. I thought your testimony was that your presence itself was some sort of deterrent?

A. Yes, it is.

Nunes has worked in Corcoran libraries for more than eight years. She has never needed to use either her personal alarm or the telephone alarm system. She has instead summoned the nearby educational officer, on approximately ten occasions, to control an inmate. She has prepared four or five inmate incident reports, Form 115, and 10 to 15 counseling reports, Form 128.¹³

CO Thomas Benson (Benson) worked as an educational officer at both Corcoran and San Quentin on holiday relief on numerous occasions. He stated that when he had to leave early for any reason "the program shut down because they wanted custodial staff there."

Lt. Honest insists the program office in the education building is never left unsupervised unless an alarm has been sounded. Under those circumstances all inmates in the program

¹³Form 115 has the potential of impacting an inmate's "good time" credits, and consequently his incarceration time. Form 128 is a lower level incident report, with no "good time" credit impact. A Form 128 could be quasi-disciplinary, instructional or even laudatory, in nature.

office are moved to the yard and are placed in a prone position pending termination of the alarm situation.

However, VanZant went to the program office in yard A on the morning of the third day of the hearing in this case, March 17, 1999. When he arrived he found four inmates, the yard's office assistant, and no custody staff. When he left the office one minute later, he ran into an S&E CO.¹⁴ This has happened twice in the past. On those occasions he spent approximately three to four minutes in the program office. On both occasions the yard's office assistant was present.

In addition, Nunes states she has phoned the yard supervisory office on several occasions and received no answer.

Lt. Honest, when discussing the procedure of moving inmates from A yard to the receiving and release (R and R) unit, stated that if more than ten inmates were moved at one time, two S&E officers were assigned escort duty.

Parks explained the yard emergency procedure. When a LTA hits his/her alarm a visual and auditory alarm on top of the education building is activated. The inmates immediately lie prone on the ground. The tower CO oversees the yard and all available personnel go to the source of the emergency. This could occur six times a day or not at all. In the event of an alarm, the educational officer is to stay in the building and

¹⁴S&E CO refers to a search and escort CO. These COs are assigned to the yard supervisory staff to transport inmates, as well as paperwork, throughout the prison. They are also available to respond to alarms and other emergencies.

make sure all the inmates are secured, i.e., not a danger to free staff or each other. The tower CO has no visual contact with the inside of the education building.

Nunes also provided a map of B yard. She has been told by COs that most yard disturbances occur in a portion of the yard designated as Section 7. This section is in the part of the yard that is the furthest from the library. The COs told her that the reason for this area's high degree of incidents is due to either a blind spot or a high number of shadows.

There are other instances in the prison in which non-custody personnel are left with inmates, i.e., clothing room, yard program offices, canteen, laundry room and IST (In Service Training). However this is often a situation where the inmates are working aides to non-custody staff in a secured area, i.e., behind a window in a locked work area. This would be analogous to a library worker being locked in the library with his/her inmate aides.

MOU Safety Provisions

All library workers have job duty statements which require them to perform duties consistent with the prison environment, i.e., maintaining order and supervising the conduct of general population inmates and inmate aides, preventing escapes, maintaining security of work areas and work materials and inspecting for contraband.

Bargaining Units 3 and 4 have MOU provisions relating to health and safety. Both agreements have identical provisions

that state CDC "shall attempt to provide a safe work place for State employees."

Unit 3's MOU section 10.1 (f) states that when an employee in good faith believes s/he is required to work in a situation where a "clear and present danger" exists, s/he may notify the appropriate supervisor. If, after review, the union and management disagree, the union may file a grievance alleging a safety and health grievance. MOU section 10.4.a. states safety and health grievances

are not intended to include those hazards and risks which are an ordinary characteristic of the work or are reasonably associated with performance of an employee's responsibilities and job duties.

ISSUE

Did CDC's refusal to negotiate the safety effect of its education building staffing decision violate subdivision (a), (b) or (c) of section 3519?

CONCLUSIONS OF LAW

A unilateral modification in terms and conditions of employment within the scope of employment is a per se refusal to negotiate. (NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].) PERB has long recognized this principle. (Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College District (1979) PERB Decision No. 94; and Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant).)

Under subdivision (c) of section 3519, CDC is obligated to meet and confer in good faith with an exclusive representative about matters within the scope of representation.¹⁵ This section precludes the state employer from making changes in the status quo without giving notice of its actions to the appropriate exclusive representative. (Anaheim City School District (1983) PERB Decision No. 364; Pittsburg Unified School District (1982) PERB Decision No. 199.) In addition, the alleged change must have a generalized effect or continuing impact on terms and conditions of employment. (Grant.)

PERB stated, on page 53 of Jefferson School District (1980) PERB Decision No. 133:

The employees' interest in an article relating to their safety is obvious. Safety and health stand with wages as one of the more fundamental areas of concern in a collective bargaining relationship. The District does not advance and we cannot adduce any manner in which negotiating this proposal would impermissibly intrude on the District's ability to fulfill its mission. [Emphasis added.]

Although CDC has the right to manage its prisons and make staffing decisions, if such decisions impact the safety of its employees it must meet and confer on the matter with the affected employees prior to implementation.

¹⁵The Dills Act's scope of representation is set forth in section 3516 and is as follows:

The scope of representation shall be limited to wages, hours, and other terms and conditions of employment, . . .

It is axiomatic that prisons are dangerous places to work, and that they contain a myriad of circumstances that pose potential risks to employees. It is also true that employees that agree to work in such institutions accept a certain degree of risk as a necessary and proper part of their employment. However, when the employer increases the degree of such risk it must meet and confer with the affected employees regarding such action.

CDC, in its brief, contends that CSEA has failed to show there was a diminution of the library workers' safety. This contention is not supported by the evidence, as shown in the examples set forth below:

1. It is clear that CDC's staffing modification decreased the availability of custody personnel to the library workers from an average of less than 50 feet to 50 yards (mid point of the yard). In addition, the yard CO is not in a position to hear whistles, scuffles or shouts for help.

Even if the yard CO becomes immediately aware of a conflict, s/he must make sure all yard inmates are in a prone position, run to the education building, find the appropriate key, unlock the door and begin a search for the location of the problem. This is in contrast with the educational officer who, upon hearing the confrontation, runs a few steps to the library and takes corrective action. Granted, there is only a difference of a few minutes, but when faced with an angry, dangerous felon, even seconds can be crucial.

2. CDC attempted to show that historically there have been few problems originating in the education building, in general, and the library, in particular. However, one plausible reason for this low degree of incidents may be because of the very officer CDC is attempting to eliminate.

3. The law library is of crucial importance to many inmates. It holds the means by which they can attempt to persuade a judge to release them. It is fraught with potential for conflict. Library workers are, in general, not the robust physical specimens often seen in COs. They are more often older, smaller and female members of the prison staff. This is a factor that should be taken into consideration when determining the reasonableness of safety policies. Their protection is not in their size, nor their strength, but rather the policies and procedures of the prison. These policies, and the dire consequences to inmates that violate them, are manifested in the presence of a nearby CO. The level of immediacy of such CO is of crucial importance in the deterrence of inappropriate inmate behavior. This immediacy is not enhanced to any appreciable degree by either a yard window or a twice hourly roving CO.

4. CDC argues that its action does not create "a clear and present danger," the MOU standard for the filing of a health and safety grievance. It supports this argument by stating the subject post elimination merely subtracts one CO from the total number of available yard COs.

This argument is rejected. CDC fails to understand, or admit, that it is not the total subtraction of one yard CO that is the crucial element, it is the elimination of that CO from the immediate work area, thereby depriving the library worker of earshot assistance.

5. MOU section 10.4.a states that safety grievances are not intended to include "an ordinary characteristic of the work" or risks that "are reasonably associated with performance". (Emphasis added.) The gravamen of the charge is that CDC appreciably changed the "ordinary" characteristic of the work, as well as the level of "reasonableness" of the risks associated with performance.

The Dills Act requires CDC meet and confer with its employees' recognized representative prior to its implementation of such basic changes to working conditions.

6. The head of Corcoran's education system admits she had the library moved from a location at the furthest end of the two legs of the corridor to a spot next to the yard door. Her reason for this move was "security concerns." In other words, it was too far from the educational officer's regular patrol area to be safe.

Now, however, CDC is insisting that its decision to place the nearest CO outside of the building at an average distance of 50 yards, does not constitute a diminution of safety.

7. Lt. Honest admitted that prison policy directed an additional S&E officer be assigned when the number of inmates to

be transported from one location to another exceeded ten.

However, CDC sees no safety impact on its employees when it directs a middle aged female library worker, with no serious physical custody capability, to be responsible for thirteen inmates on a regular basis.

An examination of the evidence shows quite clearly that a natural consequence of CDC's staffing decision was a diminution of safety for library workers. Such action, absent a meet and confer with the appropriate exclusive representatives, constitutes a violation of the Dills Act.

Motion to Amend Complaint to Include Decision

During the hearing CSEA moved to amend the complaint to challenge the lawfulness of CDC's decision, not just its effects. The motion was placed in abeyance, pending the resolution of the entire case.

The "decision" at issue is CDC's decision to amend its staffing patterns by eliminating its Saturday educational officer. The impact on the library workers' safety is an effect of that decision. It is clear that CDC has the authority to unilaterally make such staffing decisions. It is only when that decision impacted a matter within the scope of negotiations, i.e., employee safety, that an obligation to meet and confer is created.

Therefore, the motion to amend the complaint is denied.

SUMMARY

After an examination of the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that CDC refused to meet and confer in good faith with its employees' recognized employee organization on the effects of its staffing decision. Such refusal constitutes a violation of subdivision (c) of section 3519. Such action also (1) interfered with the rights of the affected employees to representation and (2) denied CSEA's right to represent its members. Both rights are guaranteed by the Dills Act. Such interference and denial constitute violations of subdivisions (a) and (b) of section 3519 of the Dills Act.

PERB, in section 3514.5(c), is empowered to

. . . issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

In order to remedy the unfair practice of the respondent and prevent it from benefitting from its unlawful conduct and effectuate the purposes of the Dills Act, it is appropriate to order CDC to cease and desist from (1) failing to meet and confer in good faith, (2) denying its employees the right to representation, (3) denying CSEA its right to represent its members, and (4) modifying the custody staffing in its libraries from those levels in existence prior to September 1998 until the

parties reach agreement or have completed the statutory impasse procedures.

It is also appropriate that the respondent be required to post a notice incorporating the terms of the Order at all of its Corcoran offices where notices are customarily placed for all employees. This notice should be subscribed by an authorized agent of CDC, indicating that it will comply with the terms therein. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that CDC has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the Dills Act that employees be informed of the resolution of the controversy and will announce CDC's readiness to comply with the ordered remedy. (See Placerville Union School District (1978) PERB Decision No. 69.) In Pandol and Sons v. Agricultural Labor Relations Board (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584], the California District Court of Appeals approved a similar posting requirement. (See also National Labor Relations Board v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].)

PROPOSED ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the State of California (Department of Corrections) (CDC) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(a),

(b) and (c). Therefore, it is hereby ORDERED that CDC, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and confer in good faith with its employees' recognized organization, the California State Employees Association (CSEA), regarding the effects upon the safety of library workers of its staffing decision at the California State Prison, Corcoran (Corcoran).

2. Denying to its employees the right of representation when it refused to meet and confer in good faith on the subject referenced in paragraph 1 above.

3. Denying to CSEA the right to represent its members in the meet and confer process referenced in paragraph 1 above.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT.

1. Maintain custody staffing in all Corcoran libraries at the level in existence prior to September 1998 until a modification to such level is negotiated with and agreed to by CSEA or until such time as the parties have reached an impasse in negotiations and have completed the impasse procedures set forth in Government Code section 3518.

2. Within ten (10) working days of service of a final decision in this matter, post at all Corcoran offices, where notices are customarily placed for all employees, copies of the notice attached hereto as an Appendix. This notice must be signed by an authorized agent of CDC, indicating that it will comply with the terms of this Order. Such posting shall be

maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the charging party herein.

It is further ordered that all other aspects of the charge and complaint are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing, together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Allen R. Link
Administrative Law Judge