STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, LOCAL 1000, SEIU, AFL-CIO, CLC, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF YOUTH AUTHORITY), Respondent.	Case No. SA-CE-1315-S PERB Decision No. 1527-S May 22, 2003

Appearance: California State Employees Association by Patrick Clark, Senior Labor Relations Representative, for California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC (CSEA) of a Board agent's dismissal and deferral to arbitration (attached) of its unfair practice charge. The charge alleged that the State of California (Department of Youth Authority) (CYA) violated Section 3519 of the Ralph C. Dills Act (Dills Act)[1] by failing to bargain over a decision to send teaching staff into living units and by surface bargaining over the impact of that decision.

[1] The Dills Act is codified at Government Code section 3512 et seq.

After reviewing the entire record in this matter, including the original charge, amended charge and CSEA's appeal, the Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself consistent with the discussion below.

DISCUSSION

The Board agent dismissed CSEA's unfair practice charge on July 26, 2002, and deferred the charge to arbitration. CSEA argues on appeal that the dismissal was improper because, "CSEA has already arbitrated the issue of teachers performing teaching duties in the living units/cell blocks at the youth correctional facilities, and CSEA prevailed in that arbitration." CSEA argues that the issue here is "not a prearbitral situation but a post-arbitral issue of compliance." To the extent CSEA seeks to have the Board enforce its arbitration award, this charge is duplicative of the one filed by CSEA in PERB Case No. SA-CE-1294-S and must be similarly dismissed.[2]

To the extent this charge alleges new issues, the Board agent correctly dismissed the charge and deferred it to arbitration. CSEA argues that deferring this charge to arbitration would be futile because the CYA has not complied with the previous arbitration order issued on January 9, 2001, which involved the same issue. CSEA implies that the CYA's failure to comply with the arbitration order is evidence of the CYA's enmity towards CSEA. Accordingly, CSEA asserts that the standards for deferral are not met. (See State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S (citing to Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931]).)

[2] See State of California (Department of Youth Authority) (2003) PERB Decision No. 1526-S.

The facts do no support CSEA's contentions. The January 9, 2001, arbitration order found that the CYA violated the applicable memorandum of understanding (MOU) by assigning new work duties to unit members without providing them the appropriate training and equipment. On its face, the arbitration order does not totally prohibit CYA from making the proposed changes. This is evidenced by the arbitrator's order that CYA meet and confer with CSEA before making further changes. CYA apparently attempted to comply with the arbitrator's order by proposing additional training and equipment for unit members. It is this proposal that appears to be the focus of this charge. Contrary to CSEA's assertions, there is no evidence that the CYA is flagrantly ignoring the January 9, 2001, arbitration order.

As for whether the CYA's actions constitute a unilateral change in the terms and conditions of employment, that is a matter covered by the parties' MOU. CYA has agreed to waive any procedural defenses and there is no evidence that the dispute arises in other than a stable collective bargaining environment. Accordingly, to the extent this charge raises new issues, it must be dismissed and deferred to arbitration.

ORDER

The unfair practice charge in Case No. SA-CE-1315-S is hereby DISMISSED AND DEFERRED TO ARBITRATION.

Members Whitehead and Neima joined in this Decision.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377

July 26, 2002

Paula J. Negley, Attorney
California State Employees Association
10600 Trademark Parkway North, Suite 405
Rancho Cucamonga, CA 91730

Re: California State Employees Association v. State of California (Department of Youth Authority)
Unfair Practice Charge No. SA-CE-1315-S
NOTICE OF DISMISSAL AND DEFERRAL TO ARBITRATION

Dear Ms. Negley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 16, 2001. An amended charge was filed on June 28, 2002. The California State Employees Association alleges that the State of California (Department of Youth Authority) violated the Ralph C. Dills Act (Dills Act)[1] by refusing to bargain over the decision to send teaching staff into living units and by surface bargaining over the impact of that decision.

I indicated in the attached letter dated July 11, 2002, that this charge was subject to deferral to arbitration. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, the charge should be amended. You were further advised that unless the charge was amended or withdrawn prior to July 18, 2002, it would be deferred to arbitration. That letter erroneously stated that the case would then be placed in abeyance. On July 25, I called your office and left a message on your voicemail. The message stated that the previous letter contained an error and that the case would actually be dismissed. The message also invited you to call if you have any questions.

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 July 11 letter.

As I explained in the attached letter, Government Code section 3514.5(a) and PERB Regulation 32620(b)(5) require a Board agent to defer a charge where the dispute is subject to final and binding arbitration pursuant to a collective bargaining agreement. (Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81; State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.) The charge alleges that the employer made a unilateral change in job duties. This conduct is covered by the parties' collective bargaining agreement, the Respondent has agreed to waive any procedural defenses,

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

and there is no evidence that the dispute arises in other than a stable collective bargaining environment. Accordingly, the charge must be dismissed and deferred to arbitration. Following the arbitration of this matter, the Charging Party may seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)[2]

Right to Appeal

Pursuant to PERB Regulations,[3] 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. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Regulation 32635(b).)

[2] Pursuant to Government Code section 3514.5(a), the six-month limitation on the filing of a charge is tolled during the time required to exhaust the grievance machinery where that procedure ends in binding arbitration.

[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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 Regulation 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

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. (Regulation 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
General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: Barrett W. McInerney, Labor Relations Counsel

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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July 11, 2002

Paula J. Negley, Attorney
California State Employees Association
10600 Trademark Parkway North, Suite 405
Rancho Cucamonga, CA 91730

Re: California State Employees Association v. State of California (Department of Youth Authority)
Unfair Practice Charge No. SA-CE-1315-S
WARNING LETTER (DEFERRAL TO ARBITRATION)

Dear Ms. Negley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on November 16, 2001. An amended charge was filed on June 28, 2002. The California State Employees Association alleges that the State of California (Department of Youth Authority) violated the Ralph C. Dills Act (Dills Act)[1] by refusing to bargain over the decision to send teaching staff into living units and by surface bargaining over the impact of that decision.

Investigation reveals the following. Heman G. Stark is a maximum-security facility of the DYA in Chino. In August 2000, management determined that teachers and teaching assistants would need to perform certain educational services in the celled "living units" for inmates prohibited from attending classes in the regular classrooms at the facility's high school. When CSEA learned of this decision, it requested to negotiate and filed a health and safety grievance. The parties met on September 11, 2000. The employer took the position that, under the collective bargaining agreement, it was permitted to make the decision without negotiating.

On September 25, 2000, CSEA filed for injunctive relief in San Bernardino Superior Court. The Superior Court judge assisted the parties in accelerating arbitration using a local arbitrator. An amended arbitration award issued on January 9, 2001. That award found a violation of several sections of the collective bargaining agreement. The arbitrator ordered that the teachers be removed from the living units and that the DYA meet with CSEA before making any changes in teacher working conditions. In March 2001, the court granted CSEA's petition to confirm the award.

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

On February 20 and 21, 2001 the parties met, there was no agreement. According to CSEA, the DYA negotiator, Jan Sales declared that the parties were at impasse at the end of the meetings. According to DYA, CSEA negotiator Bill Kelly agreed.

On March 14, CSEA's Petition to Confirm the Award of the Arbitrator was granted and DYA's Petition to Correct or Vacate was denied in San Bernardino Superior Court. CSEA contends that, at this hearing, counsel for the DYA stated that the department intended to re-implement the same changes in working conditions, that CSEA could then file another safety grievance, and the dispute could be heard by another arbitrator.

The parties met again on April 9, 2001. Dale Wells, a subordinate of Sales represented DYA. Wells had invited state mediator Jeff Schrader to attend. Wells asked CSEA negotiator Bill Kelly to agree to mediation and to agree that the parties were at impasse. Kelly insisted that the parties were not at impasse and stated that the proper procedure would be for DYA to file an impasse request at PERB.

On April 18, Wells filed a request for impasse determination at PERB. On May 2, PERB issued a determination that an impasse existed and notified the parties that a mediator would be contacting them shortly. On that same date, CSEA filed unfair practice charge SA-CE-1294-S against the DYA.[2]

On May 3, DYA negotiator Jan Sale sent a letter to CSEA negotiator Bill Kelly stating that the employer was available to meet with the state mediator "on any day from the date of this letter until June 1, 2001." On May 16, Kelly replied by letter that he would discuss his availability with the mediator.

On June 25, mediator Jan Schrader sent a letter proposing five dates in July and asking the parties to pick one or more of them. Kelly responded on July 3, that there are "two problems with scheduling mediation" in this matter. He was unavailable because of negotiations over new contracts and "Until we get a ruling from PERB on the ULP it is inappropriate for the parties to proceed with mediation." On July 27, Schrader sent a letter to both sides stating that "the parties...have been unable to come up with a mutually agreeable date to mediate the above-referenced dispute."

On November 16, CSEA filed this unfair practice charge (SA-CE-1315-S) and a request for injunctive relief alleging that DYA had announced that teaching staff would begin performing work duties in the cell blocks/living units at Stark. That action did not take place at that time and CSEA withdrew its request for injunctive relief.

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[2] That charge was dismissed and deferred to arbitration under Lake Elsinore by this PERB Regional Attorney. The union appealed that determination to the Board. In State of California (Department of Youth Authority) (June 6, 2002) PERB Decision No. 1483-S, the Board remanded the case for processing consistent with its decision in State of California (Department of Food and Agriculture (2002) PERB Decision No. 1473-S.

According to the employer, teaching staff has been working in the living units and conducting educational meetings since January 2002, with no incidents.[3] The employer also states that such meetings had been suspended in January 2001 to allow the adoption of modified policies that are consistent with the arbitrator's decision.

The unit 3 contract, effective through June 30, 2003, states:

> **22.1 Entire Agreement**
>
> This Contract sets forth the full and entire understanding of the parties regarding the matters contained herein, and any other prior or existing understanding or agreement by the parties, whether formal or informal, regarding any such matters is hereby superseded. Except as provided in this Contract, it is agreed and understood that each party to this Contract voluntarily waives its right to negotiate with respect to any matter raised in negotiations or covered in this Contract.
>
> With respect to other matters within the scope of negotiations, negotiations may be required as provided in subsection B. below.
>
> > B. The parties agree that the provisions of this subsection shall apply only to matters that are not covered in this Contract.
>
> The parties recognize that it may be necessary for the State to make changes in areas within the scope of negotiations. Where the State finds it necessary to make such changes, the State shall notify the Union of the proposed change thirty (30) days prior to its proposed implementation.
>
> The parties shall undertake negotiations regarding the impact of such changes on the employees when all three of the following exists:
>
> > 1. Where such changes would affect the working conditions of a significant number of employees.
> >
> > 2. Where the subject matter of change is within the scope of representation pursuant to Ralph C. Dills Act.
> >
> > 3. Where the Union requests to negotiate with the State.

[3] The teaching staff includes teachers in state bargaining unit 3 and instructional aides in state bargaining unit 20.

> An agreement resulting from such negotiations shall be executed in writing and shall become an addendum to this Contract. If the parties are in disagreement as to whether a proposed change is subject to this subsection, such disagreement may be submitted to the arbitration procedure for resolution.
>
> The arbitrator's decision shall be binding. In the event negotiations on the proposed change are undertaken, any impasse which arises may be submitted to mediation pursuant to Section 3518 of the Ralph C. Dills Act.

A similar entire agreement article is found in the collective bargaining agreement for state bargaining unit20.

Section 3514.5(a) of the Dills Act states, in pertinent part, that PERB shall not:

> Issue a complaint against conduct also prohibited by the provisions of the [collective bargaining] agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

In Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a, the Board explained that:

> While there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations.[2] EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector.[3] [Fn. 2 omitted; fn. 3 to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.]

Although Dry Creek was decided under the Educational Employment Relations Act[4] the NLRB deferral standard has also been applied to the Dills Act. (State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.)

In Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] and subsequent cases, the National Labor Relations Board articulated standards under which deferral to the contractual

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[4] The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

grievance procedure is appropriate in prearbitral situations. These requirements are: (1) the dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

These standards are met with respect to this case. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by the attached letter from its representative, Barrett McInerney, dated July 11, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issues raised by this charge, that the employer refused to bargain over a decision to make a change in teaching staff duties and engaged in surface bargaining over the impact, directly involves an interpretation of the entire agreement articles of the collective bargaining agreements for bargaining units 3 and 20. The entire agreement articles arguably grant the employer the ability to make changes on matters within the scope of bargaining subject to impact bargaining if certain conditions are met. This article covers the issue of whether the employer was free to make a change in job duties and the issue of whether the employer met its obligation to bargain over the impact of that decision. The articles also state that any disputes regarding the applicability of the article to the proposed change may be submitted to binding arbitration.

Accordingly, this charge must be deferred to arbitration and will be placed in abeyance until such time as the arbitration process has concluded. Following the arbitration of this matter, the charge will be dismissed unless the Charging Party seeks a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District, supra.)

If there are any factual inaccuracies in this letter or any additional facts that would require a different conclusion than the one 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 filed with PERB. If I do not receive an amended charge or withdrawal from you before July 18, 2002, I shall place your charge in abeyance. If you have any questions, please call me at the above telephone number.

Sincerely,

Bernard McMonigle
Regional Attorney

Attachment