STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA UNION OF SAFETY EMPLOYEES, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF PARKS & RECREATION), Respondent.	Case No. LA-CE-581-S PERB Decision No. 1566-S December 16, 2003

Appearances: Linda M. Kelly, Legal Counsel, for California Union of Safety Employees; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California (Department of Parks and Recreation).

Before Baker, Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California Union of Safety Employees (CAUSE) of a Board agent's dismissal and deferral to arbitration (attached). The charge alleges that the State of California (Department of Parks and Recreation) (State) violated the Ralph C. Dills Act (Dills Act)[1] by using a supervisor, a non-bargaining unit employee, to perform bargaining unit work at the State's Channel Coast District Dispatch Center in Gaviota, California. CAUSE further alleges that it received no notice of the intent to assign bargaining unit work to a non-unit employee and was not afforded the opportunity to negotiate. In addition, CAUSE claims that the State's conduct denies unit members their right to be represented and denies CAUSE its right to represent it members. CAUSE alleges that this conduct constituted a violation of Dills

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

Act section 3519(b) and (c).[2] By telephone conversation dated August 22, 2002 between CAUSE General Counsel Sam McCall and the Board agent, CAUSE waived its right to a warning letter. The Board agent deferred the charge to arbitration and dismissed the charge. The Board agent attached to the dismissal and deferral to arbitration a letter from State Representative, Linda Nelson, dated May 31, 2002, in which the State indicated its willingness to proceed to arbitration and to waive all procedural defenses. That letter is entitled "Confidential Response"; however, DPA Labor Relations Counsel, Joan Branin, waived confidentiality by telephone conversation with the Board agent on August 26, 2002.

Upon review of the entire record, including the charge, the State's response to the charge, the dismissal letter, CAUSE's appeal and the State's response to CAUSE's appeal, the Board adopts the Board agent's dismissal as the decision of the Board itself. The Board will address the issues raised in CAUSE's appeal below.

CAUSE'S APPEAL

In its appeal, CAUSE reiterates the statement of facts in its charge: A communications operator was hired as a limited term supervisor but continued to perform communications operator work, bid for shifts against other communications operators, and bumped some unit employees with greater seniority. The communications operator is also a public safety position and the negative impact on the bargaining unit could have a corresponding negative impact on public safety. However, CAUSE did not explain how the supervisor performing unit work hindered public safety.

CAUSE argues that deferral is improper since the facts in this case do not meet the requirements of Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] (Collyer).

[2]This conduct also allegedly violates Dills Act section 3519(a) although CAUSE did not specifically identify that section.

The issues of taking work outside of the bargaining unit, violation of bargaining unit rights and bad faith bargaining are not addressed in the parties' memorandum of understanding (MOU).[3] CAUSE disagrees with the Board agent's assessment that work preservation is covered by the MOU because, according to CAUSE, eliminating bargaining unit work destroys the bargaining unit itself; and the parties did not specifically intend that that issue be covered by the MOU.[4] CAUSE asserts that PERB gives unique status to such cases because such violations impact the integrity of the bargaining unit and affect the viability of the unit itself. The only case cited for this proposition was Long Beach Community College District (2002) 26 PERC 33079, a non-precedential Board decision. CAUSE further claims that Article 20.1 of the MOU specifically limits negotiations to impact bargaining only.[5] However, removing work from the bargaining

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[3]The parties' MOU was effective from July 1, 2001 to July 2, 2003.

[4]CAUSE did not provide any evidence of bargaining unit history to support this claim.

[5]MOU Article 20.1 provides in its entirety that:

> B. The parties agree that the provisions of this Subsection shall apply only to matters which are not covered in this Contract.
>
> The parties recognize that during the term of this Contract 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 CAUSE 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 in Unit 7, when all three (3) of the following exists:
>
> 1. Where such changes would affect the working conditions of a majority of Unit 7 employees by classification in a department.
>
> 2. Where the subject matter of the change is within the scope of representation pursuant to the Ralph C. Dills Act.
>
> 3. Where CAUSE requests to negotiate with the State.

unit confers the right to bargain over the decision itself and applying Article 20.1 would impose upon CAUSE a waiver of the right to bargain over this issue. CAUSE asserts that such a waiver does not meet the Board's standard for a "clear and unmistakable waiver."

For the first time on appeal, CAUSE alleges a violation of Section 3519(a); however, the basis for this charge is not explained.

CAUSE further alleges that the State's conduct produces independent violations of union rights to represent unit members and bad faith bargaining in violation of Dills Act section 3519(b) and (c), and that these are rights not covered in the MOU. CAUSE argues that these violations have separate remedies that cannot be addressed through the grievance procedure, such as posting cease and desist orders.[6]

CAUSE states that before the Board's decision in State of California (Department of Corrections) (1995) PERB Decision No. 1100-S (Corrections), the Board bifurcated issues in deferral cases. In Corrections, the Board overruled prior cases to eliminate duplicative proceedings, reasoning that the remedy for both violation of employee and union rights was to correct the conduct (i.e., reinstate an employee from a retaliatory dismissal). However, Corrections did not address remedies such as postings of cease and desist orders. CAUSE argues that it is unclear whether an arbitrator may order the State to post a cease and desist order, or that an arbitrator's order has the same effect as a PERB order.

> Any 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 Dills Act.

[6]CAUSE does not explain how the MOU precludes such a remedy.

Therefore, according to CAUSE, it is irrelevant that the State has waived procedural defenses. CAUSE concludes that it should not be forced to waive its right to bargain over elimination of bargaining unit work. Under the Board's standard for waiver, there has been no "clear and unmistakable" waiver.

STATE'S OPPOSITION TO CAUSE'S APPEAL

The State agrees with the Board agent's deferral of the matter to arbitration and dismissal of the charge pending the completion of arbitration. In support, the State refers to the MOU Article 20.1 provision as applicable to changes in working conditions, citing the Board's decision in a similar matter in State of California (Department of Personnel Administration) (1996) PERB Decision No. 1145-S (DPA). In DPA, the Board deferred a charge alleging transfer of bargaining unit work within Unit 7 to arbitration. The arbitration occurred and the arbitrator based her decision on an interpretation of Article 20.1 of the MOU. CAUSE participated in that arbitration and is fully aware that an arbitrator has rendered a decision in a similar matter.

DISCUSSION

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

> [I]ssue 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. [Fn. omitted.] 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.[7]

Although Dry Creek was decided under the Educational Employment Relations Act (EERA)[8] 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] (Collyer) and subsequent cases, the National Labor Relations Board (NLRB) articulated standards under which deferral to the contractual 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.

Article 20.1 of the parties' MOU provides that the parties shall negotiate the impact of changes within the scope of representation, but not covered by the MOU, if the changes affect the working conditions of the majority of Unit 7 members and CAUSE requests negotiations. Further, any disagreement as to whether a change is subject to Article 20.1 may be submitted to binding arbitration.[9]

Under Eureka City School District (1985) PERB Decision No. 481 and its progeny, the transfer of bargaining unit work as alleged by CAUSE is clearly within the scope of representation. A unilateral change involving that issue violates the duty to bargain under Dills Act section 3519(c). (See e.g., State of California (Department of Corrections) (2000)

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[7]Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.

[8]EERA is codified at Government Code section 3540 et seq.

[9]Article 6 of the parties' MOU provides for a grievance procedure ending in binding arbitration.

PERB Decision No. 1391-S.) As transfer of bargaining unit work is within the scope of representation, it is also covered by the above provisions of Article 20.1 of the MOU and so, under the MOU's plain terms, its impact must be negotiated. Any dispute regarding MOU coverage of this issue may be submitted to binding arbitration. Accordingly, as the State has waived its procedural defenses, under Collyer, the Board defers to arbitration and dismisses this issue.

CAUSE, however, argues that the parties did not intend by that provision that CAUSE waive its right to negotiate removal of bargaining unit work from the unit and that such waiver must be "clear and unmistakable." We agree that a waiver of the right to bargain a negotiable issue must be "clear and unmistakable." (Amador Valley Joint Unified School District (1978) PERB Decision 74.) In Los Angeles Community College District (1982) PERB Decision No. 252, p. 13, citing NLRB precedent, the Board has previously held that:

> [U]nion conduct in negotiations will make out a waiver only if a subject was 'fully discussed' or 'consciously explored' and the union 'consciously yielded' its interest in the matter. [Citation.] Moreover, where a provision would normally be implied in an agreement by operation of the Act itself, a waiver should be express, and a mere inference, no matter how strong, should be insufficient.

In Los Angeles Community College District (1982) PERB Decision No. 252, at p. 10, the Board also held that:

> Contract terms will not justify a unilateral management act on a mandatory subject of bargaining unless the contract expressly or by necessary implication confers such right. New York Mirror (1965) 151 NLRB 834, [58 LRRM 1465, 1467]. (Emphasis added.)

Article 20.1 of the MOU clearly requires negotiation of the impact of changes in negotiable matters that are not covered by the agreement. By necessary implication, it appears that Article 20.1 covers the decision to make the change itself, which would include

adjudication of CAUSE's waiver of the right to bargain this issue. Under Article 20.1, any dispute as to coverage may be submitted to binding arbitration. Accordingly, the Board also defers and dismisses this issue.

However, CAUSE has also alleged that the State's conduct results in multiple Dills Act violations, some of them not covered by the MOU. CAUSE argues that these violations should not be deferred because the MOU offers no remedy for some of these violations.

For instance, CAUSE alleges that the State's conduct denied CAUSE its right to represent unit employees in violation of Dill Act section 3519(b).[10] Although CAUSE claims the Section 3519(b) violation is an independent violation of the Dills Act, it is in fact a derivative claim of the alleged violation of Section 3519(c), arising out of the same conduct, transfer of bargaining unit work. (State of California (Department of Youth Authority) (2000) PERB Decision No. 1374-S; San Francisco Community College District (1980) PERB Decision No. 146; San Francisco Community College District (1979) PERB Decision No. 105, pp. 18-20.)

In contrast, an independent violation arises out of other specific conduct. The NLRB has long recognized the distinction between derivative and independent violations. (See Morris, Developing Labor Law, Third Ed., ABA Sec. of Labor and Employment Law, BNA Books, Ch. 6, Sec. I., C.) Section 8(a)(1) of the National Labor Relations Act (NLRA)[11] may

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[10]In its charge, CAUSE also alleged that the State's conduct interfered with unit employees' rights to be represented by CAUSE, an alleged violation of Section 3512, though CAUSE failed to reiterate this allegation on appeal.

[11]NLRA Section 8 provides, in pertinent part that:

> (a) It shall be an unfair labor practice for an employer –
>
> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

either be an independent violation or a derivative violation of one of the other four subdivisions of section 8. Historically, the NLRB has not deferred charges based upon independent violations that are closely related. (Hoffman Air and Filtration System, Division of Clarkson Industries, Inc. (1993) 312 NLRB 349; [144 LRRM 1215] (Hoffman).) In Hoffman, the NLRB refused to defer a section 8(a)(1) violation involving the employer's expressed policy of holding the union job steward to a higher standard of conduct than other employees because the CBA limited the contractual remedies for such a violation, specifically precluding the arbitrator from issuing a cease and desist order. At the same time, the NLRB chose not to defer a section 8(a)(3) violation, which involved issuing the job steward a warning letter for violating the policy, which was covered by the CBA, and which could have been adequately remedied through the grievance/arbitration procedure, reasoning that the section 8(a)(3) violation was closely related to the section 8(a)(1) violation. Likewise, in American Commercial Lines (1988) 291 NLRB 1066, 1069 [133 LRRM 1561], the NLRB stated that "when, as here, an allegation for which deferral is sought is inextricably related to other complaint allegations that are either inappropriate for deferral or for which deferral is not sought, a party's request for deferral must be denied."[12]

However, NLRB precedent has required deferral of section 8(a)(1) violations that are derivative violations of the other section 8 subsections. (See National Radio Company, Inc.

> (3) to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization . . . .
>
> (5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

[12]Accord, Carpenters (MFG. Woodworkers Assn.) (1998) 326 NLRB 321, 322 [159 LRRM 1314].

(1972) 198 NLRB 527 [80 LRRM 1718] (National Radio)).[13] In National Radio, the employer unilaterally instituted a policy requiring union representatives to report to their supervisors when leaving their work areas to conduct union business. The employer also disciplined and later discharged an employee/union activist and official, who had repeatedly failed to comply with this directive. The union filed charges alleging violations of sections 8(a)(5) (unilateral change) regarding the new policy, and 8(a)(3) (discrimination) and 8(a)(1) (interference) for the discipline and dismissal of the union official. Regarding the sections 8(a)(3) and 8(a)(1) allegations, the NLRB deferred the charge. As in the present case, those two violations were based upon the same conduct.

The Board's decision in State of California (Department of Corrections) (1995) PERB Decision No. 1100-S (Corrections) is consistent with NLRB precedent and comports with the requirement of Dills Act section 3514.5(a)(2) that the Board may not issue a complaint against conduct also prohibited by the parties' agreement. In Corrections, paraphrasing Section 3514.5(a)(2), the Board held that if the employer's conduct was arguably prohibited by the MOU and subject to a grievance procedure ending in binding arbitration, the entire matter must be deferred. Also in Corrections, the Board determined that, where the conduct is arguably prohibited by the MOU, the Board must defer to arbitration all multiple legal theories arising from that conduct. (Corrections, pp. 13-15, citing Dills Act sec. 3514.5(a)(2) and Lake Elsinore School District (1987) PERB Decision No. 646.)[14] The Board in Corrections reasoned that such a rule ensures one forum for resolution of a dispute, eliminates overlapping and duplicative proceedings, promotes more timely resolution of disputes and contributes to

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[13]See also Collyer.

[14]The Board circumscribed its ruling with the proviso that the jurisdiction to resolve the dispute must bring with it the authority to order an appropriate remedy for the unlawful conduct. (Corrections, p. 15.)

employer-employee stability. The Board confirmed this policy for handling multiple legal violations in deferral cases in a matter involving CAUSE and the State over issues similar to those presented in this matter. (State of California (Department of Personnel Administration) (1996) PERB Decision No. 1145-S; see also, Chula Vista Elementary School District (1998) PERB Decision No. 1232a.) The alleged violation of Section 3519(b) derives from the alleged violation of Section 3519(c), both arising out of the same alleged conduct, the transfer of bargaining unit work. CAUSE has failed to provide support for its contention that an arbitrator's remedy could not resolve a violation of Section 3519(b) if a violation of the MOU is found. The Board, therefore, defers and dismisses that allegation.

For the first time on appeal, CAUSE raises the allegation of bad faith bargaining and fails to identify any facts that support such a violation. Under PERB Regulation 32635(b),[15] unless good cause is shown, a charging party may not present new charge allegations or supporting evidence in the appeal. (State of California (State Teachers Retirement System) (1997) PERB Decision No. 1202-S.) Here, CAUSE has not provided any information showing good cause for presenting this new allegation and therefore this allegation is dismissed.[16]

ORDER

The unfair practice charge and complaint in Case No. LA-CE-581-S is hereby DISMISSED AND DEFERRED TO ARBITRATION.

Members Baker and Neima joined in this Decision.

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[15]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[16]For the same reason, the Board shall not address the unexplained violation of Dills Act section 3519(a) alleged in CAUSE's appeal.

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

August 26, 2002

Sam A. McCall, General Counsel
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (Department of Parks & Recreation
Unfair Practice Charge No. LA-CE-581-S
NOTICE OF DISMISSAL AND DEFERRAL TO ARBITRATION

Dear Mr. McCall:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 14, 2002. The California Union of Safety Employees alleges that the State of California (Department of Parks & Recreation) violated the Ralph C. Dills Act (Dills Act)[1] by unilaterally removing bargaining unit work. We discussed this charge on August 22, 2002. In that conversation, you agreed to waive your right to a warning letter in this matter.

Your charge states the following. Recently, the union became aware that the employer had assigned a supervisor to fill a full-time bargaining unit position as a Communications Operator[2]. The union received no advance notice or opportunity to bargain over the assignment.

The collective bargaining agreement is effective July 1, 2001 to July 2, 2003. Article 20.1 is the Entire Agreement clause and states in relevant part.

> B. The parties agree that the provisions of this Subsection shall apply only to matters which are not covered in this Contract.
>
> The parties recognize that during the term of this Contract 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 CAUSE of the proposed change thirty (30) days prior to its proposed implementation.

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[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.

[2] By telephone message, you state that the union learned of the employer's action in February 2002.

The parties shall undertake negotiations regarding the impact of such changes on the employees in Unit 7, when all three (3) of the following exists:

1. Where such changes would affect the working conditions of a majority of Unit 7 employees by classification in a department.

2. Where the subject matter of the change is within the scope of representation pursuant to the Ralph C. Dills Act.

3. Where CAUSE requests to negotiate with the State.

Any 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.

At Article 6, the contract also provides for a grievance procedure that ends in binding arbitration.

Based on these facts and Dills Act section 3514.5, this charge must be deferred to arbitration under the MOU and dismissed in accordance with PERB Regulation 32620(b)(5).

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[3] 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 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, Linda Nelson, dated May 31, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses[4]. Finally, the issue raised by this charge that the employer has failed to satisfy its bargaining obligation when it unilaterally removed bargaining unit work directly involves an interpretation of 20.1 of the MOU.

Accordingly, this charge must be deferred to arbitration and will be dismissed. 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, supra.)[5]

Right to Appeal

Pursuant to PERB Regulations,[6] 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.

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

[4] The letter is titled "Confidential Response", however, DPA Labor Relations Counsel Joan Branin waived confidentiality by telephone conversation on August 26, 2002.

[5] 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.

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

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).)

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

cc: Linda Nelson