STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA UNION OF SAFETY EMPLOYEES, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF MENTAL HEALTH), Respondent.	Case No. LA-CE-563-S PERB Decision No. 1567-S December 16, 2003

Appearance: Linda M. Kelly, Legal Counsel, for California Union of Safety Employees.

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 of its unfair practice charge and deferral of the charge to arbitration (attached). The charge alleged that the State of California (Department of Mental Health) (State) violated the Ralph C. Dills Act (Dills Act)[1] by eliminating the Hospital Police Department's job to transport and escort forensic Penal Code patients on the grounds of Metropolitan State Hospital. CAUSE alleged that this conduct constituted a violation of Dills Act section 3519(b) and (c).

The Board agent initially dismissed and deferred this charge to arbitration pursuant to the Board's decision in Lake Elsinore School District (1987) PERB Decision No. 646 (Lake

[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.

Elsinore). Since the Board agent's original dismissal, the Board issued State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S (Food and Agriculture), and upon appeal, remanded this charge for further processing pursuant to that decision. (State of California (Department of Mental Health) (2002) PERB Decision No. 1477-S.) By letter dated July 26, 2002, the State agreed to proceed to arbitration and waived its contract-based procedural defenses. As a result, the Board agent again dismissed and deferred the charge to arbitration.

Upon review of the entire record, including the charge, the State's response to the charge, the dismissal letter, and 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.

BACKGROUND

The charge alleges that by memo on October 6, 2000, Chief Walt Thurner (Thurner) notified the Metropolitan State Hospital (Hospital) Police Department personnel (police) that the police would no longer transport or escort forensic (Penal Code) patients on the grounds of the Hospital effective October 10, 2000. It has been the police's responsibility to transport and escort forensic patients on the Hospital ground since the Hospital admitted such patients. The State's purpose for this action was to cut down on overtime worked by the police. On October 10, CAUSE representatives met with Thurner protesting the Hospital's action. Thurner said there was nothing he could do since it was the Hospital administration's decision. As a result, CAUSE threatened to file a formal grievance. Thurner refused to meet and confer and notified CAUSE that a new administrative directive was being written.[2] CAUSE alleges

[2]CAUSE states that as of March 15, 2001, the State had not revised the administrative directive. However, CAUSE did not describe what the directive now says or what CAUSE anticipates that it would say after it is modified.

that there are safety and security concerns with allowing other Hospital staff to transport and escort patients and CAUSE had advised Thurner of this fact.

CAUSE'S APPEAL

Except for factual differences, CAUSE's appeal is identical in every respect to its appeal in California Union of Safety Employees v. State of California (Department of Parks and Recreation), Case No. LA-CE-581-S. In this case, CAUSE also explains how the State's conduct impacts public safety. According to CAUSE, the forensic patients were placed at the Hospital due to risk to themselves and the public. The charge provides examples of the risk, e.g., a forensic patient left alone outside smoking a cigarette coupled with apparent lack of concern by non-peace officer Hospital staff. As a result, CAUSE argues, the Hospital police, as peace officers, should remain responsible for transporting these patients on and off the grounds.

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 (Dry Creek), 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.[3]

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

Although Dry Creek was decided under the Educational Employment Relations Act (EERA)[4] the National Labor Relations Board (NLRB) deferral standard has also been applied to the Dills Act. (Food and Agriculture.)

In Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] (Collyer) and subsequent cases, the 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' memorandum of understanding (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.[5]

Board precedent has long held that the elimination of bargaining unit work as alleged by CAUSE is clearly within the scope of representation. (Eureka City School District (1985) PERB Decision No. 481; State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S.) A unilateral change involving that issue violates the duty to

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

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

bargain under Dills Act section 3519(c). (See e.g., State of California (Department of Corrections) (2000) PERB Decision No. 1391-S.) As the elimination 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).[6] 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)[7] may

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[6]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.

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

(a) It shall be an unfair labor practice for an employer –

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 Systems, 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 collective bargaining agreement (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."[8]

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.

> (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
>
> (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).

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

(1972) 198 NLRB 527 [80 LRRM 1718] (National Radio)).[9] 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); Lake Elsinore.)[10] 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 employer-employee stability. The Board

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[9]See also Collyer.

[10]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.)

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 elimination 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),[11] 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.

ORDER

The unfair practice charge in Case No. LA-CE-563-S is hereby DISMISSED AND DEFERRED TO ARBITRATION.

Members Baker and Neima joined in this Decision.

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

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
Fax: (916) 327-6377

August 20, 2002

Linda Kelly, Esquire
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

James R. Brantley, Supervising LR Representative
California Union of Safety Employees
2900 Bristol Street #H-201
Costa Mesa, CA 92626

Re: California Union of Safety Employees v. State of California (Department of Mental Health)
Unfair Practice Charge No. LA-CE-563-S
NOTICE OF DISMISSAL AND DEFERRAL TO ARBITRATION

Dear Ms. Kelly and Mr. Brantley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 23, 2001. The California Union of Safety Employees alleges that the State of California (Department of Mental Health) violated the Ralph C. Dills Act (Dills Act)[1] by unilaterally transferring work out of the bargaining unit represented by CAUSE.

I indicated in the attached letter dated August 1, 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 August 19, 2002, it would be deferred to arbitration and dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my August 1, 2002 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 dismiss 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 State violated the Dills Act by unilaterally transferring work out of the bargaining unit represented

[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.

by CAUSE. This conduct is covered by the parties' collective bargaining agreement, the Respondent 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, 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

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[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.

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,
Robert Thompson
General Counsel

Attachment

cc: Barrett McIerney

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8381
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August 1, 2002

Linda Kelly, Esquire
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

James R. Brantley, Supervising LR Representative
California Union of Safety Employees
2900 Bristol Street #H-201
Costa Mesa, CA 92626

Re: California Union of Safety Employees v. State of California (Department of Mental Health)
Unfair Practice Charge No. LA-CE-563-S
WARNING LETTER (DEFERRAL TO ARBITRATION)

Dear Ms. Kelly and Mr. Brantley:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 23, 2001. The California Union of Safety Employees alleges that the State of California (Department of Mental Health) violated the Ralph C. Dills Act (Dills Act)[1] by unilaterally transferring work out of the bargaining unit represented by CAUSE.

CAUSE is the exclusive bargaining representative for State Bargaining Unit 7, Protective Services and Public Safety. The State and CAUSE are parties to a collective bargaining agreement which expired on June 30, 2001. Article six of the agreement contains the parties' grievance procedure, which culminates in binding arbitration. Additionally, article 20.1 of the agreement 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 will notify CAUSE of the proposed change in thirty (30) days prior to its proposed implementation.

[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.

> 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 the majority of the unit 7 employees by classification in a department.
>
> 2. Where the subject matter of the changes is within the scope of representation pursuant to the Ralph C. Dills Act.
>
> 3. Where CAUSE requests to negotiate with state.

On Oct. 6, 2000, Metropolitan State Hospital Police Department personnel were informed by Chief Walt Turner that they would no longer transport or escort Penal Code patients on the grounds of the Hospital effective October 10, 2000. Prior to this time, the Police Department personnel exclusively performed this duty. This duty has now been assigned to general hospital staff in other bargaining units.

On Oct. 6, 2000, Officer Finch informally discussed the issue with Chief Turner. Chief Turner stated that the decision was made in order to cut down on overtime. On October 10, 2000, Officer Finch and Job Steward Dan Gurule met with Chief Turner regarding the transfer of bargaining unit work. Mr. Gurule requested to meet and confer over this change, but Chief Turner stated it was an administrative decision and there was nothing he could do.

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[2] 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, Barrett W. McInerney, dated July 26, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issue raised by this charge that the State unilaterally transferred work outside bargaining unit 7 directly involves an interpretation of Article 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.)[3]

If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the

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

[3] 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.

respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before August 19, 2002, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Robert Thompson
General Counsel

Attachment

STATE OF CALIFORNIA
GRAY DAVIS, Govern
DEPARTMENT OF PERSONNEL ADMINISTRATION
LEGAL DIVISION
1515 "S" STREET, NORTH BUILDING, SUITE 400
SACRAMENTO, CA 95814-7243
(916) 324-0512 FAX (916) 323-4723

July 26, 2002

Public Employment Relations Board
Los Angeles Regional Office
3530 Wilshire Boulevard, Suite 1435
Los Angeles, CA 90010-2334

Attn: Robert Thompson, Regional Attorney

Re: ***C.A.U.S.E. v. State of California (Department of Mental Health)***
PERB File No. UPC LA-CE-563-S

Dear Mr. Thompson:

This letter will confirm out telephone conversation concerning the above-referenced file.

This office represents the California Department of Mental Health ("DMH") with respect to the above-referenced matter. On behalf of the DMH, we agree to resolve the matter through contractual arbitration and we hereby waive all contract based procedural defenses with respect to the substantive unfair practice charge.

Should you have any further questions or comments concerning the above, please do not hesitate to call or write. Thank you for your courtesy and cooperation.

Sincerely,

Barrett W. McInerney
Labor Relations Counsel