

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL UNION OF OPERATING)
ENGINEERS, LOCAL 39,)
)
Charging Party,) Case No. S-CE-532-S
)
v.) PERB Decision No. 916-S
)
STATE OF CALIFORNIA (DEPARTMENT OF)
PERSONNEL ADMINISTRATION),)
)
Respondent.)
)
_____)

Appearance: Van Bourg, Weinberg, Roger & Rosenfeld by Stewart Weinberg, Attorney, for International Union of Operating Engineers, Local 39.

Before Hesse, Chairperson; Shank and Camilli, Members.

DECISION AND ORDER

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on appeal by the International Union of Operating Engineers, Local 39 to a Board agent's partial dismissal (attached hereto) of its charge that the State of California (Department of Personnel Administration) (DPA) failed to bargain in good faith in violation of section 3519(b) and (c) of the Ralph C. Dills Act¹ when it made a final offer after being informed that the Board had issued a complaint based upon failure to provide information. The Board has reviewed the partial dismissal, and finding it to be free from prejudicial error, adopts it as the decision of the Board itself.

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

The portion of the charge in Case No. S-CE-532-S which alleges DPA violated section 3519(b) and (c) when it made a final offer after issuance of a complaint by the Board is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairperson Hesse and Member Shank joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3088



November 22, 1991

Mr. Stewart Weinberg, Attorney
Van Bourg, Weinberg, Roger & Rosenfeld
875 Battery Street
San Francisco, CA 94111

Re: International Union of Operating Engineers, Local 39 v.
State of California (Department of Personnel Administration)
Unfair Practice Charge Case No. S-CE-532-S
PARTIAL DISMISSAL LETTER

Dear Mr. Weinberg:

On October 7, 1991, the International Union of Operating Engineers, Local 39, filed the above-referenced charge alleging violations of Government Code section 3519(b) and (c). In that charge, you specifically alleged that the employer had violated the Government Code by a failure to provide information and by delivering the State's "last, best, and final" offer after the Union had informed the State's negotiator that an unfair practice complaint had issued regarding a prior failure to provide information.

I indicated to you in my attached letter dated November 13, 1991 that certain allegations contained in the charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts that would correct the deficiencies explained in that letter, you should amend the charge accordingly. You were further advised that unless you amended these allegations to state a prima facie case, or withdrew them prior to November 20, 1991, the allegations would be dismissed.

I have not received either a request for withdrawal or an amended charge and am therefore dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my November 14, 1991 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal (California Code of Regs., tit. 8, sec. 32635(a)). To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5:00 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing (California Code of Regs., tit. 8, sec. 32135). Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty calendar days following the date of service of the appeal (California Code of Regs., tit. 8, sec. 32635(b)).

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See California Code of Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail postage paid and properly addressed.

Extension of Time

A request for an extension of time in which to file a document with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three 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 (California Code of Regs., tit. 8, sec. 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,

JOHN W. SPITTLER
General Counsel

By .
Bernard McMoniglé
Regional Attorney

Attachment

cc: Christopher W. Waddell
Chief Counsel
Department of Personnel Administration
Legal Division
1515 "S" Street, North Building, Suite 400
Sacramento, CA 95814-7243

PUBLIC EMPLOYMENT RELATIONS BOARD



Headquarters Office
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November 13, 1991

Mr. Stewart Weinberg, Attorney
Van Bourg, Weinberg, Roger & Rosenfeld
875 Battery Street
San Francisco, CA 94111

Re: International Union of Operating Engineers, Local 39 v.
State of California (Department of Personnel Administration)
Unfair Practice Charge Case No. S-CE-532-S
PARTIAL WARNING LETTER

Dear Mr. Weinberg:

On October 7, 1991, the International Union of Operating Engineers, Local 39, filed the above-referenced charge alleging violations of Government Code section 3519(b) and (c). In that charge, you specifically alleged that the employer had violated the Government Code by a failure to provide information and by delivering the State's "last, best, and final" offer after the Union had informed the State's negotiator that an unfair practice complaint had issued regarding a prior failure to provide information.¹

In relevant part, your charge indicates the following:

On September 25, 1991, Mr. Navarro announced that he was delivering the State's last, best and final offer to the Charging Party relative to Unit 13. The Union informed him that on September 24, 1991 a complaint had issued regarding the failure to provide information. Mr. Navarro nonetheless presented the State's last, best and final offer and indicated that an impasse existed.

Refusal to bargain cases are analyzed by the Public Employment Relations Board (PERB) under both the "totality of conduct" test

¹This warning letter does not address your allegation of a failure to provide information.

and those cases where PERB finds that conduct by one party is a "per se" violation. Pajaro Valley Unified School District (1978) PERB Decision No. 51. You allege that the making of a final offer, after being informed that PERB had issued a complaint based on failure to provide information, is a "per se" violation of the obligation to bargain in good faith. As I indicated to you briefly on November 6, I am not aware of any case law to support such a theory. To date, you have supplied no cases to support such a theory. The issuance of a complaint does not mean that the Dills Act has been violated. It is merely a conclusion by a Board agent that enough facts have been alleged, that an unfair practice may have been committed, that the matter should proceed to a hearing before an Administrative Law Judge. It may well then be found that there has been no violation of the Act and the obligation to bargain in good faith. Accordingly, making a final offer after a complaint has issued is not a "per se" violation of the obligation to bargain. Nor is such conduct indicia of bad faith under the "totality of conduct" test.

For these reasons, the allegation that the State made a final offer after issuance of a complaint, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or any additional facts that would correct the deficiencies explained above, please amend the charge accordingly. 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 must be signed under penalty of perjury by the charging party. The amended charge must be served on the respondent and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before November 20, 1991, I shall dismiss the above-described allegation from your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney