STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES' ASSOCIATION, SEIU, LOCAL 1000,	)	
Charging Party,	)	Case No. S-CE-522-S
v.	)	PERB Decision No. 995-S
STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION),	)	May 10, 1993
Respondent.	)	

Appearances: Barbara E. Brecher, Attorney, for California State Employees' Association, SEIU, Local 1000; Joan Branin, Labor Relations Counsel, for State of California (Department of Personnel Administration).

Before Blair, Chair; Hesse and Caffrey, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California State Employees' Association, SEIU, Local 1000 (CSEA) to a PERB administrative law judge's (ALJ) proposed decision (attached hereto). The ALJ dismissed CSEA's complaint which alleged that the State of California (Department of Personnel Administration) (DPA) violated section 3519(a), (b) and (c), and section 3518.5 of the Ralph C. Dills Act (Dills Act)[1] when it

[1]The Dills Act is codified at Government Code section 3512 et seq. Section 3519 provides, in pertinent part:

> It shall be unlawful for the state to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise

refused to grant released time for preparation between bargaining sessions beginning on or about August 26, 1991. CSEA alleged that DPA altered the established released time policy without providing CSEA notice and an opportunity to negotiate over the policy change. After review of the entire record in this case, including the proposed decision, the hearing transcript, the exhibits, CSEA's exceptions and DPA's response thereto, the Board adopts the ALJ's proposed decision as the decision of the Board itself consistent with the following discussion.

> to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

Although not included in the complaint, the ALJ found the evidence also presented an alleged section 3519(e) violation.

> (e) Refuse to participate in good faith in the mediation procedure set forth in Section 3518.

Section 3518.5 provides, in pertinent part:

> A reasonable number of employee representatives of recognized employee organizations shall be granted reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the state on matters within the scope of representation.

BACKGROUND

The detailed factual background of this case is included in the "Findings of Fact" section of the ALJ's proposed decision (pages 3-17). Among the significant facts are the released time provisions of the ground rules agreed to by CSEA and DPA prior to the 1987, 1988 and 1991 bargaining cycles. The 1987 ground rules state:

> The State agrees to grant time off without loss of compensation to a total of thirty-six (36) members of the Union's nine (9) Bargaining Unit Councils, to be selected by the Union, for their entire work shift on any day there is a negotiating or preparation session scheduled for their respective Bargaining Unit. . . . This time off shall apply only to those employees listed in attachment B for the schedule in attachment A. . . .
> (Emphasis added.)

Released time for bargaining preparation was expressly authorized. The ground rules also incorporated a schedule of bargaining days for each bargaining unit, essentially calling for two-day bargaining sessions with the first day for preparation and the second day for actual bargaining. Negotiations were held on a daily basis when agreement seemed imminent.

For the 1988 negotiations, the ground rules state:

> The State agrees to grant time off without loss of compensation to a total of thirty-two (32) members of the Union's eight (8) Bargaining Unit Councils, to be selected by the Union, for their entire work shift on any day there is a negotiating session scheduled for their respective bargaining unit. . . . This time off shall apply only to those employees listed in Attachment B for the schedule in Attachment A. . . .
> (Emphasis added.)

While a specific reference to released time for bargaining preparation was not included, a bargaining schedule was incorporated into the ground rules which called for two-day-sessions which the parties acknowledged included one day open (for preparation) and one day for actual bargaining.

The ground rules for 1991, the bargaining cycle which resulted in the charges in this case, state:

> The State agrees to grant time off without loss of compensation to a total of thirty-two (32) members of the Union's eight (8) remaining Bargaining Unit Councils, to be selected by the Union, for their entire work shift on any day there is a negotiating session scheduled for their respective bargaining unit. . . . This time off shall apply only to those employees listed in Attachment A, Column A. . . .
> (Emphasis added.)

Unlike the previous provisions, the 1991 ground rules did not include either a specific reference to released time for preparation or a bargaining schedule which, by acknowledgement of the parties, included released time for planned open or preparation days.

Prior to adoption of the 1991 ground rules on May 22, 1991, union leave was used by CSEA for bargaining sessions on May 6 and May 16. Released time was used for bargaining sessions on May 22 and 30, and June 7, 13, 14, 24 and 25. CSEA used union leave, rather than released time, for bargaining preparation on May 21, 28 and 31, and June 5, 6, 11, 12, 20, 21 and 26.

No released time was given for bargaining preparation prior to July when DPA granted continuous released time to bargaining

team members. Between July 1 and August 23, 1991, there were 21 bargaining days and 18 open or preparation days, all on released time. The continuous released time was rescinded by DPA after August 23, 1991 due to DPA's dissatisfaction with the progress of negotiations and with the effectiveness of granting continuous released time. Released time was granted for actual negotiating sessions only following August 23.

CSEA'S EXCEPTIONS

On appeal,. CSEA excepts to the ALJ's conclusion that the status quo for released time in this case is defined by the ground rules negotiated by the parties as modified by any deviations from the ground rules which have been mutually agreed to by the parties. CSEA argues that the practice of granting released time for both bargaining and bargaining preparation in 1987 and 1988, and in 1991 beginning in July and extending to August 23, 1991, represents the status quo.

CSEA also excepts to the ALJ's finding that the reasonable released time requirement of Dills Act section 3518.5 was not violated in this case. In support of this exception, CSEA reiterates the testimony of a CSEA bargaining team member that the elimination of released time for preparation made it difficult after August 23 for CSEA to counter DPA proposals and develop its own proposals for presentation at bargaining sessions.

DISCUSSION

To establish a unilateral change, the charging party must show that: (1) the employer breached or altered the parties' written agreement or established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change is not merely an isolated breach of the contract, but amounts to a change of policy (i.e., has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196; Glendora Unified School District (1991) PERB Decision No. 876.)

An established policy may be embodied in the terms of a collective bargaining agreement (Grant Joint Union High School District, supra, PERB Decision No. 196); or, where a contract is silent or ambiguous, it may be determined from past practice or bargaining history (Rio Hondo Community College District (1982) PERB Decision No. 279). Ground rule agreements represent a contractual obligation for purposes of determining whether a unilateral change from them constitutes a violation. (Stockton Unified School District (1980) PERB Decision No. 143.)

CSEA argues that the established past practice in this case is the granting of released time for both bargaining sessions and bargaining preparation during negotiations in 1987 and 1988, and in 1991 beginning in July and extending to August 23, without

reference to the negotiated ground rules in effect. When released time for bargaining preparation was no longer granted by DPA after August 23 without granting an opportunity to bargain over the change, CSEA alleges that an unlawful unilateral change occurred.

DPA argues that no violation occurred because it consistently provided at least the level of released time called for by the ground rules negotiated by the parties. In 1991, DPA contends released time for preparation was not included in the ground rule requirements, and was granted temporarily only through the mutual agreement of the parties.

A review of the 1987 and 1988 bargaining ground rules reveals the clear intent of the parties that released time be granted for bargaining preparation. In 1991 the circumstances, and the ground rules, changed however. CSEA proposed ground rules that specifically authorized released time for preparation and travel. DPA testified that it attempted to include a specific bargaining schedule in the 1991 ground rules, as had been done in 1987 and 1988, but CSEA declined to do so. The ground rules which were then adopted by the parties included no specific authorization of released time for preparation, and no bargaining schedule which included acknowledged open or preparation days. The unambiguous terms of these ground rules lead to the conclusion that the parties have agreed to released time only for negotiating sessions.

CSEA contends that the ground rules reference to "negotiation sessions" was intended to include preparation time, but the record does not support that contention. CSEA's proposal to specifically include released time for preparation in the ground rules was not adopted by the parties and the ground rules included no bargaining schedule calling for open or preparation days. Furthermore, the actions of the parties before July constitute a tacit acknowledgment that the ground rules did not provide released time for preparation since CSEA utilized union leave for nine preparation days in May and June after adoption of the ground rules.

DPA testified that beginning in July it authorized continuous released time in the interest of encouraging movement toward settlement. As determined by the ALJ, the fact that DPA agreed to grant released time over and above the level required by the ground rules does not establish a higher level obligation for released time which DPA can not reduce. As the Board has held "[T]he mere fact that an employer has not chosen to enforce its contractual rights in the past does not mean that, ipso facto, it is forever precluded from doing so." (Marysville Joint Unified School District (1983) PERB Decision No. 314.) Temporarily authorizing a higher level of released time than that required by the negotiated ground rules does not create an obligation to continue to do so indefinitely. The Board, therefore, concludes that DPA did not alter the parties' written

ground rules or established past practice when it agreed to released time only for negotiating sessions after August 23.

CSEA also contends that as a matter of law, it was denied reasonable released time under Dills Act section 3518.5 when DPA denied released time for preparation days. CSEA asserts that elimination of preparation days "immobilized further meaningful negotiations between the state and the CSEA" because CSEA was unable to counter state proposals.

As noted by the ALJ, whether the amount of released time is reasonable is a question of fact to be determined on a case-by-case basis. (Sierra Joint Community College District (1981) PERB Decision No. 179.) The Board has evaluated specific circumstances and determined that a refusal to grant released time did not deny rights to an exclusive representative.[2]

The ALJ noted that CSEA's Unit 1 bargaining team received released time for 1991 far in excess of that received in previous negotiations. A review of the level of released time received by an exclusive representative in previous negotiation cycles can be instructive in evaluating the reasonableness of released time in disputed cases. More compelling in this case, however, is the fact that CSEA received released time in accordance with, and in excess of, the ground rules it negotiated and agreed to with DPA.

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[2]Burbank Unified School District (1978) PERB Decision No. 67 (no violation where district refused union's request for released time for seven union negotiators); Muroc Unified School District (1978) PERB Decision No. 80 (no violation when district refused to grant released time to teachers for rest and recuperation the day after the negotiating session ended at 3:00 a.m.).

When DPA returned to the level of released time required by the negotiated ground rules, CSEA then argued that the mutually-agreed to level was not reasonable. Under these circumstances it cannot be concluded that DPA denied reasonable released time to CSEA, and this exception is rejected.

ORDER

The unfair practice charge in Case No. S-CE-522-S is hereby DISMISSED.

Chair Blair and Member Hesse joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, SEIU, LOCAL 1000, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION), Respondent.	)	Unfair Practice Case No. S-CE-522-S PROPOSED DECISION (2/19/92)

Appearances: Barbara E. Brecher, Attorney, for California State Employees Association, SEIU, Local 1000; Joan Branin, Labor Relations Counsel, for State of California (Department of Personnel Administration).

Before Christine A. Bologna, Administrative Law Judge.

PROCEDURAL HISTORY

This case alleges unilateral change and denial of reasonable released time when preparation time was eliminated during contract negotiations. The state employer points to the negotiated ground rules agreement and denies any violation of the union's statutory rights.

On August 30, 1991, the California State Employees Association, SEIU, Local 1000 (Charging Party or CSEA) filed an unfair practice charge against the State of California (Department of Personnel Administration) (Respondent or DPA). On October 22, the general counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that Respondent violated section 3519(c) of the Ralph C. Dills Act (Dills Act) and, independently, section 3519(a) and (b) of the

statute,[1] by changing established policy when it refused to grant released time for preparation between bargaining sessions on or about July 30, 1991, without prior notice to and affording Charging Party an opportunity to negotiate over the decision or its effects. DPA filed a timely answer on November 18, denying any unfair practices and asserting affirmative defenses.

An informal settlement conference conducted by a PERB administrative law judge (ALJ) on October 28 did not resolve the dispute. Formal hearing was held on November 5 and 18, and December 6 and 19, 1991, in Sacramento, California.

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[1]Unless otherwise indicated, all statutory references herein are to the Government Code. The Dills Act is codified at Government Code section 3512 et seq. and is administered by PERB. In pertinent part, section 3519 provides that:

> It shall be unlawful for the state to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.
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> . . . . . .
>
> (e) Refuse to participate in good faith in the mediation procedure set forth in section 3518.

Charging Party was allowed to present evidence of bargaining history for all CSEA bargaining units included within the negotiated ground rules agreement, and on the alternative cause of action of denial of the statutory right to reasonable released time,[2] over the objection of Respondent.[3] The parties stipulated to limit the evidence to the last three negotiations for state bargaining unit one.

With the filing of post-hearing briefs, the matter was submitted for decision on January 30, 1992.

FINDINGS OF FACT

Charging Party is an employee organization within the meaning of Dills Act section 3513(a), and the exclusive representative of an appropriate unit of state employees under

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[2]Dills Act section 3518.5 provides as follows:

> A reasonable number of employee representatives of recognized employee organizations shall be granted reasonable time off without loss of compensation or other benefits when formally meeting and conferring with representatives of the state on matters within the scope of representation.
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> This section shall apply only to state employees, . . . and only for periods when a memorandum of understanding is not in effect.

Section 3518.5 was cited in the unfair practice charge but was not mentioned in the complaint.

[3]Respondent objected to the first ruling on relevance grounds, and to the second as an improper expansion of and amendment to the complaint. The ALJ also ruled that Respondent could offer the practices in other bargaining units, including those not represented by CSEA, in defending against the statutory released time claim, over the objection of Charging Party.

section 3513(b) of the statute.[4] Respondent is the state employer within the meaning of Dills Act section 3513(j).

State bargaining unit one (Administrative, Financial and Staff Services) (Unit 1) contains more than 29,000 employees in 500+ civil service classes;[5] virtually all of the 100+ state departments employ Unit 1 staff at some 720 worksites.[6] Unit 1 has been represented by CSEA for more than ten years. CSEA and the state have negotiated a number of comprehensive contracts and reopener agreements for Unit 1 since 1982.[7]

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[4]Section 3513(b) of the Dills Act defines a "recognized employee organization" as an employee organization recognized by the state as the exclusive representative of employees in an appropriate unit.

[5]Some Unit 1 classes are used by only one department; i.e., District Sales Representative, California State Lottery. Other Unit 1 classes are used by many and/or all state departments; i.e., Staff Service Analyst (General).

[6]Unit 1 employees include accountants; administrative assistants; analysts; auditors; agents and appraisers; buyers; consultants; claims examiners; computer operators and data processors; financial and information officers; planners; program technicians and specialists; statisticians; and lottery, tax and unemployment representatives.

[7](Unit Determination for the State of California (1979) PERB Decision No. 110-S.) CSEA was certified as the exclusive representative for Unit 1 on July 7, 1981, following a representation election conducted by PERB (Case No. S-R-1-S). PERB Regulation 32120 (tit. 8, Cal. Code of Regs., sec. 32120) requires the state employer to file a copy of its contracts with exclusive representatives in the Sacramento Regional Office. The Board and its agents may take official notice of documents in PERB files and records. (Antelope Valley Community College District (1979) PERB Decision No. 97; John Swett Unified School District (1981) PERB Decision No. 188; Compton Community College District (1988) PERB Decision No. 704.)

1987 Ground Rules, Negotiations and Contract

Since at least 1987, Unit 1 and the state have negotiated over "coalition" ground rules with other CSEA-represented bargaining units before bargaining over successor contracts on an individual unit basis. In 1987, Rick McWilliam (McWilliam), DPA chief of labor relations, was the state's chief negotiator over ground rules, while John Hamilton served as CSEA's chief negotiator. On May 18, the parties signed a three-page, 18-paragraph ground rules agreement.

The released time clause stated:

> The state agrees to grant time off without loss of compensation to a total of thirty-six (36) members of the Union's nine (9) Bargaining Unit Councils, to be selected by the union, for their entire work shift on any day there is a negotiating or preparation session scheduled for their respective bargaining unit. [Emphasis added.]

The ground rules further provided that the balance of CSEA's bargaining teams would be granted union leave,[8] compensable time off (CTO), vacation, or other authorized unpaid leave of absence, with other employees released by mutual consent. CSEA designated the team members on released time, and their status would not change throughout the negotiations.[9] Each team could bring

[8] If an employee was on paid union leave, CSEA reimbursed the state for the employee's entire salary, plus 35 percent of wages for benefits. Union leave could also be unpaid.

[9] Released time was given to 36 employees in the aggregate, an average of four per team. Ronald Almquist (Almquist), CSEA manager for bargaining services and research, explained that the union placed the lowest paid employee-negotiators on union leave and selected higher salaried workers for released time. Almquist, McWilliam and Cathy Hackett (Hackett), Unit 1

observers and call experts and other witnesses.[10] Travel was on the employees' own time, except for three remote locations; travel from Los Angeles, San Francisco, San Diego, Riverside and Ontario was specifically excluded from released time. Caucuses were limited to one hour.[11]

The ground rules incorporated a negotiating schedule for each bargaining unit. Unit 1 bargaining was held on June 2, 9, 16 and 23, and released time was granted to the union team. The Unit 1 team also received released time for preparation on June 1, 8, 15 and 22. Additional time for Unit 1 negotiations was scheduled from 10:30 a.m. to 12:30 p.m. on June 28, 29 and 30. Thus, the 1987 ground rules authorized 11 days of released time for union negotiators: four for bargaining, four for preparation and an additional three days.

McWilliam agreed to two days of released time for negotiating sessions, with the first devoted to preparation, in the ground rules in return for a definite weekly bargaining schedule and limited caucus time. The parties also negotiated daily around the time of contract expiration, and the state granted continuous released time to the union team, when

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chairperson, agreed that unit 1 team members were on released time as they were higher paid than other unit negotiators.

[10]CSEA observers were required to use their own time. Union witnesses and experts would be on their own time, or could be released on vacation, CTO, union leave or authorized leave without pay, subject to state operational needs.

[11]If caucuses lasted more than 60 minutes, the session would end and reconvene at the next scheduled meeting. Bargaining team members were required to return to work.

agreement seemed imminent.[12] Hackett recalled a one-to-one ratio between released time for preparation and negotiating; i.e., for every day of bargaining, the CSEA Unit 1 team received a day of preparation on released time.[13]

McWilliam was also the chief negotiator for the state in Unit 1 successor contract bargaining in 1987; the state team included eight other members. The CSEA Unit 1 chief negotiator was Peter McClory (McClory); 12 to 16 additional members were on the union team. All bargaining took place in Sacramento. A new contract was reached in July 1987. The Unit 1 contract, effective from August 16, 1987 through June 30, 1988, was a comprehensive document containing 22 articles, 46 pages of text and various addenda.

1988 Ground Rules, Negotiations and Contract

In 1988, McWilliam again served as chief negotiator for the state in coalition ground rules bargaining, while the CSEA chief negotiator was Tut Tate. The three-page, 20-page ground rules agreement was signed April 25.[14] The released time provision stated:

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[12]McWilliam and James Wheatley (Wheatley), a member of the state Unit 1 team, testified about this practice. Wheatley was appointed as DPA senior labor relations officer in June 1991, and is the chief state negotiator for Unit 1.

[13]Hackett did not participate in 1987 ground rules negotiations for the union, but Wheatley was a member of the state team.

[14]Hackett participated in 1988 ground rules negotiations for CSEA, but Wheatley was not on the state team.

> The state agrees to grant time off without loss of compensation to a total of thirty-two (32) members of the Union's eight (8) Bargaining Unit Councils, to be selected by the Union, for their entire shift on any day there is a negotiating session scheduled for their respective bargaining unit. [Emphasis added.]

The remaining provisions were virtually identical to the 1987 ground rules. Travel continued to be on the employee's own time and disallowed for the five cities named in the 1987 ground rules, but there were two additional remote locations. Caucus times remained the same.

A schedule of negotiating sessions was incorporated into the ground rules.[15] It called for two consecutive days every two weeks, one day for bargaining and one open; the union teams received released time on both days. McWilliam agreed to this arrangement to promote definite scheduling of negotiations, accommodate the union members' travel, and provide better quality bargaining time. Additional released time requests from CSEA for meetings of union negotiators were denied; however, McWilliam agreed to union leave. The Unit 1 team used the open days for preparation.

McWilliam and McClory again served as the Unit 1 chief negotiators for the state and union, respectively, in successor contract bargaining. The state team included Wheatley and six

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[15]McWilliam and Almquist agreed that the chief negotiators for the bargaining units were totally responsible for scheduling, including any time away from the table on released time or other approved leave. Although witnesses were not sequestered, neither was present during the other's testimony.

others; the union team included Hackett and 14 additional members. All bargaining took place in Sacramento. Negotiations continued on the established schedule through August 31. No negotiations were held, and no released time was afforded, from September 1 through March 1989,[16] when agreement was reached after two days of mediation. The new Unit 1 contract, effective May 18, 1989, through June 30, 1991, was again a comprehensive document, containing 56 pages of text, three side letters, 22 articles and four attachments.[17]

It is unclear exactly when Unit 1 bargaining began in 1988.[18] If negotiations began the week the ground rules were signed, the union team would have received 20 days of released time, ten for bargaining and ten open, from April 25 through August 29. If bargaining started the week after agreement on ground rules, i.e., the week of May 2, 18 days of released time, nine for negotiating and nine open, would have been afforded from May 2 through August 23.[19]

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[16]A few "side bar" meetings with the state, for which the union team received released time, were held in September and October. In November, Unit 1 employees rejected the tentative agreement in a contract ratification vote.

[17]According to McWilliam, Unit 1 was one of the last bargaining units to reach agreement with the state.

[18]Hackett recalled that negotiations began in May.

[19]These estimates are based on the established negotiating schedule of two consecutive days every other week through August 31, when bargaining ended.

1991 Ground Rules and Negotiations

DPA principal labor relations officer Arnold Beck (Beck) was the chief negotiator for the state in 1991 coalition ground rules negotiations; his CSEA counterpart was Almquist. There was only one mid-May meeting between the state and union teams. Before that session, Almquist sent a two-page, four paragraph written proposal to McWilliam. CSEA proposed the following language on released time:

> The state agrees to grant time off without loss of compensation to the five representatives of each of the nine bargaining units, expert witnesses and the four CSEA Civil Service Division officers for the purpose of negotiating a new agreement. Release time shall include negotiations. travel time, preparation time and ratification. [Emphasis added.]

This proposal was not discussed during the single session on ground rules. The union wanted to conclude the ground rules negotiations quickly, and get to the unit tables. The parties talked about released time as discretionary with the state or a union entitlement, but there was no specific dialogue on scheduling, preparation time or other conditions. Agreement on the ground rules was not reached at this meeting.[20]

On May 22, the three-page, 18 paragraph ground rules agreement was signed by Beck, Almquist and Elizabeth Lindgren.[21]

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[20] Almquist characterized the coalition ground rules as essentially negotiated by "fax", i.e., facsimile exchange of proposals.

[21] Elizabeth Lindgren was the alternate deputy director for bargaining in the CSEA civil service division.

The paragraph on released time stated:

> The state agrees to grant time off without loss of compensation to a total of thirty-two (32) members of the Union's eight (8) remaining[22] Union Bargaining Unit Councils, to be selected by the Union, for their entire shift on any day there is a negotiating session[23] scheduled for their respective bargaining unit. [Emphasis added.]

The remaining ground rules were virtually identical to the 1987 and 1988 ground rules. Travel continued to be on employee time, disallowed for the five cities identified in prior ground rules, and there were two additional remote locations. Caucuses continued to be limited to 60 minutes. A schedule of dates for negotiating sessions was not incorporated, however.

In 1991, Rosmarie Duffy (Duffy), a CSEA senior labor relations representative, was the chief negotiator for the six-member union team,[24] while Wheatley served as the chief

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[22]CSEA Unit 15 (Allied Services) had separate ground rules.

[23] The union witnesses defined a negotiating session broadly. Caucus time included preparation during breaks in face-to-face negotiations, and on days away from the table. Both caucusing and preparation involved review and evaluation of management proposals, drafting requests for information, preparation of witnesses and preparation of counters. Hackett asserted that the last three Unit 1 negotiations included caucuses lasting from one to four hours on bargaining days. Wheatley agreed, adding that lengthier caucuses occurred on multiple-day bargaining sessions when direct negotiations took less than an entire day.

[24]The union team included Hackett, an associate budget analyst with the Department of Transportation (Caltrans) in Sacramento; Jim Hard, an employment program representative with the Employment Development Development (EDD) in Sacramento; Sam Giardo, an EDD employment program representative from Ontario; Henry Ochoa, an accounting officer with Caltrans in Los Angeles; and Dave Westin, an apprenticeship consultant with the Department of Industrial Relations in Oakland.

negotiator for the six-member state Unit 1 team.[25] All negotiations were held in Sacramento. The expired contract was extended through July 18, and session-by-session until July 26.

The CSEA Unit 1 team used union leave, rather than released time, for the May 6 and 16 bargaining sessions because ground rules had not been finalized. Unit 1 negotiations were held on May 22 and 30, and June 7, 13, 14, 24 and 25; the union team received released time. The CSEA team used May 21, 28 and 31, and June 5, 6, 11, 12, 20, 21 and 26 for preparation, and took union leave, not released time, on these days.

Duffy testified that during the June 24-25 negotiations, Wheatley agreed to total released time for bargaining and preparation until an agreement was reached. Wheatley testified that on July 2, he told the union team that he would give them released time for preparation between negotiating sessions to pick up the pace of bargaining, and to spend time more productively in reviewing and presenting written proposals and counterproposals (counters); the released time was to continue until the contract expired. Released time was extended to days away from face-to-face negotiations beginning July 3, and the CSEA Unit 1 team was on released time during all of July and until August 23.[26]

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[25]The state team included representatives from the Franchise Tax Board, Department of Social Services, Board of Equalization, Caltrans and EDD.

[26]The union team was granted released time for every bargaining session except May 6 and 16. Unit 1 bargaining was conducted on the nine days noted above; on July 1, 2, 8, 9, 10,

CSEA presented a comprehensive opening proposal to the state in late May or early June,[27] which contained changes in existing contract language, carryover clauses and new items. The state presented a comprehensive response to the union on or about June 14.[28] Throughout July, the union explained its proposals and called 50 witnesses[29] on a number of topics.[30] In August, the Unit 1 team continued to explain its proposals and called 20 more

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17, 18, 22, 24, 26, 29, 31; and on August 2, 6, 8, 12, 14, 16, 19, 21, 23, 26 and 28. Bargaining also took place on September 6, 9, 10, 16, 17, 23 and 24. Negotiations with the mediator occurred on Halloween, November 8, 21 and December 12. A total of 41 days of released time was given to the Unit 1 negotiators for bargaining. Released time for preparation was granted to the team on July 3, 5, 11, 12, 15, 16, 19, 23, 25 and 30, and August 1, 5, 7, 9, 13, 15, 20 and 22, a total of 18 days. As of the last day of hearing, the Unit 1 team had received 59 days of released time.

[27]Wheatley testified that he first saw the union's opening proposals around May 22. Hackett testified that the union gave its opening proposal to the state on June 7. The parties' initial proposals were "sunshined," i.e., presented at a public meeting for public comment under Dills Act section 3523, in February.

[28]The state proposals included a 5 percent salary reduction; reduced employer contributions for health benefits; alternative transportation; and rollover language for per diem allowances and reimbursements, employee transfers and nonindustrial disability insurance (NDI).

[29]The witnesses' testimony ranged from 15 minutes to two hours. Some were group presentations on salary proposals.

[30]These included special salary and/or inequity adjustments for specified classes; contracting out; child care; health and safety; stewards' rights; testing; NDI; bilingual pay; performance standards; employee transfers; election leave; permanent intermittent employment; alternative work schedules; and long-term care benefits.

witnesses on a variety of subjects.[31] During this time, the union also presented new proposals and/or counters on existing contract language.[32] The state gave counters to the union on July 10, August 2 and 21.[33] The parties also discussed a new proposal, whether to support health benefits legislation.

By early August, Wheatley was dissatisfied with the progress of Unit 1 negotiations. On August 8 and 14, he told the union team that he would eliminate released time for preparation if he did not see more counters, written proposals and productive use of negotiating time. On August 8, CSEA gave the state a new proposal on grievance procedures; it also submitted a revised election leave proposal on August 14. After the August 14 session, Wheatley spoke with McWilliam about eliminating released time for days other than bargaining sessions in Unit 1.[34] McWilliam told Wheatley that the decision was up to him.

On August 21, the union team gave the state a new NDI proposal. At the end of the day, Wheatley told the Unit 1 team that released time for preparation would cease, beginning the

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[31]These included discipline, steward release time, union rights/distribution of literature, indoor air quality, industrial disability leave (IDL), discrimination, layoffs, catastrophic leave and special salary or inequity adjustments.

[32]These included the preamble; recognition; union representation rights; organizational security; state's rights; article 5/general provisions; and permanent intermittent employment.

[33]Among the topics were IDL; performance standards; and permanent intermittent employment.

[34]Wheatley and McWilliam did not discuss past Unit 1 negotiations, practices or coalition ground rules.

following week, due to the lack of bargaining progress and proposals; released time for preparation would be allowed on August 22, however, because August 23 bargaining was already scheduled. Wheatley informed the team that released time would continue for all negotiations. Duffy objected; she argued that CSEA had a right to present its case, the issues required research, the parties needed more time, and the Unit 1 team was entitled to released time under the Dills Act. Duffy requested union leave for the team on nonbargaining days. Wheatley agreed to consider it.

The next day, Wheatley advised Duffy that the ground rules did not allow union leave for preparation. On August 26, the parties again discussed released time for activities other than face-to-face negotiations. Wheatley rejected the union's request for continued released time on nonbargaining days.

Wheatley admitted that he did not negotiate with CSEA over the decision to grant full-time released status in July, or to eliminate released time for preparation effective August 26. CSEA filed this charge four days later.

The Unit 1 teams continued bargaining. As of the end of August, there were no tentative agreements.[35] After August, the union made no new major proposals although it gave the employer two minor proposals; the state gave the union new, although

[35]Unit 1 policy, followed in and communicated to the state in past and current negotiations, would not tentatively agree to any one subsection absent agreement on the entire article. The parties had reached conceptual agreement on many items, however.

minor, revisions on grievance procedures, furloughs and union representation rights. CSEA presented a written list of classes proposed for inequity or special salary adjustments in September.

Wheatley sent the state's last, best and final offer to Duffy on September 27. On October 10, Wheatley requested PERB to declare impasse and appoint a mediator in Unit 1 negotiations. PERB found an impasse and appointed a mediator on October 18.

According to Hackett, when released time for preparation was eliminated, CSEA was unable to counter the state proposal for a 5 percent salary reduction, although the team verbally rejected it. The union also could not counter the state proposals on IDL; health benefits; several health and safety items; employee transfers; allowances; and alternative transportation. The unit 1 team further could not develop and present its own proposals over layoff, performance standards, and NDI.

Hackett explained why released time for preparation is essential to Unit 1 bargaining. The unit is very large and diversified.[36] Expert witnesses are also required on many issues: out-of-class work; special salary adjustments; workweek groups; permanent intermittent employment; bonuses; job classifications; travel; and apprenticeship programs. Three team members had to travel to Sacramento, and the team needed to caucus after negotiations. Finally, Unit 1 employees also are

[36]For example, a statewide grievance on special salary adjustments was filed under the 1989-91 Unit 1 contract which affected 2,800 employees.

very interested in, and wish to participate and receive updates on the progress of bargaining.

According to Wheatley, the size of the unit by itself has no direct impact on the ability to prepare bargaining proposals and counters. Instead, the nature of the proposal, including cost factors and the source and availability of information to justify and support it, must be considered. Rollover proposals including minor variations in language, but retaining the essential concept, could and were countered immediately.

ISSUES

1. Did the state employer unilaterally change its released time policy, and thereby fail to negotiate in good faith in violation of Dills Act section 3519(c) when it eliminated released time for preparation between bargaining sessions effective August 26, 1991?

2. Did the state employer unreasonably deny released time to the union negotiating team in violation of Dills Act section 3518.5?

3. Did the state employer's conduct independently violate the rights of CSEA, the Unit 1 team members and Unit 1 employees under Dills Act section 3519(b) and (a), respectively?

CONCLUSIONS OF LAW

The complaint alleges that the state employer failed to bargain in good faith when it changed established policy by refusing to grant released time between bargaining sessions for preparation without negotiating with CSEA over the decision

and/or effects of the change. It charges a violation of Dills Act section 3519(c), but does not allege a failure to participate in the statutory impasse procedure in good faith, a separate violation of Dills Act section 3519(e). The alleged unilateral change occurred before the statutory impasse procedures while the parties were negotiating a successor agreement. The parties also presented evidence establishing that the state requested PERB to declare impasse; PERB found a bargaining impasse and appointed a mediator; and mediation was invoked while the denial of state released time for preparation continued. Accordingly, a Dills Act section 3519(e) claim of refusal to participate in the statutory impasse procedures in good faith is also presented. (Moreno Valley Unified School District v. PERB (1983) 142 Cal.App.3d 191, 200-202 [191 Cal.Rptr. 60]; Charter Oak Unified School District (1991) PERB Decision No. 873; Temple City Unified School District (1990) PERB Decision No. 841; Santa Clara Unified School District (1979) PERB Decision No. 104.)[37]

The Dills Act requires the state employer and an exclusive representative to meet and confer in good faith with each other on matters within the scope of representation. In addition, the Dills Act requires the state employer to give employee organizations an opportunity to meet and confer regarding any

[37]Under section 3518 of the Dills Act, impasse resolution is limited to mediation and there is no provision for factfinding. The parties may mutually agree on a mediator or request PERB to determine the existence of an impasse and appoint a mediator. (PERB Reg. 32791 (tit. 8, Cal. Code of Regs., sec. 32791).) If PERB appoints the mediator, PERB pays the mediation costs.

law, rule, resolution or regulation that it proposes to adopt, which directly relates to matters within the scope of bargaining. (Secs. 3516.5, 3517.) The obligation imposed by the Dills Act requires both parties to negotiate and discuss each other's proposals, engage in good faith efforts to reach agreement on subjects within the scope of representation, and to reduce those agreements to writing upon request. (Secs. 3517, 3517.5.) The Dills Act also obliges the parties to provide adequate time to reach agreement, including the resolutions of impasses. (Sec. 3517.)

Released time is a negotiable subject under the Educational Employment Relations Act (EERA).[38] EERA section 3543.2 provides, in part, that the scope of representation shall be limited to matters relating to wages, hours of employment and other terms and conditions of employment. The Board has held that released time is related to the enumerated subjects of wages and hours, and is well-suited to the "mediatory influence of negotiations" for resolution of disputes. (Willits Unified School District (1991) PERB Decision No. 912; Compton Community College District (1990) PERB Decision No. 790; San Mateo City School District et al. (1984) PERB Decision No. 375; Anaheim Union High School District (1981) PERB Decision No. 177; Jefferson School District (1980) PERB Decision No. 133.)

[38]EERA is codified at Government Code section 3540 et seq. and is also administered by PERB.

Section 3516 of the Dills Act is virtually identical to EERA section 3543.2, stating that the scope of representation shall be limited to wages, hours and other terms of conditions of employment.[39] The Board has recently concluded that released time is within the scope of representation of the Dills Act. (Professional Engineers in California Government (1991) PERB Decision No. 900-S.)

The duty to bargain requires both labor and management to refrain from taking any unilateral action that would effectuate a change in a mandatory subject of bargaining until each has given the other side notice and an adequate opportunity to negotiate. If negotiations are requested, unilateral changes cannot be implemented until the parties have either reached agreement or impasse after exhausting the statutory impasse resolution procedures. (PERB v. Modesto City School District (1982) 136 Cal.App.3d 881, 900 [186 Cal.Rptr. 634]; National Labor Relations Board v. Katz (1962) 369 U.S. 736, 745 [8 L.Ed.2d 230].)

Absent waiver, the negotiating obligation is continuous, binding both parties during the bargaining process throughout the life of the agreement, after expiration of the contract and until all impasse procedures have been exhausted. (Placentia Unified School District (1986) PERB Decision No. 595; Modesto City

[39] Neither party is obliged to negotiate over subjects outside the scope of representation. (State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S).

Schools (1983) PERB Decision No. 291.) The duty to bargain must be fulfilled before the employer may implement its last, best and final offer. (Temple City Unified School District, supra, PERB Decision No. 841.)

Unilateral Change

Because the Dills Act is designed to foster the negotiating process, a preimpasse unilateral change in an established negotiable practice, absent a valid defense, is a per se violation of the duty to bargain under the Dills Act section 3519(c). (NLRB v. Katz, supra, 369 U.S. 736 [8 L.Ed.2d 230]; State of California (Department of Transportation) (1983) PERB Decision No. 361-S; San Francisco Community College District (1979) PERB Decision No. 105.) When unilateral changes are implemented during the statutory impasse procedures, Dills Act section 3519.5(e) is violated. (Moreno Valley Unified School District, supra, 142 Cal.App.3d 191 [191 Cal.Rptr. 60];[40] Temple City Unified School District, supra, PERB Decision No. 841.)

To establish a unilateral change, a charging party must show that: (1) the respondent has changed the status quo; (2) the exclusive representative was not given notice or an opportunity to bargain; (3) the breach or alteration was not isolated, but amounted to a change of policy, having a generalized effect or continuing impact on the terms and conditions of employment of

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[40]Dills Act section 3519(e) and EERA section 3543.5(e) are virtually identical in making it unlawful for an employer to refuse to participate in good faith in the impasse resolution procedures set forth in the respective statutes.

bargaining unit members; and (4) the change in policy concerns matters within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196.) Established policy may be reflected in the agreement (Grant Joint Union High School District, supra), bargaining history (Colusa Unified School District (1983) PERB Decision Nos. 296 and 296a), or past practice (Rio Hondo Community College District (1982) PERB Decision No. 279; Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

The employer's lack of subjective bad faith in making unilateral changes is immaterial; the change itself has a destablizing and disorienting impact on employer/employee relations, derogates employee freedom of choice in selecting an exclusive representative and promotes bargaining inequality which is inconsistent with the statutory design. (Davis Unified School District et al. (1980) PERB Decision No. 116; San Mateo County Community College (1979) PERB Decision No. 94.) Offering to negotiate after the changes have been implemented does not cure the prior conduct since the employer's fait accompli makes the give and take of labor negotiations impossible. (San Francisco Community College District, supra, PERB Decision No. 105.)

A unilateral change, however, does not occur where the action taken by the employer does not alter the status quo. "The 'status quo' against which an employer's conduct is evaluated must take into account the regular and consistent past patterns of changes in the conditions of employment." (Pajaro Valley

Unified School District, supra, PERB Decision No. 51.) Where the employer acts consistently with past practice, no violation may be found in a change that did not alter the status quo. (Oak Grove School District (1985) PERB Decision No. 503.) Charging Party bears the burden of proving the change in past practice or established policy. (Ibid.)

The state argues that it met its statutory notice and meet and confer obligations when Wheatley gave three days advance notice to the Unit 1 team that released time for preparation would end the following week, and considered, but rejected, the union's request to retain full-time released status. This contention is rejected. Wheatley candidly admitted that he did not negotiate with the union over the decision to grant or eliminate released time for preparation during Unit 1 bargaining. CSEA certainly did not agree to any limitation on released time.

Thus, the question is whether the state employer made a unilateral change when it restricted released time to negotiating days effective August 26, 1991, in Unit 1 bargaining. The answer lies in determining the nature of the status quo before the state limited the released time available to the union team.

The state asserts that the language of the negotiated 1991 ground rules is dispositive.[41] CSEA responds that the ground rules are not controlling because the practice of released time for preparation and bargaining days on a one-to-one ratio

[41]The 1989-91 Unit 1 contract contained no language on released time for negotiating a successor contract.

remained intact over three successor contract negotiations. The analysis properly begins with the ground rules agreements.

The May 18, 1987, ground rules specifically authorized released time for both bargaining and preparation, and further attached a schedule of 11 dates on which the Unit 1 team was released. The April 25, 1988, ground rules removed preparation from released time, but also attached a schedule of negotiating sessions of two consecutive days, one for bargaining and one open, every other week, with both days on released time. The May 22, 1991, ground rules contained the same language as the 1988 ground rules, providing released time only for negotiating, but did not attach a schedule for Unit 1 bargaining, unlike the past two ground rules. Furthermore, CSEA specifically proposed that released time include preparation and travel before the single negotiating session on ground rules, but this language was not included in the final agreement signed by the parties.

The 1987 ground rules demonstrate that the parties knew how to include preparation within the authorized released time provisions. All three ground rules prohibited released time for travel from the worksites of the three Unit 1 team members located outside Sacramento. All three ground rules described caucus time separately from released time. Notwithstanding CSEA's honestly held definition of "negotiating session" to include preparation,[42] caucusing and travel, the plain language

[42]CSEA witnesses used the terms "preparation" and "caucusing" interchangeably, over the state's objection as an expansion of the complaint.

of the 1991 ground rules does not authorize released time for these purposes.

The union correctly contends that the ground rules language does not end the inquiry. This is because the evidence clearly demonstrates that the parties frequently deviated from the ground rules. The scheduling of negotiating sessions, including any released time, was up to the chief negotiators. The 60-minute caucus limitation was exceeded routinely. The state granted continuous released time to the union team when an agreement seemed near.[43]

Although Wheatley claimed that he followed the ground rules, he significantly departed from them in releasing the Unit 1 team five days a week after July 3. This arrangement far surpassed the released time in prior years of one day for bargaining and one for preparation or open, on a weekly basis or every other week. In addition, the CSEA Unit 1 team used union leave for preparation in May and June after the ground rules were signed, unlike past negotiations when released time away from the table began concurrently with bargaining, even though the contract(s) had not expired.

The key to solving the past practice puzzle is the mutual consent of the Unit 1 chief negotiators. The ground rules provided a floor, not a ceiling, for released time and other matters. This is likely a result of the parties' bargaining

[43]The parties were not close to a final agreement as of August 21 to invoke the continuous released time afforded in prior years.

history. Despite comprehensive ground rules, not every aspect of a particular negotiation can be anticipated in coalition ground rules applying to eight or nine bargaining units. Thus, departures from the ground rules occurred routinely by assent of the chief union and state negotiators. So long as both sides agreed, there were no disputes. This case apparently presents the first such controversy.

It is concluded that the past practice was the negotiated ground rules agreement, plus any deviation(s) worked out between the chief negotiators for the unit(s), so long as the negotiators remained in agreement. When Wheatley informed CSEA that he would no longer give unlimited released time to the Unit 1 team, there was no longer mutual consent to alter the ground rules so as to allow released time for non-negotiating days, or for CSEA to use union leave as agreed in past years when McWilliam was the Unit 1 negotiator. At that point, the ground rules governed Unit 1 negotiations and limited released time to negotiating days. No past practice was created by the full-time release of Unit 1 members in July and most of August, since this status exceeded the scheduled one-to-one bargaining-nonbargaining days of released time afforded in 1987 and 1988.

Denial of CSEA's Statutory Rights

As a separate claim, CSEA alleges that the state denied its rights to reasonable released time under Dills Act section 3518.5 by eliminating preparation time after August 26, 1991, in Unit 1 negotiations. The state objects procedurally to consideration of this issue as not included in the complaint. On the merits, the state argues that the released time given to Unit 1 members met the statutory standard.

In Magnolia School District (1977) EERB[44] Decision No. 19, the Board discussed the policy underlying the right to reasonable released time in EERA section 3543.1(c).[45]

> "Reasonable released time" means, at least, that the District has exhibited an open attitude in its consideration of the amount of released time to be allowed so that the amount is appropriate to the circumstances of the negotiations. The District may have to readjust its allotment of released time based upon the reasonable needs of the District, the number of hours spent in negotiations, the number of employees on the employee organization's negotiating team, the progress of the negotiations and other relevant factors. A district's policy does not provide for reasonable periods of released time if the policy is unyielding to changing circumstances,
> (Id. at p. 5.)

[44]Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

[45]EERA section 3543.1(c) states:

> A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

The Board later rejected a narrow construction of EERA section 3543.1(c), concluding that "meeting and negotiating" is not limited to direct negotiating sessions. (Sierra Joint Community College District (1981) PERB Decision No. 179.)

> So narrow a construction of the statutory-language is unwarranted. In our view, the phrase is intended to permit teacher negotiators to receive released time for periods spent in the negotiating process. How much of this total time span is subject to the requirement of section 3543.1 depends, of course, on what is "reasonable." But we find in this section no requirement that the time employees are excused from duty without loss of compensation must precisely coincide with time actually spent negotiating, (Id. at p. 5.)

The Board has also commented that in EERA, the Legislature declined to leave released time either to the employer's discretion or entirely to the vagaries of negotiations. Instead, ". . .a minimum released-time standard was established, . . . against which the parties' good faith in negotiating on the subject could be measured." (Anaheim Union High School District, supra. PERB Decision No. 177, p. 11.)

Whether the amount of released time is reasonable is a question of fact to be determined on a case-by-case basis. Sierra Joint Community College District, supra, PERB Decision No. 179, p. 7.) The Board did not define the "minimum released-time standard" in Anaheim Union High School District supra, PERB Decision No. 177, and has not held that a particular refusal to grant released time denied rights to an exclusive representative. PERB decisions have evaluated a specific denial of released time

against the minimal standard, using two approaches: (1) the history of the negotiations, or (2) an objective "patently unreasonable" standard. (Willits Unified School District (1991) PERB Decision No. 912, adopting proposed dec, p. 24.)

A "history of the negotiations" analysis was used in Muroc Unified School District (1978) PERB Decision No. 80. At issue was the number of negotiators to be granted released time. The Board identified several factors: complexity of negotiations; reasonable needs of the employee organization to include representatives of various groups on their negotiating team; number of hours spent in negotiations; size of the district; and geographical dispersement of facilities.

A "patently unreasonable" standard was suggested in Burbank Unified School District (1978) PERB Decision No. 67. This case involved denial of released time for rest and recuperation on the day after negotiations proceeded late into the night. Although the Board found that the employer did not unreasonably expect employees to return to work, it observed:

> Such a situation would occur when it would be patently unreasonable, given the legislative intent to limit the burden on employee representatives, to force employee organization negotiating team members to choose between working after the negotiating session ends or losing pay or sick leave. However, such circumstances are rare, (Id. at p. 5.)

The parties are free to negotiate released time provisions which are broader than the statutory standard. (Gilroy Unified School District (1984) PERB Decision No. 471.) After a

declaration of impasse by PERB, however, the parties have no obligation to meet and negotiate outside the presence of the appointed mediator, and the employer therefore is not required to grant released time except for bargaining with the mediator. (Victor Valley Union High School District (1986) PERB Decision No. 565.)

The Board has not interpreted Dills Act section 3518.5. The statutory released time provision for negotiating[46] is similar to that of EERA, with one exception: the right applies only for periods when a contract is not in effect. Here, released time for preparation was granted, and subsequently revoked, after the Unit 1 agreement officially expired on June 30, 1991, so as to apply the statute.

The EERA-based cases are useful in analyzing whether the state denied CSEA reasonable released time. Unit 1 is obviously a large and complex bargaining unit, involving many negotiating issues, as demonstrated by the comprehensive 1987-88 and 1989-91 contracts. CSEA also asserts that its 1991 six-member team is only one-third the size of its teams in the two prior negotiations. The state, however, had six negotiators as well. In addition, the union has not shown that the state played any

[46]The Dills Act refers to "formally meeting and conferring" while EERA specifies "meeting and negotiating." In addition, **EERA section 3543 and section 3569 of the Higher Education** Employer-Employee Relations Act (HEERA) specifically grant reasonable released time for the processing of grievances. Dills Act section 3518.5 is silent on this point.

role in limiting the size of its team, and the ground rules allow CSEA to select the employees on released time.

The union further contends that preparation time is required because three of the 1991 Unit 1 team members are located outside of Sacramento. The last three negotiated ground rules have addressed travel separately from released time, and limited travel to the employees' time unless they worked in designated cities. Although the remote locations permitting travel on release time were expanded in each ground rules agreement, the three members' worksites have been excluded consistently. It cannot be concluded that this arrangement violated the statutory standard of reasonable released time.[47]

Released time for preparation cannot be viewed in a vacuum. Instead, it must be considered in context with the released time afforded for direct negotiations as part of a total package. The fact is that the released time received by the Unit 1 team in 1991 far surpassed its released time in the two prior negotiations. In 1987, the union team received 11 days of released time: four bargaining, four preparation, and three additional days. In 1988, the team received either 20 days (ten bargaining and ten open) or 18 days (nine bargaining and nine open) of released time, depending upon when bargaining began. In 1991, the negotiators were granted released time for every bargaining session except two before the ground rules were

[47]Compare Regents of the University of California (1987) PERB Decision No. 640-H, where the negotiated ground rules specifically included "reasonable travel time" on released time.

signed. As of the close of the record, 41 days of released time had been afforded to the Unit 1 team members for bargaining, including four with a mediator. Eighteen additional days of preparation on released time were granted to the team during July and August. Thus, a total of 59 days on released time had been given to each of the five team members. Under either the history of negotiations or patently unreasonable standard, and the particular facts of this case, it cannot be concluded that the state denied reasonable released time to CSEA and its Unit 1 negotiators.

CONCLUSION

Charging Party has not established an unlawful unilateral change and/or denial of its statutory rights to released time in Unit 1 successor contract negotiations with the state in 1991. The past practice was the negotiated ground rules and any mutually agreed-upon departure(s) so long as the chief negotiators continued to agree. The reasonable released time standard of Dills Act section 3518.5 was not violated by the negotiated ground rules and Unit 1 team members received more released time in 1991 than in prior negotiations.

Charging Party has failed to prove, by a preponderance of the evidence, a prima facie case of the state employer's refusal to bargain under Dills Act section 3519(0), failure to participate in the statutory impasse procedures under section 3519(e) and denial of the exclusive representative's rights to reasonable released time under section 3518.5. Since no

bargaining violations have been established, the independent section 3519(a) (interference with bargaining unit employees' rights to be represented by CSEA) and section 3519(b) (denial of representation rights to CSEA) violations based on the same facts must also be dismissed.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the unfair practice charge no. S-CE-522-S and its companion complaint entitled California State Employees Association (CSEA) v. State of California (Department of Personnel Administration) are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page, citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . ." (See Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc., sec. 1013 shall apply.) Any

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

Dated: February 19, 1992

Christine A. Bologna
Administrative Law Judge