

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



INTERNATIONAL UNION OF OPERATING)
ENGINEERS, LOCAL NO. 12,)
)
Charging Party,) Case No. LA-CE-295-S
)
v.) PERB Decision No. 1071-S
)
STATE OF CALIFORNIA (DEPARTMENT)
OF FOOD AND AGRICULTURE) ,)
)
Respondent.)
_____)

Appearances: Richard G. Funderburg for International Union of Operating Engineers, Local No. 12; State of California (Department of Personnel Administration) by Warren C. Stracener, Labor Relations Counsel, for State of California (Department of Food and Agriculture).

Before Blair, Chair; Caffrey and Garcia, Members.

DECISION

BLAIR, Chair: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the International Union of Operating Engineers, Local No. 12 (IUOE) of a Board agent's dismissal (attached hereto) of its unfair practice charge. In its charge, IUOE alleges that the State of California (Department of Food and Agriculture) (State) violated section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act)¹ by

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

It shall be unlawful for the state to do any of the following:

(b) Deny to employee organizations rights guaranteed to them by this chapter.

insisting that IUOE deal with District Agricultural Association Fair Managers at the second level of the grievance procedure.

The Board has reviewed the warning and dismissal letters, IUOE's original and amended charge, IUOE's appeal and the State's response thereto. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

DISCUSSION

IUOE appears to allege for the first time on appeal that the State failed to provide requested information.

PERB Regulation 32635(b)² states:

Unless good cause is shown, a charging party may not present on appeal new charge allegations or new supporting evidence.

IUOE has failed to state why good cause exists to justify presenting this new allegation on appeal. Therefore, the Board declines to consider the new allegation.

ORDER

The unfair practice charge in Case No. LA-CE-295-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Caffrey and Garcia joined in this Decision.

(c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

²PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

PUBLIC EMPLOYMENT RELATIONS BOARD



Los Angeles Regional Office
3530 Wilshire Blvd., Suite 650
Los Angeles, CA 90010-2334
(213)736-3127



April 29, 1994

Richard G. Funderburg
International Union of Operating
Engineers, Local Union No. 12
150 East Corson Street
Pasadena, California 91103

Re: DISMISSAL AND REFUSAL TO ISSUE COMPLAINT, Unfair Practice
Charge No. LA-CE-295-S, International Union of Operating
Engineers, Local Union No. 12 v. State of California

Dear Mr. Funderburg:

In the above-referenced charge, the International Union of Operating Engineers, Local Union No. 12 (IUOE) alleges that the State of California insisted that IUOE deal with District Agricultural Association secretary-managers. This conduct is alleged to violate Government Code sections 3519(b) and (c) of the Ralph C. Dills Act (Dills Act).

I indicated to you, in my attached letter dated April 14, 1994, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to April 22, 1994, the charge would be dismissed. I later extended that deadline.

On April 28, 1994, I received from you a first amended charge. This amended charge, unlike the original charge, does describe specific State conduct. The amended charge, however, still does not demonstrate how the State's conduct constituted a Dills Act violation within PERB's jurisdiction. It is still not apparent how the issue of the statutory authority of District Agricultural Association secretary-managers under the Food and Agriculture Code is within the scope of representation defined by Government Code section 3516 or is otherwise an issue under the Dills Act.

The only allegation that arguably states a Dills Act violation is the allegation that the State unilaterally changed a grievance policy. This same allegation was made in Unfair Practice Charge No. LA-CE-292-S, which you filed on December 22, 1993. I indicated to you, in my attached letter dated March 4, 1994, that the allegation was subject to deferral to arbitration. I am therefore dismissing the charge, based on the facts and reasons contained in this letter and my March 4 and April 14 letters.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, 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. (Cal. 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 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. 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 (20) calendar days following the date of service of the appeal. (Cal. 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 Cal. 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 (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. (Cal. Code of Regs., tit. 8, sec. 32132.)

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April 29, 1994
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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
Deputy General Counsel

By _____
THOMAS J. ALLEN
Regional Attorney

Attachments

cc: Warren C. Stracener, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD



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April 14, 1994

Richard G. Funderburg
International Union of Operating
Engineers, Local Union No. 12
150 East Corson Street
Pasadena, California 91103

Re: WARNING LETTER, Unfair Practice Charge No. LA-CE-295-S,
International Union of Operating Engineers, Local Union
No. 12 v. State of California

Dear Mr. Funderburg:

In the above-referenced charge, the International Union of Operating Engineers, Local Union No. 12 (IUOE) alleges that the State of California insisted that IUOE deal with District Agricultural Association secretary-managers. This conduct is alleged to violate Government Code sections 3519(b) and (c) of the Ralph C. Dills Act (Dills Act).

My investigation of the charge reveals the following relevant facts.

IUOE is the exclusive representative of a unit of State employees, some of whom work for the Department of Food and Agriculture. In its charge, IUOE alleges in part as follows:

The State of California through the actions of its agents, the Department of Personnel Administration and the Department of Food and Agriculture and its Division of Fairs and Expositions, has insisted the International Union of Operating Engineers deal with District Agricultural Association secretary-managers, who have no statutory authority [under the Food and Agriculture Code] to act as agents of the State on wages, hours, and other terms and conditions of employment for civil service employees represented by the I.U.O.E., as further set forth in the Factual Statement of Charges.

By the aforementioned actions, the State of California through the actions of its agents:

- b) Interferes with and denies the I.U.O.E, of its right to represent its members.
- c) Refuses or fails to meet and confer in good faith with the I.U.O.E.

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The "Factual Statement of Charges" attached to the charge does not in fact describe any specific conduct on any specific date by any specific agent of the State. Moreover, the charge does not demonstrate how the State actually denied IUOE its rights under the Dills Acts, failed to meet and confer with IUOE, or otherwise violated the Dills Act.

Based on the facts stated above, the charge does not state a prima facie violation of the Dills Act, for the reasons that follow.

PERB Regulation 32615(a)(5) states that a charge shall contain a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." A charging party should allege the "who, what, when, where and how" of an unfair practice. (United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Legal conclusions are not enough. (Id.; see also Charter Oak Unified School District (1991) PERB Decision No. 873, at p. 12, fn. 6.)

The present charge does not contain a clear and concise statement of any specific State conduct. Moreover, it does not contain allegations supporting the legal conclusion that the State violated the Dills Act.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which 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 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 April 22, 1994, I shall dismiss your charge. If you have any questions, please call me at (213) 736-3127.

Sincerely,

Thomas J. Allen
Regional Attorney

TJA:we

PUBLIC EMPLOYMENT RELATIONS BOARD



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(213)736-3127



March 4, 1994

Richard G. Funderburg,
Business Representative
Int'l Union of Operating Engineers
150 East Corson Street
Pasadena, California 91103

Re: WARNING LETTER (DEFERRAL TO ARBITRATION), Unfair Practice
Charge No. LA-CE-292-S, International Union of Operating
Engineers. Local Union No. 12 v. State of California
(Department of Food and Agriculture)

Dear Mr. Funderburg:

In the above-referenced charge, the International Union of Operating Engineers, Local Union No. 12 (IUOE) alleges that the State of California Department of Food and Agriculture (State) unilaterally changed a grievance policy. This conduct is alleged to violate Government Code sections 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act).

My investigation of the charge reveals the following relevant facts.

IUOE and the State are parties to a collective bargaining agreement for the term July 1, 1992, through June 30, 1995. Article 14 (Grievance and Arbitration Procedure), Section 14.8 (Formal Grievance - Step 2), provides in part as follows:

If the grievant is not satisfied with the decision rendered pursuant to Step 1, the grievant may appeal the decision to a designated supervisor or manager identified by each department head as the second level of appeal.

Article 14, Section 14.12 (Formal Grievance - Step 5), provides for binding arbitration of grievances.

On or about October 22, 1993, the State informed IUOE that Fair Managers of District Agricultural Associations were designated for second level of review of grievances. IUOE alleges that this represents a unilateral change of policy. IUOE's argument appears to be that a Fair Manager is not a State employee and therefore cannot be a "supervisor or manager" within the meaning of Article 14, Section 14.8.¹

Based on the facts stated above, the charge is subject to deferral to arbitration and must be dismissed, for the reasons that follow.

Government Code 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 in effect] 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 Lake Elsinore School District (1987) PERB Decision No. 646, PERB held that section 3541.5(a) of the Educational Employment Relations Act, which contains language identical to section 3514.5(a) of the Dills Act, established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Regulation 32620(b)(5) (Cal. Code of Regs., tit. 8, sec. 32620(b)(5)) also requires the investigating Board agent to dismiss a charge where the allegations are properly deferred to binding arbitration.

These standards are met with respect to this case. First, the grievance machinery of the agreement covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge, that the State

¹This appears to be the only argument that could support an alleged violation of the Dills Act. If a Fair Manager can be a "supervisor or manager" within the meaning of Article 14, Section 14.8, then the State's conduct would not represent a unilateral change of policy and would not violate either the agreement or the Dills Act.

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unilaterally changed a policy on second level review of grievances, is arguably prohibited by Article 14, Section 14.8, of the agreement.

Accordingly, this charge must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See PERB Reg. 32661 [Cal. Code of Regs., tit. 8, sec. 32661]; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)

If there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the Charging Party. The amended charge must be served on the Respondent and the original proof of service filed with PERB. If I do not receive an amended charge or withdrawal from you before March 11, 1994, I shall dismiss your charge without leave to amend. If you have any questions, please call me at (213) 736-3127.

Sincerely,

✓
Thomas J. Allen
Regional Attorney