

assigned the duties of the Supervising Cook I (SCI) classification to correctional officers at its California State Prison, Sacramento.

The Board has reviewed the Board agent's warning and dismissal letters, CSEA's unfair practice charge, its February 7, 1995 response to the warning letter, its appeal and CDC's response to CSEA's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself deferring this matter to arbitration.²

employees because of their exercise of rights guaranteed by this chapter.

(c) Refuse or fail to meet and confer in good faith with a state agency employer of any of the employees of which it is the recognized employee organization.

²Article 22.1(b) of the parties' collective bargaining agreement (CBA) requires that if the conduct complained of in this charge (CSEA's assertion that CDC unilaterally transferred duties from SCI classifications that are in the bargaining unit to correctional officers in Unit 6 without negotiating) is subject to subsection (b) and there is a disagreement on that point, then any disagreement as to whether subsection (b) requires the parties to meet and confer must be submitted to the arbitration procedure for resolution.

If, as CSEA alleges, CDC did in fact make changes in areas within the scope of negotiations (transfers), then it is for the arbitrator to decide whether the parties are required to meet and confer over the impact of the decision. Accordingly, PERB will not rule on the merits of this case, but has investigated the initial procedural aspects of this case and finds that the procedural question is covered by Article 22.1(b) of the parties' CBA and must defer this matter to the arbitration procedure for resolution.

ORDER

The unfair practice charge in Case No. S-CE-732-S is hereby
DISMISSED WITHOUT LEAVE TO AMEND.

Chair Blair and Member Carlyle joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



February 9, 1995

Robert J. Losik
Senior Labor Relations Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: California State Employees Association v. State of
California (Department of Corrections)
Unfair Practice Charge No. S-CE-732-S
DISMISSAL LETTER

Dear Mr. Losik:

On December 16, 1994, you filed a charge on behalf of California State Employees Association (CSEA) in which you allege that the State of California, Department of Corrections (CDC) violated sections 3519(b) and (c) of the Government Code. More specifically, you contend that CDC has assigned the duties of the Supervising Cook I (SCI) classification to correctional officers at its California State Prison - Sacramento facility. The SCI classification is assigned to Unit 15 which is represented by CSEA. Correctional Officers are in Unit 6, represented by California Correctional Peace Officers Association. This misassignment of duties you contend is a unilateral transfer of bargaining unit work.

During the course of the investigation of this charge I learned that you became aware of the use of correctional officers in the satellite kitchens at California State Prison - Sacramento when you had a walk-through of the facility in May, 1994. You inquired of the use of SCIs by CDC and in June, 1994, CDC responded with a brief denial of any misassignment. In August, 1994, you had some discussions with CDC regarding the use of SCIs at the satellite kitchens but no agreement was reached. Your filing of the charge reflects the fact that no agreement with CDC has been reached.

I indicated to you, in my attached letter dated January 25, 1995, 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 February 6, 1995, the charge would be dismissed.

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On February 6, 1995, I granted a request for an extension of time for the submission of a response to my January 25, 1995 letter. On February 7, 1995, I received neither an amended charge nor a request for withdrawal but rather, I received additional legal argument. You argue that the language of Article 22.1(b) was not intended to be a clear and unmistakable waiver of CSEA's right to negotiate the decision to alter terms and conditions of employment, i.e. assignment of duties. You continue by arguing that PERB should resolve this question (the applicability of Article 22.1(b)) through an evidentiary hearing.

As recited in my January 25, 1995 letter, Article 22.1(b) states "the parties recognize that it may be necessary for the State to make changes in area within the scope of negotiations." This Article continues by establishing a procedure by which the State may make those changes. This language provides a mechanism, which ends in binding arbitration, to resolve disputes such as the one raised by this charge and therefore this charge must be deferred and dismissed based on the facts and reasons contained in my January 25, 1995 letter.

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"

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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.)

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 _____
Roger Smith
Board Agent

Attachment

cc: Charles D. Sakai, Legal Counsel

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198



January 25, 1995

Robert J. Losik, Sr. Labor Relations Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: California State Employees Association v. State of
California (Department of Corrections)
Unfair Practice Charge No. S-CE-732-S
WARNING LETTER

Dear Mr. Losik:

On December 16, 1994, you filed a charge on behalf of California State Employees Association (CSEA) in which you allege that the State of California, Department of Corrections (CDC) violated sections 3519(b) and (c) of the Government Code. More specifically, you contend that CDC has assigned the duties of the Supervising Cook I (SCI) classification to correctional officers at its California State Prison - Sacramento facility. The SCI classification is assigned to Unit 15 which is represented by CSEA. Correctional Officers are in Unit 6, represented by California Correctional Peace Officers Association. This misassignment of duties you contend is a unilateral transfer of bargaining unit work.

During the course of the investigation of this charge I learned that you became aware of the use of correctional officers in the satellite kitchens at California State Prison - Sacramento when you had a walk-through of the facility in May, 1994. You inquired of the use of SCIs by CDC and in June, 1994, CDC responded with a brief denial of any misassignment. In August, 1994, you had some discussions with CDC regarding the use of SCIs at the satellite kitchens but no agreement was reached. Your filing of the charge reflects the fact that no agreement with CDC has been reached.

Section 3514.5(a) of the Ralph C. Dills Act (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/MOU covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge that CDC unilaterally transferred duties from SCI classifications that are in the unit to correctional officers in Unit 6 without negotiating is arguably prohibited by Article 22.1(b) of the MOU.¹

¹Article 22.1(b) provides:

b. The parties agree that the provisions of the Subsection shall apply only to matters which are not covered in this Contract.

The parties recognize that it may be necessary for the State to make changes in areas within the scope of negotiations. Where the State finds it necessary to make such changes, the State shall notify the Union of the proposed change 30 days prior to its proposed implementation.

The parties shall undertake negotiations regarding the impact of such changes on the employees in Unit 15, when all three of the following exists:

- (1) Where such changes would affect the working conditions of a significant number of employees in Unit 15.
- (2) Where the subject matter of change is within the scope of representation pursuant to the Ralph C. Dills Act.

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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 February 6, 1995, I shall dismiss your charge without leave to amend. If you have any questions, please call me at (916) 322-3198 ext. 358.

Sincerely,

~~Roger~~ Roger Smith
Board Agent

RCS:cb

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- (3) Where the Union requests to negotiate with the State.

An agreement resulting from such negotiations shall be executed in writing and shall become an addendum to this Contract. If the parties are in disagreement as to whether a proposed change is subject to this Subsection, such disagreement may be submitted to the arbitration procedure for resolution. The arbitrator's decision shall be binding. In the event negotiations on the proposed change are undertaken, any impasse which arises may be submitted to mediation pursuant to Section 3518 of the Ralph C. Dills Act.