STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INTERNATIONAL UNION OF OPERATING ENGINEERS, CRAFT-MAINTENANCE DIVISION, UNIT 12,	)	
Charging Party,	)	Case No. S-CE-792-S
v.	)	PERB Decision No. 1149-S
STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS),	)	April 30, 1996
Respondent.	)	

Appearances; Van Bourg, Weinberg, Roger & Rosenfeld by William A. Sokol, Attorney, for International Union of Operating Engineers, Craft-Maintenance Division, Unit 12; State of California (Department of Personnel Administration) by Nalda L. Keller, Labor Relations Counsel, for State of California (Department of Corrections).

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 (IUOE) of a Board agent's dismissal (attached) of its unfair practice charge. In its charge, IUOE alleged that the State of California (Department of Corrections) (State) unilaterally changed the work schedules of plant operations employees at the California Correctional Women's Facility at Chowchilla (CCWF) without providing IUOE with notice and the

opportunity to meet and confer over the change, thereby violating section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act).[1]

The Board has reviewed the entire record in this case, including the unfair practice charge, the warning and dismissal letters, IUOE's appeal and the State's response thereto. The Board finds the Board agent's warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself in accordance with the following discussion.

DISCUSSION

The Board agent found that the State's action in changing the work schedules of plant operations employees at CCWF was allowed by the parties' collective bargaining agreement (CBA).[2]

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[1]The 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.
>
> (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

[2]It should be noted that the State and IUOE are parties to a CBA with an expiration date of June 30, 1995. The Board has held that certain terms contained in an expired CBA remain in effect until such time as bargaining over a successor agreement has been completed by either reaching agreement or concluding impasse proceedings. (Pajaro Valley Unified School District (1978) PERB Decisión No. 51; State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S citing NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].) Therefore, Article 7, "Hours of Work," of the parties' expired CBA remained in effect in November 1995 at the time of the alleged unlawful conduct here. The parties do not dispute this.

On appeal, IUOE asserts that "there has been a fundamental misunderstanding of this charge." IUOE argues that this case does not involve shift changes, a subject which is addressed in the parties' CBA, but rather "the unilateral taking away of a benefit" by the State. That benefit, IUOE asserts, was a paid meal period since the employee work schedule before the State's change was 8 hours and included a meal period, whereas after the change, it was 8-1/2 hours including a scheduled, unpaid meal period.

In response, the State opposes IUOE's appeal and asserts that its action was taken pursuant to CBA Articles 7.1 and 7.3, which were cited by the Board agent in his warning letter. Article 7.5 states, in pertinent part:

> 7.5 Meal Period
>
> a. Unit 12 employees will be allowed an unpaid meal period of not less than 30 minutes nor more than 60 minutes which shall be scheduled by the employee's supervisor as near as possible to the middle of the work shift. Employees on an unpaid meal period normally will not be restricted to any special area during the meal period. It shall be the responsibility of each employee to be at the work site and prepared to begin work at the conclusion of the meal period.
>
> c. Employees may be required to work a full shift without a scheduled meal period. Employees required to work without a scheduled meal period may eat their meal while performing their duties.

The State argues that consistent with this provision, the affected employees did not receive a paid meal period prior to the change, but instead worked a full 8-hour shift during which

they were expected to eat their meal while working in accordance with CBA Article 7.5(c). Following the change, a 30-minute, unpaid meal period was provided in accordance with CBA Article 7.5(a). Therefore, the State asserts that its actions are expressly permitted by the provisions of the contract.

The Board will find that an employer has committed an unlawful unilateral change if: (1) the employer breached or altered the parties' written agreement or established practice concerning a matter within the scope of representation; (2) the action was taken without providing the exclusive representative with notice and the opportunity to meet and confer over the change; and (3) the change has a generalized or continuing effect on the terms and conditions of employment of bargaining unit members. (Grant Joint Union High School District (1982) PERB Decision No. 196.)

The parties' CBA allows the employer to establish different work schedules (sec. 7.1(a)), and requires the state to provide a 15-day notice when employees' hours of work during a day are permanently changed (sec. 7.3(a)). The CBA also provides that employees will be allowed an unpaid meal period of at least 30 minutes (sec. 7.5(a)), but that employees may be required to work a shift without a scheduled meal period provided that they are given the opportunity to eat while performing their duties (sec. 7.5(c)).

As noted by the Board agent, the State's actions in this case appear to be consistent with and permitted by these CBA

provisions. Employees whose previous work shift did not include a scheduled meal period were given at least 15-day notice of a schedule change to provide for a 30-minute, unpaid meal period. Therefore, the State's actions do not breach the parties' written agreement, and do not constitute an unlawful unilateral change.

Other than the assertion that its charge has been misunderstood, IUOE's appeal fails to offer any response to the Board agent's conclusion that the State's conduct was consistent with the CBA, or provide any alternative to the unilateral change analysis. Accordingly, the Board finds that IUOE's appeal is without merit.

ORDER

The unfair practice charge in Case No. S-CE-792-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Johnson and Dyer joined in this Decision.

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

January 22, 1996

William A. Sokol, Attorney
180 Grand Avenue
Oakland, CA 94612

Nalda Keller, Counsel
Department of Personnel Administration
1515 S Street, North Building, Suite 400
Sacramento, CA 95814-4723

Dear Parties:

The above-referenced charge alleges that the State of California, Department of Corrections (State) unilaterally changed the work shifts of employees exclusively represented by the International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 (UIOE). This conduct is alleged to violate sections 3519(b) and (c) of the Ralph C. Dills Act.

I indicated to you, in my attached letter dated January 12, 1996, 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 January 19, 1996, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my January 12, 1996, 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" 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

Bernard McMonigle
Regional Attorney

Attachment

BMC:eke

STATE OF CALIFORNIA PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

January 12, 1996

William Sokol
Attorney
180 Grand Avenue
Oakland, CA 94612

RE: International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 v. State of California, (Department of Corrections)
Unfair Practice Charge No. S-CE-792-S
WARNING LETTER

Dear Mr. Sokol:

The above-referenced charge alleges that the State of California, Department of Corrections (State) unilaterally changed the work shifts of employees exclusively represented by the International Union of Operating Engineers, Craft-Maintenance Division, Unit 12 (IUOE). This conduct is alleged to violate sections 3519(b) and (c) of the Ralph C. Dills Act.

The following facts have been alleged in this case. IUOE is the exclusive representative of employees in Bargaining Unit No. 12 and as such had a collective bargaining agreement with the State which expired on June 30, 1995. Article 7.1 of the agreement reads:

> **Work Week**
>
> a. The regular work week of full-time Unit 12 employees shall be 40 hours.
>
> b. Different work schedules may be established by the employer to meet varying needs of state agencies.

Article 7.3 of the agreement provides:

> **Permanent Change of Shift, Work Hours, or Work Days**
>
> a. The state shall provide 15 calendar days' advance notice when an employee's shift, hours of work during a day, or days of work

during the week are permanently changed. Permanent means a change lasting for 3 0 calendar days or more. Shift is defined as day, evening, or night. Work hours means both the number of hours worked during the day as well as the starting and ending times of the assigned work day. Work days means both the number of days in the week being worked as well as the days of the week being worked.

This provision shall not apply to Department of Forestry employees when they changed from a fire mission to a nonfire mission duty week or vise-versa.

b. The State shall endeavor to provide at least 24 hour notice to employees of shift changes of less than 3 0 calendar days duration.

On November 2, 1995, the California Correctional Women's Facility at Chowchilla notified employees in plant operations that their work schedules were being changed, effective December 1995, from straight eight hour shifts to eight and a half hour shifts with an unpaid lunch of half an hour. On November 27, 1995, Labor Relations Officer Lloyd Bell told Union Representative Dennis Bonnifield that the employer was within its rights to make the change unilaterally.

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

In determining whether a party has violated Dills Act section 3519 (c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196; State of California. Department of Transportation (1983) PERB Decision No. 361-S.)

The charging party's initial burden is to demonstrate that the State changed a policy within the scope of representation. The policy regarding shift assignment is contained in the collective bargaining agreement and allows the State to establish different work schedules according to its needs with 15 days advance notice. The exhibits provided with the charge indicate that the union received more than 15 days advance notice of the change in their shifts. Accordingly, there has been no demonstration that the State changed a policy within the scope of negotiations and this charge must be dismissed.

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 January 19, 1996, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Bernard McMonigle
Regional Attorney

BMC:eke