STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party,	)	Case No. S-CE-808-S
v.	)	PERB Decision No. 1160-S
STATE OF CALIFORNIA (DEPARTMENT OF EDUCATION), Respondent.	)	June 20, 1996

Appearances: Bill Kelly, Senior Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Susan B. Sandoval, Labor Relations Counsel, for State of California (Department of Education).

Before Caffrey, Chairman; Garcia and Dyer, Members.

DECISION AND ORDER

CAFFREY, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (CSEA) of a Board agent's dismissal (attached) of its unfair practice charge. In its charge, CSEA alleged that the State of California (Department of Education) (State) failed to meet and confer in good faith regarding a change in work hours of teaching staff at the California School for the Blind, in violation of section 3519(c) of the Ralph C. Dills Act (Dills Act).[1]

[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:

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

The unfair practice charge in Case No. S-CE-808-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Garcia and Dyer joined in this Decision.

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

PUBLIC EMPLOYMENT RELATIONS BOARD

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

April 18, 1996

Bill Kelly
Senior Labor Relations Representative
California State Employees' Association
1108 "0" Street
Sacramento, CA 95814

Re: NOTICE OF DISMISSAL AND REFUSAL TO ISSUE COMPLAINT
California State Employees' Association v. State of California (Department of Education)
Unfair Practice Charge No. S-CE-808-S

Dear Mr. Kelly:

I indicated to you, in my attached letter dated March 22, 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 April 1, 1996, the charge would be dismissed.

Your request for additional time was granted, and a First Amended Charge was filed on April 10, 1996. The amended charge attaches and incorporates two documents which were prepared by the California State Employees' Association (CSEA) for use in the mediation sessions held with the Department of Education (Department) at the California School for the Blind. While the documents demonstrate the level of effort made by CSEA in these negotiations, they do not supplement the record in terms of additional indicia of the Department's failure to bargain with the requisite intent to reach agreement.[1]

[1]In discussing your charge by telephone on April 18, 1996, you reiterated the contention that the Department treated the negotiations "as a joke" and did not adequately prepare for bargaining sessions. As discussed in my March 22, 1996 letter, a party's unyielding position at the bargaining table, fairly maintained, does not evidence lack of good faith. (See Oakland Unified School District (1982) PERB Decision No. 275, and cases cited therein.) The charge does not, however, contain specific factual allegations which support your conclusory statements or indicate in what way the Department's position was not fairly maintained.

The only charge allegation which provides evidence of bad faith is the Department's submission of a regressive proposal in mediation on September 21, 1995. Under Muroc Unified School District (1978) PERB Decision No. 80 and the other cases cited in my earlier letter, this single allegation does not state a prima facie case under the "totality of conduct" test.

Therefore, I am dismissing the charge based on the facts and reasons discussed above as well as those contained in my March 22, 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

By
Les Chisholm
Regional Director

Attachment

cc: Susan B. Sandoval

PUBLIC EMPLOYMENT RELATIONS BOARD

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

March 22, 1996

Bill Kelly
Senior Labor Relations Representative
California State Employees Association
1108 "0" Street
Sacramento, CA 95814

Re: WARNING LETTER
California State Employees Association v. State of California (Department of Education)
Unfair Practice Charge No. S-CE-808-S

Dear Mr. Kelly:

The above-referenced charge was filed with the Public Employment Relations Board (PERB or Board) on February 13, 1996. The charge alleges that the Department of Education (Department) failed to meet and confer in good faith with the California State Employees Association (CSEA or Charging Party) regarding a change in work hours at the California School for the Blind (School). This conduct is alleged to violate the Ralph C. Dills Act (Act)[1] at section 3519.

Investigation of the charge revealed the following information. CSEA is the exclusive representative of, inter alia, Dills Bargaining Unit 3 - Institutional Education, which includes teaching staff of the School. In June 1995, management of the School announced there would be a change in the teaching schedule for the 1995-96 school year. CSEA demanded that the Department bargain over the change in work hours and filed a grievance over the matter. The grievance was resolved with the Department agreeing to meet and confer with CSEA.

On August 28, 1995 the Department and CSEA met and conferred over the issue of a change of working hours, including extending the work hours on Friday afternoons. That meeting did not result in an agreement, and the dispute was submitted to mediation.

The parties met with a mediator on September 21 and November 9, 1995, and were unable to reach an agreement.

The Department maintained a position from the beginning of negotiations through the time that they implemented the change whereby the revised teachers schedule would be as follows:

[1]The Act is codified at Government Code section 3512 et seq.

Monday, Tuesday, Thursday, 8:15 a.m. to 4:00 p.m. with 45 minute lunch period.

Wednesday, 8:00 a.m. to 4:00, with 45 minute lunch period.

Friday, 8:15 a.m. to 2:00 p.m. with 45 minute lunch period.

This schedule contrasted with the 1994-95 schedule, which provided as follows: Monday through Thursday, 8:00 a.m. to 4:00 p.m. with 30 minute lunch period, and Friday, 8:00 a.m. to 12:45 p.m.

During the course of the negotiations and mediation, the Department responded to CSEA's concerns by changing its proposal only once. On September 21, 1995, in response to CSEA demands that the workday should begin earlier and end earlier, the Department communicated through the mediator a proposal that would change the starting times for all five days of the week to 8:00 a.m. but did not propose any movement on the ending time of the workday. At CSEA's request, communicated through the mediator, the Department put this revised proposal in writing.

Subsequent to the final mediation session, the Department implemented its proposal as originally presented to CSEA.

Discussion

The Dills Act provides at section 3517 for the State employer's duty to meet and confer in good faith with duly recognized employee organizations. It is a violation of section 3519(c) for the State employer to refuse or fail to meet and confer in good faith with the recognized employee organization, and a violation of section 3519(e) to refuse to participate in good faith in the mediation process.

In determining whether the employer has violated section 3519 (c) or (e), 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.) The totality of conduct test looks to the entire course of negotiations to determine the respondent's subjective intention.

As the Board first held in Muroc Unified School District (1978) PERB Decision No. 80,

> It is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling

> fabric to delay or prevent agreement. [Footnote omitted.]

Factors which may be indicative of bad faith bargaining include frequent turnover in negotiators; negotiators' lack of authority which delays the bargaining process; lack of preparation for bargaining sessions; missing, delaying, or cancelling bargaining sessions; taking an inflexible position or making regressive bargaining proposals. (Pajaro Valley Unified School District (1978) PERB Decision No. 51, Amador Valley Joint Union High School District (1978) PERB Decision No. 74, Healdsburg Union High School District (1980) PERB Decision No. 132, San Ysidro School District (1980) PERB Decision No. 134, Stockton Unified School District, supra, Anaheim Union High School District (1981) PERB Decision No. 177, Oakland Unified School District (1982) PERB Decision No. 275.)

CSEA's allegation of surface bargaining in this matter rests on two claims: That the Department was inflexible in its bargaining position, and that it submitted a regressive proposal. Maintenance of one's position at the table is not per se evidence of bad faith bargaining. The Dills Act does not require parties to reach agreement or make concessions. As noted in Oakland Unified School District, supra:

> The NLRB and the Courts have consistently ruled that adamant insistence on a bargaining position is not necessarily a refusal to bargain in good faith. (NLRB v. American National Insurance Co. (1952) 343 U.S. 395 [30 LRRM 2147].) See also NLRB v. Wooster Division of Borg-Warner Corporation (1958) 356 U.S. 342 [42 LRRM 2034] . And in NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829], the Court said:
>
> > The obligation of the Employer to bargain in good faith does not require the yielding of positions fairly maintained.

The proposal labeled by CSEA as regressive, while it represented a change in position in a direction which would increase working hours, was nevertheless made in response to CSEA's proposal that the workday begin earlier. The factual allegations surrounding this so-called regressive proposal do not suggest on their face that the Employer was attempting to "torpedo" a proposed agreement or otherwise undermine the negotiations process. (Alhambra City & High School Districts (1986) PERB Decision No. 560; see also Fresno County Office of Education (1993) PERB Decision No. 975.) However, even if it was regressive, one indicia of surface bargaining does not state a prima facie violation.

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 1, 1996, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198 ext. 359.

Sincerely,

Les Chisholm
Regional Director

HLC:cb