STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SA-CE-933-S
v.	)	PERB Decision No. 1205-S
STATE OF CALIFORNIA (DEPARTMENT OF HEALTH SERVICES),	)	June 19, 1997
Respondent.	)	

Appearances: Bonnie Morris, Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Linda Buzzini, Legal Counsel, for State of California (Department of Health Services).

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION AND ORDER

JOHNSON, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (Association) to a Board agent's partial dismissal (attached) of the unfair practice charge. The Association alleged that the State of California (Department of Health Services) (Department) violated section 3519(a) and (c) of the Ralph C. Dills Act (Dills Act)[1] by: (1) failing to meet with

[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:
>
> (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

the Association representatives to resolve employment disputes involving unit members; (2) unilaterally changing a term and condition of employment relating to the Department's flex-time policy; and (3) refusing to provide the Association with certain requested information.[2]

The Board has reviewed the entire record in this case, including the Board agent's partial warning and dismissal letters, the unfair practice charge, the amended charge, the Association's appeal,[3] and the Department's response. The Board finds the partial warning and dismissal letters to be free of prejudicial error and, therefore, adopts them as the decision of the Board itself.

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guaranteed by this chapter.

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

[2]A complaint was issued with respect to the third allegation. This decision addresses only the first and second allegations, which were dismissed by the Board agent.

[3]In its appeal, the Association attempts to offer new evidence for the first time on appeal. PERB Regulation 32635(b) (PERB regs, are codified at Cal. Code Regs., tit. 8, sec. 31001 et seq.) provides:

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

CSEA has not offered any explanation or good cause for submitting this new evidence for the first time on appeal. Therefore, it may not be presented for the first time on appeal and has not been considered by the Board. (See State of California (State Teachers Retirement System) (1997) PERB Decision No. 1202-S.)

ORDER

The partial dismissal of the unfair practice charge in Case No. SA-CE-933-S is hereby AFFIRMED.

Chairman Caffrey and Member Dyer joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

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

March 6, 1997

Bonnie Morris, Labor Relations Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: PARTIAL DISMISSAL LETTER
California State Employees Association v. State of California (Department of Health Services)
Unfair Practice Charge No. SA-CE-933-S

Dear Ms. Morris:

On January 30, 1997, you filed the above-captioned unfair practice charge on behalf of the California State Employees Association (CSEA). The charge alleges that the Department of Health Services (DHS) has violated sections 3519 (a), (b) and (c) of the Ralph C. Dills Act (Dills Act) by demonstrating an unwillingness to work with CSEA in attempting to resolve disputes involving employees and their supervisors and by unilaterally altering the department's flex-time policy by threatening employees who have excessive docks with the cancellation of their flex-time privileges. Additionally you contend that you requested a copy of DHS's flex-time policy on September 27, 1995, January 30, 1996 and October 24, 1996 and you requested a copy of the department's policy on dock-time on October 24, 1996. You contend that you have not received a response from the department as to either.

I indicated to you, in my attached letter dated February 14, 1997, that certain allegations contained in the 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 these allegations to state a prima facie case or withdrew them prior to February 24, 1997, the allegations would be dismissed. You subsequently requested and were granted an additional week to respond to my warning letter.

On March 3, 1997, you filed an amended charge in which you reiterate the facts as alleged in the original charge but reorganized into three issues. These three issues stated briefly are: DHS' unwillingness to meet with CSEA in a cooperative manner to resolve employee complaints; the unilateral implementation of a change in the dock time and flex time policies; and DHS' failure to advise CSEA of the policy changes and the subsequent failure to negotiate regarding the changes.

As I indicated in my February 14, 1997, letter, in order to establish a change of a past policy you must first establish what the policy

originally was. The additional information you provided fails to clarify what change occurred.

You indicate that your job stewards obtained a copy of Office Guidelines for the Center for Health Statistics which are dated 11/96. You have also provided a memo dated September 6, 1995, with a copy of the Office Guidelines. The only apparent change in the two documents is that in Paragraph 2 of the 11/96 revision, flexible work hours will only be available to employees who have passed probation. Both documents provide that flexible work schedules are available with prior approval of the employee's supervisor subject to revocation if employee's do not follow established office policies. There is no reference to employees who are docked salary for inadequate time on the books. You have not alleged that DHS policy previously allowed docked employees to continue on flex schedules or that employees were removed from flex schedules without prior notice. Therefore, you have not established a change in policies.

As to the other allegation that DHS was uncooperative in resolving employee complaints, you have failed to resolve the discrepancy I discussed in my warning letter. The fact that the results of meetings with DHS managers or supervisors are not completely satisfactory or that such meetings are unduly delayed does not establish evidence of bad faith. Therefore, I am dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained in my February 14, 1997, letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in 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. 3213 5.) 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

Roger Smith
Board Agent

Attachment

cc: Linda Buzzini, Legal Counsel

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

February 14, 1997

Bonnie Morris, Labor Relations Representative
California State Employees Association
1108 0 Street
Sacramento, CA 95814

Re: PARTIAL WARNING LETTER
California State Employees Association v. State of California (Department of Health Services)
Unfair Practice Charge No. SA-CE-933-S

Dear Ms. Morris:

On January 30, 1997, you filed the above-captioned unfair practice charge on behalf of the California State Employees Association (CSEA) . The charge alleges that the Department of Health Services (DHS) has violated sections 3519 (a), (b) and (c) of the Ralph C. Dills Act (Dills Act) by demonstrating an unwillingness to work with CSEA in attempting to resolve disputes involving employees and their supervisors and by unilaterally altering the department's flex-time policy by threatening employees who have excessive docks with the cancellation of their flex-time privileges. Additionally you contend that you requested a copy of DHS's flex-time policy on September 27, 1995, January 30, 1996 and October 24, 1996 and you requested a copy of the department's policy on dock-time on October 24, 1996. You contend that you have not received a response from the department as to either.

California Code of Regs., tit. 8, sec 32615 (a)(5) requires that a charge contain a "clear and concise statement of the facts alleged to constitute an unfair practice." The examples you provide to support your contention that the department was not cooperating with CSEA does not provide the "clear and concise" statement of facts that would establish a prima facie violation of the Dills Act.

It is unclear from your charge the specific violation(s) of the Dills Act that you are alleging. It appears that you are contending that the department's failure to meet with you regarding Dunigan's discipline violated the past practice as established in Article 2.1(a) of the last MOU wherein it states the State "agrees to deal with...Union staff on...(e)mployee discipline cases."

In one example you refer to an attempt to resolve employee Frances Dunigan's concern with a corrective memo she received from her supervisor. You cite the difficulties in scheduling a

meeting with the employee's supervisor, Debbie Balsley. In another example you cite difficulties in scheduling a meeting between employee Gale Bush and her supervisor, Christine Linden. However, in the same charge you provide dates of meetings you did have with DHS personnel regarding other employee complaints. Without clarification of these contradictions, this portion of your charge fails to state a violation.

As to the allegation that the department unilaterally implemented a change regarding the issues of dock-time and flex-time, in order for PERB to find that DHS violated its duty to negotiate in good faith, you as charging party must demonstrate that: (1) the employer breached or altered a written agreement or its own established past practice; (2) such action was taken without notice to the exclusive representative and an opportunity to bargain over the change; (3) the change is not an isolated event but amounts to a change of policy (i.e., has a generalized effect or continuing impact upon unit member's terms and conditions of employment); and, (4) the change concerns a matter within the scope of representation. (See Grant Joint Union High School District (1982) PERB Decision No. 196.)

You have not established what the policy was regarding dock-time or flex-time before the change therefore it is not possible to determine whether the policy was changed. The allegation that the department has failed to provide you with their policies is being treated separately.

Further, you cited four occasions of employee's pay being docked. Article 19.5 of the expired 1992-95 Unit 4 memorandum of understanding provides the "employees who are placed on a flexible work schedule will comply with reasonable procedures established by the department." You have not established that those "reasonable procedures" do not include the docking of employee's pay checks. For this reason your charge fails to state a prima facie violation as to the allegation that DHS changed its policies relating to flex-time or dock-time.

For these reasons the allegations that DHS has failed to cooperate with CSEA, and unilaterally altered flex-time and dock-time policies as presently written, do 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 February 24, 1997, I shall dismiss the above-described allegations from your charge. If you have any questions, please call me at (916) 322-3198 ext. 358.

Sincerely,
Roger Smith
Board Agent