STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF YOUTH AUTHORITY), Respondent.	Case No. SA-CE-966-S PERB Decision No. 1215-S August 11, 1997

Appearances: William K. Sweeney, Area Manager, for California State Employees Association; State of California (Department of Personnel Administration) by Warren C. Stracener, Labor Relations Counsel, for State of California (Department of Youth Authority).

Before Caffrey, Chairman; Johnson and Amador, Members.

DECISION AND ORDER

AMADOR, Member: This case comes before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (CSEA) to a Board agent's partial dismissal (attached) of CSEA's unfair practice charge.

CSEA alleged that the State of California (Department of California Youth Authority) (State) violated section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act)[1] by: (1) changing the

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[1]The Dills Act is codified at Government Code section 3512 et seq. Section 3519 provides, 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.

evening shift teachers to the day shift; (2) reassigning some teachers from their regular classes to relief or substitute assignments; (3) requiring that two classes be taught in rooms where one class was previously taught; and (4) extending teacher/student contact time by thirty minutes, thus reducing teacher preparation time by thirty minutes. CSEA alleges that all of these actions were taken without giving it the opportunity to bargain.

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

The partial dismissal of the unfair practice charge in Case No. SA-CE-966-S is hereby AFFIRMED.

Chairman Caffrey and Member Johnson joined in this Decision.

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

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

May 28, 1997

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

Re: NOTICE OF PARTIAL DISMISSAL
<u>California State Employees Association</u> v. <u>State of California (Department of Youth Authority)</u>
Unfair Practice Charge No. SA-CE-966-S

Dear Mr. Kelly:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 3, 1997, by the California State Employees Association (CSEA). CSEA alleges that the California Youth Authority (State or Respondent) violated the Ralph C. Dills Act (Dills Act) at sections 3519(b) and (c) .

I indicated to you, in my attached letter dated May 12, 1997, 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 May 19, 1997, the charge would be dismissed.

Your First Amended Charge was received on May 19, 1997. The amended charge reads in its entirety as follows:

> During the past six months the Department of Youth Authority has made numerous changes to the working conditions of teachers employed at the Heman G. Stark Youth Training Center without officially noticing or meeting and conferring with CSEA.
>
> The department has completely eliminated the evening teaching shift forcing all the teachers working that shift to change to the day shift. The department has also taken some teachers from their regularly scheduled classes and designated them as relief or substitute teachers.

> The department has required two classes to be taught in rooms that were formally [sic] used for the teaching of one class. Teachers have also been required to teach classes in the gymnasium and other non-traditional settings such as living units where the teachers must instruct students who are each confined in kennel-like cages.
>
> The department has also increase[d] the amount of teacher/student contact by thirty minutes per day which reduces the teacher preparation time by thirty minutes.
>
> The department has extended the lunch period by five minutes which extends the teacher workday by five minutes.

CSEA is the exclusive representative of State Bargaining Unit 3 - Institutional Education, which includes teachers employed by Respondent. CSEA and the State were parties to a memorandum of understanding (MOU) for Unit 3 which expired June 30, 1995, and for which successor negotiations have not concluded.

The MOU, in Article 19, Section 19.4.a, provided as follows:

> Except in emergencies, the State shall provide fourteen (14) calendar days advance notice before an employee's regular shift is changed so that the employee has an opportunity to reschedule his/her obligations. Shift change includes changes in workday, workweek, and/or work cycle. When a department intends to change an employee's regular shift, the department shall consider the following factors:
>
> - The needs of the employee(s)
> - Volunteers
> - Seniority
> - Operational needs
> - The needs of the clients, patients, inmates, wards, students, etc.
> - Skills and abilities
> - Staffing requirements
> - Performance and attendance
> - Credentials
> - Recruitment and Retention

The MOU in Section 21.6.a provided as follows concerning non-instructional/teacher preparation time:

> During a teacher's workday, there shall be scheduled non-instructional periods for purposes of teacher preparation and for performance of other job duties.
>
> Teacher preparation is work time to be used for the purpose of supporting classroom instruction at a level consistent with the diversity of student needs and changing program demands. Management may grant additional preparation time to an individual teacher when management has made a major change in the teacher's assignment.
>
> Although it is not the intent of the State to unnecessarily infringe upon teachers' preparation time, it is recognized by both parties that it may be appropriate for teachers to be assigned other duties during this time.

Discussion

As discussed in my May 12, 1997 letter, 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, in determining whether a party has violated Dills Act section 3519(c). (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.)

Further, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Legal conclusions are not sufficient to state a prima facie case. (Id.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

Your charge alleges five separate instances of changes in policy.[1] The first concerns the elimination of the evening teaching shift and requirement of employees to change to the day shift. However, under Section 19.4.a of the expired MOU, the State was able to change an employee's regular work shift provided notice was given and specified factors were considered. Your charge does not allege facts showing that the State failed to give the required notice or failed to consider the factors set forth in that policy. Therefore, this charge allegation fails to establish a prima facie violation and must be dismissed.

The second allegation is that some teachers have been reassigned from their regular classes to relief or substitute assignments. The charge does not allege specific facts to show any material change in working conditions or other factor which would remove this change from the arena of managerial prerogative and place it within the scope of representation. (See, e.g., State of California (Agricultural Labor Relations Board) (1984) PERB Decision No. 431-S.) This charge allegation must also be dismissed.

Third, the charge alleges that the State has required two classes to be taught in rooms where only one class was previously taught, and that other classes have been placed in "non-traditional" settings. This allegation also fails to establish any material change in working conditions which is subject to the duty to bargain, and must be dismissed.

The fourth allegation is that the State unlawfully extended teacher/student contact time by thirty minutes and thus reduced teacher preparation time by thirty minutes. The MOU, however, did not establish a minimum amount of preparation time and did provide at Article 21, Section 21.6.a, that teachers may be assigned other duties during their preparation time. Therefore, this allegation does not establish a unilateral change in violation of the Dills Act. Further, even assuming the provisions of Section 21.6.a are not dispositive of this issue, this charge fails to allege prima facie evidence of a violation under the standard set forth in Healdsburg Union Elementary School District (1994) PERB Decision No. 1033 (Healdsburg). In Healdsburg, the Board held that:

> To demonstrate that a change in duties during the workday is negotiable, a charging party

[1] One of the five allegations, concerning a change in the length of the workday, is not addressed by this letter.

> must show that the change has an impact on the employees' workday. (Imperial Unified School District (1990) PERB Decision No. 825 (Imperial); Cloverdale Unified School District (1991) PERB Decision No. 911.) The Board has held that employers are generally free to alter the instructional schedule without negotiations; however, when changes in the instructional day affect the length of the workday or existing duty-free time, the subject is negotiable. (Imperial; San Mateo City School District (1980) PERB Decision No. 129.) The Board will not presume an effect on length of workday or duty free time. Rather, the charging party has the burden of proving that the employer's change impacted negotiable terms and conditions of employment. (Imperial.)

This allegation also fails to state a prima facie violation and must be dismissed.

Therefore, I am dismissing the four charge allegations described above based on the facts and reasons discussed herein and those contained in my May 12, 1997 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: Nalda L. Keller

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

May 12, 1997

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 Youth Authority)
Unfair Practice Charge No. SA-CE-966-S

Dear Mr. Kelly:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 3, 1997, by the California State Employees Association (CSEA). CSEA alleges that the California Youth Authority (State or Respondent) violated the Ralph C. Dills Act (Dills Act) at sections 3519(b) and (c).

The charge as filed reads in its entirety as follows:

> On or about April 1, 1997, the [Respondent] made changes in the working conditions of Unit 3 members at Heman G. Stark - Youth Training School. The changes include, but are not limited to, changing the starting and stopping times of work shifts, modifying work schedules within work shifts, changing the ratio of preparation time to student contact time, and forcing Unit 3 members to share classrooms and restroom facilities. All of the above occurred without officially noticing [CSEA] or bargaining with [CSEA] over these issues.

Discussion

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Legal conclusions are

not sufficient to state a prima facie case. (Id.; Charter Oak Unified School District (1991) PERB Decision No. 873.)

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.)

The instant charge alleges that Respondent unlawfully implemented a change in policy, but the charge is wholly lacking specific information as to what the specific provisions of the prior policy were and how the "new" policy differs from past policy or practice.

On April 29, 1997, we discussed the lack of specificity of this charge by telephone, and you indicated that an amended charge correcting the deficiency would be filed that same week. To date, an amended charge has not been filed and my subsequent attempts to contact you have been unsuccessful.

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 May 19. 1997, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198, extension 359.

Sincerely,

Les Chisholm
Regional Director