STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, Charging Party, v. STATE OF CALIFORNIA (BOARD OF EQUALIZATION), Respondent.	)	Case No. SA-CE-950-S PERB Decision No. 1235-S November 24, 1997

Appearances: Rosmaire Duffy, Senior Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Michael E. Gash, Labor Relations Counsel, for State of California (Board of Equalization).

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal of a Board agent's dismissal (attached) of an unfair practice charge filed by the California State Employees Association (CSEA). In its charge, CSEA alleged that the State of California (Board of Equalization) (State) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)[1] when it: (1) unilaterally implemented a

[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

relocation of its Ventura office without providing CSEA with an opportunity to meet and confer over the impact of the decision; (2) responded belatedly to an information request; (3) implemented the proposal without referring it to the main bargaining table; and (4) failed to "sunshine" the proposal prior to negotiations.

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

CSEA'S APPEAL

On appeal, CSEA challenges the Board agent's conclusion regarding the unilateral change allegation by repeating the argument that the State failed to provide adequate notice in advance of the pending relocation. CSEA also repeats its earlier demand that "all future issues on . . . management-initiated changes should be referred to the [main] bargaining table."

Further, CSEA asserts that the Board agent did not "fully take . . . into consideration" the impact of the delay in the State's response to the CSEA information request.

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employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

STATE'S OPPOSITION TO APPEAL

The State supports the Board agent's dismissal.

DISCUSSION

On appeal, CSEA continues to claim that it received inadequate or "defective" notice of the State's proposal to relocate the Ventura office. However, we agree with the Board agent that CSEA received several forms[2] of notice from the State in December 1996 and January 1997, but did not indicate a desire to bargain until February 1997, a month after the move occurred. CSEA failed to make a timely demand to bargain.

CSEA also claims a right to have negotiations on this issue referred to the main bargaining table during negotiations over a successor collective bargaining agreement. However, CSEA offers no legal support for this assertion.[3] Under the Dills Act and PERB precedent, as discussed by the Board agent, CSEA has the right to negotiate the effects of proposed changes on matters within the scope of representation, upon request. We know of no authority which gives CSEA the right to dictate the setting in which such negotiations must occur.

CSEA also challenges the Board agent's review of the refusal to provide information allegation. We note that in its unfair

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[2]In fact, on appeal, CSEA itself acknowledges receiving notice of the proposed change on December 18, 1996, "when a verbal notice was given."

[3]We note that CSEA's demand glosses over the fact that, under longstanding PERB precedent, the employer's decision to relocate an office is nonnegotiable. (See warning letter, p. 2, citing Newman-Crows Landing Unified School District (1982) PERB Decision No. 223.)

practice charge, CSEA alleged that the State took "over a month" to provide information requested on January 17, 1997. However, CSEA's charge also states that the State responded on February 11, 1997, less than a month later. The Board agent noted these facts and reached the logical conclusion that CSEA had failed to support its allegation. We agree, and find that CSEA's argument is without merit.

ORDER

The unfair practice charge in Case No. SA-CE-950-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

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

April 23, 1997

Rosemaire Duffy
Senior Labor Relations Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: DISMISSAL LETTER
California State Employees Association v. State of California (Board of Equalization)
Unfair Practice Charge No. SA-CE-950-S

Dear Ms. Duffy:

The above referenced charge alleges that State of California, Board of Equalization, (BOE) violated Government Code sections 3519 (b) & (c), 3517, 3516.5, 3523 (Dills Act). Specifically, you allege that BOE made a unilateral change and refused to bargain over it in violation of the Dills Act.

I indicated to you, in my attached letter dated April 2, 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 April 10, 1997 (later extended to April 18, 1997), the charge would be dismissed.

On April 22, 1997, I received your first amended charge. The amended charge contains the facts summarized as follows. On December 18, 1996, Mr. Gorham, manager of labor relations at BOE verbally notified Ms. Tut Tate, the Manager of the Civil Service Division of CSEA that a lease had been signed to relocate the Ventura BOE office effective January 7, 1997. Ms. Tate indicated to Mr. Gorham that when you [Rosemaire Duffy] were available you would be contacting him. Mr. Gorham stated that he would like to discuss the move and the concept of the Joint Taxpayers Service Center. On December 20, 1996, Mr. Gorham sent a confirming letter to Ms. Tate regarding relocation of the BOE office. You have reason to believe that Mr. Gorham knew at that time that you were on vacation from December 16, 1996 to January 6, 1997. You also believe that Mr. Gorham knew that most of the CSEA Bargaining Services staff was on vacation during the Christmas holidays.

On January 7, 1997, Mr. Gorham notified Ms. Tut Tate that the relocation date had been extended to January 21, 1997. On January 17, 1997, you sent a letter to Mr. Gorham, requesting information regarding the move. Mr. Gorham provided this information in a February 11, 1997 letter.

On February 20, 1997, you sent two letters to Mr. Gorham. The letter attached to the original charge states in pertinent part:

> [i]f the Board of Equalization wishes to relocate or close any Board of Equalization offices, state management must refer this item to the main table for CSEA bargaining units impacted by your department's proposal. As you know, the parties are involved in successor collective bargaining agreements in all CSEA units and the state can make no changes on anything within the scope of representation while the parties are continuing to bargain. If the department has implemented your proposed changes, they must be rescinded immediately.

The February 20th letter attached to the amended charge states in pertinent part:

> [t]he purpose of this letter is to notify you that CSEA will not entertain any notices or proposals from the Board of Equalization for meet and confer relative to issues that fall within the scope of representation. If the Board of Equalization wishes to propose changes to any matter within the scope of representation, the department should refer these items to the main bargaining table for the appropriate CSEA bargaining unit.

As described in the warning letter, in order to establish a prima facie case of a unilateral change, CSEA must demonstrate that the change was made without reasonable notice. The information provided in the amended charge does not meet this burden.

As described in my April 2, 1997 letter, the key issues raised by these facts is whether the State provided reasonable notice to CSEA of its intention to move the BOE office prior to the move. BOE provided both verbal and written notice to Ms. Tate, a high level CSEA official, approximately 20 days prior to the original moving date and more than 30 days prior to the date of the actual move. You assert that this notice is inadequate because it fell during a holiday period and while you were on vacation. However, this does not change the fact that BOE did provide proper notice to Ms. Tate who has authority to act on behalf of CSEA. CSEA failed to notify BOE of your absence or its desire to bargain these issues. The first CSEA communication with BOE was your

January 17th letter which did not request to meet and confer with BOE, but rather requested information relating to the relocation. The second communication, your letters of February 20, 1997, did not make a clear request to bargain either.

In summary, BOE provided reasonable notice of its intentions and CSEA failed to make a timely request to bargain. Thus, CSEA has not presented a prima facie case of a unilateral change. In addition, CSEA has not made a clear request to bargain over the effects and, therefore, BOE has not refused to bargain.

Therefore, I am dismissing the charge based on the facts and reasons contained in my April 2, 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

Stacey Malcom

Board Agent

Attachment

cc: Michael Gash, Labor Relations 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

April 2, 1997

Rosmaire Duffy-
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 (Board of Equalization)
Unfair Practice Charge No. SA-CE-950-S

Dear Ms. Duffy:

On March 3, 1997, you filed a charge on behalf of California State Employees Association (CSEA) in which it is alleged that the Board of Equalization (BOE) violated sections 3516.5, 3517, 3519 (b), (c), and 3523 of the State Employer-Employee Relations Act (SEERA).

My investigation of the charge reveals the following relevant facts.

On December 16, 1996, Robert Gorham, manager of labor relations at BOE notified Ms. Tut Tate, the Manager of the Civil Division of CSEA, that it would be relocating its Ventura office on January 6, 1997. A request was made by BOE to have a meeting with CSEA to resolve any concerns CSEA may have about the move. The relocation date was later changed to January 21, 1997.

On January 17, 1997, CSEA requested information on the status of the relocation of the Ventura office. BOE provided a response, answering all of CSEA's questions, on February 11, 1997. On February 20, 1997 CSEA requested to bargain with BOE over the relocation of the Ventura Office on February 20, 1997, in a letter which stated:

> "if the Board of Equalization wishes to relocate or close any... offices, state management must refer this item to the main table for CSEA bargaining units impacted by your department's proposal."

CSEA asserts that the above facts support a violation of a unilateral change by the state.

A charging party will establish a prima facie case for a unilateral change when it shows:[1]
(1) an employer breached or altered the parties' written agreement
(2) employer acted without giving the exclusive representative reasonable notice or an opportunity to bargain
(3) breach or alteration is not an isolated breach of contract, but amounts to a change in policy
(4) change in policy concerns a matter within the scope of representation

The main issue for the facts here are to determine if the notice given by BOE to CSEA was reasonable. To see if the notice was reasonable it is necessary to look at the requirements that notices must include prior to making a change. Victor Valley Union High School District, (1986) PERB Dec. No. 565, found that an employer who was proposing a change had to satisfy several factors.

> (1) Notice of a proposed change must be given to an official of the employee organization who has the authority to act on behalf of the organization.
> (2) The notice must be communicated in a manner which clearly informs the recipient of the proposed change.
> (3) Notice must be given sufficiently in advance of a firm decision to make a change to allow the exclusive representative a reasonable amount of time to decide whether to make a demand to negotiate, a "reasonable amount of time" necessarily depends upon the individual circumstances of each case.

The facts here establish that the notice was given to Ms. Tate, who has authority to act on behalf of CSEA. CSEA was aware that BOE would be relocating its Ventura office from the notice given to Ms. Tate on December 16, 1996. Also, CSEA sent a letter dated, January 17, 1997, which sought information about the relocation, but which gave no indication to BOE that CSEA wished to bargain the effects of the relocation of the Ventura office. BOE's notice to CSEA regarding the relocation of its Ventura office was reasonable.

To find a violation by BOE it will have to be found that CSEA requested to bargain over the effects of the relocation, which BOE failed to comply with. However, CSEA did not indicate a desire to bargain with BOE until five weeks after implementation of the change, when it sent a letter dated, February 20, 1997.

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[1]Furthermore, it must be acknowledged that the decision to relocate the office is a matter of "fundamental management concern" which requires such decisions be left to the employer's prerogative. Newman-Crows Landing Unified School District, (1982) PERB Dec. No. 223. Therefore, only the effects would be bargainable by CSEA.

Even at that time CSEA did not state "we want to bargain over the effects of the relocation" instead they stated that "management must refer this item to the main table for CSEA bargaining." As such, CSEA waived its right to bargain over the effects of the Ventura office relocation.

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 10, 1997. I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Sincerely,

Stacey Malcom

Board Agent