STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, SEIU LOCAL 1000, AFL-CIO,	)	
Charging Party,	)	Case No. LA-CE-404-S
v.	)	PERB Decision No. 1247-S
STATE OF CALIFORNIA (EMPLOYMENT DEVELOPMENT DEPARTMENT),	)	January 28, 1998
Respondent.	)	

Appearances: California State Employees Association by Anne M. Giese, Attorney, for California State Employees Association, SEIU Local 1000, AFL-CIO; State of California (Department of Personnel Administration) by Michael E. Gash, Labor Relations Counsel, for State of California (Employment Development Department).

Before Caffrey, Chairman; Johnson and Jackson, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California State Employees Association, SEIU Local 1000, AFL-CIO (Association) to a Board agent's partial dismissal (attached) of the unfair practice charge. The Association alleged that the State of California (Employment Development Department) (State or EDD) violated section 3519(a), (b), (c) and (d) of the Ralph C. Dills Act (Dills Act)[1] by: (1) unilaterally changing job duties for

[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

certain employees; (2) unilaterally changing the job title of certain classifications; (3) unilaterally changing the amount of lunch time received by employees at the Buena Park Call Center; and (4) failing to provide the Association with notice of its intention to close certain field offices (among other allegations not at issue here).

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

DISCUSSION

In its appeal of the dismissal of allegation 6 involving the

> 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 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.
>
> (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

change in lunch periods, the Association argues that the Board agent's citation to Marysville Joint Unified School District (1983) PERB Decision No. 314 (Marysville) is incorrect because the parties' collective bargaining agreement (CBA) had expired. The Association cites State of California (Department of Mental Health) (1990) PERB Decision No. 840-S (Mental Health) and asserts that "EDD's practice, since expiration, supplants the contract language and constitutes the status quo."

The Association's reference to Mental Health is misplaced. In that case, the Board held that the contractual provision relied upon by the employer to permit a unilateral scheduling change did not authorize the employer's action regardless of whether the contract had expired. The decision did not turn on the fact that the parties' agreement had expired.

Upon expiration of a contract, the employer must maintain certain terms and conditions of employment embodied in that contract until such time as bargaining over a successor agreement has been completed. (State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S.) This policy promotes stability and avoids the disruption and uncertainty which would result if basic terms and conditions of employment terminated with the expiration of the agreement. Thus, most provisions of an expired contract, such as those involving wages, benefits and work hours, remain in effect during successor negotiations unless the parties have agreed to an alternative approach. There is no precedent for the

Association's assertion that an employer's action following expiration of the agreement "supplants" the status quo of terms and conditions of employment embodied in the provisions of the contract.

In this case, the provision of the parties' expired CBA dealing with the subject of meal periods remained in effect during successor agreement negotiations following the expiration of the CBA. Therefore, EDD was free to act in accordance with that provision and did not commit a unilateral change in violation of the Dills Act when it did so. (Marysville.)

ORDER

The partial dismissal of the unfair practice charge in Case No. LA-CE-404-S is hereby AFFIRMED.

Chairman Caffrey and Member Jackson joined in this Decision.

STATE OF CALIFORNIA PETE WILSON, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Poet Street, 9th Floor
San Francisco, CA 94108-4737
(415)439-6940

August 1, 1997

Helen T. Leon, LRR
California State Employees Association
10600 Trademark Parkway North, Suite 405
Rancho Cucamonga, CA 91730

Re: **PARTIAL DISMISSAL LETTER**
California State Employees Association v. State of California (Employment Development Department)
Unfair Practice Charge No. LA-CE-404-S

Dear Ms. Leon:

The above-referenced unfair practice charge, filed May 13, 1997, alleges the State of California, Employment Development Department (State or EDD), unilaterally changed numerous terms and conditions of employment for the classification of Employment Program Representatives (EPR). The California State Employees Association (CSEA) alleges this conduct violates Government Code section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act or Act).

I indicated to you, in my attached letter dated June 10, 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 June 18, 1997, the allegations would be dismissed. On June 18, 1997, you filed a first amended charge.

The first amended charge reiterates the original allegations and adds the following. The amended charge alleges seven (7) separate unilateral changes in the terms and conditions of employment for EPR's at the Employment Development Department.[1] Specifically, the amended charge alleges:

[1] Job titles under the classification of Employment Program Representative are Unemployment Insurance Claims Processor and Interviewer and Job Service Program Processor and Interviewer.

1. The State changed the job duties for EPR's.

2. The State changed the job title of Unemployment Insurance Claims Processor to Share Job Identifier.

3. The State implemented new performance standards for EPR's.

4. The State implemented an electronic monitoring system to restrain employees movement during work hours.

5. The State changed the dress code at the Buena Park Call Center.

6. The State changed the amount of lunch time received by employees at the Buena Park Call Center

7. The State failed to provide CSEA with notice of its intention to close certain field offices.

Based on the facts stated in both the original and amended charges, the following allegations fail to state a prima facie case, and are therefore dismissed.

With regard to Allegation 1, CSEA asserts the State has changed the job duties for EPR's. In support of this allegation, CSEA provided PERB with a copy of the State Personnel Board's (SPB) job specification for the EPR classification and copies of a position statement for positions within the EPR classification. CSEA does not, however, delineate which additional or new job duties employees are asked to perform. SPB specifications state the following "typical tasks" for EPR's:

> Job Service Program: Gathering and disseminating labor market information to employers and applicants; assisting employers in their labor needs; interviewing, testing and referring applicants for work; making job development contacts;. . . .
>
> Unemployment Insurance Program: Conducting unemployment insurance eligibility interviews; gathering all relevant facts "

> through employer and other contacts and claimant's statement; . . . .

SPB specifications regarding an EPR's knowledge and abilities state:

> Knowledge of: General economic conditions and trends; California industrial, labor, business and agricultural conditions, trends, employment practices and employment and training requirements; . . . provisions of State and Federal laws and services available to veterans; . . . interviewing techniques utilized in claims determination work including adjudication.

Position statements supplied by CSEA state the following job duties for positions within the classification of EPR:

> With a minimum of direction, assume placement responsibility. Perform complex/sensitive placement services. Demonstrate extensive knowledge of clients and labor market conditions associated with specialty assignments. . . Conduct interviews courteously and handles adjustment authorizations and adjustments efficiently while applying the policies and procedures of the Department.

CSEA asserts the State has unilaterally changed the job duties in the EPR classification. Facts presented fail, however, to demonstrate a change within the scope of bargaining.

As indicated in my June 10, 1997, letter, PERB has generally recognized that direction of the work force and determination of what work is to be performed is a managerial prerogative, and not a subject of bargaining. (Davis Joint Unified School District (1984) PERB Decision No. 393.) However, managerial control in this area is not unlimited. The State's discretion applies only to those tasks that are reasonably understood to be among the duties of the classification as established in the job description. (Id.) Facts presented by CSEA in the amended charge do not demonstrate what, if any, new job duties employee are required to perform. As such, this allegation is dismissed.

Allegation 2 contends the State changed the job title of Unemployment Insurance Claims Processor to Share Job Identifier and Customer Service Representative. In support of this

allegation, CSEA presents a copy of the job description for both the Unemployment Insurance Claims Processor and the Share Job Identifier. Additionally, during a phone conversation with CSEA Labor Representative Helen Leon, Ms. Leon acknowledged that there has been no State Personnel Board action regarding this alleged job title change.

CSEA fails to present any facts demonstrating the State has changed the job title for any of the positions mentioned above. While CSEA presented job descriptions for these positions, nothing in the job descriptions indicate a change in job title. Indeed, CSEA acknowledges that the State Personnel Board has not taken any action to change the job titles for these positions. As such, this allegation fails to state a prima facie case.

Allegation 6 of the amended charge asserts that the State has unilaterally changed the lunch period for EPR employees. Specifically, CSEA contends that prior to March 24, 1997, all employees received a 60-minute lunch break. On March 24, 1997, Ms. Venters-Bowles distributed a memorandum to all represented staff which states in pertinent part:

> At this time management and supervision have decided to incorporate the use of 30 minute, 45 minute, and 60 minute lunch periods which will be scheduled at specific times and rotated among staff. This will enable supervision to have the flexibility required to ensure adequate coverage of the telephone limes while providing effective service to our customers.

Article 19.3 of the Unit 4 Memorandum of Understanding between the State and CSEA states the following with regard to the Meal Period:

> a. Except for employees who are assigned to a straight eight (8) hour shift, full-time employees will normally be allowed a meal period of not less than thirty (30) minutes or more than sixty (60) minutes which shall be scheduled near the middle of the work shift. Meal periods taken shall not be counted as part of total hours worked.

CSEA contends the State's March 24, 1997, memorandum unilaterally changed the lunch period for employees. Specifically, CSEA contends that prior to March 24, 1997, all employees were able to take a 60 minute lunch break. After implementation of the new

policy, some employees receive lunch breaks of only 30 or 45 minutes. This allegation fails, however, to state a prima facie case.

Article 19.3 of the parties MOU provides that lunch breaks be no shorter than 30 minutes and no longer than 60 minutes. In Marysville Joint Unified School District (1981) PERB Decision No. 314, PERB found that the plain meaning of a collective bargaining agreement that provided lunch breaks of "no less than 30 minutes" was not superseded by a consistent past practice of 55-minute lunch breaks. PERB concluded as follows (at p. 10, citation omitted):

> The mere fact that an employer has not chosen to enforce its contractual rights in the past does not mean that, ipso facto, it is forever precluded from doing so. Accordingly, we find that the Association, by agreeing to a contractual provision which plainly permitted the District to grant teachers a lunch period of 30 minutes or longer at its discretion, waived its right to negotiate over the District's reduction of the lunch period to 30 minutes.

In the present case, as in Marysville, the meaning of the collective bargaining agreement is clear. The parties agreed that employees would receive no less than a 30 minute lunch break. Although employees have consistently received 60 minute lunch breaks, the State's decision to enforce its contractual right and order 30 minute lunch breaks does not constitute a unilateral change. As such, this allegation is dismissed.

Finally, with regard to Allegation 7, CSEA asserts the State has closed EDD field offices without providing CSEA notice of such closures. CSEA contends the closure of these field offices results in CSEA's inability to locate these members.

CSEA contends the State is closing its field office without notice to CSEA is a unilateral change in past practice. As stated above, in order to state a prima facie case CSEA must demonstrate the State has altered a past practice regarding field office closure. The amended charge fails, however, to present any facts demonstrating CSEA and the State have a past practice regarding the closure of field offices. Additionally, an examination of the parties MOU does not demonstrate the State had a contractual obligation to inform CSEA when a field office was

slated for closure. As such, the allegation fails to state a prima facie case.

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. 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
Kristin L. Rosi
Regional Attorney

Attachment

cc: Michael Gash

STATE OF CALIFORNIA

PETE WILSON, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

San Francisco Regional Office
177 Post Street, 9th Floor
San Francisco, CA 94108-4737
(415) 439-6940

June 10, 1997

Helen T. Leon, LRR
California State Employees Association
10600 Trademark Parkway North, Suite 405
Rancho Cucamonga, CA 91730

Re: **WARNING LETTER**
California State Employees Association v. State of California (Employment Development Department)
Unfair Practice Charge No. LA-CE-404-S

Dear Ms. Leon:

The above-referenced unfair practice charge, filed May 13, 1997, alleges the State of California, Employment Development Department (State or EDD), unilaterally changed employees' job duties and refused to bargain over the implementation of new monitoring systems. The California State Employees Association (CSEA) alleges this conduct violates Government Code section 3519(b) and (c) of the Ralph C. Dills Act (Dills Act or Act).

Investigation of the charge revealed the following. CSEA alleges that for the last six months the States has instituted several unilateral changes in bargaining unit members working conditions. Specifically, the charge alleges as follows:

> The Department (EDD) has drastically changed the job duties of a significant number of Employment Program Representatives without noticing the Union. The Department has instituted a new standard of performance without providing the Union the opportunity to meet and confer on these new standards.

CSEA also asserts the State has created an electronic monitoring system in the call centers, without providing notice to CSEA. Finally, the charge asserts:

> In the last several months the EDD has been closing its field offices and opening call centers. EDD has not provided advance notice to the Union regarding the movement of employees and office closure, so that the

> Union can not locate and represent bargaining unit employees. [sic]

On May 19, 1997, I telephoned you and requested CSEA provide further information regarding the above allegations. Specifically, I requested copies of the new and old job descriptions for Employment Program Representatives, and inquired into why CSEA believed the change to these new duties fell within the scope of representation. Additionally, I requested copies of the new performance standards and an explanation regarding the electronic monitoring system. Finally, I requested CSEA provide specific dates for all of the above actions and specific information regarding the closure of EDD offices. You stated you would provide this information promptly. To date, I have not received any further information regarding this charge.

Based on the above stated facts, the charge as presently written, fails to state a prima facie case for the reasons stated below.

PERB regulation 32615 (California Code of Regulations, Title 8, section 32615) requires that a charge contain "a clear and concise statement of the facts and the conduct alleged to constitute an unfair practice." Thus, pleading or raising a bare allegation without sufficient supporting facts is insufficient for purposes of alleging a prima facie case. (California State University (Pomona) (1988) PERB Dec. No. 710-H; United Teachers-Los Angeles (Ragsdale) (1992) PERB Dec. No. 944.) The Charging Party must allege with specificity who, what, when, where and how the Respondent's activities and conduct interfered with, restrained and coerced the employee organization and bargaining unit members. Mere speculation, conjecture or legal conclusions are insufficient. (Id.) Upon receiving the charge, I informed you the charge lacked specificity with regard to both the dates of alleged actions and facts surrounding the allegations. Without such information, the charge fails to state a prima facie case, and may fall outside PERB's six months statute of limitations.

In determining whether a party has violated EERA 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.)

CSEA alleges the State has implemented new job duties without providing the organization an opportunity to meet and negotiate.[1] PERB has generally recognized that direction of the work force and determination of what work is to be performed is a managerial prerogative, and not a subject of bargaining. (Davis Joint Unified School District (1984) PERB Decision No. 393.) However, managerial control in this area is not unlimited. The State's discretion applies only to those tasks that are reasonably understood to be among the duties of the classification as established in the job description. (Id.) As CSEA has not provided any facts regarding the new and old job duties, this allegation fails to demonstrate a prima facie case.

CSEA also alleges the State has implemented an electronic monitoring system and closed many offices while opening call centers. CSEA fails, however, to present facts demonstrating these changes are within the scope of representation, and therefore these allegations fail to state a prima facie case.

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 June 18. 1997. I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney

CSEA does not allege they requested to bargain the
these decisions, and therefore this letter will not
that issue.