STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA UNION OF SAFETY EMPLOYEES, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF MOTOR VEHICLES), Respondent.	Case No. SA-CE-897-S PERB Decision No. 1251-S February 25, 1998

Appearances: Sam A. McCall, Jr., Chief Legal Counsel, for California Union of Safety Employees; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California (Department of Motor Vehicles).

Before Johnson, Amador and Jackson, Members.

DECISION

JOHNSON: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the State of California (Department of Motor Vehicles) (State or DMV) to an administrative law judge's (ALJ) proposed decision. The ALJ found that the State violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)[1] by unilaterally eliminating a $75 per month stipend for certain Licensing Registration Examiners (LREs) without affording the California Union of Safety Employees (CAUSE) the opportunity to meet and confer.

After reviewing the entire record, the Board hereby

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[1]The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

dismisses the unfair practice charge and complaint.

BACKGROUND

Factual Background

LREs are a classification of employees at DMV who test applicants for motor vehicle drivers licenses. Certain LREs who have been trained to administer commercial driver licensing (CDL) tests are known as "CDL LREs". Pursuant to Article 19.19 of the parties' expired memorandum of understanding (MOU),[2] CDL LREs receive a $75 per month pay differential provided that they meet certain conditions. The MOU reads, in part:

> (a) Licensing Registration Examiners who are trained and certified by the department to test applicants for a Commercial Drivers License (CDL) shall be eligible for a differential of $75.00 per pay period, provided the following criteria is met:
>
> (1) Be designated by management as a CDL examiner for a specific work location.
>
> (2) Spend an average of 25% of time while on duty conducting CDL drive tests.
>
> (Emphasis added.)

A few years ago, a certain type of CDL test known as "special drives" was assigned to CDL LREs.[3] In 1995, DMV expressed its intention to train all LREs, not just CDL LREs, to perform special drives. After training, there was a greater number of LREs available to perform a limited number of special

[2]The parties' MOU expired June 30, 1995. Neither party disputes the application of the terms involved in the instant dispute.

[3]These tests are given to drivers with physical or mental disabilities, or who lack skill or knowledge due to age or disability.

drives. Thus, some LREs do not receive the $75 stipend because it is not possible for all examiners to meet the 25 percent time requirement in the MOU. That result gives rise to the instant unfair practice charge.

In February 1995, DMV Labor Relations Officer Bruce Arbuckle (Arbuckle) wrote CAUSE, stating that DMV intended to assign special drives to non-CDL LREs as well as CDL LREs. He promised that the union would be notified when an effective date was selected.

On April 24, 1995, Arbuckle informed CAUSE that there may be situations where individual CDL examiners will not qualify for the differential pay. CAUSE did not request to meet and confer at that point.

On or about September 16, 1995, DMV informed CAUSE that beginning on October 1, 1995, all LREs would be given training to do special drives. DMV further stated that this was a "set decision" and schedules were already in place. CAUSE did not request to meet and confer at that point.

On October 25, 1996, CAUSE filed an unfair practice charge against the State. The complaint alleges that in September 1996, the State changed its policy regarding a $75 per month stipend to perform special drive tests, without providing notice to CAUSE and without affording CAUSE an opportunity to meet and confer over the decision to implement the change or its effects. This conduct was alleged to violate Dills Act section 3519. After a hearing, the ALJ issued a proposed decision.

PROPOSED DECISION

The ALJ presented the issues as: (1) did the State make an unlawful unilateral change in classification of employees who performed the special drives examination; and (2) did the State make an unlawful change in compensation for examiners who perform special drives?

Regarding the first allegation, the ALJ found that the State clearly notified CAUSE in February and April 1995 of its intent to assign special drives to non-CDL LREs. However, he found no evidence of a demand by CAUSE to meet and confer on this issue. Accordingly, he dismissed that allegation.

The ALJ found a violation on the second allegation.

EXCEPTIONS AND RESPONSE

On appeal, the State asserts that it never paid stipends for the performance of special drives. Instead, its past practice was to pay the stipends for the performance of all types of CDL examinations, as provided in the MOU. This payment occurred when a CDL LRE spent at least 25 percent of his time conducting CDL examinations. There was no separate past practice or contractual obligation to pay a stipend for special drives. CAUSE responds by supporting the ALJ's ruling, essentially arguing that stipends were paid for special drives according to past practice, not the parties' MOU.

DISCUSSION

Change in Classification Allegation

CAUSE did not file exceptions to the ALJ's dismissal of this

allegation, so we do not discuss it further.

Change in Compensation Allegation

The issue before us is whether the fact that certain LREs do not receive a $75 stipend in certain pay periods constitutes evidence of a unilateral change in compensation. As the ALJ recognized, an employer's unilateral change in terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate and violates the Dills Act. (Regents of the University of California (1985) PERB Decision No. 520-H; Pajaro Valley Unified School District (1978) PERB Decision No. 51; and Davis Unified School District, et al. (1980) PERB Decision No. 116.) To prevail on a complaint of unilateral change, the charging party must establish by a preponderance of the evidence that all of the following elements are met: (1) the respondent has breached or otherwise altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change is not merely an isolated breach of the contract, but amounts to a change of policy (i.e., having a generalized effect or continuing impact on bargaining members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196; Pajaro, supra: and Davis. supra.)

We find that dismissal of this charge is warranted because

the first element has not been shown. CAUSE has not established that DMV breached or otherwise altered either the parties' written agreement or past practice.

Written Agreement

The payment of stipends is governed by Article 19.19 of the parties' MOU. It provides that CDL LREs who perform all types of CDL tests (not just special drives) receive a stipend when certain conditions are met. Those conditions are that: (1) the LRE must be a CDL LRE; (2) the LRE must be designated by management as a CDL examiner for a specific work location; and (3) the LRE must spend an average of 25 percent of his time on duty conducting CDL drive tests. CAUSE does not allege that LREs who meet these three conditions fail to receive the stipend. Therefore, CAUSE has not demonstrated a breach of the parties' agreement.

Established Past Practice

Likewise, CAUSE offers no evidence for its assertion that DMV paid stipends for the performance of special drives as part of a distinct past practice outside the MOU. For example, evidence that LREs receive the stipend even if they do not meet the contractual criteria might have been persuasive to show the existence of such a past practice. No such evidence was proffered.

The bottom line is that those LREs who do not meet the 25 percent figure are not, and have not been, entitled to receive the stipend. Since CAUSE has not shown any deviation from the

parties' MOU or past practice, there is no basis for a unilateral change violation.

ORDER

The unfair practice charge and complaint in Case No. SA-CE-897-S are hereby DISMISSED.

Members Amador and Jackson joined in this Decision.