STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SA-CE-822-S
v.	)	PERB Decision No. 1258-S
STATE OF CALIFORNIA (BOARD OF EQUALIZATION),	)	April 3, 1998
Respondent.	)	

Appearances: Howard Schwartz, Attorney, for California State Employees Association; State of California (Department of Personnel Administration) by Michael P. Cayaban, Legal Counsel, for State of California (Board of Equalization).

Before Caffrey, Chairman; Amador and Jackson, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the State of California (Board of Equalization) (State or BOE) of a PERB administrative law judge's (ALJ) proposed decision. In the proposed decision, the ALJ determined that BOE violated the Ralph C. Dills Act (Dills Act) section 3519(a), (b) and (c),[1] finding

[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. Section 3519 states, in pertinent part:

> It shall be unlawful for the state to do any of the following:
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> (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 guaranteed by this chapter. For purposes of

that BOE unlawfully implemented a change in the automated compliance management system (ACMS).[2] After reviewing the entire record, the Board reverses the proposed decision in part and affirms it in part, for the reasons explained below.

BACKGROUND

The State is an employer and the California State Employees Association (CSEA) is the exclusive representative of an appropriate unit of employees, both within the meaning of the Dills Act. Several thousand employees represented by CSEA work at BOE. In early 1996, BOE management established a Compliance Strategies Team to develop a program for processing files by computer. Two CSEA members participated on that team, which ultimately developed the ACMS.

In January 1996,[3] CSEA Senior Labor Relations Representative Rosemarie Duffy (Duffy) learned about the formation of the team. On or about January 31, BOE issued a memo to team members describing a series of meetings to design and implement the ACMS. The meetings were scheduled over a three-month period starting

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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.

[2]The ACMS is a computer system to replace paper processing of files.

[3]A11 calendar dates hereafter refer to 1996.

February 14.

On or about February 13, Duffy had a phone conversation with BOE labor relations, during which the BOE representative stated that CSEA would be notified officially 30 days before implementation of the ACMS. On or about February 20, Duffy wrote to BOE Labor Relations Officer Robert Gorham (Gorham) regarding the team, expressing her belief that the team would circumvent the union by dealing directly with unit members on items within the scope of representation. She also requested further information and minutes of the February 14 meeting, to which BOE responded on or about March 26.

On or about March 28, Duffy wrote Gorham, officially requesting to meet "over the ACMS efforts, including potential impact on Unit 1 and Unit 4 employees at the Board such as displacement, training needs, and changes in work procedures." On or about March 29, Gorham telephoned Duffy, expressed his willingness to meet, and the parties set a meeting date of April 15.

The same day, CSEA filed its original unfair practice charge alleging that, among other things,[4] BOE's assignment of unit members to the team was an attempt to bypass the authority of CSEA in violation of the Dills Act. Gorham phoned CSEA on or about April 2 and stated that "based on receiving the unfair practice charge, I now have to bump this up to DPA and you need

[4]Charge allegations which were dismissed by PERB's General Counsel are not before the Board in this appeal.

to go to DPA to request a meeting." The April 15 meeting was cancelled.

Duffy asked Gorham whether BOE was refusing to meet, and he testified that he answered as follows:

> I clarified, no, I'm not refusing to meet with you, it's that I don't have the authority to meet with you any longer. [Emphasis added.]

Duffy followed this phone call with a letter to Gorham, accusing BOE of refusing to meet. Gorham responded by letter, reiterating that BOE had never refused to meet, and explained that CSEA's filing stripped him of legal authority to meet with CSEA. He closed by saying that if Duffy had any questions, she should phone him. She did not do so.

On or about April 5, Department of Personnel Administration (DPA) counsel wrote to Duffy, informing her that DPA was representing BOE in connection with the unfair practice charge, and requesting that all future correspondence and documents be directed to DPA. CSEA did not respond.

On or about June 14, BOE sent CSEA official notice that the ACMS would be implemented on July 29. Once again, CSEA did not respond.

On or about July 15, however, CSEA filed an amended unfair practice charge, adding an allegation that:

> Since April, 1996 CSEA has continued to request to meet and confer with the BOE concerning its intent to implement the ACMS and its impact on BOE employees. Despite these requests, BOE has and continues to refuse to meet and confer with CSEA on this subject.

On or about July 24, DPA made a settlement offer to CSEA, which expressly stated that the purpose of the offer was to resolve the unfair practice dispute, and "shall not in any manner be deemed a waiver of any of the State's defenses." DPA also conveyed BOE's offer to meet and confer with CSEA about impact on or before implementation, provided that CSEA's unfair labor practice charge be withdrawn without prejudice. On or about July 26, CSEA rejected the offer.

On or about September 19, 1996, PERB's General Counsel issued a complaint against BOE. The complaint alleged that prior to July 29, employees represented by CSEA were assigned and processed cases manually. On that date, it was alleged that BOE changed the policy by activating the ACMS in violation of the Dills Act. This action was allegedly done without affording CSEA an opportunity to meet and confer over the effects of the change in policy, and was thereby a failure of BOE's duty to meet and confer in good faith in violation of section 3519(c), denied CSEA its rights to represent its members in violation of section 3519(b), and interfered with employee rights to be represented in violation of section 3519(a).

The complaint alleged a separate bypassing cause of action relating to BOE's assignment of CSEA members as part of the Compliance Strategies Team.

On or about October 3, BOE filed its answer, denying any violation of the Dills Act and raising various defenses. After a hearing, the ALJ issued a proposed decision in which he dismisses

the bypassing allegation.

With regard to the unilateral change allegation, the main issue the ALJ faced was whether BOE afforded CSEA an opportunity to meet and confer over impacts of the ACMS. He found that CSEA requested to meet and confer on March 28 and on June 14. After describing the late July settlement-related communications in detail,[5] he concluded that the State violated the Dills Act because it placed an unlawful condition on its offer to meet.

EXCEPTIONS AND RESPONSE

BOE challenges the ALJ's admission of the settlement-related evidence and asserts that CSEA was afforded the opportunity to bargain over the effects of the ACMS.[6] CSEA responds by accusing BOE of making "illusive and conditional offers to meet, all of which were ultimately retracted."

DISCUSSION

Bypassing Allegation

In planning to convert from manual to automated processing of certain files in early 1996, BOE established a compliance strategies team to develop the ACMS. Two members of the bargaining unit represented by CSEA were included on that team.

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[5]During the hearing, the ALJ admitted into the record several items of settlement-related evidence over the State's vigorous and repeated objections. The ALJ stated that he was admitting the evidence to show a course of conduct only, not to show liability. We discuss the impact of this ruling in more detail below.

[6]BOE makes numerous other exceptions, including an objection to the remedy. However, it is unnecessary to discuss them because this case turns on the issues described here.

On March 29, 1996, CSEA filed an unfair practice charge alleging that this constituted unlawful bypassing by BOE. In his proposed decision, the ALJ dismissed the bypassing allegation.

No exceptions address the dismissal of this allegation, and we affirm its dismissal for the following reasons. In order to sustain an allegation of unlawful bypassing, the charging party must demonstrate that the employer worked directly with bargaining unit members, and not the exclusive representative, to create a new policy or modify an existing policy affecting negotiable subjects of general application to bargaining unit members. (Walnut Valley Unified School District (1981) PERB Decision No. 160 (Walnut Valley).)

Here, CSEA did not present direct evidence of the work conducted by the team. Although it appears that the team discussed ideas and processes, CSEA has failed to meet its burden under Walnut Valley of demonstrating that the State unlawfully bypassed CSEA. Accordingly, we affirm the ALJ's dismissal of this allegation.

Unilateral Change Allegation[7]

In this case, the parties differ over the legal significance of a series of communications between them. The employer claims

[7]On September 19, 1996, a Board agent correctly dismissed the allegation that the State was required to negotiate over its decision to implement the ACMS. The Board agent noted that the determination of what work is to be done is a non-negotiable matter of management prerogative. (Davis Joint Unified School District (1984) PERB Decision No. 393.) As a result, the PERB complaint in this case involves only the State's failure to meet and confer over the negotiable effects of the ACMS.

it offered to negotiate in good faith, however, the exclusive representative claims that the employer retracted that offer, made conditional offers, or otherwise refused to bargain. In analyzing the merit of these claims, we do not look for panacean words to determine which side prevails. However, as Board members, we cross the line from neutrality into advocacy if we permit the charging party to prevail without proving all elements of its case.

It is well settled that an employer who makes a unilateral change in a term or condition of employment within the scope of representation commits a per se refusal to meet and confer in good faith. (Pajaro Valley Unified School District (1978) PERB Decision No. 51 at p. 5; San Mateo County Community College District (1979) PERB Decision No. 94 at p. 12.) In order to prevail, the charging party must demonstrate all of the following: (1) the employer breached or altered the parties' written agreement or 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 an isolated breach of contract but amounts to a change in policy; 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; Davis Unified School District, et al. (1980) PERB Decision No. 116.)

We find that CSEA has not met its burden of proving the second element of its prima facie case by a preponderance of the

evidence. Specifically, CSEA has not shown that BOE failed to afford CSEA the opportunity to negotiate the effects of BOE's decision to implement the ACMS. Our reasons follow.

Admissibility of Settlement Evidence

As a preliminary matter, we address the admissibility of evidence related to settlement. During the hearing, BOE made numerous specific and timely objections to CSEA's attempts to enter that evidence into the record. These objections were based on the grounds that Evidence Code section 1152 and PERB Regulation 32176[8] preclude admission of settlement discussions.

Evidence Code section 1152 provides in part that:

> (a) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money or any other thing, act, or service to another who has sustained or will sustain or claims that he or she has sustained or will sustain loss or damage, as well as any conduct or statements made in negotiation thereof, is inadmissible to prove his or her liability for the loss or damage or any part of it. [Emphasis added.]

This rule reflects an important public policy in favor of settling disputes without litigation. (See Brown v. Pacific Electric Ry. Co. (1947) 79 Cal.App.2d 613 [180 P.2d 424]; see also, Fieldson Associates. Inc. v. Whitecliff Laboratories. Inc. (1969) 276 Cal.App.2d 770 [81 Cal.Rptr. 332] [purpose of section is to avoid deterring parties from making offers of settlement and to facilitate candid discussion which may lead to

[8]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

settlement].)[9]

When considering BOE's objections, the ALJ stated that he was admitting the evidence only for a limited purpose -- to permit CSEA to show that "there was dialogue" between the parties in July prior to implementation of the ACMS. (R.T. Vol. I, p. 39.) The ALJ clearly was aware of the significance of Evidence Code section 1152, since in the course of officially admitting the settlement offer into evidence, he stated that "no finding of a violation of the Dills Act will be made by reading of the letter itself."

However, we are not convinced that the ALJ confined his consideration of the disputed evidence to the limited purpose he stated. In the proposed decision, the ALJ began by discussing the settlement offer for the limited, proper purpose --as evidence that "DPA knew of CSEA's continued interest to meet and confer, as it wrote to CSEA on July 24." However, he went on to

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[9]The State also relies on PERB Regulation 32176, which provides in part that:

> Evidence of any discussion of the case that occurs in an informal settlement conference shall be inadmissible in accordance with Evidence Code Section 1152.

We note that this regulation refers to PERB-sponsored informal settlement negotiations, which is a different context from the settlement offer DPA made. However, the same public policy goal inherent in Evidence Code section 1152 underlies this regulation. (See, e.g., Willits Unified School District (1991) PERB Decision No. 912, proposed decision at p. 17, citing Modesto City Schools and School District (1981) PERB Order No. Ad-117 [exposure of the content of settlement negotiations to the light of a public hearing might well discourage the parties from sincerely engaging in such discussions].)

use the evidence to find liability, which is improper. Focusing on the existence and content of the settlement offer as proof, he held that the State violated the Dills Act by unlawfully pressing conditions to impasse.[10] This is a separate use of the evidence from the stated, limited purpose he articulated, a use that is directly linked to the rationale for finding a violation.

Although it is sometimes appropriate to admit evidence of a settlement offer for a limited purpose, it appears that the ALJ had difficulty here in keeping the evidence from being used improperly, thereby crossing the fine line of limiting purpose. That fact, coupled with the public policy considerations discussed above, lead us to conclude that the settlement-related evidence should not have been admitted.[11]

Merits of Unilateral Chancre Issue

If one ignores the inadmissible evidence, the following facts remain for consideration:

1. CSEA requested to meet and confer on March 28.[12]

2. BOE agreed unequivocally on March 29, and the parties

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[10]Citing Lake Elsinore School District (1986) PERB Decision No. 603, he noted that an employer cannot insist to impasse the withdrawal of unfair practice charges. Since DPA did not go through the statutory mediation process prior to implementing the ACMS, he found a violation.

[11]We wish to emphasize that nothing in this opinion should be construed as removing the option for parties to offer, and ALJs to consider, evidence of settlement offers for purposes that do not conflict with the Evidence Code.

[12]We note that CSEA's charge alleges that it requested to negotiate "since April." Since no one disputes that the March 28 request operated as a valid demand to bargain, we do not place undue emphasis on the apparent three-day discrepancy.

set a date to meet (April 15).[13]

3. CSEA filed the instant unfair practice charge the same day.

4. During an early April telephone call between the parties, the April 15 meeting was cancelled, and Gorham referred Duffy to BOE's legal representative should CSEA wish to request a meeting. Duffy asked Gorham whether BOE was refusing to meet. Gorham responded in the negative and explained his reason for referring CSEA to BOE's legal representative.

5. Duffy followed with a letter, accusing BOE of refusing to meet.

6. Gorham responded by letter, reiterating that BOE had never refused to meet. He invited Duffy to call back if there were any questions. She did not do so.

7. A few days later, BOE's attorney wrote to Duffy, mentioned that she was representing BOE in connection with the unfair practice charge, and requested that all future correspondence and documents be directed to her. CSEA did not respond.

8. BOE gave CSEA formal notice of implementation of the ACMS on June 14, and stated that implementation would occur in late July.

9. On July 15, CSEA filed an amended unfair practice charge.

Using these facts and the legal principles set forth above, we analyze the case as follows. There is no dispute that CSEA expressed a clear demand to bargain on March 28. As stated above, we find that BOE's March 29 response constituted an unconditional offer to meet. CSEA now apparently argues that when BOE referred CSEA to its attorneys to schedule a new

[13]One of BOE's exceptions challenges the ALJ's finding that "BOE never unconditionally offered to meet and confer regarding the implementation of the ACMS." BOE is correct. The record lacks any evidence that BOE's March 29 agreement to meet on April 15 was, or became, conditional.

meeting, that referral operated as a retraction of BOE's March 29 offer to meet.

In weighing the merit of this argument, we consider the significance of the entire sequence of events and communications during the March-April time period. First, it is important to note that nothing which occurred during that time altered the parties' respective legal obligations. Having expressed a willingness to meet, BOE remained obligated to provide CSEA with an opportunity to bargain, and CSEA remained obligated to take advantage of that opportunity or accept the consequences if it chose not to do so. Simply put, we must decide whether BOE "closed the door" or, by contrast, whether CSEA failed to walk through the open door.

Focusing first on BOE's post-March 29 conduct, there is no doubt that BOE had the legal right to refer CSEA to its legal representative upon learning of the unfair practice charge. That action was reasonable and appropriate under the circumstances, and we conclude that it was not the equivalent of retracting an offer to negotiate. This is especially true in light of the fact that, upon being questioned, BOE expressly denied CSEA's accusation that BOE was refusing to meet. The door was still open to CSEA at this point.

CSEA, on the other hand, made accusations and generated documents in early April, but for some unexplainable reason did not arrange a meet and confer session with the State. Neither the Dills Act nor PERB precedent places an additional

responsibility on the State to seek out, cajole or encourage CSEA to meet and confer. The State stood ready, willing and able to negotiate. The onus was on CSEA to follow up after the State acknowledged its obligation to negotiate. This acknowledgment and duty to negotiate should not be construed as requiring the State to actively initiate meeting arrangements. Furthermore, we know of no case holding that an employer who manifests a continued willingness to negotiate must aggressively pursue scheduling negotiations or periodically broadcast signals that the door remains open.[14]

In conclusion, to find a violation on these facts is contrary to PERB precedent. After excluding the inadmissible settlement evidence, the facts clearly demonstrate that CSEA failed to meet its burden of showing that BOE refused to bargain. CSEA has not proven its case, and dismissal of this allegation is appropriate.

ORDER

The unfair practice charge and complaint in Case No. SA-CE-822-S are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Member Jackson joined in this Decision.

Chairman Caffrey's concurrence and dissent begin on page 15.

[14]We also note that CSEA ignored a second clear opportunity to request bargaining after it received the promised 30-day notice on June 14. By its inaction, it failed a second time to step through an open door.

CAFFREY, Chairman, concurring and dissenting: I concur in the finding that the State of California (Board of Equalization) (State or BOE) did not violate section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act) by bypassing and undermining the authority of the California State Employees Association (CSEA). However, I conclude that the State violated section 3519(b) and (c) of the Dills Act by failing to meet and confer with CSEA over the negotiable effects of the automated compliance management system (ACMS). Therefore, I dissent from the dismissal of that allegation.

DISCUSSION

Bypassing Allegation

BOE established a compliance strategies team (CST) in early 1996 to assist in the planning process for the conversion to the ACMS. Included by BOE on the CST were two members of the bargaining unit represented by CSEA. CSEA indicated to BOE that it believed the CST was dealing with negotiable subjects and, therefore, that working directly with bargaining unit members as part of the CST constituted unlawful bypassing and circumvention of CSEA. BOE responded that the CST was dealing with technical issues relating to the conversion to automation, which did not involve items within the scope of representation. On March 29, 1996, CSEA filed an unfair practice charge with the Public Employment Relations Board (PERB or Board) alleging unlawful bypassing by BOE.

To sustain this allegation, CSEA must demonstrate that BOE worked directly with bargaining unit members to create a new policy or modify an existing policy affecting negotiable subjects of general application to employees. (Walnut Valley Unified School District (1981) PERB Decision No. 160 (Walnut Valley).) However, CSEA has failed to present direct evidence of the work conducted by the CST. The State has indicated that the CST discussed ideas and processes but did not become involved in issues involving terms and conditions of employment. Further, the CST did not have authority to make any final decisions involving the ACMS and/or its implementation. Therefore, CSEA has failed to meet its burden under Walnut Valley, and I concur in the dismissal of the unlawful bypassing allegation.[1]

Failure to Bargain Over Negotiable Effects Allegation

On March 28, 1996, CSEA made a clear demand of BOE to meet and confer over the negotiable effects of the ACMS on bargaining unit members. On March 29, 1996, the parties scheduled an April 15, 1996, meeting for that purpose. Also, on March 29, CSEA filed an unfair practice charge at PERB consisting of the unlawful bypassing allegation discussed above. BOE cancelled the April 15 meet and confer session indicating that the Department of Personnel Administration (DPA) had sole legal authority to

[1]I note that the PERB administrative law judge (ALJ) reached this same conclusion and dismissed the bypassing allegation. CSEA filed no exceptions to the ALJ's proposed decision.

meet with CSEA once the unfair practice charge had been filed.[2] BOE Labor Relations Officer, Robert Gorham (Gorham), testified that after cancelling the April 15 meeting he advised CSEA to contact DPA to request another bargaining session. CSEA wrote to BOE on April 2, 1996, asking if BOE was refusing to meet and confer with CSEA. BOE responded on April 2 that it was not refusing to meet and confer, but that "BOE is prohibited from discussing this matter with CSEA" because of the unfair practice charge. Gorham testified that he informed DPA of CSEA's request to meet and confer.

Neither CSEA or the State made any apparent effort to schedule another bargaining session. On June 14, 1996, BOE advised CSEA that the ACMS would be implemented effective July 29, 1996. CSEA filed an amended unfair practice charge on July 15, 1996, alleging that BOE had failed to meet and confer with CSEA over "its intent to implement the ACMS and its impact on BOE employees."[3]

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[2]The source of this "sole legal authority" assertion is unclear. It appears that BOE's assertion reflects the State's policy concerning representation of the State employer in various aspects of employer-employee relations. While the State has the discretion to designate its representative in dealing with CSEA, and to change that representative, the exercise of that discretion in no way changes or diminishes CSEA's Dills Act right to bargain, or the State's Dills Act obligation to provide CSEA with the reasonable opportunity to do so.

[3]It is well settled that the determination of what work is to be done is a non-negotiable matter of management prerogative. (Davis Joint Unified School District (1984) PERB Decision No. 393.) Consequently, a Board agent on September 19, 1996, dismissed CSEA's allegation that the State unlawfully failed to negotiate over its decision to implement the ACMS. As a result, the PERB complaint in this case involves the State's failure to

An employer's unilateral change in a matter within the scope of representation is a per se violation of the duty to bargain in good faith. (San Francisco Community College District (1979) PERB Decision No. 105.) However, if the employer provides the exclusive representative with reasonable notice and the opportunity to bargain, but the exclusive representative does not respond to the opportunity, the employer may act unilaterally. (Stationary Engineers v. San Juan Suburban Water Dist. (1979) 90 Cal.App.3d 796, 805 [153 Cal.Rptr. 666].) Reviewing the facts of this case, the majority finds that the State "opened the door" to negotiations to CSEA, but that CSEA failed to walk through it. Therefore, the majority concludes that the State did not refuse to negotiate and that CSEA failed to respond to the opportunity to bargain and its charge must be dismissed.

The legal theory at work here, while not specifically referenced by the majority, is that of waiver by inaction. The majority concludes that CSEA's failure to more actively pursue bargaining over the impact of the ACMS constitutes a waiver of its right to meet and confer on that subject. I disagree.

It is the fundamental purpose of the Dills Act to provide for collective bargaining of the parties as a means of resolving disputes concerning terms and conditions of employment (Dills Act section 3512). As a result, in cases in which a waiver by inaction is asserted, the Board has consistently held that a waiver will not be found absent clear and unmistakable evidence

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meet and confer over the negotiable effects of the ACMS.

or demonstrative behavior by the exclusive representative indicating a failure to act in response to a reasonable bargaining opportunity. (Amador Valley Joint Union High School District (1978) PERB Decision No. 74; Sutter Union High School District (1981) PERB Decision No. 175.) In Compton Community College District (1989) PERB Decision No. 720, the Board considered circumstances in which the exclusive representative had been uncooperative and engaged in dilatory conduct, yet concluded that the conduct did not constitute a waiver by inaction and did not relieve the employer of the duty to bargain. In Compton Community College District (1990) PERB Decision No. 798, the employer argued that the exclusive representative "failed to timely, adequately, and in good faith, respond to notices from management" regarding a proposed policy change. The Board noted that the exclusive representative had failed to respond to management communications concerning the policy, but had also clearly demanded to bargain. The Board rejected the waiver by inaction assertion and concluded that the employer violated its duty to bargain.

In my view, the instant case presents similar circumstances. CSEA's demand to negotiate was clear. The State cancelled the scheduled bargaining session and designated DPA rather than BOE as its representative to meet and confer with CSEA. It is undisputed that the State, both BOE and DPA, was aware of CSEA's continuing demand to negotiate. Nonetheless, months went by with neither party actively pursuing a rescheduling of the April 15

bargaining session. It is clear that neither CSEA or the State made a conscientious effort during this period to engage in the bargaining over the negotiable effects of the ACMS which both parties acknowledged should occur. Similar to the Board's appraisal of the dilatory conduct in Compton Community College District, supra. PERB Decision No. 720, the conduct of the parties here "should not be applauded, nor emulated by other parties."

But exemplary conduct by the parties is not typically the stuff of which PERB cases are made. The question for the Board here is whether CSEA's failure to actively and conscientiously pursue its valid demand to bargain over the negotiable effects of the ACMS, following the State's cancellation of the April 15 bargaining session, constituted a waiver by inaction which relieved the State of its obligation to negotiate. Both the fundamental purpose of the Dills Act to provide for negotiations and the precedent cited, lead me to conclude that it did not. The State's policy concerning designation of its representative to negotiate with CSEA led to the cancellation of the April 15 bargaining session. The State remained aware of CSEA's valid demand to bargain. Neither party followed up to schedule another bargaining session, but CSEA exhibited no demonstrative behavior indicating that its bargaining demand was no longer active. Under these circumstances, it is clear that CSEA did not waive its right to negotiate and the State was not relieved of its bargaining obligation. Therefore, I conclude that the State

violated Dills Act section 3519(b) and (c) by failing to meet and confer with CSEA over the negotiable effects of the ACMS, and I would order the appropriate remedy.