STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SF-CE-199-S
v.	)	PERB Decision No. 1344-S
STATE OF CALIFORNIA (DEPARTMENT OF VETERANS AFFAIRS),	)	August 19, 1999
Respondent.	)	

Appearances; Carl Jaramillo, Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Paul M. Starkey, Labor Relations Counsel, for State of California (Department of Veterans Affairs).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION AND ORDER

AMADOR, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees Association (CSEA) to a Board agent's dismissal (attached) of the unfair practice charge and refusal to issue a complaint. CSEA alleged that the State of California (Department of Veterans Affairs) (State) violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)[1] by unilaterally changing the

[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

workweeks of Activity Coordinators at the Veterans Home in Yountville.

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

The unfair practice charge in Case No. SF-CE-199-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Dyer joined in this Decision.

> 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 OF CALIFORNIA GRAY DAVIS, *Governor*

PUBLIC EMPLOYMENT RELATIONS BOARD

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

April 21, 1999

Carl Jaramillo
California State Employees' Association
2020 Challenger Drive, Suite 102
Alameda, CA 94501

Re: **DISMISSAL OF CHARGE/REFUSAL TO ISSUE COMPLAINT**
California State Employees' Association v. State of California (Department of Veterans Affairs)
Unfair Practice Charge No. SF-CE-199-S; First Amended Charge

Dear Mr. Jaramillo:

The above-referenced unfair practice charge, filed January 28, 1999, alleges the State of California, Department of Veterans Affairs (State or Department) unilaterally altered the workweeks of Activity Coordinators at the Veterans Home in Yountville. The California State Employees' Association (CSEA) alleges this conduct violates Government Code section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act or Act).

I indicated to you, in my attached letter dated March 5, 1999, 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 March 12, 1999, the charge would be dismissed.

On March 12, 1999, I received a first amended charge. The amended charge alleges the State was required to provide CSEA with notice of its intent to change the work schedules and shifts of employees at the Veterans Home. The charge further alleges the State engaged in such shift and schedule changes to eliminate the amount of overtime employees were receiving. However, the amended charge suffers from the same deficiencies as the original charge, and is therefore dismissed for the reasons provided below.

Article 19 of the Agreement provides the following with regard to Hours of Work and Overtime:

> 19.1 Workweek: The regular workweek of full-time Unit 20 employees shall be 40 hours. However, workweeks and workdays of a different number of hours may be scheduled by the State in order to meet the needs of the State. The employer shall not alter or change shifts for the purpose of avoiding overtime.
>
> * * * *
>
> 19.8: Shift Changes
> (a) It is the intent of the parties that there be as much advance notice as possible, but in no case less that 15 calendar days, of permanent shift changes when the change is made at other than the employee's request. Upon request, the department or its designee will provide the employee with a reason for the shift change.

On September 1, 1998, Supervisor Margo McCandless informed Activity Coordinators that permanent schedule changes would take place during the following month. Ms. McCandless specifically stated that this served as employees two-week notice of her intent to change the shifts and schedules. On October 6, 1998, supervisors Nancy Kennedy and Ms. McCandless informed Activity Coordinators at the Veterans Home in Yountville of changes in the regular Monday through Friday workweek. The starting times of these employees would now be staggered throughout the week.

As noted in my March 5, 1999, letter, the Agreement between the parties gives the State the exclusive right to change the schedules and shifts depending upon their own need, provided the State gives 15 days notice. Such notice was provided to employees. Additionally, although CSEA admits the State possesses this right, it argues such a provision does not allow the State to require some employees to work on Saturdays or Sundays. However, nothing in the contract language limits the State's right to develop and change the schedules of employees, except the State may not change schedules for the purpose of avoiding overtime.

With regard to the claim that the State made such changes for the purpose of avoiding overtime, I spoke with Charging Party on March 24, 1999, and requested CSEA provide PERB with facts demonstrating that employees are no longer receiving overtime pay at the same level they received such pay prior to the shift changes. Charging Party's representative stated he would provide this information as soon as possible. After failing to receive

the information after two weeks, I again contacted Charging Party's representative on April 7, 1999. On April 9, 1999, Charging Party stated he would provide information demonstrating the effect on overtime pay. Instead, Charging Party provided me with information demonstrating some employees are now working on Saturdays and Sundays. To date, Charging Party has failed to provide me with any information from which PERB could determine that the State unilaterally changed the language in Article 19.1. As such, this allegation is also dismissed.

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 (2 0) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit.8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d) ; see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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 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 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. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

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 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: Paul Starkey

PUBLIC EMPLOYMENT RELATIONS BOARD

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

March 5, 1999

Carl Jaramillo
California State Employees' Association
2020 Challenger Drive, Suite 102
Alameda, CA 94501

Re: **WARNING LETTER**
California State Employees' Association v. State of California (Department of Veterans Affairs)
Unfair Practice Charge No. SF-CE-199-S

Dear Mr. Jaramillo:

The above-referenced unfair practice charge, filed January 28, 1999, alleges the State of California, Department of Veterans Affairs (State or Department) unilaterally altered the workweeks of Activity Coordinators at the Veterans Home in Yountville. The California State Employees' Association (CSEA) alleges this conduct violates Government Code section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act or Act).

Investigation of the charge revealed the following. CSEA is the exclusive bargaining representative of State Bargaining Unit 20, which includes Activity Coordinators at the Veterans Home. The State and CSEA are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1995. Article 19 of the Agreement provides the following with regard to Hours of Work and Overtime:

> 19.1 Workweek: The regular workweek of full-time Unit 20 employees shall be 40 hours. However, workweeks and workdays of a different number of hours may be scheduled by the State in order to meet the needs of the State. The employer shall not alter or change shifts for the purpose of avoiding overtime.
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> * * * *
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> 19.8: Shift Changes
> (a) It is the intent of the parties that there be as much advance notice as possible, but in no case less that 15 calendar days, of

> permanent shift changes when the change is made at other than the employee's request. Upon request, the department or its designee will provide the employee with a reason for the shift change.

On October 6, 1998, supervisors Nancy Kennedy and Margo McCandless informed Activity Coordinators at the Veterans Home in Yountville of changes in the regular Monday through Friday workweek. The starting times of these employees would now be staggered throughout the week.

CSEA representatives Jo Harmon and Carl Jamamillo met with Ms. Kennedy and Ms. McCandless regarding the changes and the State's failure to notify CSEA, but the State refused to discuss the matter.

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

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.)

In the instant charge, CSEA asserts the State failed to notify CSEA of the impending schedule changes and implemented the schedule changes in order to circumvent overtime payments. However, as provided by the Agreement, the State may change the schedules of employees with 15 days notice to those employees. As presently written, the charge fails to demonstrate the State violated this provision. Additionally, CSEA fails to provide any facts demonstrating the State made changes in the schedule in order to circumvent overtime requirements. The charge does not demonstrate the amount of overtime regularly paid to employees has changed significantly, nor does the charge demonstrate the State failed to provide an adequate reason for the changes. As such, the charge fails to state a prima facie violation of the Dills Act.

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 have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 12, 1999, I shall dismiss your charge. If you have any questions, please call me at (415) 439-6940.

Sincerely,

Kristin L. Rosi
Regional Attorney