STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, SEIU LOCAL 1000, AFL-CIO,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT YOUTH AUTHORITY),

Respondent.

Case No. SA-CE-1107-S

PERB Decision No. 1374-S

February 28, 2000

Appearances: California State Employees Association by Janis Mickel, Labor Relations Representative, for California State Employees Association, SEIU Local 1000, AFL-CIO; State of California (Department of Personnel Administration) by Wendi L. Ross, Labor Relations Counsel, for State of California (Department of Youth Authority).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the State of California (Department of Youth Authority) (CYA or State) to an administrative law judge's (ALJ) proposed decision. The unfair practice charge alleged that the CYA violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)[1] when

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

it changed its past practice with regard to permitting union stewards to take state-paid release time to represent an employee at a facility other than the one in which the steward is employed.

After reviewing the entire record, including the unfair practice charge, the ALJ's proposed decision, CYA's exceptions and California State Employees Association, SEIU Local 1000, AFL-CIO's (CSEA) response, the Board hereby affirms the proposed decision in accordance with the following discussion.

BACKGROUND

The parties stipulated to CSEA being a recognized employee organization and CYA being the State employer within the meaning of the Dills Act.

CSEA is the exclusive representative for State Bargaining Units 1, 3, 4, 15, 17 and 20, all of which have members employed at the Northern California Youth Correctional Center (NCYC). This location has four school facilities, a central administration, which includes culinary, nursing, accounting and maintenance, and the Youth Authority Training Center (YATC). The

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> 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.
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> (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.

entire NCYC, including all units within it, have a common street address, 7650 S. Newcastle Road, Stockton, California. A central security force monitors the one entrance gate and a five-to six-mile perimeter fence, which encompasses all of NCYC, with the exception of YATC. The four NCYC school facilities are: N. A. Chaderjian Youth Correctional Center (N.A. Chaderjian), Karl Holton Youth Correctional Drug and Alcohol Treatment Facility, DeWitt Nelson Youth Correctional Facility (DeWitt Nelson) and O. H. Close Youth Correctional Facility (O.H. Close). Each facility is designed to serve a different type of juvenile ward. Each facility has its own superintendent, school principal and budget, as well as its own security personnel and a security perimeter fence around its own borders.

The furthest distance between any two of these facilities is six-tenths of a mile. Witnesses estimate the amount of time required to drive from one facility to another is between two and five minutes.

In 1982, the State and CSEA reached agreement on language concerning steward access and representation, specifically memorandum of understanding (MOU) section 2.1.b. The language has not changed substantively over the years. The most recent MOU at the time in question stated:

> b. A written list of Union stewards, broken down by units within each individual department and designated area of primary responsibility, shall be furnished to each department and a copy sent to the State immediately after their designation and Union shall notify the State promptly of any changes of such stewards. Union stewards

> shall not be recognized by the State until such lists or changes thereto are received. A Union steward's 'area of primary responsibility' is meant to mean institution, office or building. However, the parties recognize that it may be necessary for the Union to assign a steward an area of primary responsibility for several small offices or buildings within close proximity. [Emphasis added.]

Since at least 1982, CSEA has designated the entire NCYC as its stewards' area of primary responsibility. From 1982 until April 1995, CYA did not object to, or even negatively comment on, designations.

In April 1995, an employee of the O.H. Close facility needed a representative for an investigatory interview.[2] Since Janis Mickel, the local CSEA staff labor relations representative, could not attend the interview, the employee requested that the CSEA chapter president, Harvey Martinez (Martinez),[3] provide the representation. However, Martinez worked at a different facility and due to a class scheduling conflict was not allowed release time to attend the interview.

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[2]An investigatory interview is necessitated by a negative allegation against an employee that could result in some kind of adverse action or corrective action. The purpose of the interview is to determine the truth or falsity of the charge. Due to the potential seriousness of the issues, CSEA professional staff usually represents employees at investigatory interviews.

Unlike the normal grievance hearing regarding alleged MOU violations, there is often very little time provided to secure representation for investigatory interviews.

[3]Martinez has been a steward and a teacher at Karl Holton for 18 years. He testified that he has represented employees in investigatory interviews approximately six times in 18 years, and that he does not believe any other NCYC stewards have represented employees in such interviews during that time.

Jay Aguas (Aguas), at that time CYA's assistant director of labor relations, wrote Janis Gerhart, CSEA labor relations representative, stating in part:

> As I indicated, the employer was placed in the awkward position of one institution having to disrupt its school programming to provide representation at another school. Our preference is for representation needs to be met by stewards in a specific work area, i.e., institution. I understand we need to address any modification of current steward areas of responsibility with Mr. Kenney [sic] of your organization.

On April 17, 1995, Aguas wrote to CSEA Civil Service Division Director Perry Kenny (Kenny) requesting that CSEA change its designations at NCYC to make each facility "separate worksites for representational purposes." Kenny responded, stating that CSEA "is not unreceptive" to this request but that as negotiations on a successor agreement were about to commence, it was not possible to focus on this problem. He added that CSEA would address this issue once the new contract had been reached.

In August 1995, at the Unit 20 bargaining table, the State submitted a proposal that addressed this issue. While the State's proposal was being discussed at the table, no restrictions were placed on NCYC stewards. They continued to represent individuals at all four facilities on State-paid steward time off.[4]

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[4]Such release time is governed by MOU section 2.6:

> Upon request of an aggrieved employee, a Union steward shall be allowed reasonable time off during working hours, without loss of compensation, for representational

The issue was not addressed again until an incident in September 1997, which led to the filing of this charge.

On September 30, 1997, Diana Rodriguez (Rodriguez), a CSEA steward at O.H. Close, was asked to represent an employee at DeWitt Nelson. The issue concerned teaching assistants covering classes for teachers. Rodriguez is familiar with this issue, as she is a teaching assistant and the matter has been raised at the Unit 20 negotiating table where she is a CSEA team member. Rodriguez has been a CYA employee for twenty years and a steward for at least eight years. During that time she has represented employees at each of the NCYC facilities, other than her own, approximately five to ten times. It had been her practice, when she wished to go to another facility to represent an employee, to request release time. These requests had routinely been approved. This time, after approval by her immediate supervisor, her request was denied by school Principal Jay Holmes, who stated:

> Dee is not to go to other institutions as a job steward as long as one of theirs (DWN) [DeWitt Nelson] is available.

Rodriguez represented the employee by using her own time, i.e., vacation or compensating time off. Since then, she has

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> purposes in accordance with Section 2.1.a of this Contract, provided the employee represented is in the steward's department and designated area of primary responsibility. Release time for these purposes is subject to prior notification and approval by the steward's immediate supervisor.

used her own time approximately ten to fifteen times to represent employees at other facilities.

Rodriguez has since been told that she can represent employees at other facilities if that facility does not have a steward in residence. However, the employee requesting such representation must request her assistance by personally calling her (Rodriguez's) immediate supervisor. Grievants are very reluctant to do this, as they believe this is a breach of their confidentiality.

On June 22, 1998, Timothy Mahoney, CYA assistant director for labor relations, sent a notice to Kay Hankins, the CSEA official who compiles and disseminates its steward lists. He requested her to change her NCYC steward designations to reflect institutions. He explained the reason for his request was that, according to CYA's interpretation of MOU section 2.2 (Access), stewards were required to be assigned to institutions, not addresses.

Martinez stated that from 1982 to 1997, he never had a problem obtaining release time to travel to other NCYC facilities. He gave a rough estimate of having represented employees at such facilities between twelve and fourteen times over the past 18 years.

Since September 1997, Martinez has not requested state time to represent employees at other facilities, as he knows his request would be denied. He continues to provide representation, however, by doing so on his own time.

Each school site at NCYC has a concrete sign embedded in the lawn near its entrance. These signs proclaim the location as being a "facility", i.e., the entrance sign at O.H. Close proclaims the areas as being the O.H. Close Youth Correctional Facility. This same "facility" designation is used in the state telephone directory.

Aguas has been with CYA since February 1986 in various capacities. He discussed the evolution of the naming of the various CYA schools, and explained that the names of the institutions in the Institutions and Camps Branch have evolved over the years. In the early years they were called schools, until approximately June of 1997. At that time, according to Aguas, the director, Francisco Alarcon, decided to rename all the institutions as "facilities," to be consistent with the common wording throughout the United States.

ISSUE

Did CYA's failure to grant Rodriguez release time to represent an employee at DeWitt Nelson violate the provisions of Dills Act section 3519(a), (b) or (c)?

DISCUSSION

A unilateral modification in terms and conditions of employment within the scope of negotiations is a per se refusal to negotiate. (NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].) PERB has long recognized this principle. (Pajaro Valley Unified School District (1978) PERB Decision No. 51; Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant).

Under section 3519(c), the State is obligated to meet and negotiate in good faith with a recognized representative about matters within the scope of representation.[5] This section precludes an employer from making changes in the status quo without giving notice of its action to the appropriate exclusive representative. (Anaheim City School District (1983) PERB Decision No. 364; Pittsburg Unified School District (1982) PERB Decision No. 199.) In addition, such change must have a generalized effect or continuing impact on terms and conditions of employment. (Grant.)

The issues in this case concern payment of wages in relationship to hours. Accordingly, the matter is within the scope of representation. (Jefferson School District (1980) PERB Decision No. 133, pp. 57-58.)

The record clearly shows that CSEA stewards have represented employees at NCYC facilities other than their own since 1982. CYA acknowledges, but minimizes, this pattern of representation, and it also asserts that this pattern of representation is not justified by the MOU. It argues that MOU section 2.1.b is ambiguous in that the word "institution" really means "facility" when applied to the four facilities at NCYC. It also asserts that one steward can be used for multiple locations only in the case of closely proximate offices or buildings, not institutions.

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[5]Dills Act section 3516 states, in pertinent part:

> The scope of representation shall be limited to wages, hours, and other terms and conditions of employment, . . .

Although the original negotiators' intent would be helpful, the evidence shows that no one at that time gave much thought to the matter. It is clear that in 1982 the four facilities were not called institutions. Nor did CYA consider them institutions for the purposes of MOU section 2.1.b for the next fifteen years.

It is concluded there was insufficient evidence proffered to show that the parties mutually considered such schools or facilities to be institutions at any time prior to the events in this case.

Based on the foregoing, it is determined that the four educational facilities at NCYC are not separate institutions for the purposes of MOU section 2.1.b.[6]

The foregoing supports a conclusion that, absent a valid defense, CYA's action in denying stewards the right to represent employees at any NCYC facility is a violation of section 3519 (c).

CYA contends that CSEA waived its right to object to its actions by not filing its charge within six months of Aguas' letter of April 17, 1995. However, that letter merely asked Kenny to change CSEA's NCYC designations to conform with CYA's interpretation of MOU section 2.1.b. Kenny's response was that CSEA was too busy to discuss the matter at that time, but would be willing to do so once a successor contract was reached.

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[6]CYA also asserts that one steward cannot have an area of primary responsibility that encompasses more than one institution. The determination above is also controlling on this issue. If these four facilities are not institutions, the MOU does not restrict NCYC stewards from representing employees anywhere at NCYC.

Aguas' letter did not put CSEA on notice that a change in NCYC's representational policy was being implemented. It was merely a request for a change in CSEA's manner of designating stewards. Furthermore, the evidence clearly shows that after Aguas' 1995 letter, CYA continued to permit intra NCYC representation until September 1997, when Rodriguez' request was denied. In no manner did CSEA's failure to file a charge in 1995 constitute a waiver of its rights.

CSEA also asserts that the charge is untimely. As determined above, however, Aguas' 1995 letter did not convey a notice of a change in policy. Therefore, CSEA's failure to file a charge within six months does not bar its subsequent filing in April 1998.

Citing Dills Act section 3514.5(c),[7] CYA contends that this matter concerns contract interpretation, and that PERB has no jurisdiction over the matter. (Oakland Unified School District (1985) PERB Decision No. 540.)

PERB, in Grant, stated:

> This is not to say that every breach of contract also violates the Act. Such a breach must amount to a change of policy, not merely a default in a contractual obligation, before it constitutes a violation of the duty to bargain. This distinction is crucial. A

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[7]Section 3514.5(b) states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

> change of policy has, by definition, a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members.

There is no doubt that CYA's action in changing the pattern of representation at NCYC amount to a change in policy and are more than a mere default in a contractual obligation. CYA changed a long-standing past practice in a manner that will have both a generalized effect and a continuing impact. Hence, PERB has jurisdiction over this matter.

CYA next argues that the Dills Act does not have a statutory right of access, such as is found in two similar public employer-employee relations acts, also administered by PERB. Although this is true, PERB has found an identical right of access is implicit in the purpose and intent of the Dills Act. (State of California (Department of Corrections) (1980) PERB Decision No. 127-S.) We find that the absence of such a statutory right does not prohibit the finding of a violation in this unilateral change case.

CYA also asserts that an employee is not entitled to a particular representative if another is reasonably available. CYA insists that if a steward is available at the grievant's facility, a steward from another facility is not permitted to provide representation. Although the State has a right to minimize paid release time, in order to determine if an employee must accept a more accessible steward, all relevant circumstances must be examined on a case by case basis.

Looking at the facts in the case at bar, several factors lead us to conclude that Rodriguez' request for release time to represent a particular grievant was reasonable. First, we note that travel time among the various NCYC facilities is minimal. There is no evidence that Rodriguez' request for release time would have caused an inordinate use of release time. We also note that the grievance concerned a teaching assistant work issue and Rodriguez works in that classification. Furthermore, Rodriguez is a member of Unit 20's bargaining team and, therefore, she is knowledgeable of the nuances of the issues in this area.

It is determined that, based on the particular facts of this case, in light of the longstanding past practice at NCYC, the subject grievant had a right to request Rodriguez as her representative, subject to the prior notification and supervisorial approval required by the MOU.

As a final defense, CYA insists that its action did not alter the status quo in that it was consistent with its past practice. This defense relies, to some extent, on its "facilities are really institutions" argument, which has been discussed and rejected. CYA also states in its brief that although some "stewards on a few occasions traveled from one institution to another in order to perform representational duties," no real pattern of such activity was ever proven.

This argument is without merit. The evidence was quite clear that both Rodriguez and Martinez have represented employees at facilities other than their own, on many occasions since 1982.

CYA's action also denied CSEA's rights guaranteed to it by the Dills Act, i.e., the right to represent its members in their employment relations with the state employer. CYA's failure to permit a CSEA steward to move freely within her "area of primary responsibility" derivatively violated section 3519(b).

CYA's failure to permit intra-NCYC representation interfered with employees' right to the provisions of their MOU, i.e., the right to select a representative within their "area of primary responsibility." This action constitutes a violation of Dills Act section 3519(a).

After an examination of the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that CYA: (1) interfered with its employees due to their exercise of rights under the Dills Act; (2) denied CSEA its right to represent its members in their employment relations with the employer; and (3) failed to negotiate in good faith over a matter within the scope of representation. Such failure and denial constitute a violation of Dills Act section 3519(a), (b) and (c), respectively.

Dills Act section 3514.5(c) provides that:

> The Board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the

> reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

In order to remedy the unfair practice of the State and to prevent it from benefiting from its unlawful conduct and effectuate the purpose of the Dills Act, it is appropriate to order the State to: (1) approve intra-NCYC representation by CSEA stewards, subject to the conditions set forth in the MOU; (2) cease denying to CSEA its right to represent its members in their employment relations with the state employer; (3) cease interfering with its employees' rights under the Dills Act; and (4) reimburse Rodriguez and Martinez for vacation hours and compensating time off they expended in the representation of employees at NCYC facilities other than their own, since September 30, 1997.

It is also appropriate that CYA be required to post a notice incorporating the terms of the attached order at all of its locations where notices are customarily placed for Units 1, 3, 4, 15, 17 and 20 employees. This notice should be signed by an authorized agent of CYA, indicating that it will comply with the terms therein. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that CYA has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the Dills Act that employees be informed of the resolution of the controversy and

will announce CYA's readiness to comply with the ordered remedy. (See Placerville Union School District (1978) PERB Decision No. 69.) In Pandol & Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584], the California District Court of Appeals approved a similar posting requirement. (See also, National Labor Relations Board v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].)

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the State of California (Department of Youth Authority) (CYA or State) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(a), (b) and (c). Therefore, it is hereby ORDERED that CYA, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Prohibiting the California State Employees Association, SEIU Local 1000, AFL-CIO (CSEA), stewards at the Northern California Youth Correctional Center (NCYC) from representing employees at facilities other than the one to which they are assigned;

2. Interfering with NCYC stewards, due to their exercise of rights guaranteed by the Dills Act.

3. Denying to CSEA its right to represent its members with regard to their employment relations with the State.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE DILLS ACT:

1. Permit CSEA stewards at NCYC to represent employees at any of its subunits, subject only to prior notification and approval by the steward's immediate supervisor.

2. Reimburse Diana Rodriguez and Harvey Martinez for any vacation or compensating time off they expended in the representation of employees at NCYC, including central administration and the Youth Authority Training Center, other than their own, since September 30, 1997. Such expenditure shall include the subject incident at DeWitt Nelson. Such reimbursement shall be made by restoring the time expended by Rodriguez and Martinez, respectively.

3. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all locations where notices are customarily posted for Units 1, 3, 4, 15, 17 and 20 employees, copies of the notice attached hereto as an Appendix.

4. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on CSEA.

It is further Ordered that all other aspects of the unfair practice charge and complaint in Case No. SA-CE-1107-S are hereby DISMISSED.

Chairman Caffrey and Member Dyer joined in this Decision.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SA-CE-1107-S, California State Employees Association. SEIU Local 1000. AFL-CIO v. State of California (Department of the Youth Authority), in which all parties had the right to participate, it has been found that the State of California (Department of the Youth Authority) (State) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(a), (b) and (c).

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Prohibiting the California State Employees Association, SEIU Local 1000, AFL-CIO (CSEA), stewards at the Northern California Youth Correctional Center (NCYC) from representing employees at facilities other than the one to which they are assigned.

2. Interfering with NCYC stewards, due to their exercise of rights guaranteed by the Dills Act.

3. Denying to CSEA its right to represent its members with regard to their employment relations with the State.

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2. Reimburse Diana Rodriguez and Harvey Martinez for any vacation or compensating time off they expended in the representation of employees at NCYC, including central administration and the Youth Authority Training Center, other than their own, since September 30, 1997. Such expenditure shall

include the subject incident at DeWitt Nelson. Such reimbursement shall be made by restoring the hours expended by Rodriguez and Martinez, respectively.

Dated:____________________ STATE OF CALIFORNIA (DEPARTMENT OF THE YOUTH AUTHORITY)

By: ____________________
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED WITH ANY OTHER MATERIAL.