STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, SEIU LOCAL 1000,	)	
Charging Party,	)	Case No. SA-CE-1101-S
v.	)	PERB Decision No. 1391-S
STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS),	)	June 26, 2000
Respondent.	)	

Appearances: California State Employees Association by Howard Schwartz, Attorney, for California State Employees Association, SEIU Local 1000; State of California (Department of Personnel Administration) by Paul M. Starkey, Labor Relations Counsel, for State of California (Department of Corrections).

Before Dyer, Amador and Baker, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions by the State of California (Department of Corrections) (CDC or State) to an administrative law judge's (ALJ) proposed decision (attached).[1] In this case, which concerns work at the California Substance Abuse Treatment Center at Corcoran, the California State

[1]This is one of three cases before the Board on exceptions filed by the State to three proposed decisions by an ALJ. Although the cases were not consolidated below, the parties agreed to combine the records of the three proceedings, and also to incorporate the record of an earlier case, State of California (Department of Corrections) (1997) PERB Decision No. HO-U-659-S. The record in HO-U-659-S involved a dispute at California State Prison, Sacramento, which was factually similar to the disputes at issue here. That record was incorporated primarily to assist the ALJ in ascertaining the timeliness of the unfair practice charges filed in both the instant case, and its two related cases.

Employees Association, SEIU Local 1000 (CSEA) alleged that CDC transferred Supervising Cook I (SCI) work out of Unit 15 to Correctional Officers (COs) in Unit 6, in violation of section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act).[2] The unfair practice charge was filed on March 30, 1998, followed by a PERB complaint on April 28, 1998, an answer on May 26, 1998, and a formal hearing on September 3 and October 5, 1998. On May 21, 1999, the ALJ issued a proposed decision in which he found that CDC had violated the Dills Act.

After reviewing the entire record, including the unfair practice charge, the proposed decision, the briefs of the parties, CDC's exceptions,[3] and CSEA's response, the Board affirms the proposed decision, in accordance with the following

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[2]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 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.

[3]CDC's request for oral argument is hereby denied.

discussion.[4]

DISCUSSION

Transfer of Work

In the proposed decision, the ALJ noted that the transfer of work out of one unit into another is negotiable, and that a unilateral transfer of work violates the duty to bargain. (Rialto Unified School District (1982) PERB Decision No. 209.) The ALJ thereafter found that CDC had "taken effective control of the cooking process away from Unit 15 SCIs and given it to Unit 6 COs."[5]

The ALJ noted that CDC had "relied heavily . . . on the overlapping duties of the SCIs and COs to justify its staffing decision." He found, however, that each affected SCI "went from a full-time participant in meal preparation and serving to a 20 percent participant, at best." The ALJ then found that a "diminution of this magnitude evidences a change in the quantity and kind of the duties of the respective employees." In concluding that there had been a unilateral change, the ALJ cited Oakland Unified School District (1983) PERB Decision No. 367, a case which involved subcontracting unit work.

We find that Eureka City School District (1985) PERB

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[4]On page 24 of the proposed decision, the ALJ finds that the SCIs' post orders are "illusory at best, and misrepresentations, at worst." PERB finds that the categorization of the post orders as "misrepresentations" is unnecessary, and such categorization is not adopted as part of the Board's decision.

[5]In doing so, the ALJ rejected CDC's arguments that satellite kitchen food preparation was "new work" and that the SCIs were not "deprived of any particular work."

Decision No. 481 (Eureka) is more instructive with regard to the unilateral transfer of work question.[6] In Eureka the Board stated:

> In our view, in order to prevail on a unilateral transfer of work theory, the charging party must establish, as a threshold matter, that duties were, in fact, transferred out of the unit; that is, that unit employees ceased to perform work which they had previously performed or that nonunit employees began to perform duties previously performed exclusively by unit employees. However, where, as here, unit and nonunit employees have traditionally had overlapping duties, an employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work which nonunit employees perform and decreasing the quantity of work which unit employees perform. (Emphasis in the original; footnote omitted.)[7]

The Board notes that the three major transfer of work areas discussed by the ALJ in the proposed decision involved supervision, training, and assignment of food preparation work.

Under Eureka, we find that CDC merely increased the quantity of work which nonunit employees performed, and decreased the quantity of work which unit employees performed, in only one of these areas, i.e., supervision. Although inmates involved in food preparation now receive less supervision from SCIs, and

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[6]See Calexico Unified School District (1989) PERB Decision No. 754 (Calexico); Beverly Hills Unified School District (1990) PERB Decision No. 789, p. 17; Whisman Elementary School District (1991) PERB Decision No. 868, p. 12.

[7]Although CDC cited Eureka in both its post-hearing brief and in its exceptions, the ALJ did not discuss Eureka in the proposed decisions, and CSEA did not discuss Eureka in its post-hearing brief or in its response to the exceptions.

relatively more supervision from COs, it cannot be said that SCIs "ceased to perform" such work or that COs "began to perform" such work.[8]

However, the evidence does show that COs began to perform training in food preparation, which SCIs did exclusively in the past. It also shows that SCIs ceased to assign food preparation work, and COs began such work, despite the fact that SCIs had done this exclusively in the past. Although the Board finds less extensive law violations than those found by the ALJ, the transfer of work which occurred here constitutes a violation under Eureka.

REMEDY

Pursuant to 3514.5 (c) of the Dills Act, PERB has the authority to order "an offending party . . . to take such affirmative action . . . as will effectuate the policies of this chapter." The ALJ proposed, in part, to order CDC to bargain "the staffing patterns for SCIs" with CSEA. In the absence of agreement, CDC would be ordered, in 120 days, to staff every satellite kitchen with one SCI per shift.[9] Neither of these two remedies is entirely justified.

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[8]We note that in Calexico, at footnote 3, PERB did add that "The Board has yet to deal with a situation where there is a severe redistribution of overlapping duties from unit to nonunit employees." (Emphasis added.) In light of our finding that nonunit employees began to perform duties previously performed exclusively by unit employees, it is again unnecessary for the Board to address that question in the instant case.

[9]This 120-day period was presumably in consideration of evidence presented which showed the difficulty of obtaining SCIs in rural areas.

First, this case is not about "staffing patterns" per se, but rather about the transfer of work. What CDC should have bargained here is the transfer of work out of Unit 15. However, we recognize that there may be managerial decisions concerning SCI staffing patterns that would not be negotiable, even though their effects might be negotiable.

Second, although the staffing pattern proposed by the ALJ would presumably remedy the transfer of work, we cannot say, on the record before us, that it is the only remedy available. There may be other elections which CDC can make, such as with scheduling, or with the addition of other Unit 15 employees, that would keep food preparation assignment and training work from being transferred out of the unit. Such decisions are not appropriately mandated by the Board.

ORDER

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

A. CEASE AND DESIST FROM:

1. Unilaterally transferring food preparation assignment and training work out of Unit 15 without providing California State Employees Association, SEIU Local 1000 (CSEA) with notice and the opportunity to negotiate over the changes and

their effects on the terms and conditions of employment of bargaining unit members.

2. Interfering with the right of CSEA to represent its members by the same conduct specified in A1, above.

3. Interfering with the right of employees to be represented by CSEA by the same conduct specified in A1 and A2, above.

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

1. Immediately, upon request by CSEA, enter into negotiations over these unilateral changes.

2. Within thirty (30) working days following the date this decision is no longer subject to appeal, halt the unilateral transfer of food preparation assignment and training work out of Unit 15.

3. Within ten (10) working days following the date this decision is no longer subject to appeal, post at all work locations where notices are customarily placed for all employees, copies of the notice attached hereto as an Appendix. This notice must be signed by an authorized agent of the State, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

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.

Members Amador and Baker 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-1101-S, California State Employees Association, SEIU Local 1000 v. State of California (Department of Corrections), in which all parties had the right to participate, it has been found that the State of California (Department of Corrections) 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. Unilaterally transferring food preparation assignment and training work out of Unit 15 without providing California State Employees Association, SEIU Local 1000 (CSEA) with notice and the opportunity to negotiate over the changes and their effects on the terms and conditions of employment of bargaining unit members.

2. Interfering with the right of CSEA to represent its members by the same conduct specified in A1, above.

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

1. Immediately, upon request by CSEA, enter into negotiations over these unilateral changes.

2. Within thirty (30) working days following the date this decision is no longer subject to appeal, halt the unilateral transfer of food preparation assignment and training work out of Unit 15.

Dated: _____ STATE OF CALIFORNIA
(DEPARTMENT OF CORRECTIONS)

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 BY ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, SEIU LOCAL 1000, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF CORRECTIONS), Respondent.	)	Unfair Practice Case No. SA-CE-1101-S PROPOSED DECISION (5/21/99)

Appearances: Howard Schwartz, Attorney, for California State Employees Association, SEIU Local 1000; Paul M. Starkey, Labor Relations Counsel, for State of California (Department of Corrections).

Before Allen R. Link, Administrative Law Judge.

PROCEDURAL HISTORY

On March 30, 1998, the California State Employees Association, SEIU Local 1000 (CSEA), filed an unfair practice charge with the Public Employment Relations Board (PERB or Board) against the State of California (Department of Corrections) (CDC). The charge alleged violations of the Ralph C. Dills Act (Dills Act).[1]

On April 28, 1998, the Office of the General Counsel of PERB, after an investigation, issued a complaint against CDC, alleging violations of subdivisions (a), (b) and (c) of section

[1]The Dills Act is codified in the Government Code (commencing with section 3512). All section references, unless otherwise noted, are to the Government Code.

3519.[2] On May 26, 1998, the respondent answered the complaint, denying all material allegations and asserting affirmative defenses.

A formal hearing was held before the undersigned on September 3 and October 5, 1998.

The circumstances involved in this case occurred at the California Substance Abuse Treatment Center (Corcoran II) in Corcoran, California. Two other cases concerning the same issue are SA-CE-1111-S, at the Salinas Valley State Prison, Soledad (Salinas Valley), and SA-CE-1032-S at the High Desert State Prison, Susanville (High Desert). The parties agreed to combine the transcripts and exhibits of all of these cases to create a record upon which all three decisions will be based.

In addition, an earlier case, SA-CE-835-S, which concerned the same issue at California State Prison, Sacramento (CSP Sacramento) was incorporated into this combined record. A

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[2]Subdivisions (a), (b) and (c) of section 3519, in pertinent part, state:

> It shall be unlawful for the state to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employee, 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.
>
> (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.

decision in that case, by PERB Administrative Law Judge Fred D'Orazio, was issued on June 27, 1997, and became final on July 28, 1997.

A motion by charging party was granted to amend the complaint by substituting new paragraphs 3, 4 and 5 for those in the complaint. Respondent had no objection on the condition that its answer was deemed to cover the new paragraphs. These new paragraphs are as follows:

> 3. Respondent operates the Substance Abuse Treatment Center - Corcoran, and within that facility assigns Correctional Officers to satellite kitchens to supervise inmate crews in the preparation of, cooking and serving of food to the inmate population.
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> 4. The duties of supervising inmate crews in the preparation of, cooking and serving of food to an inmate population are reserved to the classification of Supervising Cook.
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> 5. Respondent has assigned the duties described in paragraphs 3 and 4 above to correctional officers without notice to charging party and opportunity to bargain, and without approval of the PERB or resort to appropriate unit modification procedures.

At conclusion of the hearing, transcripts were prepared, briefs were filed and the case was submitted for proposed decision on May 12, 1999.

INTRODUCTION

CSEA complains of CDC's decision to transfer Unit 15 (cooks) work at three prisons to Unit 6 (correctional officers) (COs) employees.[3] CDC did this, CSEA asserts, when it failed to assign one Supervising Cook I (SCI) to each of its satellite kitchens. Instead, CDC directed SCIs to oversee the food preparation process at four geographically separate satellite kitchens, and left the minute-by-minute supervision of meal preparation to correctional officers.

The respondent insists that the charge should be dismissed because (1) it is untimely, (2) there was no transfer of bargaining unit work, and (3) the union waived its right to object.

FINDINGS OF FACT

Jurisdiction

The parties stipulated to the charging party being a recognized employee organization and the respondent being the state employer within the meaning of the Dills Act.

Background

From July 1, 1992 through June 30, 1995, CSEA and CDC were parties to a memorandum of understanding (MOU) which called for binding arbitration of disputes which arose during its term.

[3]Satellite kitchens were activated at Corcoran II in late February or early March 1998; at High Desert on May 22, 1997; and at Salinas Valley in July, August or September 1997.

SA-CE-835-S[4]

On page 24 of his proposed decision Judge D'Orazio concluded the charge was time-barred by section 3514.5 (a) (I),[5] stating:

> In sum, the record evidence cannot reasonably be construed in a manner that starts the limitations period anew with Mr. Losik's[6] actions in 1994 or brings CDC's action within the statute of limitations under a continuing violation theory. The fact that Mr. Losik rediscovered the staffing and work assignment practice approximately seven years after . . . Hall, and CDC agreed to meet in an attempt to resolve the dispute, does not defeat CDC's statute of limitations defense.

CSEA's Knowledge of Corcoran II's SCI Staffing Policies

1. In the High Desert Proposed Decision various facts were set forth regarding CSEA's knowledge of that prison's satellite

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[4]A simultaneously issued proposed decision in SA-CE-1032-S regarding a similar issue at High Desert (High Desert Proposed Decision) describes CSEA's contact with CDC's actions regarding SCI staffing patterns in greater detail.

The record in SA-CE-835-S, consisting of the transcript and exhibits, was retrieved from PERB's archives and was available during the case's deliberations.

[5]Section 3514.5(a)(1) is as follows:

> (a) Any . . . employee organization . . . shall have the right to file an unfair practice charge, except that the board shall not do . . . the following: (1) issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge....

[6]Bob Losik was the CSEA senior labor relations representative assigned to Unit 15 until July 1997. He was directly involved with many of the events leading up to the activation of High Desert's satellite kitchens.

kitchens activation. There was nothing in that chronology that would suggest CSEA knew of Corcoran II's satellite kitchen staffing plans during such activation.

2. Joan Bryant (Bryant), CSEA manager of bargaining services, said that prior to the CSP Sacramento arbitration[7] she had heard of the SCI staffing issue, but did not realize it had any statewide impact. Bryant was aware Losik was looking at other prisons throughout the state, but did not know when she became aware of that information. In late summer 1997 or at some unspecified time afterwards, Bryant was aware that Iona Hughes (Hughes),[8] in her new assignment, had some "open issues" with regard to SCI staffing, but she did not recall what those issues were. She admitted that during Hughes' tenure she became aware that these SCI staffing issues were occurring at other institutions. Bryant was never made aware of the staffing pattern at Pelican Bay, which does not staff its kitchen with full-time SCIs.

3. Norman Stone (Stone), chair of Unit 15, first learned of the CSP Sacramento SCI staffing pattern in 1993 or 1994. He had no information regarding Pelican Bay prison.

4. Stone and Hughes went on a cook-safety tour of Salinas Valley on December 2, 1997. It was on this tour that Stone first learned that Salinas Valley was not staffing each of its

[7]This arbitration resulted in a decision on April 9, 1996.

[8]Hughes, a CSEA senior labor relations representative, followed Losik as manager of Unit 15. This assignment started in late summer 1997 and lasted until May 29, 1998.

satellite kitchens with a SCI. Once Hughes and Stone learned of Salinas Valley's SCI staffing pattern, they pursued this issue.

5. In the CSP Sacramento case, Bill Haythorne (Haythome), its food service manager, testified that immediately prior to his testimony on March 14, 1997, he "called around" and learned that three other prisons did not staff their kitchens with full-time SCIs. Pelican Bay was one of those other prisons. High Desert and Salinas Valley were the other two.

CDC cites this testimony to support its contention that CSEA, with a minimum of diligence, should have known of the Pelican Bay staffing pattern. It believes that CSEA, through its state-wide field representatives and steward system, should have learned that the SCI staffing ratios were less than 1:1 at prisons in addition to CSP Sacramento.

Haythorne's March 1997 testimony is in direct conflict with the fact that (1) High Desert did not activate its satellite kitchens until May 22, 1997, and (2) Salinas Valley did not activate its satellite kitchens until July, August or September 1997.

Haythorne's testimony may have been correct to the extent that on March 14, 1997, High Desert and Salinas Valley were not staffing their satellite <u>areas</u> with SCIs. However, that was before the satellite kitchens were activated, and at that time those areas were merely dining halls. As there were no kitchens in those areas, there would have been no reason to staff them with SCIs. Therefore, Haythorne's testimony does not lend

support to CDC's contentions regarding CSEA's knowledge at that time.

6. CDC Lieutenant Patrick Cowan (Cowan), is a headquarters representative who was assigned to evaluate the cooking process that created the need for satellite kitchens. He testified that Pelican Bay had a staffing ratio of 1:4 in June 1996 when he visited it. Sometime between then and when he testified in June 1998, CDC was required, due to a court decision, to realign their staffing to either 1:2 or 1:3.

7. There was no evidence proffered that CDC, when presenting its case in SA-CE-835-S, stated that it was going to continue to staff satellite kitchens with less than a 1:1 ratio.

8. CSEA received no notice, of any kind, from CDC that it was about to activate its Corcoran II satellite kitchens, much less notice it was adopting a staffing pattern of less than one SCI per kitchen per shift.

9. In February 1998 Louis Flores (Flores), a Corcoran II SCI and a CSEA steward, was told by his food service manager, Kathy Gisler, that when the satellite kitchens were activated they would not be staffed by SCIs, but by COs. She said the SCIs "would be just roaming around taking food temperatures of each satellite kitchen . . . ."

Satellite Kitchen Retherming Policy Decision

Lieutenant Cowan works in the Program Support Unit in the Institutions Division in CDC headquarters. His unit was in

charge of reviewing and developing staffing criteria for level IV[9] prisons with regard to food services. When CDC first went to the cook-chill process.[10] Pelican Bay and CSP Sacramento, and later, High Desert had a central retherming area. This was an area, separate from, but adjacent to, the main kitchen. It was used to retherm or reheat the food immediately prior to trucking it to the satellite dining rooms for immediate consumption. At that time the satellites were merely dining halls or eating areas, with no cooking equipment.

High Desert and CSP Sacramento were having problems under this system with serving food at proper temperatures. Cowan's unit recommended that the retherm operations be moved from the central area into the satellite areas. Due to this recommendation, the retherm units were placed in Salinas Valley's satellite areas, as well. His unit made no recommendation regarding Corcoran II, but he believes that prison was originally expected to receive a centralized retherm system. However, because of CDC's experiences at CSP Sacramento and High Desert, these plans were modified and retherm ovens were placed in the satellite areas.

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[9]All inmates are given a security rating from level I to IV, with IV being the most serious or potentially dangerous.

[10]The cook-chill process initially prepares meals in a main prison kitchen. The prepared food is quickly chilled and stored until needed. Eventually it is sent to a second location where it is rethermed (reheated) and served to the inmates. This process is a relatively recent innovation at CDC. Prior to its introduction, food was prepared and served to all inmates in a central dining area.

With the installation of retherm ovens, as well as grilles, regular ovens and other cooking equipment, these satellite areas became actual kitchens. Once this activation was effected, Cowan's unit decided each satellite kitchen should be directly controlled by an on-site CO, with one SCI assigned to every four kitchens, a 1:4 ratio, to oversee them.

Physical Plant and Design of Satellite Kitchens

High Desert, Salinas Valley and Corcoran II are among several recently-built prisons that have independent housing units, each containing their own satellite kitchens. The physical plan and design of the three prisons is identical. However Corcoran II has only one yard with satellite kitchens. Both High Desert and Salinas Valley have two such yards. Each yard has four satellite kitchens. On each yard the size of the satellite kitchens and the distance from each other is identical.

Each set of two satellite kitchens is approximately 100 yards away from each other. The other set of two kitchens is approximately one-quarter to one-third of a mile from the first set. In order to travel from one set of kitchens to the other, it is necessary to go through at least one, and as many as four, security gates. Estimates of the time to reach all four of the assigned satellite kitchens ranged from five minutes to one-half hour.

The satellite kitchens have refrigeration units, ovens, areas for meal assembly, a scullery, a cafeteria style food line,

and a dining area. Under supervision, inmate crews prepare and serve meals, and clean up afterwards.

This cook-chill process is used for most evening meal entrees and partly for breakfasts, depending on the menu. In addition to reheating the cook-chill food, the satellite kitchen staff prepares such items as pancakes, french toast, hamburgers, eggs, hash brown potatoes, fish, steaks and many types of vegetables.

Minimum Requirements for SCI Positions

The minimum requirements for a position as a CDC SCI are as follows: (1) an eighth grade education; (2) five years experience cooking for 1,000 or more in an institutional setting; (3) passage of a written examination; (4) passage of an oral examination; and (5) a personal interview by the food service manager of the hiring prison. The examinations and interview concern dietary needs, sanitation, food portioning, temperature controls, cook-chilling and inmate control.

By way of contrast, it is not necessary for a CO to have any kind of culinary experience or training prior to being assigned to supervise a satellite kitchen.

Responsibilities of SCIs and COs in Satellite Kitchens

At all three prisons, each satellite kitchen has a full-time CO supervising pre-meal preparation, meal production and serving lines. On each of the two daytime shifts, one SCI is assigned to oversee the four satellite kitchens on each yard. The assigned SCI moves between his/her assigned kitchens during meal

preparation and serving periods, providing training, advice and instructions, to whatever extent possible. When staff is available, a roving SCI is assigned to every two yards, or eight kitchens.[11] This rover is primarily a problem-solver, going wherever needed. According to CDC, the SCIs are the ultimate authority for "cooking" decisions at each kitchen. However, many of the decisions are made without input from the SCI as s/he is only present a small percentage of the time that food is being prepared and served. In addition to supervisorial duties in the satellite kitchens, nearly half of a SCI's time is spent in the main kitchen overseeing the selecting, packing and transporting of the next day's meals.

There are between five and twelve inmate workers assigned to each satellite kitchen. The kitchen inmate personnel are constantly changing. It is not unusual to have one or two new inmates on the crew each day. Even though the SCI is responsible for the ultimate food product, s/he is not able to do most of the training of the inmate workers, as s/he cannot be in four places at once. The culinary CO does most of the actual training. If this CO is experienced, the process works fairly well, absent unusual circumstances. If not, chaos can develop.

The high rotational level of the COs presents an additional problem for the SCIs. The regularly assigned CO, once experienced, is not a major problem. However, on his/her days

[11]Corcoran II has only one yard with satellite kitchens. There was no evidence of it ever utilizing a rover.

off it is not uncommon to have a CO assigned to culinary duty who has never previously been in a satellite kitchen. COs, as a general rule, do not want to work in kitchens. In addition, the prisons often staff the satellite kitchens with permanent intermittent employees (PIEs),[12] in order to cut down on overtime costs. Because of this, the SCIs are constantly attempting to train COs, as well as inmate workers.

The duties and responsibilities of satellite kitchen SCIs are reflected in their post orders.[13] The post orders at High Desert for a third (afternoon) shift SCI are, in pertinent part, as follows:

> GENERAL STATEMENT
>
> . . . the Supervising Cook I's will supervise inmate Food Service workers assigned to your work area. Responsible for checking the delivered food prior to preparing the planned menu. Ensure that the food quality standards are maintained. Supervise and be responsible for inmates preparation of food production according to the institutional recipes. Prepare for the next days production whenever possible.

[12]PIEs, although fully trained COs, work on a part-time basis (no more than 1,500 hours per year). They do not have regular assignments and are often used as vacation and regular day off relief.

[13]Post orders are provided for each CO and SCI position in the prison. They set forth, with a high degree of specificity, exactly how each SCI or CO is to fulfill the responsibilities of that position. They describe the hour-by-hour tasks as well as how to respond to various interpersonal conflicts and emergencies. Failure to be aware of and/or to follow one's post orders is a serious CDC offense. These post orders are developed and refined over many years and are subject to annual revision.

SPECIFIC DUTIES AND RESPONSIBILITIES:

4. Teach, train, instruct and pass information to the Culinary Officer of Food Service Standards and procedures, HACCP procedures,[14] quality and quantity controls, rethermalization procedures and techniques, sanitation standards and accountability.

5. Ensure each Satellite Kitchen receives appropriate amounts of food. Receive Culinary Officer signature in agreement on amount of food.

DAILY ROUTINE DUTIES:

1500 HOURS — Assist Culinary Officer as needed for rethermalization process of the dinner meal.

1700 HOURS — Feeding starts as soon as count clears. Float between the Satellite Kitchens, assuring:

1). Correct issue is being served.
2). No food shortages occur.
3). Assist the Culinary Officer as needed.

WEEKLY:

Assist the Culinary Officer in giving a safety meeting with all inmate culinary workers, for a minimum of 15 minutes, . . .

An examination of a CO's job description shows that the primary emphasis of his/her duties is to maintain safety and security. Whereas, the SCI's job description clearly shows that his/her primary emphasis is to ensure that food production and

[14]HACCP is an acronym for Hazards, Analytical Critical Control Points, which sets forth the rules governing the preparation of food in the prisons. It is the system that insures food is maintained at proper temperatures and does not spoil.

service are provided with the highest possible level of quality and sanitation.

Traditionally, the employees in these two classifications have shared responsibility with regard to the supervision of the culinary inmate workers. At the main kitchen, the SCIs manage the inmate cooks and back dock workers, whereas the COs manage the dining hall and line-server inmates. Each of them is responsible for their inmates' tools, behavior, work product and time cards. The respondent cites the administrative segregation (ad seg) unit and medical clinic as examples of areas in which the COs have traditionally fed inmates without the assistance of SCIs. However, as these "culinary" duties do not include preparation, but are limited to merely delivering food trays, this example has little relevance to the subject issue.

In the satellite kitchens, the COs are directly and totally responsible for all inmate culinary workers. This responsibility can be so absolute that if a SCI wants an inmate in one of his assigned satellite kitchens to do something he must direct his request to the CO who, in turn, tells the inmate to take the requested action.

Administrative Segregation and Clinic Culinary Practices

The inmates in the ad seg unit are all in a "locked down" status, i.e., they remain in their cells throughout all, or at least almost all, of the day. They are fed by COs who bring food trays to them. The food trays are prepared in the nearest satellite kitchen and are transported to the unit. The ad seg CO

takes the food's temperature and inserts the results on the appropriate form. A similar procedure is followed with regard to the inmates requiring medical attention, who are temporarily housed in the clinic.

Food Temperature Requirements

CDC requires the temperature of the food to be taken at least four different times during each feeding cycle. First, when it is brought into the kitchen and placed in storage. Second, when it taken out of storage. Third, immediately after it has been cooked, and again when it is being served. If the food is not maintained at the correct temperatures, sickness could develop. If the food becomes contaminated, it has been made very clear that the involved SCI will be held responsible.

Food Tasting Procedures

Each meal is required to have three tasters, a SCI, a correctional staff member, usually a sergeant or lieutenant and an inmate. Each is required to taste the food and write down his/her comments about it in a daily log. If a meal is unsatisfactory, for any reason, it is discarded and a replacement meal is provided.

Culinary Reference Manual for COs

Corcoran II disseminates a reference manual, entitled "Level IV Satellite Kitchen Procedures". It attributes its creation to CSP Sacramento's Food Services department. It has twelve pages of text, which covers responsibilities, food control, food preparation and sanitation. The manual states it

is required reading for all culinary COs. However, there was no evidence proffered as to whether it was, in actuality, read, consulted or utilized, in any manner, by such COs.

ISSUES

1. Is this unfair practice charge barred by the provisions of section 3514.5 (a) (1)?

2. If it is not barred, has CDC unlawfully transferred SCI work to COs, in violation of subdivision (c) of section 3519?

CONCLUSIONS OF LAW

Issue No. 1

The statute of limitations begins to run on the date charging party obtains actual or constructive knowledge of the subject conduct. (Fairfield-Suisun Unified School District (1985) PERB Decision No. 547; The Regents of the University of California (1990) PERB Decision No. 826-H; Regents of the University of California (1993) PERB Decision No. 1002-H; Regents of the University of California (1993) PERB Decision No. 1023-H.)

Even actual knowledge must "clearly inform" the charging party of the alleged unlawful act. In Victor Valley Union High School District (1986) PERB Decision No. 565 at pp. 5-6, the Board described the required notice in the following terms:

> Notice of a proposed change must be given to an official of the employee organization who has the authority to act on behalf of the organization. The notice must be communicated in a manner which clearly informs the recipient of the proposed change. Even in the absence of formal notice, proof that such an official had actual knowledge of the proposed change will suffice. Notice must be given sufficiently in advance of a

> firm decision to make a change to allow the exclusive representative a reasonable amount of time to decide whether to make a demand to negotiate. . . . As waiver is an affirmative defense, an employer asserting a waiver of the right to bargain properly bears the burden of proving that the exclusive representative failed to request bargaining despite received sufficient notice of the intended change. [Emphasis added; fn. omitted.]

The decision in SA-CE-835-S clearly shows that in 1987 CSEA had knowledge of the SCI staffing ratio at CSP Sacramento and was therefore precluded from bringing that charge. CDC contends that CSEA's knowledge of that staffing pattern imparts knowledge of Corcoran II's staffing patterns, therefore, it is precluded from bringing this charge. This contention is not supported by credible evidence.

Corcoran II activated its satellite kitchens in late February or early March 1998. CSEA filed its charge on March 30, 1998. The crucial question becomes, "[H]ow soon before March 30, 1998, did CSEA have knowledge that at Corcoran II one SCI would not be assigned to each satellite kitchen?" If it had actual or constructive notice prior to September 30, 1997, the charge is barred by the provisions of section 3514.5(a).

The following factors have some relevance in determining the answer to this question:

1. CDC contends that CSEA's involvement with the CSP Sacramento case automatically transmitted knowledge to it of the staffing patterns at High Desert originally, and Salinas Valley and Corcoran II, eventually. And yet, CDC failed, when

presenting its case, to openly state that it was going to continue to staff all new satellite kitchens with less than a 1:1 ratio. CDC's failure to clearly state its intentions in March 1997, when the CSP Sacramento case was heard, suggests that this staffing plan was either not yet finalized, or if already conceived, was being kept secret.

2. Stone, CSEA's Unit 15 chair, did not know of any satellite kitchens, other than CSP Sacramento, that were being staffed at less than 1:1 until December 2, 1997, when he and Hughes toured Salinas Valley on an unrelated matter.

3. The emphasis of both the respondent's questions and its brief suggests the practice at Pelican Bay should have given CSEA the requisite knowledge of CDC's satellite kitchen staffing practices throughout the state. However, there was no credible evidence to suggest that CSEA had knowledge of what was occurring at Pelican Bay. There was evidence that Stone had some contact with a SCI who worked at Pelican Bay prior to transferring to High Desert. However, this contact was limited to a minor unrelated issue.

Losik, when he surveyed his state-wide field representatives in May 1994, received no information from Pelican Bay. In addition, Cowan's discussion of Pelican Bay shows that between June 1996 and June 1998, there were fluctuating circumstances regarding the staffing patterns at that prison.

4. Bryant states that she was unaware of the SCI staffing issue at any prison prior to early 1996. She also states that

she was generally aware of the issue in July 1997 and learned that it was not confined to High Desert sometime during Hughes' assignment to Unit 15. That assignment ranged from July 1997 to May 29, 1998.

Summary

Respondent contends that CSEA's knowledge of CSP Sacramento staffing patterns automatically means it was aware that CDC was going to staff all future satellite kitchens in the same manner. There is no credible evidence to support this contention.

It was determined in the High Desert Proposed Decision that the charge in that case was not time-barred. In addition, there was nothing in the facts of that case that would suggest that CSEA had knowledge of the Corcoran II satellite kitchen staffing practices.

The testimony of Losik, Bryant and Stone provided definite knowledge regarding CSP Sacramento, but provided no credible evidence they were aware of Corcoran II's staffing patterns prior to September 30, 1997. Hughes was not even involved in the process until late summer 1997, so she could not have been privy to any Corcoran II information prior to that time. She made no statement that would suggest she became aware of the staffing pattern at Corcoran II prior to September 30, 1997.

CDC's failure to assert, in its SA-CE-835-S case, that all prisons it would open in the future would duplicate this staffing pattern, suggests that this knowledge was not as open and prevalent as it contends.

The fact that notice was not given of such activation lends support to a conclusion that CSEA had neither actual nor constructive knowledge of Corcoran II's activation prior to September 30, 1997.

There is nothing in any of the proffered evidence that proves, or even strongly suggests, someone at CSEA "who had the authority to act on behalf of the organization" received actual notice prior to September 30, 1997, that Corcoran II was going to staff its satellite kitchens at less than a 1:1 ratio. Nor is there any evidence in the record upon which I can conclude that CSEA had constructive knowledge of the staffing pattern at Salinas Valley.

Therefore, it is determined that the charge is not time-barred by the provisions of section 3514.5(a)(1).

Issue No. 2 - If it is not barred, has CDC unlawfully transferred SCI work to COs, in violation of subdivision (c) of section 3543.5?

Relevant Citations

PERB, in State of California (Department of Personnel Administration) (PECG) (1987) PERB Decision No. 648-S (PECG v. DPA) stated:

> DPA's argument does not confront the "work preservation" aspect of this proposal, however. It is well settled that work preservation is a valid subject of bargaining, as noted by a long line of PERB and NLRB cases. Thus, where a transfer of work occurs in a situation that is not an emergency, the union does have a vested right in maintaining what it already has. To excuse the transfer of work merely because of a "policy change" by management would defeat the purpose of collective bargaining, and

> could easily shelter an employer who artfully chooses his words and ends up gutting an entire bargaining unit of its work on the basis of a policy change. [Emphasis added.]

PERB, in Rialto Unified School District (1982) PERB Decision No. 209 (Rialto), citing International Harvester (1976) 227 NLRB 85 [93 LRRM 1492] and American Needle and Novelty Co. (1973) 206 NLRB 534 [84 LRRM 1526] citing Fibreboard Paper Products Corp. v. NLRB (1964) 379 U.S. 203, 213 [57 LRRM 2609], stated:

> . . . the transfer of jobs from the bargaining unit to non-unit employees, with an adverse impact on the unit employees, imposed on the employer the obligation to negotiate the decision to relocate the jobs. . . .

In Rialto, PERB favorably cited UAW v. NLRB (General Motors) (D.C. Cir. 1967) 381 F.2d 265 [64 LRRM 2489], as follows:

> . . . the United States Circuit Court found this obligation to exist even though the affected employees were assigned other unit work and there was no demonstrable change in their wages or hours. The Court reasoned that the reduction of the whole number of jobs within the unit itself triggered the bargaining obligation.
>
> . . . . . .
>
> The Board observes that the unilateral transfer of work can create a conflict between the employer and its employees. . . . the viability and effectiveness of the employee organization is adversely affected by diminution of the unit. [Citation.]

In discussing an employer's attempt to create and abolish classifications, thereby transferring traditional duties between various bargaining units, PERB, in Alum Rock Union Elementary School District (1983) PERB Decision No. 322 (Alum Rock), stated:

> . . . we find that those aspects of the creation or abolition of a classification which merely transfer existing functions and duties from one classification to another involve no overriding managerial prerogative. Such changes amount to transfers of work between employees or groupings of employees, similar to decisions to subcontract work or to transfer work out of the bargaining unit. They do not represent a decision to undertake a new function or to eliminate an existing function. Thus, no decision on what functions are essential to management's mission is involved. The same functions are still being performed; an existing classification is merely replaced by a new classification to do the same work under similar conditions of employment. . . . (Emphasis added; fn. omitted.)

Analysis

In this case CDC unilaterally modified the traditionally intertwined responsibilities of SCIs and COs in prison kitchens. When it did this it relegated the SCI to a almost purely advisory role. In the past, the SCI would have hands-on responsibility for a kitchen's preparation and cooking function and the CO would be responsible for its serving and dining room function. Without the subject modification each of these employees would be responsible for his/her inmates, tools and culinary functions. With the modification, the CO became responsible for both functions and all of the inmates, with a minimal level of oversight from the SCI.

Even a cursory examination of the minimum requirements for positions in the SCI classification, clearly shows that the job is a very skilled one. The prison SCI, whether s/he is in a main or satellite kitchen, is both a teacher and a "doer." S/he uses

his/her experience to show and teach the inmates how to prepare meals for literally thousands of people each day. It is clear that under CDC's modification this experience, to a large extent, becomes lost to the process.

And yet, the SCI is still held responsible for the ultimate product at four kitchens when s/he cannot possibly have any effective control over what occurs at those kitchens. The evidence clearly shows that there is a constant turnover of both COs and inmate culinary workers. It is not possible for a SCI to be responsible for four kitchens and have an effective impact on, much less control, forty-four[15] culinary workers.

The SCIs' post orders are illusory at best, and misrepresentations, at worst. There is no way a SCI who is assigned to four kitchens can reasonably be held responsible to (1) "supervise Food Service workers", (2) "supervise and be responsible for inmates preparation of food production. . . ", or (3) assure (a) "correct issue is being served" and (b) "no food shortages occur". This is especially true when, as described by one Salinas Valley SCI, s/he may not even personally direct the inmates, but must go through the culinary CO.[16]

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[15]This figure assumes one CO and an average of ten inmate culinary workers per kitchen.

[16]This is not to suggest that this "single supervisor" practice is improper from a personnel management perspective. Getting an effective work product out of inmates is difficult enough without requiring them to be simultaneously responsible to multiple supervisors.

There is no doubt that CDC's unilateral modification has taken effective control of the cooking process away from Unit 15 SCIs and given it to Unit 6 COs, leaving the SCIs with only the responsibility for the end product. Obviously this is an untenable situation and one that violates the "work preservation" rights of Unit 15 employees. (PECG v. DPA.) Absent the agreement of the Unit 15 representative, CSEA, it is a violation of subdivision (c) of section 3519 of the Dills Act. (See also Rialto and UAW v. NLRB (General Motors), supra, 381 F.2d 265 [64 LRRM 2489].)

Respondent Defenses

New Work

CDC insists this was "new work," therefore, it is not required to maintain the SCI's traditional role in the food service process. However, it fails to explain why food preparation in satellite kitchens should be considered "new work," when SCIs have always been involved in the preparation of food in the prisons' kitchens. The only thing that has changed is the place in which the primary entree is cooked. This change is insufficient to alter the nature of the work to the degree that CDC's obligation to maintain the status quo is abrogated. Absent CDC's improper modification, all food in the satellite kitchens would still be cooked by inmates under the culinary control of the SCIs and the security control of the COs in exactly the same manner as in the main kitchens.

Based on the foregoing, it is determined that respondent's theory of "new work" is insufficient to defend it from the charge it violated subdivision (c) of section 3519.

No Deprivation of Work

CDC asserts, in its brief, that SCIs are precluded from complaining about the staffing patterns because no SCI was deprived of any particular work. First, this statement is incorrect, in that the SCIs are deprived of using their skills and experience in directly supervising the preparation of meals.

Secondly, Unit 15 is being deprived of work when these responsibilities are transferred to Unit 6. See the "work preservation" concept discussion, supra.

Lastly, UAW v. NLRB(General Motors), supra, 381 F.2d 265 [64 LRRM 2489], states that it is not necessary to show a "demonstrable change in wages or hours" to find a violation. The court stated "the reduction of the whole number of jobs within the unit itself triggered the bargaining obligation."

Based on the foregoing, it is determined that CDC's theory regarding an absence of "deprivation of work" is insufficient to defend it from the charge it violated subdivision (c) of section 3519.

Waiver

PERB has held that any waiver of the right to negotiate must be "clear and unmistakable." (Amador Valley Joint Union High School District (1978) PERB Decision No. 74.) However, CDC points out that contract terms can justify a unilateral

management act if the contract expressly or by necessary implication confers such right. (Los Angeles Community College District (1982) PERB Decision No. 252 (Los Angeles CCD).)

CDC admits that a general management rights clause is not usually considered a waiver of union rights. It insists, however, that MOU Article 4.b. is different, because, as it states in its brief, it "delineates a clear line, by successive illustrations, of what types of activities are reserved to management." MOU Article 4.b., in pertinent part, states as follows:

> b. Consistent with this Contract, the rights of the State shall include, but not be limited to, the right . . . to determine the methods, means and personnel by which State operations are to be conducted; . . . . to exercise control and discretion over the merits, necessity, or organization of any service or activity provided by law . . . .

It is difficult to see how this very broad language is any different from the dozens of other management rights clauses evaluated by PERB each year. Even in the case cited by CDC, Los Angeles CCD, PERB made it very clear that the contractual provisions cited by the respondent in that case contained no provision "expressly reserving to the District the right to change or eliminate shifts." Nor was such a right necessarily implied.

Similarly, in this case, MOU section 4.b. contains no language expressly reserving to CDC the right to transfer duties from one bargaining unit to an other without negotiating the matter with the appropriate employees' representative.

In addition, the Board's decision in Alum Rock, is of some relevance and instructive in this case. That case concerns the creation or abolition of classifications and is often cited in scope of negotiations cases. It states that changes "which merely transfer existing functions and duties from one classification to another involve no overriding management prerogative."

Based on the foregoing, it is determined that CSEA, in agreeing to the cited MOU provision, did not waive its right to object to CDC's modification of staffing patterns in its satellite kitchens.

Overlapping Duties

CDC relied heavily, in both testimony and in its brief, on the overlapping duties of the SCIs and COs to justify its staffing decision. This reliance is not justified. It is true that the employees in the two classifications have traditionally shared responsibilities in prison kitchens. However, the SCIs have directed their attention to the actual preparation of the food, whereas the COs have dealt with its serving and overall kitchen security. Under this procedure, each employee is able to use his/her experience to its fullest capacity.

CDC, in its brief, insists that the SCIs still exercise judgment and discretion over "cooking work." This statement is not supported by the evidence. The SCI, under CDC's modified staffing pattern, is physically in his/her assigned kitchens, on average, less than 20 percent of the time s/he would be there if

the pattern had not been modified.[17] There is no reasonable manner in which a SCI can exercise judgment and discretion over "cooking work" when physically present only 20 percent of the cooking preparation and serving time.

This is especially true in light of the acknowledged high turnover rate. This factor alone makes it almost impossible for a SCI to have any effective control over the "cooking work" other than selecting and delivering the food. Running from kitchen to kitchen during the two to three hour preparation and serving period, permits the SCI only sufficient time to identify and cure the most egregious of difficulties. There literally is no time for "exercising judgment and discretion" over the process.

Under CDC's staffing pattern, the SCI is virtually eliminated from any meaningful participation in the food service process. S/he went from a full-time participant in meal preparation and serving to a 20 percent participant, at best. A diminution of this magnitude evidences a change in the quantity and kind of the duties of the respective employees. Such a change constitutes a unilateral change in an established policy. (Oakland Unified School District (1983) PERB Decision No. 367.)

Based on the foregoing, it is determined that CDC's theory of "overlapping duties" is an insufficient defense to the charge it violated subdivision (c) of section 3519.

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[17]This percentage mathematically divides the SCIs' time between four assigned satellite kitchens and factors in necessary travel time.

Summary

From all of the foregoing, it is determined that when CDC unilaterally modified the staffing pattern of its satellite kitchens at Corcoran II without affording CSEA an opportunity to negotiate the matter, it violated subdivision (c) of section 3519.

CSEA's Right to Represent its Members

CDC's action also denied CSEA rights guaranteed to it by the Dills Act, i.e., the right to represent its members in their employment relations with the state. CDC's failure to negotiate the SCI staffing patterns at Corcoran II with CSEA, derivatively violated subdivision (b) of section 3519.

Individual Employees' Rights

CDC's actions interfered with the involved SCIs, in that they were not permitted to use their skills at their chosen trade. In addition, they were held accountable for results over which they had no real control. This action constitutes a violation of subdivision (a) of section 3519.

SUMMARY

After an examination of the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that CDC (1) interfered with the 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 state, and (3) failed to negotiate in good faith over a matter within the scope of negotiation. Such failure and denial

constitute violations of subdivision (a), (b) and (c) of section 3519 of the Dills Act.

PERB, in section 3541.5(c) is empowered 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 respondent and to prevent it from benefitting from its unlawful conduct and effectuate the purposes of the Dills Act, it is appropriate to order CDC to (1) negotiate in good faith with CSEA over SCI staffing patterns in the Corcoran II satellite kitchens (2) cease denying to CSEA its right to represent its members in their employment relations with the state, (3) cease interfering with employee rights under the Dills Act, and (4) staff each of its Corcoran II satellite kitchens with one SCI per shift per day.

In consideration of the difficulty of obtaining SCIs in the Corcoran rural area, the traditional cease and desist order will be stayed for one hundred and twenty (120) calendar days. This will give CDC sufficient time to negotiate an agreement with CSEA that permits it to arrive at a solution to this recruitment problem. If, at the end of that time, CDC has failed to negotiate an agreement with CSEA on this subject, the cease and desist order will become effective and it must staff each of its satellite kitchens with one SCI per shift per day.

It is also appropriate that CDC be required to post a notice incorporating the terms of the order at all of its statewide locations where notices are customarily placed for Unit 15 employees. This notice should be subscribed by an authorized agent of CDC, 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 CDC 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 CDC's readiness to comply with the ordered remedy. (See Placerville Union School District (1978) PERB Decision No. 69.) In Pandol and Sons v. Agricultural Labor Relations Board (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].)

PROPOSED ORDER

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

A. CEASE AND DESIST FROM:

1. Failing to negotiate with the California State Employees Association, SEIU Local 1000 (CSEA), over a matter within the scope of negotiation of its members in Unit 15;

2. Interfering with the Supervising Cook Is (SCIs) at the California Substance Abuse Treatment Center (Corcoran II), due to their exercise of rights guaranteed by the Dills Act; and

3. Denying to CSEA its right to represent its members with regard to the staffing patterns for SCIs at Corcoran II.

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

1. Negotiate with CSEA, upon demand, the staffing patterns for SCIs at Corcoran II;

2. One hundred and twenty (120) calendar days after a final decision in this matter, unless an agreement with CSEA to the contrary has been reached, staff each of the satellite kitchens at Corcoran II with one SCI per shift per day;

3. Within ten (10) workdays of service of a final decision in this matter, post at all statewide locations where notices are customarily posted for its Unit 15 employees, copies of the notice attached hereto as an Appendix. This notice should be subscribed by an authorized agent of the State, 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; and

4. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to

the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the charging party herein.

It is further Ordered that all other aspects of the charge and complaint are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 323 05, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 2 0 days of service of this Decision. The Board's address is:

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

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code Reg., tit. 8, sec. 32300.)

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 postmarked 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.

(Code Regs., tit. 8, sec. 32135(a); see also Cal Code Regs., tit. 8, sec. 23130.)

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 (c); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Allen R. Link
Administrative Law Judge