

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA ATTORNEYS,
ADMINISTRATIVE LAW JUDGES & HEARING
OFFICERS IN STATE EMPLOYMENT,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
PERSONNEL ADMINISTRATION),

Respondent.

Case No. SA-CE-1484-S

PERB Decision No. 1836-S

May 8, 2006

Appearances: Beeson, Tayer & Bodine by Costa Kerestenzis, Attorney, for California Attorneys, Administrative Law Judges & Hearing Officers in State Employment; Wendi L. Ross, Labor Relations Counsel, for State of California (Department of Personnel Administration).

Before Duncan, Chairman; McKeag and Neuwald, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by California Attorneys, Administrative Law Judges & Hearing Officers in State Employment (CASE) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the State of California (Department of Personnel Administration) (DPA) violated the Ralph C. Dills Act (Dills Act)¹ by failing to bargain in good faith. CASE alleged that this conduct was a violation of Dills Act section 3519(c).

We have reviewed the entire record in this case including, but not limited to, the unfair practice charge, the untimely first amended charge, the warning and dismissal letters, the appeal by CASE and the opposition filed by DPA. We find the Board agent's warning and

¹The Dills Act is codified at Government Code section 3512, et seq.

dismissal letters to be free of prejudicial error and adopt them as the decision of the Board itself.

ORDER

The unfair practice charge in Case No. SA-CE-1484-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members McKeag and Neuwald joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377



June 9, 2005

Stacey Livingston, Labor Relations Representative
CASE
2495 Natomas Park Drive, Suite 550
Sacramento, CA 95833

Re: California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Department of Personnel Administration)
Unfair Practice Charge No. SA-CE-1484-S
DISMISSAL LETTER

Dear Ms. Livingston:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 27, 2005. California Attorneys, Administrative-Law Judges & "Hearing Officers in State Employment (CASE) alleges that the State of California (Department of Personnel Administration) (State or DPA) violated the Ralph C. Dills Act (Dills Act)¹ by failing and refusing to bargain in good faith.

I indicated to CASE in my attached letter dated May 17, 2005, that the above-referenced charge did not state a prima facie case. The letter advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, CASE should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to May 27, 2005, the charge would be dismissed. On May 25, 2005, you spoke, in my absence, with Regional Attorney Erin Koch-Goodman and requested an extension of this deadline. An extension to June 3, 2005 was granted.²

On June 6, 2005, a First Amended Charge was filed in this matter. The amended charge was sent by certified mail and postmarked on June 3, 2005, but was not received until June 6, 2005. A document is only considered "filed" when actually received by PERB, and the date of the mailing of a document, even if by certified mail, does not establish a filing date. (See PERB Regulation 32135.)

The amended charge adds an allegation that, on October 22, 2003, the State's negotiator stated several times that anything discussed at that meeting would have to be taken back by him in order to make sure that he was on the right track. The amended charge also asserts that the

¹ The Dills Act is codified at Government Code section 3512 et seq.

² Since the new deadline of June 3, 2005, was confirmed verbally and not in writing or by mail, the provisions of PERB Regulation 32130(c) are not applicable; PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

issues addressed by the previous tentative agreements (TAs) that DPA indicated had to be "revisited" were at the "very heart" of the contract. CASE also asserts, as a part of the amended charge, that each time DPA submitted a new proposal on a matter previously tentatively agreed to, and each time that DPA offered to again TA an agreement previously reached but then revisited the conduct evidenced the State's violation of its duty to bargain in good faith.

Discussion

As the First Amended Charge was not timely filed, the charge must be dismissed based on the facts and reasons set forth in my May 17, 2005 letter, without consideration of the information contained in the amended charge. (Los Angeles Unified School District (2003) PERB Decision No. 1552.)

However, even if the additional information contained in the First Amended Charge was considered, the charge still fails to state a prima facie case.

As discussed in my May 17, 2005 letter, renegeing on tentative agreements, while an indicia of bad faith bargaining, is not enough to establish a prima facie case. The added commentary in the First Amended Charge regarding the importance of the issues on which the State renegeed does not change this analysis. Nor does the allegation that, at a single meeting in October 2003, the State's negotiator lacked sufficient authority. The charge does not provide evidence of such lack of authority; it only alleges that conclusion. The conclusion is supported only by reference to the negotiator stating that he would have to take matters back and make sure he was on the right track, or words to that effect. I am not aware of, and the charge does not reference, any legal authority for the proposition that a negotiator is considered to lack authority solely because the negotiator indicates that he or she will have to go to those who set parameters for bargaining to verify that he is "on the right track."

Therefore, I am dismissing the charge based on the facts and reasons contained in my May 17, 2005 letter.

Right to Appeal

Pursuant to PERB Regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

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

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

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Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By

Les Chisholm
Regional Director

Attachment

cc: Raquel Silva
Wendi L. Ross

PUBLIC EMPLOYMENT RELATIONS BOARD



Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8383
Fax: (916) 327-6377



May 17, 2005

Raquel Silva, Executive Director
CASE
2495 Natomas Park Drive, Suite 550
Sacramento, CA 95833

Re: California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Department of Personnel Administration)
Unfair Practice Charge No. SA-CE-1484-S
WARNING LETTER

Dear Ms. Silva:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 27, 2005. The California Attorneys, Administrative Law Judges & Hearing Officers in State Employment (CASE) alleges that the State of California (Department of Personnel Administration) (State or DPA) violated the Ralph C. Dills Act (Dills Act)¹ by renegeing on tentative agreements.

CASE is the exclusive representative of State Bargaining Unit 2. The most recent memorandum of understanding between CASE and the State expired July 2, 2003, and the parties are engaged in successor agreement negotiations. The parties signed off on various tentative agreements (TAs) in August, September and October, 2003. Between November 2003 and September 2004, the parties did not meet.²

On October 27 and 28, 2004, Jacquelyn Sanders, representing DPA in negotiations with CASE, informed CASE that DPA would be "revisiting" 16 articles that had been TA'd in 2003. On February 23, 2005, DPA made proposals on two of these articles. On March 16, 2005, DPA made proposals on two more previously TA'd articles but also verbally indicated readiness to again TA five other of the 16 articles. On April 6, 2005, DPA made a new proposal on another article previously TA'd.

Citing the conduct described above from the period October 2004 through April 2005, CASE contends that the State has failed and refused to bargain in good faith.

¹ The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

² In November 2003, a recall election removed Governor Gray Davis from office, and changes occurred thereafter in the staffing of DPA, including the negotiator assigned to negotiate with CASE.

Discussion

While CASE argues that DPAs' conduct per se violates the duty to bargain, as well as demonstrates evidence of surface bargaining, the Board has held that a refusal to honor prior agreements following a change in negotiators, while evidence of surface or bad faith bargaining, is not a per se violation. (Stockton Unified School District (1980) PERB Decision No. 143.)

It is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (Muroc Unified School District (1978) PERB Decision No. 80.) Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (Oakland Unified School District (1982) PERB Decision No. 275.)

In Chino Valley Unified School District (1999) PERB Decision No. 1326, the Board held that renegeing on tentative agreements demonstrates resort to regressive bargaining techniques, and that the conduct is an indicia of bad faith bargaining. (See, also, Charter Oak Unified School District (1991) PERB Decision No. 873; Stockton Unified School District, supra, PERB Decision No. 143; Placerville Union School District (1978) PERB Decision No. 69). However, the Board has long held that one indicia of bad faith is not enough to demonstrate a prima facie case of bad faith or surface bargaining. (Ventura County Community College District (1998) PERB Decision No. 1264; State of California (Department of Education) (1996) PERB Decision No. 1160-S; Oakland Unified School District (1996) PERB Decision No. 1156.) Thus, under the "totality" standard applicable to a surface bargaining claim, no prima facie showing is present in this case. (Oakland Unified School District, supra, PERB Decision No. 275.)

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an

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amended charge or withdrawal from you before May 27, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Les Chisholm
Regional Director