STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA CORRECTIONAL PEACE OFFICERS ASSOCIATION, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION), Respondent.	Case No. SA-CE-1667-S PERB Decision No. 2018-S April 7, 2009

Appearances: Suzanne L. Branine, Staff Counsel, for California Correctional Peace Officers Association; Paul M. Starkey, Assistant Chief Counsel, for State of California (Department of Personnel Administration).

Before McKeag, Wesley and Dowdin Calvillo, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the California Correctional Peace Officers Association (CCPOA) of a Board agent's dismissal. The unfair practice charge filed on March 14, 2008, alleged that the State of California (Department of Personnel Administration) (DPA or State) violated section 3519(c) of the Ralph C. Dills Act (Dills Act)[1] by refusing to increase the business-related automobile travel reimbursement rate for employees in State Bargaining Unit 6 following an increase to the Federal Standard Mileage Rate (FSMR).

The Board has reviewed the entire record in this matter. Based on this review, we conclude the dismissal of this case was proper for the reasons set forth below.

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

BACKGROUND

CCPOA represents employees in State Bargaining Unit 6. The parties' collective bargaining agreement (CBA) expired July 30, 2006. Negotiations on a successor agreement stalled, and the parties eventually reached impasse. Accordingly, on September 18, 2007, the State notified CCPOA that, pursuant to section 3517.8 of the Dills Act, the State was implementing its last, best and final offer (LBFO).

The expired CBA required the State to reimburse employees for business-related automobile travel at "34 cents per mile." The LBFO struck the phrase "34 cents per mile" and instead provided that employees will be reimbursed for business-related automobile travel at the FSMR. On or about January 1, 2008, the FSMR increased to 50.5 cents per mile.

On December 14, 2007, DPA issue the following announcement:

> Effective January 1, 2008, all State employees, except those represented by Bargaining Unit 6, may claim mileage reimbursement at the rate of 50.5 cents per mile (CPM) when using their personal vehicle for authorized State business.

CCPOA contends that DPA's failure to increase the reimbursement rate for employees in Unit 6 to the current FSMR was not reasonably comprehended in the LBFO and, therefore, constitutes an unfair labor practice.

DISCUSSION

In *Public Employment Relations Bd.* v. *Modesto City Schools Dist.* (1982) 136 Cal.App.3d 881, 900-901 (*Modesto*), a case arising under the Educational Employment Relations Act (EERA),[2] the court explained:

> An employer cannot change matters within the scope of representation without first providing the exclusive representative notice and opportunity to negotiate. Unilateral change in these

[2] EERA is codified at Government Code section 3540 et seq.

> areas prior to impasse is seen as a violation of the duty to negotiate in good faith because it is tantamount to a refusal to bargain. However, once impasse is reached, the employer may take unilateral action to implement the last offer the union has rejected. (*Labor Board* v. *Katz* (1962) 369 U.S. 736, 745 [8 L.Ed.2d 230, 237, 82 S.Ct. 1107].) The employer need not implement changes *absolutely identical* with its last offer on a given issue. However, the unilateral adoptions must be reasonably comprehended within the preimpasse proposals. (*Taft Broadcasting Co.* (1967) 163 N. L. R. B. No. 55, enforced *sub nom., American Fed. of Television and Radio Artists* v. *N. L. R. B.* (D.C. Cir. 1968) 395 F.2d 622.)

Consistent with *Modesto*, CCPOA argues that, in a post-impasse situation, DPA may only implement those policies that were reasonably contemplated by the LBFO. Since, in this case, the LBFO clearly contemplates that employees in Bargaining Unit 6 are entitled to receive reimbursement for business-related automobile travel at the FSMR, CCPOA claims DPA violated the Dills Act by failing to apply the increased FSMR to its members. The problem with this theory, however, is that it ignores language in the Dills Act that directly addresses an employer's post-impasse ability to implement a LBFO.

A. DPA Could Not Legally Provide The Increased Reimbursement Rate

Section 3517.8(b) of the Dills Act reads, in pertinent part:

> If the Governor and the recognized employee organization reach an impasse in negotiations for a new memorandum of understanding, the state employer may implement any or all of its last, best, and final offer. Any proposal in the state employer's last, best, and final offer that, if implemented, would conflict with existing statutes or require the expenditure of funds shall be presented to the Legislature for approval and, if approved, shall be controlling without further legislative action, notwithstanding Sections 3517.5, 3517.6, and 3517.7. [Emphasis added.]

Thus, as a general rule and with limited exceptions, Section 3517.8(b) permits the State to implement "any or all" of the proposals contained in its LBFO. However, if a proposal

contained in the LBFO conflicts with existing law or requires the expenditure of funds, the proposal must be approved by the Legislature.

In this case, the implementation of the LBFO after January 1, 2008 increases mileage reimbursements. We find such a proposal requires the expenditure of funds. Therefore, the State's implementation of the proposal does not become "controlling" until it is "approved" by the Legislature.

Here, the increased mileage reimbursement proposal has not been approved by the Legislature. Absent such approval, DPA cannot legally provide the increased reimbursement rate. Accordingly, DPA's failure to implement the LBFO's mileage reimbursement proposal, as alleged, does not violate the Dills Act.

B. Labor Code Section 2802 Does Not Require DPA To Increase The Reimbursement Rate

In its amended charge, CCPOA asserts that Labor Code section 2802 requires DPA to reimburse employees in Bargaining Unit 6 for mileage at the FSMR. Labor Code section 2802 provides, in pertinent part:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

PERB, however, does not enforce other independent statutory schemes. (*Wygant* v. *Victor Valley Joint Union High School Dist.* (1985) 168 Cal.App. 3d 319, 323.) Thus, it does not have jurisdiction over Labor Code disputes. Rather, PERB is an expert, quasi-judicial administrative agency charged with administering California's public sector collective bargaining statutes. (See e.g., Dills Act § 3512 et seq., EERA § 3540 et seq., and HEERA[3] § 3560 et seq.) In this case, the "collective bargaining" question presented to PERB is

[3] HEERA is codified at Government Code section 3560 et seq.

whether, in the absence of legislative approval, DPA must implement the mileage provision set forth in the LBFO. We find Dills Act section 3517.8(b) clearly answers that question in the negative. Accordingly, the alleged facts fail to establish a violation of the Dills Act.

ORDER

The unfair practice charge in Case No. SA-CE-1667-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Wesley and Dowdin Calvillo joined in this Decision.