

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA ASSOCIATION OF
PSYCHIATRIC TECHNICIANS,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS & REHABILITATION),

Respondent.

Case No. SA-CE-2047-S

PERB Decision No. 2598a-S

January 18, 2022

Appearances: Sean H. Bedrosian, Attorney and Consultant, for California Association of Psychiatric Technicians; California Department of Human Resources by Stanley R. Marubayashi, Labor Relations Counsel, for State of California (Department of Corrections & Rehabilitation).

Before Banks, Chair; Shiners and Krantz, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) after the Court of Appeal for the Third Appellate District issued its unpublished opinion and order in *Department of Corrections and Rehabilitation v. Public Employment Relations Bd.* (October 4, 2021, No. C088562, 2021 WL 4519682.) The Court of Appeal affirmed, with a modification, the Board's decision in *State of California (Department of Corrections & Rehabilitation)* (2018) PERB Decision No. 2598-S. In that decision, the Board concluded that the Department of Corrections and Rehabilitation (CDCR) interfered with (1) an employee's right to be represented by her union, the California Association of Psychiatric Technicians (CAPT), prior to

and during an invasive body search; and (2) CAPT's corresponding right to represent employees prior to and during such searches. The Board found that CDCR thereby violated the Ralph C. Dills Act (Dills Act) section 3519, subdivisions (a) and (b).¹

The Court of Appeal affirmed the Board's conclusion that CDCR violated the Dills Act, but the Court modified the wording of the Board's remedial order.

Specifically, the Court of Appeal held that the remedial order applies only in circumstances in which CDCR and its representatives either constitute the appointing authority or are acting as an employer and the employee reasonably fears discipline.²

In accordance with the Court of Appeal's direction, we issue the following order that fully supersedes our remedial order in *State of California (Department of Corrections & Rehabilitation)*, *supra*, PERB Decision No. 2598-S.

ORDER

It is hereby ORDERED that the State of California (Department of Corrections and Rehabilitation) (CDCR) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with an employee's right to have a union representative present prior to and during an invasive body search, if CDCR and its representatives

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

² The Court of Appeal noted that in California, a public employee is entitled to representational rights not only when an employee reasonably fears discipline, but also in other "highly unusual" circumstances that are not necessarily disciplinary. However, the Court of Appeal further noted that the Board did not reach that issue in this case. (See *State of California (Department of Corrections & Rehabilitation)*, *supra*, PERB Decision No. 2598-S, adopting proposed decision at p. 26, fn. 22 [no need to consider whether invasive body search constituted "highly unusual" circumstances, as CAPT established its claim based on the search's investigatory nature].)

either constitute the appointing authority or are acting as an employer and the employee reasonably fears discipline.

2. Denying California Association of Psychiatric Technicians (CAPT) the right to represent employees in Bargaining Unit 18 prior to and during an invasive body search, if CDCR and its representatives either constitute the appointing authority or are acting as an employer and the employee reasonably fears discipline.

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

1. Within 10 workdays following service of this decision, post copies of the Notice attached hereto as an Appendix at all work locations at California State Prison, Sacramento, where notices to employees represented by CAPT are customarily posted. The Notice must be signed by an authorized agent of CDCR, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means customarily used by CDCR to communicate with its employees in the bargaining unit represented by CAPT. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.³

³ In light of the ongoing COVID-19 pandemic, Respondent shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If Respondent so notifies OGC, or if Charging Party requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. CDCR shall provide reports, in writing, as directed by the General Counsel or designee. All reports regarding compliance with this Order shall be concurrently served on CAPT.

Chair Banks and Member Shiners joined in this Decision.

adequate publication of the Notice, such as directing Respondent to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing Respondent to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing Respondent to mail the Notice to those employees with whom it does not customarily communicate through electronic means.



**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-2047-S, *California Association of Psychiatric Technicians v. State of California (Department of Corrections and Rehabilitation)*, in which all parties had the right to participate, it has been found that the State of California (Department of Corrections and Rehabilitation) (CDCR) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519, subdivisions (a) and (b), when it interfered with its employee's right to be represented by the California Association of Psychiatric Technicians (CAPT) and with CAPT's right to represent employees, by denying the employee's request to be represented by a CAPT representative on July 1, 2015, prior to and during an invasive body search.

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

1. Interfering with an employee's right to have a union representative present prior to and during an invasive body search, if CDCR and its representatives either constitute the appointing authority or are acting as an employer and the employee reasonably fears discipline.

2. Denying CAPT the right to represent employees in Bargaining Unit 18 prior to and during an invasive body search, if CDCR and its representatives either constitute the appointing authority or are acting as an employer and the employee reasonably fears discipline.

Dated: _____

STATE OF CALIFORNIA (DEPARTMENT OF
CORRECTIONS AND REHABILITATION)

By: _____
Authorized Agent

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