

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES	)	
ASSOCIATION, SEIU LOCAL 1000,	)	
	)	
Charging Party,	)	Case No. SA-CE-824-S
	)	
v.	)	Administrative Appeal
	)	
STATE OF CALIFORNIA (DEPARTMENTS OF	)	PERB Order No. Ad-300-S
PERSONNEL ADMINISTRATION, BANKING,	)	
TRANSPORTATION, WATER RESOURCES	)	October 27, 1999
AND BOARD OF EQUALIZATION),	)	
	)	
Respondent.	)	
	)	

Appearances: 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 (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the State of California (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization) (State) to a Board agent's administrative determination concerning compliance with a Board order.

In the administrative determination, the Board agent ordered the State to comply with the Board order in State of California (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization (1998) PERB Decision No. 1279-S (DPA, et al.)). After reviewing the

entire record, including the Board agent's administrative determination, the State's appeal and request for a stay of compliance, and the California State Employees Association, SEIU Local 1000's (CSEA) response thereto, we reverse the administrative determination and find that the State has complied with the Order in DPA, et al..

#### BACKGROUND

In DPA, et al., the Board found that the State violated section 3519(a) and (b) of the Ralph C. Dills Act (Dills Act)<sup>1</sup> when the State of California (Department of Transportation) (Caltrans) adopted a policy that allows employees to use the State's electronic mail system for minimal amounts of personal communication so long as the subject of the communication does not pertain to employee organization matters. It also found that Caltrans, the State of California (Department of Banking) (Banking) and the State of California (Department of Water Resources) (DWR) violated the Dills Act by discriminatorily

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<sup>1</sup>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.

applying other policies. The Board dismissed all other allegations.

As a remedy, the Board ordered the State to:

A. CEASE AND DESIST FROM:

1. Discriminatorily prohibiting Unit 1 members employed by Caltrans, Banking and DWR from such incidental and minimal use of the State's electronic mail system for communication about employee organization activities as those departments permit for other non-business purposes.

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

1. Within ten (10) days following the date this Decision is no longer subject to appeal, post at all work locations where notices to persons employed in Unit 1 customarily are posted, copies of the Notice attached as an Appendix hereto. The Notice must be signed by an authorized agent of the State, indicating the State 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 ensure that this Notice is not reduced in size, altered, defaced or covered by any other material.

2. 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.

On or about October 27, 1998, the State informed the regional director that the three agencies found to have violated the Dills Act in DPA, et al. (Caltrans, Banking and DWR) had initiated the required posting of the notice. On or about February 3, 1999, the State reported by letter to PERB's regional director that those three agencies had satisfied the posting

requirements of the order. On or about February 26, 1999, the regional director issued a letter to the parties indicating that the State had complied with the terms of the order, and that the matter would be considered closed unless CSEA objected within 10 days. CSEA did object, and the State responded.

On or about June 30, 1999, the regional director issued an administrative determination in which he found that compliance had not occurred because statewide posting was required.

#### STATE'S APPEAL AND CSEA'S RESPONSE

The State contends that the remedial posting should be limited to the three specific agencies that were found to have violated the Dills Act (i.e., Caltrans, Banking and DWR). CSEA responded by supporting the Board agent's determination that statewide posting is required.

#### DISCUSSION

In the underlying decision, DPA, et al., the Board found that three individual departments (Caltrans, Banking, and DWR) violated the Dills Act in specified ways.<sup>2</sup> The sole issue is whether statewide posting is required, or whether posting in just

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<sup>2</sup>The Board specifically found that: (1) Caltrans violated the Dills Act when it adopted a policy that allows employees to use the State's electronic mail system for minimal amounts of personal communication but prohibits such use when the subject of the communication pertains to employee organization matters; and (2) Caltrans, Banking and DWR violated the Dills Act by discriminatorily applying other neutral policies in a way that prohibits communication about employee organization business while permitting other personal communication. These discriminatory actions interfered with the rights of employees to participate in the activities of employee organizations and the right of CSEA to communicate with its members.

those three departments is sufficient.

When the Board orders posting as a remedy, it typically orders that a notice be posted for a certain period of time in appropriate locations at the premises of the employer to notify employees of the conduct that was found to be unlawful. (Zerger, California Public Sector Labor Relations (1999) Chapter 42, sec. 42.21[2][a], p. 42-7, fn. 5, citing Jefferson School District (1980) PERB Decision No. 133; Pittsburg Unified School District (1984) PERB Decision No. 318a.) The purpose of such a posting is to ensure that all employees affected by a decision are notified of their rights under the statute and of PERB's findings regarding violations of those rights. (Placerville Union School District (1978) PERB Decision No. 69.) Posting also serves to notify the affected employees that the controversy has been resolved and announces the employer's readiness to comply with the ordered remedy. (Davis Unified School District, et al. (1980) PERB Decision No. 116.)

Systemwide posting has been ordered on occasion even though the violation occurred at a single worksite. However, this type of remedy typically occurs in a case which involves the interpretation of contract language that applies to an entire unit of represented employees. (See, e.g., State of California (Department of Mental Health) (1990) PERB Decision No. 840-S, p. 5, fn. 3, in which the Board ordered statewide posting because the violation to be remedied concerned contract language applicable to the entire unit, whose members are employed on a

systemwide basis; The Regents of the University of California (1990) PERB Decision No. 826-H, p. 13, in which the Board ordered systemwide posting despite the fact that the violation occurred on a single campus because the violation to be remedied by the posting order concerned contract language applicable to the entire unit, whose members were employed at all University campuses; see also, Trustees of the California State University (1988) PERB Order No. Ad-174-H, p. 2.)

The cited cases are readily distinguishable from the case at bar. In those cases, the Board sought to remedy a violation which affected an entire bargaining unit. Here, by contrast, the issue was the legality of three particular agencies' policies and/or the application of those policies to employees of those agencies. The charge does not identify or challenge a statewide policy. It does not claim that the agencies' policies had a unitwide effect. It does not claim that any other agency's policy violated the Dills Act, beyond the named agencies.<sup>3</sup> Accordingly, the remedy applies only to the three agencies whose policies and application of those policies were at issue in the case and were found to be unlawful.<sup>4</sup>

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<sup>3</sup>We note that the State of California (Board of Equalization) was originally named as a respondent and the Board dismissed allegations related to that agency. Hence, it would be inappropriate to order posting at the Board of Equalization.

<sup>4</sup>The argument has been made that wider posting is desirable to convey the results of a PERB decision to a broader audience for purposes of instruction and guidance. Although we conclude that the facts here do not justify statewide publication for that purpose, we note that the State of California (Department of Personnel Administration) voluntarily informed all State agencies

Posting only at those three agencies serves the traditional purposes for posting; i.e., it notifies employees of the unlawful conduct; it publicizes PERB's ruling on the controversy to employees who are affected; and it notifies those employees that the employer is ready to comply with the ordered remedy.

Perhaps most importantly, in finding a violation in DPA, et al., it was the Board's intent that posting occur only at Caltrans, Banking and DWR, not statewide. That posting occurred, and the Board hereby finds that compliance has been achieved.

#### ORDER

The administrative determination is hereby REVERSED and the Public Employment Relations Board ORDERS that the State of California (Departments of Transportation, Banking, and Water Resources) has complied with the Order in State of California (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization) (1998) PERB Decision No. 1279-S.

Chairman Caffrey and Member Dyer joined in this Decision.

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of the Board's decision in DPA, et al. in the form of an informational memo.