STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1000, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF DEVELOPMENTAL SERVICES), Respondent.	Case No. SA-CE-1850-S PERB Decision No. 2234-S January 31, 2012

Appearances: Daniel Luna, Staff Attorney, for Service Employees International Union, Local 1000; Department of Personnel Administration by Jennifer M. Garten, Labor Relations Counsel, for State of California (Department of Developmental Services).

Before McKeag, Dowdin Calvillo and Huguenin, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Service Employees International Union, Local 1000 (SEIU) of a Board agent's partial dismissal (attached) of its unfair practice charge. The charge, filed February 16, 2010, alleged that the State of California (Department of Developmental Services) (State) violated section 3519(c) of the Dills Act[1] by: (1) unilaterally transferring work out of the bargaining unit; (2) failing to negotiate in good faith about the installation of

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

surveillance cameras at the Porterville Developmental Center (PDC); and (3) failing to negotiate in good faith about SEIU's request for information.[2]

On February 16, 2011, the Board agent partially dismissed the charge. In the dismissal letter, the Board agent concluded that: (1) the charge failed to allege as a threshold matter that Unit 15 employees, represented by SEIU, had previously and exclusively performed the transferred work; (2) the State's alleged refusal to bargain occurred outside the six-month statute of limitations; (3) regarding the State's responses, within the timeframe of April 16, 2009 and October 27, 2009, to SEIU's request for information, the charge failed to allege with sufficient facts how the State's responses were not in good faith; and (4) regarding the State's responses after October 27, 2009 to SEIU's request for information, SEIU did not respond to the State's claim of confidentiality, and thus failed to show that the State was unwilling to bargain. The Board agent partially dismissed SEIU's allegation that the State failed to negotiate in good faith about SEIU's request for information.[3]

We have reviewed the entire record in this matter. Based on this review and applying the relevant law, we find the Board agent's warning and dismissal letters to be well-reasoned, adequately supported by the record and in accordance with the applicable law. Accordingly, the Board adopts the warning and dismissal letters as the decision of the Board itself, subject to the discussion below regarding SEIU's appeal.

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[2] On May 19, 2010, SEIU filed a request for injunctive relief. The Board denied that request on May 24, 2010.

[3] The Board agent issued a complaint on SEIU's allegation that the State failed to respond to two items of information requested by SEIU.

DISCUSSION

On appeal, SEIU argues that the Board agent erred in dismissing its allegation that: (1) the State unilaterally transferred work out of the bargaining unit; and (2) the State failed to negotiate in good faith about the installation of surveillance cameras at the PDC.[4] We address SEIU's arguments on appeal in turn.

SEIU Has Not Established A Prima Facie Case That The State Unilaterally Transferred Work Out Of The Bargaining Unit

On appeal, SEIU argues that the Board agent erred in dismissing its allegation that the State unilaterally transferred work out of the bargaining unit. SEIU's appeal asserts that the Board agent failed to consider SEIU's allegation that the Unit 15 bargaining unit members were historically assigned monitoring duties. We disagree.

Relying on the Board's decision in *Eureka City School District* (1985) PERB Decision No. 481, the Board agent concluded that the charge failed to allege as a threshold matter that Unit 15 employees had "previously" and "exclusively" performed the transferred work. In the partial dismissal letter, the Board agent explained adequately that camera-monitoring work was a completely new duty that neither bargaining unit had performed in the past. SEIU has provided no information on appeal that changes this conclusion. We concur with the Board agent's findings and affirm the Board agent's dismissal of this allegation.

The State's Alleged Refusal To Bargain About The Effects Of The Installation Of The Camera System Is Barred By The Six-Month Statute Of Limitations

On appeal, SEIU argues that the Board agent erred in dismissing its allegation that the State failed to negotiate in good faith about the installation of surveillance cameras at the PDC. SEIU's appeal asserts that the State's refusal to bargain about the cameras did not come until

[4] SEIU does not argue in its appeal that the Board agent erred in dismissing allegations related to SEIU's request for information.

December 2009 and, since SEIU filed its charge on February 16, 2010, the State's refusal to bargain and SEIU's subsequent charge fall within the six-month statute of limitations. We disagree.

Dills Act section 3514.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The Board agent found that sometime prior to April 16, 2009, SEIU had requested to bargain over the camera-related work and that sometime prior to April 16, 2009, the State had refused to bargain over the camera-related work. Relying on section 3514.5(a)(1), the Board agent concluded in the warning letter that since SEIU filed its charge on February 16, 2010 and the State refused to bargain sometime prior to April 16, 2009, nine months had elapsed between the State's first refusal to bargain and the date SEIU filed the charge. As such, the Board agent found that the State's alleged refusal to bargain about the camera-related work did not fall within the six-month statute of limitations.

The record demonstrates that SEIU sent a letter to the State on April 16, 2009 entitled "2nd Written Request [to bargain]." Because SEIU's letter dated April 16, 2009 indicates that it is a second request to bargain, it appears that prior to April 16, 2009, SEIU made an initial demand to bargain.[5] The record further shows that on December 9, 2009, SEIU made a third request to bargain. However, as stated in the warning letter, the second and third requests to bargain reiterate SEIU's first, pre-April 16, 2009 demand. There were no allegations that

[5] The record does not contain a copy of the first demand. Nor does the charge allege what, if anything, the State said or did in response to the first demand.

circumstances had changed between the first, second, or third demand.[6] For these reasons, we affirm the Board agent's dismissal of this allegation.

ORDER

The unfair practice charge in Case No. SA-CE-1850-S is hereby DISMISSED IN PART WITHOUT LEAVE TO AMEND.

Members McKeag and Dowdin Calvillo joined in this Decision.

[6] In the absence of changed circumstances, subsequent demands to bargain about a prior change do not constitute new violations so as to bring the dispute within the statute of limitations. (*San Dieguito Union High School District* (1982) PERB Decision No. 194.)

STATE OF CALIFORNIA EDMUND G. BROWN JR., Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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February 15, 2011

Daniel Luna, Staff Attorney
SEIU Local 1000
1551 E Shaw #139
Fresno, CA 93710

Re: *Service Employees International Union Local 1000 v. State of California (Department of Developmental Services)*
Unfair Practice Charge No. SA-CE-1850-S
PARTIAL DISMISSAL

Dear Mr. Luna:

SEIU Local 1000 (SEIU) filed the above-referenced unfair practice charge with the Public Employment Relations Board (PERB or Board) on February 16, 2010. The charge alleges that the State of California (State), Department of Developmental Services (Department), violated section 3519(c)of the Dills Act[1] by: (1) unilaterally transferring work out of the bargaining unit; (2) failing to negotiate in good faith about the installation of surveillance cameras at Porterville Developmental Center (PDC); and; (3) failing to negotiate in good faith about SEIU's request for information.[2]

In a Warning Letter dated January 4, 2011, PERB advised you that certain allegations contained in the charge did not state a prima facie case, including the "transfer of work" allegation. PERB advised you that if there were any factual inaccuracies or additional facts that would correct the deficiencies, you should amend the charge by January 24, 2011. Per your request, PERB extended that deadline to January 31, 2011, and February 4, 2011, respectively. SEIU filed an amended charge on February 4, 2011.

The original charge clearly shows that both the peace officers and the security guards performed "monitoring" duties and that the "allocation" of those duties between bargaining units fluctuated over time. The amended charge attempts to address this problem by asserting the security guards traditionally performed the greater portion of the duties. The amended

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and PERB Regulations may be found at www.perb.ca.gov.

[2] On May 19, 2010, SEIU filed a request for injunctive relief. The Board denied that request on May 24, 2010. Also, in a prior related case, PERB found that SEIU had not demanded to negotiate the effects of the State's decision to install surveillance cameras at PDC. (See *State of California (Department of Developmental Services & Office of Protective Services)* (2009) PERB Decision No. 2062-S.)

charge does not, however, deny that the proportion of duties fluctuated over time. Also, regardless of the exact proportion of duties at any point in time, the fact remains that camera monitoring was a completely new duty that neither bargaining unit had performed in the past. Accordingly, the facts alleged in the amended charge do not alter the Warning Letter's "transfer of work" analysis.

The amended charge also includes three declarations from employees who participated in, or were otherwise involved with, negotiations. By way of example, Megan Lane declares that during a bargaining session on March 23, 2010, SEIU asked the Department "what analysis" it had done concerning the safety "effectiveness" of the cameras. The Department refused to answer, claiming that SEIU was attempting to bargain the Department's "decision" to install cameras, not the "effects" of that decision. Also, Robert Johnson and Richard Chavez declare that Jo Ann Juarez-Salazar—the SEIU representative responsible for PDC—told them she had sent certain "information requests" to the Department in December 2009, and that, as of May 10, 2010, Johnson and Chavez "believed" that the Department had not "provided the information." These factual declarations, along with the other assertions in the declarations, do not change the Warning Letter's analysis regarding the "requests for information."

Accordingly, except for the request for information allegation mentioned in footnote 9 of the Warning Letter, PERB hereby dismisses the charge as amended and it does so for the reasons discussed in this letter and in the Warning Letter.

Right to Appeal

Pursuant to PERB Regulations,[3] Charging Party 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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 during a regular PERB business day. (Cal. Code Regs, tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB 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. (Cal. Code Regs, tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
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. (Cal. Code Regs, tit. 8, § 32635, subd. (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 Cal. Code Regs., tit. 8, § 32140 for the required contents.) The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs, tit. 8, § 32135, subd. (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. (Cal. Code Regs, tit. 8, § 32132.)

Final Date

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

Sincerely,

WENDI L. ROSS
Interim General Counsel

By _____
Harry J. Gibbons
Senior Regional Attorney

Attachment

cc: Jennifer Garten, Attorney

HG

PUBLIC EMPLOYMENT RELATIONS BOARD

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January 4, 2011

Daniel Luna, Staff Attorney
SEIU Local 1000
1551 E Shaw #139
Fresno, CA 93710

Re: *Service Employees International Union Local 1000 v. State of California (Department of Developmental Services)*
Unfair Practice Charge No. SA-CE-1850-S
PARTIAL WARNING LETTER

Dear Mr. Luna:

SEIU Local 1000 (SEIU) filed the above-referenced unfair practice charge with the Public Employment Relations Board (PERB or Board) on February 16, 2010. The charge alleges that the State of California (State), Department of Developmental Services (DDS), violated section 3519(c)of the Dills Act[1] by: (1) unilaterally transferring work out of the bargaining unit; (2) failing to negotiate in good faith about the installation of surveillance cameras at Porterville Developmental Center (PDC) and; (3) failing to negotiate in good faith about SEIU's request for information.[2]

BACKGROUND AS ALLEGED

State Bargaining Unit 15 (Unit 15) includes security guards at PDC. SEIU is the exclusive representative of Unit 15. State Bargaining Unit 7 (Unit 7) includes peace officers at PDC. SEIU is not the exclusive representative of Unit 7.

1. Transfer of Bargaining Unit Work

According to the charge, the classifications of security guard and peace officer were both "created to provide security and surveillance duties" at PCD and other "developmental centers." The security guards "monitor" developmental centers and "prevent escape or illegal entry of unauthorized individuals." Similarly, peace officers are responsible for "patrolling and protecting buildings" and "checking for unauthorized movement and breaches of security." Peace officers also "monitor client and visitor activities." The charge continues as follows:

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and PERB Regulations may be found at www.perb.ca.gov.

[2] On May 19, 2010, SEIU filed a request for injunctive relief. The Board denied that request on May 24, 2010.

> Some times, particular safety/security duties have been allocated to Unit 15 employees while in other instances they have been allocated to Unit 7 peace officers. Moreover, in some instances duties have been reassigned from one group to another.

Prior to 2009, DDS did not operate surveillance cameras at PDC. Thus, neither the security guards nor the peace officers had traditionally operated such cameras. In 2009, DDS installed surveillance cameras at PDC. On some unspecified date in 2009, DDS assigned the peace officers the exclusive responsibility for operating the surveillance cameras. DDS assigned the camera work to the peace officers even though it had, according to the charge, "represented to [Unit] 15 security guards [that] they would be trained to operate the new equipment."

If the charge is interpreted in the light most favorable to SEIU, the charge asserts that DDS transferred bargaining unit work from Unit 15 to Unit 7 when it assigned the camera work to the peace officers.

2. The Surveillance Cameras at PDC

(a) The Prior PERB Decision

In 2007, Jo Ann Juarez-Salazar was the SEIU representative responsible for Unit 15 employees at PDC. (See *State of California (Department of Developmental Services & Office of Protective Services)* (2009) PERB Decision No. 2062-S (*DDS*).) On December 21, 2007, Juarez-Salazar demanded to bargain about the State's inchoate plan to install surveillance cameras at PDC. (*Ibid.*) On February 19, 2008, SEIU filed a PERB charge alleging that DDS had failed to bargain about the cameras. PERB issued a complaint on March 6, 2008 alleging that DDS had failed to bargain the "effects" of its decision to install the cameras and a PERB Administrative Law Judge (ALJ) conducted an evidentiary hearing. (*Ibid.*) As of the date of the hearing—July 17, 2008—DDS had not yet installed any cameras. (*Ibid.*)

On March 24, 2009, the ALJ dismissed the complaint, finding that Juarez-Salazar had failed to make a "valid request" to bargain the "effects" of the State's decision to install the cameras. Specifically, the ALJ found that Juarez-Salazar's had not "identified any specific identifiable effects" in her demand to bargain. (*Ibid.*, citing *Beverly Hills Unified School District* (2008) PERB Decision No. 1969 (*Beverly Hills*). On September 14, 2009, the Board affirmed the ALJ's dismissal. (*DDS, supra*, PERB Decision No. 2026, pp. 1-2.)

(b) The Current PERB Charge

In 2009, Juarez-Salazar was still the SEIU representative at PDC. On or about March 24, 2009,[3] Juarez-Salazar observed security cameras at PDC. According to the charge, SEIU was "concerned about the effects of the installation of [those] cameras." On April 16, Juarez-

[3] Hereafter, all references are to 2009, unless otherwise noted.

Salazar sent a letter to the State's bargaining representatives, including Patricia Flannery, demanding to bargain about the cameras. The letter is entitled "2nd Written Request [to Bargain]."[4] Interpreting Juarez-Salazar's second demand in the light most favorable to SEIU, Juarez-Salazar demanded to bargain the effects that the cameras might have on employee "performance, monitoring, attendance, discipline, privacy, and safety." Juarez-Salazar demanded an "immediate" meeting to discuss the matter. The State did not immediately respond.

On May 1, Juarez-Salazar again wrote to Flannery, stating that she had not received a response to her second demand to bargain. Juarez-Salazar asked Flannery to "immediately" respond to her demand or SEIU "will pursue all available legal recourse." The State did not immediately respond.

However, based on a State letter *dated* May 5, and *received* by SEIU on December 9 (the belated letter),[5] it is clear that the State (1) believed that it had already bargained "all of the [camera-related] issues" over "which SEIU [was] requesting to meet and confer" and (2) the State was refusing to bargain any further. Specifically, the belated letter stated that:

> The Department believes that it has addressed all of the [camera-related] issues presented in which SEIU is requesting to meet and confer.

The belated letter also asserts that the State had told SEIU—*prior to April 16*—that it was refusing to bargain about the camera-related issues.

In a letter dated December 9, Juarez-Salazar reiterated her prior demands to bargain about camera-related issues. In a response dated December 17, Patrick Gage, a Labor Relations Officer with the State, reiterated the position the State had taken prior to April 16. Specifically he insisted that "there were no changes to negotiate over."

3. Request for Information

On April 16, Juarez-Salazar sent the State a letter requesting 20 individually numbered items of information (Information Request). Juarez-Salazar asked for a response by April 30, 2009. The State did not respond by April 30. On May 1, Juarez-Salazar sent the State a short, follow-up letter. The State's belated letter—which SEIU received on December 9—contained

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[4] Because Juarez-Salazar's letter dated April 16, is entitled "2nd Written Request [to Bargain]," it appears that, prior to April 16, Juarez-Salazar made a "first" demand to bargain. The charge does not contain a copy of the first demand. Nor does the charge allege what, if anything, the State said or did in response to the first demand.

[5] At this stage of the proceedings, PERB accepts as true SEIU's allegation that—although the State's letter is *dated* May 5—SEIU *did not receive* the letter until December 9. (*Golden Plains Unified School District* (2002) PERB Decision No. 1489.)

a detailed response to all 20 items. But, as will be discussed below, the belated letter was *not* the State's first or only response to the Information Request.

(a) The State's First Responses—May 1 to October 27

In a letter dated October 27, Juarez-Salazar complained to Flannery as follows:

> The responses provided by your office [in reply to the Information Request] have been vague, ambiguous and illusive.

It is clear from this language that SEIU received some "responses" from the State between May 1 and October 27.[6] However, neither Juarez-Salazar's letter of October 27, nor the charge describe the content of those "responses." Thus, it is unclear *what* the parties said to each other between May1 and October 27, and which, if any, of the 20 items in the Information Request remained at issue on October 27. Accordingly, the current record lacks *factual* allegations on which PERB can conclude that the State's first "responses" were "vague, ambiguous and illusive."

(b) The State's Subsequent Responses—December 3

In her letter dated October 27, Juarez-Salazar again asked for the 20 items listed in the Information Request.[7] She also asked for seven additional items.

Flannery responded in a letter dated December 3. Flannery first identified the 20 items that had appeared in the Information Request. She then asserted that she had adequately addressed each of those items in a letter dated May 5—the so-called belated letter—a copy of which she enclosed.[8] Flannery then answered four of the seven "new" requests.

Flannery, however, refused to answer three of the "new" requests, although she gave a reason for each refusal. One of the "new" requests asked the State to provide a copy of the

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[6] Although the State's belated letter contained detailed responses to each of the 20 items in the Information Request, Juarez-Salazar could *not* have been referring to those "responses" because—as the charge alleges—Juarez-Salazar did not receive those "responses" until December 9.

[7] Although Juarez-Salazar confused matters by assigning different numbers to some of the original 20 items. (Compare Information Request, Request Nos. 15-20 and Letter dated October 27, Request Nos. 22-27 (identical requests, different numbers).)

[8] The belated letter gave a detailed answer to each of the 20 items in the Information Request. Juarez-Salazar did not respond to the belated letter, so it appears that the State has answered, either directly or through its subsequent actions, all 20 items listed in the Information Request.

"Implementation Monitoring System Pilot Information." In response, Flannery explained to Juarez-Salazar that the requested document was "the system manual" and that the manual contained "confidential and sensitive" information. Flannery declined to release the manual because its release would, in her opinion, create "a safety and security risk at PDC."

Juarez-Salazar did not respond to Flannery's letter dated December 3.[9]

DISCUSSION

1. Transfer of Bargaining Unit Work

In determining whether a party has violated Dills Act section 3519(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143, pp. 21-22.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (*Grant Joint Unified High School District* (1982) PERB Decision No. 196, p. 9.)

The transfer of work from bargaining unit employees to those in a different bargaining unit is a subject within the scope of representation. (*Rialto Unified School District* (1982) PERB Decision No. 209, p. 6.) To "prevail on a transfer of work theory," the charging party "must establish as a threshold matter" that its bargaining unit had "previously" and "*exclusively* performed" the duties at issue. (*Eureka City School District* (1985) PERB Decision No. 481, p. 15 (emphasis in original) (*Eureka*).)

The work at issue in this case is the operation and monitoring of the surveillance cameras. The charge shows that the State started using cameras in 2009. It further shows that once the State started using the cameras, it assigned all of the camera-related work to the peace officers. Thus, the charge fails to allege as "a threshold matter" that Unit 15 employees had "previously" and "exclusively" performed the camera-related work. (*Eureka*, *supra*, PERB Decision No. 481, p. 15.)

Further, if it is assumed for the sake of discussion that the work at issue can generally be considered "security" work, and not just "camera-related" work, it is undisputed that the security work traditionally "overlapped" the two bargaining units. For instance, the security guards "monitor[ed]" the developmental centers and "prevent[ed] escape or illegal entry of unauthorized individuals," while the peace officers "patrol[ed] and protect[ed] buildings" and "check[ed] for unauthorized movement and breaches of security." Additionally, the State would occasionally reassign the security duties "from one group to another." Where, as in this

[9] PERB will address Flannery's refusal to answer the remaining two "new" requests in a separate document.

case, unit and non-unit employees traditionally have performed "overlapping" duties, the employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work that non-unit employees perform and decreasing the quantity of work that unit employees perform. (*Eureka*, *supra*, PERB Decision No. 481, p. 15.) Thus, assuming that "camera-related" and "security" work are one and the same, the State merely adjusted "overlapping" duties and was therefore under no obligation to bargain the adjustment (*Ibid.*)

Accordingly, for the reasons discussed above, the charge does not establish an illegal transfer of work.

2. Refusal to Bargain about the Effects of the Cameras

Provided certain conditions are met, an employer commits an unfair practice when it refuses to bargain the "effects" of an otherwise non-negotiable decision. (See *Beverly Hills*, *supra*, PERB Decision No. 1969, p. 10.) However, PERB is prohibited from issuing a complaint based on conduct that occurred more than six months before the charge was filed. (Gov. Code, § 3514.5(a)(1); *Coachella Valley Mosquito and Vector Control District* v. *Public Employment Relations Board* (2005) 35 Cal.4th 1072, 1077 (*Coachella*).) The limitations period begins to run once the charging party knows, or should have known, about the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177, p. 4.) A charging party bears the burden of demonstrating that the charge is timely filed. (*Tehachapi Unified School District* (1993) PERB Decision No. 1024, p. 4; *State of California (Department of Insurance)* (1997) PERB Decision No. 1197-S.)

The record in this case shows that at some point prior to April 16, Juarez-Salazar made her "first" demand to bargain about the camera-related work. The record further shows that sometime prior to April 16, the State had refused to bargain based on its belief that it had "addressed all of the [camera-related] issues." On April 16, Juarez-Salazar sent the State a "2nd Written Request [to Bargain]," camera-related issues. In the State's belated response—which is dated May 5, but which SEIU did not receive until December 9—the State bluntly refused to bargain as follows:

> The Department believes that it has addressed all of the [camera-related] issues presented in which SEIU is requesting to meet and confer.

However, that blunt refusal was not the State's first. Rather, the State was simply *quoting* from an even earlier refusal—a refusal that pre-dates April 16. Thus, based on the current record, it appears that prior to April 16, Juarez-Salazar had demanded to bargain the camera-related work and that sometime *prior to April 16*, the State had flatly refused to do so, insisting that it had already "addressed all of the [camera-related] issues."

SEIU filed the charge on February 16, 2010. The State had refused to bargain sometime prior to April 16, 2009. Thus, at least nine months elapsed between the State's *first* refusal to bargain and the date SEIU filed the charge. Accordingly, the charge is barred by the six-month statute of limitations. (Gov. Code, § 3514.5(a)(1); *Coachella*, *supra*, 35 Cal.4th at p., 1077.) (

Granted, Juarez-Salazar made a second demand to bargain on April 16, and a third demand to bargain on December 9, the date she received the belated letter. But these subsequent demands simply reiterate her first, *pre-April 16* demand. There is no allegation that circumstances had changed between the first, second, or third demand. In the absence of changed circumstances, subsequent demands to bargain about a prior change do not constitute *new* violations so as to bring the dispute within the statute of limitations. (*San Dieguito Union High School District* (1982) PERB Decision No. 194, p.10.)

Accordingly, the State's alleged refusal to bargain about the camera-related work occurred sometime before April 16 and thus it falls outside the six-month statute of limitation. PERB therefore lacks jurisdiction over this part of the charge. (*Coachella, supra*, 35 Cal.4th 1072, 1082.)

3. Request for Information

It is a charging party's responsibility to allege a "clear and concise statement of the *facts* and conduct alleged to constitute an unfair practice." (Cal. Code Regs., tit. 8, § 32615(a)(5) (emphasis added).) That means the charge must allege the "who, what, when, where and how" of an unfair practice. (*United Teachers-Los Angeles (Ragsdale)* (1992) PERB Decision No. 944 (*Ragsdale*).) Mere legal conclusions are not sufficient to state a prima facie case. (*Ibid.*; *Charter Oak Unified School District* (1991) PERB Decision No. 873.)

The exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 13 (*Stockton*).) PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (*Trustees of the California State University* (1987) PERB Decision No. 613-H, p. 13.) Failure to provide such information is a per se violation of the duty to bargain in good faith.

Notwithstanding the liberal standard, an employer can refuse to release information that is otherwise "relevant and necessary" if, for example, it will impose burdensome costs on the employer, or the release will compromise employee privacy rights. (*Los Rios Community College District* (1988) PERB Decision No. 670, p. 13 (*Los Rios*); *Modesto City Schools and High School District* (1985) PERB Decision No. 479, p. 11.) However, the employer must affirmatively assert its concerns and then both parties must bargain in good faith to ameliorate those concerns. (See, e.g., *Los Rios, supra*, PERB Decision No. 670, pp. 10-12 (employer bargained in good faith by offering to delete social security numbers from requested document).) The employer cannot simply ignore a union's request for information.

(a) The State's Responses Between April 16 and October 27

In this case, Juarez-Salazar requested 20 items of information on April 16. Between April 16 and October 27, the State provided certain "responses" to that request. The charge alleges that those responses were "vague, ambiguous and illusive," but the charge does not provide sufficient *facts* from which one can conclude "what" it was about the "responses" that rendered

them vague and/or ambiguous. The charge, in other words, alleges a conclusion. As the authorities make clear, conclusions are insufficient to establish a prima facie violation. (Cal. Code Regs., tit. 8, § 32615(a)(5); *Ragsdale*, *supra*, PERB Decision No. 944; (charge must allege "who, what, when, where and how," not just conclusions).)

Accordingly, the charge fails to establish that the State ignored an information request, or refused to bargain about an information request, between April 16 and October 27.

(b) The State's Subsequent Responses

In her letter dated October 27, Juarez-Salazar again asked for the 20 items listed in the Information Request dated April 16. However, in that same letter, Juarez-Salazar admits that the State had already provided "responses" to at least some of the 20 items in the Information Request,—although, as discussed above, the charge fails to allege the specific facts surrounding those "responses."

Additionally, in her letter dated December 3, Flannery provided detailed responses to the list of 20 items. But Juarez-Salazar did not respond, thus leaving the record unclear as to which, if any, of the 20 items remained at issue in December. Accordingly, this part of the charge fails to show that the State refused to provide, or bargain about, the 20 listed items.

However, in her letter dated October 27, Juarez-Salazar asked for seven "new" items. In her response letter dated December 3, Flannery provided information on four of the seven "new" items. Flannery's responses to these four items appear on their face to be adequate. Also, Juarez-Salazar did not object to these four responses. Thus, based on the current record, this part of the charge fails to show that the State refused to provide, or bargain about, the four items.

Finally, in her letter dated October 27, Juarez-Salazar had asked—for the first time—that the State provide a copy of the "Implementation Monitoring System Pilot Information. Flannery explained to Juarez-Salazar that the requested document was "the system manual" and that the manual contained "confidential and sensitive" information. Flannery declined to release the manual because its release would, in her opinion, create "a safety and security risk at PDC." Stated differently, Flannery affirmatively stated her concerns about releasing the entire document. (*Los Rios*, *supra*, PERB Decision No. 670, pp. 10-12.)

Having stated her concerns, it was incumbent on both parties to bargain in good faith about how to ameliorate those concerns. Juarez-Salazar, however, did not respond to Flannery. Thus, although Flannery refused to release the entire document, citing security concerns, this part of the charge fails to show that Flannery was unwilling to bargain about how the parties might ameliorate those concerns. Accordingly, this part of the charge fails to show that the State refused to bargain about the system manual.[10]

[10] In her letter dated December 3, Flannery refused to provide information on two additional items. As noted above, PERB will address those two items in a separate document.

CONCLUSION

For these reasons, the parts of the charge discussed above do not state a prima facie case.[11] If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, Charging Party may 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 an authorized agent of 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 an amended charge or withdrawal is not filed on or before January 24, 2011,[12] PERB will dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Harry J. Gibbons
Senior Regional Attorney

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[11] A prima facie case is established where the Board agent can determine that the facts as alleged state a legal cause of action and that the charging party is capable of providing admissible evidence to support the allegations. (*Eastside Union School District* (1984) PERB Decision No. 466.) If, after investigation, the factual allegations are in conflict or the parties assert contrary theories of law, then due process demands that a complaint be issued and the matter be sent to formal hearing." (*Ibid.*)

[12] A document is "filed" on the date the document is **actually received** by PERB, including if transmitted via facsimile. (PERB Regulation 32135.)