

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

CALIFORNIA UNION OF SAFETY
EMPLOYEES,

Charging Party,

v.

STATE OF CALIFORNIA (DEPARTMENT OF
DEVELOPMENTAL SERVICES),

Respondent.

Case No. SA-CE-1337-S

PERB Decision No. 1614-S

April 5, 2004

Appearance: Linda M. Kelly, Legal Counsel, for California Union of Safety Employees.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California Union of Safety Employees (CAUSE) of a Board agent's dismissal (attached) of its unfair practice charge. The charge alleged that the State of California (Department of Developmental Services) (DDS) transferred work previously performed by CAUSE to another bargaining unit in violation of the Ralph C. Dills Act (Dills Act)¹.

The Board has reviewed the entire record in this matter, including the unfair practice charge, the warning and dismissal letters and CAUSE's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself, subject to the discussion below.

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

DISCUSSION

First, CAUSE repeats its assertion that providing security at State Personnel Board (SPB) hearings held on DDS facilities is the exclusive domain of its unit.² However, this assertion is contradicted by the charge itself and the applicable class specifications. Specifically, the classification of peace officers, developmental centers is charged with “maintaining law and order on developmental center grounds.” However, this duty is shared with the classification of officer, California Highway Patrol (CHP), which includes “. . . law enforcement and police protection plans for State officers, employees, and properties; and develops and administers training in crime prevention, employee protection . . .” Thus, at a minimum, the Board agent correctly found that providing security at SPB hearings is an overlapping duty between CAUSE and the CHP.

Next, CAUSE asserts that its members are better suited to provide security for SPB hearings because they are unarmed. CAUSE implies that having armed officers on DDS facilities poses special concerns. However, CAUSE’s appeal admits that the concern over unarmed officers relates to their contact with residents of the developmental centers. Here, there is no allegation that residents would be included in the SPB hearing or would otherwise be in close proximity. Rather, the charge alleges that the SPB hearing involved a DDS employee who had made threats of violence.

Given the overlapping duties, the Board finds that DDS did not violate the Dills Act by choosing to use CHP officers instead of CAUSE members. Such a decision is not negotiable

²The appeal also includes an assertion that this matter is not deferrable to arbitration. However, neither DDS nor the Board agent raised this issue below. Accordingly, the Board makes no finding as to deferral.

because CAUSE, though given a second opportunity, failed to allege any negotiable impact on its members. Accordingly, the charge must be dismissed.

ORDER

The unfair practice charge in Case No. SA-CE-1337-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

Dismissal Letter

October 22, 2002

Linda M. Kelly, Legal Counsel
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (Department of Developmental Services)
Unfair Practice Charge No. SA-CE-1337-S
DISMISSAL LETTER

Dear Ms. Kelly:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 10, 2002. The California Union of Safety Employees alleges that the State of California (Department of Developmental Services) violated the Ralph C. Dills Act (Dills Act)¹ by unilaterally transferring work out of the bargaining unit.

I indicated to you in the attached letter dated October 8, 2002, that the above-referenced charge did not state a prima facie case. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you 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 October 16, 2002, the charge would be dismissed.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my October 8, 2002 letter.

Right to Appeal

Pursuant to PERB Regulations,² 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.

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

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than 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 _____
Robin W. Wesley
Regional Attorney

Attachment

cc: Robert J. Allen

Warning Letter

October 8, 2002

Linda M. Kelly, Legal Counsel
California Union of Safety Employees
2029 H Street
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (Department of Developmental Services)
Unfair Practice Charge No. SA-CE-1337-S
WARNING LETTER

Dear Ms. Kelly:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on April 10, 2002. The California Union of Safety Employees alleges that the State of California (Department of Developmental Services) violated the Ralph C. Dills Act (Dills Act)¹ by unilaterally transferring work out of the bargaining unit. We discussed this charge on September 18 and October 4, 2002.

CAUSE is the exclusive representative of bargaining unit employees in the Peace Officer, Developmental Center classification. Employees in this classification serve as hospital police officers at facilities such as the Sonoma Developmental Center (SDC) which is administered by the Department of Developmental Services. Employees in this classification are responsible for maintaining law and order on developmental center grounds. Hospital police officers are not permitted to carry a firearm in the course of their duties. The California Highway Patrol is also charged with providing security at State facilities.

At some point in early 2002, the SDC took adverse action against an employee. There were some safety concerns based on the employee's "contentious behavior" and threats of violence. As a result, on an unspecified date, a CHP officer was dispatched to be present at the employee's Skelly hearing.

Thereafter, SDC officials made arrangements for a CHP officer to be present at the employee's April 4, 2002 State Personnel Board hearing scheduled to be held at SDC.

Based on the facts stated above, the charge fails to state a prima facie case.

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.

In determining whether a party has violated the 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.) 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. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

PERB has held that the transfer of work from bargaining unit employees to those in a different or no bargaining unit is a subject within the scope of representation. (Rialto Unified School District (1982) PERB Decision No. 209.) However, not all transfers of bargaining unit work are negotiable. In Eureka City Schools (1985) PERB Decision No. 481, the Board held that a change in the distribution of duties between unit and non-unit employees, where there is an established practice of overlapping duties, does not always give rise to a duty to bargain. In Eureka, the Board stated that:

In our view, in order to prevail on a unilateral transfer of work theory, the charging party must establish, as a threshold matter, that duties were, in fact, transferred out of the unit; that is, that unit employees ceased to perform work which they had previously performed or that nonunit employees began to perform duties previously performed exclusively by unit employees. However, where, as here, unit and nonunit employees have traditionally had overlapping duties, an employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work which nonunit employees perform and decreasing the quantity of work which unit employees perform. [Emphasis in original; footnote omitted.]

A duty to bargain may still be found where there are negotiable effects such as a reduction of hours in the bargaining unit positions (Id.) or if unit employees cease to perform the overlapping work. (Calistoga Joint Unified School District (1989) PERB Decision No. 744.)

The charge alleges that the State transferred work exclusively performed by hospital police officers to CHP officers when it arranged for CHP officers to be present at a Skelly hearing and a SPB hearing at the SDC facility. CAUSE contends that hospital police officers provide security at developmental center facilities to the exclusion of all other law enforcement with the exception of mutual aid situations. However, CHP officers are also charged with maintaining law and order on State property and responding as necessary. The parties' MOU does not contain language which provides that hospital police officers exclusively provide security at developmental center facilities. Thus, the charge demonstrates overlapping duties between hospital police officers and CHP officers in maintaining law and order on State property. As discussed above, under Eureka a change in the distribution of overlapping duties

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performed by different bargaining units does not demonstrate an unlawful transfer of bargaining unit work. Thus, the charge must be dismissed.

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 amended charge or withdrawal from you before October 16, 2002, I shall dismiss your charge. If you have any questions, please call me at (916) 327-8385.

Sincerely,

Robin W. Wesley
Regional Attorney

Attachment