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-1621-S PERB Decision No. 2130-S September 20, 2010

Appearance: Carroll, Burdick & McDonough by Gregg McLean Adam and Jonathan Yank, Attorneys, for California Correctional Peace Officers Association.

Before Dowdin Calvillo, Chair; McKeag and Wesley, Members.

DECISION

DOWDIN CALVILLO, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California Correctional Peace Officers Association (CCPOA or Union) to the proposed decision of an administrative law judge (ALJ). The amended complaint alleged, in relevant part, that the State of California (Department of Personnel Administration) (State or DPA) violated the Ralph C. Dills Act (Dills Act)[1] by: (1) implementing the terms of its last, best and final offer (LBFO) for a three year duration; and (2) failing to implement the activist release time (ART) provision of the LBFO.[2] The ALJ

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

[2] The amended complaint also alleged that DPA violated the Dills Act by failing to implement the State Vice-Presidents Leave (SVPL) provision of the LBFO. The ALJ ruled this issue had been resolved by DPA's subsequent implementation of the provision retroactive to September 18, 2007. CCPOA did not except to this ruling and we therefore do not address the SVPL allegation in this decision. (PERB Reg. 32300(c); PERB regs. are codified at Cal. Code Regs., tit. 8, sec. 31001 et seq.)

found that DPA did not implement the LBFO for a three year term and that CCPOA had waived its right to pursue the ART allegation by entering into a Union Paid Leave (UPL) Agreement with DPA.

The Board has reviewed the proposed decision and the record in light of CCPOA's exceptions and supporting brief, and the relevant law. Based on this review, the Board affirms the ALJ's dismissal of the amended complaint for the reasons discussed below.

FACTUAL BACKGROUND

CCPOA is the exclusive representative of employees in State Bargaining Unit 6. CCPOA and the State were parties to a memorandum of understanding (MOU) with a term of July 1, 2001 through July 2, 2006.

Section 2.12 of the MOU, entitled "Union Activity Related to Collective Bargaining," stated, in relevant part:

> The State shall annually provide the amount of release time to CCPOA for activity related to collective bargaining pursuant to the parties' agreement of December 11, 2001.

CCPOA's Chief of Labor Relations, Stephen Weiss, testified that approximately 500 CCPOA members used release time under this section, commonly referred to as ART, to attend the Union's annual two-day training conference.

Negotiations for a successor MOU began in May or June 2006. On May 10, 2007, DPA filed with PERB a request for impasse determination and appointment of a mediator. PERB certified impasse and appointed a mediator on May 17.

On August 22, 2007, CCPOA withdrew from mediation. Later that day, DPA submitted a voluminous package offer to the Union. DPA proposed to "rollover" section 2.12, the ART provision, without language changes. Proposed section 15.01, Salaries, included a five percent general salary increase for all Bargaining Unit 6 employees on July 1, 2007,

July 1, 2008, and July 1, 2009. Proposed section 27.03, Term of MOU, provided for a three year term effective upon ratification of the MOU by CCPOA membership and the Legislature, with the MOU to expire on June 30, 2010.

On September 12, 2007, DPA Deputy Director of Labor Relations Julie Chapman (Chapman) informed CCPOA by letter that the State had received the Union's rejection of the August 22 offer. Enclosed with the letter were modifications to some of the proposals in the August 22 offer. Chapman's letter stated that these modified proposals, along with any section of the August 22 offer not replaced with one of the enclosed proposals, constituted the State's LBFO. Sections 15.01, Salaries, and 27.03, Term of MOU, were included in the enclosed proposals; the language of each remained the same as in the August 22 offer. Section 2.12, ART, was not listed among the September 12 modifications.

On September 17, 2007, CCPOA rejected the State's LBFO. On September 18, Chapman advised the Union by letter that:

> [p]ursuant to the Ralph C. Dills Act, Government Code Section 3517.8, the State is exercising its right to implement all three years of its last, best and final offer as indicated in the attached table and subject to Legislative funding of expenditures.

The table/implementation plan stated at the top of each page: "Only the items listed below from the State's LBF are being implemented." Section 15.01, Salaries, was included in the table/plan; sections 2.12, ART, and 27.03, Term of MOU, were not on the table/plan.

DPA's September 18, 2007 letter also stated, "In the absence of a contract, union paid leave, among other things, no longer exists as the parties have previously understood it." Chapman testified that any paid union leave provisions calling for CCPOA to reimburse the State required an agreement with the Union and therefore could not be imposed unilaterally by

the State as part of its LBFO implementation.[3] Her September 18 letter informed CCPOA that if the Union executive leadership wanted to remain off work outside an institution or facility, CCPOA was to contact Chapman by September 25 "to discuss how this could be accomplished extra-contractually."

Upon receiving the September 18, 2007 letter, CCPOA's outside counsel, Gregg McLean Adam (McLean Adam), immediately contacted Chapman to discuss the continued release of CCPOA's executive leadership for union activity. During the ensuing negotiations with DPA, which eventually led to the UPL Agreement, McLean Adam proposed the following language be included in the agreement:

> CCPOA agrees that for the duration of this agreement it will not file any federal or state litigation against the State employer, CDCR or DPA or any representative thereof, alleging that the ending of VPL, RTB, Chapter Presidents' Release Day and UPL through the implementation of the LBFO was designed to interfere with or retaliate for CCPOA's associational activity. CCPOA will retain the right to continue to prosecute its Dills Act claims about the ending of VPL, RTB, Chapter Presidents' Release Day and UPL in front of PERB.

The final UPL Agreement signed by representatives of CCPOA and DPA requires CCPOA to reimburse the State for the total compensation cost of both long and short term union leave for CCPOA officials and members. Paragraph 21 of the agreement provides:

> CCPOA waives any claim that the State violated any provision of law, contract, or past practice by requiring the union to reimburse the State for the release of union members or by implementing the State's LBFO that ended various forms of union leave. Nothing in this agreement shall be construed as an admission by either party or used as evidence in any pending action as of the date of this agreement. If this agreement is ended by the State within 180 days of the execution of this agreement this waiver will also end (unless the State's basis for ending the agreement is CCPOA's failure to timely pay amounts owing under this

[3] There were multiple forms of paid union leave in the expired MOU, some paid by the State and others paid by the Union.

> agreement); if, however, this agreement lasts at least 180 days, then the waiver will become permanent.

McLean Adam testified that, by agreeing to paragraph 21, CCPOA did not intend to waive any Dills Act claims then pending at PERB but only future litigation in federal or state court alleging that the State's elimination of union leave constituted retaliation for CCPOA members' exercise of their constitutional right of association.

On December 7, 2007, PERB's Office of the General Counsel issued a complaint in this case which alleged, in relevant part, that DPA violated the Dills Act by "implementing terms and conditions for a three-year duration."[4] On December 13, DPA withdrew the second and third years of its economic proposals from the implemented terms of the LBFO.

On March 17, 2008, CCPOA moved to amend the complaint to add an allegation that DPA violated the Dills Act by failing to implement the ART provision of the LBFO. On April 16, the General Counsel issued an amended complaint incorporating this allegation.

Meanwhile, on April 11, 2008, McLean Adam requested by letter that DPA return to the bargaining table and negotiate both economic and non-economic items ahead of the state budget. McLean Adam referred to the State's withdrawal of its second and third year economic proposals on December 13, 2007, and asserted that the existing one year economic proposal expired at the end of Fiscal Year 2007-2008.

On May 7, 2008, DPA invited CCPOA to "sunshine" a proposal for economic terms of a new MOU on May 22. On May 8, McLean Adam replied that CCPOA wished to bargain a new MOU and would use the offered sunshine date. The parties stipulated that CCPOA did

[4] On this same date, the General Counsel dismissed all of the allegations in the charge except for the allegations that implementation of the LBFO for three years and elimination of SVPL violated the Dills Act. The Board affirmed the partial dismissal in *State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2017-S.

not sunshine a proposal on May 22, 2008, or on any date thereafter, and that the parties have not resumed bargaining for a successor MOU.

ALJ's Proposed Decision

Regarding the allegation that the State unlawfully implemented its LBFO for a three year term, the ALJ found no Dills Act violation because: (1) the State did not implement LBFO section 27.03, Term of MOU; and (2) the Legislature did not authorize expenditures for the salary increases in each of the three years of the LBFO. As for the ART issue, the ALJ found that elimination of ART was not "reasonably comprehended" within the LBFO, which proposed to rollover section 2.12 of the MOU without changes. Nonetheless, the ALJ found that CCPOA waived any right to continued ART leave by signing the UPL Agreement in November 2007. On these grounds, the ALJ dismissed the amended complaint and underlying unfair practice charge.

CCPOA's Exceptions

CCPOA excepts to the ALJ's conclusions on both allegations. CCPOA argues that an employer commits an unfair practice by unilaterally imposing terms and conditions of employment for a set duration and that DPA in fact imposed its LBFO for a three year term because it did not withdraw implementation of the non-economic terms for years two and three of the LBFO. Regarding ART, CCPOA contends that the State was required to implement section 2.12 of its LBFO because DPA did not propose elimination of that type of leave during bargaining. CCPOA further asserts that the UPL Agreement did not waive CCPOA's right to continue to pursue Dills Act claims over elimination of union leave that were pending at the time the agreement was signed in November 2007.

DISCUSSION

"Once impasse is reached either party may refuse to negotiate further and the employer is free to implement changes reasonably comprehended within its last, best and final offer. However, impasse suspends the parties' obligation to bargain only until changed circumstances indicate that an agreement may be possible." (*Rowland Unified School District* (1994) PERB Decision No. 1053.)

These basic principles are codified in section 3517.8, subdivision (b) of the Dills Act, which states in full:

> 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. Implementation of the last, best, and final offer does not relieve the parties of the obligation to bargain in good faith and reach an agreement on a memorandum of understanding if circumstances change, and does not waive rights that the recognized employee organization has under this chapter.

The amended complaint alleged that DPA acted contrary to this subdivision, and therefore violated Dills Act section 3519, subdivision (c),[5] by: (1) implementing its LBFO for a three year term; and (2) failing to implement section 2.12, the ART provision of the LBFO. We address each of these allegations in turn.

[5] Dills Act section 3519, subdivision (c) states in full: "It shall be unlawful for the state to . . . [r]efuse or fail to meet and confer in good faith with a recognized employee organization."

1. Implementation of LBFO for Three Year Term

CCPOA contends in its exceptions that implementation of a LBFO for a set duration is per se an unfair practice. In support of this contention, CCPOA relies upon *Roosevelt Memorial Medical Center* (2006) 348 NLRB 1016. In that case, the employer implemented a two year term of agreement provision contained in its LBFO. (*Id.* at p. 1033.) The National Labor Relations Board (NLRB) found that by implementing this provision, the employer "in effect attempted to place the other imposed conditions beyond the reach of collective bargaining for that period." (*Id.* at p. 1017.) Because implementation of the term of agreement provision impaired the union's statutory right to bargain should the impasse be broken during the term, the NLRB held that the employer violated the National Labor Relations Act (NLRA).[6] (*Ibid.*)

PERB addressed this same issue in *Rowland Unified School District, supra.* There, the school district bargained to impasse with its teachers' union and then implemented its LBFO, which contained the following provision:

> "Except where otherwise specifically indicated, the terms and conditions of employment shall be effective July 1, 1992 through August 31, 1993, and from year to year thereafter unless and until modified pursuant to the provisions of the Educational Employment Relations Act (EERA).[7] This implementation resolves negotiations affecting the 1992-93 school year except as follows: [The Association] and the District may select up to two subjects for meeting and negotiating in connection with the 1992-93 school year."

[6] The NLRA is codified at 29 U.S.C. section 151 et seq.

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

Consistent with the doctrine that the parties' bargaining rights and obligations continue after implementation upon impasse, the Board observed:

> an employer may not, following impasse, unilaterally impose a waiver/limitation of an exclusive representative's statutory right to bargain. Such a waiver/limitation of the statutory right to bargain may only occur within the context of a mutually agreed collective bargaining agreement.

The Board then held that an employer may lawfully implement a term of agreement provision contained in its LBFO because such a provision, standing alone, does not act as a waiver of the union's bargaining right for the specified period. The Board did, however, find that the limitation of bargaining to two subjects during the specified period violated EERA.

This case is easily distinguishable from *Roosevelt Memorial Medical Center*, *supra*, and *Rowland Unified School District*, *supra*, because DPA did not implement the term of agreement provision contained in its LBFO. DPA's September 18, 2007 letter to CCPOA stated that "the State is exercising its right to implement all three years of its last, best and final offer as indicated in the attached table and subject to Legislative funding of expenditures." LBFO section 27.03, Term of MOU, which would have made the MOU effective from the date of ratification until June 30, 2010, was not included in the table/implementation plan attached to the letter. Thus, DPA did not implement the LBFO's term of agreement provision.

CCPOA argues that the above quoted language from DPA's letter indicates that DPA implemented its LBFO for a three year term notwithstanding the omission of section 27.03 from the implementation plan. Chapman testified she intended the quoted language to mean DPA would implement LBFO provisions in the attached table that provided for wage or benefit increases at certain times during the proposed three year term if the Legislature approved the

expenditures.[8] The Legislature did not authorize funding for the first year of any of these proposals and the parties stipulated that DPA withdrew the economic proposals for the second and third years of its LBFO on December 17, 2007.[9] Thus, the record establishes that DPA never implemented any LBFO term that depended upon a three year MOU duration.

CCPOA also contends that DPA implemented the LBFO for a three year term because it did not withdraw the second and third year non-economic proposals from the implementation plan. However, nothing in the record indicates that DPA intended to implement non-economic proposals for any specific period of time. Therefore, DPA's failure to withdraw those proposals from its implementation plan does not indicate DPA implemented the LBFO for a three year period.

Nevertheless, even if DPA did implement its LBFO for a three year term, the record does not establish that implementation had any effect on CCPOA's right to bargain should impasse be broken. Unlike the term of agreement provision in *Rowland Unified School District*, *supra*, LBFO section 27.03 did not limit the subjects over which the parties could negotiate during the term of the implemented proposals. Moreover, DPA did not indicate that it would refuse to bargain over any negotiable subject during the term of the LBFO. Indeed,

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[8] The only LBFO provisions in the table/implementation plan that fall within this category are: Section 13.01, Health Benefit Plan; Section 14.04, Uniform/Uniform Accessories Replacement Allowance; Section 15.01, Salaries; Section 15.02, Recruitment Incentive; Section 15.08, Night Shift Differential/Weekend Differential; and Section 15.13, Recruitment – Avenal, Ironwood, Chuckawalla Valley, Calipatria, and Centinela State Prisons.

[9] DPA's withdrawal of its second and third year economic proposals in response to the amended complaint was apparently based on the premise that implementation of a LBFO for more than a one year term is an unfair practice. This premise appears to originate from *Rowland Unified School District*, *supra*, in which the Board found implementation of a one year term of agreement lawful. The Board's holding, however, was not based on the length of the term but rather on the effect the implemented term provision had on the union's bargaining rights. Hence, the inquiry in a case involving implementation upon impasse of a term of agreement provision is whether the provision has the effect of waiving or limiting the union's statutory right to bargain.

DPA responded to CCPOA's offer to resume successor MOU negotiations by inviting the Union to sunshine its economic proposals. Consequently, assuming that DPA implemented its LBFO for a three year term, implementation did not waive or limit CCPOA's right to bargain should impasse be broken during that period.

Because DPA neither implemented its LBFO for a three year term (or any other specific term), nor unilaterally waived or limited CCPOA's statutory right to bargain, we affirm dismissal of the allegation that DPA unlawfully implemented its LBFO for a three year term.

2. Failure to Implement ART Provision

a. Waiver of ART Allegation

As noted above, the ALJ concluded that CCPOA waived any "right to continued ART leave" by signing the UPL Agreement in November 2007. CCPOA contends that the UPL Agreement did not waive any pending Dills Act claims regarding DPA's elimination of union leave but only waived CCPOA's right to pursue litigation alleging that DPA's action was taken in retaliation for CCPOA members' exercise of constitutional rights. For the following reasons, we conclude that CCPOA waived its right to pursue the ART allegation.

Dills Act section 3514.5, subdivision (a) grants any employee organization the right to file an unfair practice charge. It is undisputed that CCPOA is an "employee organization" as defined in section 3513, subdivision (a) of the Dills Act. Thus, CCPOA has a statutory right to file a charge alleging that DPA's failure to implement the ART provision of the LBFO constituted an unfair practice.

A union's waiver of a statutory right must be "clear and unmistakable" and will not be lightly inferred. (*Placentia Unified School District* (1986) PERB Decision No. 595; *Amador Valley Joint Union High School District* (1978) PERB Decision No. 74.) Where contract language constitutes a clear and unmistakable waiver of rights, the waiver will be given effect

without consideration of extrinsic evidence such as bargaining history. (*Amador Valley Joint Union High School District*, *supra*; *Marysville Joint Unified School District* (1983) PERB Decision No. 314.)

DPA asserts that the following language in Paragraph 21 of the UPL Agreement constitutes a waiver of CCPOA's right to pursue the ART allegation in the amended complaint:

> CCPOA waives any claim that the State violated any provision of law, contract, or past practice by requiring the union to reimburse the State for the release of union members or by implementing the State's LBFO that ended various forms of union leave. Nothing in this agreement shall be construed as an admission by either party or used as evidence in any pending action as of the date of this agreement.

We agree that, by executing the UPL Agreement containing this language, CCPOA waived its right to file an unfair practice charge over DPA's failure to implement the ART provision of the LBFO.[10] CCPOA contends that the waiver does not apply to the ART allegation because this charge was pending at the time the UPL Agreement was executed in November 2007. However, CCPOA did not amend the complaint to add the ART allegation until March 2008. Because the ART allegation was not pending at the time the agreement was executed, it is subject to the waiver provision of the UPL Agreement and must be dismissed.

b. Failure to Implement ART Provision of LBFO

Even if CCPOA had not waived its right to pursue the ART allegation, we would dismiss the allegation nonetheless because DPA's failure to implement the ART provision did not violate the Dills Act.

[10] Because we find the plain language of Paragraph 21 constitutes a clear and unmistakable waiver, we need not consider McLean Adam's testimony about the bargaining history of the UPL Agreement. (See *Barstow Unified School District* (1996) PERB Decision No. 1138 [PERB may only examine bargaining history when contract language is ambiguous].)

In *State of California (Department of Personnel Administration)* (2008) PERB Decision No. 1985-S, the Board addressed DPA's failure to implement the fair share fee provision of the same September 12, 2007 LBFO at issue in this case. Relying on Dills Act section 3517.8, subdivision (b), which allows the State to "implement any or all of its last, best, and final offer," the Board held that "the State is not required to implement the entire LBFO." The Board then affirmed dismissal of CCPOA's allegation that DPA violated the Dills Act by failing to implement the fair share fee provision. The Board reached this conclusion even though DPA's proposal was merely to rollover the fair share fee provision from the expired MOU.

The facts in this case are virtually identical to those in *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 1985-S; the only difference, that the prior case involved a fair share fee provision while this one involves a union leave provision, is without legal significance. Accordingly, we hold that DPA did not violate the Dills Act by failing to implement the ART provision of the LBFO upon impasse.

Without addressing the Board's prior decision on this issue,[11] CCPOA argues that PERB should follow case law under EERA in this case. Specifically, CCPOA relies upon *Laguna Salada Union School District* (1995) PERB Decision No. 1103, in which the Board observed that a post-impasse change cannot be "reasonably comprehended" within the employer's LBFO if it was not discussed during negotiations and is less than the status quo. According to CCPOA, elimination of ART was not reasonably comprehended within DPA's LBFO because the parties never discussed elimination of ART during negotiations and elimination of ART would be less than the status quo.

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[11] *State of California (Department of Personnel Administration)*, *supra*, PERB Decision No. 1985-S issued on November 20, 2008. The hearing in this matter did not take place until October 13 and 14, 2009.

As the Board noted in *State of California (Department of Personnel Administration)* (2009) PERB Decision No. 2017-S, there appears to be tension between the "reasonably comprehended" requirement in EERA cases and the language of the Dills Act when the State has not implemented a provision of its LBFO. Elimination of a benefit that the State proposed to rollover unchanged from the prior MOU appears to fall under the prohibition on implementing changes that are less than the status quo. Yet, as noted, PERB has held that section 3517.8, subdivision (b) does not require the State to implement the entire LBFO.

We resolve this apparent tension by holding that the "reasonably comprehended" requirement only applies to provisions of the LBFO that are actually implemented, as was the case in *Laguna Salada Union School District*, *supra*. To apply the "reasonably comprehended" requirement to LBFO provisions that were not implemented, as CCPOA urges, would eviscerate the plain language of section 3517.8, subdivision (b) granting DPA the authority to implement "any or all" of its LBFO.

We find support for this harmonization of PERB case law with the language of the Dills Act in two places. First, the legislative history of Senate Bill (SB) 683, which added section 3517.8 to the Dills Act, supports PERB's interpretation of the statutory language. Early versions of SB 683 required DPA to submit the entire LBFO to the Legislature upon impasse. (Sen. Amend. to Sen. Bill No. 683 (1999-2000 Reg. Sess.) April 14, 1999.) Upon approval by the Legislature, DPA would be required to implement the entire offer. (*Ibid.*) However, the bill was later amended to include the language currently found in section 3517.8, subdivision (b), which provides that DPA may implement "any or all" of the LBFO and that only provisions which require expenditure of funds or conflict with existing statutes are subject to legislative approval. (Assem. Amend. to Sen. Bill No. 683 (1999-2000 Reg. Sess.) August 30, 2000.) While the legislative history is silent about the reason for this change, the

amendment nonetheless indicates the Legislature did not intend to require DPA to implement the entire LBFO upon impasse.

Second, despite CCPOA's claim that interpreting the Dills Act to allow implementation of some but not all of the LBFO "flies in the face of all pertinent precedent," we find support for PERB's interpretation of section 3517.8, subdivision (b) in both PERB and NLRB case law. In *Charter Oak Unified School District* (1991) PERB Decision No. 873, the Board stated that "when an employer reaches impasse in the entire negotiations, an employer may implement some or all of its proposals and need not place all of them into effect." The NLRB has similarly held that an employer may implement "some or all of its last contract offer" upon impasse. (*Lihli Fashions Corp.* (1995) 317 NLRB 163, 165; *Sage Development Co.* (1991) 301 NLRB 1173, 1175-1176.)

Nonetheless, PERB and NLRB precedent also counsel against interpreting Dills Act section 3517.8, subdivision (b) to grant DPA absolute discretion as to which LBFO provisions it may implement upon impasse. As discussed above, an employer may not implement a provision that waives or limits the union's right to bargain over a particular subject for a specified period of time. (*Rowland Unified School District*, *supra.*) The NLRB has held that an employer may not implement a provision that grants the employer authority to unilaterally change wages without further bargaining. (*McClatchy Newspapers, Inc.* (1996) 321 NLRB 1386, 1390-1391, enforced *McClatchy Newspapers, Inc. v. National Labor Relations Bd.* (D.C. Cir 1997) 131 F.3d 1026.) In each case, the respective board concluded that the employer's unilateral implementation of the provision undermined fundamental principles of collective bargaining.

We find no such harm to CCPOA's bargaining rights here. DPA's failure to implement the ART provision did not preclude CCPOA from bargaining over any term or condition of

employment for a specific period nor did it allow DPA to unilaterally change any term or condition without bargaining. Indeed, CCPOA and DPA's successful negotiation of the UPL Agreement demonstrates that CCPOA's ability to bargain over union leave was not harmed in any way by DPA's failure to implement the ART provision.

In sum, we conclude that Dills Act section 3517.8, subdivision (b) grants the State employer authority to implement "any or all" of its LBFO, provided the implementation does not waive or limit the bargaining rights of the recognized employee organization. Because we find no such waiver or limitation of CCPOA's rights here, we conclude DPA acted pursuant to its statutory authority when it did not implement section 2.12 of the LBFO. This conclusion provides an alternative ground for dismissal of the allegation that DPA violated the Dills Act by failing to implement the ART provision of the LBFO.

ORDER

The amended complaint and underlying unfair practice charge in Case No. SA-CE-1621-S are hereby DISMISSED.

Members McKeag and Wesley joined in this Decision.