STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA UNION OF SAFETY EMPLOYEES,	)	
Charging Party,	)	Case No. S-CE-756-S
v.	)	PERB Decision No. 1145-S
STATE OF CALIFORNIA (DEPARTMENT OF PERSONNEL ADMINISTRATION),	)	March 8, 1996
Respondent.	)	

Appearances: Carroll, Burdick and McDonough by Gary M. Messing, Attorney, for California Union of Safety Employees; Linda A. Mayhew, Labor Relations Counsel, for State of California (Department of Personnel Administration).

Before Caffrey, Chairman; Garcia and Johnson, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on appeal of a Board agent's partial dismissal (attached) of an unfair practice charge filed by the California Union of Safety Employees (CAUSE). In its charge, CAUSE alleged that the State of California (Department of Personnel Administration) (State or DPA) violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)[1] when it unilaterally changed released time rights,

[1]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

transferred the work of the California State Police (CSP) to another bargaining unit and unlawfully delegated responsibility to negotiate from the State to individual departments.[2]

The Board has reviewed the entire record in this case, including CAUSE'S original and amended unfair practice charge, the warning and dismissal letters, CAUSE'S appeal and DPA's response thereto. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

CAUSE'S APPEAL

In dismissing the charge the Board agent concluded that the facts presented by CAUSE allege a unilateral transfer of bargaining unit work rather than an unlawful modification of a bargaining unit. CAUSE addresses only this issue on appeal, contending that the Board agent erred in finding that the State's actions constitute a transfer of bargaining unit work, an allegation which must be deferred to the parties' contractual

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> 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.
>
> (c) Refuse or fail to meet and confer in good faith with a recognized employee organization.

[2]A complaint was issued concerning certain allegations in CAUSE'S charge involving alleged unilateral changes in released time provisions of the parties' memorandum of understanding (MOU).

grievance procedure. Instead, CAUSE argues that the State's actions constitute an unlawful modification of a bargaining unit by transferring Unit 7 CSP positions to Unit 5, which is comprised of California Highway Patrol (CHP) officers. CAUSE states that CSP employees remain in their original positions performing the same Unit 7 duties they did prior to the merger, but claims that the State intends to move these employees to Unit 5 upon completion of certain training. CAUSE contends that PERB has exclusive jurisdiction over this unlawful unit modification, jurisdiction which cannot be deferred or divested. CAUSE argues that the State may not modify a bargaining unit without complying with PERB regulations which specify the procedure for unit modification.

DPA responds by supporting the Board agent's determination that this matter is subject to deferral to the parties' contractual grievance procedure. DPA asserts that CSP positions have been placed under the management and administration of the CHP, but that no classifications have been transferred from Unit 7 to Unit 5. DPA contends that CSP officers will remain in Unit 7 classifications until they participate in the training necessary to make them eligible to transition or promote into a CHP classification. DPA asserts that the provisions of the parties' MOU cover this dispute and, therefore, it is subject to deferral to the parties' grievance procedure.

DISCUSSION

The sole question raised by CAUSE on appeal to the Board is whether the facts alleged in CAUSE'S charge demonstrate that the State unlawfully modified state bargaining units, or whether the facts manifest an alleged unilateral transfer of work from one bargaining unit to another. CAUSE correctly states in its appeal:

> The removal of job classifications from a bargaining unit or the transfer of classifications from one unit to another are governed by PERB regulations. (CAUSE'S appeal, p. 8.)

However, CAUSE does not assert that job classifications are being removed or transferred by the State in this case. Instead, CAUSE states that:

> Although employees in both units are now CHP employees due to the merger, their status as Unit 7 or Unit 5 employees is unaffected. Unit 7 employees continue to perform the same duties and functions as they did prior to the merger, as do Unit 5 employees. (CAUSE'S appeal, p. 4.)

CAUSE then asserts that the State intends to offer training to affected Unit 7 employees, who will become CHP officers and whose positions will be moved to Unit 5 upon the completion of that training.

The allegations presented by CAUSE do not describe a modification of the bargaining units involved. On appeal CAUSE clearly states that the status of the Unit 7 employees has not been affected by the merger. The assertion that the State intends to transfer CSP officers into Unit 5 CHP positions in the

future does not demonstrate that a bargaining unit is being modified by the removal or transfer of job classifications.

In its charge, CAUSE alleges that several Unit 5 CHP officers have been assigned duties that were previously performed by Unit 7 CSP officers, primarily duties of the Bureau of Protective Services. As discussed by the Board agent, these facts demonstrate that the State may have assigned the work previously undertaken by Unit 7 employees to Unit 5 CHP employees, but the reassignment of work does not represent a unit modification. The performance by Unit 5 employees of work previously performed by Unit 7 employees is correctly characterized by the Board agent as an allegation that the State unilaterally transferred work from one bargaining unit to another.

The Board has held that the transfer of work from one bargaining unit to another affects the wages, hours and working conditions of employees in the former unit. (Rialto Unified School District (1982) PERB Decision No. 209.) The parties here specifically agreed in Article 20 of the MOU to negotiate over the impact of any changes in working conditions proposed by the State. Accordingly, a proposal by the State to transfer bargaining unit work is covered by Article 20.

In Lake Elsinore School District (1987) PERB Decision No. 646 (Lake Elsinore). the Board held that section 3541.5(a) of the Educational Employment Relations Act, which contains language identical to Dills Act section 3514.5(a), establishes a

jurisdictional rule requiring that a charge be dismissed and deferred to arbitration if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties.

As correctly determined by the Board agent, the Lake Elsinore deferral standard has been met in this case. First, the grievance machinery provides for resolution of this dispute and culminates in binding arbitration. Second, the conduct complained of in the charge, that the State changed working conditions by unilaterally transferring work to another bargaining unit and refusing to bargain over the change, is arguably prohibited by Article 20. Therefore, PERB is without jurisdiction over this matter and it must be dismissed and deferred to the contractual grievance and arbitration procedure.

CAUSE did not appeal the Board agent's remaining findings. Therefore, it is unnecessary for the Board to address them.

ORDER

The partial dismissal of the unfair practice charge in Case No. S-CE-756-S is hereby AFFIRMED.

Member Johnson joined in this Decision.

Member Garcia's concurrence begins on page 7.

GARCIA, Member, concurring: After review of this case, it is my conclusion that the parties' agreement is susceptible to an interpretation that Article 6 and Article 20 cover the conduct alleged to be an unfair practice and this case must be deferred until the parties exhaust their contractual grievance process.

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3198

October 5, 1995

Gary Messing
Timothy K. Talbot
Carroll, Burdick and McDonough
400 Capitol Mall, Suite 1400
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (Department of Personnel Administration)
Unfair Practice Charge No. S-CE-756-S
PARTIAL DISMISSAL LETTER

Dear Messrs. Messing and Talbot:

The above-referenced charge alleges, in part, that the State of California, Department of Personnel Administration (State) unilaterally changed the released time rights under Article 2.1(e) and 2.9 of its collective bargaining agreement with the California Union of Safety Employees (CAUSE). In addition, the State unilaterally transferred the work of the California State Police to another bargaining unit, refused to bargain over this transfer and the impact of the State's change in released time, and unlawfully delegated responsibility to negotiate from the State to individual departments. This conduct is alleged to violate sections 3519(a), (b), and (c) of the Ralph C. Dills Act.

I indicated to you, in my attached letter dated August 4, 1995, that certain allegations contained in the 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 filed a first amended charge on August 30, 1995.

The amended charge contains much of the same information contained in the original charge. However, the following information or argument is new.

The amended charge argues that the State has unilaterally modified a bargaining unit by placing State Police officers in the Highway Patrol unit (bargaining unit 5). However, this characterization does not match the facts presented, which indicate that there has been no attempt to place the State Police classifications in the Highway Patrol bargaining unit. Rather, employees in the State Police have been made members of the Highway Patrol and given the opportunity to transition in to the Highway Patrol classifications. If an employee chooses to

transition and meets the applicable requirements, he or she would then become a member of bargaining unit 5. These facts and those concerning the assignment of Highway Patrol officers to BOPS describe an alleged transfer of bargaining unit work as discussed in my August 4 letter. This alleged transfer of work is covered by the collective bargaining agreement which was in effect when these events occurred. Accordingly this allegation must be deferred to binding arbitration and dismissed.

Charging party asserts:

> [t]he delegation of bargaining to other departments may result in the presentation of new proposals that were not previously sunshined as required by the Dills Act. The potential for overlapping and inconsistent proposals also make it extremely difficult, if not impossible, for the parties to obtain a "total tentative agreement." (Amended unfair practice charge, p. 15.)

In addition, the charge asserts that delegation is tantamount to an enlargement of the State's bargaining team in violation of the ground rules. These allegations are speculative. There is no evidence that any of these problems have actually occurred. Accordingly, this allegation must be dismissed.

Therefore, I am dismissing the allegations contained in this charge that the State unilaterally changed the released time rights under Article 2.1(e) and 2.9, transferred the work of the California State Police to another bargaining unit, refused to bargain over this transfer and the impact of the State's change in released time, and unlawfully delegated responsibility to negotiate from the State to individual departments based on the facts and reasons contained in this letter and my August 4, 1995 letter.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of certain allegations contained in the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code of Regs., tit. 8, sec. 32635(a).) To be timely filed, the original and five copies of such appeal must be actually received by the Board itself before the close of business (5 p.m.) or sent by telegraph, certified or Express United States mail postmarked no later than the last date set for filing. (Cal. Code of Regs., tit. 8, sec. 32135.) Code of Civil Procedure section 1013 shall apply. The Board's address is:

Public Employment Relations Board
1031 18th Street
Sacramento, CA 95814

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 of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 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.

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 of Regs., tit. 8, sec. 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,

ROBERT THOMPSON
Deputy General Counsel

By
Robert Thompson
Deputy General Counsel

Attachment

cc: Roy Chastain, Esq.

PUBLIC EMPLOYMENT RELATIONS BOARD

Office of the General Counsel
1031 18th Street
Sacramento, CA 95814-4174
(916) 322-3198

August 4, 1995

Gary Messing
Timothy K. Talbot
Carroll, Burdick and McDonough
400 Capitol Mall, Suite 1400
Sacramento, CA 95814

Re: California Union of Safety Employees v. State of California (Department of Personnel Administration)
Unfair Practice Charge No. S-CE-756-S
WARNING LETTER

Dear Messrs. Messing and Talbot:

The above-referenced charge alleges, in part, that the State of California, Department of Personnel Administration (State) unilaterally changed the released time rights under Article 2.1(e) and 2.9 of its collective bargaining agreement with the California Union of Safety Employees (CAUSE). In addition, the State unilaterally transferred the work of the California State Police to another bargaining unit, refused to bargain over this transfer and the impact of the State's change in released time, and unlawfully delegated responsibility to negotiate from the State to individual departments. This conduct is alleged to violate sections 3519(a), (b), and (c) of the Ralph C. Dills Act.

My investigation revealed the following information. CAUSE is the exclusive representative of State bargaining unit 7 which contains approximately 5,700 State employees working in 175 job classifications in over 75 different State agencies and departments scattered at over 740 work locations throughout the State. Of these, 205 are California State police officers and 51 are California State police sergeants.

CAUSE and the State are parties to a collective bargaining agreement with effective dates of July 1, 1992 through June 30, 1995. The contract provides in Article 6 for a grievance process that ends in binding arbitration. Article 20 - Entire Agreement provides a mechanism for notice to CAUSE and bargaining over the impact of changes made by the State during the term of the agreement.

The contract also contains several sections dealing with released time including Articles 2.1 (e) and 2.9. Article 2.1 provides in

relevant part:

> (e) Upon request of a Unit 7 employee a CAUSE representative shall be allowed reasonable release time for the purposes of representing Unit 7 employees in "Skelly" hearings during working hours without loss of compensation, subject to prior notification and approval by his/her immediate supervisor.

Article 2.9 - Employee Organization Release Time provides in pertinent part:

> a. Employees in Unit 7 may use vacation, holiday credit, compensating time off or absence without pay for purposes related to employee organization matters provided such time away from the job does not interfere with employers' [sic] efficient operations. Employees must request release from the appropriate staff manager or designee.
>
> b. Employees may request the department head's approval for leave without pay for up to one (1) year for purposes related to employee organization matters. Such leave without pay would not unreasonably be withheld.

On June 27, 1995 the Office of the Director of the Department of Personnel Administration sent a memorandum to all agency secretaries and department directors which indicates in pertinent part:

> 5. Represented employees may not receive union leave, except where agreed to in negotiation ground rules for union bargaining teams. This means all pending and future union leave requests may <u>not</u> be approved. All current union leave must be terminated, and all represented employees currently on union leave must return to work;
> 6. Union time banks consisting of State donated time off must be terminated, and all represented employees currently on leave using this time must return to work;
> 7. Union time banks consisting of leave time donated by represented employees may not be used, and all represented employees currently using this leave must return to work. Donations of employee leave time cannot be accepted after June 30, 1995, and any balance of donated leave time shall remain in the account until agreements are reached; and

8. The entire agreement clauses of the expired collective bargaining agreement are superseded by Government Code section 3516.5 of the Ralph C. Dills Act. This means that any department proposing a change in a work rule or policy that is within the scope of representation and not a management right, such as budget, layoff, or organization, must obtain Department of Personnel Administration delegation to notice and meet and confer over the policy itself as well as its impact on the terms and conditions of employment of represented employees.

Approximately 4,200 California Highway Patrol officers are included in Bargaining Unit 5 which is exclusively represented by the California Association of Highway Patrolmen (CAHP). California State Police (CSP) responsibilities for protection of life and property and enforcement of State laws on and around State property, including patrol of the State Capitol and other State property, have been exclusively the domain of Unit 7 employees.

Discussion regarding the merger of the CSP and the California Highway Patrol (CHP) began in earnest in 1994. In January and February 1995 CHP officials met with CAUSE representatives and CSP members of Unit 7. CAUSE provided written and oral testimony before the Milton Marks Commission concerning the proposed merger and its effects on Unit 7 on March 3, 1995 and March 16, 1995 respectively. CHP representatives dispute some of the CAUSE statements.

On March 28, 1995, CAUSE representatives attended a meeting with CHP officials and CSP employees. According to CAUSE, CHP officials indicated that after the merger, CSP employees would be moved into Unit 5.

CAUSE and the State did reach agreement on three side letters concerning issues related to the merger. One of these agreements, signed May 16, 1995, states in part that:

CSP officers completing the CHP's Phase III (Advanced Patrol Program) academic training and CSP sergeants completing the CHP's Phase III (Supervisory/Managerial Program) academic training shall be returned and remain in their previous geographical area of assignment with their same duties. CSP officers and sergeants not completing the applicable CHP Phase III training will remain in their current area of geographical assignment with their same duties guaranteed under the Unit 7 Memorandum of Understanding.

At a meeting on May 4, 1995, CAUSE informed both CHP and DPA that it believed all CSP positions should remain in Unit 7 and that the merger would not affect their unit status. CAUSE reiterated this position in a meeting on June 5, 1995, at which time officials from DPA, CHP, and CAHP claimed otherwise. CAUSE asserts that at a June 13th bargaining session, DPA labor relations officer Mike Navarro stated that CHP officers and sergeants would become members of the CHP and move into Unit 5, and that Navarro further stated that the State does not "recognize" work as belonging to a bargaining unit. The merger was effective July 1, 1995.

CHP officers from unit 5 have been hired into positions that have traditionally been held by CSP officers. As early as June 7, 1995, one CHP officer had been assigned to a Bureau of Protective Service (BOPS) position previously occupied by a CSP officer. Later, according to CAUSE, three other CSP officers were transferred out of BOPS to other assignments and were replaced by CHP officers. CAUSE also alleges the governor's security detail on one recent trip was comprised of CHP officers plus one CSP sergeant, while formerly security for the governor was provided exclusively by CSP officers.

The allegations contained in this charge that the State unilaterally changed the released time rights under Article 2.1(e) and 2.9, transferred the work of the California State Police to another bargaining unit, refused to bargain over this transfer and the impact of the State's change in released time, and unlawfully delegated responsibility to negotiate from the State to individual departments do not state a prima facie violation of the Dills Act for the following reasons.

Section 3514.5(a) of the Ralph C. Dills Act (Dills Act) states, in pertinent part, that PERB shall not:

> Issue a complaint against conduct also prohibited by the provisions of the [collective bargaining agreement in effect] between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

In Lake Elsinore School District (1987) PERB Decision No. 646, PERB held that section 3541.5(a) of the Educational Employment Relations Act, which contains language identical to section 3514.5(a) of the Dills Act, established a jurisdictional rule requiring that a charge be dismissed and deferred if: (1) the grievance machinery of the agreement covers the matter at issue and culminates in binding arbitration; and, (2) the conduct complained of in the unfair practice charge is prohibited by the provisions of the agreement between the parties. PERB Regulation 32620(b)(5) (Cal. Code of Regs., tit. 8, sec. 32620(b)(5)) also

requires the investigating Board agent to dismiss a charge where the allegations are properly deferred to binding arbitration.

These standards are met with respect to the allegations that the State unilaterally transferred the work of the California State Police to another bargaining unit and refused to bargain over the transfer contained in this case. First, the grievance machinery of the agreement/MOU covers the dispute raised by the unfair practice charge and culminates in binding arbitration. Second, the conduct complained of in this charge that the State unilaterally transferred the work of the California State Police to Bargaining Unit 5 and refused to bargain over it is arguably prohibited by Article 20 of the MOU.

A unilateral change occurs when an official action has been taken, not a subsequent date when the action becomes effective. State of California(Department of Corrections) (1994) PERB Decision No. 1056-S. CAUSE was notified at several meetings before July 1, 1995 that the State intended to transfer State Police employees to bargaining unit 5. State representative Navarro's alleged refusal to bargain over the transfer occurred on June 13, 1995. Thus, these alleged violations happened during the term of the agreement and are subject to the grievance and arbitration procedure.

Accordingly, these allegations must be deferred to arbitration and will be dismissed. Such dismissal is without prejudice to the Charging Party's right, after arbitration, to seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See PERB Reg. 32661 [Cal. Code of Regs., tit. 8, sec. 32661]; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)

With regard to the alleged unilateral changes in released time, there is no evidence that the Tirapelle memorandum is being interpreted to prevent unit 7 employees from using released time under either Article 2.1(e) or 2.9. This lack of evidence also defeats the allegation that the State has refused to bargain over the meaning or impact of the Tirapelle memorandum. Although the subject of release time was discussed at the July 11, 1995 bargaining session, it is not apparent that the State refused to bargain over this issue. Without more information, these alleged changes do not state a prima facie violation of the Dills Act.

The final allegation to be discussed in this letter concerns the statement in the Tirapelle memorandum that State departments must obtain DPA approval to negotiate with the exclusive representatives over changes. Dills Act section 3513(j) defines the State employer for purposes of bargaining as the Governor or his designated representatives. DPA has acted as that designee. As such, it may delegate this authority to State agencies or departments, at its discretion. There is no evidence that such delegation is either a subject within the scope of bargaining or

that this delegation has interfered with the State's obligation to bargain in good faith. Accordingly, this allegation does not state a prima facie violation of the Dills Act.

If there are any factual inaccuracies in this letter or any additional facts which would require a different conclusion than the one 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 be served on the Respondent and the original proof of service filed with PERB. If I do not receive an amended charge or withdrawal from you before August 14, 1995, I shall dismiss the allegations that the State unilaterally changed the released time rights under Article 2.1(e) and 2.9, transferred the work of the California State Police to another bargaining unit, refused to bargain over this transfer and the impact of the State's change in released time, and unlawfully delegated responsibility to negotiate from the State to individual departments contained in your charge without leave to amend. If you have any questions, please call me at (916) 322-3198.

Robert Thompson
Deputy General Counsel