STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PROFESSIONAL ENGINEERS IN CALIFORNIA GOVERNMENT,	)	
Charging Party,	)	Case No. SA-CE-750-S
v.	)	PERB Decision No. 1227-S
STATE OF CALIFORNIA (DEPARTMENTS OF PERSONNEL ADMINISTRATION AND TRANSPORTATION),	)	November 5, 1997
Respondent.	)	

Appearances; Dennis F. Moss, Attorney, for Professional Engineers in California Government; State of California (Department of Personnel Administration) by Linda M. Nelson, Labor Relations Counsel, for State of California (Departments of Personnel Administration and Transportation).

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the State of California (Departments of Personnel Administration and Transportation) (State) of a PERB administrative law judge's (ALJ) proposed decision. In the proposed decision, the ALJ determined that the State violated the Ralph C. Dills Act (Dills Act)[1] section 3519(b) and (c), finding that the State's

[1]The Dills Act is codified at Government Code section 3512 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3519 states, in pertinent part:

> It shall be unlawful for the state to do any of the following:

representatives failed to freely exchange information with the Professional Engineers in California Government (PECG). After reviewing the entire record, the Board reverses the proposed decision in part and affirms it in part, for the reasons explained below.

BACKGROUND

PECG is the recognized employee organization for State Bargaining Unit 9 - Engineers. In early 1995, the Department of Transportation (Caltrans) managers informed PECG of budget cuts and the potential impact on Unit 9 employees. From January to April 1995, PECG and the State met and conferred several times regarding the effects of layoff. During that process, PECG made a series of information requests of Caltrans, asserting that the information was relevant and necessary for PECG to fulfill its responsibilities under the Dills Act.

Various types of oral and written communications occurred between the parties and Caltrans provided some of the requested information. However, PECG filed the instant unfair practice charge on May 8, 1995, alleging that Caltrans' responses to eleven information requests failed to satisfy Dills Act requirements.

(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.

After a hearing, the ALJ concluded that Caltrans had violated the Dills Act with respect to seven of the eleven information requests. He dismissed allegations relating to the remaining four information requests.

EXCEPTIONS AND RESPONSE

The State excepts to the ALJ's proposed decision on numerous grounds and offers various arguments in support of its position that it committed no unfair practices. The State's arguments fall into several groups, which may be briefly summarized as follows:

(1) Some of the requested information did not exist at the time of the request.

(2) Caltrans exercised reasonable diligence and complied to the best of its ability.

(3) Some of the information was not in its possession, and it had no obligation to contact other agencies to obtain the requested information.

(4) Some of the information was not readily available in the form sought by PECG, and it would have been unduly burdensome to compile it.

(5) The Dills Act does not require employers to provide the thought processes of its directors, since mental impressions do not constitute "information".

(6) Certain requests were vague and overly broad, and PECG failed to provide any specifics or limitations that would assist in the discovery of relevant information.

PECG responded to the exceptions by urging the Board to affirm the proposed decision.

DISCUSSION

First we provide an overview of the general principles we apply in resolving information request cases, although each case turns on the particular facts involved. (Chula Vista City School District (1990) PERB Decision No. 834 (Chula Vista) at pp. 52-53, citing Detroit Edison Co. v. NLRB (1979) 440 U.S. 301 [100 LRRM 2728] .) We then analyze each of the information requests in this case by applying principles that are drawn from established precedent.

General Principles

The Dills Act imposes a duty on parties to meet and confer in good faith on matters within the scope of representation. Stemming from the duty to meet and confer in good faith is the requirement that employers provide the exclusive representative of its employees, upon request, with information that is necessary and relevant to the union's representational obligations. (Stockton Unified School District (1980) PERB Decision No. 143 (Stockton); Chula Vista.)[2] In other words, while an exclusive representative performs a number of functions for the benefit of its membership, its right to obtain

[2]See also, NLRB v. Item Co. (1955) 220 F.2d 956 [35 LRRM 2709] (information must be sought for a purpose that is directly related to the union's function as a bargaining representative and must appear reasonably necessary for the performance of this function); NLRB v. Boston Herald-Traveler Corp. (1954) 210 F.2d 134 [33 LRRM 2435].

information from an employer while performing those functions is not unlimited.[3] An exclusive representative only has the right to obtain information necessary and relevant to its representational obligations under the Dills Act.

Information request charges will be analyzed as follows:

Failure to respond to a request is a violation because the employer cannot simply refuse to provide information or ignore a request (Chula Vista at p. 53).

Information requested that pertains immediately to a mandatory subject of bargaining,[4] is presumptively relevant.[5]

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[3]The same basic fact pattern may provide parties with concurrent, but distinct, rights, duties and remedies that derive from other sources, such as contract, the state or federal constitution, or other statutes (e.g., the Public Records Act or civil rights statutes). It is a fundamental rule that parties must seek relief in the appropriate forum.

[4]See Dills Act section 3516, which limits the scope of representation to "wages, hours and other terms and conditions of employment." These topics are mandatory subjects of bargaining.

[5]We also note that an employer's decision to lay off employees because there is insufficient work or funds to support the work force is a matter of fundamental managerial prerogative and outside the scope of bargaining. (Newman-Crows Landing Unified School District (1982) PERB Decision No. 223 (Newman-Crows Landing); State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S (Personnel Administration).) The employer has no obligation to provide the union with information relating to economic justifications for nonnegotiable decisions. (UOP Inc. 272 NLRB 999 [1117 LRRM 1429] (UOP).)

Hence, in the case at bar, it should be noted that Caltrans' management decision to lay off employees is outside the scope of representation and nonnegotiable, although the effects of the layoff decision are negotiable. (Newman-Crows Landing; Personnel Administration).) Furthermore, an employer must negotiate the "reasonably foreseeable effects" of a nonnegotiable decision, but there is no obligation to meet and confer over those effects which are speculative or indirect. (See, e.g., Lake Elsinore

The burden then shifts to the employer to either provide the information within a reasonable time of the request or overcome the presumption of relevance.[6] (Stockton; Los Angeles Unified School District (1994) PERB Decision No. 1061 (Los Angeles); and Trustees of the California State University (1987) PERB Decision No. 613-H.)

If the requested information does not pertain immediately to a mandatory subject of bargaining, there is no presumption of relevance, and the requestor must show that the requested information is relevant and necessary to its representational responsibilities. (Los Angeles; Reiss Viking (1993) 312 NLRB 622 [145 LRRM 1190]; Duquesne Light Co. (1992) 306 NLRB 1042 [140 LRRM 1079].) In the absence of such a showing, no violation will be found and the allegation is dismissed.

School District (1987) PERB Decision No. 646 at p. 16; and Mt. Diablo Unified School District (1983) PERB Decision No. 373.)

[6]The employer may challenge relevancy by informing the requestor or asking for clarification of the request, since, as noted above, failure to respond constitutes a violation. (Chula Vista.) Even if the employer fails to challenge relevance, the Board may assess relevance in its review because PERB, like the courts, may test for relevancy during analysis of a particular case, regardless of whether the employer disputed relevancy earlier. (Modesto City Schools and High School District (1985) PERB Decision No. 479, at fn. 2, p. 5.)

We decline to hold that an employer waives its right to dispute relevance by failing to do so immediately following a request. In this case, there were numerous oral and written communications between the parties following Caltrans' announcement of its decision to lay off certain employees. It serves no purpose to penalize the employer for failing to challenge relevance at that time in lieu of engaging in communication with the requestor.

The employer may defend its failure to provide information by justifiable circumstances. Examples include the following:

An employer need not comply with an information request that is unduly burdensome or where the requested information does not exist. (Stockton; Chula Vista.) The employer need only comply with portions of the request that clearly ask for necessary and relevant information. (Azabu USA (Kona) Co. (1990) 298 NLRB 702 [134 LRRM 1245] (Azabu).) Although an employer cannot unreasonably delay providing relevant information (Chula Vista at p. 51), the employer need not furnish information in a form more organized than its own records (NLRB v. Tex-Tan. Inc. (1963) 318 F.2d 472 [53 LRRM 2298] (Tex-Tan. Inc.).) If the employer partially complies and the union fails to communicate its dissatisfaction, or to reassert or clarify its request, no violation will be found. (Oakland Unified School District (1983) PERB Decision No. 367 (Oakland USD).)

This case requires a determination of whether the requested information is necessary and relevant to the exclusive representative's Dills Act representational duties. Since information request cases turn on the particular facts involved (Chula Vista), we will analyze the various requests separately by applying the rules presented above.

Request No. I[7]

> 1. The method of calculation of Personnel Year Equivalents (PYEs) allocation provided

[7]Please note that the requests are set forth as articulated by the ALJ.

> to [Caltrans] districts (and any other organizational units).

Caltrans responded to this request, stating that its staff reported that no documents existed to reflect Personnel Year Equivalents methodology.

PECG sought this information to ascertain the impact of the pending layoff on unit members and to formulate its negotiation strategy. The information requested is entitled to the presumption of relevance since it pertains immediately to the subjects of wages and hours, which are mandatory subjects of bargaining.[8]

Caltrans' main defense is its assertion that the information requested did not exist. The ALJ made a credibility determination on this matter and we decline to disturb that determination since it is a well-established principle of PERB caselaw that the Board grants great deference to the ALJ's credibility determinations. This principle recognizes that the ALJ, who conducts the hearing and observes witnesses' testimony, is in a better position to make accurate credibility determinations than the Board which, in an appellate capacity, has only the benefit of the transcripts and record. (Temple City Unified School District (1990) PERB Decision No. 841.) Absent evidence in the record to support overturning the ALJ's credibility determinations, the Board defers to the ALJ's

[8]See also, Newman-Crows Landing (impacts of layoff are negotiable).

findings. (Whisman Elementary School District (1991) PERB Decision No. 868.)

Here, the ALJ observed that PYE reductions could not have spontaneously appeared on Caltrans' documents, reasoning that some methodology must have been used. Finding insufficient evidence to overturn that determination, we defer to the ALJ's conclusion and hold that a violation occurred.

Request No. 2

> 2. Regarding the $163 million for rail projects, the magnitude of the engineering effort which would be involved, and who will do that work.

A Caltrans witness testified that the employer responded to this request by inquiring internally whether any relevant documents existed, then informed PECG that none existed.

PECG apparently sought this information to find out more about Caltrans' plan to retire a rail bond debt by using funds that could otherwise be used to fund the positions of PECG members. It was assumed that Caltrans was prepared to contract out work that could otherwise be performed by PECG members; PECG wanted to know who would do the work instead.

Portions of this request are entitled to the presumption of relevance. This request is entitled to the presumption of relevance only to the extent that it seeks information regarding unit 9 members, since only those portions of the request are relevant and necessary to PECG's negotiating the impacts of layoff on Unit 9 employees, a mandatory subject of bargaining. (Newman-Crows Landing.)

In defense of its failure to comply with the relevant portions of the request, a Caltrans witness testified that the employer did not provide the requested information for several reasons. First, some of the information did not exist at the time of the request. Second, some of the information was in the possession of local agencies rather than the State. Third, in order to comply with this request, Caltrans would have had to gather and compile it from local agencies, and it argues that it has no obligation to do so.

We find these defenses persuasive. Regarding the first two defenses, a violation will not be found where there is no convincing evidence that the requested information existed at the time of the request, since an employer cannot be forced to turn over what it did not possess or what did not exist at the time of the request. (See Chula Vista.) The third defense is also valid, since an employer need not furnish information in a more organized form than that in which it keeps in its own records. (Tex-Tan. Inc.) We hold that these defenses excuse Caltrans from its obligation to provide this information and we find no violation.

Request No. 3

> 3. The historical pattern of additional federal money being made available to states which are plan ready, Caltrans' historical share of such money, whether it can be reasonably anticipated that such money will be available in the upcoming fiscal year, and whether Caltrans will be in a position to take advantage of that opportunity.

There is evidence that Caltrans responded to this request by informing PECG that it exercised reasonable diligence in its attempt to comply, but that its efforts to obtain the requested information were fruitless. Caltrans explained that the information either did not exist at the time of the request, or that to compile it would be unduly burdensome. There is no evidence that PECG, upon receiving this response, attempted to clarify its request in a way that would make compliance less burdensome.

This request does not pertain immediately to any of the mandatory subjects of bargaining. In fact, it appears to seek information regarding the financial basis for Caltrans' nonnegotiable decision to lay off employees. As stated above, Caltrans' decision to lay off employees because there is insufficient work or funds to support the work force is a matter of fundamental managerial prerogative and outside the scope of bargaining. (Newman-Crows Landing; Personnel Administration.) Hence, Caltrans has no obligation to provide the union with information relating to economic justifications for nonnegotiable decisions. (UOP.)

Although PECG is entitled to information it needs to negotiate the effects of layoff, we fail to see how this request would produce that type of information. In addition to seeking economic justification for the layoffs, it seeks information about speculative or indirect effects of layoff. Under the

authorities cited above, that type of request is not entitled to the presumption of relevance.[9]

In such a case, PECG has the burden of showing that the request is relevant. We see no persuasive evidence that this information was necessary and relevant to PECG's representational duties. PECG has not met its burden, and we find no violation.

Request No. 4

> 4. An explanation of why a Caltrans Director letter states that its budget would be "significantly smaller" in 1995/96, while both the Governor's Budget and a departmental Fact Sheet, show an increase in funding of $200 million.[10]

The ALJ found that Caltrans did not respond to this request. Under the authorities cited above, since we do not find evidence

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[9]See footnote 6, supra.

[10]This request is not entitled to the presumption of relevance since it does not pertain immediately to any of the topics listed in Dills Act section 3516 (i.e., wages, hours and terms and conditions of employment). In fact, the subject of this request more closely resembles the subjects expressly excluded from the scope of representation in Dills Act section 3516, which provides in part that:

> . . . the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

In view of the fact that Caltrans had no obligation to provide the requested information, merely the obligation to respond to the request, we expressly limit the remedy for this violation to ordering Caltrans to make some response (upon request by PECG).

in the record sufficient to disturb the ALJ's credibility-determination, we defer to it and find a violation.[11]

Request No. 5

> 5. Any workload measures used in determining staffing needs and allocations for the current and budget years, including any changes in such measures and/or any efficiencies which would affect staffing needs.

This request seeks to obtain information regarding any modifications Caltrans had implemented in its workload standards. Caltrans attempted to find out if there had been any such modifications from a unit known as PYPSCAN which maintained a data base record of historical work project efforts. Unable to locate such information, Caltrans informed PECG. Under Chula Vista. Caltrans has no obligation to provide information which does not exist. Accordingly, we find no violation.

Request No. 6

> 6. Engineering or related work (surveying, etc.) reimbursed by local agencies during the current year; what had been planned for reimbursed work during the budget year; and the current allocation, limitations and rationale for such work, also, if respondent has turned down such work, and/or is not actively soliciting such work as an alternative to potential layoffs, the rationale for these decisions.

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[11]We note that Caltrans offered an explanation during the hearing as part of its defense. However, it is well settled that an employer cannot unreasonably delay providing requested information. (Chula Vista at p. 51.) To offer an explanation long after the request was made, as a defense to an unfair labor practice charge, is tantamount to a refusal to respond and we would find a violation on that basis regardless of the ALJ's credibility determination.

Caltrans responded to PECG that it had made a reasonable effort to obtain the requested information by contacting managers and local agencies, but found nothing.

To the extent that this request seeks "the rationale for these decisions," Caltrans had no obligation to satisfy the request.[12] The remainder of the request is entitled to a presumption of relevance, because it pertains immediately to mandatory subjects of bargaining (hours and availability of work) and to negotiating the impacts of layoff.

Various defenses apply, however. Request No. 6 contains eight separate, broad inquiries with which compliance is likely to be burdensome. Although we emphasize that an employer may not simply refuse to respond if compliance would be burdensome, it need only comply to the extent that the request clearly asks for necessary and relevant information. (Azabu; Stockton.) This request, as phrased, is overly burdensome because it encompasses a broad range of activities and seeks information far beyond what is necessary and relevant for PECG to perform its representational functions. The requester must word information requests as specifically as possible,[13] since the right to information cannot be turned into a broad-ranging fishing expedition.

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[12]See footnote 10, supra.

[13]For example, this request could have been narrowed by listing specific activities typically performed by the affected job classifications PECG represents, rather than using the broad phrase "engineering or related work."

Furthermore, portions of this request target information not yet in existence, and as stated above, a violation cannot be found when that is the case. (Chula Vista.) We find that Caltrans' efforts to respond satisfied its legal obligation, and we find no violation.

Request No. 7

> 7. Any requests, suggestions or recommendations from Caltrans or any local agency for Caltrans or State government to perform engineering or related services (including but not limited to surveying and landscaping architecture) on any state highway or other transportation project since January 1, 1993. For purposes of this request, local agency refers to any governmental unit other than the state or federal government.

Caltrans made a reasonable effort to obtain this requested information by contacting its finance division for any written requests from local agencies for reimbursed work. Caltrans found nothing and notified PECG. Therefore, under Chula Vista, we find no violation.

Request No. 8

> 8. Any document from any source dated on or after July 1, 1994, which requests, proposes, recommends or analyzes the possibility of additional future funding for transportation in California in addition to the funding anticipated in the Governor's budget, not including any measure on the November 1994 ballot.

A Caltrans witness testified that he asked the department's budget program staff whether there were any such documents. They advised him that they did not understand the request, but to the extent that they did understand it, there were no such documents.

Caltrans forwarded the budget program's queries to PECG, asking for further clarification. There was no evidence that PECG ever did so.

Under Oakland USD, no violation will be found if the employer partially complies and the union fails to reassert or clarify its request. Therefore, we find no violation.

Request No. 9

> 9. Detailed information regarding the Caltrans staffing plans, including chart showing the allocations to the districts and headquarters units with numbers of authorized personnel years for administration, capital outlay, etc.

The State complied with this request by providing its current staffing plans to PECG and updating them when necessary. No exceptions address this request.

Request No. 10

> 10. Copies of the request(s) or response(s) from the districts and headquarters' functional units regarding staffing plans, personnel years, etc.

Caltrans responded to this request as part of its response to Request No. 9.

The distinction between this request and Request No. 9 is that in this request, PECG sought the rationale Caltrans used in making its internal staffing allocation decisions, based on the requests received internally. The distinction is significant, since the way in which Caltrans used those requests to develop staffing plans and personnel year figures, etc. is excluded from the scope of bargaining pursuant to Dills Act section 3516. The

result is that this request is not entitled to a presumption of relevance.

PECG has not met its burden of showing that the requested information is necessary and relevant to negotiating the impacts of layoff or any other representational function protected by the Dills Act. Accordingly, we find no violation for this request.

Request No. 11

> 11. A listing of all Unit 9 vacancies filled in any state department or agency, on a monthly basis, beginning on January 10, 1995, including vacancies filled by hiring, transfers, promotions, or any other method.

Caltrans argues in its exceptions that it complied with the request, apparently after the PERB hearing, but it offers no evidence that it responded earlier. As noted above, an employer cannot unreasonably delay providing relevant information (Chula Vista at p. 51), and Caltrans has offered no explanation for the delay. Accordingly, we find a violation.

In summary, the Board hereby dismisses the charge and complaint with regard to request No. 2, 3, 5, 6, 7, 8, 9 and 10. The Board finds that the State committed a violation of Dills Act section 3519(b) and (c) with respect to request No. 1, 4 and 11.

ORDER

Based on the foregoing findings of act, conclusions of law and the entire record in this case, it is found that the State of California (Departments of Personnel Administration and Transportation) (State) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(b) and (c).

Pursuant to Dills Act section 3514.5(c), it is hereby ORDERED that the state employer, its administrators, and representatives shall:

A. CEASE AND DESIST FROM:

1. Denying to the Professional Engineers in California Government (PECG) rights guaranteed to them by the Dills Act.

2. Refusing or failing to meet and confer in good faith with PECG.

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

1. Provide to PECG, upon request, the method of calculation of personnel year equivalents allocation provided to the State (Department of Transportation) districts (and any other organizational units) during the relevant time period.

2. Provide to PECG, upon request, some response to Request No. 4.

3. Provide to PECG, upon request, specified listings of all State Bargaining Unit 9 (Unit 9) vacancies filled in any state department or agency, on a monthly basis, beginning on January 10, 1995, including vacancies filled by hiring, transfers, promotions, or any other method.

3. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees are customarily placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting

shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

4. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions.

Member Johnson joined in this Decision.

Chairman Caffrey's concurrence and dissent begins on page 20.

CAFFREY, Chairman, concurring and dissenting: I concur in the finding that the State of California (Departments of Personnel Administration and Transportation (Caltrans or State) violated the Ralph C. Dills Act (Dills Act) section 3519(b) and (c) by failing to provide to the Professional Engineers in California Government (PECG) information relevant and necessary to PECG's representational responsibilities. I dissent with regard to several of the specific findings of the majority as discussed below. I also write separately to fully describe the circumstances surrounding this case, and to distance myself from portions of the majority analysis.

BACKGROUND

On January 10, 1995, Dave Brubaker (Brubaker), Chief of Caltrans' Office of Labor Relations, sent Bruce Blanning (Blanning), PECG's Executive Assistant, a letter titled "Reduction in Force, Fiscal Year 1995-1996." The letter notified PECG that the Governor's proposed budget established a Caltrans staffing level that was 1,226 Personnel Year Equivalents (PYE) less than the existing level. As a result, Caltrans planned layoffs in unknown classifications. Caltrans offered to discuss impacts and promised to share information as it became available.

The January 10, 1995, letter included several attachments. One attachment, the "1995-1996 Governor's Budget Fact Sheet," states that the budget provides a 1,200 PYE reduction as part of the ongoing commitment to reduce costs and balance staff to a declining workload. Another attachment, a January 10, 1995, memo

to all Caltrans employees, explained that the 1989-1994 hiring of 2,000 additional staff left Caltrans over-staffed when anticipated gas tax and bond measure revenues failed to fully materialize.

The parties met on January 20, 1995, to discuss issues related to the layoff. On January 23, 1995, Blanning wrote Brubaker a letter summarizing information requests which PECG made at the January 20, 1995, meeting. The letter included the following requests:[1]

1. The PYE allocations provided to the Districts (and any other organizational units), their method of calculation, and any instructions on how to develop appropriate responses, such as staffing plans.

2. Whether the $77 million for rail bond debt service, the $163 million to fund rail projects, or other Caltrans funds are being used for purposes which the voter rejected rail bonds would fund. Regarding the $163 million for rail projects, the magnitude of the engineering effort involved and who will do the work.

3. The current and anticipated status of "shelf" work. Also, the historical pattern of additional federal monies being made available to plan ready states, Caltrans historical share of such money, whether such money will be available in the upcoming fiscal year, and whether Caltrans will be in the position to take advantage of that opportunity.

4. Why the Director's January 10 letter states that "Caltrans FY 1995/96 budget is

[x]In this discussion of the facts, all of PECG's requests and Caltrans' responses are summarized in corresponding numerical order. The numbers assigned to the summaries vary from the numbers in PECG's original letters because many of the original requests are not at issue in this case.

significantly smaller than the current fiscal year" and the "Transportation Funding Shortfall Summary" you provided identifies numerous elements of a "funding shortfall," whereas the Governor's Budget and the Fact Sheet show a $200 million increase in Caltrans funding.

5. Any workload measures used in determining staffing needs and allocations for current and budget years. This should include any changes in such measures and/or any efficiencies which would affect staffing needs.

6. Engineering or related work (surveying, etc.) reimbursed by local agencies during the current year; reimbursed work planned during the budget year; and the current allocation, limitations and rationale for such work. If the Department has turned down such work and/or is not actively soliciting such work as an alternative to potential layoffs, please provide relevant information and rationale.

Between January 23 and February 10, 1995, Blanning and Brubaker discussed the information requests. Caltrans indicated that it was working to gather the requested information. At no time did Caltrans refuse to provide the requested information.

On February 10, 1995, Blanning wrote another letter to Brubaker reiterating the requests contained in the January 23, 1995, letter. Blanning requested additional information under the California Public Records Act. The letter contained the following clarifications and additions:

3. Please also include the anticipated amount of federal money available to California and the anticipated date of availability.

6. For "reimbursed" work, please indicate the source of local agency funding (local sales tax/measure work, federal funding, state funding, etc.); specific agencies; specific

identification of the projects and the nature of such work; whether Caltrans made any commitment to reimburse the local agency for such funding in the future; and the cost and PYEs to perform such work.

7. Any request, suggestion, or recommendation from Caltrans or any local agency for Caltrans or state government to perform engineering or related services (including but not limited to surveying and landscape architecture) on any state highway or other transportation project since January 1, 1993. For purposes of these requests, local agency refers to any governmental unit other than the state or federal government.

8. Any document from any source dated on or after July 1, 1994 which requests, proposes, recommends or analyzes the possibility of additional future funding for transportation in California in addition to the funding anticipated in the Governor's budget, not including any measure on the November 1994 ballot.

On February 16, 1995, Blanning met with Brubaker and Caltrans Deputy Director of Finance Martin Kiff (Kiff). The purpose of this meeting was for Kiff to provide PECG with information regarding funding and financial allocations.

On February 28, 1995, Blanning wrote Brubaker a letter expressing his concern that Caltrans had not provided most of the requested information. He states that:

> On February 23, I wrote to you listing questions raised at our January 20 meeting to which you promised to respond. Despite repeated commitments, a response was not received so I made a California Public Records Act request on February 10, expanding somewhat on the questions. The statutorily-mandated response time has long since passed. Some information was received in correspondence on February 9 and 15 and through Mr. Kiff's comments on February 16.

As Brubaker requested, Blanning listed PECG's understanding of Caltrans' responses, or lack of responses. That list included:

1. PYE allocations to the Districts have been provided. The method of calculation has not.

2. PECG believes that the referenced funds are for purposes rejected by the voters in the last two elections. The magnitude of the engineering effort has not been provided.

3. No shelf projects are available and there is no plan to develop any. Unanticipated funding would be used to accelerate projects in future years. Information regarding historical and anticipated additional federal funding was not provided.

4. Although more funding is available in 1995-96 than in 1994-95, there is not enough funding to complete all projects as scheduled.

5. No workload measures have been provided.

6. Caltrans only provided information regarding the total PYEs in the current fiscal year and proposed PYEs for the 1995-96 fiscal year. The Department will lay off workers rather than honor commitments for reimbursed work or seek additional work. "Relevant information" would include the funding Caltrans lost by failing to honor its commitments on reimbursed work and failing to pursue additional work.

7. No information has been provided.

8. No information has been provided.

Brubaker responded to Blanning's January 23, February 10 and February 28, 1995, letters in a March 14, 1995, letter. The response included:

1. Caltrans is researching to determine whether written instructions exist for calculating this information.

2. At this point we have found no documentation, but will research this request further.

3. This question was partially answered by Martin Kiff's February 16, 1995 presentation and "1995-1996 Governor's Budget Major Assumptions." We will further research anticipated federal funding.

4. This issue was addressed in "1995-96 Budget Highlights" and "Responses to Questions Professional Engineers in California Government Asked During Informal Meetings on Proposed Reduction In Force for 1995."

5. We have not been able to locate any documents and will pursue the issue further.

6. Attached is a summary chart. We know of no decision to renege on any commitment on reimbursed work.

7. We are still researching the availability of this information.

8. Our budget staff does not understand this request, please clarify the information you want.

The letter ended:

> . . . many of these questions are not as you seem to believe, basic stuff. They require considerable time to locate, if they exist at all. We will continue to provide you with available information as we receive it.

On March 23, 1995, Blanning wrote a letter to Gloria Moore Andrews (Andrews), Labor Relations Officer for the Department of Personnel Administration, requesting "more detailed information under the Dills Act and the California Public Records Act" and sent Brubaker a copy of the letter. That letter requested the following information:

9. Since the initial allocations to the Districts and the Headquarters units on February 9 included charts which showed authorized PYEs for Administration, Capital Outlays, etc., we request the latest authorizations and people on board to be

provided in that format. We also request copies of the requests and responses from the Districts and Headquarters' functional units regarding staffing plans, PYEs, etc. so we can distinguish between the requests from the Districts and what was finally approved.

10. To verify if Caltrans is filling Unit 9 positions without offering them to other Caltrans employees, pursuant to the Dills and the California Public Records Act, provide PECG with a listing of all unit 9 vacancies filled in any state department or agency, on a monthly basis, since January 10, 1995.

On May 12, 1995, Caltrans and PECG agreed to a document entitled "Reduction in Force Impact Agreements." The document covers details concerning the process Caltrans would follow in its reorganizing and downsizing efforts.

DISCUSSION

The Dills Act imposes a duty to meet and confer in good faith on matters within the scope of representation. Dills Act section 3516 limits the scope of representation to "wages, hours and other terms and conditions of employment." The duty to furnish information stems from the underlying statutory duty to bargain.[2] (Cowles Communications. Inc. (1968) 172 NLRB 1909 [69 LRRM 1100].) The employer's duty to provide information arises when the exclusive representative makes a good faith request for information relevant and necessary to its representational duties. (NLRB v. Boston Herald-Traveler Corp.

[2]Although PECG requested some of the information under the California Public Records Act, this discussion only addresses Caltrans' duty to provide information under the Dills Act.

(1954) 210 F.2d 134 [33 LRRM 2435]; Westinghouse Elec. Supply Co. v. NLRB (1952) 196 F.2d 1012 [30 LRRM 2169].)

Although the employer need not provide information that is not relevant to the union's statutory representational responsibilities, a liberal discovery standard is used to determine relevance. (AGA Gas (1992) 307 NLRB 1327 [141 LRRM 1046]; Chula Vista City School District (1990) PERB Decision No. 834.) Information pertaining immediately to mandatory subjects of bargaining is so intrinsic to the core of the employer-employee relationship that it is presumptively relevant. (Stockton Unified School District (1980) PERB Decision No. 143.)[3]

An employer's decision to lay off employees is nonnegotiable as a matter of fundamental management prerogative. The state's fundamental management prerogative includes the authority to identify the specific component of a state agency subject to reduction. (State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S.) Since there is no duty for the employer to bargain on subjects outside the scope of representation, there is no underlying duty to provide

[3]For example, when the exclusive representative requested information for collective bargaining or contract administration purposes, PERB has found the following information presumptively relevant. (Stockton Unified School District, supra, PERB Decision No. 143 (health insurance data); Trustees of the California State University (1987) PERB Decision No. 613-H (wage survey data); Newark Unified School District (1991) PERB Decision No. 864 (staffing and enrollment projections); and Oakland Unified School District (1983) PERB Decision No. 367 (seniority lists).)

information on those subjects. (Goodyear Tire & Rubber Co. (1993) 312 NLRB 674 [146 LRRM 1055]; BC Industries (1992) 307 NLRB 1275 [140 LRRM 1326].) Therefore, there is no duty to provide information regarding the decision to reduce staff and designate specific components of an agency to be the subject of reduction.

However, the effects of layoff on terms and conditions of employment are negotiable. Further, aspects of the procedure an employer uses to lay off employees, such as the designation of the area of layoff, are negotiable subjects. (State of California (Department of Forestry and Fire Protection), supra, PERB Decision No. 999-S.) Therefore, the employer is obligated to provide necessary and relevant information concerning the effects of layoff and aspects of the layoff procedure.[4]

The employer must provide presumptively relevant information or establish that the information is plainly irrelevant. If the employer rebuts the presumption of relevance, the exclusive representative must show how the information is relevant to its statutory representational responsibilities like collective bargaining or collective bargaining agreement administration. (Los Angeles Unified School District (1994) PERB Decision

[4]Note that the State and PECG have engaged in negotiations on subjects related to layoff. Article 13 of the parties' September 1992 to June 30, 1995, Memorandum of Understanding (MOU) covers layoff and reemployment. Article 13(a) indicates that the State may lay off employees when it becomes necessary "because of a lack of work or funds, or whenever it is advisable in the interest of economy to reduce the number" of employees. Article 13(b), "Order of Layoff," provides that the State will lay off employees pursuant to provisions of the Government Code.

No. 1061; Trustees of the California State University, supra, PERB Decision No. 613-H.) For information concerning nonmandatory subjects of bargaining, there is no presumption of relevancy and the exclusive representative bears the burden of establishing that the information is relevant to its statutory representational responsibilities. (Los Angeles Unified School District, supra. PERB Decision No. 1061; Reiss Viking (1993) 312 NLRB 622 [145 LRRM 1190]; Duquesne Light Co. (1992) 306 NLRB 1042 [140 LRRM 1079].)

The Board has recognized several employer defenses for failing to provide relevant information. An employer need not comply with an information request if it shows the request is unduly burdensome or the requested information does not exist. (Stockton Unified School District, supra. PERB Decision No. 143; Chula Vista City School District, supra. PERB Decision No. 834.) No violation will be found if the employer responds and the union never reasserts or clarifies its request. (Oakland Unified School District, supra. PERB Decision No. 367.) In addition, the employer need not furnish the information in a more organized form than its own records. (NLRB v. Tex-Tan. Inc. (1963) 318 F.2d 472 [53 LRRM 2298]; Los Rios Community College District (1988) PERB Decision No. 670.) Since information request cases turn on the particular facts involved, each request is analyzed separately. (Chula Vista, supra.)

Having stated the relevant precedent, I now apply it to the specific information requests made by PECG.[5]

Request No. 1

The method of calculation of Personnel Year Equivalents (PYEs) allocation provided to districts (and any other organizational units).

Blanning testified that PECG requested this information to determine if the layoff allocations would be geographically imbalanced. As noted above, however, the employer's fundamental management prerogative includes the authority to designate the specific component of the agency to be reduced. (State of California (Department of Forestry and Fire Protection), supra, PERB Decision No. 999-S.) Caltrans is under no obligation to "balance" its allocation of PYEs to districts, or to negotiate over decisions which result in "imbalance." While effects of these decisions may be negotiable, it appears that PECG's request for information relating to PYE calculation methodology pertains to Caltrans' fundamental management prerogative to determine which districts would be reduced. As such, it carries no presumption of relevance. PECG provided no evidence to establish that the information requested here was relevant to negotiable effects of layoff or PECG's other Dills Act representational responsibilities.

[5]The majority opinion addresses eleven separate information requests made by PECG, dividing PECG's ninth information request dated March 23, 1995, into two separate requests. For the remainder of this discussion I will use the majority's summaries in the interest of consistency.

Assuming that the requested information was relevant, however, the record shows that Caltrans attempted to comply with this request. Brubaker's March 14, 1995, response noted that Caltrans was researching to determine whether written instructions existed for calculating the PYE allocations. At no time prior to the PERB hearing in this case did PECG indicate that Caltrans' search for "written instructions" was an inappropriate response to its request. At the hearing, Brubaker testified that Caltrans apportioned the PYE allocations between Capital Outlay, Operations and Maintenance, and then program managers had total freedom to divide the PYE allocations between the Caltrans districts. In March, Caltrans provided a copy of the instructions outlining the assumptions used to set the allocations the Caltrans Budget Department gave to the program managers. Brubaker testified that no documents existed to reflect the method of allocation because each program manager developed his own methodology, and nothing in the record leads to another conclusion. An employer need not comply with an information request if it can show that the requested information does not exist. (Chula Vista City School District, supra. PERB Decision No. 834.)

The majority's reference to an incorrect factual conclusion by the ALJ as a "credibility determination" is puzzling. As noted above, the record shows that Caltrans responded to this request for information indicating that no documented methodology existed. The record is devoid of any evidence that a documented

methodology did exist. Ignoring the record and Caltrans' assertions and simply concluding that "some methodology must have been used" is to reach a factual conclusion which is not supported by the record.

Since there has been no demonstration of the relevance of the requested information, and since Caltrans provided available records and showed that no further documents existed to satisfy this request, it did not violate the Dills Act by failing to provide the method of calculation of the PYE allocations.

Request No. 2

Regarding the $163 million for rail projects, the magnitude of the engineering effort which would be involved, and who will do the work.

Blanning testified that PECG requested the local rail project information to determine whether the State's diversion of funds from Capital Outlay to local rail projects was proper, not because the information was relevant to negotiating the Reduction in Force agreement or aspects of layoff procedures or effects. This request involves information concerning outside local agency rail projects. Information regarding work outside the bargaining unit is not presumptively relevant and the union bears the burden of establishing the relevance of the information. (Duquesne Light Co., supra, 306 NLRB 1042.) PECG specifically stated the information was not relevant to impacts of layoff and provided no evidence the information was relevant to PECG's other Dills Act representational responsibilities. In addition, the information request concerned the propriety of the State's decision to shift

funds to local rail projects, a decision which the employer is not required to bargain. There is no underlying duty to provide information regarding nonnegotiable decisions. (Goodyear Tire & Rubber, supra. 312 NLRB 674; BC Industries, supra, 307 NLRB 1275.) Therefore, Caltrans had no duty to provide information regarding the funding of local rail projects.

Furthermore, to the extent that the information requested related to the negotiable effects of Caltrans' decision, Caltrans provided an adequate defense for its failure to provide it. In his March 14, 1995, response, Brubaker stated that Caltrans found no documentation to satisfy this request. Brubaker's testimony corroborated this response. Brubaker testified that the Caltrans Division of Rail found no records relating to the engineering aspects of the rail projects because they were local agency projects, not Caltrans projects. Since Caltrans searched and found no internal records, and reported the absence of records to PECG, Caltrans sufficiently established that the information did not exist. (Chula Vista, supra.)

Caltrans did not violate the Dills Act by failing to provide information about local rail project funding and engineering work.

Request No. 3

The historical pattern of additional federal money being made available to states which are plan ready, Caltrans' historical share of such money, whether it can be reasonably anticipated that such money will be available in the upcoming fiscal year, and whether Caltrans will be in a position to take advantage of that opportunity.

Blanning testified that PECG requested this information to determine how much federal funding Caltrans anticipated receiving for shelf projects,[6] and how much of that potential funding Caltrans might lose without sufficient staff to perform advance design work.

Again, the employer's decision to lay off employees is a matter of fundamental managerial prerogative and outside the scope of bargaining. (Newman-Crows Landing Unified School District (1982) PERB Decision No. 223; State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S.) The employer has no obligation to provide the union with information relating to economic justifications for nonnegotiable decisions. (UOP Inc. (1984) 272 NLRB 999 [1117 LRRM 1429] .) PECG provided no evidence to establish that the requested information was relevant to negotiable impacts of layoff or to PECG's other Dills Act representational responsibilities. Caltrans had no duty to provide information regarding the amount of potential federal funding, and did not violate the Dills Act by failing to provide this information.

Request No. 4

An explanation of why a Caltrans director letter states that its budget would be "significantly smaller" in 1995/96, while both the Governor's Budget and a departmental Fact Sheet show an increase in funding of $200 million.

[6] "Shelf" projects refers to previously designed projects that are awaiting funding. Periodically, the federal government releases unused transportation dollars to states with shelf projects.

Blanning testified that PECG requested this information to clarify any misunderstanding about the money available to Caltrans. Again, PECG sought information regarding the financial basis for Caltrans' nonnegotiable decision to lay off employees and the employer has no obligation to provide information regarding economic justifications for that nonnegotiable decision. (UOP Inc., supra, 272 NLRB 999.) PECG provided no evidence to establish that the information was relevant to negotiable impacts of layoff or to PECG's other Dills Act representational responsibilities. Therefore, Caltrans had no duty to provide this information.

I find the majority's conclusion that Caltrans violated the Dills Act with regard to this request to be illogical. The duty to provide information stems from the duty to bargain. The majority correctly finds that the requested information carried no presumption or relevance because it relates to a non-negotiable subject, and Caltrans had no obligation to provide it. Nonetheless, the majority finds a violation, apparently because the majority concludes that Caltrans did not provide an adequate response to the request. Illogically, therefore, the majority finds a violation of the duty to provide information which Caltrans had no duty to provide. I expressly reject this misguided conclusion which is unsupported by any precedent.[7]

[7]The majority incorrectly cites Chula Vista, supra, for the proposition that the employer's failure to respond to a request for information is a violation the duty to bargain, even if the information requested is unnecessary and irrelevant to the exclusive representative's duties. There is no finding in Chula

Again, the majority's reference to an incorrect factual conclusion by the ALJ as a "credibility determination" is puzzling. In fact, the record shows that Caltrans responded to this request for information. Brubaker testified that Kiff responded to this request at two separate meetings. In addition, Brubaker's March 14, 1995, response clearly indicated that the issue was addressed in two documents provided to PECG, "1995-96 Budget Highlights" and "Responses to Questions Professional Engineers in California Government Asked During Informal Meeting on Proposed Reduction in Force for 1995."

For these reasons, Caltrans did not violate the Dills Act by failing to respond to this request.

Request No. 5

Any workload measures used in determining staffing needs and allocations for the current and budget years, including any changes in such measures and/or any efficiencies which would affect staffing needs.

PECG made this request because it wanted general information about how Caltrans determined its workload and staffing needs. The employer's decision to layoff employees is a matter of fundamental managerial prerogative and outside the scope of bargaining. (Newman-Crows Landing Unified School District, supra, PERB Decision No. 223; State of California (Department of Personnel Administration), supra, PERB Decision No. 648-S.) To the extent this request relates to the decision to reduce

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Vista, or any other case of which I am aware, that a violation occurs under these circumstances.

staffing, Caltrans had no duty to bargain over it and no underlying duty to provide information regarding that subject.

Assuming the requested information was relevant, Caltrans provided an adequate defense for its failure to provide the information. Brubaker's March 14, 1995, response stated that Caltrans could not locate any documents to satisfy this request. Brubaker's testimony confirmed this response. Brubaker testified that he inquired of a Caltrans department with a database record of historical project work effort, and no documents relating to workload measures could be located. Since Caltrans searched and found no records, and reported the absence of records to PECG, Caltrans sufficiently established that the information did not exist. (Chula Vista, supra.)

For these reasons, Caltrans did not violate the Dills Act by failing to provide information about workload measures.

Request No. 6

Engineering or related work (surveying, etc.) reimbursed by local agencies during the current year; what had been planned for reimbursed work during the budget year; and the current allocation, limitations and rationale for such work, also, if respondent has turned down such work, and/or is not actively soliciting such work as an alternative to potential layoffs, the rationale for these decisions.

PECG requested information about reimbursed work in Blanning's January 23, 1995, and February 10, 1995, letters. In his February 28, 1995 letter, Blanning states that he understood Caltrans' response to be that the department will lay off workers rather than honor commitments for reimbursed work or seek additional work. In that same letter, Blanning stated that

"relevant information" would include the funding Caltrans lost by failing to honor its commitments on reimbursed work and not pursuing additional work. Blanning testified that PECG requested this information to determine whether Caltrans could use reimbursed work to avoid cutting staff or laying people off. It appears that PECG sought to challenge the basis of Caltrans' nonnegotiable decision to layoff employees. The employer has no obligation to provide the union with economic justifications for nonnegotiable decisions. (UOP Inc., supra. 272 NLRB 999.)

Furthermore, to the extent that the requested information relates to the negotiable effects of layoff, the record clearly shows that Caltrans provided it. Blanning's February 10, 1995, letter notes that Caltrans responded to the request. Blanning also testified that Caltrans provided a letter listing the PYEs for reimbursed work. Brubaker's March 14, 1995, response clearly indicated that the issue was addressed in an attached summary chart. In addition, Brubaker testified that he discussed reimbursed work with Blanning several times at the bargaining table. He told Blanning that the Governor's Office policy decision was to cut back on reimbursed work because Caltrans should not compete with the private sector for engineering work. Therefore, the evidence shows that Caltrans' responded to this request for information and did not violate the Dills Act.

Request No. 7

Any requests, suggestions or recommendations from Caltrans or any local agency for Caltrans or State government to perform engineering or related services (including but not limited to surveying and landscape architecture) on any state highway or

other transportation project since January 1, 1993. For purposes of this request, local agency refers to any governmental unit other than the state or federal government.

PECG sought this information to determine if outside engineering work was available from other sources to avoid cutting staff or laying off employees. Again, this request appears to concern the basis for Caltrans' nonnegotiable decision to lay off employees. The employer has no obligation to provide the union with economic justifications for nonnegotiable decisions. (UOP Inc., supra, 272 NLRB 999.) PECG provided no information to establish that the information was relevant to negotiable impacts of layoff or to PECG's other Dills Act representational responsibilities. Caltrans did not violate the Dills Act by failing to provide this information.

Request No. 8

Any document from any source dated on or after July 1, 1994, which requests, proposes, recommends or analyzes the possibility of additional future funding for transportation in California in addition to the funding anticipated in the Governor's budget, not including any measure on the November 1994 ballot.

Blanning testified that the purpose of this request was to determine how any additional funding received by Caltrans would be used, if it was not used to replace lost staffing. Again, it appears that PECG sought information regarding the financial basis for Caltrans' nonnegotiable decision to lay off employees, and the employer has no obligation to provide information regarding economic justifications for nonnegotiable decisions. (UOP Inc., supra, 272 NLRB 999.) PECG provided no evidence to establish that the information was relevant to negotiable impacts

of layoff or to PECG's other Dills Act representational responsibilities.

Assuming the requested information was relevant, Caltrans provided an adequate defense for its failure to provide the information. In his March 14, 1995 letter, Brubaker responded that Caltrans budget staff did not understand PECG's request and asked for clarification of the requested information. No violation will be found if the employer responds and the union never reasserts or clarifies its request. (Oakland Unified School District, supra. PERB Decision No. 367.) Blanning's subsequent request for information, the March 23, 1995, letter to Andrews, contained no clarification of the request. Brubaker testified that Blanning merely repeated the same request at the bargaining table. Since PECG failed to establish that it sufficiently clarified the request, Caltrans did not violate the Dills Act by failing to provide this information.

Request No. 9

Detailed information regarding the Caltrans staffing plans, including chart showing the allocations to the districts and headquarters units with numbers if authorized personnel years for administration, capital outlay, etc.

While the decision to lay off employees is nonnegotiable, the employer must bargain over the negotiable effects of that decision. (State of California (Department of Forestry and Fire Protection), supra, PERB Decision No. 999-S.) The requested staffing plan included a list of classifications, the number of filled positions in those classifications by district, and the net reduction needed during the Reduction in Force process.

Caltrans had a duty to provide the staffing plan because PECG clearly needed information regarding the affected classifications to negotiate the impacts of layoff. The record shows that Caltrans delivered the staffing plan to PECG on March 17, 1995. Both Blanning and Brubaker testified that Brubaker sent PECG updates as he received them. Therefore, the evidence shows that Caltrans' fulfilled its obligation to provide relevant information under the Dills Act.

Request No. 10

Copies of the request(s) or response(s) from the districts and headquarters' functional units regarding staffing plans, personnel years, etc.

Blanning testified that PECG requested this information to discover the rationale employed by district management in determining staffing needs. This request is similar to the request for the methodology of PYE allocation discussed in Request No. 1. To the extent this request involved information regarding Caltrans' decision to reduce staff and designate specific components of the agency for layoff, Caltrans had no duty to provide information regarding that nonnegotiable decision. PECG provided no evidence to establish that the information was relevant to other negotiable impacts of layoff or PECG's other Dills Act representational responsibilities. Therefore, Caltrans did not violate the Dills Act by failing to provide the information.[8]

[8]I note that the majority concludes inconsistently that information from districts relating to personnel years is not entitled to a presumption of relevance, yet information to

Request No. 11

A listing of all Unit 9 vacancies filled in any state department or agency, on a monthly basis, beginning on January 10, 1995, including vacancies filled by hiring, transfers, promotions, or any other method.

PECG requested information regarding Unit 9 vacancies in Blanning's March 23, 1995, letter to Andrews. Although the decision to lay off employees is nonnegotiable, the employer must bargain over the negotiable effects of that decision. (State of California (Department of Forestry and Fire Protection), supra, PERB Decision No. 999-S.) Caltrans had a duty to provide this information because PECG clearly needed information regarding other Unit 9 vacancies available in state service to negotiate the impacts of layoff. Caltrans admits that it failed to provide this information. Caltrans' failure to provide the information regarding Unit 9 vacancies violated Dills Act section 3519(c). Caltrans failure to provide the information also violated Dills Act section 3519(b) by denying PECG the right to represent its members.

SUMMARY

Based on the foregoing review of the facts of this case and application of the relevant legal principles and precedent, I conclude that Caltrans violated Dills Act section 3519(b) and (c) when it failed to provide PECG with information necessary and relevant to its representational duties. I would order an appropriate remedy.

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districts relating to the methodology for allocating those personnel years (Request No. 1) is presumed relevant.

I offer some brief additional thoughts. Among the primary-purposes of the Dills Act is "to promote full communication between the state and its employees . . . ." (Dills Act section 3512). This purpose is served in a cooperative, good faith employer-employee relationship when the exclusive representative has access to information it needs to fulfill its obligation to represent employees, including information which will assist it in understanding management decisions which may or may not be subject to negotiations. Requesting information through a scattergun, combative approach designed more to challenge management decisions than to understand them is unlikely to serve this purpose. Similarly, in a cooperative, good faith relationship, the employer accepts its obligation to inform the exclusive representative, and understands that providing information pertaining to management decisions which may not be subject to negotiations improves the possibility that those decisions will be supported and effectively implemented. Delaying or stonewalling on information requests merely because legal precedent may allow such conduct is unlikely to serve the purposes of the Dills Act.

It is my impression that a higher degree of commitment to the Dills Act purpose described above by the parties to this case would have eliminated the need for a decision by the Public Employment Relations Board to resolve this dispute.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An agency of the State of California

After a hearing in Unfair Practice Case No. SA-CE-750-S, Professional Engineers in California Government v. State of California (Departments of Personnel Administration and Transportation). in which all parties had the right to participate, it has been found that the State of California (Departments of Personnel Administration and Transportation) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(b) and (c).

As a result of this conduct, we have been ordered to post this notice and we will:

A. CEASE AND DESIST FROM:

1. Denying to the Professional Engineers in California Government (PECG) rights guaranteed to them by the Dills Act.

2. Refusing or failing to meet and confer in good faith with PECG.

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

1. Provide to PECG, upon request, the method of calculation of personnel year equivalents allocation provided to the State (Department of Transportation) districts (and any other organizational units) during the relevant time period.

2. Provide to PECG, upon request, some response to Request No. 4.

3. Provide to PECG, upon request, specified listings of all State Bargaining Unit 9 (Unit 9) vacancies filled in any state department or agency, on a monthly basis, beginning on January 10, 1995, including vacancies filled by hiring, transfers, promotions, or any other method.

Dated: _____

STATE OF CALIFORNIA (DEPARTMENTS OF PERSONNEL ADMINISTRATION AND TRANSPORTATION)

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.