

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES )  
ASSOCIATION, )  
 )  
Charging Party, ) Case No. LA-CE-399-S  
 )  
v. ) PERB Decision No. 1317-S  
 )  
STATE OF CALIFORNIA (DEPARTMENT )  
OF CORRECTIONS), )  
 )  
Respondent. )  
 )  
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Appearances; Brian K. Taylor, Attorney, for California State Employees Association; State of California (Department of Personnel Administration) by Paul M. Starkey, Labor Relations Counsel, for State of California (Department of Corrections).

Before Caffrey, Chairman; Dyer and Amador Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the State of California (Department of Corrections) (CDC or State) to a proposed decision by a PERB administrative law judge (ALJ). The ALJ found that the State violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)<sup>1</sup> by

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<sup>1</sup>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:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights

unilaterally modifying its overtime policy for nurses represented by the California State Employees Association (CSEA) at three correctional institutions.

The Board has reviewed the entire record in this case, including the ALJ's proposed decision and the filings of the parties. The Board hereby reverses the proposed decision and dismisses the unfair practice charge and complaint in accordance with the following discussion.

BACKGROUND

CSEA is the exclusive representative of the nurses in State Bargaining Unit 17. This case involves nurses who are employed at the California Institution for Men (CIM), the California Institution for Women (CIW), and the California Rehabilitation Center (CRC), three correctional institutions within CDC.

CSEA and the State are parties to a collective bargaining agreement (CBA) with a negotiated term of July 1, 1992 through June 30, 1995. The parties are currently engaged in negotiations over a successor agreement. During bargaining over the 1992-95 CBA, both the State and CSEA expressed interest in reducing the amount of mandatory overtime assigned to nurses at CDC

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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.

institutions. In addition, CSEA wanted to change the system under which voluntary overtime was allocated, and instead implement a rotational system for overtime assignment. The State wanted to be able to make greater use of registries of non-state employee nurses to meet workload demands. A nurse registry is a private organization which has a roster of local nursing personnel available for daily employment assignments. The registry contracts with various employers, including the State, to provide nurses on a temporary basis.

The parties 1992-95 CBA contained the following provisions within Article 20 - Hours of Work and Overtime:

20.10 Overtime Scheduling

a. The Departments recognize and understand the importance of reducing mandatory overtime to Registered Nurses. To this end, the Departments will make every effort to schedule staff in a manner that will reduce the need for mandatory overtime.

b. Upon request, and where practicable, the State shall, upon consultation with the Union, establish a system to request and utilize qualified volunteers to perform overtime work from within the appropriate work area(s). Through the establishment of such a system, the State will endeavor to reduce the amount of mandatory overtime and number of mandatory holdovers, distribute overtime fairly insofar as circumstances of health and safety permit, and provide employees notice of possible or actual overtime assignments. The State shall also consider the use of intermittents, registries, or float pools.

c. The State agrees to make reasonable efforts to utilize this overtime scheduling system prior to requiring mandatory overtime.

20.15 Overtime CDC/CYA [California Youth Authority]

CDC and CYA will, by August 30, 1992, establish a Labor/Management Committee to develop a policy and procedures for the distribution of voluntary and mandatory overtime.

Pursuant to section 20.15 of the CBA, the Labor/Management Committee met and agreed in the latter part of 1993 to an overtime policy side letter which states, in pertinent part:

Bargaining Unit 17 Overtime Policy

In accordance with Section 20.10 of the 1992-95 Bargaining Unit 17 Memorandum of Understanding . . . the California Department of Corrections (CDC) recognizes and understands the importance of reducing mandatory overtime to Unit 17 employees. CDC will strive to make efforts to schedule staff in manners that will reduce the need for mandatory overtime.

As a result of this commitment, CDC, upon consultation with CSEA, establishes the following system to request and utilize Unit 17 nursing staff to perform overtime work within the appropriate work area(s). Through the establishment of the following system, CDC will endeavor to reduce the amount of mandatory overtime and number of mandatory holdovers; distribute overtime fairly insofar as circumstances of health and safety permit; and provide employees notice of possible or actual overtime assignments. This policy does not preclude CDC from utilizing permanent intermittents, registries as an alternative to overtime.

When an overtime assignment becomes available, it will be the policy of the CDC to attempt to fill the assignment by the use of the voluntary overtime roster. . . . When there are no names listed on the overtime roster, and no other means available to fill the assignment, (permanent intermittents, registries) it will be necessary to require involuntary overtime.

CSEA asserts that the side letter requires CDC to offer overtime assignments to nurses whose names appear on the volunteer overtime roster prior to utilizing permanent intermittent or registry nurses to meet a staffing need. CSEA states that this was the clear intent and understanding of the parties in agreeing to the side letter.

CSEA states that CDC offered overtime assignments consistent with this clear intent and understanding for some time following the agreement to the side letter in late 1993. However, CDC gradually began changing the overtime assignment policy until, in late 1996, CDC was routinely offering assignments to registry nurses before making voluntary overtime available to staff nurses.

On April 8, 1997, CSEA filed the instant unfair practice charge alleging that CDC unilaterally changed the overtime assignment policy for nurses at CIM, CIW and CRC, and thereby violated the Dills Act.

CDC responds by offering a different version of the meaning of the overtime policy side letter. CDC notes that a primary purpose of the side letter was to establish a system for the equitable distribution of overtime assignments and provide for a reduction in mandatory overtime. In accomplishing this purpose, the side letter contains the specific reference to utilizing permanent intermittent or registry nurses as an alternative to overtime, and gives CDC the clear right to use those means of meeting staffing needs in lieu of overtime assignment of staff

nurses. Therefore, CDC asserts, the conduct alleged by CSEA to be unlawful is expressly authorized by the side letter.

#### DISCUSSION

To prevail in a unilateral change case, the charging party must establish that the employer, without providing the exclusive representative with notice or the opportunity to bargain, breached or altered the parties' written agreement or established past practice concerning a matter within the scope of representation, and that the change had a generalized effect or continuing impact on the terms and conditions of employment of bargaining unit members. (Pajaro Valley Unified School State (1978) PERB Decision No. 51 at pp. 5-6 (Pajaro Valley); Grant Joint Union High School State (1982) PERB Decision No. 196 at p. 10.)

As noted above, the State and CSEA were parties to a CBA with a term of July 1, 1992 through June 30, 1995. Pursuant to that CBA, the parties negotiated and reached agreement on an overtime policy side letter in 1993. It is a fundamental rule of labor law that certain terms and conditions of employment remain in effect following expiration of a CBA during the parties' negotiations over a successor agreement. (State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S at pp. 8-9; Pajaro Valley at p. 6; San Mateo County Community College District (1979) PERB Decision No. 94 at p. 17; California State Employees' Assn. v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923 at p. 936 [59 Cal.Rptr.2d 488].)

Therefore, the provisions of the parties' 1992-95 CBA and the 1993 overtime side letter remained in effect during the time of the alleged unlawful conduct in this case. (Antelope Valley-Union High School District (1998) PERB Decision No. 1287 at pp. 3-4.)

This case involves a dispute over the interpretation of the parties' overtime policy side letter. If the side letter requires CDC to meet staffing needs by offering voluntary overtime assignments to staff nurses before utilizing permanent intermittent or registry nurses, then CDC breached that written agreement in violation of the Dills Act when it failed to do so. If the side letter allows CDC to meet staffing needs by utilizing permanent intermittent or registry nurses without first offering voluntary overtime assignments to staff nurses, then CDC acted lawfully when it took that action.

The California Civil Code provides guidance in the interpretation of contractual language. Civil Code section 1638 states, in part:

INTENTION TO BE ASCERTAINED FROM LANGUAGE.  
The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Additionally, Civil Code section 1641 states, in part:

EFFECT TO BE GIVEN TO EVERY PART OF CONTRACT.  
The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

Following this guidance, the Board has held that, where contractual language is clear and unambiguous, it is unnecessary

to go beyond the plain language of the contract itself to ascertain its meaning. (Marysville Joint Unified School District (1983) PERB Decision No. 314 at p. 9 (Marysville.) In interpreting contract language, the Board examines bargaining history to determine the intent of the parties in agreeing to a contractual provision, only if the language of the contract is found to be ambiguous. (Barstow Unified School District (1996) PERB Decision No. 1138 at pp. 17-18 (Barstow); Colusa Unified School District (1983) PERB Decision No. 296a at p. 2.)

In this case, the Board concludes that the language of the parties' overtime policy side letter is clear and unambiguous, and finds it unnecessary to go beyond the plain meaning of that language.

The side letter clearly establishes a policy governing the assignment of staff nurses to work overtime, once overtime assignments become available. Under that policy, the roster of staff nurses volunteering to work overtime is utilized first. When that roster is depleted, other means of filling the assignment, including permanent intermittent and registry nurses, must be utilized before staff nurses can be ordered to work mandatory, involuntary overtime.

However, the side letter also clearly and explicitly states that under the policy CDC is not precluded "from utilizing permanent intermittents, registries as an alternative to overtime." Under this language, CDC is expressly authorized to meet staffing needs by using permanent intermittent or registry

nurses as an alternative to the overtime assignment of staff nurses. To interpret this language as enabling CDC to utilize registry nurses only after exhausting the voluntary overtime roster would essentially ignore this clear statement and render it meaningless. In accordance with Civil Code section 1641, the Board must avoid an interpretation of contract language which leaves a provision without effect. (Riverside Community College District (1992) PERB Order No. Ad-229 at pp. 3-4; Barstow at pp. 17-18.) Therefore, the conduct by CDC which forms the basis of the dispute in this case is expressly authorized by the parties' overtime policy side letter, and there was no breach of that written agreement.

It should also be noted that the fact that the employer has not exercised contractual rights in the past, does not preclude it from doing so in the future. (Marysville at p. 10.) Therefore, even if CDC in late 1996 changed its method of meeting staffing needs by utilizing registry nurses prior to assigning overtime to staff nurses listed on the voluntary overtime roster, its action was authorized by the clear language of the parties' overtime policy side letter and was not unlawful.

#### ORDER

The unfair practice charge and complaint in Case No. LA-CE-399-S are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Dyer and Amador joined in this Decision.