STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SA-CE-1087-S
v.	)	PERB Decision No. 1318-S
STATE OF CALIFORNIA (EMPLOYMENT DEVELOPMENT DEPARTMENT),	)	March 5, 1999
Respondent.	)	

Appearances: Daniel S. Connolly, Attorney, for California State Employees Association; State of California (Department of Personnel Administration) by Timothy G. Yeung, Legal Counsel, for State of California (Employment Development Department).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to a proposed decision by a PERB administrative law judge (ALJ) filed by the California State Employees Association (CSEA). In his proposed decision, the ALJ dismissed the unfair practice charge and complaint which alleged that the State of California (Employment Development Department) (State or EDD) violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)[1] by changing the policy concerning the compensation of

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

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

on-call employees without providing CSEA with notice and the opportunity to negotiate over the change.

The Board has reviewed the entire record in this case including the proposed decision, the hearing transcript and the filings of the parties. Based on the following discussion, the Board hereby reverses the proposed decision and finds that the State's conduct violated the Dills Act.

FINDINGS OF FACT

CSEA is the exclusive representative of various employees working within the Information Systems Division (ISD) of EDD. ISD is divided into four areas, each of which consists of several teams of employees. There are seventeen teams within the four areas.

Employees within some of these teams are required to be on-call at various times when they are not at their normal work site. These on-call employees are provided by EDD with the equipment necessary to allow them to perform work at home when called upon to do so.

> (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 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.

This case involves the issue of the compensation of ISD on-call employees when they are called upon to perform work at home.

CSEA and the State agreed to the following stipulation of facts, which states in its entirety:

Stipulation of Facts

1. 'On call' or standby status requires an Employment Development Department (EDD) employee within the Information Systems Division to be available after regularly scheduled work hours to respond to requests for assistance and to perform EDD work. While in an on call status, the employee is provided with a pager, a cellular telephone and a computer (or informer) as needed to enable the employee to respond to the request and to perform the EDD work at his/her home.

2. Prior to October 29, 1997, some employees within the Information Systems Division at the EDD who while on call and who performed work at home, received up to four hours of compensation. This compensation practice gave on call employees discretion to request up to four hours overtime for work at home which took less than four hours to perform. Some employees exercised their discretion not to claim the full four hours of compensation for work performed at home while on call.

3. The compensation practice as described in item two applied to employees within the Maintenance Unit and the Taxpayer Accounting System Unit (TAS) within the Information Systems Division at EDD.

4. EDD Supervisors Denny Smith, Rosemarie Clark, and Joe Ortiz authorized and applied the compensation practice as described in item two.

5. The compensation practice as described in item two was in existence at least since 1992.

6. EDD changed this compensation practice on or about October 19, 1997 [sic] by-memorandum from Bryan Gillgrass, Chief, Information Systems Division, whereby on call employees would now only be paid for actual hours worked while at home. Employees would be paid by quarter hour increments if total work effort exceeded seven minutes. According to Gillgrass, work effort of less than seven minutes is considered incidental and not compensable. However, work of increments less than 7.5 minutes may be aggregated until the 7.5 minute minimum is reached. Four hours call back pay would be paid if staff return to headquarters to resolve a problem.

7. EDD did not notice CSEA about the change nor did it meet and confer with CSEA about such change.

In addition to this stipulation, CSEA introduced a copy of a memorandum on the subject of on-call time which was directed to staff and managers within one of the four areas of ISD (CSEA exhibit 9). That memorandum, dated August 19, 1997, approximately two months prior to the alleged unilateral change in this case, describes the "current policy" with regard to compensation of on-call employees as follows:

> If called and have to come in to office, charge minimum of 4 hours OT [Overtime].
>
> If called and work on solution at home, may charge 4 hours OT (and more if used).

CSEA and the State are parties to a collective bargaining agreement (CBA) with a negotiated term of July 1, 1992 through June 30, 1995. CBA section 19.4 states, in pertinent part:

19.4 Call Back Time

a. An employee in Workweek Group 1, Workweek Group 2, or Workweek Subgroup 4A who has completed a normal work shift, or an employee in Workweek Subgroups 4B and 4D on an authorized day off, when ordered back to work, shall be credited with a minimum of four hours' work time provided the call back to work is without having been notified prior to completion of the work shift, or the notification is prior to completion of the work shift and the work begins more than three (3) hours after the completion of that work shift.

At the time of the alleged unlawful conduct in this case in October 1997, the parties were engaged in negotiations over a successor CBA. Therefore, CBA section 19.4 remained in effect at that time. (State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S at pp. 8-9; California State Employees' Assn. v. Public Employment Relations Bd. (1996) 51 Cal.App.4th 923, 936 [59 Cal.Rptr.2d 488].)

The EDD Administrative Manual contains a section on call back time (CSEA exhibit 3) which includes essentially the same language found in CBA section 19.4. The EDD Administrative Manual also contains a section on overtime reporting (CSEA exhibit 4) which reiterates the policy with regard to compensation when employees are called back to work.

Based on the conduct described in the parties' factual stipulation, on February 20, 1998, CSEA filed an unfair practice charge alleging that the State, on October 29, 1997, unilaterally changed a longstanding practice concerning compensation for

on-call employees within ISD who are called upon to perform work at home. On March 17, 1998, PERB's Office of the General Counsel issued a complaint alleging that the State, by that conduct, violated section 3519(a), (b) and (c) of the Dills Act.

POSITIONS OF THE PARTIES

CSEA points out that the parties' CBA, as well as EDD's Administrative Manual section concerning call back time, describe compensation for employees called back to work at their normal work site. However, the CBA and internal departmental policies are silent with regard to compensation of on-call employees who are called upon to perform work at home. Instead, as stipulated by the parties, a longstanding practice had been established governing compensation for ISD on-call employees. When EDD unilaterally changed that practice as stipulated, it violated the Dills Act.

The State responds that the parties' CBA provision concerning call back time limits the circumstances in which employees are entitled to at least four hours of compensation to situations in which they are called back to work at their normal work site. The provision does not authorize similar compensation in situations in which on-call employees perform work at home. When EDD changed the practice within the ISD as described in the stipulation, it was merely enforcing the contractual provision. Therefore, the State asserts, its conduct did not constitute an unlawful unilateral change, pursuant to the Board's holding in Marysville Joint Unified School District (1983) PERB Decision

No. 314 (Marysville). Furthermore, the State asserts that the ISD compensation practice for on-call work at home, which is described in the parties' factual stipulation, was isolated, unauthorized and in violation of EDD policy.

DISCUSSION

To prevail in a case involving an alleged unlawful unilateral change, the charging party must establish that the employer breached or altered the parties' written agreement or established past practice; the action was taken without giving the exclusive representative notice or the opportunity to bargain over the change; the change was not merely an isolated breach but represented a change in policy having a generalized or continuing impact on the terms and conditions of employment of bargaining unit members; and the change concerned a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant); Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

Applying this standard, it is clear that wages and hours are enumerated subjects of bargaining in Dills Act section 3516, and that the subject of overtime compensation is within the scope of representation. (State of California (Department of Transportation) (1983) PERB Decision No. 333-S.) It is also undisputed that EDD took the action which forms the basis of this dispute without providing CSEA with notice or the opportunity to bargain, as is indicated in the parties' factual stipulation.

Turning to the question of whether a contractual provision was breached, the parties agree that the "Call Back Time" provision of CBA section 19.4 provides that employees called back to work at their normal work site shall be credited with a minimum four hours of work time. They also agree that CBA section 19.4 does not authorize similar compensation for on-call employees called upon to work at home. Therefore, the State asserts, employees are entitled to compensation for four hours of worktime only if they are required to return to work at their normal work site. Consequently, EDD's decision to change the practice of providing "call-back compensation" to on-call employees who work at home is expressly allowed under PERB's Marysville decision.

The State's argument is without merit. The Board held in Marysville that the fact that an employer has not exercised contractual rights in the past, does not preclude it from doing so in the future. However, Marysville involved a subject - the length of the employee lunch break - which was clearly and explicitly addressed within a CBA provision. Here, the "Call Back Time" provision of the parties' CBA deals with compensation of employees called back to work at their normal work site, but it does not address compensation for on-call employees called upon to work at home. Nor does the provision contain language limiting the compensation it describes only to employees called back to work at their normal work site. Furthermore, the EDD Administrative Manual sections introduced into evidence simply

repeat elements of the CBA provision on call back time, and also do not address compensation for on-call employees who work at home. Therefore, the subject of the disputed conduct in this case - compensation of on-call employees working at home - is not addressed in either the CBA or the EDD Administrative Manual. The State derived no Marysville right concerning compensation of those employees from the contractual provision pertaining to call back time.

Accordingly, this case involves an alleged breach by EDD of an established past practice. That practice is clearly defined in the parties' factual stipulation:

> This compensation practice gave on call employees discretion to request up to four hours overtime for work at home which took less than four hours to perform.

This description of the established practice is confirmed in CSEA exhibit 9 which describes "current policy" for on-call compensation in one of ISD's four areas as:

> If called and work on solution at home, may charge 4 hours OT (and more if used).

The State stipulated to the fact that this was the practice "at least since 1992" which it altered on or about October 29, 1997. Therefore, by the undisputed terms of the parties' factual stipulation and other documentary evidence, it has been demonstrated that EDD altered a longstanding, established past practice.

The State also argues that the practice described in the factual stipulation was isolated. This appears to be an

assertion that, when EDD altered that practice, it represented only an isolated change, and did not change a policy having a generalized impact on employees, another element of the Board's Grant standard for determining whether a unilateral change has occurred.

This argument also fails. The record establishes that there are seventeen teams of employees within the four areas of ISD, not all of which include employees who are required to be on-call. Donna Haslett, who manages one of the four ISD areas, testified that two of her four teams included on-call employees at the time of the alleged unlawful conduct. The parties' factual stipulation indicates that one of those two teams, supervised by Joe Ortiz, followed the compensation practice described in the stipulation. In a second of the four ISD areas, the evidence establishes that at least two of the four teams, supervised by Denny Smith and Rosemarie Clark, include on-call employees. Both of these teams followed the practice described in the factual stipulation. In a third area, all teams which include on-call employees followed the practice described in the factual stipulation, as verified by CSEA exhibit 9. The record contains no information concerning on-call practices in the fourth area of ISD. This evidence establishes that the compensation practice described in the factual stipulation was pervasive and predominant within ISD, and not isolated as the State asserts.

The State also asserts that the ISD practice concerning compensation of on-call employees for work at home was unauthorized and violated EDD policy. However, in defining the official EDD policy on this subject, the State points to CBA section 19.4 and EDD Administrative Manual provisions relating to compensation of employees called back to work at their normal work site. As noted above, these provisions do not describe a policy with regard to compensation of on-call employees working at home. The State presented no evidence to establish that EDD had a policy on this subject with which ISD's longstanding practice was inconsistent. In fact, it cannot be concluded from the record in this case that any other division or organizational unit within EDD was following an on-call employee compensation practice which differed from that being followed in ISD. Therefore, the State's assertion that the ISD practice was unauthorized and violated EDD policy is rejected.

Summarizing, it has been demonstrated that the State altered the established past practice concerning the compensation of on-call employees called upon to work at home. It did so without providing CSEA with notice or the opportunity to bargain over the change, which had a generalized and continuing impact on the terms and conditions of employment of bargaining unit members. The Board concludes that, by this conduct, the State failed and refused to meet and confer in good faith in violation of Dills Act section 3519(c), and denied CSEA and bargaining unit members their rights in violation of Dills Act section 3519(a) and (b).

REMEDY

Dills Act section 3514.5(c) empowers the Board to:

> . . . issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

In order to remedy the unlawful conduct in this case and effectuate the policies of the Dills Act, it is appropriate to order the State to cease and desist from the unlawful conduct, and to make whole the affected employees for compensation they would have received but for that unlawful conduct.

It is also appropriate that the State be required to post a notice incorporating the terms of the Order at EDD sites where such notices are customarily placed. This notice should be subscribed by an authorized agent of EDD, indicating that it will comply with the terms therein. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that EDD has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the Dills Act that employees be informed of the resolution of the controversy and will announce EDD's readiness to comply with the ordered remedy. (See Placerville Union School District (1978) PERB Decision No. 69.) In Pandol & Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584], the California District Court of Appeals approved a similar

posting requirement. (See also, NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].)

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in the case, it is found that the State of California (Employment Development Department) (EDD) violated the Ralph C. Dills (Dills Act), Government Code section 3519(a), (b) and (c). Therefore, it is hereby ORDERED that EDD, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally modifying compensation practices for on-call employees within the Information Services Division (ISD).

2. Denying to the California State Employees Association (CSEA) the right to represent its members.

3. Interfering with the right of individual employees to be represented by an employee organization of their choice.

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

1. Reimburse EDD employees within the ISD for any lost compensation they would have received had EDD not unlawfully modified its compensation practices for on-call employees with seven (7) percent interest per annum.

2. Within ten (10) days following the date this decision is no longer subject to appeal, post at all work locations where notices to employees are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of EDD, indicating that EDD

will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notice 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 regional director's instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on CSEA herein.

Member Amador joined in this Decision.

Member Dyer's dissent begins on page 15.

DYER, Member, dissenting: In overturning the Public Employment Relations Board (PERB or Board) administrative law judge's (ALJ) proposed decision, the majority holds that a small group of supervisors in one division of the State of California (Employment Development Department) (State or EDD) can create a past practice that supersedes both EDD's established practice and the statewide overtime policy incorporated into the expired memorandum of understanding (MOU) between the parties. I disagree.

For the reasons that follow, I conclude that the isolated and inconsistently applied procedures of a handful of supervisors in a single division of EDD is insufficient to establish a binding practice. Even assuming that this isolated breach were sufficient to supersede EDD's existing policy, however, EDD's actions were consistent with the statewide overtime policy established by the California Code of Regulations (CCR) and incorporated into the expired MOU. Accordingly, I would dismiss the unfair practice charge and complaint.

BACKGROUND

As the majority notes, the parties stipulated that EDD periodically requires employees in its Information Systems Division (ISD) to be available after regular work hours to respond to requests for assistance and to perform EDD work. The parties refer to such periods of mandated availability as time spent "on call." Prior to October 29, 1997, three supervisors in

two units of the ISD[1] permitted some employees to "request up to four hours" of overtime for on-call work that took less than four hours to perform.[2] [Emphasis added.]

ISD managers became aware of the foregoing compensation practice in the Fall of 1997. On October 29, 1997, after consultation with staff from EDD's Human Resource Services Division, the Chief of the ISD promulgated a memorandum indicating that employees were entitled to overtime compensation only for the time actually worked while on call. The memorandum indicated that overtime would accrue in quarter-hour increments so long as the total time worked exceeded seven minutes. EDD did not provide the California State Employees Association (CSEA) with notice or an opportunity to bargain prior to releasing the October 29 memorandum.

On February 20, 1998, CSEA filed a charge asserting that the October 29 memorandum constituted a unilateral change in violation of section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act).[3]

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[1] ISD is divided into 14 units and employs 17 supervisors and managers, approximately 15 of whom directly supervise employees.

[2] As used in this dissent, the term "on-call work" refers to work performed away from the work place while on call. This type of work is distinct from the situation where an employee is called back to the worksite after his or her normal work shift. (See Cal. Code Regs., tit. 2, sec. 599.708.)

[3] Dills Act section 3519 provides, in relevant part:

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

DISCUSSION

It is well established that an employer's unilateral change in terms and conditions of employment within the scope of negotiations is a per se refusal to negotiate. (State of California (Department of Motor Vehicles) (1998) PERB Decision No. 1291-S at pp. 3-4; State of California (Department of Transportation) (1983) PERB Decision No. 361-S at p. 14; see Pajaro Valley Unified School District (1978) PERB Decision No. 51 at p. 5.) To prevail on a unilateral change allegation, the charging party must demonstrate that: (1) the employer breached or altered the parties' written agreement or established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounted to a change in policy; and (4) the change in policy concerns a matter within the scope of representation. (State of California (Department of Motor Vehicles) (1998) PERB Decision No. 1251-S (Motor Vehicles) at

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> (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 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.

p. 5; see Grant Joint Union High School District (1982) PERB Decision No. 196 at p. 10; Davis Unified School District, et al. (1980) PERB Decision No. 116 at pp. 14-15.)

It is undisputed that EDD issued the October 29 memorandum without giving CSEA notice or an opportunity to bargain. Further, the October 29 memorandum was an articulation of State-wide policy. Finally, the matter of overtime compensation is within the scope of negotiations. (State of California (Department of Transportation) (1983) PERB Decision No. 333-S at p. 10; see Compton Unified School District (1989) PERB Decision No. 784 at p. 5.) Accordingly, the only issue in this case is whether the October 29 memorandum constituted a change in EDD's overtime policy.

CSEA bears the burden of establishing the existence of any past practice and demonstrating that EDD's October 29 memorandum deviated from that past practice. (State of California (Departments of Personnel Administration, Banking, Transportation, Water Resources and Board of Equalization) (1998) PERB Decision No. 1279-S (Personnel Administration, et al.), proposed dec. at pp. 37-39 [dismissing unilateral change allegation because union had failed to demonstrate existence of a past practice from which the employer had deviated]; Motor Vehicles at p. 6.) As noted above, the parties in the instant matter stipulated that three supervisors in two units of one division of EDD permitted "some employees" to request up to four

hours of overtime for on-call work that took less than four hours to complete.

Departmental Policy

Relying almost exclusively on the stipulation, CSEA declined to present any witnesses during its case in chief. EDD called three witnesses in rebuttal. In considering the evidence, the ALJ balanced the terms of the stipulation against the live testimony and concluded that CSEA had failed to meet its burden of proof.

> Here, [CSEA] established that three supervisors allowed employees to claim, without question their hours of credit for on[-]call hours not at the work site. Against this evidence is the department's practice of paying only for time actually worked when not at the work site, and four hours credit only at the work site. [Data Processing Manager III, Donna J.] Haslett testified without contradiction that the department policy was to pay only for time worked when on call not at the work site.
>
> As the State argues, the three managers' actions were not consistent with the department and were, in fact, exceptions to department policy. Moreover, the evidence does not establish that the practice was to provide four hours compensation for off-site work, but only that the three managers accepted, without question, an employee's claim for up to four hours compensation.
>
> I conclude the October 29, 1997, memo was merely a reaffirmation of what had been office policy, and did not represent a change in the status quo. Since the memo only reflected what had been office policy, its promulgation could not be a violation of the duty to meet and confer required by the Dills Act. Accordingly, the complaint, and underlying unfair practice charge should be dismissed. [Proposed dec. at pp. 9-10.]

The ALJ's findings are supported by the record and I see no reason to disturb them. (State of California (Departments of Personnel Administration and Transportation) (1997) PERB Decision No. 1227-S at pp. 8-9 [noting that the Board grants great deference to ALJs' factual findings]; see Duarte Unified Education Association (Fox) (1997) PERB Decision No. 1220 at p. 3.)

In rejecting the ALJ's findings, the majority turns the burden of proof on its head, claiming that EDD presented insufficient evidence to establish that it had a policy of paying on-call employees only for time worked (cf. Personnel Administration, et al., proposed dec. at pp. 37-39; Motor Vehicles at p. 6.) Nonetheless, both the hearing transcript and EDD's Administrative Manual demonstrate that EDD had an established policy of paying employees only for time worked while on call.[4]

California Code of Regulations

Even assuming that CSEA had presented evidence sufficient to establish a past practice, that practice would be inconsistent with the provisions of the expired MOU between the parties. The Board has long held that an employer is entitled to resort to the provisions of a negotiated agreement. Since the October 29

[4]As the ALJ noted, an EDD witness testified, without contradiction, that it was EDD's established policy to pay employees only for actual time worked while on call. Further, EDD's Administrative Manual defines overtime as time actually worked in excess of the employee's regularly scheduled work week. This definition addresses the issue in this case: overtime in non-callback situations.

memorandum was consistent with the provisions of the expired MOU, I conclude that the October 29 memorandum did not constitute a unilateral change and did not violate the Dills Act.

In 1983, the State employer adopted comprehensive regulations controlling overtime compensation for employees of the State of California. (CCR, tit. 2, sec. 599.700 et seq.)[5] These regulations define overtime as any authorized time worked in excess of an employee's regularly scheduled workweek. (CCR, tit. 2, sec. 599.700.)[6] The stipulated definition of on-call work falls within the CCR's definition of overtime. Accordingly, the Board must measure the alleged unilateral change in on-call compensation against the framework of the CCR's overtime regulations.[7]

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[5]Since neither party provided argument regarding the impact of the California Code of Regulations on EDD's duty to pay for on call work, I would have preferred to request that the parties file supplemental briefs addressing this subject. In light of the majority's disposition of the case, however, such briefs would appear to have an extremely limited utility. Accordingly, I take administrative notice of the CCR and the expired MOU. (State of California (Department of Corrections) (1995) PERB Decision No. 1107-S at p. 9, fn. 4 [PERB may take official notice of terms of an MOU filed with PERB]; State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S at p. 8, fn. 5.)

[6]The CCR also provides special compensation for situations in which an employee is called back to the worksite after regular working hours. (CCR, tit. 2, sec. 599.708.)

[7]The provisions of the CCR bind both the State and third parties such as CSEA. (See Agricultural Labor Relations Bd. v. Exeter Packers, Inc. (1986) 184 Cal.App.3d 483 [229 Cal.Rptr. 87] [enforcing Agricultural Labor Relations Board regulations against citrus growers]; Pozar v. Department of Transportation (1983) 145 Cal.App.3d 269 [193 Cal.Rptr. 202] [mandamus will lie to compel an agency to comply with its own rules]; see Cal. Gov. Code sec. 11340 et seq.) In addition, employee organizations, such as

The CCR provides that "[o]vertime will be credited on a one-quarter of an hour basis with a full-quarter hour credit to be granted if half or more of the period is worked." (CCR, tit. 2, sec. 599.704.) Likewise, the October 29, 1997 memorandum provides that employees are paid only for time actually worked while on call and that "[p]ay is by quarter hour increments if the total work effort exceeds seven (7) minutes."

I find that the October 29 memorandum is entirely consistent with the overtime compensation provisions of the CCR. Since both the MOU and overtime provisions of the CCR were subject to the meet and confer provisions of the Dills Act, I conclude that, far from constituting an unlawful unilateral change in EDD's overtime policy, the October 29 memorandum was a lawful reversion to a negotiated procedure. (See State of California (Employment Development Department) (1998) PERB Decision No. 1247-S at p. 4; State of California (Corrections) (1996) PERB Decision No. 1149-S at p. 4; Marysville Joint Unified School District (1983) PERB Decision No. 314 at pp. 9-10; Dills Act sec. 3516.5; MOU, Art. 5, sec. 5.6.)

CSEA, have the opportunity to negotiate over any proposed regulations relating to matters within the scope of representation. (Dills Act sec. 3516.5.) In this case, the expired MOU specifically incorporates all existing overtime regulations. (MOU, Art. 5, sec. 5.6.) CSEA has not demonstrated that the parties have reached any additional agreement setting out a different standard for EDD or for any division or subdivision thereof.

CONCLUSION

I conclude that the actions of a handful of supervisors in a single division of EDD were insufficient to supersede EDD's established policy of paying only for time worked while on call. Even assuming that their actions were sufficient to create a past practice in some circumstances, the October 29 memorandum was consistent with the provisions of the expired MOU and I conclude that the provisions of the MOU controlled over any past practice created by the supervisors of the ISD. Accordingly, the unfair practice charge and complaint in Case No. SA-CE-1087-S should be dismissed.

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-1087-S, California State Employees Association v. State of California (Employment Development Department), in which all parties had the right to participate, it has been found that the State of California (Employment Development Department) (EDD) violated the Ralph C. Dills Act (Dills Act), Government Code section 3519(a), (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. Unilaterally modifying compensation practices for on-call employees within the Information Services Division (ISD).

2. Denying to the California State Employees Association the right to represent its members.

3. Interfering with the right of individual employees to be represented by an employee organization of their choice.

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

1. Reimburse EDD employees within the ISD for any lost compensation they would have received had EDD not unlawfully modified its compensation practices for on-call employees with seven (7) percent interest per annum.

Dated: _____

STATE OF CALIFORNIA (EMPLOYMENT DEVELOPMENT DEPARTMENT)

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.