STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SA-CE-1207-S
v.	)	PERB Decision No. 1346-S
STATE OF CALIFORNIA (EMPLOYMENT DEVELOPMENT DEPARTMENT),	)	September 2, 1999
Respondent.	)	

Appearances: Marcia Mooney, Labor Relations Representative, for California State Employees Association; State of California (Department of Personnel Administration) by Wendy L. Ross, Labor Relations Counsel, for State of California (Employment Development Department).

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (Board) on the California State Employees Association's (Association) appeal from a Board agent's dismissal (attached) of its unfair practice charge. As amended, the charge alleged that the State of California (Employment Development Department) (Department) violated section 3519(a), (b) and (c) of the Ralph C. Dills Act (Dills Act)[1] when it unilaterally changed

[1]The Dills Act is codified at Government Code section 3512 et seq. Section 3519 provides, in relevant 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

the procedure for determining employee eligibility to receive a bilingual pay differential.

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

ORDER

The unfair practice charge in Case No. SA-CE-1207-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Caffrey and Member Amador joined in this Decision.

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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.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

June 9, 1999

Marcia Mooney, Labor Relations Representative
California State Employees Association
P.O. Box 1056
Galt, California 95632

Re: California State Employees Association v. State of California (Employment Development Department)
Unfair Practice Charge No. SA-CE-1207-S
Dismissal Letter

Dear Ms. Mooney:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on January 29, 1999. The charge alleges that the State of California (Employment Development Department) (EDD) violated the Ralph C. Dills Act, Government Code section 3519 (a), (b) and (c), when it reprised against employees by decertifying them for bilingual differential pay, when it denied employees union representation, and when EDD unilaterally changed its policy regarding employee eligibility to receive bilingual differential pay certification. On May 28, 1999, the allegations concerning reprisal against employees and the denial of union representation were withdrawn without prejudice by the Charging Party. Therefore, this letter addresses only the allegation that EDD unilaterally changed its policy concerning employee eligibility to receiving bilingual pay.

I indicated to you, in my attached letter dated May 20, 1999, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to May 28, 1999, the charge would be dismissed. On May 28, 1999, I received an amended unfair practice charge.

The amended charge addresses the allegation that EDD changed its procedure for determining employee eligibility to receive bilingual differential pay without providing California State Employees Association (CSEA) with an opportunity to bargain. The charge alleges that EDD's tactical plan for regionalization required employees to voluntarily transfer into comparable job classifications and\or transfer to a different location. As **a** result, the Stockton EDD Office took **steps** to **assess the number**

of positions within the branch where bilingual skills were needed. The Stockton Office determined its operational needs required three bilingual employees. Consequently, On February 1, 1999, a number of employees at the EDD Stockton Office were decertified to receive bilingual differential pay.

I indicated in my letter of May 20, 1999, that the parties' expired memorandum of understanding clearly states the terms and standards for employee eligibility to receive bilingual pay, and as written, the charge failed to demonstrate that EDD had not followed the existing policy or procedure.

The amended charge continues to allege that the Respondent unilaterally changed terms and conditions of employment without meeting and conferring with CSEA over mandatory issues of bargaining.

As noted in my previous letter, to establish a prima facie case of an unlawful unilateral change, the charging party must show: (1) that an employer breached or otherwise altered the parties' written agreement; and (2) that those breaches amounted to a change of policy which produced a generalized affect or continuing impact upon the terms and conditions of employment. (Grant Joint Union High School District (1982) PERB Decision No. 196.)

As in the original charge, the amended charge fails to demonstrate the EDD failed to follow the standard specified in the parties' agreement when it decertified employees from receiving bilingual differential pay. Nor does the amended charge provide factual support demonstrating that employees are using their bilingual skills more than 10% of the time without receiving bilingual differential pay. The agreement states that the employer may "ensure that positions clearly meet the standards by centralizing the bilingual responsibility in as few positions as possible." Thus, regardless of the length of time the employees had been certified to receive bilingual differential pay, decertifying employees to reduce the number of employees receiving bilingual differential pay to as few positions as operationally necessary is within the terms of the parties' agreement.

A charging party has the obligation to identify the existing policy and provide sufficient facts to support an allegation that a change was made in the existing policy. This charge fails to allege sufficient facts to demonstrate that the Respondent made a change in policy within the scope of representation. Accordingly, the allegation that EDD unilaterally changed its practice and procedure for determining an employee's eligibility to receive bilingual differential pay must be dismissed.

Right to Appeal

Pursuant to Public Employment Relations Board regulations, you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Cal. Code Regs., tit. 8, sec. 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, sec. 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, sec. 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally

delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, sec. 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Cal. Code Regs., tit. 8, sec. 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
Deputy General Counsel

Board Agent

Attachment

cc: Wendi L. Ross

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street, Room 102
Sacramento, CA 95814-4174
(916) 322-3198

May 20, 1999

Marcia Mooney, Labor Relations Representative
California State Employees Association
P.O. Box 1056
Galt, California 95632

Re: California State Employees Association v. State of California (Employment Development Department)
Unfair Practice Charge No. SA-CE-1207-S
WARNING LETTER

Dear Ms. Mooney:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board on January 29, 1999. The charge alleges that the State of California (Employment Development Department) (EDD) violated the Ralph C. Dills Act, Government Code section 3519(a), (b) and (c). After discussing the allegations in the charge with you on May 14, 1999, you stated you were withdrawing all the alleged violations except the allegation of an illegal unilateral change.

The charge states that on or about January 8, 1999, EDD announced that it had determined the Stockton Disability Insurance Field Office only needed three bilingual employees. This determination resulted in approximately 18-20 existing employees who had previously been certified for bilingual differential pay to be decertified. You contend that under Article 11.4 of the expired Bargaining Unit 1 Memorandum of Understanding between CSEA and the State of California and in keeping with established practice by the parties, the decertified employees had originally been hired into bilingual classifications, and thus, they should not lose their bilingual differential pay certification.

Section 11.4 of the expired memorandum of understanding between the parties states:

> Bilingual Differential Pay applies to those positions designated by the Department of Personnel Administration as eligible to receive bilingual pay according to the following standards:
> a. Definition of Bilingual Position for Bilingual Differential Pay:
> (1) A bilingual position for salary differential purposes requires the use of a bilingual skill on a continuing basis averaging 10% of the time. Anyone using their bilingual skills 10% or more of the

> time will be eligible .... In order to receive bilingual differential pay, the position/employee must be certified by the using department and approved by the Department of Personnel Administration.
>
> (3) Position(s) must be in a setting where there is a demonstrated client or correspondence flow where bilingual skills are clearly needed.
> (4) Where organizationally feasible, departments should ensure that positions clearly meet the standards by centralizing the bilingual responsibility in as few positions as possible.

To demonstrate an illegal unilateral change, a charging party must show: (1) that an employer breached or otherwise altered the parties' written agreement; and (2) that those breaches amounted to a change of policy which produced a generalized affect or continuing impact upon the terms and conditions of employment. (Grant Joint Union High School District (1982) PERB Decision No. 196.) In this case, the parties' agreement quoted above clearly states the terms for receiving the bilingual pay differential. While you have presented facts alleging that EDD has discontinued bilingual differential pay of certain employees, there are no facts demonstrating that the method or manner in which the decertification was determined varied from the stated practice. Nor are there any facts demonstrating that employees are using their bilingual skills more than 10% of the time without receiving bilingual differential pay. Accordingly, you have not demonstrated a breach in the employer's past practice and this charge must be dismissed.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts which would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge,• contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 28,1999, I shall dismiss your charge. If you have any questions, please call me at (916) 322-3198.

Daya Hutchins
Board Agent