STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, LOCAL 1000, SEIU, AFL-CIO, CLC, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF YOUTH AUTHORITY), Respondent.	Case No. SA-CE-1294-S PERB Decision No. 1526-S May 20, 2003

Appearance: California State Employees Association by Patrick Clark, Senior Labor Relations Representative, for California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC.

Before Baker, Whitehead and Neima, Members.

DECISION

BAKER, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC (CSEA) of a Board agent's dismissal and deferral to arbitration (attached) of its unfair practice charge. The charge alleged that the State of California (Department of Youth Authority) violated Section 3519 of the Ralph C. Dills Act (Dills Act)[1] by failing to bargain over a decision and impact of changes in teacher assignments.

[1] The Dills Act is codified at Government Code section 3512 et seq.

After reviewing the entire record in this matter, including the charge and CSEA's appeal, the Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself consistent with the discussion below.

DISCUSSION

The Board agent dismissed CSEA's unfair practice charge on July 26, 2002, and deferred the charge to arbitration. CSEA argues on appeal that the dismissal was improper because the issues presented in the charge have "already been arbitrated and the union prevailed." CSEA argues that the issue here is "not a prearbitral situation but a post-arbitral issue of compliance."

In essence, CSEA seeks to have the Board enforce its arbitration award. However, it is well-settled that the Board does not have jurisdiction to enforce agreements between the parties unless the alleged violations also constitute an unfair practice. (Dills Act sec. 3514.5(b)[2].) This necessarily includes the enforcement of settlement agreements and arbitration decisions. (See State of California Department of Developmental Services) (1996) PERB Decision No. 1150-S.) Of course, this does not mean that a party may ignore an arbitration decision with impunity. Other avenues exist for CSEA to enforce its arbitration award.

Since CSEA admits that the arbitration process has concluded and repugnancy review has not been sought before PERB, there is no further need to defer this charge to arbitration. Instead, the charge must be dismissed.

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[2] Section 3514.5(b) states, in pertinent part, that:

> (b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

ORDER

The unfair practice charge and complaint in Case No. SA-CE-1294-S is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Members Whitehead and Neima joined in this Decision.

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax: (916) 327-6377

July 26, 2002

Patrick Clark, Representative
Bill Kelly, Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC v. State of California (Department of Youth Authority)
Unfair Practice Charge No. SA-CE-1294-S
NOTICE OF DISMISSAL AND DEFERRAL TO ARBITRATION

Dear Mr. Clark and Mr. Kelly:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 2, 2001. The California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC alleges that the State of California (Department of Youth Authority) violated the Ralph C. Dills Act (Dills Act)[1] by failing to bargain over the decision and impact of changes in teacher assignments.

This charge was deferred and dismissed on July 27, 2001, in accordance with the Board's precedent in Lake Elsinore School District (1987) PERB Decision No. 646. That dismissal was appealed by CSEA to the Board itself. In State of California (Department of Youth Authority) PERB Decision No. 1483-S, the Board remanded this charge to the General Counsel's office for further processing consistent with its decision in State of California Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.

I indicated in the attached letter dated July 11, 2002, that this charge was subject to deferral to arbitration. You were advised that if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, the charge should be amended. You were further advised that unless the charge was amended or withdrawn prior to July 18, 2002, it would be deferred to arbitration. That letter erroneously stated that the case would then be placed in abeyance. On July 25, I called your office and left a voicemail message for Mr. Clark after being told that Mr. Kelly had retired. The message stated that the previous letter contained an error and that the case would actually be dismissed. The message also invited Mr. Clark to call me if he had any questions.

I have not received either an amended charge or a request for withdrawal. Therefore, I am dismissing the charge based on the facts and reasons contained in my July 11 letter.

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

As I explained in the attached letter, Government Code section 3514.5(a) and PERB Regulation 32620(b)(5) require a Board agent to defer a charge where the dispute is subject to final and binding arbitration pursuant to a collective bargaining agreement. (Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81; State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.) The charge alleges that the employer made a unilateral change in job duties. This conduct is covered by the parties' collective bargaining agreement, the Respondent has agreed to waive any procedural defenses, and there is no evidence that the dispute arises in other than a stable collective bargaining environment. Accordingly, the charge must be dismissed and deferred to arbitration. Following the arbitration of this matter, the Charging Party may seek a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a.)[2]

Right to Appeal

Pursuant to PERB Regulations,[3] 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. (Regulation 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. (Regulations 32135(a) and 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 Regulation 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant

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[2] Pursuant to Government Code section 3514.5(a), the six-month limitation on the filing of a charge is tolled during the time required to exhaust the grievance machinery where that procedure ends in binding arbitration.

[3] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

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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. (Regulation 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 Regulation 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. (Regulation 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. (Regulation 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
General Counsel

By
Bernard McMonigle
Regional Attorney

Attachment

cc: Barrett W. McInerney, Labor Relations Counsel

STATE OF CALIFORNIA GRAY DAVIS, Governor

PUBLIC EMPLOYMENT RELATIONS BOARD

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July 11, 2002

Bill Kelly, Representative
California State Employees Association
1108 O Street
Sacramento, CA 95814

Re: California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC v. State of California (Department of Youth Authority)
Unfair Practice Charge No. SA-CE-1294-S
WARNING LETTER (DEFERRAL TO ARBITRATION)

Dear Mr. Kelly:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on May 2, 2001. The California State Employees Association, Local 1000, SEIU, AFL-CIO, CLC alleges that the State of California (Department of Youth Authority) violated the Ralph C. Dills Act (Dills Act)[1] by failing to bargain over the decision and impact of changes in teacher assignments.

This charge was deferred and dismissed on July 27, 2001, in accordance with the Board's precedent in Lake Elsinore School District (1987) PERB Decision No. 646. That dismissal was appealed by CSEA to the Board itself. In State of California (Department of Youth Authority) PERB Decision No. 1483-S, the Board remanded this charge to the General Counsel's office for further processing consistent with its decision in State of California Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.

The charge reveals the following. CSEA and the Employer have had an ongoing dispute with regard to a new policy requiring teachers and teacher assistants to perform certain job duties in the celled living units at the Stark Youth Correctional Facility. The dispute was the subject of an unfair practice charge that was dismissed and deferred to the arbitration process in August 2000. CSEA filed a safety grievance and the matter was eventually submitted to an arbitrator who issued a binding award that was amended January 9, 2001. The arbitrator ordered a return to the status quo, the establishment of a Joint Union/Management Health and Safety Committee and that the parties "meet...before any changes are made in the teachers' working conditions." The Superior Court for the County of San Bernardino confirmed the award.

The parties met regarding the issue of living-unit duty on February 20-21 and April 9, 2001. According to the charge, the Employer brought a mediator to the April 9 meeting; CSEA took the position that the parties were not at impasse. No agreement was reached.

[1] The Dills Act is codified at Government Code section 3512 et seq. The text of the Dills Act and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

CSEA contends that the Employer has made a firm decision and intends to implement its last proposal, allowing it to take actions similar to those intended for the summer of 2000.[2] According to CSEA, in this manner the Employer failed to meet its obligation to bargain.

The teachers at the youth facility are in state bargaining unit 3, teacher assistants are in unit 20, both represented by CSEA. Both collective bargaining agreements, at Article 10, commit the Employer to providing a safe working environment. Both contracts contain an entire agreement article that describes the employer's obligation to bargain on matters not contained in the agreement, and mandates that a dispute over the applicability of the article be referred to binding arbitration. Both contracts have grievance procedures that end in binding arbitration.

Based on these facts and Dills Act section 3514.5, this charge must be deferred to arbitration under the MOU.

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

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

In Dry Creek Joint Elementary School District (1980) PERB Order No. Ad-81a, the Board explained that:

> While there is no statutory deferral requirement imposed on the National Labor Relations Board (hereafter NLRB), that agency has voluntarily adopted such a policy both with regard to post-arbitral and pre-arbitral award situations.[2] EERA section 3541.5(a) essentially codifies the policy developed by the NLRB regarding deferral to arbitration proceedings and awards. It is appropriate, therefore, to look for guidance to the private sector.[3] [Fn. 2 omitted; fn. 3 to Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608.]

Although Dry Creek was decided under the Educational Employment Relations Act[3] the NLRB deferral standard has also been applied to the Dills Act. (State of California (Department of Food and Agriculture) (2002) PERB Decision No. 1473-S.)

In Collyer Insulated Wire (1971) 192 NLRB 837 [77 LRRM 1931] and subsequent cases, the National Labor Relations Board articulated standards under which deferral to the contractual grievance procedure is appropriate in prearbitral situations. These requirements are: (1) the

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[2]Subsequent events and allegations are contained in Unfair Practice Charge No. 1315-S.

[3] The Educational Employment Relations Act is codified at Government Code section 3540 et seq.

dispute must arise within a stable collective bargaining relationship where there is no enmity by the respondent toward the charging party; (2) the respondent must be ready and willing to proceed to arbitration and must waive contract-based procedural defenses; and (3) the contract and its meaning must lie at the center of the dispute.

These standards are met with respect to this case. First, no evidence has been produced to indicate that the parties are not operating within a stable collective bargaining relationship. Second, by the attached letter from its representative, Barrett McInerney, dated July 11, 2002, the Respondent has indicated its willingness to proceed to arbitration and to waive all procedural defenses. Finally, the issue raised by this charge that the employer failed to bargain over additional duties and work location for teaching staff is arguably prohibited by the entire agreement article. The allegation that the employer failed to provide a safe work environment is arguably prohibited by the health and safety article of the respective bargaining unit agreements.

Accordingly, this charge must be deferred to arbitration and will be placed in abeyance until such time as the arbitration process has concluded. Following the arbitration of this matter, the charge will be dismissed unless the Charging Party seeks a repugnancy review by PERB of the arbitrator's decision under the Dry Creek criteria. (See Regulation 32661; Los Angeles Unified School District (1982) PERB Decision No. 218; Dry Creek Joint Elementary School District, supra.)

If there are any factual inaccuracies in this letter or any additional facts that would require a different conclusion than the one explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the Charging Party. The amended charge must be served on the Respondent and the original proof of service filed with PERB.

If I do not receive an amended charge or withdrawal from you before July 18, 2002, I shall place your charge in abeyance. If you have any questions, please call me at the above telephone number.
Sincerely,

Bernard McMonigle
Regional Attorney

Attachment