STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATE EMPLOYEES INTERNATIONAL UNION LOCAL 1000, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF DEVELOPMENTAL SERVICES & OFFICE OF PROTECTIVE SERVICES), Respondent.	Case No. SA-CE-1660-S PERB Decision No. 2062-S September 14, 2009

Appearances: Service Employees International Union Local 1000 by Jo Ann Juarez-Salazar, Representative; State of California (Department of Personnel Administration) by Jennifer M. Garten, Labor Relations Counsel, for State of California (Department of Developmental Services & Office of Protective Services).

Before McKeag, Neuwald and Wesley, Members.

DECISION

NEUWALD, Member: This case is before the Public Employment Relations Board (Board) on appeal by the State Employees International Union Local 1000 of an administrative law judge's (ALJ) proposed decision (attached). The complaint alleged that the State of California (Department of Developmental Services & Office of Protective Services) violated the Ralph C. Dills Act (Dills Act)[1] by (1) replacing a security tower with a security booth, and (2) dismantling other security towers and replacing them with surveillance cameras, without prior notice and an opportunity to meet and confer over the effects of these changes. The charge alleged that this conduct constituted a violation of Dills Act section 3519, subdivisions (a), (b) and (c). The ALJ dismissed the complaint and underlying unfair practice charge.

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

The Board reviewed the entire record in this matter. In light of our review, the Board finds the proposed decision was well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, the Board adopts the ALJ's proposed decision as a decision of the Board itself.

ORDER

The complaint and underlying unfair practice charge in Case No. SA-CE-1660-S are hereby DISMISSED.

Members McKeag and Wesley joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SEIU LOCAL 1000, Charging Party, v. STATE OF CALIFORNIA (DEPARTMENT OF DEVELOPMENTAL SERVICES & OFFICE OF PROTECTIVE SERVICES), Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-1660-S PROPOSED DECISION (3/24/2009)

Appearances: Service Employees International Union Local 1000, by Jo Ann Juarez-Salazar, URC Union Representative; Jennifer Garten, Legal Counsel, Department of Personnel Administration for State of California (Department of Development Services & Office of Protective Services).

Before Bernard McMonigle, Chief Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that the state employer violated the Ralph C. Dills Act (Dills Act or Act) by replacing security towers with security booths and surveillance cameras without bargaining the effects of those actions. The employer denies any unfair practice.

On February 19, 2008, Service Employees International Union Local 1000 (SEIU or Union) filed an unfair practice charge against the State of California, Department of Developmental Services & Office of Protective Services (Department or DDS). On March 6, 2008, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint alleging that DDS violated the Act when it replaced a security tower with a security booth without meeting and conferring over the effects of the change in policy. The complaint also alleged, as a separate violation, that the Department violated the Act by adopting a policy to replace four other security towers with surveillance cameras without

meeting and conferring over the effects of that change in policy. It is alleged that with each of these acts, DDS violated Dills Act section 3519, subdivisions (a), (b) and (c).[1]

On March 26, 2008, DDS filed its answer generally denying the allegations and setting forth several affirmative defenses. On that same date, an informal settlement conference was conducted by a PERB agent but the case was not settled.

A formal hearing was held on July 17, 2008. At the end of the hearing, it was agreed that the parties would concurrently place briefs in the mail on September 8, 2008.

Respondent's post hearing brief was received on September 9, 2008. On September 15, SEIU filed a request for an extension of time to file the closing brief which was opposed by DDS. On September 18, SEIU was granted an extension of time to file its closing brief no later than September 29, 2008. DDS would have an opportunity to file a reply brief by October 13, 2008.

On October 6, 2008, SEIU filed its closing brief accompanied by a second request for an extension of time. On October 9, that request was denied for lack of good cause. The parties were notified that SEIU's closing brief would not be considered by the undersigned and, accordingly, DDS was not to file a reply brief. Thus, the matter was submitted for decision on October 9, 2008.

FINDINGS OF FACT

DDS is a State employer within the meaning of section 3513, subdivision (j) of the Dills Act. SEIU is the recognized employee organization within the meaning of section 3513, subdivision (b) and the exclusive representative for statewide bargaining units 1, 3, 4, 11, 14, 15, 17 and 20.

[1] Unless otherwise indicated, all statutory references are to the Government Code. The Dills Act is codified at Government Code section 3512 and following. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 and following.

The Porterville Developmental Center (PDC) is a DDS facility that provides 24-hour residential services for developmentally disabled individuals with medical and behavioral problems. For the secure treatment program at PDC there is a perimeter fence with five security towers and a security kiosk, each with a security guard.[2] The primary responsibility of the guards is to observe and report unusual activity and prevent escapes.

Jeffrey Bradley (Bradley) is the Supervising Special Investigator that oversees all security and police functions at PDC. He testified that as part of a facility expansion the fence line was moved and it was necessary to demolish Tower Two in March 2008. To maintain security, a kiosk was placed at the same location temporarily and a portable toilet installed nearby. The staffing and duties remained the same. Bradley believed that, while the view of the fence line was closer to the ground, the change did not inhibit a guard's view or impede performance of responsibilities.

Robert Johnson (Johnson) has been employed by DDS as a security guard for ten years. He is the SEIU Chief Job Steward at PDC.

In the summer of 2007, Johnson and other guards heard there would be new construction at the facility that might result in the removal of Tower 2. Johnson requested information from his supervisors and the PDC Director. He was told to address his questions to the Office of Protective Services, the subdivision responsible for security. He made several requests, and over time received several responses as to timing of the tower removal. He received no information regarding other changes.

In the fall of 2007, Johnson drove to DDS headquarters in Sacramento where he met with Devin Fong (Fong), the DDS labor relations specialist recently assigned to the SEIU bargaining unit. They discussed several issues regarding PDC including the use of

[2] In addition, one "rover" security guard is assigned to each shift.

surveillance cameras. Fong could provide little information as he was new to the assignment. However, Johnson was able to state his concerns.

Johnson testified that at some point he demanded DDS "cease and desist" from removing Tower 2. Despite the demand, the tower was removed. It was replaced by a kiosk and his ability to observe the grounds was greatly reduced. At times, Johnson now walks the perimeter to increase his ability to observe. Unlike the tower, the kiosk contained no bathroom facilities or air conditioning, conditions which have been corrected.[3] Guards were provided with wireless telephones.

In February 2008, the security guards were informed that installation of electronic surveillance would be a part of the new construction. They also were told by a construction worker that fiber optic lines were being installed for surveillance purposes. Johnson and other guards became concerned that cameras in the towers would lead to layoffs.

Richard Chavez (Chavez) is also a security guard and a job steward at PDC. He confirmed that the view from the kiosk was greatly reduced from that of the Tower. He was also aware of employee concerns that the new surveillance system would result in job loss.

Chavez recalled that SEIU representatives were invited by management to a meeting regarding the construction issues in February 2008. He testified the meeting was rejected by SEIU representative Jo Ann Juarez-Salazar because the DDS representative "did not have anything to bring to the table."

Steve Ensslein (Ensslein) has been a security guard at PDC for twelve years. At the time of this hearing, he was assigned to the kiosk. Ensslein testified that vision of the fence

[3] Air conditioning was installed and a bathroom repaired nearby. Now, a bathroom break requires calling for the rover guard as a temporary replacement.

line is now limited "so you have to physically get up just to see down the fence line. However, you cannot see over the top of the compound."

On December 21, Juarez-Salazar sent a letter to DDS alleging that the department had unilaterally implemented changes affecting bargaining unit members and requested to meet and confer.

On January 28, 2008, DDS Acting Chief Labor Relations Division Brad Louie replied to what he described as SEIU's "Demand to Cease and Desist and Request to Meet and Confer Porterville Developmental Center (PDC)."[4] In relevant part, the letter stated,

> This letter is to acknowledge that the Department of Developmental Services (Department) is in receipt of your letter dated December 21, 2007, and received by fax on the same date. In your letter, you allege that the Department and Office of Protective Services at PDC have unilaterally implemented several changes which have material and significant impact to the terms and conditions of employment to the employees in Bargaining Unit (BU) 15. In addition, the Service Employees International Union (SEIU) Local 1000 is requesting to meet and confer over the alleged working changes impacting BU 15 members.
>
> The Department will evaluate the merits of the issues raised in your letter, and determine if changes at PDC's Secured Treatment Area (STA) Program does obligate the Department to notice SEIU Local 1000 of changes that impact working conditions of covered employees, pursuant to Article XXIV of the Collective Bargaining Agreement between BU 15 and the State of California. After I have had a chance to review the circumstances of your concerns, I will get back to you for an update on or before February 20, 2008.

Fong responded to Juarez-Salazar. He contacted her on February 13 to arrange a meeting to discuss her December letter and employee concerns regarding possible job loss. They tentatively set a meeting for February 26. Juarez-Salazar said she would confirm the meeting after checking with her members.

[4] Neither party entered the Juarez-Salazar letter of December 21, 2007, into evidence.

On February 13, Fong also learned that SEIU had filed the unfair practice charge in this matter.[5]

On February 21, Fong sent Juarez-Salazar an email asking her to confirm the February 26 meeting. Juarez-Salazar responded,

> Devin, as discussed yesterday, it is our position that a meet and confer is required in this situation. It appears you are interested in an informational meeting as a way to bypass a required meet and confer: and consider the ULP & IR issue moot. Please present any information you are interested in presenting at the informational meeting. I will immediately pass this information to our team.

There was no meeting and Fong sent no additional information. Fong recalled that there was no request from SEIU representatives to negotiate over specific effects of the construction changes.

ISSUE

1. Did DDS violate its duty to bargain over the effects of replacing a security tower with a kiosk?

2. Did DDS violate its duty to bargain over the effects of its decision to install surveillance cameras?

DISCUSSION AND CONCLUSIONS OF LAW

The formal hearing began with some confusion over the nature of the issue to be decided. After opening statements, I noted that the complaint issued by the Office of the General Counsel alleged that DDS violated the Dills Act when it failed to bargain over the effects of the decision to replace Tower 2 with a kiosk and the decision to install surveillance cameras; it did not allege that DDS violated the Act by failing to bargain over the two

[5] The unfair practice charge was accompanied by a request that PERB seek injunctive relief. That request was denied by the Board.

decisions. The SEIU representative expressed her belief that the complaint included an alleged failure to bargain over the decisions themselves.

Having again reviewed the complaint, I find no support for the expansive interpretation urged by SEIU. I also note that SEIU representatives did not make a motion to amend the complaint during four months between its issuance and the hearing in this matter; nor was such motion made at the hearing.[6] This case remains limited to the question of whether DDS improperly failed to engage in effects bargaining.

When an employer makes a unilateral change, and the effects of the decision are negotiable, the employer has a duty to provide an opportunity to bargain prior to implementation. *Compton Community College District* (1989) PERB Decision No. 720. On December 21, 2007, Juarez-Salazar sent DDS a demand to cease and desist from implementing decisions to close Tower 2 and to implement surveillance equipment at PDC. Tower 2 was not demolished until March 2008, surveillance cameras had not been installed at the time of this hearing in July 2008. Accordingly, I find that SEIU had knowledge of these changes with sufficient time to request that DDS bargain over their effects.

The record in this case establishes that with the December 21 letter, SEIU demanded to bargain over the decisions, asserting there were significant impacts on the terms and conditions of employment. DDS did not agree to do so.

However, the issue here is not whether DDS violated the Dills Act by refusing to bargain over its decisions to make policy changes. The issue, as stated in the PERB complaint, is whether it violated the Act by refusing to bargain over negotiable effects of those decisions.

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[6]Accordingly, there was no need to determine whether the changes required bargaining or were within management's prerogative. *State of California (Department of Corrections)* (2000) PERB Decision No. 1381-S.

A union must make a demand to bargain over the effects that clearly identifies subjects of impact within the scope of bargaining. (*Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223; *State of California (Department of Corrections)* (2006) PERB Decision No. 1848-S.) The Board will not presume an effect on negotiable terms and conditions of employment as a result of an employer change. (*Imperial Unified School District* (1990) PERB Decision No. 825.)

As the Board has recently stated, "[w]hen a union demands to meet and confer over the effects of a [employer] decision, the demand must clearly identify the negotiable effects. [Citation omitted.] Absent such an identification, the employer has no duty to bargain. [Citation omitted.] (*Beverly Hills Unified School District* (2008) PERB Decision No. 1969.)

The record is devoid of facts demonstrating that SEIU representatives made a demand that identified any specific negotiable effects of the decisions to demolish Tower 2 or to install surveillance equipment. Additionally, Fong provided unchallenged testimony that SEIU did not make such a demand.

At the hearing, union witnesses described effects of the subject decisions that may have required bargaining by the employer. However, the burden was on SEIU to demonstrate that it made a valid request to bargain the effects. (*Sylvan Union Elementary School District* (1992) PERB Decision No. 919; *State of California (Department of Corrections)* (2006) PERB Decision No. 1848-S.) It did not do so.

Accordingly, I conclude that DDS did not violate the Dills Act by refusing to bargain over the effects of the decision to dismantle a security tower or the effects of the decision to install surveillance cameras.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that the complaint and underlying unfair practice charge in PERB Case No. SA-CE-1660-S, *SEIU Local 1000 v. State of California (Department of Development Services & Office of Protective Services)* are without merit and they are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4174
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered filed when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered filed when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135, subdivision (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, § 32135, subdivisions (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Bernard McMonigle
Chief Administrative Law Judge