

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA STATE EMPLOYEES')
ASSOCIATION, SEIU, Local 1000,)
)
Charging Party,) Case No. S-CE-371-S
)
v.) PERB Decision No. 706-S
)
STATE OF CALIFORNIA, DEPARTMENT)
OF PERSONNEL ADMINISTRATION,)
)
Respondent.)
)
_____)

Appearances: George Karrer, Administrator, for the California State Employees' Association.

Before Hesse, Chairperson; Porter, Craib and Shank, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (Board) on appeal by the California State Employees' Association (CSEA) of the Board agent's dismissal of an amended charge which alleges that the Governor failed to "meet and confer in good faith" in violation of section 3517 of the Ralph C. Dills Act (Act)¹ before submitting his proposed budget

¹The Ralph C. Dills Act is codified at Government Code section 3512 et seq. Section 3517 states:

The Governor, or his representative as may be properly designated by law, shall meet and confer in good faith regarding wages, hours, and other terms and conditions of employment with representatives of recognized employee organizations, and shall consider fully such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

for the fiscal year 1988-89 pursuant to article IV, section 12(a) of the California Constitution.² It is also alleged that a violation of section 3523(a)³ of the Act, which mandates the

"Meet and confer in good faith" means that the Governor or such representatives as the Governor may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the state of its final budget for the ensuing year. The process should include adequate time for the resolution of impasses.

²Article IV, section 12(a) of the California Constitution states:

Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. If recommended expenditures exceed estimated revenues, the Governor shall recommend the sources from which the additional revenues should be provided.

³Government Code section 3523(a) states:

All initial meet and confer proposals of recognized employee organizations shall be presented to the employer at a public meeting, and such proposals thereafter shall be a public record.

All initial meet and confer proposals or counterproposals of the employer shall be presented to the recognized employee organization at a public meeting, and such proposals or counterproposals thereafter shall be a public record.

Governor to provide the recognized employee organization (CSEA) with all initial meet and confer proposals regarding salary increases at a public meeting. Such failures to act allegedly constitute violations of section 3519(a), (b), and (c) of the Act.⁴

Having reviewed the entire record, we affirm the dismissal of the charge for the reasons set forth below.

On January 28, 1988, CSEA filed the charge alleging that the State of California, Department of Personnel Administration violated sections 3517, 3523, and 3519(a), (b), and (c) of the Act by the Governor's submission of the 1988-89 fiscal year budget to the Legislature. The gravamen of CSEA's charge is that the Governor was obligated, pursuant to the Act, to meet and confer with CSEA and to consider CSEA's positions prior to the submission of the budget proposal to the Legislature. In support of the claim that the Governor unlawfully arrived at a

⁴Government Code section 3519(a), (b), and (c) state;

It shall be unlawful for the state to:

(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.

(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.

determination of policy or course of action, CSEA attached a copy of section 9800 of the 1988-89 proposed budget, an augmentation for employee compensation. Section 9800 stated in part, "... the budget proposes a general compensation increase up to four percent (4%) commencing January 1, 1989, with that increase supplemented by an additional 75.2 million for benefit and other compensation adjustments as may be agreed upon."

The Board agent, by letter dated March 3, 1988, replied to CSEA's initial charge of the state's failure to meet and confer in this fashion:

At the time of the budget's submission, CSEA had not presented any proposals or any other type of information for the State to consider.

On March 18, 1988, CSEA filed a first amended charge, which stated in part:

In the past when the Governor's proposal has included reference to a specific percentage increase and/or effective date, the state has consistently bargained economic issues using the Governor's proposal as a ceiling and has consistently refused to agree to an effective date other than that proposed by the Governor. . . .

Further, CSEA was given no prior notice of the fact that the Governor's proposal would contain a specific percentage increase for employee compensation or a specific effective date. Therefore, CSEA could not have requested to meet and confer prior to the public announcement of the Governor's proposal. Subsequent to the public announcement of the Governor's proposals a request to meet and confer with the Governor would have been futile because the policy or course of action had been publicly determined and because the deadline for the proposal is constitutionally set.

CSEA could not have requested to meet and confer on the budget proposal in connection with the negotiation on the successor collective bargaining agreement because those negotiations were not scheduled by the State, pursuant to Section 3523, until January 21, 1988 and thereafter.

The Board agent replied to the first amended charge on March 22, 1988, by stating that Constitution article IV, section 12, provides adequate notice of the Governor's responsibility and the timetable within which to submit the budget. Therefore, CSEA had the opportunity to request to meet and confer, and had failed to do so before submission of the budget. Furthermore, CSEA presented no persuasive argument to support its assumption that the proposed budget constitutes the state's initial meet and confer proposal. Nor does section 3517 or 3523 of the Act give the state employer the sole right to establish dates upon which to present meet and confer proposals. The charge was then dismissed.

CSEA'S POSITION

CSEA contends that section 3517 of the Act imposes an affirmative obligation on the Governor or his representative to meet and confer prior to arriving at a policy or course of action. Further, the limitation of a general compensation increase of up to four percent commencing January 1, 1989, and a supplemental \$75.2 million for benefits is a unilateral implementation of a term and condition of employment without meeting and conferring in violation of the Act.

ISSUE

The issue is whether the Governor's compliance with the constitutional mandate of article IV, section 12 in submitting a fiscal year budget constitutes a unilateral implementation of a negotiable item under the Act.

DISCUSSION

The Board agent's dismissal is based upon the fact that CSEA made no demand upon the Governor to negotiate prior to the submission of his proposed budget. We do not agree with the Board agent's reasoning. We dismiss the charge on the ground that the Governor's proposed budget is not a matter for negotiation, but is instead the performance of a constitutionally imposed duty. The Governor acts as an essential participant in the legislative process, whereby the state remains solvent and operating. The Governor has the constitutional responsibility to assess the financial needs of state government and estimate potential income and expenditures and provide a fiscal plan to the Legislature which will culminate in the adoption of a fiscal budget, effective the first day of the next fiscal year. In doing so, he acts in a legislative capacity as part of the legislative process which is separate and apart from his responsibilities as the chief executive and employer of state employees.

In the case of Veterans of Foreign Wars v. State of California (1974) 36 Cal.App.3rd 688 [111 Cal.Rptr. 750], the court considered the legality of a diversion of money from the

Veteran's Farm and House Building Fund and found it to be illegal. In determining the capacity in which the named defendants, including the Governor, had acted in making the diversion, the court stated at page 697:

The Governor, moreover, acts in a legislative capacity in submitting the annual budget bill to the Legislature and in approving it after its adoption. (Cal. Const., art. IV, sections 10, 12; see Jenkins v. Knight 46 Cal.2nd 220, 223 [293 P.2nd 6] Lukens v. Nye, 156 Cal. 498, 501-503 [105 P. 593].)

Here, the question is whether the Act places a duty on the Governor to meet and confer and sunshine his economic proposals for state employees prior to complying with article IV, section 12 of the Constitution. We conclude that no such duty can be imposed when the Governor is acting in a legislative capacity in submitting a fiscal plan to the Legislature pursuant to constitutionally mandated process designed to keep the state solvent and operating.

ORDER

For the foregoing reason, we hereby DISMISS the charge in Case No. S-CE-371-S.

Chairperson Hesse and Member Porter joined in this Decision. Member Craib's concurrence begins on page 8.

Member Craib, concurring: I concur with the result reached in the lead opinion, however, I find it necessary to briefly clarify the Board's holding. The potential for confusion arises from the rejection, without sufficient explanation, of the Board agent's reliance on CSEA's failure to demand bargaining.

My colleagues have correctly perceived CSEA's charge as alleging that the Governor has an affirmative duty to bargain prior to submitting the proposed budget. In CSEA's view, such action constitutes a unilateral change in policy which would be unlawful regardless of whether there was an earlier demand to bargain. As my colleagues point out, the submission of the proposed budget is constitutionally mandated and cannot itself constitute a violation of the Governor's statutory duty to negotiate pursuant to the Ralph C. Dills Act.

While the same conclusion was implicit in the Board agent's analysis, it was not given the emphasis it deserved. Instead, the Board agent focused on an alternative reading of the charge, i.e., one addressing the Governor's actual bargaining conduct during the period preceding the submission of the proposed budget. Had that in fact been the focus of CSEA's charge, the Board agent's reliance on the failure of CSEA to demand bargaining during that period would have been correct. While CSEA could have attempted to negotiate with the Governor prior to the submission of the proposed budget, perhaps with the hope of affecting the content of the proposed budget, CSEA would have had the obligation to demand bargaining during that period and could

not later complain of a lack of negotiations in the absence of such a demand.¹

¹It is important to note that, though the Governor's bargaining conduct during the period preceding submission of the proposed budget obviously would be subject to the good faith requirements of the Dills Act, the submission of the budget itself, since it is a constitutionally required act, could not evidence bad faith nor be the subject of a remedy ordered by this Board.