STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATION OF CALIFORNIA STATE ATTORNEYS AND ADMINISTRATIVE LAW JUDGES (ACSA),	)	
Charging Party,	)	Case No. S-CE-410-S
v.	)	PERB Decision No. 739-S
STATE OF CALIFORNIA, DEPARTMENT OF PERSONNEL ADMINISTRATION,	)	June 8, 1989
Respondent.	)	

Appearances: Ernest F. Schulzke, Attorney, for the Association of California State Attorneys and Administrative Law Judges (ACSA); Christopher W. Waddell, Chief Counsel, for the State of California, Department of Personnel Administration.

Before Porter, Craib and Shank, Members.

DECISION

SHANK, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by the Association of California State Attorneys and Administrative Law Judges (ACSA or Association) of the dismissal by a PERB administrative law judge (ALJ) of a complaint which alleged that the State of California, Department of Personnel Administration (DPA) failed to "meet and confer in good faith" in violation of section 3519(c) and derivatively, (a) and (b) of the Ralph C. Dills Act (Act).[1]

[1]The Ralph C. Dills Act is codified at Government Code section 3512 et seq. Section 3519 states, in relevant part:

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,

Having reviewed the entire record, we reverse the dismissal of the complaint for the reasons set forth below.

FACTUAL AND PROCEDURAL SUMMARY

On October 3, 1988, the Association, exclusive representative for state attorneys and administrative law judges, filed the charge at issue. ACSA alleged that DPA failed to meet and confer in good faith by refusing to make a salary proposal or respond meaningfully to its proposal until five months after ACSA made its opening proposal, three months after ACSA made a detailed salary proposal, and nearly two months after the adoption of the state budget by the Legislature and Governor. The gravamen of ACSA's charge is that DPA is obligated, pursuant to the Act, to meet and confer with ACSA and to consider its salary proposal prior to the adoption of the state budget by the Legislature and the Governor.

The PERB General Counsel issued a complaint against DPA and DPA filed its answer along with a motion to dismiss the complaint.

In its motion to dismiss, DPA contended that ACSA failed to state a prima facie case and argued that a delay in negotiations

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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.

over salaries is not, in and. of itself, a failure to negotiate in good faith. In response, the Association argued that the charge and complaint stated a prima facie case.

The ALJ dismissed the complaint after concluding that the single allegation that DPA delayed in making an initial salary offer was insufficient to establish a prima facie failure to meet and confer in good faith violation.

DISCUSSION

The only issue for Board resolution is whether sufficient facts were alleged to state a prima facie case of failure to negotiate in good faith.[2] To state a prima facie case, the Association must allege facts indicating that the conduct by DPA amounted to a refusal to negotiate ACSA's salary proposal.

PERB utilizes both the "per se" and "totality of the conduct" tests to ascertain whether a party's negotiating conduct constitutes an unfair labor practice. (Stockton Unified School District (1980) PERB Decision No. 143.) The distinction between the two tests was delineated in Pajaro Valley Unified School District (1978) PERB Decision No. 51. The Board noted:

> The National Labor Relations Board (hereafter NLRB) has long held that [a duty to bargain in good faith] requires that the employer negotiate with a bona fide intent to reach an agreement. In re Atlas Mills, Inc. (1937)

[2]In reviewing the dismissal of a charge for failure to state a prima facie case, the essential facts alleged in the charge are presumed to be true. (San Juan Unified School District (1977) EERB Decision No. 12.) (Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).) (State of California (Department of Transportation) (1983) PERB Decision No. 333-S.)

> 3 NLRB 10 [1 LRRM 60]. The standard generally applied to determine whether good faith bargaining has occurred has been called the "totality of conduct" test. See NLRB v. Stevenson Brick and Block Co. (4th cir. 1968) 393 F.2d 234 [68 LRRM 2086] modifying (1966) 160 NLRB 198 [62 LRRM 1605]. This test looks to the entire course of negotiations to determine whether the employer has negotiated with the requisite subjective intention of reaching an agreement.
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> There are certain acts, however, which have such a potential to frustrate negotiations and to undermine the exclusivity of the bargaining agent that they are held unlawful without any determination of subjective bad faith on the part of the employer. In NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177] the NLRB found that a unilateral grant of benefits, short of impasse and without notice to the union, constituted per se an illegal refusal to bargain. . . .

The Association alleges that, by refusing to present a salary proposal or to respond meaningfully to ACSA's salary proposal until five months after ACSA's "sunshine" proposal, more than three months after ACSA's first detailed salary proposal, and nearly two months after adoption of the budget by both the Legislature and the Governor, DPA failed to meet and confer in good faith. Here, the Association alleges that DPA presented its first salary proposal nearly two months after the adoption of the budget by both the Legislature and the Governor.

In dismissing the complaint for failure to state a prima facie violation of the Act, the ALJ relied primarily on State of California (Department of Personnel Administration) (1986) PERB Decision No. 569-S. In State of California, supra, the Board, in a narrowly drawn decision, held that, although the state was

under an obligation pursuant to section 3517 of the Act "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," a failure to negotiate salaries prior to the date the Legislature must pass the budget was not always a per se refusal to bargain. (Id. at p. 7.) The Board noted that "the statutorily imposed obligation 'to endeavor' can by no means be interpreted to create an absolute standard pursuant to which a failure to present proposals by June 15 must be judged a per se violation." (Id. at p. 8.)

We find that the allegations are sufficient to state a prima facie case, and that the issue of whether or not DPA failed to meet and confer in good faith is a factual question to be determined after a hearing on the merits.

ORDER

Based on the record, it is hereby ORDERED that the ALJ's dismissal of the complaint in Case No. S-CE-410-S is REVERSED and the complaint herein is REMANDED to the Chief Administrative Law Judge for further proceedings in accordance with this Decision.

Members Porter and Craib joined in this Decision.