

COPY



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

PUBLIC EMPLOYMENT
RELATIONS BOARD
NEW YORK QUARTER OFFICE
MAR 22 PM 2:21

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No: _____ Date Filed: _____

INSTRUCTIONS: File the original and two copies of this charge form with proof of service attached to each copy in the appropriate regional office of the PERB. A copy of the charge must also be served on Respondent. All forms are available from the regional offices. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES _____ NO X _____

1. CHARGING PARTY: EMPLOYEE _____ EMPLOYEE ORGANIZATION X EMPLOYER _____

- a. Full name: SEIU Local 1000 CSEA
- b. Mailing address: 1108 O" Street, Suite 327
Sacramento, CA 95814
- c. Telephone number: (916) 326-4208
- d. Name, title and telephone number of person filing charge: Paul E. Harris, III
Assistant Chief Counsel
(916) 326-4208
- e. Bargaining unit(s) involved: Unit 1 - Institution Artist Facilitators and
Unit 3 - Professional Educators and Librarians

2. CHARGE FILED AGAINST: (mark one only) EMPLOYEE ORGANIZATION _____ EMPLOYER _____

- a. Full name: California Department of Corrections
- b. Mailing address: 1515 S Street, P.O. Box 942883
Sacramento, CA 95814
- c. Telephone Number: (916) 445-7167
- d. Name, title and telephone number of agent to contact: Jan Sale, Labor Relations Officer

3. NAME OF EMPLOYER (Complete this section only if the charge is filed against an employee organization.)

- a. Full name:
- b. Mailing address:

4. APPOINTING POWER: (Complete this section only if the employer is the State of California. See Government Code section 18524.)

- a. Full name: California Department of Corrections
- b. Mailing address: 1515 S Street
Sacramento, CA 95814
Jan Sale, LRO
- c. Agent:

a. Are the parties covered by an agreement containing a grievance procedure which ends in binding arbitration?

Yes x No

6. STATEMENT OF CHARGE

a. The charging party hereby alleges that the above-named respondent is under the jurisdiction of: (check one)

- Educational Employment Relations Act (Gov. Code sec. 3540 et. seq.)
- x Ralph C. Dills Act (Gov. Code sec. 3512 et. seq.)
- Higher Education Employer-Employee Relations Act (Gov. Code sec. 3560 et. seq.)

b. The specific section(s) alleged to have been violated is/are:

 GC 3517; 3519(a), (b) and (c)

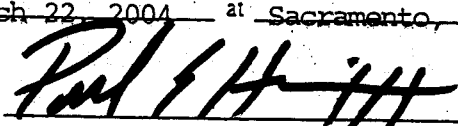
c. Provide a clear and concise statement of the conduct alleged to constitute an unfair practice including, where known, the time and place of each instance of respondent's conduct, and the name and capacity of each person involved. This must be a statement of the facts that support your claim and not conclusions of law. *(Use and attach additional sheets of paper to adequately set forth the supporting factual allegations.)*

See Attached Statement

DECLARATION

I declare under penalty of perjury that I have read the above charge and that the statements herein are true and complete to the best of my knowledge and belief and that this declaration was executed on March 22, 2004 at Sacramento, California.

Paul E. Harris, III
(Type or Print Name)


(Signature)

Title, if any: Assistant Chief Counsel
Mailing address: 1108 "O" Street, Suite 327
Sacramento, CA 95814
Telephone Number: (916) 326-4208

In the Matter of CSEA vs. the State of California (Department of Corrections)
Attachment A: No 6(d) - Statement of Charge
March 22, 2004

Statement of Charge

SEIU Local 1000, AFL-CIO, CLC (CSEA) (hereafter the "Union") is the exclusive bargaining representative for employees in Bargaining Units 1 and 3. Bargaining Unit 1 is covered by an MOU effective July 3, 2003 to June 30, 2005. Bargaining Unit 3's MOU expired on July 3, 2003 and the parties have not yet reached agreement on a successor contract.

Bargaining Unit 1 received Notice from the Department of Personnel Administration ("DPA") in a letter dated September 25, 2003 that the California Department of Corrections ("CDC") would on November 1, 2003, implement changes to the Arts In Corrections Program through creation of a Bridging Program, significantly impacting the assignments and duties for Bargaining Unit 1 CDC Institution Artist/Facilitators ("IAF").

Bargaining Unit 1 requested to meet-and-confer concerning the impact of the Bridging Program on IAFs. Union representatives and CDC administrators met on October 7, October 24, November 13, December 19, 2003 and February 4, 2004. While various proposals have been passed across the table, the parties are still in the process of negotiating and have not reached agreement.

Despite the fact that the parties are in the midst of negotiations, CDC implemented the Bridging Program on November 1, 2003 without fully considering or allowing a reasonable time for presentations from Bargaining Unit 1 on behalf of its members prior to arriving at a determination of policy or course of action and as required by the Dills Act, Government Code Sections 3517 and 3519 (b) and (c).

In or about November 2003, CSEA Bargaining Unit 3 received Notice from DPA that CDC planned to implement the same Bridging Program, which would significantly impact the assignments and duties of various CDC Bargaining Unit 3 teacher classifications. The dates CDC stated it would implement the Bridging Program for Unit 3 employees were December 1, 2003 for those teachers assigned to General Population prisons and January 1, 2004 for those teachers assigned to prison Reception Centers.

Bargaining Unit 3 requested to meet-and-confer concerning the impact of the Bridging Program on its teachers. Specifically, representatives of Bargaining Unit 3 sought to negotiate with CDC over the manner in which the educational lessons would be imparted to CDC inmates. Union representatives repeatedly expressed concern over whether educational instruction would be delivered in a secure classroom setting, even if that classroom were located in a chapel, dining hall or an actual classroom. During these early negotiations, CDC representatives indicated a

willingness to consider these alternatives on an institution-by-institution basis. Meetings were held between CDC and the Union concerning implementation of the Bridging Program on various dates in August, September, and October 2003.

On October 22, 2003, DPA Senior Labor Relations Officer Randy Fisher invited Union negotiators to offer a proposal that would allow Bridging Program instruction to occur in spaces other than at the cell-fronts. At that meeting, Fisher assured the Union that where legitimate alternatives existed, alternatives would be adopted.

The parties met again on December 10, 2003. At that meeting, CDC representatives passed a written proposal to Union representatives concerning implementation of the Bridging Program and cell front instruction. The proposal, included a detailed method pursuant to which CDC would negotiate with the Union on an institution by institution basis to develop alternatives to teaching at the cell-fronts. These alternatives included using classrooms, chapels and dining hall areas as well as a ducating process which would involve members of CCPOA transporting prisoners from the cell block to more secure areas for educational instruction. The December 10, 2003-proposal also included a mechanism pursuant to which the Union could refer disagreements over these alternatives to a State Labor/Management Committee to review the issue. A true and correct copy of the CDC's December 10, 2003 bargaining proposal is attached hereto as Exhibit "A."

Following CDC's unlawful implementation of the Bridging Program, officials at Calipatria State Prison ordered IAFs to commence instruction of inmates on the cellblocks and in the living units at that maximum security institution. The Union filed a motion for a temporary restraining order against CDC in Imperial County California in an effort to prevent the CDC from forcing IAFs and Unit 3 educators employed at Calipatria State Prison to render educational instruction in the cell blocks and living units without proper training, supervision and protective equipment. CDC vigorously opposed the Union's efforts, but on December 24, 2003, the Superior Court judge signed the temporary restraining order preventing CDC from implementing the program at Calipatria State Prison. A true and correct copy of the judge's December 24, 2003-order is attached hereto as Exhibit "B."

Negotiators for CDC and Bargaining Units 1 and 3 met again on February 4, 2004. This was the first meeting following the issuance of the temporary restraining order. At the February 4, 2004-meeting, CDC retaliated against the Union by engaging in surface bargaining. In retaliation against the Union for filing the request for injunctive relief at Calipatria State Prison, CDC passed an intensely regressive proposal to the Union concerning the manner in which the Bridging Program would be implemented. This proposal deleted all of the provisions pursuant to which CDC had agreed to consider alternatives to cell-front instruction and unilaterally withdrew its agreement to submit disputes over implementation of the Bridging Program to a Statewide Labor/Management Committee. In addition, the February 4, 2004 proposal included a new provision prohibiting classroom or group instruction. This proposal completely negates the Department's earlier agreement to consider classroom alternatives on an institution-by-institution

basis and continue to negotiate in good faith with the Union. A copy of CDC's February 4, 2004 proposal is attached hereto as Exhibit "C."

An additional motive for CDC's unlawful regressive bargaining proposals was revealed on March 16, 2004. The Union discovered for the first time on March 16, 2004, that CDC had made an agreement with the California Correctional Peace Officers Association ("CCPOA") concerning the manner in which teachers and IAFs would deliver instruction under the Bridging Program. Pursuant to a tentative agreement dated December 16, 2003, CDC agreed with CCPOA that teachers and IAFs would deliver the Bridging Program at the cell-front. CDC further agreed that if instruction would be delivered anywhere other than at the cell-front, CDC would negotiate with CCPOA over such instruction. A copy of the tentative agreement between CSEA and CCPOA dated December 16, 2003 is attached hereto as Exhibit "D."

The actions of the California Department of Corrections described above, violated the Dills Act as follows:

1. Despite the fact that the parties had not completed negotiations, CDC implemented the Bridging Program on November 1, 2003 for IAFs; and in mid January 2004, CDC began to implement the program for teachers in the General Population prisons and Reception Centers without fully considering or allowing a reasonable time for presentations made by Bargaining Units 1 and 3 on behalf of its members prior to arriving at a determination of policy or course of action and as required by the Dills Act, Government Code Sections 3517 and 3519 (b) and (c).
2. CDC engaged in illegal bad faith bargaining in violation of the Dills Act, Government Code Sections 3517 and 3519 (a), (b) and (c), when it engaged in surface bargaining by passing regressive bargaining proposals on February 4, 2003 in retaliation for the Union's filing for injunctive relief at Calipatria State Prison.
3. CDC bypassed the employees' exclusive representative in violation of the Dills Act, Government Code Sections 3517 and 3519 (b) and (c), when on December 18, 2003, it agreed with CCPOA that teachers and IAFs represented by SEIU Local 1000, CSEA would be required to deliver instruction at the cell doors and agreed to negotiate in the future with CCPOA over terms and conditions of employment of SEIU Local 1000, CSEA.

Remedy

1. That PERB order CDC to immediately cease and desist implementation of the Bridging Program until such a time as negotiations with Bargaining Units 1 and 3 have gone through the appropriate processes outlined in the Dills Act.
2. That PERB order CDC to cease and desist from surface bargaining and order CDC to commence negotiations in good faith with Units 1 and 3 without further delay.
3. That PERB order CDC to cease and desist from bargaining with anyone other than SEIU Local 1000, CSEA over terms and conditions applicable to CDC employees in Bargaining Units 1 and 3 and that PERB find that the tentative agreement between CDC and CCPOA is of no force and effect.

Exhibit A

Agreement Between
The California State Employees Association
And the
California Department of Corrections
December 10, 2003

This agreement represents the conclusion of negotiations over the impact of the California Department of Corrections Bridging Program. This agreement is an addendum to the Bargaining Unit 3 Agreement between the State of California and the California State Employees' Association, which expired on July 2, 2003.

1. All Teachers participating in the Bridging Program shall be subject to and protected by the provisions of the Bargaining Unit 3 Collective Bargaining Agreement.
2. The expectation for a fulltime experienced Bridging Program Teacher, providing instruction under this program, is to have and maintain a 54-1 student to teacher ratio.
3. It is acknowledged by both parties that this new unique program is in its infancy and program goals, expectations, and objectives, may be subject to modification as this program is implemented.
4. Teachers not will be assigned inmates for 14 days from the inmates arrival to the Reception Center to provide for the initial screening process. Teachers will be provided access to inmate's files upon request.
5. Equipment and Supplies shall be provided in accordance with Article 12.1 (Tools, Business Equipment, Materials and supplies) of the Bargaining Unit 3 Labor Agreement.
6. Safety Equipment shall be provided in accordance with Article 10.6 (Safety Equipment) of the Bargaining Unit 3 Labor Agreement.
7. Teachers will not be required to provide services on living units unless cleared by the Warden of the institution.
8. Teachers will be provided access to staff lavatories in the same manner as provided to other non-custody staff.
9. Mass TABE testing at Reception Centers shall be administered by designated non-bridging Teachers.

10. The Department of Corrections agrees to meet, upon request, with local representatives of CSEA at each institution to develop ways to minimize the need for cell front instruction. Each institution will provide a tour to the local committee to review and identify possible alternative sites where Bridging Program instruction can be provided.

The types of options that shall be explored at the local level shall include but not be limited to:

- a. Building instructional time into the inmates schedules
- b. A ducating process
- c. Use of dining hall areas
- d. Use of vacate classrooms and other areas
- e. Use of chapels

Two local CSEA Stewards and one BUNC (CDC) representative shall be provided state release time to attend these meetings.

If the parties at the local level are unable to reach consensus, CSEA has the ability to move the issue to a Statewide Labor/Management Committee as provided below.

11. The Department of Corrections agrees to establish a Statewide Labor Management Committee to review issues that may arise during the implementation process of this program. The committee, if requested by either party, by June 20, 2004 shall meet to discuss the issues of concern. CSEA shall be provided three (3) representatives of their choice State Release time to participate in this committee.
12. This agreement expires on July 1, 2004.

Exhibit B

Provided by CSEA
2/4/03
11:53 am

Agreement Between
The California State Employees Association
And the
California Department of Corrections
February 4, 2004

This agreement represents the conclusion of negotiations over the impact of the California Department of Corrections Bridging Program. This agreement is an addendum to the Bargaining Unit 3 Agreement between the State of California and the California State Employees' Association, which expired on July 2, 2003.

1. All Teachers participating in the Bridging Program shall be subject to and protected by the provisions of the Bargaining Unit 3 Collective Bargaining Agreement.
2. The expectation for a fulltime experienced Bridging Program Teacher, providing instruction under this program, is to have and maintain a 54-1 student to teacher ratio.
3. While management recognizes that all bridging teachers shall have a 54-1 ratio all newly assigned/hired teachers shall be provided on the job training.
4. It is acknowledged by both parties that this new unique program is in its infancy and program goals, expectations, and objectives, may be subject to modification as this program is implemented.
5. Teachers will not be assigned inmates for ~~14 days from the inmates arrival to the Reception Center to provide for the~~ until their initial housing review and day for day eligibility has been completed ~~screening process~~ Teachers will be provided access to inmate's files upon request.
6. Equipment and Supplies shall be provided in accordance with Article 12.1 (Tools, Business Equipment, Materials and Supplies) of the Bargaining Unit 3 Labor Agreement.
7. Safety Equipment shall be provided in accordance with Article 10.6 (Safety Equipment) of the Bargaining Unit 3 Labor Agreement.
8. Teachers will ~~not be required to provide services on living units unless cleared~~ prohibited by the Warden of the institution.
9. Teachers will be provided access to staff lavatories in the same manner as provided to other non-custody staff.

added

assessment
done

12.11

10. Mass TABE testing at Reception Centers shall be administered by designated non-bridging Teachers.
11. ~~The Department of Corrections agrees to meet, upon request, with local representatives of CSEA at each institution to develop ways to minimize the need for cell front instruction. Each institution will provide a tour to the local committee to review and identify possible alternative sites where Bridging Program instruction can be provided.~~

~~The types of options that shall be explored at the local level shall include but not be limited to:~~

- ~~a. Building instructional time into the inmates schedules~~
- ~~b. A educating process~~
- ~~c. Use of dining hall areas~~
- ~~d. Use of vacate classrooms and other areas~~
- ~~e. Use of chapels~~

~~Two local CSEA Stewards and one BUNG (CDC) representative shall be provided state release time to attend these meetings.~~

~~If the parties at the local level are unable to reach consensus, CSEA has the ability to move the issue to a Statewide Labor/Management Committee as provided below.~~

The intent of the BEP is to provide education services in the cell/dorm/housing unit. Teachers are to visit the inmates in the inmate's designated housing areas (cell front or dorm day room). If the physical plant of an institution does not allow the teacher to provide the services at the cell front or dorm day room, with approval of the Warden/designee, a system may be developed where the inmates are seen in small groups (no more than 10 inmates) at an alternative site, where they may remain until the teacher is available to meet with them individually for 30 minutes to provide one-on-one instruction. However, under the implementation plan of the BEP, it is not permitted to teach inmates in a traditional classroom format.

Notwithstanding above, it is recognized that on an exceptional basis it may not be possible to deliver educational services as provided above. Should this be necessary, management will meet with the local CSEA representatives. If the parties at the local level are unable to reach consensus, CSEA has the ability to move the issue to a Statewide Labor/Management Committee as provided below.

12. The Department of Corrections agrees to establish a Statewide Labor Management Committee to review issues that may arise during the implementation process of this program. The committee, if requested by either party, by June 20, 2004 shall meet to discuss the issues of concern. CSEA shall be provided three (3) representatives of their choice State Release time to participate in this committee.

13. Teachers who are initially located to new facilities to provide instruction in the bridging program will be notified of the shift and work schedules available for the GP and RC positions. Teachers will be allowed to request which schedule they wish to work. The teacher with the highest seniority will make the first selection. This process will continue in until all teachers have been given an opportunity to make a request.

Teacher's requests shall be granted unless operational needs, special circumstances, and/or other verifiable factors have occurred. If this does occur, the Department will attempt to place the employee in another position of the employee's preference.

14. This agreement expires on July 1, 2004.

*Needs a drop dead date.
Cannot go on forever.*

Rudy

Page 3

State of California

California State Employees
Association

Exhibit C

1 ANNE M. GIESE (State Bar No. 143934)
 2 PAUL B. HARRIS, III (State Bar No. 180265)
 3 PAULA J. NEGLEY (State Bar No. 189451)
 4 FERNANDO ACOSTA (State Bar No. 173612)
 5 California State Employees Association
 6 Local 1000, SEIU, AFL-CIO, CLC
 7 1108 O Street, Suite 327
 8 Sacramento, California 95814
 9 Telephone: (916) 326-4208
 10 Facsimile: (916) 326-4276

FILED
 DEC 24 2003
 SUPERIOR COURT
 IMPERIAL COUNTY CA
 LYNN B. HARRIS, CLERK
 COURT REPORTER
 DEPUTY

Attorney for Plaintiffs

11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 12 IN AND FOR THE COUNTY OF IMPERIAL

13 PABLO FRIEDMANN; CALIFORNIA
 14 STATE EMPLOYEES ASSOCIATION;
 15 and SEIU LOCAL 1000 (UCSW), ON
 16 BEHALF OF ALL AFFECTED STATE
 17 WORKERS

Case No.

TEMPORARY RESTRAINING ORDER

Plaintiffs,

v.

18 CALIFORNIA DEPARTMENT OF
 19 CORRECTIONS,
 20 Defendant.

RECEIVED

DEC 30 2003

LOS ANGELES LEGAL

21 After consideration of all the pleadings and arguments of counsel and good cause having
 22 been demonstrated, the court orders that a temporary restraining order shall issue enjoining
 23 defendant, and their agents, servants, and employees, and all persons acting under, in concert with,
 24 or for them:

- 25 a) from ordering from plaintiffs, and all other affected artist facilitators,
 26 teachers and education staff represented by CSEA and Local 1000, to enter
 27 into the living units at the Calipatria State Prison to teach inmates in those
 28 cell block/living units, until such time as the grievance filed on behalf of
 those artist facilitators, teachers and education staff, has been processed

CALIFORNIA STATE EMPLOYEES ASSOCIATION
 1108 "O" Street
 Sacramento, California 95814
 Telephone: (916) 326-4208

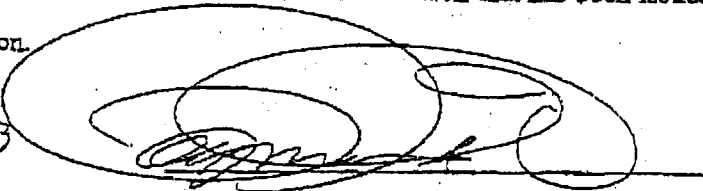
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through the arbitration procedure and a decision has been issued in that arbitration; and

b) to thereafter act in accordance with the decision that has been issued in that arbitration.

DATED:

12/27/03



Judge of the Superior Court

CALIFORNIA STATE EMPLOYEES ASSOCIATION
1108 "O" Street
Sacramento, California 95814
Telephone: (916) 326-4208

Exhibit D

MANAGEMENT'S COUNTER TO CCOPA's PROPOSAL NO. 2

DATE 12/16/03 TIME 16:26

CDC agrees that in implementing the Bridging Education Program in a celled housing unit, it is ~~the intent~~ that the primary delivery method will be at the cell door. However, it is recognized that on an exception basis it may be necessary to deliver education out of cell. Should this be necessary, management will meet with the local CCPOA representatives. Should the locals be unable to resolve the issues, CDC agrees to reopen negotiations.

TA'd 7/2/18/03
11:50

[Handwritten signature]

[Handwritten signature]
Dain Deane
Don Cotton

[Handwritten signature]
MASH
Julius
Graham

