



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD
UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE:

Case No:

Date Filed:

INSTRUCTIONS: File this charge form via the e-PERB Portal, with proof of service. Parties exempt from using the e-PERB Portal may file the original charge in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached. Proper filing includes concurrent service and proof of service of the charge as required by PERB Regulation 32615(c). All forms are available from the regional offices or PERB's website at www.perb.ca.gov. If more space is needed for any item on this form, attach additional sheets and number items.

IS THIS AN AMENDED CHARGE? YES ☐ If so, Case No. NO ☒

1. CHARGING PARTY: EMPLOYEE ☐ EMPLOYEE ORGANIZATION ☒ EMPLOYER ☐ PUBLIC¹ ☐

a. Full name: SEIU Local 1000

b. Mailing address: 1808 14th Street, Sacramento, CA 95811

c. Telephone number: (916) 554-1279

d. Name and title of person filing charge: Yuri Kvichko, Attorney
Telephone number: (916) 554-1279

E-mail Address: ykvichko@seiu1000.org

Fax No.:

e. Bargaining unit(s) involved: 1, 3, 4, 11, 14, 15, 17, 20, and 21

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

a. Full name: California Department of Human Resources

b. Mailing address: 1515 S Street, North Building, Suite 500, Sacramento, CA 95811

c. Telephone number: (916) 342-0512

d. Name and title of agent to contact: Frolan Aguilin, Chief Counsel
Telephone number: (916) 342-0512

E-mail Address: frolan.aguilin@calhr.ca.gov

Fax No.: (916) 323-4723

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 Gov. Code, § 18524.)

a. Full name: Department of Corrections and Rehabilitation

b. Mailing address: P.O. Box 750, Susanville, CA 96127-0750

c. Agent: Connie Gibson, Director, Division of Adult Institutions

¹ An affected member of the public may only file a charge relating to an alleged public notice violation, pursuant to Government Code section 3523, 3547, 3547.5, or 3595, or Public Utilities Code section 99569.

5. GRIEVANCE PROCEDURE

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

Yes ☒ 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 (EERA) (Gov. Code, § 3540 et seq.)
- ☒ Ralph C. Dills Act (Gov. Code, § 3512 et seq.)
- ☐ Higher Education Employer-Employee Relations Act (HEERA) (Gov. Code, § 3560 et seq.)
- ☐ Meyers-Milias-Brown Act (MMBA) (Gov. Code, § 3500 et seq.)
- ☐ A Covered Public Utilities Code Transit Employer (BART (Pub. Util. Code, § 28848 et seq.), Orange County Transportation Authority (Pub. Util. Code, § 40000 et seq.), and supervisory employees of the Los Angeles County Metropolitan Transportation Authority (Pub. Util. Code, § 99560 et seq.)).
- ☐ Trial Court Employment Protection and Governance Act (Trial Court Act) (Article 3; Gov. Code, § 71630 – 71639.5)
- ☐ Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act) (Gov. Code, § 71800 et seq.)
- b. The specific Government or Public Utilities Code section(s), or PERB regulation section(s) alleged to have been violated is/are:
- Ralph C. Dills Act Section 3515 and 3519(c)
- c. For MMBA, Trial Court Act and Court Interpreter Act cases, if applicable, the specific local rule(s) alleged to have been violated is/are **(a copy of the applicable local rule(s) MUST be attached to the charge):**
- d. 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*. A statement of the remedy sought must also be provided. *(Use and attach additional sheets of paper if necessary.)*
- see attached

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 11/17/21

at Sacramento, CA (Date)

(City and State)

Yuri Kvichko

(Type or Print Name)

(Signature)

Title, if any: Attorney

Mailing address: 1808 14th Street, Sacramento, CA 95811

Telephone Number: (916) 554-1279 E-Mail Address: ykovichko@seiu1000.org

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Sacramento,
State of California. I am over the age of 18 years. The name and address of my
Residence or business is 1808 14th Street, Sacramento, CA 95811

On 11/17/21, I served the Unfair Practice Charge
(Date) (Description of document(s))

_____ in Case No. _____.
(Description of document(s) continued) PERB Case No., if known)

on the parties listed below by (check the applicable method(s)):

- ☒ placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Service or private delivery service following ordinary business practices with postage or other costs prepaid;
- ☐ personal delivery;
- ☒ electronic service - I served a copy of the above-listed document(s) by transmitting via electronic mail (e-mail) or via e-PERB to the electronic service address(es) listed below on the date indicated. *(May be used only if the party being served has filed and served a notice consenting to electronic service or has electronically filed a document with the Board. See PERB Regulation 32140(b).)*

(Include here the name, address and/or e-mail address of the Respondent and/or any other parties served.)

Frolan Aguilin, Chief Counsel
Department of Human Resources
1515 S Street, North Building, Suite 500
Sacramento, CA 95811
Email: frolan.aguilin@calhr.ca.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on 11/17/21,
(Date)
at Sacramento CA.
(City) (State)

Felicia Hernandez

(Type or print name)


(Signature)

STATEMENT OF THE CHARGE

Statement of Facts

SEIU Local 1000 is the exclusive bargaining representative for State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. Many employees in these bargaining units are employed at CDCR/CCHCS. The most recent Memorandum of Understanding between the State and the Union covers the period January 2020 through June 2023.

In the budget for July 2021, the State announced the closure of the California Correctional Center (“CCC”) in Susanville where SEIU represents hundreds of employees across six bargaining units. SEIU’s mission is to protect the rights of the employees that it represents, including those who work at the CCC and High Desert State Prison (“HDSP”), both in Susanville. After the Union’s numerous efforts to oppose the closure of CCC, the Warden at HDSP has announced the unilateral closure of Yard B.

Yard B contains 5 housing buildings plus support facilities such as kitchens, medical areas, and educational areas. The closure will directly affect many employees represented by SEIU, and the indirect effects will reach many more.

With the announced closure of CCC, the flight of staff to more secure positions, and the ongoing ravages of COVID, HDSP has added insult to the injury of CDCR/CCHCS ongoing refusal to honor Dills Act requirements to notice the Union and present the opportunity to bargain the impacts of the changes. SEIU has a direct interest in opposing the closure of HDSP Yard B as it will cause harm to employees represented by SEIU, as well as their community, and is being taken in violation of the law and employees’ rights.

On or about November 2, 2021, the Warden began making an announcement personally and by email similar to the following message:

“Due to DAI custody staffing shortages, beginning Monday, November 8, 2021, HDSP will begin the process of transferring out all inmate-patients housed on B-Facility. The goal is to have B-Facility completely empty by December 31, 2021. This is a **temporary** measure to address said staffing shortages. The full impact is not known at this time. More to come.”

This rushed policy, without notice and the opportunity to bargain, leads to the absolute conclusion that the Yard B closure bypassed Dills Act requirements.

Unilateral Change

“The rule in California is well settled: [an employer’s] unilateral change in a matter within the scope of representation is a *per se* violation of the duty to meet and confer in good faith.” (*California State Employees Association v. Public Employment Relations Bd.* (1996) 51 Cal.

App. 4th 923, 934-935.) Repudiation of a provision in the parties' MOU is a per se unilateral change. (*Stanislaus Consolidated Fire Protection District* (2012) PERB Dec. No. 2231-M.)

PERB has found that unilateral actions are disfavored because they destabilize employer-employee affairs, denigrate the representative's negotiating power and ability to perform as an effective bargaining agent in the eyes of employees, undermine exclusivity, and denigrate statutory sanctions for negotiations. (*San Mateo Community College District* (1979) PERB Dec. No. 94, 3 PERC Para. 10080.)

Because HDSP is unilaterally implementing a Yard B closure, it is committing an unfair labor practice. Such changes have a continuing impact upon the terms and conditions of employment of the Union's represented workers. Unlawful unilateral changes have a "generalized impact or continuing effect" on the terms and conditions of employment. In considering whether CCHCS's conduct had a generalized effect, it is useful to note that the changes referenced above are not merely one-time breaches of a contract – which have previously been found not to constitute an unlawful unilateral change. Instead, PERB has noted that under existing precedent, "a breach of contract amounts to a unilateral change where the party in breach asserts that the contract authorizes its conduct" or where the breach represents a "change in policy that is generally applicable to future situations." (*Service Employees International Union, Local 1000, CSEA* (2008) PERB Decision No. 1997-S.)

The changes detailed herein constitute a fundamental alteration in the terms and conditions of employment. Prior to this change, the Yard B remained open and operational. Any closure of HDSP – in light of the ongoing threat of closure of CCC, presents critical issues, which deserve attention in bargaining. Since this alteration represents an overarching change in policy and impacts terms and conditions of employment, notice, as well as the opportunity to meet and confer, is required. The failure to do so is a "*per se*" violation of the Dills Act.

This unilateral change should not, and could not, have been taken without at least an opportunity to meet and confer. This was a violation of the Dills Act, which is administered by this Board.

Conclusion

By the acts and conduct described above, the State interfered with the rights of bargaining unit employees being represented by the Union in violation of Government Code section, 3519(a).

By the acts and conduct described above, the State interfered with the rights of the Union to represent its bargaining unit employees in violation of Government Code section, 3519(b).

By the acts and conduct described above, the State failed to meet and confer in good faith with the Union in violation of Government Code, section 3519(c).

Remedy

The Union requests that the PERB order the following:

- Cease and desist unlawful activity, unilateral changes, and interference;
- Return employees to *status quo ante*;
- Order CDCR/CCHCS to cease and desist implementing the policy;
- Provide adequate notice of changes within the scope of representation;
- Bargain in good faith with SEIU Local 1000 representatives;
- Post any such PERB order at worksite bulletin boards throughout the State of California where SEIU Local 1000 represented employees work; and
- Any other appropriate relief – including monetary or attorney fees.



Tel: (916) 554-1279

Fax: (916) 554-1292

VIA E-MAIL

November 17, 2021

Todd E. Murray, Chief Executive Officer
Healthcare Services
High Desert State Prison
Email: Todd.Murray@cdcr.ca.gov

RICHARD
LOUIS BROWN
President

DAVID JIMENEZ
Vice President/
Secretary-Treasurer

ANICA WALLS
Vice President for
Organizing/Representation

IRENE GREEN
Vice President for Bargaining

Toyin Olusegun, Labor Relations Representative
California Correctional Health Care Services
Email: Oluwatoyin.olusegun@cdcr.ca.gov
CCHCSLaborRelations@cdcr.ca.gov

RE: CEASE AND DESIST - CLOSURE OF YARD B FACILITY

SEIU Local 1000 has been informed that High Desert State Prison intends to shut down Yard-B. We have not been informed of this formally, however an email sent to HDSP employees stated:

Due to DAI custody staffing shortages, beginning Monday, November 8, 2021, HDSP will begin the process of transferring out all inmate-patients housed on B-Facility. The goal is to have B-Facility completely empty by December 31, 2021. This is a temporary measure to address said staffing shortages. The full impact is not known at this time. More to come

This is a change in the terms and working conditions of our represented employees and requires meeting and conferring with the Union prior to implementing the change. The effect of the sudden closure is further compounded on our employees by its timing. Many have just finished their post & bid process and the closure will result in an effective loss of seniority rights and many other complications.

The closure constitutes a unilateral change in violation of the obligation to give notice and the opportunity to meet and confer prior to implementation. This violates the requirements of the Dills Act.

To be in compliance with Dills Act requirements, shut down process must be tolled until a proper notice is delivered to:

SERVICE EMPLOYEES
INTERNATIONAL UNION
CTW, CLC

1808 14th Street
Sacramento, CA 95811

866.471.SEIU (7348)
www.seiu1000.org

Richard Louis Brown, President
SEIU Local 1000
1808 14th Street
Sacramento, CA 95811

CCHCS and HDSP must cease and desist from proceeding with the closure until the process relating to the Union's request to meet and confer is complete. If you have any questions about this issue or this letter, please contact me at (916) 554-1279.

Sincerely,



YURI KVICHKO
Attorney

YK:fh

