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STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

UNFAIR PRACTICE CHARGE

DO NOT WRITE IN THIS SPACE: Case No:

Date Filed: 01/10/2022

INSTRUCTIONS: File the original and one copy of this charge form in the appropriate PERB regional office (see PERB Regulation 32075), with proof of service attached to each copy. 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 agent to contact: SEIU Local 1000 E-mail Address: Agiese@seiu1000.org
Telephone number: (916) 554-1279 Fax No.: (916) 554-1292
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, #500 Sacramento, CA 95811
c. Telephone number: (916) 324-0512
d. Name and title of agent to contact: Frolan Aguilin, Chief Counsel E-mail Address: Frolan.Aguiling@calhr.ca.gov
Telephone number: (916) 324-0512 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:
b. Mailing Address:
c. Agent:

5. GRIEVANCE PROCEDURE

¹An 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

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

Yes ☒ No ☐ Unknown ☐

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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.)
☐ Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (TEERA) (Pub. Utilities 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:
32147(a) and (b); 3519(a), (b) and (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 Statement of the Charge

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. (A Declaration will be included in the e-mail you receive from PERB once you have completed this screen. The person filing this Unfair Practice Charge is required to return a properly filled out and signed original Declaration to PERB pursuant to PERB Regulations 32140 and 32135.)

Anne M. Giese
(Type or Print Name)

/s/ Anne M. Giese
(Signature)

01/10/2022
Date

STATEMENT OF THE CHARGE

REQUEST FOR EXPEDITED REVIEW

SEIU Local 1000 (the “Union”) requests expedited review of this charge due to the importance and statewide significance of the conduct of the California Department of Corrections and Rehabilitation (“CDCR”), as set forth below. Over a thousand employees will be detrimentally affected by management’s denial of the opportunity to meet and confer over the new N95 mask requirements and unilateral implementation of a policy on January 7, 2022. This conduct is unacceptable for the State of California, as it once again bypasses union bargaining rights, which are enshrined in the Dills Act and articulated in decisions of the Board. As set forth below, expedited review is critical to ensure that the remedies available at PERB are achieved swiftly to restore the parties to *status quo ante*. A recent decision of the Board is on point and has confirmed that an employer’s decision to implement a vaccination policy change without first satisfying its obligation to meet and confer with unions representing the affected employees violated collective bargaining rights and constituted an unlawful unilateral change. (*Regents of the University of California* (July 26, 2021) PERB Decision No. 2783H.)

Statement of the Charge

The Union is the exclusive bargaining representative for State Bargaining Units 1, 3, 4, 11, 14, 15, 17, 20, and 21. The most recent Memorandum of Understanding between the State and Local 1000 covers the period of January 2020 through June 2023.

State workers have both been on the front lines of this pandemic, as well as adjusted to the widespread societal changes throughout the almost two years of this pandemic. The State has issued hundreds of COVID related notices to the Union and offered to meet and confer over many changes or other matters within the scope of bargaining, specifically pertaining to changes in procedures or policies that have to do with the COVID response.

In response to these many transformative changes in bargaining, the Union endeavored to effectively represent its nearly 100,000 state employees at the bargaining table. However, on January 7, 2022, CDCR abruptly turned away from the legal requirements of notice and bargaining and instead issued a unilateral mandate, in which they summarily state:

Personal Protective Equipment

Effective immediately and in response to the current dramatic increase in cases of COVID-19, all employees, contractors, and visitors working, visiting, or performing duties in a CDCR institution/facility shall wear an N95 mask while on CDCR institution/facility grounds and follow current testing directives. These requirements apply to all employees and contractors regardless of vaccination

status, religious accommodation or reasonable accommodation for qualifying medical reason(s) for the COVID-19 vaccine.

Exceptions to N95 masking requirements apply as follows:

- 1) While actively and briefly eating or drinking, and only if a minimum of six feet of physical distance is maintained from all other individuals.
- 2) When alone in an office with the door closed.
- 3) When alone in a tower or enclosed control booth with no other individuals present.
- 4) When outdoors, if a minimum of six feet of physical distance is maintained from all other individuals. An appropriate mask shall be kept on person at all times and shall be worn walking or standing within six feet of others.

After the release of this administrative fiat, CDCR orchestrated the distribution of a notice of policy change through its labor relations branch. (See, Exhibit A.) Rather than giving this Union the legal right to bargain over this important policy change, CDCR dodged its legal obligations by unilaterally imposing an immediate mandate without sufficient safeguards as required by law – i.e. proper fit testing of N95 masks.

CDCR's January 7, 2022 mandate to employees does not clearly articulate how employees can safely don N95 masks. On November 8, 2021, the Union served a cease and desist letter on CDCR/CCHCS for ignoring Cal-OSHA requirements for the proper and safe use of N95 respirator masks, after Union President, Richard Louis Brown, received a number of complaints from CDCR/CCHCS institutional employees across the State, who were being required to don N95 masks without being fit-tested first. The Union notified CDCR/CCHCS labor relations that its mandate for employees to wear N95 masks as a condition of employment violates standards dictated by Cal-OSHA.

According to these legal requirements, employers like CDCR/CCHCS, who require respiratory protection if the working conditions include harmful exposures, must have a written respiratory protection program when providing the respirators, that addresses the following:

- proper selection of respiratory equipment;
- employee training;
- medical evaluation of an employee's ability to wear a respirator;
- ensuring proper fit of the respirators; and
- proper respirator use, storage, and cleaning.

To require N95 masking – as opposed to other masks for precautionary reasons - the employer must also follow all other applicable requirements in Title 8 CCR section 5144. CDCR/CCHCS has failed to correctly follow this regulation. Despite this valid objection, the State has proceeded with this unilateral change.

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.)

Because CDCR is unilaterally implementing the N95 mask policy, which violates fit testing requirements mandated by law, 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 CDCR’s conduct has 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.)

Importantly, this unilateral change is similar to the facts of a recent decision. On July 26, 2021, PERB issued a decision finding the UC Regents engaged in an unfair practice when it unilaterally imposed an influenza vaccination requirement in response to the COVID-19 pandemic. (*Regents of the University Of California* (2021) PERB Decision No. 2783-H.) The decision finds that the UC Regents failed to properly notice the unions of the impending policy change and refused to bargain over the impacts of the policy on working conditions prior to implementation. Even assuming, *arguendo*, that the State may impose the N95 Mask policy under its management rights, it must still give notice to the Union of the impending policy change and, prior to implementation, meet and confer regarding the impacts of the policy on issues within the scope of representation, such as discipline imposed for failing to meet the standards of the policy.

The changes detailed herein constitute fundamental alterations in the terms and conditions of employment. Prior to this change, the State did not have a mandatory N95 mask policy, which violated fit testing requirements mandated by law. Instead, most employees adhered to onsite and County controlled mask requirements. In regards to the new N95 requirement, in addition

to the previously mentioned concerns, some of the impacts the Union seeks to address are the disciplinary consequences that may be imposed for non-compliance and/or the presentation of conflicting directives to employees. These are 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.

Expedited review

This Charge is subject to expedited review. Expedited Review is governed by the California Code of Regulations, section 32147, which is written to be very permissive. It provides:

The Board itself, the Chief Administrative Law Judge or the General Counsel may expedite any matter pending before the Board, as follows:

- (a) In any case arising under Section 32761, 32770, 32781, 32802, 33050, 33070, 33700, 40170, 40200, 51030, 51040, 51100, 51680, 61210, 61300, 61350, 61400, 61450, 71030, 71040, 71100, 71680, 81210, 81300, 81350, 81400, 81450, 91210, 91300, 91350, 91400, or 91450;
- (b) In any case that presents an important question of law or policy under any statute administered by the Board, the early resolution of which is likely to improve labor relations between or among affected parties;
- (c) In conjunction with any determination to seek injunctive relief pursuant to Section 32450 et seq.;
- (d) In any case, as ordered or directed by the Board itself.

For purposes of this Section, the expediting of a matter means the matter shall be given priority and decided on an expedited basis, in the manner determined to be appropriate by, as applicable, the Board itself, the General Counsel, or the Chief Administrative Law Judge.

The Union's request for expedited review should be granted in this matter because: (1) This case presents important questions of law and policy, under a statute administered by the Board; and (2) This case is very time sensitive and its early resolution would have an enormous impact on labor relations, as each day counts. Not only can this Charge be placed on the expedited track under section 32147(a) & (b), but due to the immediate severity of the effects at stake, it must be.

The State has taken an unprecedented step, both in the questionable nature of the new N95 requirements, as well as in its swift implementation without ensuring fit testing. There is no question of any actual emergency, as the COVID-19 pandemic has been here for almost two years. Yet, the policy was unveiled as a surprise and without proper notice. Whether the State can take such action is, on its face, an important question of law and policy. Further, COVID-19 mandates, such as this, are a constant "can they or can't they" topic on the nightly news; they

are one of the more important legal questions of this last year. 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. Therefore, this Charge should be expedited under section 32147(a), as presenting an important question of law or policy.

This Charge should also be expedited under section 32147(b), as early resolution of this case is likely to improve labor relations between or among affected parties. The implications of this case are significant to every aspect of labor relations. The uncertainty alone, surrounding this topic, will produce a great deal of stress among all California state employees. Labor relations are strained as employees worry for their safety and autonomy and management continues to push employees to work regardless of conditions. This new N95 policy leaves employees unsure as to the consequences of the policy. Further, the Governor and CDCR's attempt to use this pandemic as an excuse to circumvent the State's duty to meet and confer, has put a new and unnecessary strain on the parties' relationship. The certainty provided by a speedy resolution will undoubtedly improve labor relations amongst all.

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).

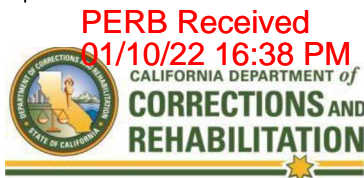
By the acts and conduct described above, the State failed to meet and confer in good faith with the Union in violation of Government Code section 3519(c).

REMEDY

The Union requests that the PERB order the following:

- Cease and desist unlawful activity and unilateral changes;
- Return employees to *status quo ante*;
- Order CalHR to require departments 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.

EXHIBIT A



MEMORANDUM

Date: JANUARY 7, 2022

To: California Department of Corrections and Rehabilitation – All Staff
California Correctional Health Care Services – All Staff
Division of Juvenile Justice – All Staff

From:

DocuSigned by:

Connie Gipson

Connie Gipson

Director

Division of Adult Institutions, CDCR

DocuSigned by:

Joseph Bick

Joseph Bick, MD

Director

Health Care Services, CDCR and CCHCS

DocuSigned by:

Heather Bowlds

Heather Bowlds, Psy. D

Director

Division of Juvenile Justice, CDCR

Subject: REQUIRED COVID-19 FACIAL COVERINGS FOR ALL INSTITUTIONAL AND FACILITY STAFF

This memorandum updates expectations and requirements outlined in previous memoranda regarding the wearing of personal protective equipment (PPE), specifically facial coverings, at California Department of Corrections and Rehabilitation (CDCR) institutions and facilities. All employees, contractors and visitors entering CDCR institutions and facilities shall abide by the procedures outlined in this memorandum.

Effective immediately, and in response to the current dramatic increase in cases of COVID-19, all employees, contractors, and visitors working, visiting, or performing duties in a CDCR institution/facility shall wear an N95 mask while on CDCR institution/facility grounds and follow current testing directives. These requirements apply to all employees and contractors regardless of vaccination status, religious accommodation or reasonable accommodation for qualifying medical reason(s) for the COVID-19 vaccine.

Exceptions to N95 masking requirements apply as follows:

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CDCR All Staff
CCHCS All Staff
DJJ All Staff

MEMORANDUM

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As a reminder, leadership at each institution shall continue to monitor staff for compliance with N95 masks, physical distancing and mandatory COVID-19 testing. Supervisors and managers shall utilize the progressive discipline process as outlined in the Department Operations Manual (DOM), Article 22, Employee Discipline, in addressing staff who fail to comply with these directives. Supervisors and managers are also reminded to utilize DOM Section 33030.8, Causes for Corrective Action, and Section 33030.9, Causes for Adverse Action.

Current masking directives will be posted on [Lifeline](#).

This directive will be regularly reviewed and revised as needed based upon the status of the current COVID-19 outbreak.

For questions or concerns, please contact your respective supervisor or manager.

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 January 10, 2022, 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 AGUILING, Chief Counsel
California Department of Human Resources
1515 S Street, North Bldg., Ste. 500
Sacramento, CA 95811
email: Frolan.Aguiling@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 January 10, 2022,
(Date)
at Sacramento CA 95811.
(City) (State)

MARY A. WALSH

(Type or print name)

(Signature)