

CHAPTER 12
UNFAIR LABOR PRACTICES
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CHAPTER 12

UNFAIR LABOR PRACTICES

1. PUBLIC EMPLOYMENT RELATIONS BOARD. Public Employment Relations Board (PERB) is the state agency responsible for enforcing the collective bargaining law covering employees in state civil service.

2. UNFAIR PRACTICE.
 - a. Unfair practices are those actions or inactions by the employer or exclusive representatives which violate the rights guaranteed by the Ralph C. Dills Act (Dills Act).

 - b. Under the Dills Act, it shall be unlawful for the state employer to:
 - (1) 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 the Dills Act.

 - (2) Deny to exclusive representatives rights guaranteed to them by the Dills Act.

 - (3) Refuse or fail to meet-and-confer in good faith with an exclusive representative.

 - (4) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

 - (5) Refuse to participate in good faith in the mediation procedure set forth in Government Code (GC) Section 3518.

 - c. Following are examples of unlawful employer conduct:
 - (1) Giving the employee representative all the bad jobs or inundating them with unwanted overtime.

 - (2) Assisting employees in researching background to file grievances.

 - (3) Expressing support for a particular employee organization during a decertification election.

- (4) Failing to bargain in good faith.
 - (5) Coercive questioning of employees regarding their union activity.
 - (6) Disciplining employees for participating in union activities or promising benefits to employees if they refuse to participate in union activities.
- d. Under the Dills Act, it shall be unlawful for an employee organization to:
- (1) Cause or attempt to cause the state to commit an unfair practice.
 - (2) Impose or threaten to impose reprisals on employees; discriminate or threaten to discriminate against employees, or otherwise interfere with, restrain, or coerce employees who exercise the rights guaranteed to them by the Dills Act.
 - (3) Refuse to participate in good faith in the mediation procedure set forth in GC Section 3518.
- e. The following are examples of unlawful employee organization conduct:
- (1) Threatening employees if they refuse to join a union.
 - (2) Disciplining a member for filing an unfair practice charge against their union.
 - (3) Failing, as an exclusive representative, to fairly represent an employee in dealing with the employer.

3. PROCESS.

- a. Allegation of an Unfair Practice. The state or the employee organization begins the process by filing initial allegations of an unfair practice with the PERB. The case is screened by a PERB regional attorney who conducts an investigation to determine if a prima facie case is present. For one to exist, this means the evidence, if true, is sufficient to support the charge.
- b. Complaint. If a prima facie case exists, the regional attorney files a complaint. A response to the complaint stating the Department's defense is submitted to PERB by California Department of Human Resources (CalHR). If no complaint is issued, the case is dismissed, withdrawn or settled.
- c. Settlement Conference. After considering CalHR's response, PERB either drops the case or holds an informal conference to resolve the matter. If the matter is not settled as a result of the conference, PERB schedules a formal hearing.

- d. Formal Hearing. An Administrative Law Judge (ALJ) presides over the unfair practice hearing. The ALJ then issues a proposed decision which contains a recommendation to PERB regarding the validity of the unfair practice allegation.
- e. Public Employment Relations Board Ruling. After receiving the ALJ's recommendation, PERB makes a final ruling on the case.
- f. Appeal. The ruling may be appealed through the judicial process.

4. REMEDIES IMPOSED UPON PARTIES COMMITTING AN UNFAIR PRACTICE.

- a. Cease and Desist. This orders the guilty party to stop committing the unfair practice and refrain from committing it in the future.
- b. Post a Written Notice. The guilty party may be required to post a declaration of guilt and agreement to cease and desist.
- c. Reinstatement of Employee with Full Seniority. This remedy may be granted if an employee was discriminatorily discharged.
- d. Back Pay. Back pay may be awarded if an employee was discriminatorily fired, denied pay, or suffered a job-related action based upon union membership or support.

5. MANAGEMENT GUIDELINES.

- a. Managers and supervisors must guard against committing unfair labor practices and, at the same time, continue to exercise normal control and discipline at the work place. In essence, management may not refuse or fail to meet and negotiate, nor do anything to interfere with an employee's right to (1) vote for or join the employee organization of their choice, or (2) engage in lawful activities on behalf of that organization.
- b. Managers and supervisors should take all normal steps to maintain the effective and efficient operation of state business.
- c. The following will assist managers and supervisors in carrying out their responsibilities when dealing with employees and their respective employee organizations:
 - (1) Once an organization is designated as an exclusive representative for a represented employee group, that organization is accorded special rights under law and by contract. It is entitled to access, posting rights, meeting rooms, courtesies and other rights and privileges.

(2) Do not interrogate employees about employee organizations. Do not ask questions relating to individual employee's legal activities (e.g., who supports the employee organization, who attended employee organization meetings, who has signed a petition, or similar questions).

(3) Do not conduct polls or informal "straw" votes to find out the extent of an employee organization's support.

(4) Do not ask employees whether they favor employee organizations, or whether they are or have been employee organization members. Do not ask which organization they favor.

(5) Do not "spy" on employees regarding union activities. Do not ask an employee to attend an employee organization meeting and report back to you concerning its results.

(6) Do not punish employees or threaten them for participating or not participating in employee organization activities. All employees should be aware that:

(a) Discharge, discipline, adverse job assignments, or adverse actions of any kind to discourage or encourage employee organization support are illegal and improper—so are threats to take such action.

(b) Management actions or threats to adversely change its operations due to an employee's participation in organizational activities are illegal and improper.

(c) To engage in reprisals against employees for activities protected by the Dills Act is illegal and improper.

(7) Maintain fair and effective supervision of employees whether or not they are employee organization supporters.

(a) Where normal operations dictate a particular job assignment or enforcement of job-related rules or regulations, you should not fail to take such action because an employee is or is not sympathetic to an employee organization.

(b) Be accessible to employees who want to talk with you. A manager or supervisor who takes the time to listen to employees when they want to air their concerns will be aware of the morale at the work place, the impact of employee organizations and the attitudes of most employees on matters of potential dispute between labor and management. This knowledge will

assist management in its efforts to find solutions to problems in these areas and negotiate effective contracts with exclusive representatives.

(8) Do not make any promises or changes in order to discourage or support an employee organization.

(a) Do not promise that you or the Department will improve or change wages, benefits or working conditions if the employees cease their support of an employee organization.

(b) Take no actions designed to encourage or discourage employee organization support. Implement all proper changes which are needed for meeting legitimate managerial needs.

(9) Know and enforce the Department's rules for employee organization access and solicitation.

(a) Do not prohibit employees from soliciting support for an employee organization if such solicitation is done in compliance with these guidelines.

(b) Make sure that working time is used for work and that the contracts and the Department's policies/regulations regarding solicitation and distribution of literature are properly enforced.

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