

**BEFORE THE STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by	)	<b>BOARD DECISION</b>
	)	
<b>CALIFORNIA STATE EMPLOYEES ASSOCIATION</b>	)	<b>PSC NO. 03-02</b>
	)	
from the Executive Officer's January 15, 2003 Approval of a Contract for nursing services between the California Department of Corrections and Best Rehabcare Services, Inc.	)	August 5, 2003
	)	
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**APPEARANCES:** Harry Gibbons, Attorney, on behalf of the California State Employees Association; Keri L. Faseler, Staff Counsel, on behalf of the California Department of Corrections.

**BEFORE:** William Elkins, President; Sean Harrigan and Maeley Tom, Members.

**DECISION**

The California State Employees Association (CSEA) has appealed from the Executive Officer's January 15, 2003 decision approving a Contract (Contract) for nursing services between the California Department of Corrections (CDC) and Best Rehabcare, Inc. (Contractor). In this decision, the Board finds that CDC has shown that the Contract is authorized under Government Code § 19130(b)(10). The Board, therefore, sustains the Executive Officer's decision approving the Contract.

## **BACKGROUND**

Federal court decisions and orders in on-going federal litigation (Coleman v. Davis, Madrid v. Alameida, and Plata v. Davis) have determined that CDC has violated the constitutional rights of inmates by failing to provide adequate medical and mental health care. After its efforts to recruit sufficient civil service nurses failed, CDC entered into the Contract in order to obtain temporary/relief nursing services so that it could provide inmates with the level of medical and mental health services mandated in the on-going federal litigation.

CSEA asserts that the contracted services can be provided adequately and competently by individuals hired through the civil service, but that CDC has been unable to recruit sufficient civil service nursing staff because the salaries that the state has been offering are inadequate to attract qualified nurses.

## **PROCEDURAL HISTORY**

By letter dated August 30, 2002, pursuant to Government Code § 19132, CSEA asked SPB to review the Contract for compliance with Government Code § 19130(b). CDC submitted its response to CSEA's request on October 17, 2002. By letter dated November 6, 2002, CSEA submitted its reply to CDC's response.

The Executive Officer issued his decision approving the Contract on January 15, 2003.

On February 14, 2003, CSEA appealed to the Board from the Executive Officer's January 15, 2003 approval. CSEA filed its written argument dated April 21, 2003. CDC filed its response dated May 19, 2003. CSEA filed its reply dated May 27, 2003.

The Board has reviewed the record, including the written arguments of the parties, and has heard the oral arguments of the parties, and now issues the following decision.

## **ISSUE**

The following issue is before the Board for consideration:

Is the Contract authorized under Government Code § 19130(b)?

## **DISCUSSION**

CDC asserts that the Contract is justified under Government Code § 19130(b), subdivisions (5), (8) and (10).

Government Code § 19130(b)(10) authorizes a state department to enter into a personal services contract with a private contractor when:

The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

In order to justify a personal services contract under Government Code § 19130(b)(10), a state agency must provide sufficient information to show: (1) the urgent, temporary, or occasional nature of the services; and (2) the reasons why a delay in implementation under the civil service would frustrate the very purpose of those services.

According to CSEA, CDC has a permanent and ongoing need for nursing services that is so predictable that the state has been able to allocate the appropriate number of positions needed to perform the work, and that a workload that is permanent, ongoing, and predictable does not qualify as “temporary” or “occasional.” The Board

agrees. CDC has a permanent, ongoing, and predictable need for nursing services that cannot qualify as “temporary” or “occasional.”

Therefore, the sole issue is whether the contracted nursing services are so “urgent” that the delay in their implementation under the civil service would frustrate their very purpose. CSEA concedes that the federal courts in Coleman, Madrid and Plata have ordered CDC to provide health care services to its inmate population that CDC cannot currently meet utilizing only its existing civil service staff and that CDC has engaged in diligent recruitment efforts to retain more civil service nurses. CSEA asserts, however, that the “urgent” exception applies only when there is not enough time to hire civil servants and that the state has known for approximately seven years that it has a pressing need for nurses, more than enough time to complete the competitive hiring process. CSEA contends that the reason that allocated positions have remained vacant for all this time is that the salaries the state is offering to pay to civil service nurses, when compared to the salaries that the contract registry nurses receive, are inadequate. CSEA argues that it is not the delay in the civil service hiring process that is preventing the court-mandated nursing services from being performed in a timely manner, it is the state’s unwillingness to spend available money on civil service salaries.

It is not clear from the information that has been presented to the Board whether the failure of the state to pay civil service nurses salaries that are comparable to the salaries paid to contract registry nurses is the sole determining factor that has caused CDC to be unable to attract sufficient civil service nurses. While CDC concedes that salary differentials may play some role, it asserts that it is not clear that, when the

benefits that the state offers are taken into consideration, the total compensation that civil service nurses receive is that much less than that of contract registry nurses. CDC also asserts that other factors may play very important roles in influencing nurses to work for a contract registry instead of the state, including a desire for very flexible part-time or intermittent work schedules and the opportunity to work in multiple and varied settings, rather than a single prison.

Even if the salary differentials may play a role in causing some nurses to choose to work for contract registries rather than for the state, CSEA has not presented, and we have not independently found, any case law or administrative ruling that has concluded that the state's failure to pay salaries that are as high as the salaries that the private sector may be willing to pay is a reason to deny contracting in an otherwise appropriate instance.

The federal court orders have imposed upon CDC an urgent need to provide nursing services to its inmate population that, despite its diligent recruitment efforts, it is currently unable to satisfy completely through the civil service hiring process. The Board, therefore, finds that the Contract is authorized under Government Code § 19130(b)(10). The Contract is approved for those nursing services that are urgently needed in order to comply with the federal courts' orders. The Board strongly encourages CDC to work diligently with CSEA to find a more permanent civil service solution to its nursing shortage by, among other things, reviewing whether it could institute a state registry, instead of a private contract registry, to fill its nursing needs.

Because the Board finds that the Contract is justified under Government

Code § 19130(b)(10), it does not need to review whether Government Code § 19130(b), subdivisions (5) and/or (8) also may apply.

## **CONCLUSION**

The Board finds that CDC has submitted sufficient information to establish that the Contract is authorized under Government Code § 19130(b)(10). The Board, therefore, sustains the Executive Officer's decision approving the Contract.

## **STATE PERSONNEL BOARD<sup>1</sup>**

William Elkins, President  
Sean Harrigan, Member  
Maeley Tom, Member

\* \* \* \* \*

I hereby certify that the State Personnel Board made and adopted the foregoing Decision at its meeting on August 5, 2003.

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Walter Vaughn  
Executive Officer  
State Personnel Board

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<sup>1</sup> Vice President Ron Alvarado did not participate in this decision.

**CORRECTED DECLARATION OF SERVICE**

I declare:

I am employed in the County of Sacramento, California. I am 18 years of age or older and not a party to the within entitled cause; my business address is 801 Capitol Mall, P. O. Box 944201, Sacramento, California 94244-2010.

On October 29, 2003, I mailed the attached

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in said cause, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Sacramento, California, addressed as follows:

Harry J. Gibbons, Attorney  
California State Employees Association  
1108 "O" Street  
Sacramento, CA 95814

Keri L. Faseler, Staff Counsel  
Department of Corrections  
1515 S Street, 314S  
Sacramento, CA 95814

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed at Sacramento, California on October 29, 2003.

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ELLA B. COWDEN