

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



SOUTHWEST TEACHERS ASSOCIATION,	)	
	)	
Charging Party,	)	Case No. LA-CE-382
	)	
v.	)	Request for Reconsideration
	)	PERB Decision No. 207
SOUTH BAY UNION SCHOOL DISTRICT	)	
BOARD OF TRUSTEES,	)	PERB Decision No. 207a
	)	
Respondent.	)	August 19, 1982
_____	)	

Appearances: Charles R. Gustafson, Attorney for Southwest Teachers Association; Clifford D. Weiler, Attorney (Brown and Conradi) for South Bay Union School District Board of Trustees.

Before Jaeger, Morgenstern and Tovar, Members.

REQUEST FOR RECONSIDERATION

Following the issuance of the Public Employment Relations Board's (PERB or Board) decision in South Bay Union School District Board of Trustees (4/30/82) PERB Decision No. 207, the Board received a request for reconsideration from the South Bay Union School District Board of Trustees (District). That request was made pursuant to PERB rule<sup>1</sup> 32410(a) which provides:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within 10 days following

<sup>1</sup>PERB rules are codified at California Administrative Code, title 8, sections 31000 et seq.

the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the record relied on. Service and proof of service of the request pursuant to Section 31240 are required.

This rule, which permits reconsideration because of "extraordinary circumstances," has been interpreted in prior Board decisions to permit reconsideration when the Board finds that substantial errors of law or fact have been demonstrated. Bassett Unified School District (3/23/79) PERB Order No. Ad-62.

#### DECISION AND ORDER

The Request for Reconsideration is granted. We found that the unfair practice committed by the District was its failure to negotiate the impact of its decision to abolish the lead teacher positions in question. Given this legal conclusion, upon reconsideration, we hereby amend the back-pay portion of the Order attached to the original decision.<sup>2</sup> We herein ORDER the District to bargain with the Southwest Teachers Association (Association), upon

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<sup>2</sup>The Board's decision to grant the District's request for reconsideration is based on its view that a more appropriate remedy is required. This is not based on the District's allegations concerning its request to bargain subsequent to the hearing officer's proposed decision but before the Board issued its final decision.

request, over the effects of the decision to alter the work assignment of lead teachers and to pay to the affected employees a rate of pay which reflects the pro rata share of their salary commensurate with their duties as lead teachers<sup>3</sup> from ten days of the date of service of this decision until the occurrence of the earliest of the following conditions: (1) the date the District negotiates an agreement with the Association over the effects of the decision to alter job duties of lead teachers; (2) a bona fide impasse is declared; (3) the failure of the Association to request negotiations within ten days of service of this decision or to commence negotiations within four days of the District's notice of its desire to negotiate with the Association; or (4) the subsequent failure of the Association to negotiate in good faith. In no event shall the sum paid to any of these employees exceed the pro rata amount they would have earned as lead teachers from the date on which the District altered the lead teachers' positions to the time they secured or refused equivalent employment elsewhere. However, in no event shall this sum be less than these employees would have earned for a two-week

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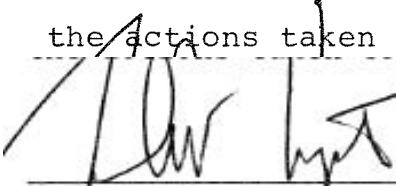
<sup>3</sup>The pro rata share shall reflect both the lead teacher differential and the extra day assignment.

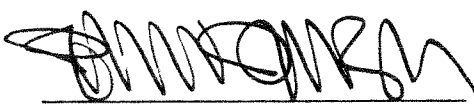
period at the rate of pay when employed as lead teachers prior to the District's unilateral action.<sup>4</sup>

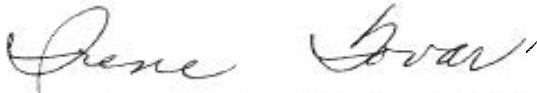
We further ORDER that the District shall:

1. Prepare and post copies of the notice attached hereto as Appendix "A" within ten (10) workdays following service at each of its work sites for thirty (30) workdays in conspicuous places, including all locations where notices to certificated employees are customarily posted.

2. Within ten (10) workdays after the end of the posting period, notify the Los Angeles Regional Director of the Public Employment Relations Board, in writing, of the actions taken to comply with this Order.

  
By: Marty Morgehstern, Member

  
John W. Jaeger, Member

  
Irene Tovar, Member

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<sup>4</sup>See Transmarine Navigation Corporation (1968) 170 NLRB 389 [67 LRRM 1419]; Solano County Community College District (6/30/82) PERB Decision No. 219.

APPENDIX A

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California

After a hearing in Case No. LA-CE-382, Southwest Teachers Association v. South Bay Union School District Board of Trustees, in which both parties had the right to participate, it has been found that the South Bay Union School District Board of Trustees violated the Educational Employment Relations Act (Government Code subsections 3543.5(a), (b) and (c)) by taking unilateral action changing wages and hours of employment of employees who are lead teachers and represented by the Southwest Teachers Association. As a result of this conduct, we have been ordered to post this notice. We will abide by the following:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action on matters within the scope of representation.

2. Denying the Association its right to represent unit members by failing and refusing to meet and negotiate about matters within the scope of representation.

3. Interfering with employees' right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS WHICH ARE NECESSARY TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Negotiate, upon request, with the Southwest Teachers Association over the effects of the decision to alter the work assignment of lead teachers.

2. Reimburse the affected employees at a rate of pay which reflects the pro rata share of their salary commensurate with their duties as lead teachers from ten (10) days of the date of service of this decision until the occurrence of the earliest of the following conditions:

a. The date the District negotiates an agreement with the Association over the effects of the decision to alter job duties of lead teachers.

b. A bona fide impasse is declared.

c. The failure of the Association to request negotiations within ten (10) days of service of this decision or to commence negotiations within four (4) days of the District's notice of its desire to negotiate with the Association.

d. The subsequent failure of the Association to negotiate in good faith.

In no event shall the sum paid to any of these employees exceed the pro rata amount they would have earned as lead teachers from the date on which the District altered the lead teachers' positions to the time they secured or refused equivalent employment elsewhere. However, in

no event shall this sum be less than these employees would have earned for a two-week period at the rate of pay when employed as lead teachers prior to the District's unilateral action.

3. Pay, in addition to the amounts specified in subparagraph 2 above, seven (7) percent interest per annum on the amount owing to each employee, measured by the duration described in subparagraph 2.

Dated: \_\_\_\_\_

South Bay Union School District  
Board of Trustees

By \_\_\_\_\_  
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 30 WORKDAYS FROM THE DATE OF THIS POSTING AND MUST NOT BE DEFACED, ALTERED, OR COVERED BY ANY MATERIAL.