SUPERCEDED by Trustees of the California State University
(2009) PERB Decision No. 1876a-H

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE EMPLOYEES ASSOCIATION, CSU DIVISION, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	Case No. SA-CE-191-H PERB Decision No. 1876-H December 29, 2006
CALIFORNIA FACULTY ASSOCIATION, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	Case No. SA-CE-194-H

Appearances: California State Employees Association by Philip Cooney, Labor Relations Representative, for California State Employees Association, CSU Division; Rothner, Segall & Greenstone by Bemhard Rohrbacher and Emma Leheny, Attorneys, for California Faculty Association; Donald A Newman, Attorney, for Trustees of the California State University.

Before Shek, McKeag and Neuwald, Members.

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Trustees of the California State University (CSU) of a proposed decision by a PERE administrative law judge (ALJ). The charge alleged that CSU

violated the Higher Education Employer-Employee Relations Act (HEERA)[1] when it prohibited faculty and staff (collectively faculty) from parking in newly built parking structures. The charge also alleged that CSU unlawfully consulted with an advisory group on a matter within scope (i.e., parking location) and wrongfully denied a request for information regarding parking. The California State Employees Association, CSU Division (CSEA) and the California Faculty Association (CFA) alleged this conduct constituted a violation of HEERA section 3571(a), (b), (c) and (f).

The ALJ ruled that CSU violated HEERA section 3571(c) when it unilaterally prohibited the faculty from parking in the newly built parking structures. Next, the ALJ ruled that CSU violated HEERA section 3571(b) and (c) when it refused to comply with an information request by CFA regarding parking information. Last, the ALJ ruled that CSU violated Section 3571(a) and (b) when it consulted with an advisory group comprised of students, faculty and staff regarding parking fees.[2]

The central legal issue in this case is whether parking location, as opposed to parking fees, is a matter within the scope of representation (i.e., a mandatory subject of bargaining). The proposed decision concludes that parking location is within scope. We disagree. Accordingly, the Board finds CSU did not have a duty to bargain a change of parking location and, therefore, did not violate Section 3571(c) (unilateral change) when it prohibited the faculty from parking in the newly built parking structures. The Board further finds CFA's information request should not be deferred to arbitration. Moreover, since CSU did not except to the merits of the ALJ's ruling regarding the information request, we affirm the ALJ's

[1]HEERA is codified at Government Code section 3560, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[2]CSU did not except to this ruling by the ALJ.

conclusion, but not the analysis. Last, since CSU did not except to the ALJ's findings with regard to the Section 3571(f) violation (unlawful consultation with an advisory group), the Board affirms the ALJ's conclusion. However, since this would be an issue of first impression for the Board, we do not affirm the ALJ's analysis.

OVERVIEW

CSU Northridge (CSUN) and CSU Sacramento (CSUS) are constituent campuses of the CSU. In recent years, both campuses have experienced significant growth, which has correspondingly impacted their respective parking resources. To accommodate increased enrollment, multi-level parking structures have been built at both campuses. Specifically, CSUS opened Parking Structure II (PS II (CSUS)) in August 2002, and CSUN opened Parking Structure B-5 (B-5 (CSUN)) in August 2003.

To finance these structures, both universities were required to increase user parking fees. At that time, the existing collective bargaining agreements (CBA) for the bargaining unit members represented by CFA and CSEA included a specified parking fee. CSU asked both CFA and CSEA to reopen their respective CBAs and negotiate parking fee increases, but both unions declined. Accordingly, although the parking fees paid by students increased, the fees paid by CFA and CSEA bargaining unit members did not.

Prior to the construction of the parking structures, the faculty were generally permitted to park in both faculty and student lots. However, when the structures became operational, CFA and CSEA bargaining unit members were not granted access. They alleged that this conduct constituted a unilateral change in a matter within the scope of representation.

Before PS II (CSUS) was opened, CSUS President, Donald Gerth (Gerth), created the ad hoc task force on parking (task force). The charge of the task force was to address the

equitable treatment of students in light of the fact that they were paying higher parking fees than the faculty. The task force made several recommendations to the CSUS administration. CFA and CSEA alleged this constituted an unlawful consultation with an advisory group in violation of HEERA section 3571(f).

Also during this time, CFA tendered an information request to CSUS. The request sought information regarding parking fees, parking availability and parking allocation. CFA alleged that CSUS's failure to provide the information constituted a violation of Section 3571(c).

PROCEDURAL HISTORY

This case has a relatively lengthy procedural history which includes the consolidation of similar charges filed by CFA and CSEA. For clarity, a brief synopsis of the procedural history is set forth below.

Case No. SA-CE-191-H

On June 4, 2002, CSEA, filed an unfair practice charge against CSU. The charge alleged that CSUS violated Section 3571(f) when it issued a memorandum dated May 9, 2002, asking "the Vice President for Administration to bring together a small group of representative[s] of the campus, including . . . staff to address broader issues of equity in the distribution of parking availability." On September 26, 2002, CSEA filed a first amended charge. The amended charge alleged violations of Section 3571(b) and (c) when PS II (CSUS) was designated as a student only parking structure.

On December 6, 2002, PERB's General Counsel, after an investigation of the charge, issued a complaint alleging violations of Section 3571(a) and (c). On December 24, 2002,

CSU answered the complaint. The answer denied all material allegations and asserted various affirmative defenses.

Case No. SA-CE-194-H

On October 7, 2002, CFA filed an unfair practice charge against CSU. The charge alleged violations of Section 3571(b), (c) and (f). Generally, the allegations were based on CSUS' consultation with the task force and its designation of PS II (CSUS) as a student only parking structure.

On December 6, 2002, PERB's General Counsel, after an investigation of the charge, issued a complaint alleging violations of Section 3571(a) and (c), the same subdivisions of Section 3571 that were alleged in Case No. SA-CE-191-H. On December 24, 2002, CSU answered the complaint. The answer denied all material allegations and asserted various affirmative defenses.

On April 9, 2003, CFA filed its first amended unfair practice charge against CSU. This amended charge alleged violations of Section 3571(a), (b), (c) and (f). The amended charge also added allegations that CSUS failed to produce relevant documents and CSUN unilaterally changed its past practice when it failed to meet and confer over the restriction of Bargaining Unit 3 members from parking in B-5 (CSUN).

Miscellaneous Motions and Position Statements

On May 15, 2003, CSU filed a position statement regarding CFA's first amended unfair practice charge. The position statement opposed amending the complaint issued on December 6, 2002, to include CSUS's failure to provide information and CSUN's alleged unilateral change. Specifically, CSU argued that CSUS' alleged failure to provide information should be deferred to arbitration, and that the unilateral change allegations regarding CSUN

did not establish a prima facie case. In the alternative, CSU argued that the CSUN allegations, even if they are sufficient to support a prima facie showing, should not be incorporated into the complaint because of the factual differences between the CSUN situation and the CSUS situation.

On May 16, 2003, CSEA requested the consolidation of Case No. SA-CE-191-H with Case No. SA-CE-194-H.

On June 9, 2003, CFA responded to CSU's position statement, arguing that the complaint issued by PERB should be amended. With regard to the information request, CFA argued that the amendment was appropriate because it was entitled to the requested information.[3] Additionally, CFA argued that the complaint should be amended to include the CSUN unilateral change due to the similarities of the facts between the CSUN situation and the CSUS situation.

Issuance of the Amended Complaint

On September 23, 2003, the ALJ issued an amended complaint. Counsel for CSU received a copy of the amended complaint on September 24, 2003, minutes before the commencement of the first day of hearing. CSU objected to the timing of the amended complaint, and was concerned that because it did not have an answer to the amended complaint on file, it may be ruled that CSU waived its affirmative defenses. The ALJ overruled the objection, but authorized CSU to file an answer to the amended complaint "later on." CFA and CSEA did not object to this ruling. CSU filed its amended answer on November 26, 2003, two months after the formal hearing was held.

[3]CSU argued that the dispute should be deferred to arbitration, not that CFA was not entitled to the information. CFA, however, did not address the deferral argument.

Motions and Rulings on the First Day of Hearing

The first day of the formal hearing was held on September 24, 2003. At the outset, CSEA moved to amend the complaint to include an allegation CSU unlawfully failed to provide CSEA with certain information. The ALJ determined that although CSEA's request was "substantially" the same as CFA's request, it was not an exact duplicate. After concluding the amendment would impose too great a burden on CSU to expect it to mount a defense upon such short notice, the ALJ denied the motion. Additionally, CSEA moved to amend the complaint to include an allegation that CSU unilaterally modified its parking policy at CSUN. After determining that CSU had sufficient notice of these proposed amendments to prepare a defense, the ALJ granted the motion.

In addition to CSEA's pre-hearing motions, CFA moved to amend the complaint to include allegations that CSU had: (1) unilaterally modified its parking policy at CSUN, and (2) refused to comply with a lawful request for information about such policies. After determining that CSU had sufficient notice of these proposed amendments to prepare a defense, the ALJ granted CFA's motion.

The ALJ also ruled to consolidate cases SA-CE-191-H and SA-CE-194-H. The hearing concluded on September 26, 2003.

The case was submitted for a proposed decision on January 12, 2004.

FACTS

A. Relevant Contractual Language

CSEA represents employees in CSU Bargaining Units 2, 5, 7, and 9. CFA represents employees in Bargaining Unit 3.

1. CSEA-CSU CBA

Section 21.15 of the July 1, 2002 to June 30, 2005 CSEA-CSU CBA states, in part:

> Employees wishing to park at any CSU facility shall pay the parking fee in accordance with CSU campus policy. There shall be no parking fee increases for CSEA-represented employees on any campus during fiscal year 2002-2003. Thereafter, any increases in parking fees are subject to a reopener.

2. CFA-CSU CBA

Section 32.17 of the May 14, 2002 to June 30, 2004, CFA-CSU CBA states:

> An employee is required to pay the parking fee as determined by the CSU for parking at any facility of the CSU. . . . The CSU shall not change the parking fees payable in effect upon the effective date of this Agreement.

This provision had an accompanying footnote, which states, in pertinent part:

> 'The parties agree that faculty will not be required to pay parking fees in excess of those applicable as of June 30, 2001 during the 2001-2002, 2002-2003 contract years.'

The parties have historically negotiated faculty parking fees, but not specific locations. Prior to the events described herein, parking fees for both students and the faculty at the two campuses had not changed since 1992.

B. Parking is a Self-Sustaining Function

Both CSUS and CSUN have experienced a marked increase in the number of students, and, therefore, a corresponding increase in the need for parking. In 1995, every CSU campus became responsible for their own parking policies, subject to approval by the Board of Trustees. As a result, all parking related costs, including any new parking structures, must be paid for by campus parking fees. Additionally, all new parking structures and/or improvements are funded through CSU revenue bonds. However, in order to obtain approval

for such a bond, the respective campus must demonstrate both fiscal viability and the ability to pay for its expenditures.

C. Parking Fee Increase – Background

During the 2000-01 school year, administrators at both CSUN and CSUS determined that additional campus parking structures were needed. Both administrations determined that, in order to pay for these new structures, it was necessary to raise parking rates for all campus parkers.

As set forth above, both the CSEA CBA and the CFA CBA contained provisions regarding parking fees paid by their members, and neither contract authorized an increase of those fees. Although CSU proposed reopening the respective CBAs to negotiate a fee increase, it was unable to negotiate an increase with either union. Indeed, CFA's leadership stated that its members would not approve a fee increase in a year that they did not receive a pay increase.

D. CSUN: Restrictions on Parking Location

On June 14, 2001, CSUN informed both its students and the faculty that parking fees would be raised in two stages. On September 1, 2001, these fees would be increased from $14.00 to $21.00 per month and from $63.00 to $94.50 per semester. On July 1, 2002, the fees would be increased from $21.00 to $28.00 per month and from $94.50 to $126.00 per semester.

CSU negotiated with and obtained a fee increase for employees in various bargaining units not represented by CFA and CSEA (i.e., Bargaining Units 4, 6 and 8). Thus, on September 1, 2001, when CSUN raised parking fees for its students, it also raised the fees for its non-represented employees. It did not, however, raise the parking fees for the faculty represented by CFA and CSEA.

Later, on March 17, 2003, CFA and CSEA were informed that their bargaining unit members would not be permitted to park in B-5 (CSUN) when it was completed. In September 2003, when B-5 (CSUN) was opened, the members were permitted to park in all of the areas outside of the B-5 (CSUN) in which they had previously parked, but not inside the structure. In addition to their former parking locations, the faculty had access to 308 resurfaced spaces in the ground area surrounding the new structure. These 308 spaces constituted an increase of 127 spaces over those available prior to the construction of B-5 (CSUN). Students and faculty not represented by CFA and CSEA, but paying the higher fee, were permitted to park in the structure. Neither CSEA nor CFA offered any evidence that the parking limitations placed on B-5 (CSUN) created a negative impact on the faculty represented by them.

E. CSUN: Parking Location Never Bargained

In 1994, the Northridge earthquake wrought serious damage to the campus. Numerous buildings, including an existing parking structure, were rendered uninhabitable and required demolition. In response, CSUN erected temporary buildings on lawns and parking lots. As a result, parking locations changed frequently. The location of parking remained in flux as reconstruction efforts continued. Neither CSEA nor CFA presented evidence to suggest that these changes in parking locations were bargained. To the contrary, CSUN Vice President for Administration and Finance and Chief Financial Officer, Mohammad Qayoumi, testified that, to his knowledge, parking location was never negotiated with the unions.

F. CSUS: Restrictions on Parking Location

On May 9, 2002, CSUS President Gerth, issued a memorandum to the campus community discussing parking fees. In this memo he stated, inter alia, the following:

> I have significant concerns about the equity of this situation. Students and a limited number of university employees will be paying higher parking fees than the majority of university employees. The Faculty Senate at its April 25 meeting adopted a resolution recommending to me the creation of 'a funding mechanism whereby faculty and staff who wish to pay an additional sum to equal the student increase can do so.' I think this is a reasonable thing to do.
>
> I have asked the Vice President for Administration to bring together a small group representative of the campus, including students, faculty, and staff to address broader issues of equity in the distribution of parking availability. The group is meeting now.
>
> That group is addressing matters such as how parking spaces are to be allocated to various groups particularly with respect to the level of fees.

In May 2002, CSUS announced a new parking fee schedule for students and non-represented employees proposing fee increases in two stages. In September 2002, semester fees would be increased from $63.00 to $85.50, and in July 2003 they would be increased to $108.00, with corresponding fee increases for summer, weekly and daily parking.

On August 26, 2002, a few days prior to its opening, Gerth announced that PS II (CSUS) would be designated for students only. There was not an increase in parking fees for CSUS employees, whether they were represented or not. After PS II (CSUS) was opened, the faculty had more parking spaces on campus. Moreover, the faculty had the same proportion (18 percent) to the overall number of spaces that it had prior to the opening.

G. CSUS: Parking Location Never Bargained

Historically, each CSUS parking lot was designated for the exclusive use of either students or the faculty. In 1991, this policy was changed to permit the faculty to park in

student lots, as well as faculty lots. Students, on the other hand, were not permitted to park in faculty lots. According to CSUS's Transportation and Parking Services Manager, Nancy Fox (Fox), since 1991-92, this was done to "allow more flexibility."

Fox testified that parking lots at CSUS are typically allocated by way of an 80/20 split. In other words, approximately 20 percent is allocated to the faculty and approximately 80 percent is allocated to students. In or about 2000, some temporary buildings were replaced by a new parking lot. Rather than allocate the 20 percent of the spaces in this lot to the faculty, and 80 percent to students, all of the spaces were allocated to the faculty and students. Neither CSEA nor CFA presented any evidence that this change in parking allocation was bargained.

H. CSUS: Request for Information

On September 16, 2002, CFA Research Specialist, Andrew Lyons (Lyons), wrote Gerth requesting specified information regarding parking at CSUS. On October 22, 2002, Assistant Vice Chancellor, Human Resources, Sam Strafaci (Strafaci), responded to Lyons letter, as follows:

> As we have advised you, parking fees at Sacramento will not be increased during the 2002-2003 fiscal year, nor will we request you to reopen the Collective Bargaining Agreement to discuss raising parking fees.
>
> At this time, we have not decided whether or not to propose parking increases for 2003-2004. Since there is no current proposal to increase parking fees, we have not compiled the information and believe there is no basis for a HEERA request for this information. In light of the foregoing, please inform me why you believe that this information is required under HEERA.
>
> Should we propose parking fee increases for 2003-2004, we will at that time respond to your request.

Lyons responded to Stafaci's letter on November 5, 2002, as follows:

> I am in receipt of your letter dated October 22, 2002 in which [sic] claim there is no basis for our HEERA information request concerning parking at CSU Sacramento.
>
> I write to inform you that CFA is considering requesting the parties reopen the collective bargaining agreement in 2002/03 to discuss parking fees. Without the parking information, we will be unable to make the final determination as to whether or not to request the parties reopen the agreement.
>
> We are also considering raising parking as an issue during the 2003/04 re-opener negotiations. Again, in order to make the final determination on whether or not to re-open on this issue, we will require the data contained in my original request (September 16, 2002).

On December 4, 2002, Strafaci responded to Lyons' November 5 letter, stating in pertinent part:

> The University has further evaluated this request under HEERA and still does not understand how this parking information is relevant to the CFA's duty as the exclusive representative for Unit 3 Faculty when, at this point, no proposal has been made. To hold otherwise, contrary to HEERA, would place the unlimited responsibility to fulfill information requests on matters not open to bargaining. As both parties know, there is no obligation on either side to reopen parking for 2002/2003 and as stated above the CSU does not intend to propose any increase.
>
> If in fact, the CFA formally requests to bargain over parking fees, the CSU will fulfill its obligations under HEERA to provide information that is necessary and relevant for the CFA to carry out its bargaining obligation. However, the CSU must note in the event CFA chooses to re-open parking, the parties will still have to bargain over the cost and the extent of the information that the CSU will provide.

CSU did not produce the documents.

EXCEPTIONS

CSU set forth 11 exceptions in its appeal of the proposed decision. Of these exceptions, eight address the unilateral change allegations, two address the document production allegations and one addresses both issues. No exceptions were filed regarding the violation of Section 3571(f) (consultation with advisory groups).

DISCUSSION

Unilateral Change Allegation

In determining whether a party has violated HEERA section 3571(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

To prove an unlawful unilateral change, the charging party must establish, by a preponderance of the evidence, that: (1) The employer breached or altered the parties' written agreement or past practice; (2) Such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; and (3) The change was not merely an isolated breach of contract, but amounts to a change of policy (e.g., has a generalized effect or continuing impact upon the terms and conditions of employment of

bargaining unit members); and (4) The change in policy concerns a matter within scope of representation.

Matters Within the Scope of Representation

Under HEERA section 3562(q) and (r) matters within the scope of representation are generally limited to wages, hours and other terms and conditions of employment.[4] The Board has not created a specific test to determine whether matters not specifically described in these statutory provisions are within the scope of representation under HEERA. However, PERB has determined that a matter is outside the scope of bargaining if "imposing a bargaining obligation would significantly abridge the employer's managerial prerogatives." (Regents of the University of California (1987) PERB Decision No. 640-H.)

There is no PERB decision on whether the location of employee parking is a negotiable subject under HEERA. The closest case is State of California (Franchise Tax Board) (1982) PERB Decision No. 229-S, a Ralph C. Dills Act (Dills Act)[5] decision that does not reach the scope of representation question. There, the ALJ determined that the location of employee parking spaces was not a negotiable matter. The Board, however, held that, regardless of whether the issue was negotiable, the employer had discharged any obligations it may have had toward the employee organization by meeting with it.

Matters Within Scope Must be Related to Hours, Wages or Terms and Conditions of Employment

PERB will find a subject negotiable if: (1) it is logically and reasonably related to hours, wages or terms and conditions of employment; (2) the subject is of such concern to both

[4]In addition to Section 3562, HEERA section 3562.2 expressly provides that any retirement benefits available to a state member under Part 3 (commencing with Sec. 20000) of Title 2 fall within scope for the purposes of CSU.

[5]The Dills Act is codified at Government Code section 3512, et seq.

management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3) the employer's obligation to negotiate would not specifically abridge the employer's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer's mission. (Anaheim Union High School District (1981) PERB Decision No. 177; test approved in San Mateo City School Dist. v. Public Employment Relations Bd. (1983) 33 Cal.3d 850 [191 Cal.Rptr. 800].)

Thus, we begin and end our analysis of the scope issue with the question of whether the policy regarding parking location is logically and reasonably related to wages, hours, or terms and conditions of employment. As discussed below, we conclude it does not.[6]

Parking Location Does Not Impact Wages

The parties have historically negotiated faculty parking fees, but not specific locations. When the instant charge was filed, the faculty parking fees were $63 per semester at both CSUS and CSUN. The Board has held that parking fees are within the scope of representation because they are logically and reasonably related to wages. (California State University (1990) PERB Decision No. 799-H.) Moreover, because parking fees were an express term of both the CSEA agreement and the CFA agreement, any changes to these fees would require negotiation between the parties.

In this case, faculty parking fees, unlike student parking fees, did not change when parking at PS II (CSUS) and B-5 (CSUN) became available. Thus, the decision to restrict the faculty from parking at these locations had no impact on the wages of the employees.

[6]Because we conclude that parking location is not within scope, we need not address the remaining elements to prove an unlawful unilateral change.

Parking Location Does Not Impact Hours of Employment

A change in policy is within the scope of negotiations if it impacts hours of employment. CFA and CSEA argue, in essence, that the change in policy affected hours because the employees had to spend more time looking for parking spaces and had to walk further distances to their classrooms once they secured a parking space.[7] In Inglewood Unified School District (1987) PERB Decision No. 624, however, the Board rejected the argument that hours were increased by a requirement that teachers report to the office to pick up keys prior to going to their classrooms. The Board noted that the key pickup system "did not require the teachers to be on campus any earlier than provided for in the contract."

Similarly, the mere fact that they were prohibited from parking in the new parking structures (and, in this case, retained access to the same parking spaces) did not require the faculty to report to duty any earlier than before the change in policy. Simply put, employees do not begin work when they park their cars. They begin work when they commence their duties at their work site. Accordingly, we find that the location of employee parking spaces is not logically and reasonably related to hours of employment.

Parking Location Does Not Impact Other Terms and Conditions of Employment

In determining whether a matter falls within scope under "other terms and conditions of employment", the Board has adopted a three part test. A subject is within scope if it:

[7]Although CFA and CSEA presented evidence that the availability of parking at both campuses has decreased over time, they failed to present any evidence to show that the parking restrictions at PS II (CSUS) and B-5 (CSUN) had a direct impact on the overall availability of parking spaces for the faculty. To the contrary, neither CSUS nor CSUN reduced the amount of parking available to the faculty. Indeed, according to the evidence, faculty parking actually increased when PS II (CSUS) and B-5 (CSUN) became available. Moreover, since the faculty continued to use the same locations they used prior to the construction of the lots, there was no change to their parking situation. Thus, the record does not support the proposition that the parking restriction required employees to spend more time looking for parking spaces.

(1) involves the employment relationship; (2) the subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3) the employer's obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives essential to the achievement of its mission. (Trustees of the California State University (2003) PERB Decision No. 1507-H.)

Parking at both locations is not a condition of employment. Employees are not required to drive to work. However, in the event they choose to drive, the employees are not limited to the permitted spaces. They may, like students and members of the public, park in "daily use" spaces rather than permitted spaces or, alternatively, park off campus. Ultimately, the evidence is insufficient to establish a relationship between CSU's parking policy and any condition of employment. Accordingly, we believe parking location does not involve the "employment relationship." As such, parking location does not fall within scope under "other terms and conditions of employment."[8]

The ALJ argued that if parking was not within scope, faculty could be required to park in "remote lots, well beyond the most distant student lots." Such a result, however, is not reflected in the record. Indeed, as stated above, faculty were permitted to park in the same areas as they did prior to the opening of the new parking structures. Moreover, the number of spaces available to the faculty actually increased at both campuses when the respective structures opened. Thus, under the circumstances in this case, the change did not impact the employment relationship.

[8]Parking location, under certain circumstances, may be deemed to impact the employment relationship. For example, a change in parking location might be found to impact the conditions of employment if parking was moved to a location that created significant health and safety risks. Such risks, however, were not raised in this case.

For these reasons, we conclude that CSU did not unlawfully change the terms and conditions of employment when it prohibited faculty from parking in PS II (CSUS) and B-5 (CSUN). Therefore, we dismiss this charge.

Allegation Regarding Failure to Provide Information

The ALJ ruled that CSU violated Section 3571(b) and (c) when it failed to produce information in response to CFA's request. In so doing, the ALJ denied CSU's request for deferral. Although the ALJ noted that CSU raised deferral for the first time in its closing brief, the ALJ based his denial on the merits of the request. On appeal, CSU argues that the ALJ erred in denying its request. For the reasons set forth below, we affirm the denial of the deferral request.

CSU's Deferral Request Was Timely Filed

CSU raised the question of deferral in its May 15, 2003, position statement. Over six months later, on September 23, 2003, the ALJ issued an amended complaint, which, for the first time, included the document production charge. The first day of hearing in this case was on September 24, 2003, one day after the amended complaint was issued. As a result, CSU received its copy of the amended complaint shortly before the hearing was scheduled to begin.

At the hearing, CSU expressed concerns that since it did not have an answer to the amended complaint, it ran the risk of waiving its affirmative defenses. The ALJ, without objection by CFA and CSEA, authorized CSU to file an amended answer. CSU's amended answer did, in fact, contain a request for deferral.

Since CSU raised deferral six months before the hearing, filed an amended answer in a time frame approved by the ALJ and properly asserted its affirmative defense in its amended answer, we conclude CSU timely stated its deferral defense.

Deferral is Not Appropriate in This Instance

CSU argues that the information request charge in the complaint should be deferred to arbitration. The Board, however, has declined to bifurcate disputes that arise from the same conduct when doing so would defer one theory to arbitration while entertaining a companion theory in the unfair practice arena. (State of California (Department of Corrections) (1995) PERB Decision No. 1100-S (Corrections).) According to the Board, this approach:

> . . . ensures that only one neutral, administrative forum will be responsible for resolution of any specific dispute. By this rule, PERB defers to the alternative dispute resolution forum the parties have chosen. Finally, this rule will eliminate overlapping and duplicative proceedings, [fn. omitted] lead to more timely resolution of disputes and contribute to employer-employee relations stability. (Corrections, at pp. 14-15.)

However, the dispute(s) regarding the parking restrictions and the dispute(s) regarding the information request arguably arise from different conduct. In such cases, bifurcation may be appropriate under certain circumstances. (See State of California (Department of Parks & Recreation) (2003) PERB Decision No. 1566-S.)

In the instant case, the merits of the information request were fully litigated at the hearing. Thus, if this case was deferred to arbitration, CFA and CSEA, CSU, and PERB would have wasted a significant amount of time and resources litigating the underlying charge. In so doing, the parties would be compelled to participate in duplicative proceedings and the resolution of this case would be needlessly delayed. Because this result runs counter to the objectives set forth in the Corrections case, the Board concludes that bifurcation is not appropriate in this instance.

Collyer Analysis Was Not Required in This Case

In reaching his conclusion regarding deferral, the ALJ applied that analysis set forth in Collyer Insulated Wire (1971) 192 NRLB 837 [77 LRRM 1931] (Collyer). However, in light of our

conclusion that bifurcation is not appropriate in this case, the Collyer analysis was not necessary. Thus, although we agree with the ALJ's dismissal of the deferral defense, we do so for a different reason.

Production of Documents

An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143.) PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (Trustees of the California State University (1987) PERB Decision No. 613-H (Trustees).)

In defining the parameters of "necessary and relevant information" the Board has ruled that if the requested information pertains immediately to a mandatory subject of bargaining, it is presumptively relevant. (State of California (Departments of Personnel Administration and Transportation) (1997) PERB Decision No. 1227-S (Transportation).) Failure to provide such information is a per se violation of the duty to bargain in good faith. (Trustees.) On the other hand, the Board has ruled that information not within scope is not presumptively relevant. (Transportation.) In such cases, absent the presumption, the burden falls on the charging party to demonstrate the information sought is relevant and necessary to its representational responsibilities. (Ibid.)

In the present case, CFA argues that the information sought was necessary to evaluate the desirability of a re-opener on the issue of parking fees and to help formulate strategies for future contract re-openers on parking fees. We agree. Therefore, because it pertains immediately to a mandatory subject of bargaining (i.e., parking fees), we find the requested information is presumptively relevant.

Accordingly, the Board concludes CSU violated HEERA section 3571(b) and (c) when it failed to produce the requested documents.

Allegation Regarding Unlawful Consultation With an Advisory Group

In April 2002, Gerth created the task force, which, under the Chair, Professor of Communication Studies, Val R. Smith, was assigned the following tasks: (1) Make recommendations for the distribution of spaces in the new parking structure (Parking Structure II), and (2) Make recommendations on how to treat students equitably given that they are paying a higher fee for parking compared to others.

Initially, the members of the task force consisted of the chair, four members of the faculty, two staff employees, four students, the director of support services or his designee, and, at the chair's option, one or two members of the transportation advisory committee. Gerth did not ask either CFA or CSEA to designate members on this task force. After numerous meetings, the task force made several recommendations to Gerth.

CFA and CSEA alleged this conduct violated Section 3571(f). The ALJ agreed, concluding that CSU violated Section 3571(a) and (b) when it consulted with the task force on parking matters in violation of Section 3571(f).

> Section 3571 provides, in relevant part:
>
> It shall be unlawful for the higher education employer to do any of the following:
>
> (f) Consult with any academic, professional, or staff advisory group on any matter within the scope of representation for employees who are represented by an exclusive representative, . . .

This section, which is unique to HEERA and has no counter-part in either federal or state law, has never been interpreted by the Board. As indicated above, CSU did not except to the

ALJ's conclusion. Thus, the issue is not squarely before the Board and need not be addressed herein. Accordingly, the Board affirms the ALJ's conclusion that CSU violated HEERA section 3571(f) when it consulted with the task force. However, because this issue would be a matter of first impression by the Board, we decline to adopt the ALJ's analysis.

CONCLUSION

Based on the foregoing, the Board finds that CSU did not have a duty to bargain a change of parking location and, therefore, did not violate Section 3571(c) (unilateral change) when it prohibited the faculty from parking in the newly built parking structures.

The Board further finds that deferral of the information request charge, although timely raised, is not appropriate under the facts of this case. With regard to the merits of this charge, the Board finds CSU violated HEERA section 3571(b) and (c) when it failed to produce the requested documents.

Last, since CSU did not except to the ALJ's finding that CSU violated HEERA section 3571(f) when it consulted with the task force, the Board affirms the ALJ's conclusion. However, because this issue would be a matter of first impression by the Board, we decline to adopt the ALJ's analysis.

ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a), (b) and (c), by failing to provide requested necessary and relevant information regarding parking to the California Faculty Association (CFA).

Pursuant to HEERA section 3563.3, it is hereby ORDERED that CSU, its administrators, and representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to provide properly requested necessary and relevant information to CFA; and

2. Consulting with an ad hoc task force on parking on subjects within the scope of negotiations.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF HEERA:

1. Provide all described parking information requested by CFA;

2. Within ten (10) workdays following the date this decision is no longer subject to reconsideration, post at all sites where notices are customarily placed, a copy of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSU indicating that it will comply with the terms of this order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on CFA and the California State Employees Association, CSU Division.

Members Shek and Neuwald joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. SA-CE-191-H, California State Employees Association, CSU Division v. Trustees of the California State University, and Unfair Practice Case No. SA-CE-194-H, California Faculty Association v. Trustees of the California State University, in which all parties had the right to participate, it has been found that the Trustees of the California State University violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571(a), (b) and (c), when it failed to provide necessary and relevant information to the California Faculty Association (CFA) regarding parking and by consulting with an ad hoc task force (task force) on subjects within the scope of negotiations.

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Failing to provide properly requested necessary and relevant information to CFA; and

2. Consulting with an ad hoc task force on parking on subjects within the scope of negotiations.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF HEERA:

Provide all described parking information requested by CFA.

Dated: _____

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.