

Respondent.

June 27, 1983

It shall be unlawful for a public school employer to:

adopting and implementing a classification plan for classified employees without negotiating with the exclusive representative, California School Employees Association, Chapter 305 (CSEA or Charging Party).

The District excepts to the hearing officer's finding that the classification plan affects matters within the scope of representation and to his reliance on the Board's decision in Healdsburg Union High School District and Healdsburg Union School District (6/19/80) PERB Decision No. 132 as authority for this finding.

The District further excepts to the hearing officer's denial of its motion to dismiss that portion of the charge pertaining to the unit of blue collar employees no longer represented by CSEA or, in the alternative, to join the current exclusive representative of that unit, the Teamsters Union (Teamsters), as an indispensable party to the hearing on this matter.

(a) 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 this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

Finally, the District excepts to the hearing officer's proposed order, claiming it is ambiguous and inappropriate in light of the length of time that has transpired since the initiation of the charge and because the parties have entered into a tentative agreement regarding certain features that are affected by the order.

The Board has reviewed the entire record in light of the District's exceptions. We find that the hearing officer's findings of fact are free of prejudicial error and adopt them as the findings of the Board itself. For the reasons set forth below, we affirm the hearing officer's finding of violation and his ruling on the District's motion to dismiss, but we modify his proposed order.

FACTS

On October 13, 1977, the District adopted a classification plan² which consists of the following elements:

(1) explanatory materials - definitions, objectives, procedures; (2) lists of classes retitled, new classes, and abolished classes; (3) Position Allocation List which allocates positions to classifications; (4) Book of Specifications which

²Charging Party's Exhibit No. 6 is the Alum Rock Union Elementary School District Classification Study 1977 prepared by Cooperative Personnel Services, California State Personnel Board. The classification plan was adopted with minor modifications set forth in memoranda dated October 10 and October 12, 1977 from Superintendent William F. Jefferds to the Board of Trustees (C.P. Exh. 12, 13).

provides specifications for each classification, including title, definition, distinguishing characteristics, examples of duties, special requirements (if any), and minimum qualifications; (5) Class Relationship Charts which group classifications into occupational groups, identify a "bench mark" class to be surveyed as to prevailing salaries in surrounding districts, and specify internal salary relationships (percent differentials) between classes in the same occupational group in relation to the bench mark class.

The District does not except to the hearing officer's findings that adoption of the classification plan resulted in the following changes:

1. New classifications were created; existing classifications were abolished. In some cases, classifications were created and abolished by splitting existing classifications or by consolidating existing classifications.

2. Classifications were retitled.

3. Salary ranges of existing classifications were adjusted upward and downward and percent differentials between classifications in the same occupational group were changed.

4. Incumbent employees were reassigned from their existing classifications into other existing classifications and to newly created classifications.

5. Specifications for nearly all classifications were revised.

DISCUSSION

Job classifications are an integral part of civil service systems established in public sector jurisdictions pursuant to state and local legislation. Typical of such legislation, Education Code section 45103 requires public school districts to classify all employees and positions with certain designated exceptions.³

The plan at issue in the instant case defines "classification plan" as a way of systematically describing the positions and classes in a public agency.⁴ A "position" is a group of duties and responsibilities which are intended to be performed by one employee. A "classification" or "class" is any number of positions which are sufficiently similar in duties and responsibilities that the same job title, minimum

³For a discussion of the accommodation of pre-existing classified civil service systems with the requirements of collective bargaining, see Grodin and Wallett, Labor Relations and Social Problems: Collective Bargaining in Public Employment (2d ed. 1975) p. 145 et seq.

⁴In accord, the National Labor Relations Board (NLRB) has defined a classification system as "a series of job levels or grades determined arbitrarily with each job classified into its proper relative grade" Latin Watch Case Co. (1965) 159 NLRB 203, 206 [61 LRRM 1021]. A recent Court of Appeal decision found that "the process of classification is necessarily based upon identifiable job groupings reflecting a sufficient similarity of required skills, duties, knowledge and abilities." Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689, 697 [163 Cal.Rptr. 464]. (Emphasis in original.)

qualifications, qualifying tests, and salary range are appropriate for all positions in the class.

Subsection 45101(a) of the Education Code similarly defines "classification" as follows:

"Classification" means that each position in the classified service shall have a designated title, a regular minimum of assigned hours per day, days per week, and months per year, a specific statement of the duties required to be performed by the employees in each such position, and the regular monthly salary ranges for each such position.

The hearing officer determined that the District, by its unilateral adoption and implementation of a new classification plan, breached its obligation to negotiate in good faith about matters within the scope of representation. In reaching this conclusion, the hearing officer relied, in part, on the Board's decision in Healdsburg Union High School District and Healdsburg Union School District, supra, as authority for finding that the classification plan affects matters within the scope of representation.⁵

⁵In Healdsburg, we considered the negotiability of seven specific proposals, advanced during negotiations, regarding the classification of positions. A majority of the Board concluded that three of these proposals were beyond the scope of representation: The Association could not require the District to negotiate its decision to create, abolish or reclassify a position, nor could it seek to ensure that all new positions or classifications are assigned to the negotiating unit.

However, we held that the Association had the right to negotiate the following proposals: (1) that every bargaining

The District initially excepts to the hearing officer's reliance on the Board's decision in Healdsburg, claiming that case did not provide legally sufficient precedent for the hearing officer's decision because it was then on appeal.⁶

The hearing officer did not rely exclusively on Healdsburg for his finding that the classification plan affects matters within the scope of representation. He cited both NLRB and other state public employment relations cases which provide independent authority for his holding.⁷

unit position shall be placed in a classification; (2) that when the classification of a position or class of positions is changed, the position or positions shall be placed on the salary schedule at least one range above the previous salary; (3) that when the classification of an entire class of positions is changed, incumbents shall be entitled to serve in the new positions and when less than an entire class is changed, incumbents who have been in the positions for one year or more shall be reallocated to the higher class, and if no incumbent has served in that position for one year or more, the new position shall be considered a vacant position subject to established transfer and promotion procedures; and (4) that any downward adjustment of a position or class shall be considered a demotion subject to established layoff or disciplinary procedures.

⁶The decision of the Court of Appeal in 1 Civ. 50191 (Division 4) issued on December 1981. On February 24, 1982 the California Supreme Court granted petition for hearing in Healdsburg Union High School District v. PERB, CSEA (Case No. SF 24401, 1 Civ. 50199).

Those aspects of the Court of Appeal decision which were adverse to our holdings in Healdsburg were vacated by the Supreme Court's grant of a hearing. Code of Civil Procedure subsection 916(a); Ponce v. Marr (1956) 47 C.2d 159, 161 [301 P.2d 837]; Estate of Kent (1936) 6 C.2d 154, 156 [57 P.2d 901].

⁷Latin Watch Case Co., supra; Limpco Mfg., Inc. (1976) 225 NLRB 987 [93 LRRM 1464]; Central Cartage, Inc. (1978) 236

Moreover, the Supreme Court has now affirmed the Board's test for negotiability as stated in Anaheim Union High School District (10/28/81) PERB Decision No. 177.⁸ Consistent with the Supreme Court's decision in Healdsburg, we apply the Anaheim test to determine the negotiability of those portions of the classification plan which are not expressly enumerated as terms and conditions of employment in section 3543.2.9

NLRB 1232 [98 LRRM 1554]; Handen Community Child Care (1979) 1 NPER U7-10038 Comm. SBLR; Milwaukee Police Association v. Breier (1979) WERC Decision No. 16602-A.

⁸In addition to affirming the Board's test, the Supreme Court remanded the Healdsburg case to the Board for further proceedings consistent with the Court's opinion. San Mateo City School District v. PERB, California School Employees Association v. PERB, Healdsburg Union High School District et al. v. PERB (1983) ___ Cal.3d ___ (SF 24401).

⁹Section 3543.2 provides, in pertinent part, as follows:

(a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits . . . leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security . . . , procedures for processing grievances . . . , and the layoff of probationary certificated school district employees All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school

The Anaheim test provides that a subject will be found to be negotiable even though not specifically enumerated in section 3543.2 if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both 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 the employer's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission.

Applying the Anaheim test here, we find that certain changes made by the District affect negotiable subjects. In addition, we find that the classification plan made changes in matters expressly enumerated within the scope of representation. Because the District unilaterally adopted and implemented this classification plan, which contained many changes within statutory scope, in the face of CSEA's timely demand to negotiate on "all aspects of" the plan, we affirm the hearing officer's conclusion that the District breached its obligation to negotiate in good faith.

employer to consult with any employees or employee organization on any matter outside the scope of representation.

Creation and Abolition of Classifications

Neither the creation nor abolition of classifications is specifically enumerated as a term and condition of employment within the scope of representation. Thus, we apply the Anaheim test to determine if these subjects are properly within the scope of representation.

The creation of a new classification is necessarily related to the wages, hours and terms and conditions of that new classification and to transfer and promotional opportunities for incumbent employees in existing classifications. Similarly, the abolition of an existing classification is related to the transfer and reassignment of incumbents out of the abolished class, the transfer of work previously done by them, and the transfer rights of employees in other classes.

The creation and abolition of classifications are of concern to employees whose job duties, transfer, reassignment and promotional opportunities are affected thereby.

However, management has an overriding interest in determining which functions are necessary to the accomplishment of its mission and which functions no longer serve its purposes and should be eliminated. To determine that the District requires the services of custodians, clericals, cafeteria workers, etc., is a patent managerial task which cannot be abrogated by a duty to negotiate over such decisions. Conversely, the decision that the District's mission no longer

requires the work performed by custodians, clericals or cafeteria employees is equally a managerial prerogative which would be significantly abridged by an obligation to negotiate.

Thus, we conclude that where management seeks to create a new classification to perform a function not previously performed or to abolish a classification and cease engaging in the activity previously performed by employees in that classification, it need not negotiate its decision.¹⁰

However, we find that those aspects of the creation or abolition of a classification which merely transfer existing functions and duties from one classification to another involve no overriding managerial prerogative. Such changes amount to transfers of work between employees or groupings of employees, similar to decisions to subcontract work or to transfer work out of the bargaining unit.¹¹ They do not represent a decision to undertake a new function or to eliminate an

¹⁰Of course, management remains obligated to negotiate the effects of its decision which fall within the scope of representation. Solano County Community College District (6/30/82) PERB Decision No. 219; South Bay Union School District Board of Trustees (4/30/82) PERB Decision No. 207.

¹¹See Charmer Industries (1980) 250 NLRB 293 [104 LRRM 1368]; Central Cartage, supra; Pilot Freight Carriers (1975) 221 NLRB 1026 [91 LRRM 1005]; Oil, Chemical and Atomic Workers (1976) 547 F.2d 575 [92 LRRM 3059], modified on other grounds (1977) 94 LRRM 3074; Bay State Gas Co. (1980) 253 NLRB 538 [105 LRRM 1673]; R. J. Liberto, Inc. (1978) 235 NLRB 1450 [98 LRRM 1299]. And see Rialto Unified School District (4/30/82) PERB Decision No. 209; Solano County Community College District, supra.

existing function. Thus, no decision on what functions are essential to management's mission is involved. The same functions are still being performed; an existing classification is merely replaced by a new classification to do the same work under similar conditions of employment. See Fibreboard Paper Products Corp. v. NLRB (1964) 379 U.S. 203, 213 [85 S.Ct. 398].

To require the District to negotiate the decision to transfer existing duties from one class to another does not significantly abridge its freedom to exercise any essential managerial prerogative. Thus, under Anaheim, the decision to transfer duties from one classification to another is negotiable.

The classification plan here lists 11 abolished classifications and 22 newly created classifications. It appears, however, that of the 11 classifications purportedly abolished, the functions of only 2 classifications effectively ceased to be performed.¹² The duties previously assigned to the other 9 "abolished" classifications were simply transferred to other classifications. Similarly, of the 23 allegedly newly created classifications, only 2 appear to represent new functions not previously performed by employees in a pre-existing classification.¹³ All other "newly created"

¹²These are Locksmith and Food Service Manager III.

¹³These are Administrative Assistant and Data Entry Clerk.

classifications represent the transfer of existing functions and duties to a retitled classification.

Thus, for example, four separate classifications (Audio-Visual Clerk, Duplication Clerk, Library Clerk, and Food Service Clerk) were nominally "abolished" and consolidated into the "new" classification, Clerk II. Conversely, the existing classification, Teacher Aide, was abolished and split into four "new classifications," Instructional Aide, Health Aide, Library Aide, and Special Education Aide. In both instances, the same functions are being performed; the same work is being done under similar conditions of employment, frequently by the same employees under a new rubric. In these and similar circumstances, the District was obligated to negotiate its decision to transfer work from one classification to another.

Retitling of Classifications

Job titles are not an enumerated term and condition of employment. Thus, we again apply the Anaheim test to determine the negotiability of job titles.

The title of a classification describes the nature and level of duties performed and the relationship of one classification to other classifications in the same occupational group. Thus, the title of a classification is a factor in determining salary, transfer rights, and reassignments, including promotional opportunities, and is related to all of these enumerated subjects.

Employees are naturally concerned about the job title which defines their working existence and contributes significantly to their concept of self-worth and identity. While this is an intangible and subjective condition of employment, it is nevertheless quite real and often of paramount importance to employees. Changes in job title have not infrequently been important components of labor-management agreements and of serious labor disputes. While such intangible concerns might, under some circumstances, be outweighed by a substantial management interest, in this case we fail to see any essential management interest which would be compromised or abridged by requiring the District to negotiate about job titles.

The plan lists 17 retitled classes. Some of these changes are pure retitling, applied to every position in the class, and involving no other classification changes. For example, Maintenance I, II and III are retitled Maintenance Worker I, II and III. Similarly, several former Supervisors are retitled as Chiefs, and the gender-specific titles Foreman, Serviceman and Warehouseman are replaced by Supervisor, Servicer and Warehouse Worker, respectively. Failing to see any significant management interest which is served by such changes of title, we conclude that these job titles are within the scope of representation.

Moreover, some changes in title are directly related to the transfer of duties from one classification to another.

According to the plan, the Custodian class is retitled Custodian I, while Custodian II is added as a new class. Some Custodian positions are allocated to the Custodian I class, others to Custodian II. We discern no compelling rationale or management need which mandates the labeling of one action a retitling of a class and the other the creation of a new class. Similarly, the plan indicates that the classification Teacher Aide is retitled Instructional Aide. However, not all Teacher Aide positions are retitled Instructional Aide. As indicated above, Teacher Aide positions are also variously retitled as Health Aide, Library Aide and Special Education Aide, in conjunction with the creation of those new classifications.

Having found that the decision to transfer duties from one classification to another is negotiable and is difficult to distinguish from the retitling of classifications in some instances, we find the retitling of these classifications to be negotiable for this reason as well.

Adjustment of Wages

Wages are unquestionably within the scope of representation. The California Supreme Court has held that the authority to prescribe classifications does not encompass the power to set the particular salary for such classifications. Pacific Legal Foundation v. Brown (1981) 29 Cal.3d 168, 187

[172 Cal.Rptr. 487].¹⁴ Further, salary adjustments for individual job classifications within the same occupational group are negotiable. Sonoma County Board of Education v. PERB, supra, 102 Cal.App.3d 689, 702.¹⁵

Therefore, the District was obligated to negotiate those portions of the classification plan which assigned new classifications to salary ranges, changed the salary ranges of existing classifications, or in any way changed the salary of any employee.¹⁶

Here, the District unilaterally set new salaries and salary ranges. The fact that these changes were based, in part, on an elaborate system of taking prevailing wage surveys of benchmark classes and establishing percent differentials between

¹⁴Pacific Legal Foundation v. Brown, supra, concerned an alleged conflict between the State Personnel Board's constitutional authority to prescribe classifications and the State's obligation to negotiate salaries under the State Employer-Employee Relations Act (SEERA), Government Code section 3512 et seq.

¹⁵Where a district operates a merit system pursuant to section 45240 et seq. of the Education Code, the scope of negotiability is limited by the requirement that the salary relationship between individual positions established by the personnel commission must remain intact. Sonoma County Board of Education v. PERB, supra. And see San Lorenzo Unified School District (12/29/82) PERB Decision No. 274. Here, there is no evidence that the district operates a merit system. Therefore, this limitation on negotiability does not apply.

¹⁶In accord, see Limpco Mfg., Inc., supra; Everbrite Electric Signs (1976) 222 NLRB 679 [91 LRRM 1314] enf. (1977) 562 F.2d 405 [96 LRRM 2129]; Florida Steel (1978) 235 NLRB 1010 [98 LRRM 1089], supp. (1979) 244 NLRB 395 [102 LRRM 1181].

classifications in relation to the bench mark classes does not obviate the District's obligation to negotiate. The District can develop a system of bench marks and percent differentials, take surveys and prepare other types of financial data. Such systems and data may be used to arrive at and support a negotiating position that salary setting should be based on those bench marks, differentials and surveys. However, the District cannot unilaterally implement such a plan or in any way change salaries or salary ranges without first negotiating with the employee organization.

Reassignment of Employees

The District unilaterally reassigned employees to different or newly created classifications. Reassignments are specifically enumerated in section 3543.2 as expressly within the scope of representation. While "reassignment" is not defined in the Act, the plain meaning of the term clearly encompasses the movement of an employee from an existing classification to a different or newly created classification.¹⁷

¹⁷This definition of "reassignment" is consistent with the use of the term in the Education Code. Education Code subsection 45101(e) defines "disciplinary action" as "any action whereby an employee is deprived of any classification or any incident of any classification in which he has permanence, including dismissal, suspension, demotion, or any reassignment, without his voluntary consent, except for a layoff for lack of work or lack of funds." (Emphasis added.) Dismissal clearly

We, therefore, find that "reassignment" includes assignment to a different classification, and conclude that the District had a duty to negotiate the reassignment of incumbent employees from existing classifications to different or newly created classifications.

Allocation of Positions to Classifications

The allocation of positions to classifications, while perhaps conceptually distinct, is, in this case, virtually indistinguishable from the reassignment of employees to different or newly created classifications. Thus, for example, some Custodian positions were allocated to the retitled Custodian I classification while others were allocated to the new Custodian II classification. The positions so allocated were identified by the name of the incumbent custodial employee. Concurrently, that employee was reassigned to the new classification.

The allocation of positions to classifications was inseparable from the reassignment of employees, and we find it to be similarly negotiable in this case.

denotes the permanent deprivation of a classification; suspension, a temporary deprivation; demotion is specifically defined in subsection 45101(d) as "assignment to an inferior position or status, without the employee's written voluntary consent." The only remaining contingency is deprivation of a classification by assignment to a different, though not necessarily inferior, classification.

Grouping of Classifications into Occupational Groups

The classification plan states that positions are, "divided first into groups which involve the same kind of work and then subdivided into classes based on levels of responsibility within each grouping." Thus, for example, the plan identifies the occupational group Clerk, Clerk-Typist and Related Classes, consisting of the classifications Clerk I and II, Typist-Clerk I, II and III, PBX Operator/Receptionist and Attendance Clerk. Similarly, Food Services and Related Classes consist of the classifications Food Service Assistant I and II, Food Service Manager I and II, Food Service Operations Supervisor, and Director of Nutrition Education and Food Services.

As noted above, a classification plan is, "a way of systematically describing positions and classes in a public agency." Like other elements of a classification plan, occupational groupings, which logically order or display the occupations and jobs extant within the organization, may be prepared and utilized for proper managerial purposes but may not be employed to unilaterally change terms and conditions of employment.

Here, job specifications included in the plan indicate that, at least in some cases, occupational groupings affect reassignment rights and promotional opportunities. Thus, for example, job specifications provide as follows:

Typist-Clerks I are normally considered to be a training status, and as assigned responsibilities and breadth of knowledge increase with increased experience, may reasonably expect their positions to be reassigned to the next higher grade of Typist-Clerk II.

. . . Typist Clerk II: Positions in this grade are normally filled by advancement from the lower grade of Typist-Clerk I

Similar language appears in the job specifications for Administrative Assistant, Clerk I, Food Services Assistant I and Programmer Trainee. Thus, occupational groupings are being used in a manner that relates to employee reassignment and promotional rights.

In addition, provisions on transfer, layoff and bumping rights contained in the successive negotiated agreements between the parties refer to "higher" and "lower" grades. The job specifications quoted above use the terms "higher" and "lower" to refer to relative placement in an occupational group. If, as appears likely, the same meaning is intended by the use of the terms "higher" and "lower" in the contract, then transfer, layoff and bumping rights would also be related to occupational groups.

Occupational groups may also be related to wages.¹⁸ Here, the classifications within each occupational group are arranged in vertical series with arrows pointing from the lower

¹⁸See Sonoma County Board of Education v. PERB, supra.

to the higher class and with percent differentials indicated between classes in the same series. Thus, a 10 percent differential is indicated between Clerk I and II, Clerk-Typist I and II, and Food Services Assistant I and II.

Because the District has utilized occupational groupings in a manner related to reassignments and promotions, transfer, layoff and bumping rights, and wages, the groupings have become a concern of both management and employees, and the mediatory influence of collective negotiations is the appropriate means of resolving the concerns of both parties. At the same time, the decision to group classifications in a particular occupational group is not one which is central or essential to the District's operation. Therefore, negotiations over this matter would not abridge the District's freedom to exercise managerial prerogatives essential to its mission.

Revision of Job Specifications

In the instant case, job specifications include a definition, example of duties, special requirements (if any) and minimum qualifications.

Salary is based, in large part, on the duties, requirements, and qualifications for a job. In addition, job duties, requirements and qualifications may serve as the criteria for evaluation of employee performance and thus of continued employment. See Holtville Unified School District (9/30/82) PERB Decision No. 250. Changes in duties and

responsibilities may increase hours, speed up the work required or change other conditions of employment in a number of ways. As the Board has previously indicated, a significant change in an employee's actual job duties is within the scope of representation. Rio Hondo Community College District (12/31/82) PERB Decision No. 279 and Mt. San Antonio Community College District (3/24/83) PERB Decision No. 297. Thus, an employee's actual job duties and qualifications are related to wages, hours, evaluation and other matters within the scope of representation and any change in job specifications that results in a change of such duties or qualifications is also related to matters within scope.

However, here the record fails to indicate that the change of job specifications resulted in any actual change in job duties, qualifications or any other term or condition of employment. Rather, the record indicates that specifications were revised for several reasons: (1) to more accurately describe the duties actually being performed; (2) to provide a consistent format; and (3) to conform to the requirements of the Civil Rights Act of 1964 by eliminating sex-based references and qualifications which had a discriminatory effect and were not shown to be job related.

Thus, while sections of the written job specifications were indeed rewritten, Charging Party failed to show that these revisions in fact changed any condition of employment. A

unilateral act which does not change a condition of employment is not unlawful under EERA.

In summary, on the facts here presented, we have found that the District was obligated to negotiate regarding: (1) the transfer of work from one classification to another; (2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned and any changes in salaries or salary ranges of existing classifications; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; (6) the grouping of classifications into occupational groups; and (7) the effects, if any, on terms and conditions of employment of those classification decisions within the District's exclusive prerogative, including the creation of new classifications to perform functions not previously performed, the abolition of classifications to cease engaging in functions previously performed, and the revision of job specifications.

It is undisputed that CSEA made a timely demand to negotiate on "all aspects of" the classification plan, and that the District unilaterally adopted and implemented the classification plan in the face of its demand. Therefore, we find that the District breached its obligation to negotiate in good faith in violation of subsection 3543.5(c) (San Mateo

County Community College District (6/8/79) PERB Decision No. 94; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51) and subsections 3543.5(a) and (b) derivatively (San Francisco Community College District (10/12/79) PERB Decision No. 105).

Motion to Dismiss

Because the Teamsters Union has replaced CSEA as the current exclusive representative of the blue collar unit, the District moved, at the opening of hearing, to dismiss that portion of the charge pertaining to the blue collar unit or, in the alternative, to join the Teamsters as an indispensable party. The hearing officer denied the District's motion, and the District argues that, as a result, employees were denied a voice in the proceeding, and the District was denied its due process right to confront the true parties in interest.

We find the District's argument to be without merit and affirm the hearing officer's ruling on this issue. As the hearing officer stated, dismissal as to the blue collar unit would leave those employees without a remedy.

. . . CSEA filed the instant unfair practice charge in a timely manner during the period it served as the exclusive representative for the blue collar unit. Thus, CSEA had standing to pursue the charge at the time it was filed. The Teamsters, on the other hand, never had standing to pursue the charge because it was not the exclusive representative of the blue collar unit at the time of the illegal unilateral action, and it gained exclusive status after the six

month statute of limitations had run on the charge. Therefore, there being no alternative, if the harm done by the District's unilateral action is to be remedied, it must be done in this proceeding. Dismissal of the charge as it relates to the blue collar unit would leave the employees in that unit completely without a remedy, a result the hearing officer believes to be inconsistent with the purposes of the EERA.

Neither can the Teamsters be considered an indispensable party. A party is indispensable to an action if its absence will prevent the Board from rendering any effective judgment between the parties or seriously prejudice any party or if their interest would be inequitably affected or jeopardized by a judgment rendered between the parties. Cf. Hibbard v. Calgrove (1972) 28 Cal.App.3d 1017 [105 Cal.Rptr. 172]. The indispensable party doctrine is designed to protect the defendant from a multiplicity of suits. Taylor v. Sanford (1962) 203 Cal.App.2d 330 [21 Cal.Rptr. 697].¹⁹

¹⁹California Code of Civil Procedure section 389 defines an indispensable party as follows:

(a) A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or

Here, the absence of the Teamsters does not prevent an effective judgment. There is no evidence that the interests of blue collar employees were not adequately represented at hearing by CSEA or that they were prejudiced thereby. Nor was the District inequitably affected by the Teamsters' absence since it had the right to confront CSEA, the party making the charges against it. Neither is the District in danger of a multiplicity of suits, since the Teamsters lack standing to pursue a charge based on conduct which occurred when CSEA was the exclusive representative of the affected employees. Therefore, the Teamsters cannot be considered an indispensable party to this action.

Additionally, there is no evidence that CSEA is seeking to undermine the current exclusive representative in the blue collar unit. It filed the instant charge in a timely fashion to protect its own bargaining interests and seeks only a remedy which would make whole employees who suffered losses as a result of the unilateral action.

Therefore, we find that the hearing officer correctly denied the District's motion to dismiss.

(ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party.

REMEDY

The District argues that the hearing officer's proposed order is inherently contradictory and patently ambiguous. In addition, the District contends that the remedy is inappropriate because of the length of time that has transpired since the initiation of the charge, and because it has entered into a tentative agreement with CSEA regarding certain features that are affected by the Order. In this regard, the District requests that testimony be taken as to these subsequent events so that the remedy may be tailored to present circumstances.

Contrary to the District's contentions, neither the mere passage of time nor a "tentative" agreement between the parties renders the ordered remedy inappropriate. In Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74, the Board stated that a subsequent contract between the parties does not settle or moot charges of unlawful conduct during the negotiations process. Here, CSEA, by contract, specifically reserved the right to reopen negotiations on the classification plan if the unfair practice charge, which is the subject of this case, was upheld by PERB. Thus, our Order is consistent with the agreement of the parties themselves as contained in the record before us. Moreover, as the Board has previously ruled in Alum Rock Union School District/Mt. Diablo Unified School District (9/22/81) PERB Decision No. Ad-115, additional testimony regarding subsequent events is not

required since any remaining uncertainties regarding our Order can be resolved in a compliance hearing. See Santa Monica Community College District (9/21/79) PERB Decision No. 103; San Francisco Community College District, supra; and Santa Clara Unified School District (5/7/80) PERB Decision No. 104a.

Nonetheless, we do not find the hearing officer's proposed order to be appropriate here.

The hearing officer ordered restoration of the status quo to the extent requested by CSEA. That is, CSEA would retain the right to choose which of the unilateral changes, if any, are returned to the status quo ante. The order was so limited because it could not be predicted with any certainty whether CSEA or any of the affected employees desires a return to the status quo as to any or all of the changes. A status quo remedy as to areas where the parties have no disagreement would be potentially disruptive to the negotiating process and would not serve the purposes of the Act.

We find that partial restoration of the status quo here would be unduly burdensome if not impossible as a practical matter inasmuch as some classifications were completely abolished, and because the classification plan was a single integrated package in which alterations in any single classification necessarily impact on numerous related classifications. In addition, due to the large scale of the changes implemented, affecting virtually every employee, a

temporary return to the status quo during negotiations, which would likely result in still further changes, would be unduly and unnecessarily disruptive.

However, to insure that meaningful bargaining will occur under conditions essentially similar to those that would have obtained had the District bargained at the time the Act required it to do so, unless the parties reach a contrary agreement, we order the District to make employees in the white collar unit whole for economic losses suffered as a result of the classification plan, with interest at the rate of 7 percent per annum, from the date of the unilateral change (October 13, 1977) until the occurrence of the earliest of the following conditions:

- (1) the date the District and CSEA reach agreement;
- (2) completion of the statutory impasse procedures;
- (3) the failure of CSEA to request bargaining within 10 days of service of this Decision; or
- (4) the subsequent failure of CSEA to bargain in good faith.

Because the current exclusive representative of the blue collar unit was not a party to this action, the record is silent as to the course of bargaining between the District and that union. Therefore, we cannot determine whether a demand to bargain on the matters at issue here was made by that union and, if so, what if any agreement may have been reached between

the parties. In these circumstances, we do not order the District to bargain with the current exclusive representative of the blue collar unit which may not desire to bargain or may have already so bargained. Therefore, the make-whole remedy ordered for employees in this unit is limited to the period from the date of the unilateral change (October 13, 1977) until the date on which agreement on salaries for the affected employees was, or is, reached with the successor exclusive representative.

It is also appropriate that the District post a notice incorporating the terms of the Order. Posting of such notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with this Order. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and the District's readiness to comply with the ordered remedy. Davis Unified School District et al. (2/22/80) PERB Decision No. 116; see also Placerville Union School District (9/18/78) PERB Decision No. 69.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Alum Rock Union Elementary School District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations

Act. Pursuant to subsection 3541.5(c) of the Government Code, it is hereby ORDERED that the District, its governing board and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Failing and refusing to meet and negotiate in good faith with the California School Employees Association, Chapter 305, as the exclusive representative of its employees in the paraprofessional, aides, technical and business services unit, by making unilateral changes in matters within the scope of representation, with respect to the following portions of a classification plan adopted in October 1977: (1) the transfer of work from one classification to another; (2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned and any changes in the salaries or salary ranges of existing classifications; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; (6) the grouping of classifications into occupational groups; and (7) the impact on employees of those classification decisions within the District's exclusive prerogative.

(b) By the same conduct, denying to the California School Employees Association, Chapter 305, rights guaranteed by

the Educational Employment Relations Act, including the right to represent its members.

(c) By the same conduct, interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

(a) Upon request, immediately meet and negotiate with the California School Employees Association, Chapter 305, regarding the following portions of the classification plan for the District's employees in the paraprofessional, aides, technical and business services unit (white collar unit):

(1) the transfer of work from one classification to another; (2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned and any changes in the salaries or salary ranges of existing classifications; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; (6) the grouping of classifications into occupational groups; and (7) the impact on conditions of employment of those classification decisions within the District's exclusive prerogative.

(b) Unless a contrary agreement is reached with the California School Employees Association, Chapter 305, make employees in the white collar unit whole for economic losses suffered as a result of the District's unilateral action, with interest at the rate of seven (7) percent per annum, for the period beginning on the date of the unilateral change (October 13, 1977) until the occurrence of the earliest of the following conditions:

- (1) the date the parties reach agreement;
- (2) completion of the statutory impasse procedures;
- (3) the failure of CSEA to request bargaining within 10 days following service of this Decision; or
- (4) the subsequent failure of CSEA to bargain in good faith.

(c) Make employees in the blue collar unit whole for economic losses suffered as a result of the District's unilateral action, with interest at the rate of seven (7) percent per annum, for the period beginning on the date of the unilateral change (October 13, 1977) until the date on which agreement on salaries for the affected employees was, or is, reached with the successor exclusive representative.

(d) Within seven (7) workdays of service of this Decision, post at all school sites and all other work locations where notices to employees are customarily placed, copies of

the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the District 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.

(e) Within thirty (30) workdays from service of this Decision, notify the San Francisco regional director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this Order. Continue to report in writing to the regional director periodically thereafter as directed. All reports to the regional director shall be served concurrently on the charging party herein.

Chairperson Gluck and Members Tovar and Burt 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. SF-CE-170, California School Employees Association, Chapter 305 v. Alum Rock Union Elementary School District, in which all parties had the right to participate, it has been found that the Alum Rock Union Elementary School District violated subsection 3543.5(c) of the Educational Employment Relations Act by failing and refusing to meet and negotiate with the California School Employees Association, Chapter 305, with respect to a classification plan for employees containing matters within the scope of representation. It was further found that this same conduct violated subsection 3543.5(b) since it denied CSEA the right to represent its members, and interfered with employees' rights to be represented by their chosen representative in violation of subsection 3543.5(a) of the Educational Employment Relations Act.

As a result of this conduct, we have been ordered to post this Notice, and will abide by the following. We will:

1. CEASE AND DESIST FROM:

(a) Failing and refusing to meet and negotiate in good faith with the California School Employees Association, Chapter 305, as the exclusive representative of employees in the paraprofessional, aides, technical and business services unit, by making unilateral changes in matters within the scope of representation.

(b) Denying to the California School Employees Association, Chapter 305, rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

(c) Interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

(a) Upon request, immediately meet and negotiate with the California School Employees Association, Chapter 305, regarding the classification plan for the District's employees in the paraprofessional, aides, technical and business services

unit (white collar unit), regarding particularly the following subjects: (1) the transfer of duties from one classification to another, (2) the retitling of classifications; (3) all matters related to salaries, including the salary ranges to which newly created classifications are assigned and any changes in the salaries or salary ranges of existing classifications; (4) the reassignment of employees from existing classifications to different or newly created classifications; (5) the allocation of positions to classifications; (6) the grouping of classifications into occupational groups; and (7) the impact on conditions of employment of those classification decisions within the District's exclusive prerogative.

(b) Unless a contrary agreement is reached with the California School Employees Association, Chapter 305, make employees in the white collar unit whole for economic losses suffered as a result of the District's unilateral action, with interest at the rate of seven (7) percent per annum, for the period beginning on the date of the unilateral change (October 13, 1977) until the occurrence of the earliest of the following conditions:

- (1) the date the parties reach agreement;
- (2) completion of the statutory impasse procedures;
- (3) the failure of CSEA to request bargaining within 10 days following service of this decision; or
- (4) the subsequent failure of CSEA to bargain in good faith.

(c) Make employees in the blue collar unit whole for economic losses suffered as a result of the District's unilateral action, with interest at the rate of seven (7) percent per annum, for the period beginning on the date of the unilateral change (October 13, 1977) until the date on which agreement on salaries for affected employees was, or is, reached with the successor exclusive representative.

Dated: _____

ALUM ROCK UNION ELEMENTARY
SCHOOL DISTRICT

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 BY ANY MATERIAL.