STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS PLEASANT VALLEY CHAPTER #504,	)	
Charging Party,	)	Case No. LA-CE-1706
v.	)	PERB Decision No. 488
PLEASANT VALLEY SCHOOL DISTRICT,	)	February 27, 1985
Respondent.	)	

Appearances: Patricia L. Roy, Field Representative, for California School Employees Association and its Chapter #504; The Negotiation Center, Edward M. Jones, for Pleasant Valley School District.

Before Hesse, Chairperson; Tovar and Jaeger, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Pleasant Valley School District (District) to the proposed decision, attached hereto, of a PERB administrative law judge (ALJ). The ALJ found that the District had violated section 3543.5(c) and, derivatively, section 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)[1] by

---

[1]EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code.

Section 3543.5 reads, in pertinent part, as follows:

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on

unilaterally changing the hours of work for instructional aides in November 1982, without negotiating with the California School Employees Association and its Pleasant Valley Chapter #504 (CSEA).

The Board has reviewed the ALJ's proposed decision in light of the District's exceptions and the entire record in this matter. Finding it free from prejudicial error, we adopt the ALJ's findings of fact and conclusions of law, consistent with the discussion below.

DISCUSSION

The Pleasant Valley School District's sole exception to the ALJ's proposed decision is to the finding that its duty to bargain reduction in hours was not excused by business necessity. The District bases this exception on three grounds:

1. Because the District was denied the opportunity to file a reply brief to the Association's post-hearing brief, it was unable to rebut inaccurate evidence crucial to the proposed decision;

2. Because of this denial, the ALJ was unable to fully comprehend the District's financial situation or the requirement for it to provide comparable services to its

---

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

students; and

3. The ALJ "only marginally applied" NLRB v. Katz (1962) 369 U.S. 736 to the case and that Carlsbad Unified School District (1/30/79) PERB Decision No. 89 was not applied at all.

The District also requests oral argument before the Board itself to further explain its business necessity defense.

We find no merit to the District's exception and arguments.

Reply Brief

PERB Regulations 32170(j) and 32212 require the ALJ to set a briefing schedule prior to the close of the formal hearing.[2] The District admits that the parties agreed reply briefs would not be filed, although the ALJ gave them that option. The parties were then given 35 days after the receipt of the transcript to file their briefs. Nothing in the regulations provides a right to unilaterally repeal such an agreement.

---

guaranteed to them by this chapter.

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

[2]PERB Regulations are codified at California Administrative Code, title 8, sections 31001 et seq.

PERB Regulation 32170 provides in relevant part:

The Board agent conducting a hearing shall have the powers and duties to:

. . . . . .

(j) Authorize the submission of briefs and

The District contends that the CSEA brief contained "inaccuracies and distortions of facts and evidence that were perceived by the Respondent at the time of the pre-hearing to be incontrovertible." Although the District may not have liked CSEA's position, CSEA merely advocated its view of the facts and evidence. The District had the same right, which it, indeed, took full advantage of. The ALJ was not required to overturn the parties' previous agreement, and her refusal to accept the District's reply brief was not improper. This portion of the District's exception is, therefore, dismissed.

Business Necessity Defense

In asserting that its business necessity defense should be honored, the District states it had to change the hours of instructional aides because it had a $10,000 shortfall and because it had to provide comparable services to its students.

In this case, two aides had their daily work-time reduced by two hours. Whatever savings this might have created does not excuse the District's failure to negotiate its proposed change in hours. The District, in its fiscal hardship discussion, overlooks that other employees had their hours

---

set the time for the filing thereof.

PERB Regulation 32212 provides, in relevant part:

> Before the close of the hearing, the Board agent shall rule on any request to make oral argument or to file a written brief. The Board agent shall set the time required for the filing of briefs.

increased from one-half to one and one-half hours per day. As the ALJ pointed out, a unilateral increase in hours is also a per se violation of the duty to bargain. San Mateo County Community College District (6/8/79) PERB Decision No. 94; NLRB v. Katz (1982) 369 U.S. 736 [50 LRRM 2177]. This portion of the District's exception is dismissed.

To excuse its failure to notify and negotiate with the exclusive representative, the District claims that it was not until September 1982, that it became aware that aides were working between two and five hours a day. The District's ignorance of its own operations, however, is no ground for exonerating it from its bargaining duties. Once the schedules were established, the District should have known the hours these aides would be working. At this point, the District was obligated to notify CSEA of its dilemma and begin negotiations.[3]

The District further urges that, because of the requirement that it provide comparable services to all students, it had to equalize the aide's hours. Every teacher had an aide and, because of the disparate number of hours being worked, some students received more time with an aide than did other students. The District and the El Rancho School Site Council

---

[3]Even if we were to find that the District's ignorance is a valid excuse, there was still sufficient time to confer with CSEA before issuing the October 13 notices. Failure to use this period for negotiations should not be excused by use of the business necessity defense. Sutter Union High School District (10/7/81) PERB Decision No. 175.

were concerned that this inequity would jeopardize the District's program because comparable services were not being provided to all the students. This belief is based on the assurances the District was required to make when it applied for the School Improvement Program.[4]

The aides' hours, however, were not equalized. While most aides worked three and one-half hours, others had three-hour workdays. Also, the El Rancho School Site Council and the District considered other options for providing comparable services besides the restructuring of hours. Thus, the District admits, in effect, that it was not absolutely necessary to equalize hours of these aides.

Sufficient evidence was presented at the formal hearing to support the ALJ's finding that the District unlawfully changed the hours of work of its aides, and to find that a business necessity defense was not present.

Katz and Carlsbad

The District bases its business necessity defense on NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177] and Carlsbad Unified School District (1/30/79) PERB Decision No. 89. In doing so, it misreads both cases.

---

[4]The assurance is as follows:

> The district provides instructional materials for all students on an equitable per-pupil basis. (District's Exhibit N, item 10.)

The District relies on the following dictum to allow it to make unilateral changes in conditions of employment:

> While we do not foreclose the possibility that there might be circumstances which the Board could or should accept as excusing or justifying unilateral action, no such case is presented here. (NLRB v. Katz, supra, at p. 748.)

Katz does not give the District license to make unilateral changes. The District overlooks the court's holding and admonition against making such unilateral changes.

> Unilateral action by an employer without prior discussion with the union does amount to a refusal to negotiate about the affected conditions of employment under negotiation, and must of necessity obstruct bargaining, contrary to the congressional policy. It will often disclose an unwillingness to agree with the union. It will rarely be justified by any reason of substance. It follows that the Board may hold such unilateral action to be an unfair labor practice in violation of section 8(a)(5), without also finding the employer guilty of overall subjective bad faith. (Katz, supra, p. 747.) (Emphasis added.)

The ALJ properly cited Katz for the proposition that a unilateral increase in working hours is a per se violation of EERA. Further, the ALJ properly relied on Board precedent in her determination of this issue. This argument is also dismissed.

The District next argues that it "took pains to describe the logic of utilizing the Carlsbad test for a 3543.5(c) allegation and the administrative law judge failed to make

mention of that logic." The District relies on part four of the Carlsbad test which states:

> 4. Where the harm is inherently destructive of employee rights, the employer's conduct will be excused only on proof that it was occasioned by circumstances beyond the employer's control and that no alternative course of action was available. . . . (Carlsbad, supra, at pp. 10-11.)

Carlsbad, however, is an "interference" case and inapposite to a "failure to negotiate" case. By contrast, the cases cited by the ALJ are more appropriate to the instant case than Carlsbad. Those cases also involved an employer's failure to negotiate unilateral changes; moreover, those cases recognized and discussed the business necessity defense. The ALJ adequately researched and applied the appropriate law in this area. Therefore, this portion of the District's exception is also dismissed.

In sum, we find that the District's exception and arguments are without merit.

The District also requested oral argument to explain its "business necessity" defense. Because the record before the Board is neither incomplete nor ambiguous, further presentations on the subject are not in order. As we see no point in delaying this matter further, the District's request for oral argument is denied.

ORDER

The Board hereby AFFIRMS the proposed decision in Case No. LA-CE-1706 and ADOPTS its remedy and order as that of the Board itself.

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Pleasant Valley School District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act. Pursuant to section 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 and its Pleasant Valley Chapter #504 as the exclusive representative of its classified employees by taking unilateral action on matters within the scope of representation, as defined in section 3543.2, specifically with reference to the decision to change the hours of work of employees.

(b) By the same conduct, denying to the California School Employees Association and its Pleasant Valley Chapter #504 rights guaranteed by the Educational Employment Relations Act, including the right to represent unit 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 of CSEA, meet and negotiate with CSEA over the decision and the effects thereof of the change in hours of the aides.

(b) Unless the parties reach a contrary agreement, the two employees whose hours were reduced should be made whole for any loss of economic benefits suffered as a result of the District's reduction in hours, with interest at the rate of 10 percent per annum from the date of the unilateral change (November 15, 1982) 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 following service of this Decision; or

(4) the subsequent failure of CSEA to bargain in good faith.

(5) the point at which the parties have previously reached agreement or negotiated through the statutory impasse proceedings concerning the unilateral change in hours.

(c) Within 35 days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be

maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

(d) Written notification of the actions taken to comply with this Order shall be made to the regional director of the Public Employment Relations Board in accordance with his/her instructions.

Members Tovar and Jaeger joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER #504, Charging Party, v. PLEASANT VALLEY SCHOOL DISTRICT, Respondent.	)	Unfair Practice Case No. LA-CE-1706 PROPOSED DECISION (1/25/84)

Appearances: Patricia L. Roy and Judith Locklair, Field Representatives, California School Employees Association, for California School Employees Association and its Chapter #504, Edward M. Jones and Anita J. Johnson, The Negotiation Center, for Pleasant Valley School District.

Before: Barbara E. Miller, Administrative Law Judge.

I. PROCEDURAL HISTORY

On December 20, 1982, the California School Employees Association and its Chapter #504 (hereinafter Charging Party or CSEA) filed an Unfair Practice Charge against the Pleasant Valley School District (hereinafter Respondent or District) alleging certain violations of the Educational Employment Relations Act (hereinafter EERA).[1]

The Charge alleges that in September 1982, and again in November 1982, the District unilaterally modified the hours of instructional aides. By such conduct, CSEA alleges that

---

[1]The Educational Employment Relations Act is codified at California Government Code section 3540, et seq. Unless otherwise indicated, all code references will be to the California Government Code.

the District violated sections 3543.5(a), (b), and (c).[2]

On February 11, 1983, the General Counsel for the Public Employment Relations Board (hereinafter PERB) issued a Complaint and, thereafter, on March 11, 1983, Respondent filed an Answer to the Charge. The Answer denies that an unfair practice was committed and alleges that at all times relevant hereto the Respondent was ready and willing to meet and negotiate with CSEA, but that CSEA was either not available or by its bargaining position complicated the negotiations so that meaningful negotiations could not take place.

The record does not indicate whether an informal conference was ever conducted. Nevertheless, settlement proposals were exchanged and when the parties were unable to resolve their differences, on May 23, 1983, the Charging Party requested a formal hearing. A pre-hearing conference was conducted on August 23, 1983, and the formal hearing was conducted on August 29, 30, and 31.

The parties filed briefs and on November 7, 1983, the case was submitted for decision.[3]

---

[2]For reasons set forth in greater detail, infra, at the hearing CSEA indicated that it was not contesting the modification of hours which took place in September.

[3]Although the parties agreed not to file reply briefs, the Respondent filed a reply brief on or around November 16, 1983. Since the Respondent was unable to secure the Charging Party's agreement to the filing of reply briefs, the Respondent's filing was not reviewed and was rejected by the undersigned.

II. FINDINGS OF FACT

CSEA is an employee organization and the District is a public school employer as those terms are defined by the Educational Employment Relations Act.[4] CSEA is the exclusive representative of the bargaining unit comprised of certificated employees in the District. The parties were signators to a collective bargaining agreement in effect from July 1, 1981 through June 30, 1984. The contract provides that by April 1 of each year either party could give notice of its intent to reopen negotiations on salary and fringe benefits and one additional article.

A. Outline of the District's Programs and Changes in its Schools in 1982-83

The Pleasant Valley School District is made up of seven kindergarten to sixth grade elementary schools, two seventh to eighth grade junior high schools and three kindergarten to eighth grade schools maintaining alternative programs.[5] In fulfilling its mission with respect to the education of the students in those schools, the District participates in special education programs funded at the federal and state level.

In terms of federal aid, since 1981, the District has received Chapter 1 funds pursuant to the Educational Consolidated Improvement Act (ECIA). The Chapter 1 funds are

---

[4]By stipulation of the parties.

[5]By stipulation of the parties.

allocated to the one school in the District which has the highest welfare count and are intended to provide assistance for those students who are below the 40th percentile in reading and mathematics. In Pleasant Valley, the target school is the El Rancho Elementary School, which received $76,024 for the 1981-82 school year, but only received $66,442 for the 1982-83 school year. The District also receives funds pursuant to the the School Improvement Program (SIP), which is a state legislated, categorically funded program which applies to target schools in each school district. At the time of the formal hearing, the target schools in the District were Los Altos Junior High School, Santa Rosa Elementary School, El Rancho Elementary School, Dos Caminos Elementary School, and Las Colinas Elementary School.[6]

The allocation of SIP funding to a school district for a particular year is determined by multiplying the prior December's average daily attendance by the per pupil allotment authorized by the Legislature. In the Pleasant Valley School District, the actual SIP funding for the 1981-82 school year was $191,740, the estimated SIP funding for the 1982-83 school year was $179,368, although in fact the funding was $210,951.

---

[6] During the 1981-82 school year, Pleasant Valley Elementary School was a target school receiving SIP funding. However, beginning in 1982-83, Pleasant Valley Elementary School was closed and Las Colinas Elementary School was opened, but not yet eligibile for SIP funding.

In order to receive the state and federal funds, the District must make certain assurances to the agency distributing those funds. The schools receiving either SIP or Chapter 1 funds[7] must have a site council, a quasi-governing body comprised of parents and staff which must approve a master plan and program modifications. The District must also promise that categorical funds will not be used to supplant general funds distributed to other schools not receiving the categorical funding. Moreover, the District must guarantee that the programs will be of sufficient size, scope and quality to have an educational impact on the students and that the services rendered to children within a recipient school will be comparable; i.e., some targeted students will not receive a disportportionate share of assistance.

B. Layoffs and Reductions in Hours effective September 1982[8]

Late in June 1982, certain instructional and bilingual aides in the District were informally advised that organizational changes within the District would have an impact

---

[7]At El Rancho Elementary School, the one school in the District which receives SIP and Chapter 1 funds, the funds are comingled, so that instructional and bilingual aides have particular children for a certain portion of their workday, and all children for the remainder of their day.

[8]Although this unfair practice proceeding does not challenge the September personnel actions, in order to properly address the District's defenses to the personnel actions taken later in the year, this background information is set forth.

on their employment status. A new school, Las Colinas Elementary School was to open in the fall of 1982 and students and teachers were to be transferred to Las Colinas from El Rancho Elementary School and Pleasant Valley Elementary School, which was to be closed. As a consequence of those actions, the SIP funding for Pleasant Valley School would be terminated and the SIP funding for the El Rancho School would be reduced. Because Las Colinas was a new school without an established program or a site council, it would not be eligible for SIP funding at the beginning of the 1982-83 year. Because of the reduction in funding, the aides were advised that either their hours would be reduced or they would be laid off.

On June 28, 1982, aides were formally advised of the changes which were anticipated at the beginning of the 1982-83 school year. In letters signed by Respondent's Classified Personnel Director, Kenneth Marshick, the aides were advised of a variety of options, including, but not limited to, their bumping rights. According to the testimony of Alice Richards, President of Charging Party's Chapter #504, she did not receive notice from the District of its proposed layoffs or reductions in hours, but learned of them from a unit member. Upon learning of the District's proposed action, Richards contacted Marshick and requested copies of the letters sent to the members. Richards received a copy of the form letter sent to the aides but had to contact Marshick again to ascertain the

names of the employees affected by the District's action.[9]

While awaiting word on the specifics of the District's proposed actions, Richards contacted Patricia (Pat) Roy, the CSEA Field Representative. Roy, in turn, contacted Dr. Edward Jones, the District's designated bargaining representative and requested a meeting to begin negotiations concerning the effects of the layoff and the decision to reduce hours. A meeting was arranged for July 28, 1982.

On that date, the CSEA bargaining committee met with Jones to discuss the proposed changes in hours for instructional and bilingual aides. Jones indicated any bargaining sessions would be limited to negotiations over the impact of the reduction in hours; according to Jones the obligations which arose when there was a reduction in hours were analogous to those arising when there was a layoff. Roy advised Jones that, pursuant to PERB's decision in North Sacramento,[10] the decision to reduce hours was negotiable, not just the impact. Jones indicated that he would have to look into the status of the law on that issue, but, in any event, the District's financial condition

---

[9]The letters actually received by the aides reflect that a carbon copy was sent to CSEA and Marshick and his secretary testified that it was their custom and practice to send copies of such correspondence to CSEA. The District acknowledged, however, that Richards was not working at that time and the correspondence, if sent, was sent to her work location, not her home or a CSEA office.

[10]North Sacramento School District (12/31/81) PERB Decision No. 193.

necessitated reducing aide hours. Moreover, Jones indicated that negotiations would have to proceed as soon as possible so that the matter could be resolved prior to the beginning of the 1982-83 school year.

According to Roy, at that meeting she advised Jones that CSEA would not require rescission of the proposed reduction in aide hours because notices had already been sent out and bumping or displacement arrangements were in the process of being made. In other words, it would be disruptive to rescind the actions at that time and CSEA would allow them to stand pending the outcome of negotiations.

On August 6, 1982, Roy sent a letter to Jones confirming that understanding. She wrote:

> In our negotiation session of Wednesday, July 28, regarding proposed reduction in hours for three aides at the Pleasant Valley School District, it was agreed that because of the shortness of time to the start of school the notice already sent to the aides would be allowed to stand pending the outcome of negotiations. This letter confirms that agreement.

The letter sent by Roy refers to three aides. At the hearing, however, Roy indicated that CSEA intended that all the reductions forecast in June and July could take effect in September pending the outcome of negotiations.

In August 1982, the aides who had previously been notified that their hours would be changed, received specific information regarding their status. The actions projected in the August

notification letters were implemented and effective in September of the 1982-83 school year.

C. Negotiations and Additional Changes in Hours

Notwithstanding the fact that Roy and Jones each expressed an interest in commencing and concluding negotiations as soon as possible, between July 28 and August 25 the parties did not meet. The apparent explanation for this delay was that members of CSEA's bargaining team were attending a statewide CSEA convention.[11]

The parties did meet on August 25, and there is some disagreement as to what took place at that meeting. According to Roy, she presented a fairly detailed written proposal to the District regarding the reduction in hours and the effects of layoffs. According to Jones, CSEA presented nothing in writing, and only spent approximately 20 minutes discussing those issues; he understood CSEA's position to be that no reductions or layoffs would be acceptable. Jones' recollection was that most of the time was spent discussing the "reopener" proposals submitted by the parties. Although the District suggests in its Post Hearing Brief that the inclusion of proposals on the reopeners hampered negotiations on the more pressing issue of the reduction in hours, Jones testified that

---

[11]At the formal hearing, however, no evidence was offered to support a finding that an insufficient number of representatives were available to continue negotiations.

it was his understanding that there were "two sets of negotiations on the same day. I never received the impression from CSEA that one was contingent on another."

The parties did not meet again until September 20, 1982, and no testimony was offered to explain the delay of nearly one month between negotiation sessions. At the September meeting, the District was represented by Anita Johnson, a colleague of Jones. Johnson testified that CSEA's written proposals were submitted at that session. Although she was familiar with the proposals because they were the same as those CSEA had submitted in Santa Paula, another district for which she negotiates, this was the first time they had been presented on behalf of the employees in Pleasant Valley. In essence, the CSEA proposal provided that a reduction in hours could only take place voluntarily and, if there were no volunteers, layoffs would have to take place. Johnson indicated that such a proposal was not acceptable to the District and that it would work a hardship, particularly in the areas serviced by instructional aides and cafeteria workers.

The parties again met on September 29, 1982. Johnson testified that at that meeting she formed the impression that negotiations regarding a reduction in hours and layoffs could not be separated from the reopener proposals concerning salary, fringe benefits, and a grievance procedure. The District argues that combining the reopener issues with the layoff and reduction issues hampered reaching an expeditious agreement on

the matters at issue in this proceeding and that since the District did not require consolidated negotiations, it was not responsible for the delay and was not bargaining in bad faith. Roy testified that CSEA dealt with the issues on a consolidated basis because that was consistent with the ground rules Johnson had laid in other districts in which Roy sat across the table. In any event, the parties did not reach agreement on September 29, and CSEA verbally declared impasse. Notwithstanding the declaration of impasse, CSEA did not ask for an official declaration of impasse by PERB and the parties again met to negotiate on November 2, 1982.

Before that meeting, however, on October 13, 1982, the District sent notices to seven aides advising them that their hours of work were being changed effective November 15. Isabel Morales and Esther Duncan, whose hours had previously been reduced, were increased to three hours and three and one-half hours per day, respectively. Both aides worked at El Rancho School and the increase in hours consitituted a complete restoration of the number of hours by which they had been reduced in the fall. Dorothy Ewing, who was also working at El Rancho School, was offered an increase in hours from two to three and one-half per day to be accomplished by transferring her to Las Colinas School. Ms. Ewing did transfer to Las Colinas School but, apparently at her option, continued to work only two hours per day. Ann Robillard was increased from two hours per day to three and one-half hours per day and

transferred to El Rancho School. Nora Fede, who worked at El Rancho for three hours per day, was increased to three and one-half hours per day and Nellie Santos and Tillie Nunez, who also worked at El Rancho, were both reduced from five and one-half hours per day to three and one-half hours per day which resulted in a loss of fringe benefits. Overall, with respect to the aides who received notices dated October 13, 1982, the District's actions contemplated an increase in aide time by two and one-half hours per week. Because Ewing did not accept the increase in hours, in fact, overall aide time was reduced by five hours. At El Rancho School, aide time was reduced by five hours.

According to the testimony of Alice Richards and Pat Roy, CSEA received no notification of the proposed personnel transactions described above on or before October 13, 1982. Sometime after October 13, Richards was notified by Esther Duncan that a second set of personnel actions involving a reduction in hours were about to take place. Richards testified that she again had to contact Marshick in order to get the information and on this occasion, after her conversation with Marshick, she received letters specifically setting forth those employees involved and their changes in hours.[12]

---

[12]The letters actually received by CSEA reflect that a carbon copy was sent to CSEA and again Marshick and his secretary testified that it was their custom to send copies of

According to the testimony of Roy, she was contacted by Richards and advised of the announced changes. In turn, Roy contacted Anita Johnson by telephone and advised her that the October 13 notices had been sent. According to Roy, she told Johnson that the actions were unilateral and would constitute an unfair labor practice. Again, according to Roy, Johnson indicated she had no knowledge of the proposed action and would check into it. Roy testified that she again called Johnson around October 20, 1982, to determine what, if anything, had been done. Roy testified that Johnson said she had verified the information and she would take care of it. Johnson testified that based on her recollection and a telephone log which she keeps of contacts regarding Districts she represents, she had no phone conversations with Roy regarding the October 13 notices sent to employees. Johnson testified that she did have a telephone conversation with Roy regarding the subject of a decision to reduce hours and the issuance of notices to employees, but that conversation pertained to the Santa Paula School District, not to Pleasant Valley.[13]

---

such materials to the Association. However, in this instance, the letter actually received by Esther Duncan, several days prior to that requested and received by CSEA, does not reflect that a carbon copy was sent to CSEA. This is circumstantial evidence that the letters were not initially sent. Accordingly, the testimony of Richards is credited that the District failed to give advance notice or even simultaneous notice to CSEA.

[13]In its brief, the Respondent argues that CSEA never independently challenged the reductions in hours for which

The parties again met and negotiated the question of the decision to reduce hours and contract reopeners on November 2, 1982. The Respondent does not dispute that the issue of the October 13 letters and the modification in working hours to be effective on November 15, 1982, were discussed at that negotiation session. According to Johnson, Esther Duncan, who was part of the negotiation team, stated that she was embarrassed by the reduction in hours of her colleagues while her hours were increased and that she thought it wasn't fair. It is Johnson's testimony that she first learned of the proposed personnel actions at the November 2 negotiation meeting and then said that she would look into it. The parties again met on November 15, 1982, at which time the District for the first time presented CSEA with a written counterproposal incorporating the positions it had taken during bargaining sessions in September and on November 2. CSEA was insistent that the District accept a worksharing program[14] and a continuation of fringe benefits for employees whose hours were reduced. When those proposals were rejected by the District,

---

notices were sent on October 13, 1982. Resolution of that issue or defense is not contingent upon whether or not the telephone conversations took place in October 1982 and, accordingly, no credibility determination is made in that regard.

[14]According to the testimony, a worksharing program is one which results in employees whose hours have been reduced being entitled to some proportionate share of unemployment compensation.

CSEA declared impasse and filed the appropriate papers with PERB. Although Respondent did not join in CSEA's declaration of impasse, on November 23, 1983, PERB certified that an impasse existed. As of the date of the formal hearing the parties had not yet resolved their differences.

D. Evidence Relating to the District's Rationale for the November Changes in Hours

During the course of the hearing, Floyd Davis, the Superintendent of the Pleasant Valley School District, testified that the District had experienced financial difficulties for quite some time, probably dating back to the passage of Proposition 13. Pursuant to Davis' uncontroverted testimony the District was required to cut back on its capital outlay program, charge for bus rides and reduce some of its educational programs. Moreover, the District was required to terminate an earlier practice of subsidizing categorically funded programs from the general fund. Accordingly, the District no longer absorbed deficiencies which might arise in Chapter 1 or SIP programs.

Eric Anders provided more specific information on the District's financial condition with respect to the categorical programs in the school year 1982-83. As previously noted, the Chapter 1 funding to the District decreased from $76,024 to $66,442. In terms of SIP funding, the evidence indicates that for school year 1982-83, the projected income was $179,368. The amount actually received, however, was $210,951.

Nevertheless, despite the fact that Anders testified that Chapter 1 and SIP funds are comingled, the Respondent maintained that there was a $10,000 shortfall in El Rancho's categorical funding for the 1982-83 school year.[15]

Regardless of the actual financial condition or funding for categorical programs at El Rancho, decisions were made based on a perception that there was a $10,000 shortfall. That, according to the District, created certain programatic problems and required an adjustment not only in the number of aide hours, but in the way in which those hours were distributed. Prior to the opening of the Las Colinas School, there were 15 teachers at El Rancho; afterward there were only 11. Prior to the reduction in teaching staff, according to the testimony of Liane Adamske, the Program Coordinator for SIP and Chapter 1 at El Rancho School, there were more teachers than instructional aides; after the reduction in the size of the teaching staff, every teacher had an aide.

Several weeks after the beginning of the 1982-83 school year, in order to equalize the amount of aide time given to each teacher, Nunez and Santos would spend approximately three and one-half hours per day in one classroom and during the course of the week their additional two hours each day would

---

[15]The disparity in figures resulted from a failure to include carry-over funds from a previous year. There was no testimony elicited, however, regarding the District's ability to use those funds to supplement El Rancho's budget.

be distributed to other teachers within the school. Adamske's testimony appears to indicate that this transition was made several weeks into the school year in order to equalize the delivery of services to students. In the previous years, Santos and Nunez had spent three and one-half hours in a morning classroom and then two hours in the classroom of an afternoon teacher who did not have the services of an aide.

Adamske further testified that the rotation of the services of Nunez and Santos seemed unsatisfactory and the fact that some aides were teaching two hours or three hours per day as compared to the five and one-half hours of Nunez and Santos seemed inequitable. Moreover, Adamske had some concern that the uneven distribution of hours was not only inequitable in terms of services rendered to teachers, but it was unfair to the aides themselves and perhaps, most importantly, could potentially jeopardize the District's program, because comparable services were not being provided to all the students.

In order to address what she perceived to be the deficiencies or problems in the Chapter 1 and SIP programs at El Rancho, Adamske met with "staff" and the site council. Upon questioning by the administrative law judge, Adamske testified that by staff she meant faculty and the principal. It was clear that she did not mean representatives from CSEA or classified personnel. According to Adamske, staff considered alternatives to the distribution of aide hours for a number of weeks. She testified that staff considered the possibility of

allowing either Santos or Nunez to work with one of the kindergarten teachers who taught first graders in the afternoon, but that option was rejected because the teacher only had 10 first graders and it was felt that she could provide enough instructional assistance without the use of an aide. Adamske also testified that staff rejected the idea of rearranging the school program so that classes for which aide assistance was required could be taught in the afternoon because the school children were more receptive to learning the solid subjects in the morning.

Essentially, Adamske testified that the option selected, that of equalizing aide hours, was the only alternative considered acceptable. Accordingly, after spending several weeks considering the alternatives, staff presented its solution to the site council, which discussed the matter for approximately one hour. Thereafter, it was determined that aide hours should be equalized and, without prior notice or discussion with CSEA, employees were notified of the decision to modify their hours.

III. ISSUES

A. Did the District have a duty to bargain about the decision to change hours effective November 15, 1983?

B. Did CSEA waive its right to bargain by any of the following: (1) its letter of August 6, 1982; (2) its failure to make a clear and timely demand to bargain; or (3) its failure to bargain expeditiously or efficiently?

C. Was the District's duty to bargain excused by business neccessity?

IV. CONCLUSIONS OF LAW

A. Unilateral Changes in Hours

It is well settled that, absent special circumstances, an employer's unilateral action on a matter within the scope of representation is a per se violation of the EERA. (San Mateo Community College District (6/8/79) PERB Decision No. 94; San Francisco Community College District (10/12/79) PERB Decision No. 105.) It is also well settled by PERB precedent that a school district is required to bargain with the exclusive representative of its employees regarding the decision to reduce hours. (North Sacramento School District (12/31/81) PERB Decision No. 193; Pittsburg Unified School District (6/10/83) PERB Decision No. 318.)

In the instant case, effective November 15, 1983, the employer unilaterally decreased the hours of two employees and unilaterally increased the hours of four others. As noted by the precedents set forth above, absent a viable defense, the unilateral decrease in working hours without bargaining is a per se violation of the EERA. Similarly, the increase in the working hours of four instructional aides was also unlawful; unilaterally conferring benefits on employees can undermine the role of the exclusive representative as effectively as unilaterally reducing them. (NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].)

In addition to the various waiver and business necessity defenses raised by the District, which will be discussed below, the District argues that it did not commit an unfair labor practice because, at all times relevant hereto, it was bargaining in good faith; it wanted to reach agreement. Nevertheless, if the District does not sustain its burden with respect to the defenses it raises, the unilateral modification in the hours of instructional aides prior to the conclusion of bargaining constitutes a per se violation of the Act.

B. The Waiver Defenses

The District takes the position that the Association waived its right to bargain about the November 15, 1982, change in hours. The waiver defense has three facets. First, the Respondent argues that Roy's letter of August 6, 1982, gave the District permission to reduce hours as needed pending good faith negotiations between the parties. Next, the District argues that CSEA failed to make a timely demand or, in fact, any demand to bargain about the changes which were announced in October and made effective in November. Finally, the District argues that CSEA's dilatory bargaining strategy is evidence that there was no intent to reach agreement with Respondent and constitutes a waiver by inaction. To sustain each of the defenses the PERB requires clear and unmistakable evidence that an organization has waived its statutory right to bargain about a specific subject. (Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74.)

1. Roy's August letter

As noted above, supra, at page 8, on August 6, 1982, Roy sent a letter to Jones confirming an understanding reached by them on July 28, 1982. In that letter, and indeed throughout the course of the formal hearing, Roy indicated that because aides had already been notified regarding a reduction in hours and because there was very little time to negotiate before the beginning of the school year "the notice already sent to the Aides would be allowed to stand pending the outcome of negotiations." In Respondent's Post Hearing Brief the following argument is set forth:

> [T]he letter of August 6, 1982 (Charging Party Exhibit 8) represents a clear and unmistakable waiver by the Charging Party to allow the reduction of hours as needed while simultaneously negotiating in good faith. The Respondent lived up to the verbal agreement between the parties reflected in that letter. The evidence presented by the Charging Party was absent of proof that the waiver letter did not apply to October 13, 1982 reductions.

The letter sent by Roy to Jones essentially speaks for itself and the argument advanced by the Respondent for the first time in its Post Hearing Brief is disingenuous. Roy's letter references notices already set and cannot reasonably be construed to embrace changes in hours for which notices were sent more than two months later and which CSEA did not contemplate. Moreover, the District presented no evidence that it was acting in reliance upon CSEA's August 6 letter when it effectuated the changes in hours on November 15, 1982. Based

upon the evidence submitted, it is concluded that the Respondent's position is without merit and, accordingly, it is rejected.

2. CSEA's Alleged Failure to Demand to Bargain

The Respondent takes the position that at no time did CSEA demand a rescission of the notices proposing to change the hours of aides which were sent on October 13, 1982. The Respondent alleges that no demand was made to the board, to Johnson, or to Superintendent Davis. With respect to the board and Davis, there is no evidentiary dispute. Roy admits that she made no demand to Davis, but testified that it would be inappropriate to do so because her bargaining contacts were with the Negotiation Center and Johnson. For similar reasons, Roy had no contact with the Board of Education. Moreover, Roy's failure to contact or complain to the board about the proposed action can easily be explained by the fact that the item was not placed on the board's agenda until several months after the effective date of the personnel transactions complained of in this proceeding.

An evidentiary dispute does exist with respect to the question of whether CSEA made an effective demand to Johnson to bargain about the decision to modify aide hours in October or November of 1982. Roy testified that she contacted Johnson twice to inquire about the changes and that Johnson stated "she would take care of it." Johnson, on the other hand, testified that no such telephone conversations took place and that she

only learned of the changes during the course of the bargaining session on November 2, 1982.

In a number of cases PERB has addressed the question of whether a bargaining agent waives its right to bargain by failing to make an appropriate demand. In Newman-Crows Landing Unified School District (6/30/82) PERB Decision No. 223, the Board noted:

> . . . . while it is not essential that a request to negotiate be specific or made in a particular form . . . it is important for the Charging Party to have signified its desire to negotiate to the employer by some means. In Al Landers Dump Truck, Inc. (1971) 192 NLRB 207 [77 LRRM 1729], the Board said "[a] valid request to bargain need not be made in a particular form, or in haec verba, so long as the request clearly indicates a desire to negotiate and bargain on behalf of the employees in the appropriate unit concerning wages, hours and other terms and conditions of employment."
>
> In other words, a valid request will be found, regardless of its form or the words used, if it adequately signifies a desire to negotiate on a subject within the scope of bargaining. (Id., at 7-8.) (Citations omitted.)

In Newman-Crows Landing, the Board held that the Union had made a demand to bargain about the decision to lay off employees and not the effects of the layoffs on matters within the scope of representation. Accordingly, the Board held that no appropriate demand to negotiate had been made.

In Los Angeles Community College District (10/18/82) PERB Decision No. 252, the Board again considered the question of whether or not the union waived its right to bargain by failing

to request negotiations. In that case, the employer alleged that even though it had failed to formally notify the union of its intended change, the union knew or should have known of the employer's intentions. PERB held "that a union does not waive its right to negotiate by failing to request negotiations where it had no notice of the intended change before the decision had been firmly made." (Id., at 16-17.) Similarly, in Arvin Union School District (3/30/83) PERB Decision No. 300, the Board considered the question of whether an employee organization had a reasonable opportunity to negotiate before the school district adopted a policy pertaining to discipline. In that case, the union did not formally protest the adoption of the disciplinary policy which had been adopted in August until the following December. Even though PERB found that the union had notice of the new disciplinary procedure sometime in August, it nevertheless held that the union had not waived its right to bargain because it did not "have a reasonable opportunity to negotiate prior to the adoption of the policy." (Id., at 11.)

In Delano Joint Union High School District (5/5/83) PERB Decision No. 307, the Board again considered the question of whether the union's communications with the school district constituted a proper request to negotiate the impact of the district's decision to lay off employees. The first communication was "a prioritized list of events that should occur before dismissal of any teaching personnel or disruption of any program." The Administrative Law Judge and the Board

found that that communication was political in nature or could be characterized as a protest and did not constitute a demand to bargain. The Board noted:

> Our finding is consistent with the position of the National Labor Relations Board, which has long held that a union waives its right to bargain where it merely "protests" an employer's contemplated unilateral actions, but makes no meaningful attempt to request negotiations. . . As the NLRB stated in Clarkwood Corp. (1977) 233 NLRB 1172 [97 LRRM 1034] [233 NLRB at 1172]: "[a] union which receives timely notice of a change in conditions of employment must take advantage of that notice if it is to preserve its bargaining rights and not be content in merely protesting an employer's contemplated action. Such lack of diligence by a union amounts to a waiver of its rights to bargain . . ." (Id., at 8-9.) (Citations omitted.)

In Delano, PERB also found that the union's request to meet with the school board and a meeting between the president of the union and the superintendent wherein they discussed the day negotiations would begin, did not constitute a demand to bargain because no specific reference was made to the imminent layoffs.

The circumstances surrounding the instant case are analogous to Los Angeles Community College District described above. CSEA found out about the changes after a decision had been made. Thus, according to that authority, CSEA would not have waived its right to bargain by failing to request bargaining. Moreover, Roy testified that she demanded that the District rescind the actions noticed on October 13 and

effective on November 15. As previously noted, Johnson denies that CSEA made a demand that the notices be rescinded. Unlike the cases described above in this case, CSEA had previously made a demand to negotiate the District's decision to reduce hours and at the very time the District issued the October notices the parties were in the process of negotiating the District's obligations.

In addition, Johnson testified that during the bargaining session on November 2, 1982, Esther Duncan complained about the changes in hours and said that the District's actions were unfair. If that statement is taken out of context, it might be considered a mere protest and not a demand to negotiate as was the case in Delano, supra. However, when viewed in its proper context, it is difficult to conclude that a statement made during the course of negotiations about the very matter being protested did not constitute a demand to negotiate before action was taken. Furthermore, the testimony is unrebutted that on November 15, 1982, CSEA demanded that if the District reduced the working hours of instructional aides, fringe benefits would have to be continued. Since Santos and Nunez were the only employees whose fringe benefits were impacted by the District's actions, it is clear that CSEA was protesting and bargaining not merely about the decision to reduce hours, but about the impact of that decision upon the employees it represented. In short, the District's argument that CSEA failed to make an appropriate demand or failed to put the

District on notice that it was protesting and wanted to bargain about the decision to change hours is rejected.

3. CSEA's Alleged Failure to Effectively Bargain

In its Post Hearing Brief, the Respondent argues as follows:

> The Respondent will demonstrate that it took every possible opportunity to negotiate a reduction in hours agreement prior to taking such action and that the Charging Party failed to avail itself in a timely manner to reach such an agreement.

Although the parties failed to bargain frequently and failed to reach agreement, no evidence was introduced to support the Respondent's position that CSEA alone bears the responsibility.

The Charging Party first learned of the Respondent's intent to reduce aide hours for September 1982 sometime late in June of 1982. Despite the fact that both sides said that they were interested in expediting bargaining on the issue of the proposed reductions, the first meeting did not take place until July 28, 1982, at which time meaningful negotiations could not take place because the District disputed the fact that it had a duty to bargain about the decision to reduce hours. The next bargaining session did not take place until August 25, 1982. That delay may be attributable to CSEA because several members of its bargaining team were attending a statewide CSEA convention.

Thereafter, however, there is no explanation for the long delays in bargaining between the parties. Although the District seems to argue that progress was not made because CSEA

combined reopener negotiations with negotiations regarding the decision to reduce hours, even if that were relevant, that argument or allegation is not supported by the record. Jones testified that he considered the negotiations to be separate, and agreement on one issue was not contingent upon agreement on the other. Although Johnson may have had a different perception of CSEA's position, there is no evidence that CSEA insisted that the issues be combined. In fact, Roy credibly testified that the only reason she combined or scheduled sessions on both issues on the same dates was because Johnson herself had insisted on that practice in other school districts.

It should also be noted that CSEA was not contesting or seeking to set aside the reductions which took place in September and therefore did not know that it was under the serious time constraints perceived by the District. Although the District contemplated changing hours for several weeks before the notices went out in October 1982, CSEA had no notice of that fact. Thus, since CSEA did not anticipate a change in the status quo, it would have no reason to deem it necessary to expedite negotiations.

Moreover, whether or not we accept Roy's version or Johnson's version of the contacts they had after the October 13, 1982, notices were sent, CSEA did not sit on its rights. Even according to Johnson, the issue was raised on November 2, and again on November 15. Accordingly, CSEA did move rapidly

to try to resolve the issue complained of herein. Finally, although the District accuses CSEA of being dilatory, the testimony of the District is unrebutted that its first written counterproposal was presented on November 15, 1982. Accordingly, since there is no evidence to support the District's allegation that CSEA failed to properly exercise its right to bargain about the decision to reduce hours, the waiver defense of the District is rejected.

C. The Business Neccessity Defense

The District argues that fiscal constraints and program guarantees necessitated the changes in hours which were made effective on November 15, 1982. More specifically, the District contends that it was precluded by the equivalence and comparability requirements of SIP and Chapter 1, as well as the procedural restrictions imposed through the site council, from maintaining Nunez and Santos at their previous levels of five and one-half hours.

The District claims that it reviewed and rejected various alternatives to the reduction in hours of Nunez and Santos, including laying off other aides, maintaining the status quo until funding ran out and then laying off, distributing the aides' additional hours equally amongst the teachers, and using general fund dollars to maintain the additional hours. The District argues that the decision to reduce hours was not capriciously made, that it took weeks before the school site

council and the school staff at El Rancho School could make the determination that an equalization in hours was the only possible course of action.

Regardless of the District's position on the requirements of the categorical funding programs, its financial limitations, and the alleged absence of palatable alternatives, the District's business necessity defense does not justify its unilateral changes in hours. In San Mateo County Community College District, (6/8/79) PERB Decision No. 94, the District had argued that its adoption of new policies on wages and other terms of employment was compelled by the business and legal necessity created by the passage of Proposition 13. The District claimed that it was required to take prompt cost reduction measures in response to information it was receiving about anticipated revenues for the coming year because Article XIII, Section 40 of the California Constitution prohibits public agency operations on a deficit budget. The Board held, however, that the need for a balanced budget and debt limitation is only a general directive and may not be asserted to avoid a mandatory obligation imposed by law.

In its discussion, the Board pointed out that one reason peculiar to the public sector that unilateral changes are disfavored is that "when carried out in the context of declining revenues, an employer's unilateral actions may also unfairly shift community and political pressure to employees

and their organizations, and at the same time reduce the employer's accountability to the public."

The Board was again faced with a business necessity defense in light of the passage of Proposition 13 in San Francisco Community College District (10/12/79) PERB Decision No. 105. There the District argued that its cancellation of summer school, deferral of all sabbatical leaves, and passage of resolutions freezing certificated salaries and yearly and career increments was in response to the emergency created by the initiative. The Board did not accept the District's defense, holding:

> Even when a District is in fact confronted by an economic reversal of unknown proportions, it may not take unilateral action on matters within the scope of representation, but must bring its concerns about these matters to the negotiating table. An employer is under no obligation at any time to reach agreement with the exclusive representative. The duty imposed by the statute is simply--but unconditionally--the duty to meet and negotiate in good faith on matters within the scope of representation. (Id., at 10-11.)

The Board cited to the above holding in Sutter Union High School District (10/7/81) PERB Decision No. 175, finding that the district's assertion of business necessity is a position for the negotiating table rather than an excuse for refusing to negotiate. In Sutter the district had defended its imposition of a sixth period on the basis that it was obligated to do so by the minimum requirements of the Education Code, the

admission requirements of the University of California, and its own self-imposed requirements. The Board particularly criticized the district's failure to negotiate in light of advance knowledge that changes would be made. It stated:

> A school board which knows it must make a decision that will have impact on employee working conditions cannot sit back until the eleventh hour, make a unilateral decision and then plead business necessity as a defense. (Id., at 7.)

The facts represented by the District in the present case fail to demonstrate that the emergency nature of the reduction in hours of Nunez and Santos precluded the possibility of negotiations. The District states in its brief that it became aware of its fiscal and program restraints as early as spring 1982 and testimony by Anders would seem to confirm this. Clearly, the District had found the time to take the question of reducing the aides' hours before the site council and the staff, which pondered the question of what to do for a period of weeks. The Board's criticism in Sutter, supra, should apply here where the District had adequate time and knowledge to negotiate the decision to reduce hours of Nunez and Santos.

Also, it is not necessary to reach a decision as to whether the District was legitimately limited by program and fiscal limitations posed by categorical funding programs, its financial situation, or the administrative policies it adheres to. PERB has clearly held that business necessity is a position for the bargaining table and does not create the right

to make unilateral changes involving subjects within the scope of representation. As demonstrated in San Mateo, supra, the Board has a particular concern that the District use the negotiating process and not public pressure as the tool for determining the allocation of understandably scarce economic resources. As was pointed out in San Francisco, supra, the District need not reach agreement with the CSEA, but it must negotiate those matters within scope regardless of whether it believes that its actions were mandated. If indeed there were no other alternatives available to the District, then that is a conclusion to be reached at the bargaining table.

V. CONCLUSION

Based upon the foregoing, it is found that the District violated section 3543.5(c) in failing to give CSEA a meaningful opportunity to meet and negoitate regarding the decision to change the hours of work for instructional aides in November 1982. In taking action in violation of section 3543.5(c), the District concurrently violated sections 3543.5(a) and (b). San Francisco Community College District (10/12/79) PERB Decision No. 105.

VI. REMEDY

In a unilateral change case, it is appropriate to order the employer to restore the status quo ante. In the instant case, the Charging Party primarily complains about the decrease in hours for Nunez and Santos and undoubtedly would find it preferable for an order to issue which simply restored the

hours to those two employees. However, based upon the rationale set forth by the Board in Alum Rock Union Elementary School District (6/27/83) PERB Decision No. 322, I find that a partial restoration of the status quo would not be equitable and would not restore the parties to the positions they held prior to the unlawful unilateral action. Moreover, given the passage of time, it is unclear whether the position of the parties has changed such that even complete restoration of the status quo would be desirable or feasible.

In balancing the interests of the parties I find that the best remedy is that which puts the parties in a position to, ensure that meaningful bargaining will take place and also makes whole those employees who suffered an economic loss as a result of the District's actions. Accordingly, unless the parties reach a contrary agreement, the two employees whose hours were reduced should be made whole for any loss of economic benefits suffered as a result of the District's reduction in hours, with interest at the rate of 7 percent per annum from the date of the unilateral change (November 15, 1982) 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 following service of this decision; or

(4) the subsequent failure of CSEA to bargain in good faith.

It is also appropriate to order the District to cease and desist from refusing to bargain with CSEA regarding any decision to change the hours of work of employees. Additionally, the District will be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size, defaced, altered or covered by any material. Posting such notice will inform employees that the District has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and will announce the District's readiness to comply with the ordered remedy. (See Placerville Union School District (9/18/78) PERB Decision No. 69.) In Pandol and Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580, 589, the California District Court of Appeal approved a posting requirement. The U.S. Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to California Government Code Section 3541.5(c), it is hereby ordered that

the Pleasant Valley School District, its governing Board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the exclusive representative of its classified employess by taking unilateral action on matters within the scope of representation, as defined in section 3543.2 specifically with reference to the decision to change the hours of work of employees.

2. Denying the California School Employees and its Chapter #504 their right to represent unit members by failing and refusing to meet and negotiate about matters within the scope of representation.

3. Interfering with employees because of the exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation without first providing notice and the opportunity to meet and negotiate with the exclusive representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE PURPOSES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Unless the parties reach a contrary agreement, the two employees whose hours were reduced should be made whole for any loss of economic benefits suffered as a result of the District's reduction in hours, with interest at the rate of 7 percent per annum from the date of the unilateal change

(November 15, 1982) until the occurrence of the earliest of the following conditions:

(a) the date the District and CSEA reach agreement;

(b) completion of the statutory impasse procedures;

(c) the failure of CSEA to request bargaining within 10 days following service of this decision; or

(d) the subsequent failure of CSEA to bargain in good faith.

2. Within five (5) days after this decision becomes final, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, for at leat 30 consecutive working days at its headquarters office and in conspicuous places at the locations where notices to classified employees are customarily posted. The Notice shall be taken to see that it is not defaced, altered or covered by any material.

3. Within 20 working days from service of the final decision herein, given written notification to the Los Angeles Regional Director of the Public Employment Relations Board of the actions taken to comply with this order. Continue to report in writing to the Regional Director thereafter as directed. All reports to the Regional Director shall be concurrently served on the Charging Party herein.

Pursuant to the California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on February 14, 1984, unless a party files a

timely statement of exceptions. (See California Administrative Code, title 8, part III, section 32300.) Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on February 14, 1984, or sent by telegraph or certified United States Mail, postmarked no later than the last day for filing in order to be timely filed. (See California Administrative Code, title 8, part III, section 32135.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. (See California Administrative Code, title 8, part III, sections 32300 and 32305.)

DATED: January 25, 1984

Barbara E. Miller
Administrative Law Judge

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-1706, California School Employees Association and its Chapter #540 v. Pleasant Valley School District, in which all parties had the right to participate, it has been found that the Pleasant Valley School District violated Government Code section 3543.5(a), (b), and (c) by taking action to modify the hours of employees in November 1982 before completing the meet and negotiation process with CSEA.

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

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the California School Employees Association and its Pleasant Valley Chapter #504 as the exclusive representative of its classified employees by taking unilateral action on matters within the scope of representation, as defined in section 3543.2, specifically with reference to the decision to change the hours of work of employees.

2. By the same conduct, denying to the California School Employees Association and its Pleasant Valley Chapter #504 rights guaranteed by the Educational Employment Relations Act, including the right to represent unit members.

3. 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.

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

1. Upon request of CSEA, meet and negotiate with CSEA over the decision and the effects thereof of the change in hours of the aides.

2. Unless the parties reach a contrary agreement, the two employees whose hours were reduced should be made whole for any loss of economic benefits suffered as a result of the

District's reduction in hours, with interest at the rate of 10 percent per annum from the date of the unilateral change (November 15, 1982) until the occurrence of the earliest of the following conditions:

(a) the date the District and CSEA reach agreement;

(b) completion of the statutory impasse procedures;

(c) the failure of CSEA to request bargaining within 10 days following service of this Decision; or

(d) the subsequent failure of CSEA to bargain in good faith;

(e) the point at which the parties have previously reached agreement or negotiated through the statutory impasse proceedings concerning the unilateral change in hours.

DATED: PLEASANT VALLEY 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.