STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER #277,	)	
Charging Party,	)	Case Nos. LA-CE-1636 LA-CE-1741
v.	)	
SANTA MARIA JOINT UNION HIGH SCHOOL DISTRICT,	)	PERB Decision No. 507
Respondent.	)	May 16, 1985

Appearance; Liebert, Cassidy & Frierson by Bruce A. Barsook for Santa Maria Joint Union High School District.

Before Hesse, Chairperson; Jaeger, Morgenstern, Burt and Porter, Members.

DECISION

HESSE, Chairperson: This case came before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Santa Maria Joint Union High School District (District or Employer) to the decision of the administrative law judge (ALJ) rendered below. The hearing arose out of two charges filed by the California School Employees Association and its Chapter #277 (CSEA or Association) against the District. Charge No. LA-CE-1636 was filed September 14, 1982 and amended January 13, 1983, charging that the District violated sections 3543.5(a), (b), (c); 3543; and 3543.1(a)[1] of the Educational

[1]EERA is codified at Government Code section 3540 et seq. Section 3543.5(a), (b) and (c) read as follows:

It shall be unlawful for a public school

Employment Relations Act (EERA) by taking unilateral action in reducing the hours of employment of various classified employees. Charge No. LA-CE-1741 was filed March 1, 1983, and alleged that the Employer violated the same sections as above when it laid off bargaining unit employees but failed to meet and negotiate concerning the effects of that layoff. The ALJ

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employer to:

> (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.

Section 3543 reads, in pertinent part, as follows:

> Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

Section 3543.1(a) reads as follows:

> (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer.

consolidated the two cases and issued a proposed decision, holding that the effects of the layoff decision did not have to be negotiated because the parties had adopted a collective bargaining agreement that provided for the effects of layoff.[2] She also ruled, however, that the District was obligated to negotiate both the decision to reduce hours and the effects of that decision. As the District negotiated neither, she held that the District violated section 3543.5(a), (b) and (c) of the Act.

STATEMENT OF FACTS

CSEA is the exclusive representative of the District's classified employees, and is party to a collective bargaining agreement with the District. That agreement runs from July 1982 through June 1985.

The District, prior to 1982, had on several occasions reduced employees' hours, without negotiations and without a demand by CSEA to negotiate such reductions. In 1982, however, the parties were negotiating for a new collective bargaining agreement. Because of a PERB ruling that the decision to reduce hours was now clearly negotiable, unlike the decision to layoff,[3] CSEA's representative remarked in passing that the

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[2]Because no exception was filed on this finding, we do not address this issue on appeal.

[3]See North Sacramento School District (1981) PERB Decision No. 193. The effects of both types of decisions were always seen by both sides to be negotiable. (TR 94.)

layoff provision in the contract no longer included reduction of hours. (TR, pp. 21-22.)

Beginning in July 1982, the District adopted a series of resolutions calling for some employees to be laid off and others to have their hours reduced. In the fall of 1982, CSEA demanded to bargain with the District (1) over the effects of the layoff decision and (2) over both the decision and the effects of the decision to reduce employee hours. The District's response to the demand to negotiate was that the parties had completed negotiations on effects of layoffs and reductions in hours and had embodied their agreement on these matters in Article XVIII - Effect of Layoffs and Article II - Hours of Employment of their collective bargaining contract. In the following months, CSEA made several attempts to negotiate the above, but was rebuffed by the District on the grounds that the parties had already negotiated those subjects in talks leading to the current collective bargaining agreement.

Article II reads in part as follows:

> ARTICLE II - HOURS OF EMPLOYMENT
>
> Hours The regular work week of a full-time unit member shall be forty (40) hours, and the regular work day shall be eight (8) hours exclusive of duty-free meal period of no less than thirty (30) minutes as assigned by the District.
>
> . . . . . .
>
> Nothing in this Agreement or in District Policies or regulations shall be construed to constitute a guarantee of a minimum number of hours of work per day or per week, or of days of work per week, per month, or per year.

> Adjustment of Work Day Prior to a permanent change in work days or working hours, a conference will be held with the unit member, and, at the request of the unit member, a representative of CSEA, in order to discuss the change.
>
> . . . . . .
>
> Call Back Time Whenever a unit member has left the work site and is called back to work when not regularly scheduled to be on duty, compensation will be for a minimum of two (2) hours.

Bargaining History

Paragraph 3 of Article II, the "no guarantee of minimum hours" provision, was added to the parties' contract in 1979 upon the proposal of the District. In 1982, CSEA proposed deletion of this language but the District refused on the ground that it needed flexibility to increase or decrease employees' hours. CSEA's representative testified that he believed this provision merely provided the District the authority to employ part-time employees but not to authorize it to reduce hours of employees, but he offered no explanation for this restrictive interpretation of Article II.

The District's representative testified further that the District had instituted layoffs and reductions in hours on several occasions each year prior to the summer of 1982 but that CSEA had never previously demanded mid-term negotiations regarding either the decision or effects thereof. Layoffs and reductions in hours instituted without any request to negotiate by CSEA occurred as late as February 23 and June 17, 1982, respectively.

THE DISTRICT'S EXCEPTIONS

The District excepted to only one factual finding by the ALJ, that the District did not rely on certain contractual provisions in an effort to demonstrate that the Association waived its right to bargain over the reductions in hours. As to the ALJ's legal conclusions, the District argued that the ALJ erred when she concluded that CSEA did not waive its right to demand mid-term negotiations concerning the reduction in hours.

DISCUSSION

The parties do not dispute that the District did not negotiate the decision to reduce hours and the effects of that decision. The District, however, argues that the language of the collective bargaining agreement and the established policy of the District relieve it of any further bargaining under this agreement concerning reduction in hours.

For the Association to prevail in its complaint against the employer, it must show that the latter not only took unilateral action on a matter within the scope of representation, but that the action resulted in a change in the status quo. (See generally Gorman, Labor Law (1976), pp. 450-454. See also Los Angeles Community College District (1982) PERB Decision No. 252.) As recently stated by this Board,

> having established [a] "status quo ante," the Charging Party must then show that the employer has, without first providing an opportunity to negotiate, departed from that prevailing policy or practice in a way which

> evidences the adoption of a new policy having a generalized effect or continuing impact upon the bargaining unit members." (Oak Grove School District (1985) PERB Decision No. 503 at p. 7.)

The parties do not dispute that, virtually every year since 1978, the District implemented layoffs and reductions in hours in a similar fashion pursuant to their mutual belief at that time that the two actions were both non-negotiable subjects within the District's prerogative. Consistent with this belief, the parties' 1979 and 1981 collective bargaining agreements established a clear policy granting the District authority to reduce hours, subject only to the requirement that it discuss the change with the affected employee.[4] Testimony established that the procedures specified in an "Effects of Layoff" provision added to the contract in 1981 were intended to apply to both layoffs and reductions in hours.

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[4]Article II of both the 1979 and 1981 contracts provided that, notwithstanding the specification of a "regular" 8-hour day and 40-hour week:

> Nothing in this Agreement or in District Policies or regulations shall be construed to constitute a guarantee of a minimum number of hours of work per day or per week, or of days of work per week, per month, or per year.
>
> Adjustment of Work Day
>
> Prior to a permanent change in work days or working hours, a conference will be held with the unit member in order to discuss the change. . . .

In November 1981, PERB issued its decision in North Sacramento School District (1981) PERB Decision No. 193, holding that, unlike the decision to lay off, the decision to reduce hours is negotiable. Shortly thereafter, during contract negotiations in spring 1982, CSEA served notice on the District that it would no longer consider reductions in hours to be covered by the layoff provision in the contract. CSEA proposed, inter alia, to amend Article II to require "mutual agreement" between the parties prior to any change in workdays or working hours, and to delete the language referring to "no minimum guarantee of hours." Neither of these proposals was adopted. Instead, the parties agreed to continue the "no minimum guarantee" language. The only change with respect to reduction in hours contained in the 1982 contract as adopted granted CSEA a right to "discuss" the change, at the request of the affected employee.

On these facts, we cannot agree with the ALJ that the 1982 negotiations broke the policy authorizing the District to reduce hours. Both orally and by its written proposals, CSEA clearly indicated its desire to change District policy on the subject. CSEA, however, did not succeed in obtaining agreement to its proposals. Rather, the existing policy was left substantially intact.

Because the reduction in hours announced in July 1982 was consistent with established District policy, it did not amount to a unilateral change and did not violate EERA. (Oak Grove

School District (1981) PERB Decision No. 503.

ORDER

Case Numbers LA-CE-1636 and LA-CE-1741 are hereby DISMISSED in their entirety.

Members Jaeger, Morgenstern, Burt and Porter joined in this Decision.