**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 106,<br><br>Charging Party,<br><br>v.<br><br>DESERT SANDS UNIFIED SCHOOL DISTRICT,<br><br>Respondent. | Case No. LA-CE-4491-E<br><br>PERB Decision No. 2092<br><br>February 1, 2010 |

Appearances: California School Employees Association by Maureen C. Whelan, Attorney, for California School Employees Association and its Chapter 106; Miller, Brown & Dannis by Candace M. Bandoian, Attorney, for Desert Sands Unified School District

Before Dowdin Calvillo, Acting Chair; McKeag and Neuwald, Members.

## DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Desert Sands Unified School District (District) of a proposed decision by an administrative law judge (ALJ). The unfair practice charge alleged that the District violated the Educational Employment Relations Act (EERA)[1] by: (1) discriminating against a special education health technician (health technician);[2] (2) unilaterally removing health technician work from the bargaining unit; (3) unilaterally removing school bus driving work from the bargaining unit; (4) unilaterally ceasing bus driver compensation for behind-the-wheel training needed for license renewals; (5) unilaterally assigning new duties to bus driver mechanics; and (6) unilaterally implementing a rule for

[1] EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

[2] This allegation was dismissed with prejudice by stipulation of the parties and, therefore, not considered by the ALJ.

requesting released time. The California School Employees Association and its Chapter 106 (Association) alleged that this conduct violated EERA section 3543.5(a), (b), and (c).

Following three days of formal hearing and the submission of post-hearing briefs by the parties, the ALJ ruled that the District unilaterally changed policies by: (1) transferring work from the health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals; (4) assigning the duties of the former fleet supervisor to bus mechanics; and (5) requiring released time requests be submitted on the personal leave form.[3]

We have reviewed the entire record in this matter and find the District: (1) unlawfully transferred work from the health technician position to other classifications; (2) unlawfully changed its policies regarding the assignment of field-trip work; (3) unlawfully changed its practice regarding training compensation for bus drivers; but (4) did not unlawfully change the duties of bus mechanics when it assigned the mechanics individual buses to repair and maintain.

## FINDINGS OF FACT

The issues addressed herein concern four unlawful unilateral change allegations, each of which is based on a unique set of facts. For the sake of clarity, the following recitation of facts is organized with regard to each of these allegations.

[3] With regard to the released time issue, the ALJ determined that the District: (1) violated EERA section 3543.5(a), (b), and (c) by unilaterally requiring requests for released time be submitted on the District's personal leave form, but (2) did not violate EERA by enforcing a 24-hour prior-notice rule. These findings, however, were not excepted to by either party. Accordingly, the issue is not squarely before the Board and is not addressed herein. The Board, therefore, affirms the aforementioned conclusions of the ALJ, but does not adopt the analysis.

## A. Health Technician Work

The District employs several classifications to assist students with physical disabilities and monitor the health needs of "medically fragile" students during the school day. They include the special education paraeducator (paraeducator), health technician, licensed vocational nurse/special education (LVN), and school nurse. School nurses are in the certificated bargaining unit. The other three classifications are in the Association's unit.

1. Range of Duties

All four classifications perform some health-related work. The nature of that work, however, is based on the skill level of each classification. For instance, administering first aid, dispensing medications, and assisting in the monitoring of diabetic glucose levels are duties that may be performed by all the classifications. Catheterizations[4] for the purpose of emptying the bladder, tracheotomy care (suctioning) and tube feedings, on the other hand, are invasive procedures that may be performed by school nurses, LVNs and health technicians, but not paraeducators.

Paraeducators are specialized classroom aides who work with handicapped students.[5] Around 1998, the District began to train paraeducators to perform catheterizations. The employees, through the Association, objected to the duty as being outside their job description. Consequently, the District agreed not to assign that duty to paraeducators. Instead, the District

[4] Catheterizations are sterile procedures that require specialized training to perform.

[5] The paraeducator job description describes the position as assisting teachers in providing instruction and tutorial assistance to handicapped students in a special education learning environment, monitoring and reporting student progress, and related functions. Other duties include dispensing medication and assisting with non-invasive health treatments for medically fragile children, and assisting in grooming, dressing and toileting.

created the health technician classification to perform catheterizations.[6] In addition, there are numerous special education students who do not need catheterizations but do need assistance in toileting or diapering. According to their respective job descriptions, both paraeducators and health technicians may perform these duties.

Based on our review of the classifications, we find both the paraeducator position and the health technician position perform overlapping health-related duties. Indeed, the District's Director of Student Support Services and Special Education Elka Kelly-Parker (Kelly-Parker) testified regarding this overlap, emphasizing that all of the classifications perform toileting duties because the District has "so many students" with that need.

2. Special Education Health Technician Layoffs

In the Summer of 2002, the District issued layoff notices to all eight health technicians due to lack of work and/or lack of funds. Kelly-Parker, who was promoted to her current position in the Summer of 2002, supervises the classifications at issue here. However, neither Kelly-Parker nor any other District witness recalled the precise justification for the layoffs.

In lieu of layoff, two employees were offered demotions to paraeducator positions. Georgia Maupin (Maupin) was one of them. As a health technician, Maupin's duties in a typical day included transferring wheelchair-bound students to and from buses, toileting and catheterizations, tube feedings, skin integrity and wound monitoring, and accompanying a student on the bus to monitor for seizure disorder or to administer oxygen.

[6] The health technician job description describes the position as assisting teachers or specialists in providing instruction and tutorial assistance to handicapped students in a special education learning environment and performing "specialized health care activities." Health care activities include administering medical assistance to medically fragile students under the supervision of a licensed nurse (e.g., tube feeding, catheterization, tracheotomy care, colostomy care, administering of oxygen, etc.). Other duties include assisting students with toileting, feeding, diapering, and transferring students who use lifts, walkers and wheelchairs.

Maupin met with Kelly-Parker during the layoff process. According to Maupin, Kelly-Parker asked Maupin to perform the same duties in the lower paid position, including riding on the bus with a medically fragile student. Kelly-Parker, on the other hand, denied she asked Maupin to continue performing the same duties for less pay.

Maupin was concerned with the work of the health technicians being reassigned to paraeducators. She asserted that in the year prior to the layoff, school nurses began reassigning toileting duties (but not catheterizations) to paraeducators and other duties not requiring a physician's order. Maupin also learned from a school nurse that the District was having difficulty finding someone to continue her role of monitoring the student on the bus and would ask the County Office of Education (COE) to cover that function. On the basis of such reports, Maupin came to question the justification for the layoffs.[7]

3. Reinstatement of Health Technicians

Kelly-Parker acknowledged there was sufficient health technician work to retain one employee during the 2002-2003 year but, in general, the work of the classification was absorbed by school nurses. The other health technician who was offered reassignment had LVN credentials and was ultimately restored to her original position in the Fall of 2002. She remained the only health technician employed until 2006. In that year, the District hired a number of health technicians as a result of a transfer of 194 severely handicapped students from the COE.

[7] According to a memorandum of protest written by Maupin and the other retained health technician, the District created the position a few years earlier in response to the objection to catheterization work by paraeducators. Maupin and her co-worker were willing to do this work, and so Kelly-Parker's predecessor (reluctantly) agreed to the new positions. Thereafter, the District hired the additional complement of health technicians, but there was insufficient work at the level at which the position was designed.

Michaeleen Prest (Prest) has been the District's lead school nurse since 2002 and a school nurse since 1986. Prest and Kelly-Parker agreed that health monitoring of students during transportation (either getting on or off buses or occasionally while on the bus) can be done by health technicians or paraeducators, depending on the level of need identified for the student. Prest could recall only one student in the District who required monitoring while on the bus but conceded there may have been others.

Prest explained that the District's overall need for health services has increased since 1986 due to the increased enrollment of medically fragile students. There are currently 400 to 500 such students in the District. Prest testified, though not specifically on the issue of use of the health technician position after the layoffs, that the need for catheterizations has increased over the years as well as, at least recently, the more complicated cases involving G-tube feedings, tracheal stomas, and permanent shunts. Additionally, the number of school sites increased from 20 to 33 in the past five years. Prest could not recall any decrease in the amount of health care work at the time of the layoffs.

4. Creation of LVN Position

In 2003, the District created the LVN position in response to difficulty recruiting school nurses (registered nurses) and because one special education student needed a higher level of service. The intention was for the LVNs to administer medications and perform physician-prescribed procedures under the supervision of a registered nurse. Prest stated that the District currently employs only one LVN.

5. Allocation of Duties After Layoff

The work performed by health technicians was transferred both to nurses and paraeducators following the layoffs in 2002. The invasive procedures and more sensitive medical services were transferred to school nurses or later handled by LVNs or the reinstated

health technician. Given the steadily increasing student population in need of services, a significant amount of personal assistance work (e.g., toileting, personal care, and transferring handicapped students) was transferred from health technicians to paraeducators.

**B. Use of Charter Buses**

District bus drivers are eligible for extra-duty work assignments in the form of field-trips, both during the school day and during non-school hours. The parties' 1997-2000 collective bargaining agreement (CBA) contains a section entitled "Special Trip Assignments (Transportation)." (Art. 12, § 12.2.) These provisions established a system that differentiated between "local trips" and "out-of-district trips" for distributing the extra-duty work to District drivers based on seniority. Driver lists were maintained for each type of trip, with priority in the rotation on the basis of seniority. Local trips were defined as being within the geographical limits of the District and two adjoining districts.

1. Field-Trip Policies

In 1998, the District governing board adopted Board Policy and Administrative Regulation (BP/AR) 3541.1 which read as follows:

> School buses shall be used to transport students to and from school, and for other school activities that have approval of the Governing Board and are permitted by law. Variation from this policy requires approval of each exception by the Board.
>
> In the Board's effort to maximize safety of students, the district shall provide transportation in school buses[8] or other district vehicles, as defined in Education Code 39830, for field trips and excursions in connection with instructional or school-related social, education, cultural, athletic or school band activities.

[8] Education Code section 39830 defines a "schoolbus" as a vehicle used for transporting 12th grade and younger students. The definition of a "schoolbus" does not include a "school pupil activity bus." Education Code section 39830.1 defines a school pupil activity bus as a motor vehicle, other than a schoolbus, operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned or operated transit system, or by a passenger charter-party carrier, used under a contractual agreement between a school and carrier to transport school pupils at or below the 12th grade level.

> School-related organizations requesting transportation shall be fully responsible for the costs of their trips unless funding has been approved by the Board.

In addition, BP/AR 3541.1(b) (Scheduling Procedure) of the 1998 policy provided:

> If it is determined that no district vehicles and/or drivers can be utilized, the following is required if services are provided by outside carriers:
>
> 1. School Pupil Activity Bus (SPAB) certification . . . for any driver transporting district students.
>
> 2. Proof of insurance . . .
>
> 3. The vehicle to be used will be available for inspection . . .
>
> 4. Carrier's driver shall adhere to all regulations of [SPAB] certification . . .

2. Modifications to Field-Trip Policies in 2000

The parties' 2000-2003 CBA (2000-2003 CBA) added a provision that prohibited District drivers from signing up for both the local and out-of-district lists simultaneously. The 2000-2003 CBA retained the local trip definition of district boundaries but added, by reference to BP/AR 3541, "all destinations within a 50 road-mile radius." An out-of-district trip was defined for the first time, also by reference to BP/AR 3541, as one beyond the boundaries of a local trip. The board policy was attached to the 2000-2003 CBA as an appendix for "informational purposes."[9]

Section 12.2.2 of the 2000-2003 CBA also contained the following language regarding trips outside the Coachella Valley:

[9] The attached policy included a 100-mile limit and thus the language of the contract was controlling.

School affiliated trips outside the Coachella Valley area or trips that require transporting of large equipment may also be considered out of district trips (for determination of appropriate vehicles to be utilized).

3. Prior Association Concerns Regarding the Reduction in Field-Trip Work

Albert Robinson (Robinson) has been a District bus driver for 14 years. He began serving on the Association's bargaining team beginning in 1999 or 2000, around the time the 2000-2003 CBA was negotiated. He has also been an Association job steward since approximately 2000. In the 2000-2001 school year, Robinson believed the number of out-of-town trip assignments was diminishing, particularly weekend trips, for District drivers including himself. Fannie Mae Horton (Horton), a special education bus driver for 18 years, corroborated with Robinson on this point. The drop in trips prompted the Association's first grievance concerning field-trips, which Robinson coordinated, to address the use of private charter buses. Robinson attempted without success to arrive at an accommodation with Associate Superintendent of Business Services Charlene Whitlinger (Whitlinger). The Association proposed limiting charters to graduation nights and championship athletic events. Robinson recalled Whitlinger stating that parents were in favor of more charter bus trips. Charter buses tend to be more luxurious with amenities such as air conditioning.

On February 15, 2002, Association Labor Relations Representative Tim Taggart (Taggart) sent an e-mail to Whitlinger asserting that the 2000-2003 CBA, by reference to the board policy, required that school buses be used for all field-trips unless an alternative mode was approved by the governing board. Association President Rosemary Mindiola (Mindiola) wrote a follow-up e-mail, adding her concurrence as to the intent of the board policy. The Association requested that a pending grievance be moved to mediation. There is no evidence the grievance was ever arbitrated.

4. The District's Revision of BP/AR 3541.1

In October 2002, the District proposed to revise BP/AR 3541.1 as set forth below.

> ~~School buses shall be used to transport students to and from school, and for other school activities that have approval of the Governing Board and are permitted by law. Variation from this policy requires approval of each exception by the Board.~~
>
> In the Board's effort to maximize safety of students, the district shall provide transportation ~~in~~ with school buses, school pupil activity bus (SPAB) certified carriers, or other appropriate district vehicles, as defined in Education Code 39830 for authorized field trips and excursions in connection with instructional or school-related social, ~~education~~ educational, cultural, athletic or school band activities. Variation from this policy requires approval of each exception by the Superintendent or designee.

The underlined language signified the proposed additions to the policy, and the strike-out language signified the proposed deletions. In addition, under BP/AR 3541.1(a) describing requirements for field-trips, the distance defining a local trip was changed from a 100 road-mile radius to a 50 road-mile radius. There were no material changes to the section describing the "scheduling procedure." According to Assistant Superintendent of Personnel Jon Gaffney (Gaffney), the purpose of the revision was to make the written policy consistent with actual practice, as well as the language of the Association contract.

On October 15, 2002, there was a first reading of the proposed revision to BP/AR 3541.1. A second reading, together with vote for approval, was calendared for the November 19, 2002, governing board meeting. In her capacity as Association President, Mindiola received a copy of the board agenda and noticed the proposed policy revision. Robinson also noticed the proposed change.

By e-mail dated November 18, 2002, Mindiola notified Whitlinger and Gaffney that the Association objected to implementation of the new board policy and demanded to negotiate

over the matter. Mindiola noted that the matter had been the subject of "several grievances." The governing board approved the revisions to BP/AR 3541.1 on November 19, 2002.

5. Use of Charter Buses

Robinson described the historical practice of the District regarding use of charter buses in relation to the policy revision. He indicated that at one time only District buses were used for out-of-town trips. The out-of-town list had about eight drivers. Prior to the policy revision, if the out-of-town list was exhausted, the District reverted to the local trip drivers' list. District buses had been able to accommodate band trips which had unusual equipment carriage requirements. Robinson noticed an increase in use of charter buses at Palm Desert High School over time.

Horton has done long trips in District buses in the past, up to 19 hours in duration. She also noticed that the number of charter buses used for field-trips increased over time, particularly for out-of-town trips, on the basis of which she believed she was losing trip opportunities. District bus driver Cynthia Tucker (Tucker), a 27-year driver, saw the number of charter buses increase gradually over the years.

District bus driver Mario Gutierrez (Gutierrez) testified that his own trip opportunities had increased, although he joined the District more recently than either Horton or Tucker.

The District's Director of Maintenance Operations and Transportation Terry Parker (Parker) testified that charter buses had been used for a number of years and that discretion to use a non-District bus had been vested in the transportation department manager. Parker was unaware of an instance in which the governing board acted to approve use of a charter bus. In addition, Parker testified that charter buses were permitted upon request when a parent booster club sponsoring the trip had raised funds for it.

Transportation Department Manager Blanca Cervantes (Cervantes) assumed her position beginning on an interim basis in 1999. She oversaw the procedure for assigning field-trip buses. Her office receives requests from the school sites. According to Cervantes, the requesting party is permitted to request either a District or charter bus. Cervantes did not claim that the District driver lists needed to be exhausted before resorting to charter buses. She did, however, acknowledge that the language of the board policy on "scheduling procedure" -- which provides that she or her designee is to "schedule the appropriate district vehicle" -- did set forth the requirement that District vehicles be exhausted before utilizing SPAB vehicles. Regardless of the exhaustion requirement, Cervantes testified that District drivers were rarely available for weekday trips because of their regular schedule driving duties.

Gaffney testified that charter buses had been used for many years, typically in cases of long trips, trips with equipment capacity issues, championship athletic events, and when District drivers were not available. As noted above, Gaffney believed that the language of section 12.2.2 referencing "appropriate vehicles," which was the same in both the 2000-2003 and 2003-2005 agreements, authorized the use of charter buses without regard to exhausting District buses.

**C. Behind-the-Wheel Training, Extra-Duty Compensation**

To operate District-owned school buses, District bus drivers must be licensed with a special certification provided by the California Highway Patrol (CHP). (See Ed. Code, §§ 40082, 40083, 40085, 40088; Veh. Code, §§ 545, 12517.) Once certified, drivers are required to renew their certificate every five years. The renewal consists of a written test and a hands-on driving test. Ten hours of classroom instruction are required in the year of renewal. In non-renewal years, 10 hours of classroom, behind-the-wheel, or in-service training are required. (Ed. Code, § 40085.) The District employs a driver trainer to provide behind-the-

wheel training time so as to ensure that the drivers can execute the skills required by the CHP. The trainer advises the drivers of what will be required for the recertification test. The District provides the bus for this training. A number of the drivers testified that when the behind-the-wheel training could not be completed during their regularly scheduled hours, they claimed the time on their timesheets as extra-duty time.

1. Compensation for Behind-the-Wheel Training

Robinson renewed his certificate in 1997. At that time, the 10 hours he spent for behind-the-wheel training was treated as extra-duty work and compensated as such. Robinson believes he designated the time as "driver's training" on his timesheet. Robinson understood other drivers were treated similarly for their behind-the-wheel training. Robinson could not recall using the phrase "behind-the-wheel" for this training time but, because the claims were never questioned, he assumed the District was aware of the practice of compensating such time. When Robinson renewed his certificate in 2002, he attempted to claim the same 10 hours. However, Cervantes returned Robinson's timesheet to him, advising him the hours would not be compensated.

Tucker and Gutierrez experienced the same change in practice with Cervantes and were denied compensation for their behind-the-wheel training time. Tucker testified that she denoted the extra-duty time as either "behind-the-wheel training" or "training" on her timesheet.

Horton last renewed her certificate in 2002. She received compensation for the behind-the-wheel training in each of her previous four renewals. She, too, claimed the behind-the-wheel time as extra-duty work on her timesheet. Since she normally drives a small bus transporting special needs students, Horton spent her behind-the-wheel time working on maneuvers in a long bus which is the type used in the test. Consistent with Robinson's

testimony, she testified that the District trainer explains what is needed to pass the test when the two get together to discuss the renewal process. Payment for the behind-the-wheel training has always been approved by her supervisor. Her 10 hours of classroom time was compensated time in 2002, in addition to the 10 hours of behind-the-wheel training. As to her claiming both the classroom time and the training time, Horton conceded she might not have clearly denominated the behind-the-wheel time in such a manner as to distinguish between the two. She stated, "I'd either put classroom or I'd just put training." Horton was due for renewal in 2007. In March 2007, Parker informed her that the District only paid for classroom time.

Bus Driver Joey Quintana (Quintana) spent time with the District trainer in a bus and was compensated for the time. He did not claim it as extra-duty time because he completed the training during his regular hours.

2. Bargaining Efforts

In June 2002, the parties were renegotiating the language of Article 14 ("Training and Tools"). Section 14.1 of the parties' 2000-2003 agreement provided that the District could "in its sole discretion, authorize or assign a bargaining unit employee or employees to attend in-service training," and that such attendance will be without loss of compensation. The Association proposed to include language requiring the District to provide the physical examination for the driver's license.

According to the contemporaneous bargaining notes taken by Gaffney on June 24, 2002, the District's bargaining chair prefaced the District's response to the proposal on physicals by asking Parker to describe the District's then-current practice. Parker responded that the District provided new hires with assistance "to get certified." For "ongoing" requirements, specifically the "SPAB certification," the District provided 10 hours of

classroom training as well as use of a District bus for licensing purposes. (See Ed. Code, § 39830.1; Veh. Code, § 546.) Parker added that the District did not pay for "time to brush up."

Taggart responded that the Association wanted to change the contract to reflect all "mandated hours" as opposed to the "ten hours." Mindiola asserted that the District was required to pay for the Class B special certification as well as the SPAB certification. A person with the initials "AR," not specifically identified by Gaffney (but probably Robinson), then asserted that the District had been paying for behind-the-wheel training "plus 10 hours – driver training on time sheet – working [with the] driver trainer." "AR" notes that different CHP examiners "want different things." Whitlinger responded that she would verify if this was a uniform practice in the District. The remaining exchanges indicate that the Association wanted to make the practice explicit and uniform, while the District was interested in agreeing only to what was required for the job.

3. The District's Practice Regarding Compensation for Behind-the-Wheel Training

Robinson confirmed that the practice of paying for behind-the-wheel training time was discussed in the 2002 negotiations. He recalled that a soft agreement to grant four hours for such time was reached, but the District withdrew from that, asserting that the Association had not sunshined the matter. The District claimed that since the law did not require District coverage for behind-the-wheel training, it was not interested in providing compensation for it through the agreement.

Parker confirmed this, testifying that the Education Code only requires 10 hours of classroom time for renewals. He claimed the District's policy was not to compensate for behind-the-wheel time. If drivers had been paid for behind-the-wheel time in the past, it was not the result of any conscious decision to do so. Parker also asserted that the timesheets were

reviewed during the negotiations, and they failed to demonstrate that the time was clearly designated as behind-the-wheel time.[10]

Cervantes' testimony, however, was not entirely consistent with Parker. Cervantes, a former driver herself, signed the timesheets. She agreed that behind-the-wheel training was compensated at the time of initial application and denied that she received compensation for subsequent renewals. In addition, she acknowledged that if the CHP trainer directed the training for renewal purposes, such time would be compensated.

Cervantes testified that she was unaware whether the department had a practice of compensating the training time prior to her assuming the position of manager. However, when she became the manager, it was her policy to compensate classroom time only. She also testified that when the matter came to her attention, she consulted with Parker. Parker asked what training was required, and she answered only classroom training.

**D. Bus Mechanic Duties**

Danny Pizan (Pizan) held the position of lead vehicle equipment mechanic in the transportation department until approximately 2001. His duties included reviewing the bus drivers' daily reports and assessing their notations of mechanical failures. From these reports -- which amount to approximately 60 per day -- and his own diagnoses of the problem, Pizan would determine the mechanic to whom the work should be assigned. Pizan would prioritize the repairs and prepare work orders for the mechanics. He would then assign the work orders to mechanics based on their level and/or area of expertise. The mechanics would perform the repairs and complete the paperwork to document the repairs made and parts installed.

[10] The timesheets themselves, however, were not admitted into evidence.

In 2001, Pizan was demoted to regular mechanic and the duties of reviewing and assessing mechanical failures and assigning repair work were taken over by an incoming transportation fleet supervisor.[11] In October 2003, the transportation fleet supervisor left the District.

On October 14, 2003, a meeting of the mechanics was convened. Both Parker and Cervates were present at the meeting. The mechanics were informed that the fleet supervisor position would not be filled, and those duties would be reassigned to the mechanics as a group. The work was redistributed by assigning each mechanic responsibility for the maintenance and repair of a group of the District's 65 vehicles.

Currently, approximately 11 to 12 buses are assigned to each mechanic. Each mechanic is required to maintain the maintenance logs for their buses. The log documents the maintenance history of the bus required by the CHP for the recurring certification of the bus, and records the dates and mileages at points when the inspections and servicings occur. The CHP requires inspection and servicing at mileage intervals or time intervals, whichever occur first. A bus that fails to have timely inspection or servicing must be removed from service. Criminal sanctions may result from CHP inspections of the vehicle logs. The mechanics are responsible for monitoring the logs so as to keep maintenance current and the vehicle in service at all times. Also, the ordering of parts which had typically been handled by the fleet supervisor was now the responsibility of each mechanic.

As an aid to the mechanics, Cervantes began preparing and distributing a "cheat sheet," listing the buses with their respective last-service dates, next-service dates, and mileage counts.

[11] The job description of the fleet supervisor position identifies the functions of long-term and short-term planning, preparing documentation, supervising personnel for the purpose of ensuring efficient operation of the department, and overseeing fleet maintenance.

Cervantes testified that she was harshly criticized by a CHP inspector for not having a system, whereby the driver bus reports were reviewed on a daily basis.

## DISCUSSION

In its appeal, the District challenges the ALJ's findings that the District unilaterally changed policies within the scope of representation in violation of EERA when it: (1) transferred work from the special education health technician positions to other classifications; (2) denied field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; (3) denied bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals; and (4) assigned the duties of the former fleet supervisor to bus mechanics.

The four findings appealed by the District involve alleged unlawful unilateral changes in policies within the scope of representation. In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer breached or altered the parties' written agreement or past practice; (2) the action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the action is not merely an isolated incident, but amounts to a change of policy (i.e., having a generalized effect or continuing impact on terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Walnut Valley Unified School District* (1981) PERB Decision No. 160; *Grant Joint Union High School District* (1982) PERB Decision No. 196; *San Francisco Unified School District* (2009) PERB Decision No. 2057.)

## A. Health Technician Work

In general, a transfer of work from employees in one bargaining unit to employees in another is negotiable. (*Rialto Unified School District* (1982) PERB Decision No. 209 (*Rialto*); *Solano County Community College District* (1982) PERB Decision No. 219.) In addition, under *Desert Sands Unified School District* (2001) PERB Decision No. 1468, the transfer of work from one classification to another within the same bargaining unit is also negotiable. (See also *Desert Sands Unified School District* (2004) PERB Decision No. 1682 (*Desert Sands II*).)

Notwithstanding the general rule, not all transfers of work are negotiable. In *Eureka City School District* (1985) PERB Decision No. 481 (*Eureka*), the Board set forth precedent for analyzing the negotiability of transfers of work. The Board held that where unit and non-unit employees perform overlapping duties, "an employer does not violate its duty to negotiate in good faith merely by increasing the quantity of work which non-unit employees perform and decreasing the quantity of work which unit employees perform." (*Eureka.*)

Based on our review of the record, we find the health technician classification shared duties with both the nurse classification and the paraeducator classifications. Not surprisingly, the duties of the health technician were split following the layoff, with some duties transferred to positions within the bargaining unit and other duties to positions outside the bargaining unit. Specifically, there was a transfer of toileting and other personal assistance duties from the health technicians to the paraeducators, and a transfer of catheterizations and other invasive procedures to school nurses outside the bargaining unit (and in 2003 to the LVNs within the unit). Under *Desert Sands II* and *Rialto*, those transfers were negotiable unless the *Eureka* exception applies.

The District argues that, pursuant to *Eureka*, it was not obligated to negotiate a transfer of work because the health technician position had overlapping duties with the other classifications. The test set forth in *Eureka*, however, does not apply where, as a result of the transfer: (1) unit employees cease performing duties that they previously performed, or (2) non-unit employees begin to perform duties that were previously exclusively performed by unit employees. (*Eureka*; *Calistoga Joint Unified School District* (1989) PERB Decision No. 744.) Since we agree that the health technician classification shared duties with both the nurse and the paraeducator classifications, the critical issue in this case is whether the health technician duties "ceased" to be performed by health technicians.

As stated above, the District laid off all eight of its health technicians. In so doing, the health technician duties "ceased" to be performed by health technicians. Accordingly, *Eureka* does not apply in this case. Therefore, the District breached its duty to bargain by failing to negotiate the transfer of work.

In reaching this conclusion, we acknowledge that there was sufficient health technician work to reinstate one employee during the 2002-2003 school year as a special education health technician following the layoff. However, the Board has held that a later reversal or rescission of a unilateral action or subsequent negotiation on the subject of a unilateral action does not excuse a violation. (*County of Sacramento* (2008) PERB Decision No. 1943-M; *Amador Valley Joint Union High School District* (1978) PERB Decision No. 74.) Thus, the subsequent reinstatement of a health technician did not cure the District's breach of the duty to bargain or otherwise revive the applicability of the *Eureka* exception in this case.

Based on the foregoing, we find the District violated EERA section 3543.5(c) when it unilaterally transferred work from the special education health technician classification without first affording the Association adequate notice or an opportunity to bargain over the change.

## B. Use of Charter Buses

The Association contends that the District's November 2002 revision of BP/AR 3541.1, without bargaining and over the union's objection, constituted a unilateral change in policy which extended its use of charter buses for field-trips. The District counters that the policy revision changed nothing and simply conformed the written policy to the language of the 2000-2003 agreement and existing practice.

### 1. Policy Regarding Use of Charter Buses Prior to 2002

At the time of the 2000 contract amendment, BP/AR 3541.1 expressed the general rule that District school buses as defined by reference to Education Code section 39830 would be used for transporting students. That general rule, however, was not absolute. Under BP/AR 3541.1, the use of charter buses was permitted if it was determined that no District vehicles and/or drivers could be used.

According to Gaffney, Section 12.2.2 of the 2000-2003 CBA authorized, for the first time, the use of charter buses when it was determined such would be the "appropriate" vehicle under the language of Section 12.2.2. The District, however, offered no bargaining history to corroborate this interpretation of the language so as to permit charter buses without regard to the governing board policy exceptions. We disagree.

We find that Section 12.2 of the 2000-2003 CBA governs the assignment of bus drivers for either local trips or out-of-district trips. When read in conjunction with BP/AR 3541.1, it is clear that the determination of the "appropriate" vehicle under Section 12.2.2. is first made by reference to the District's buses and drivers. Said another way, under Section 12.2.2, the District, in response to a request for transportation, first determines which District vehicle is appropriate for the trip. In the event that there is either no available District driver or no

available District bus that can accommodate the transportation needs for the trip, the District may then consider the use of a charter bus.[12]

In our view, the fundamental problem with the District's interpretation of Section 12.2.2 is that it ignores the requirement that District buses and drivers be used unless none were available. Clearly, the board policy contemplated exhausting District vehicles before considering charter buses. Therefore, we find the use of a charter bus when an appropriate District bus and driver was available would constitute a variation of BP/AR 3541.1 and require Board approval.

2. 2002 Changes To BP/AR 3541.1

As indicated above, the District, in November 2002, adopted the following revision to BP/AR 3541.1:

> ~~School buses shall be used to transport students to and from school, and for other school activities that have approval of the Governing Board and are permitted by law. Variation from this policy requires approval of each exception by the Board.~~
>
> In the Board's effort to maximize safety of students, the district shall provide transportation ~~in~~ with school buses, school pupil activity bus (SPAB) certified carriers, or other appropriate district vehicles, as defined in Education Code 39830 for authorized field trips and excursions in connection with instructional or school-related social, ~~education~~ educational, cultural, athletic or school band activities. Variation from this policy requires approval of each exception by the Superintendent or designee.

Clearly, this amendment constitutes a significant departure from the pre-2002 policy regarding the District's use of buses. First, the deletion of the initial paragraph eliminated both the general rule requiring the exhaustion of appropriate District vehicles and/or drivers prior to

[12] The parties dispute whether the District's buses were equally capable of accommodating large equipment loads. Notwithstanding this dispute, we find that the District retained the discretion under the pre-2002 policy to consider whether the District's buses had sufficient capacity for purposes of determining whether a District bus was "available."

the use of charter buses, and the rule requiring governing-board-approval of exceptions to the policy. Next, in the second paragraph, the District added non-District-owned vehicles ("school pupil activity bus (SPAB) certified carriers") to the list of "appropriate district vehicles" for the purposes of field trip-vehicle assignments and also authorized the superintendent (as opposed to the governing board) to approve exceptions to the policy.

The District claims that the amendment simply conformed the written policy to the language of the 2000-2003 agreement and existing practice. However, these language changes were clearly more than mere clean-up language. Accordingly, we find the amendment constituted a change in policy regarding the District's assignment of buses for field-trips.

3. The Change In Policy Impacted A Matter Within The Scope Of Representation

EERA section 3543.2 imposes a duty upon public school employers to meet and confer with exclusive representatives on matters within the scope of representation. EERA section 3543.2 provides that the scope of representation is limited to matters relating to wages, hours of employment, and other terms and conditions of employment.

In the instant case, the change in policy permitted the District to assign charter buses without first considering the availability of District buses and drivers. As a result, the District may have booked charter buses even if District buses and drivers were available. In so doing, District drivers would have been deprived of work contemplated by both pre-2002 board policy and the parties' 2000-2003 CBA. This reduction in work opportunities clearly constitutes a reduction in wages and is, therefore, a matter within the scope of representation.

4. The Association Did Not Waive Its Right To Bargain The Change In Policy

The District argues that the Association acquiesced in the practice of using charter buses on a regular basis because it had become an existing practice known to the Association. Acquiescence, however, involves the issue of waiver of the right to bargain through inaction,

assuming notice of a change in practice has been given. (See *Santee Elementary School District* (2006) PERB Decision No. 1822 [adequate notice through proposed change to board policy]; see also *Diablo Water District* (2003) PERB Decision No.1545-M.) Bargaining waivers of any sort are not lightly inferred. (*Amador Valley Joint Union High School District* (1978) PERB Decision No. 74.)

Though it is true that Association representatives noticed the increased level of charter bus use, the existing policy allowed for deviation from the District vehicle-first policy where the governing board had granted an exception or where no District buses and/or drivers were available. The Association had no duty to ascertain whether these exceptions were legitimately invoked; and the District offers no theory for constructive notice, establishing on this basis that the Association would have known these restrictions were being ignored pursuant to policy. Although the filed grievances demanded adherence to the prior practice, and the Association offered to reach an accommodation expanding the exceptions to graduation events and championship athletic events on a regular basis, the Association never acquiesced in the practice of using charter buses under the District's expanded list of exceptions.

5. The District Breached Its Duty To Bargain

The adoption of the revision to BP/AR 3541.1 in 2002 constituted a change in policy concerning a matter within the scope of representation. Moreover, because the District adopted the revision over the Association's protest, the District clearly failed to afford the Association sufficient notice and opportunity to bargain the change. Accordingly, we find the District violated EERA section 3543.5(c) when it amended BP/AR 3541.1 in November of 2002.

## C. Behind-the-Wheel Training, Extra-Duty Compensation

The Association contends that the District unlawfully changed a policy when it stopped paying for behind-the-wheel training time. The District, on the other hand, argues there is neither a contractual obligation nor a binding past practice that obligated it to pay for behind-the-wheel training.

Based on our review of the 2000-2003 CBA, we find there was no contractual obligation requiring the District to pay for behind-the-wheel training. Therefore, the issue to be resolved in connection with this charge is whether the District had an unwritten past practice of compensating bus drivers for such training. For a past practice to be binding, it must be: (1) unequivocal; (2) clearly enunciated and acted upon; and (3) readily ascertainable over a reasonable period of time as a fixed and established practice accepted by both parties. (*Riverside Sheriff's Assn. v. County of Riverside* (2003) 106 Cal.App.4th 1285, 1291.) PERB has also described an enforceable past practice as one that is "regular and consistent" or "historic and accepted." (*Hacienda La Puente Unified School District* (1997) PERB Decision No. 1186, adopting proposed dec. of the ALJ, at p. 13.)

### 1. The Association Established a Past Practice

Although the District contends that there was, at best, an inconsistent or unauthorized practice of paying for behind-the-wheel training, it failed to rebut the Association's witnesses who consistently testified that they were compensated for the 10 hours of training, in addition to the 10 hours of classroom instruction required for the license renewal examination. The District cites testimony of Gutierrez, Horton, and Robinson that Cervantes informed the drivers that it did not pay for the behind-the-wheel time. But this testimony relates to Cervantes' enforcement of the new policy of denying payment for such time. The District also contends that the training claims could have been overlooked or misconstrued as claims for classroom

time. However, since these claims would have been for 10 hours of compensation in addition to 10 hours of classroom time, we reject the District's assertion.

We find that the District had a history of compensating the drivers for the behind-the-wheel training. Consistent with the language of the contract, Cervantes agreed minimally that, if directed by the trainer to put in behind-the-wheel training time, the hours were compensated. The drivers themselves, as opposed to Parker, were the more percipient witnesses on this point, and they consistently testified that the claims were approved without exception until shortly after the matter was brought to the District's attention in the 2002 negotiations. We, therefore, conclude that the District compensated drivers for both 10 hours of behind-the-wheel time in addition to 10 hours of classroom time.

Common sense also favors the Association's claims. Horton noted that the practice driving that takes place is training prescribed by the District trainer. Because the District both employs a CHP trainer and provides a bus for training purposes, it would have been aware of cases when the bus was being used for such purposes and whether the trainer had instructed employees that they needed particular training to pass the test, as opposed to the driver seeking training on his/her own volition. There was no evidence presented by the District that drivers engaged in unsupervised, purely voluntary, behind-the-wheel training. Finally, since some drivers like Quintana completed the training during their regular work schedule, those hours would have been treated as compensable. It is not plausible that the District was unaware of its own practice.

The evidence here clearly establishes that the compensation practice was "fixed and established," "regular," "consistent," and "historic." It was "accepted" by the District and, thus, "acted upon." The practice was not varied, vague, ambiguous, or inconsistent. By virtue of it having been a regular and historic practice in this sense, it was "clearly enunciated."

The District argues that the practice of only compensating for mandatory training hours was consistent with the contract language on training assignments. Section 14.1 gives the District the right to "authorize or assign" employees to attend training but also states that such time will be without loss of compensation. This simply begs the question whether training was "authorized" or "assigned." Section 12.3.4, cited by the District, addresses payment for mandatory training and in-service meetings but simply disavows any duty to compensate training for which attendance is voluntary. As explained above, the evidence establishes that behind-the-wheel training was accomplished with the knowledge of the District's trainer and was not "voluntary."

2. The Association's Claim Was Timely Filed

The District contends that the charge was untimely because Parker informed the Association during the negotiations in June 2002 of his understanding that the District's policy was not to pay for behind-the-wheel training.

EERA section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177.) A charging party must file a charge when it has actual or constructive notice of the respondent's clear intent to implement a unilateral change in policy. (*Regents of the University of California* (1990) PERB Decision No. 826.) Thus, a charging party that rests on its rights until actual implementation of the change bears the risk of running afoul of the statute of limitations. (*South Placer Fire Protection District* (2008) PERB Decision No. 1944-M.)

The issue regarding this charge is whether Parker's statements during negotiations constituted notice of a clear intent to change policy. Here, Parker's discussion at the table elicited Whitlinger's promise to verify Parker's description of the policy, but there is no evidence to suggest she actually reported her findings to the Association. Moreover, Parker testified that there was a review of timesheets; however, like the policy validation, there is no claim these findings were reported to the Association. In addition, Cervantes noted that Parker asked her what was required for license renewals, suggesting he was less than sure of policy himself. We, therefore, find Parker's statements during negotiations did not constitute notice of a clear intent to change policy.

The evidence establishes that the drivers were paid for the time through 2002, and that the policy changed sometime after the negotiations had occurred but no earlier than August 26, 2002. We, therefore, find the charge timely filed.

**D. Bus Mechanic Duties**

The Association contends that there was a change in the policy as to how work was assigned to bus mechanics, that the change was implemented over its objection, and that the change impacted the employees' hours of work. The District, on the other hand, contends that the only change imposed upon the mechanics was the method of assigning job duties. According to the District, the duties themselves did not change because mechanics have always been expected to diagnose mechanical problems. Moreover, since the assignment of duties contemplated by a job description is a managerial prerogative, the District claims the change is not negotiable.

The Board has generally recognized that the direction of the work force and the determination of the work to be performed by employees is a managerial prerogative and not subject to bargaining. (*Davis Joint Unified School District* (1984) PERB Decision No. 393

(*Davis*).) Consequently, it has been long held that the assignment of duties reasonably comprehended within an existing job description is not an unfair labor practice, even if such duties have never been performed. (*Rio Hondo Community College District* (1982) PERB Decision No. 279.) Managerial prerogative, however, is not unlimited. The employer's discretion to unilaterally assign tasks applies only to those tasks that are reasonably understood to be among the duties of the classification as established in the job description. (*Davis*.) Moreover, if an employer's decision regarding the management of its services and utilization of its staff has an impact on the amount of work performed by represented employees, that decision falls within the scope of representation and is subject to bargaining. (*Ibid.*)

In the instant case, the District assigned each mechanic a "fleet" of buses to maintain and repair. In so doing, the District changed the manner in which the duties of the bus mechanics were assigned. As a result, the mechanics likely took a more active role in reviewing daily bus reports, diagnosing and prioritizing bus repairs, writing up work orders, and ordering the parts for their assigned buses. The record suggests that the mechanics performed some of these duties prior to the change. However, assuming arguendo, these additional duties were new, they were clearly contemplated by the mechanics' job descriptions and, therefore, not within the scope of representation.

The Association, on the other hand, claims that the change was negotiable because it imposed additional work on the mechanics and impacted the nature of how they went about performing their duties. We find, and the parties do not dispute, that the mechanics worked a considerable amount of overtime. Thus, the question in this case is whether the change in the method of assigning the duties to the bus mechanics contributed to this overtime.

Where, as here, it is claimed that a non-negotiable decision has an effect on work hours, the Board has held that the charging party bears the burden of alleging facts establishing an

actual impact on employees' work hours. (*Salinas Union High School District* (2004) PERB Decision No. 1639.) The impact must be "reasonably certain to occur and causally related to the nonnegotiable decision." (*Fremont Union High School District* (1987) PERB Decision No. 651.) PERB will not find an unlawful unilateral change when the alleged effect on terms and conditions of employment is "indirect and speculative." (*Lake Elsinore School District* (1987) PERB Decision No. 646.)

In the instant case, the parties acknowledge that due to a shortage of bus drivers, mechanics who are qualified to drive school buses have been assigned by the District to drive bus routes several hours per week. Pizan testified that he was driving buses two and a half to three hours per day. Mechanic Kurt Jandt (Jandt) testified that he was driving afternoons as well as some mornings. Jandt also testified that the number of hours he spends driving has increased. Office Specialist Lora Lee (Lee) confirmed that the mechanics were working more hours because their driving duties were increasing. According to Lee, the mechanics' overtime would be minimal if they were not assigned driving duties.

Based on the foregoing, we find that the mechanics' overtime was primarily due to a shortage of bus drivers. With regard to the change in the method of assigning duties, we find the evidence is, at best, indirect and speculative that the change actually increased the amount of work performed by the mechanics and, therefore, is insufficient to support a finding of a unilateral change. Accordingly, we find that the District did not violate its duty to bargain when it assigned individual buses to the mechanics.

## REMEDY

EERA section 3541.5(c) provides PERB with:

> the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement

> of employees with or without back pay, as will effectuate the policies of this chapter.

In this case, it has been determined that the District unilaterally changed policies by: (1) transferring work from the health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; and (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals. The traditional remedy in such cases is to order the District to rescind its changed policies and cease making unilateral changes in negotiable matters from that point forward. Thus, it is appropriate to order the District to rescind its decisions to implement said policy changes.

In addition, it is appropriate to order that the District be ordered to make all employees affected by its unlawful actions whole. All such retroactive awards shall include interest at the legal rate of seven (7) percent per annum. (*Calexico Unified School District* (1983) PERB Decision No. 357.) This affirmative action is necessary to effectuate the purposes of EERA, which imposes a duty on the public school employer to meet and negotiate in good faith and refrain from taking unilateral action on matters within the scope of representation. (*California State Employees' Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 946.)

With regard to the make whole remedy for the loss of field-trip work, we find the District's conduct likely resulted in a reduction of work for the bus drivers. The record, however, does not contain sufficient evidence to establish actual lost wages by the impacted employees. The Board encountered a similar situation in *Rialto*, wherein the Board determined that the employer violated its duty to bargain when it unilaterally transferred work out of a bargaining unit without first negotiating the transfer with the union. With regard to the remedy, the Board in *Rialto* explained:

> Although there was no evidence presented at the hearing proving that any certificated employees suffered loss of wages, we note that the Association requested PERB to reopen the record to take new evidence regarding adverse impact of the unilateral action on unit employees. Such evidence may be appropriately presented at a compliance proceeding, if the Association wishes to prove that the District's unilateral action resulted in loss of compensation to unit employees.

Thereafter, the Board ordered the employer to make impacted employees whole for lost compensation due to the unlawful transfer of work.

As indicated above, the record in the instant case fails to establish actual lost wages by the impacted drivers. Notwithstanding this deficiency, we find the employees should not be deprived of a remedy. Accordingly, it is appropriate for the Board to order the District to compensate impacted drivers for actual wages lost as proven by the Association during compliance proceedings.[13] However, given the complexity of establishing such damages, the Board will stay its order for 60 days from the date of this decision to afford the parties an opportunity to negotiate over a mutually acceptable remedy.[14] In the event the parties do not reach such an agreement within 60 calendar days from the date of this decision, the District

[13] It should be noted that the mere fact that a charter bus was used on any given trip is insufficient, standing alone, to establish damages in this case. Rather, in order to prove actual damages, it must be demonstrated that a charter bus was used, despite the fact that both a District driver and an appropriate District-owned bus was available. Therefore, evidence of the unavailability of either drivers or vehicles is relevant to the calculation of damages. For instance, the record contains evidence that, due to a shortage of drivers, the District rarely had drivers available for field trips immediately before or after school because the drivers were performing their normal bus routes and were, therefore, not otherwise available for field trip assignments. In addition, the record contains evidence that certain District buses were either unavailable due to repair/maintenance issues or not appropriate due to a lack of storage capacity to accommodate certain trips. Because they go directly to the issue of bus and/or driver availability, we find these facts (and any other facts regarding unavailability) relevant to the computation of damages in this case.

[14] Sixty days should be sufficient to complete negotiations. If, however, additional time is required by the parties, the stay may be extended by the Office of the General Counsel upon a showing of good cause.

shall immediately notify the General Counsel of the Public Employment Relations Board, or the General Counsel's designee, so that compliance proceedings may be initiated.

It is also appropriate that the District be required to post a notice incorporating the terms of this order. The notice should be signed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting of such notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity and will comply with the 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* (1980) PERB Decision No. 116.)

## CONCLUSION

We find the District violated EERA section 3543.5(c) when it unilaterally transferred work from the health technician classification without first affording the Association adequate notice or an opportunity to bargain over the change. We further find the District violated Section 3543.5(c) when it amended BP/AR 3541.1, changing the manner in which field-trip buses were assigned. In addition, we find the District violated EERA section 3543.5(c) when it unilaterally stopped paying bus drivers for behind-the-wheel training. Last, we find that the District did not violate its duty to bargain when it assigned the mechanics individual buses to maintain and repair.

## ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Educational Employment Relations Act (EERA) section 3541.5(b), it is hereby ordered that the Desert Sands Unified School District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

Unilaterally changing policies by: (1) transferring work from the special education health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; and (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals.

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

1. Rescind the policies of: (1) transferring work from the special education health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; and (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license certificate renewals.

2. Restore bargaining unit employees to their status prior to the unilateral changes and restore them and make them whole for lost benefits, monetary and otherwise, plus interest at the rate of seven (7) percent per annum. With regard to the make whole remedy for the loss of field-trip work, this order shall be stayed for 60 days to provide the parties an opportunity to meet and negotiate over a mutually acceptable remedy. If, however, the parties are unable to reach an agreement within 60 days, this order shall take effect. In such a case,

the District shall immediately notify the General Counsel of the Public Employment Relations Board, or the General Counsel's designee, so that compliance proceedings may be initiated.

3. Within ten (10) workdays of service of a final decision in this matter, post at all locations where notices to employees are customarily posted, copies of the Notice attached hereto as an appendix. The Notice must be signed by an authorized agent for 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 calendar days. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered by any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The District shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Association.

Acting Chair Dowdin Calvillo and Member Neuwald joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-4491, *California School Employees Association and its Chapter 106 v. Desert Sands Unified School District*, in which the parties had the right to participate, it has been found that the Desert Sands Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540, et seq., when it unilaterally changed policies by: (1) transferring work from the special education health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; and (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals.

As a result of this conduct, the District has been ordered to post this Notice and will:

A. CEASE AND DESIST FROM:

Unilaterally changing policies by: (1) transferring work from the special education health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; and (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals.

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

1. Rescind the policies of: (1) transferring work from the special education health technician positions to other classifications; (2) denying field-trip work to bus drivers by employing charter buses without regard to the limitations previously in force; and (3) denying bus drivers extra-duty compensation for behind-the-wheel training needed for license renewals.

2. Restore bargaining unit employees to their status prior to the unilateral changes and restore them and make them whole for lost benefits, monetary and otherwise, plus interest at the rate of seven (7) percent per annum. With regard to the make whole remedy for the loss of field-trip work, this order shall be stayed for 60 days to provide the parties an opportunity to meet and negotiate over a mutually acceptable remedy. If, however, the parties

cannot reach an agreement within 60 days, this order shall take effect. In such a case, the District shall immediately notify the General Counsel of the Public Employment Relations Board, or the General Counsel's designee so that compliance proceedings may be initiated.

Dated: _____ DESERT SANDS UNIFIED 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 WITH ANY OTHER MATERIAL.