

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



DELANO UNION ELEMENTARY TEACHERS)
ASSOCIATION, CTA/NEA,)
)
Charging Party,) Case No. LA-CE-1062
)
v.) Request for Reconsideration
) PERB Decision No. 213
DELANO UNION ELEMENTARY SCHOOL)
DISTRICT,) PERB Decision No. 213a
)
Respondent.) October 15, 1982
)

Appearances: Charles R. Gustafson, Attorney (California Teachers Association) for the Delano Union Elementary Teachers Association, CTA/NEA; Carl B. A. Lang III, Labor Relations Director (Schools Legal Service) for the Delano Union Elementary School District.

Before Gluck, Chairperson; Jaeger and Morgenstern, Members.

REQUEST FOR RECONSIDERATION

JAEGER, Member: Following the issuance of the Public Employment Relations Board's (PERB or Board) decision in Delano Union Elementary School District (4/30/82) PERB Decision No. 213, the Board received a request for reconsideration from the Delano Union Elementary School District (District). That request was made pursuant to California Administrative Code, title 8, section 32410(a) which provides:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision with the Board itself within 10 days following the date of service of the decision. The request for reconsideration shall be filed with the Executive Assistant to the Board and shall state with specificity the grounds claimed and, where applicable, shall specify the page of the

record relied on. Service and proof of service of the request pursuant to Section 31240 are required.

In Bassett Unified School District (3/23/79) PERB Order No. Ad-62, this provision was interpreted to permit reconsideration when the Board finds that substantial errors of law or fact are demonstrated.

DECISION

The request for reconsideration is granted. This reconsideration is based on the Board's view that a more appropriate remedy is required. It is not based on the District's assertion of a purported inconsistency concerning determining the representation status of certain employees.¹

We found that the unfair practice committed by the District was its unilateral change in the established pay, hours and term length of District resource teachers. This unilateral change occurred the day after PERB's Los Angeles regional director issued a unit modification certificate bringing these employees into the unit. However, the District did subsequently agree to negotiate these issues and the Board

¹The Board found that the hearing officer's conclusion that the subject employee was not management was supported by the District's own admission of nonmanagerial status. This admission appeared in its agreement with the Delano Union Elementary Teachers Association, CTA/NEA, as well. The Board also found this employee was not managerial because the District failed to meet its burden of proving managerial status. Thus, while the agreement itself is not binding on the Board, it is evidence of the District's own understanding of the employee's status.

takes official notice of the fact that the parties reached agreement concerning these matters. The agreement is embodied in the 1980-81 collective bargaining contract.

On reconsideration, the Board agrees that, based on the facts of this case, it would be punitive to require the District to pay the affected employees for hours not worked or to reinstate longer working hours absent evidence that those extra hours are required. Therefore, the Board amends its Order of April 30, 1982, to require the employer to compensate the District resource teachers for the period commencing on September 27, 1979, and ending July 1, 1980, the effective date of the negotiated agreement, for extra hours worked, if any, at the same rate of pay they received before September 27, 1979, for such hours.

ORDER

The Order in PERB Decision No. 213 (4/30/82) is AMENDED to read as follows: Paragraph B., subsection 2, 3, and 4 are replaced with the following:

2. Compensate the District resource teachers for the period commencing on September 27, 1979, and ending July 1, 1980, the effective date of the negotiated agreement, for extra hours worked, if any, at the same rate of pay they received before September 27, 1979, for such hours.

The District will be required to post the amended Notice to Employees pursuant to the terms prescribed in the original Order.

Chairperson Gluck and Member Morgenstern concurred.

APPENDIX A

NOTICE TO ALL 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-1062, Delano Union Elementary Teachers Association, CTA/NEA v. Delano Union Elementary School District, in which all parties had the right to participate, it has been found that the Delano Union Elementary School District violated the Educational Employment Relations Act, Government Code subsections 3543.5(a), (b) and (c).

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

WE WILL CEASE AND DESIST FROM:

1. Imposing reprisals on Raymond Barney by retaining or otherwise giving any force or effect to the letter of reprimand dated October 2, 1979, which was placed in the personnel file of Mr. Barney by District Superintendent David Yetter, in violation of Government Code subsections 3543.5(a) and (b).
2. Unilaterally affecting the wages, hours and length of the working year of District resource teachers by giving any force or effect to the September 17, 1979, resolution of the District board of trustees which placed District resource teachers on the same salary schedule with other teachers and shortened the workday and workyear of the District resource teachers, in violation of Government Code subsections 3543.5(a), (b), and (c).

WE WILL TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. Remove the October 2, 1979, letter of reprimand from the personnel file of Raymond Barney and destroy it and all copies which exist in District personnel records.
2. Compensate the District resource teachers for the period commencing on September 27, 1979, and ending July 1, 1980, the effective date of the negotiated agreement for extra hours worked, if any, at the same rate of pay they received before September 27, 1979, for such hours.

3. Within thirty (30) consecutive workdays from the service of the Decision herein notify the Los Angeles regional director of the Public Employment Relations Board in writing of what steps the employer has taken to comply with the terms of this Decision. All reports to the regional director shall be served concurrently on the charging party herein.

Dated _____

DELANO UNION ELEMENTARY SCHOOL DISTRICT

By: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR 30 WORKING DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, REDUCED IN SIZE, DEFACED OR COVERED WITH ANY OTHER MATERIAL.