STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

OAKLAND SCHOOL EMPLOYEES ASSOCIATION, Charging Party, v. OAKLAND UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. SF-CE-469 PERB Decision No. 367 December 16, 1983

Appearances; Andrew Thomas Sinclair, Attorney for Oakland School Employees Association; Sharon D. Banks and Brian M. Libow, Attorneys for Oakland Unified School District.

Before Gluck, Chairperson; Tovar and Morgenstern, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both the Oakland School Employees Association (OSEA or Association) and the Oakland Unified School District (District) to the proposed decision of an administrative law judge (ALJ). Generally, OSEA excepts to the dismissal of its charges alleging that the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act)[1] by contracting out white collar bargaining unit work

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

to temporary employees and by assigning overtime security watch work to employees in another bargaining unit. The District excepts to the ALJ's findings that it violated these subsections of EERA by unilaterally standardizing the hours of paraprofessional employees and by unilaterally adopting a three-year school calendar.

The Board has reviewed the ALJ's proposed decision in light of the parties' exceptions and the entire record in this matter. For the reasons discussed herein, we affirm in part and reverse in part the ALJ's proposed decision.

FACTS

The District employs approximately 7,200 persons organized into 12 bargaining units. OSEA is the exclusive representative of two bargaining units of classified employees, white collar and paraprofessional, each of which consists of approximately 1,000 employees.

At all times relevant to this case, OSEA and the District were parties to collective bargaining agreements for each of these units. The white collar agreement was effective April 4, 1979 to June 30, 1981. The paraprofessional agreement was effective December 12, 1979 to June 30, 1981. Both agreements provide for reopeners in 1980-81 on wages, health and welfare benefits and school district annuity contributions. Both provide for advisory arbitration of grievances.

During the spring and summer of 1980, the parties engaged in three sets of negotiations. In April 1980, negotiations commenced on the effects of a layoff which took place in June 1980. Negotiations on the 1980-81 calendar began on May 14, 1980. The parties began negotiating reopeners on August 8, 1980 and reached agreement on September 15, 1980.

The Association alleges that, during this period, the District took unilateral action and failed and refused to negotiate regarding the following matters: the subcontracting of white collar unit work; the assignment of overtime security watch work; the standardization of hours of paraprofessionals; and the adoption of school calendars.

Subcontracting of White Collar Unit Work

In February 1979, the District initiated a procurement and hiring freeze and formed a "freeze committee" to review all requests for procurement or hiring. In July and August 1979, when preparing the budget for fiscal year 1979-80, the District decided to maintain 100 vacancies in the classified service in lieu of layoffs. The freeze committee was to insure that the 100 vacancies were maintained.

Sometime during the beginning of 1980, Ann C. Sprague, OSEA President, began receiving complaints from members of the white collar bargaining unit that the District was hiring temporary personnel to provide secretarial and clerical services normally provided by members of the unit.

In mid-March 1980, Sprague made a presentation to the District board requesting information concerning the number and cost of temporary personnel being used by the District. On March 20, OSEA Grievance Officer William F. Freeman wrote a letter to Superintendent Ruth B. Love requesting a ". . . detailed report on the District's use of Sub-Contract 'temporary' employees from the Kelly or other like services . . . ." Freeman expressed concern that the District was circumventing the OSEA contract by replacing permanent staff with temporary personnel for long periods of time, and stated that OSEA considered "Sub-Contract services" a negotiable item.

On March 26, Superintendent Love prepared a memo to the board stating that temporary personnel are hired for two reasons: to do a special project for a specified period or to fill a position which has been posted, but not filled. District Business Manager W. B. Lovell wrote to Freeman on April 9 reiterating the points included in the superintendent's memo to the board and denying any attempt by the District to circumvent or violate any provision of the OSEA contract.

On April 29, Freeman sent a letter to Superintendent Love demanding to bargain over the subject of subcontracting for temporary services and threatening to file an unfair practice charge if the District refused to bargain over the matter.

On May 5, Ruth M. McClanahan, District Director of Staff Relations and Chief Negotiator, responded to Freeman, stating that she presumed OSEA was considering subcontracting to be an "effect of layoff," and that negotiations had commenced on April 1 on the effects of layoffs scheduled to occur in June.

On May 7 and 13, OSEA notified the District board president about its concern over the increased use of temporary clerical personnel and again threatened to file an unfair practice charge if the District did not immediately agree to bargain over this subject. There is no record of any District response to this demand.

On May 27, 1980, the instant charge was filed. At the time of hearing, the District provided detailed data regarding the use of temporary personnel.

The following District figures show that expenditures for temporary services for all classified employees, including the white collar unit, increased tenfold during the 1979-80 school year:

July 1979	$ 679
August 1979	7,234
September 1979	No payments made
October 1979	6,426
November 1979	3,000
December 1979	4,127
January 1980	20,772
February 1980	11,827
March 1980	26,937
April 1980	45,254
May 1980	22,911
June 1980	60,146

The District testified that these temporary personnel were hired primarily to fill positions which had been posted but not filled; others were short-term substitutes for persons on leave and for special projects of a specified duration.

During the 1979-80 school year, 48 temporary personnel worked a period of three months or more. While it is not possible to determine in which classifications these individuals worked, the record indicates that the biggest need for temporaries was for typist clerks. During the period February-April 1980, white collar vacancies ranged from 82-93 weekly or an average of 87; total classified vacancies ranged from 122-136 weekly or an average of 128. Thus, white collar positions constituted a sizeable majority of total classified vacancies.

During 1979-80, the cost to the District for a contract clerical was approximately $7.50 per hour as compared with $9.97 per hour, including benefits, for a permanent District employee classified as a secretary or senior typist clerk.

Overtime Security Watch Work

"Watch work" consists of patrolling the grounds and maintaining security at school sites that do not have an automated security system. At least two sites have daily 24-hour coverage, and another 10 sites have 24-hour coverage on weekends and holidays. The weekend and holiday assignments are

extra-duty overtime and are paid at time and one-half. For approximately 22 years, the extra-duty weekend watch shifts have been performed by both regular security watchpersons and custodians.

Security watchpersons are members of the white collar unit represented by OSEA. During 1979-80, the District employed five security watchpersons. However, the District is phasing out the class as automated security systems are installed and, at the time of hearing, three such positions existed.

The District employs 243 custodians who are in a "custodian" bargaining unit represented by another employee organization. When custodians perform watch work on weekends or holidays, it is called "custodial watch work," which the District regards as temporary watchperson work. Custodians are assigned a second primary job number and, like security watchpersons, are compensated for such work at a rate one and one-half times the highest grade in the security watchperson classification.

Overtime watch assignments are scheduled and assigned each week by the supervising custodian at each site from a list of volunteers. Individuals at a particular site have first choice of working overtime at that site.

In late March 1980, a security watchperson named Joe Godfrey was "bumped" from his regular weekend overtime assignment. With the exception of a brief period, for nearly

four years, Godfrey's assignment from Monday through Friday was 10:30 p.m. to 6:30 a.m., including one-half hour of overtime. He would then work the 6:30 a.m. to 2:30 p.m. overtime shift on Saturday so that his overtime assignment was contiguous with his Friday assignment.

Upon reporting to work one day in late March, Godfrey found that his name had been taken off the weekend security watch sign-up list and replaced by that of a custodian who wanted to work the same shift. On March 25, Godfrey spoke with Thomas J. Hagen, field supervisor of both custodians and security watchpersons for the area that included Godfrey's work site. Hagen told Godfrey that custodians had priority for selecting preferred weekend assignments and that assignments to each shift, henceforth, were to be on a rotating basis.

Because Godfrey did not wish to work other than his regular overtime assignment, he worked nine fewer overtime shifts during April, May and June than he had during January, February and March. In July, his overtime shift was restored.

On April 14, OSEA filed a grievance on behalf of Godfrey contending, among other things, that since security watchperson positions are in the white collar unit, persons in that unit should have first priority for weekend assignments.

The same day that the grievance was filed, John D. Wimberly, Director of Building Operations, ordered that the one-half hour overtime which security watchpersons had worked daily, was to be eliminated effective immediately.

On April 23 and 25, OSEA filed additional grievances charging that Godfrey's regular assignment was reduced from eight to seven and one-half hours per day in retaliation for his having filed the first grievance, and that the elimination of overtime for all security watchpersons was arbitrary, discriminatory and a violation of the District's duty to negotiate with OSEA.

District Business Manager Lovell responded on April 29 that the District board had eliminated all overtime assignments in September 1979, and that overtime hours for security watchpersons had not been eliminated at that time due only to "pure oversight" on his part. He explained that Wimberly's action was taken upon his orders and reflected District board policy.

On May 12, Freeman wrote to the superintendent demanding to bargain over the matter. There is no evidence of a District response.

The current collective bargaining agreement for the unit contains no provisions defining bargaining unit work or prohibiting or restricting the assignment of work outside the bargaining unit. Article IV of the contract provides that "Full-time assignments are 7.5 hours per day" and that "Overtime . . . may only be performed upon assignment by a supervisor. . . ."

Standardization of Hours of Paraprofessionals

The paraprofessional unit consists of instructional, community, and health assistants who work on an hourly basis and are funded by state and federal programs. When these programs were initiated in 1964, paraprofessionals were hired by principals at the individual school sites and were required to live in the surrounding community. At the time of the hearing, some instructional aides were employed at schools in communities other than those in which they lived. Paraprofessionals worked a variety of hours, ranging from 2 to 6 hours per day, with some paraprofessionals working 3, 3-1/2, 4, 4-1/2, 5 and 5-1/2 hours.

In April 1977, Angelo Lievore, then District Administrative Director of Personnel, initiated a policy of standardizing the hours of newly hired paraprofessional employees at three or six hours per day in order to provide uniformity in the accrual of seniority and to avoid favoritism in hiring by school principals. Lievore communicated the policy in an August 30, 1977 memo to all principals and in May 1980 memos to the superintendent and to Bonnie Crosse, a project coordinator at Longfellow School. However, several District witnesses testified that they had never heard about the standardization policy, and the policy was apparently not applied to 23 instructional aides hired after March 1977 who were placed in other than three-hour or six-hour positions.

Each school site draws up its own budget for its use of "categorical funds" based on its total allocation of funds from the District Office of State and Federal Programs. In the spring of 1980, the Office of State and Federal Programs informed the school sites that budget reductions would be necessary for the 1980-81 school year. School sites were instructed to draw up their budgets accordingly. Attempts to reduce hours of paraprofessionals, however, were subject to the District's policy that any hours reduction had to be to a three-hour "slot."

In May 1980, OSEA learned that a number of unit members had received notices from their site administrators or principals informing them that their hours had been reduced for the 1980-81 school year. On May 12, OSEA wrote Ruth McClanahan demanding that the District bargain about the proposed reduction and notify the school sites immediately that there was to be no reduction in hours without prior bargaining with OSEA.

At a meeting on May 14, the District assured OSEA that its standardization policy involved the reduction of hours of positions but not the hours of employees. Any employee whose hours were reduced would be able to retain the same number of hours by transferring to another location.[2] The District

[2]According to District policy, when employees could not be transferred to other positions with the same number of

agreed to communicate this policy in writing to the site administrators and to provide OSEA with a copy of such correspondence. No such memo was ever sent.

At a meeting during late May or early June 1980, Sprague requested and was briefly shown a copy of the 1977 standardization policy. Though the District promised to provide OSEA with a copy of the policy and OSEA made a number of requests for it, the policy was never provided.

Two OSEA polls of its members, on May 21 and June 10, indicated that 18 and 21 paraprofessional employees, respectively, had been informed that their positions would be reduced to three hours or eliminated. On May 27, OSEA again demanded bargaining about implementation of the policy of hours reduction/standardization.

The District made no reply to the Association's demand for bargaining. However, on June 11, in the course of bargaining on another matter, McClanahan informed OSEA that the District had decided not to reduce the hours of paraprofessional employees for the 1980-81 school year. Since June 11 was also the last day of the school year, OSEA President Sprague sent

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hours, the Office of State and Federal Programs would pay the difference in the employee's salary between the number of hours for which the local school site could pay and the number of hours previously worked. However, to avoid the hiring of excess personnel, site administrators were not informed about the availability of subsidies. The policy was only communicated to the District's top administrative personnel or "cabinet."

out a flier to members of the paraprofessional unit so advising them.

On August 11, employees received a memo from the District telling them to return to the same site to which they had been assigned in 1979-80, for the same number of hours, unless they received an "official notification from the Office of Classified Personnel."

The first day of school was September 5. In mid-September 1980, the Office of Classified Personnel sent notices to paraprofessional employees informing them that the hours of their positions had been reduced to three hours. Employees with more seniority were given the option of transferring to another site for their former number of hours. Less senior employees were informed that they would be "placed in comparable positions with like hours to the extent possible."

On September 15, Sprague wrote to Robert L. Rottman, the new Director of Personnel, requesting that the District cease its hours reduction and transfer of employees pending a meeting with OSEA. The District met with OSEA on September 17 and informed OSEA that between 50 and 60 instructional assistants might be affected by the transfers. It did not provide information OSEA requested concerning the names and school sites of the affected employees.

Sprague again wrote to Rottman on September 25 requesting clarification of the District's actions. She received a reply, dated October 1, indicating that the District was in the

process of compiling a list of affected positions and employees, and that it would provide OSEA with a list of positions to be reduced, but that it would provide the names of the affected employees only after obtaining the employee's permission.

On October 8, the Association received a list of 62 positions to be consolidated or whose hours were to be reduced and made another demand to bargain over the hours reduction and involuntary transfers. The District did not respond to this demand because it assumed that transfers had been discussed and dropped by OSEA during contract reopener negotiations in August and September 1980. Alternatively, the District took the position that it was under no obligation to bargain over transfers because the collective bargaining agreement already covered the subject.[3]

3Article XIII reads as follows:

> ARTICLE XIII - TRANSFER
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> Transfer is defined as the movement of employees from one position to another position within the same class in another department or work site, or from one class to another class having comparable levels of duties and responsibilities and the same maximum rate of pay.
>
> . . . . . .
>
> B. An involuntary transfer is a change in work location requested by the employee's principal or department head when he/she deems a change in assignment to be in the best interests of the District. Before any

As of the date of hearing, 19 employees had accepted transfers to similar assignments at other school sites, effective the last week in October or the first week in November; 2 employees requested reduced hours at their original sites in lieu of transferring. No transfer positions were available for 28 employees, a number of whom were listed as having the option to remain at their present sites at reduced hours.

Adoption of School Calendars for 1980-81, 1981-82 and 1982-83

On March 17, 1980, the District hired Ruth McClanahan as its Chief Negotiator/Director of Staff Relations. McClanahan testified that from the time she was hired, she was under pressure from her superiors to adopt a school calendar. The District maintained that it wanted identical calendars for all bargaining units. McClanahan, therefore, intended to bargain the calendar "collectively" with all 12 units at once. On March 20, McClanahan sent a memo to all employee organizations

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> request for involuntary transfer is acted upon, the employee must be advised in writing by the principal or department head that an involuntary transfer is being recommended and the reasons therefor. No such transfer shall be made without five work days' notice. Upon request, an opportunity will be provided for the employee to meet with the appropriate division administrator to discuss the proposed transfer.
>
> C. A District initiated transfer shall not be arbitrary and capricious.

inviting them to attend a meeting on April 8 "on a proposed 80-81 school calendar."

On April 3, OSEA President Ann Sprague sent a letter to McClanahan acknowledging receipt of the March 20 memo and stating that:

> . . . [the April 8] meeting does not take the place of bargaining over the calendar. The calendar is a negotiable item, therefore, bargaining over this issue must take place during formal collective bargaining sessions. However, I shall be happy to attend the meeting on Tuesday, April 8th for informational purposes.

On April 7, McClanahan sent a confidential memo to Deputy Superintendent Charles Mitchell, Jr., entitled "Problems . . . Re: Admission Day Holiday Change." After noting that the OSEA contracts for both the paraprofessional and white collar units specify September 9, 1980 as an Admission Day holiday, she wrote:

> If we get agreement on the change from the other classified groups and OEA [Oakland Education Association] in concept for the rest of that calendar, I recommend that we go ahead and adopt it and chance a challenge from OSEA. They will still get a holiday; it will just be on a different date.

At the April 8th meeting, Sprague spoke with McClanahan reiterating that she did not consider the meeting a negotiation session, and that OSEA wanted a formal collective bargaining session on the 1980-81 calendar.

On April 9, McClanahan sent a personal and confidential

memo to Mitchell regarding the school calendar, which stated in part as follows:

> I believe that we have discharged our obligation to negotiate in good faith. However, so as to take every possible precaution, I would prefer to call one more formal negotiating session for Tuesday, April 15, 2 to 4 p.m., to deal with the District's alternate proposals presented last time, and make a "best and final offer" which will respond to the specific concerns raised by the representatives in attendance today.
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> After April 15, I feel that the District will have no other alternative but to present its best and final offer, Alternate Proposal #3, to the Board for discussion, and then for action; as schools, administration, students, and community need to know how to plan.

On April 8, McClanahan sent another memo to each employee organization setting a consolidated negotiation session for April 15 to formally negotiate the 1980-81 school calendar. Sprague responded on April 14 by delivering a letter to McClanahan's office stating that she could not attend the negotiation session set for April 15, and that OSEA wanted to set another date for a negotiation session on the calendar. After unsuccessfully attempting to get an OSEA representative to attend the April 15 negotiation session, McClanahan instructed her secretary to inform Sprague that she considered OSEA's lack of representation at the session to be a refusal to negotiate.

On May 7, OSEA Attorney Andrew Thomas Sinclair sent a letter to McClanahan requesting a meeting on the calendar. The

issue was added to the agenda of the May 14 layoff negotiation session.

During the May 14 session, the District proposed moving the Admission Day holiday from September 9, 1980 to February 13, 1981 or Good Friday, 1981. OSEA was willing to bargain with respect to the placement of Admission Day and the rest of the calendar if the District was willing to give something in return. The parties closed the May 14 negotiation session with the understanding that the District would bring a draft of its latest OEA calendar proposal to the next negotiation session scheduled for May 23, that the parties would continue to negotiate at that session, and that OSEA would accept the latest proposal to OEA if it included something in return acceptable to OSEA.

The agenda handed out by McClanahan at the May 23 session listed the school calendar and layoffs as the topics for negotiation. OSEA also wanted to negotiate wages, which was the reason the meeting was originally set. The District refused to negotiate wages because its wage proposal had not been sunshined. OSEA questioned whether the District's calendar proposal had been sunshined. The District's position was that it had offered the same proposal to OEA and had sunshined the proposal as part of the OEA package. No proposals were offered by either OSEA or the District, and both parties left the session upset and without agreement on the 1980-81 calendar.

On July 9, at a District board meeting, OSEA learned that the District intended to adopt school calendars for 1980-81, 1981-82 and 1982-83. Superintendent Love distributed a memo to the board members entitled, "Negotiated School Calendars" which stated that the "calendars do not violate any existing contractual agreements and have been negotiated." Sprague asked the board not to adopt the calendars at that time because OSEA and the District had yet to conclude their negotiations or reach agreement on the 1980-81 calendar.

Sprague then wrote to McClanahan on July 14 complaining that the 1981-82 and 1982-83 calendars had never been brought up by the District and demanding negotiations on the calendar. McClanahan responded by letter on July 15 stating that "Since OSEA's contract does not expire until 1981, I would submit that it [OSEA] does not yet have a right to bargain those calendars."

On July 17 and 21, OSEA again demanded to negotiate the calendar issue. McClanahan responded by letter on July 22 stating that the District and OSEA had reached agreement on the 1980-81 calendar at the May 14 negotiation session, that OSEA had refused to bargain on May 23 and had failed to make further demands for bargaining, and that the District was willing to resolve all unresolved issues with OSEA on the 1980-81 calendar and would schedule a meeting for July 23.

At the July 23 meeting, OSEA reminded the District that, pursuant to a settlement agreement between the parties entered

into on January 30, 1980, tentative agreements were to be reduced to writing and signed-off. OSEA denied that it had reached agreement on the calendar issue and asked what the District was going to offer in return for OSEA's acceptance of its calendar proposal. The District offered OSEA nothing in return for its concession. OSEA did not concede or accept the District's calendar proposal.

On July 23, the board adopted school calendars for 1980-81, 1981-82 and 1982-83 which changed the date of the Admission Day holiday from September 9, 1980, as provided in both collective bargaining agreements between the parties, to February 13, 1981, and set the date of the Admission Day holiday on May 28, 1982 and May 27, 1983. McClanahan testified that the board adopted the three-year calendar because OEA insisted upon having the three-year calendar as part of its negotiated three-year contract and the board "couldn't conceive of having separate calendars." Nonetheless, McClanahan informed the board that she would go back to the table with OSEA as soon as possible to negotiate the 1981-82 and 1982-83 calendars.

McClanahan scheduled negotiations for August 8 to discuss the 1981-82 and 1982-83 calendars. Though McClanahan was absent on bereavement leave on August 8, the parties met on that date and discussed the 1980-81 calendar. The record fails to explain why the 1981-82 and 1982-83 calendars were not discussed on August 8, and no evidence was presented of any

subsequent request to negotiate or any subsequent negotiations on these calendars.

DISCUSSION

It is unlawful for a public school employer to "refuse or fail to meet and negotiate in good faith with an exclusive representative" about a matter within the scope of representation.[4] Moreover, a unilateral change in terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate. Pajaro

[4]Section 3543.2 provides in pertinent part as follows:

> (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits . . ., leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security . . ., procedures for processing grievances . . ., and the layoff of probationary certificated school district employees . . . .

In addition, a subject will be found to be negotiable even though not specifically enumerated in section 3543.2 if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge the employer's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission. Anaheim Union High School District (10/28/81) PERB Decision No. 177, affirmed San Mateo City School District v. PERB (1983) 33 Cal.3d 850.

Valley Unified School District (5/22/78) PERB Decision No. 51; San Mateo County Community College District (6/8/79) PERB Decision No. 94; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].

An unlawful unilateral change will be found where the charging party proves, by a preponderance of the evidence, that an employer unilaterally altered an established policy. Grant Joint Union High School District (2/26/82) PERB Decision No. 196. The nature of existing policy is a question of fact to be determined from an examination of the record as a whole. It may be embodied in the terms of a collective agreement (Grant, supra) or, where a contract is silent or ambiguous as to a policy, it may be ascertained by examining past practice or bargaining history. Marysville Joint Unified School District (5/27/83) PERB Decision No. 314; Rio Hondo Community College District (12/31/82) PERB Decision No. 279.

An employer's unlawful failure and refusal to negotiate concurrently violates an exclusive representative's right to represent unit members in their employment relations and interferes with employees because of their exercise of representational rights. San Francisco Community College District (10/12/79) PERB Decision No. 105.

We apply these general and well-established principles to the District's conduct with respect to the four matters alleged by the Association to constitute unlawful unilateral changes.

Subcontracting of White Collar Unit Work

Though not expressly alleged in the charge, the ALJ found that the District violated subsections 3543.5(a), (b) and (c) of EERA by failing to provide information sought by OSEA concerning the subcontracting of white collar unit work. The District does not except, and the Board affirms this finding, pro forma.

As to the alleged unilateral change, the ALJ initially determined that subcontracting is within scope, citing Fibreboard Paper Products Corp. v. NLRB (1964) 379 U.S. 203 [57 LRRM 2609] and Rialto Unified School District (4/30/82) PERB Decision No. 209, rev. den. (9/13/82) 2 Civ. No. 27991, and found that the volume of the District's subcontracting increased substantially during the 1979-80 school year. Nonetheless, she dismissed this portion of the charge, finding no "adverse impact" on wages, hours or other terms and conditions of employment, as required in federal subcontracting cases decided subsequent to Fibreboard. Westinghouse Electric Corp. (Mansfield Plant) (1965) 150 NLRB 1574 [58 LRRM 1257]; Equitable Gas Co. v. NLRB (3rd Cir. 1981) 637 F.2d 980 [106 LRRM 2201, 2206]; Olinkraft, Inc. v. NLRB (5th Cir. 1982) 666 F.2d 302 [109 LRRM 2573]; Park-Ohio Industries (1981) 257 NLRB No. 44 [107 LRRM 1498] ; Puerto Rico Telephone Co. v. NLRB (1st Cir. 1966) 359 F.2d 983 [62 LRRM 2069, 2072].

We affirm the ALJ's finding that the subject of subcontracting unit work is negotiable. The Board has recently

so held in Arcohe Union School District (11/23/83) PERB Decision No. 360.5 We also affirm the ALJ's finding that the extent of the District's subcontracting increased substantially during the 1979-80 school year. The evidence indicates that expenditures for subcontracting increased almost tenfold during this period. We find that an increase of this magnitude evidences a change in the quantity and kind of subcontracting in the District and constitutes a unilateral change in established policy. Grant Joint Union High School District, supra; Howmet Corporation (1972) 197 NLRB No. 91 [80 LRRM 1555] enf. (7th Cir. 1974) 495 F.2d 1375 [86 LRRM 2572].[6]

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[5]In Arcohe, supra, we noted that section 45103 of the Education Code, by its flat prohibition against the contracting out of custodial services, supersedes the negotiation of contravening proposals. See California School Employees Association v. Willits Unified School District (1966) 243 Cal.App.2d 776 [52 Cal.Rptr. 765]; San Mateo City School District v. PERB, supra. However, we concluded that a proposal intended to prohibit unlawful contracting out — and thus essentially to incorporate the Education Code provision in the negotiated agreement — would be within scope. Thus, the employer's unilateral change which precluded consideration of any valid proposal violated subsection 3543.5(c).

Here, whether the work affected by the District's subcontracting practice falls within the Education Code's proscription, was not litigated below and consequently cannot be determined from the record. Whether or not the District's practice is permissible under the Education Code, its unilateral change, as found infra, unlawfully precluded consideration of any valid proposal on the subject.

[6]We are unpersuaded by the District's attempt to distinguish Howmet, supra, on the grounds that anti-union animus was present in that case. The NLRB did not predicate its finding of a refusal to bargain on its independent finding of unlawful discrimination relating to the same conduct.

Westinghouse, supra, relied on by the ALJ, holds that an employer may lawfully subcontract where the following conditions exist:

> (1) the recurrent subcontracting is motivated solely by economic considerations; (2) it comports with the company's traditional methods of conducting its business operations; (3) it does not vary significantly from prior established practices; (4) it does not have a demonstrable adverse impact on employees in the unit; and (5) the union had the opportunity to bargain about changes in existing subcontracting practices at general negotiating meetings.

OSEA argues, and we agree, that these conditions are not present in the instant case. We have found that the subcontracting engaged in by the District in the 1979-80 school year varied significantly from prior established practices; and the record contains no evidence that the parties had ever bargained about the subject.

Moreover, the fact that employees, their representative, and employer-employee relations are adversely affected by the District's action is inherent in our findings that subcontracting is a subject within the scope of representation and that established policy with regard to that subject was unilaterally changed. In Arcohe, supra, we found subcontracting to be negotiable, in part, because "actual or potential work is withdrawn from unit employees, and wages and hours associated with the contracted out work are similarly

withdrawn. Further, such diminution of unit work weakens the collective strength of employees in the unit and their ability to deal effectively with the employer." In addition, an employer's unilateral change has a destabilizing and disorienting impact on employer-employee relations, derogates the exclusive representative's negotiating power and ability to perform as an effective representative in the eyes of employees, inherently tips the delicate balance structured by the Act, and may unfairly shift community and political pressure to employees and their organizations and reduce the employer's accountability to the public. San Mateo County Community College District, supra. Thus, adverse impact on employees in the unit is demonstrated here.

With regard to cases purportedly following Westinghouse, we agree with Professor Gorman, who states as follows:

> The decisions in this area produce no firm or readily applicable guidelines. The Board's decisions appear inconsistent with one another, in spite of its attempt to articulate relevant distinctions. The same is true of the decisions of the courts of appeals, . . . Any more detailed attempt at synthesis is hazardous . . . .
> Gorman, Labor Law (1976) p. 514.

Finding that these cases provide no consistent analysis or rationale, we expressly disavow the ALJ's reliance on them as authority for finding no adverse impact in this situation.

Because the factors specified in Westinghouse are not present here, that case does not support a finding that the

subcontracting engaged in by the District here was lawful. Rather, having found a unilateral change in established policy affecting a matter within the scope of representation, a violation is established. We, therefore, reverse the ALJ's dismissal of this charge.

Security Watch Work

The ALJ found that the assignment and allocation of unit work between unit and nonunit employees are matters within the scope of representation. Nonetheless, the ALJ dismissed the charge, finding that there had been no change in the District's 22-year practice of assigning both security watchpersons and custodians to overtime watch assignments on weekends and holidays, and that OSEA had acquiesced to the practice. In addition, the ALJ found that any change in Godfrey's hours of work was de minimis. OSEA excepts.

We agree with the ALJ that the practice of assigning custodians to do overtime watch work was such a pervasive and longstanding practice that OSEA must have known or be deemed to have known of its existence. We, therefore, affirm the ALJ's dismissal as to this allegation. We also reject OSEA's contention that the District failed to provide requested information regarding security watch work. OSEA requested such information only once, on April 8, and received a response on April 14. Though the response might not have been fully responsive to OSEA's questions, OSEA never reasserted or

clarified its request. Therefore, no failure to provide information is established. See Stockton Unified School District (11/3/80) PERB Decision No. 143.

We further reject OSEA's contention that the ALJ erred in failing to conclude that the District violated the Act by unilaterally eliminating one-half hour of daily overtime. It is well established that overtime is directly related to wages and hours of employment and is a negotiable subject. Jefferson School District (6/19/80) PERB Decision No. 133, rev. den. (9/23/83) 1 Civ. 50225; Walnut Valley Unified School District (3/30/81) PERB Decision No. 160; Pittsburg Unified School District (3/15/82) PERB Decision No. 199; Willamette Industries, Inc. (1975) 220 NLRB 707 [90 LRRM 1478].

Here, the parties had negotiated on the subject and agreed to provisions which stated that, "Full-time assignments are 7.5 hours per day," and that "overtime . . . may only be performed upon assignment by a supervisor." These provisions are clear and unambiguous on their face, and by their terms permit the District to assign or not assign overtime in its discretion.

Neither the evidence of bargaining history nor the actual practice in the District provides any basis for interpreting the provisions contrary to their plain meaning. Thus, the evidence indicates that the fact that watchpersons regularly worked eight hours per day was specifically within the contemplation of the negotiators for both parties when these

provisions were agreed to. Yet, nothing in the contract excepts watchpersons from the 7.5 hour provision. Moreover, the practice of assigning and paying watchpersons for 7.5 hours of regular time plus one-half hour of overtime daily is entirely consistent with the terms of the contract. Thus, the practice neither modifies nor supersedes the contractual language. Accordingly, the fact that the District had assigned overtime on a daily basis for several years does not diminish its contractual right to decline to assign overtime, as it did here, and does not render its action a unilateral change. In essence, OSEA had, by contract, waived its right to negotiate over the District's decision to assign or not assign overtime. See, e.g., Grossmont Union High School District (5/26/83) PERB Decision No. 313; Marysville Joint Unified School District (5/27/83) PERB Decision No. 314.

However, we conclude, contrary to the ALJ, that the District violated the Act by unilaterally changing its established procedures for assigning weekend and holiday overtime watch work.

We have held that the method used to assign work is negotiable in general (Mt. San Antonio Community College District (3/24/83) PERB Decision No. 297; Jefferson, supra) and specifically with respect to the assignment of overtime (Walnut Valley, supra; Pittsburg, supra). Here, the collective bargaining agreement does not specify any procedure for making

overtime assignments but simply provides that "overtime . . . may only be performed upon assignment by a supervisor." However, the record indicates that procedures for assigning overtime watch work had been established in the District which limited supervisors' discretion in making such assignments. Specifically, weekend and holiday overtime watch work was assigned from a list of volunteers each week, and employees at a particular site had first choice of working overtime at that site. The evidence further demonstrates that, as a result of these procedures, Joe Godfrey had been assigned the same overtime shift for four years.

However, in March 1980, Godfrey was informed by his supervisor that custodians had priority for selecting weekend assignments and that, henceforth, such assignments were to be on a rotating basis. This rotation system was used for the months of April, May and June 1980. After this time, Godfrey's usual overtime shift was restored. Because only three security watchpersons and almost one hundred custodians performed overtime security watch work, a single rotation system including both groups of employees inevitably disadvantaged security watchpersons and reduced the amount of overtime available to them, affecting both their wages and hours. Contrary to the ALJ, we do not consider such change to be a de minimis or technical violation. See Muroc Unified School District (12/15/78) PERB Decision No. 80.

Rather, we find that the District violated the Act by unilaterally changing its established method for assigning overtime watch work without providing OSEA with notice and an opportunity to negotiate. Walnut Valley, supra; Pittsburg, supra.

Standardization of Hours of Paraprofessionals

The ALJ determined that the District's application of its standardization of hours policy to incumbent employees in September and October 1980 resulted in the creation of four categories of affected employees:

> 1. Those who were notified of hours reduction without any guarantee that they would be able to maintain equivalent hours by transferring to another location;
>
> 2. Those who accepted the District's proffered hours reductions in lieu of transfer;
>
> 3. Those who had worked at a school in the district in which they resided, and who accepted transfer for an equivalent number of hours to a school site not in their residential neighborhood, thereby incurring additional transportation expenses which effectively reduced their wages; and
>
> 4. Those who were notified that they would be transferred to an equivalent position in terms of hours, and for whom the acceptance of such a transfer entailed no additional expenses.

The ALJ found unlawful unilateral changes with respect to employees in categories 1, 2 and 3. As to categories 1 and 2, the District's action had the effect of reducing hours. Employees in category 3 incurred additional transportation

expenses equivalent to a reduction in wages. However, the ALJ found no violation in the transfer of employees in group 4 because the transfers were consistent with the transfer provision of the parties' collective bargaining agreement (see footnote 3, supra, p. 14).

Both parties take issue with the ALJ's characterization of four categories of affected employees. In addition, the District excepts to the ALJ's findings with respect to groups 1, 2 and 3. The Association excepts to her findings as to group 4.

Contrary to the District's protestations, the record amply supports the ALJ's factual findings that the District did indeed implement its standardization of hours policy and that, as a result, some incumbent employees suffered a reduction in hours while others were transferred. We also reject the District's contention, reasserted on appeal, that a reduction in the hours of positions is distinguishable from a reduction in the hours of employees. Inasmuch as the positions were occupied by incumbent employees, the ALJ properly characterized the District's argument as "a distinction without a difference."

However, we agree with the parties that the ALJ erred in considering the particular character of the effects on various categories of employees as determinative of the issues in this case. The Board has previously determined that a reduction in hours is a matter within the scope of representation. North Sacramento School District (12/31/81) PERB Decision No. 193.

The District's standardization of hours policy is also a matter within the scope of representation because it is directly related to wages, hours and transfers and involves no essential managerial prerogative. Anaheim Union High School District, supra. Therefore, by unilaterally reducing hours and implementing the policy in the face of OSEA's repeated requests for information and negotiations, the District violated the Act as to all employees adversely affected thereby.

Moreover, the District compounded its unlawful conduct by committing a series of independent violations of the Act in the course of implementing the unilateral change. We affirm the findings of the ALJ, which are not excepted to by the District, that the District unlawfully refused to provide OSEA with the names of affected employees and unlawfully bypassed OSEA and dealt directly with employees, individually negotiating changes in their work assignments and work hours.

Through such individual negotiations, by the time of hearing, 19 employees had accepted transfers, while only 2 agreed to a reduction in hours at their current school sites. We cannot agree with the ALJ that transfers effected through such coercive means are protected by the language of the collective bargaining agreement.

Therefore, seeing no reason why employees transferred should be treated differently than employees whose hours were reduced, we find a violation as to all employees adversely

affected by the policy, including those whose hours were reduced and those who were transferred in order to avoid such reduction.

Adoption of School Calendars

The ALJ found that: the school calendar is a mandatory subject of negotiations; the parties had negotiated regarding the 1980-81 calendar but failed to reach agreement; and the adoption of the calendar was neither justified by operational necessity nor excused by the fact that OSEA's contract covered only the first of the three calendar years. She, therefore, concluded that the District's adoption of a three-year calendar on July 23 constitutes an unlawful unilateral change.

In its exceptions, the District merely reasserts its arguments raised at hearing and rejected by the ALJ.

We affirm the ALJ's finding of violation as to the 1980-81 calendar. However, we reverse the ALJ's finding with respect to the 1981-82 and 1982-83 calendars and dismiss that portion of the charge.

In Palos Verdes Peninsula Unified School District/Pleasant Valley School District (7/16/79) PERB Decision No. 96, the Board held that the dates on which employees begin and end work, their vacation and holiday dates are all matters within scope. The Board clearly distinguished between student attendance dates and employee work dates, stating at pp. 31-32:

> Now, ideally, the dates of both should coincide. However, in reality, even now, the beginning of teacher service does not

> precisely coincide with the date scheduled for instruction given the fact that the initial days of certificated service are spent in orientation or pre-service activities. Moreover, it would be presumptuous to assume that the professionalism of both sides at the negotiating table will not prevail in the interest of the students. It seems possible that some accommodation can be made to insure the maintenance of the student school year by innovative planning, and at the same time extend to certificated employees the opportunity to promote a fundamental employment interest, their hours of employment.

In San Jose Community College District (9/30/82) PERB Decision No. 240, the Board reaffirmed the negotiability of an employee calendar but found no violation because there the District had adopted only a tentative student calendar unrelated to dates of employee service and had subsequently continued to negotiate.

Here, the collective bargaining agreements in effect between the parties established September 9, 1980 as an Admission Day employee holiday. On July 23, 1980, the District adopted a calendar which substituted an "In Lieu of Admission Day" holiday on February 13, 1981.

Though the parties met and negotiated regarding the 1980-81 calendar on May 14, May 23 and July 23, the record is abundantly clear, and the ALJ correctly found, that no agreement was reached on May 14 or at any other time. The District's claim that negotiations occurred on April 8 is totally unsupported by the record. Neither is there sufficient

evidence to find that OSEA prevented negotiations on May 23 and thereby demonstrated such bad faith as to excuse the District's unilateral change.

It is clear from the District's testimony that the 1980-81 calendar was intended to govern both student attendance and employee workdays. The District's insistence on identical calendars for all bargaining units prompted McClanahan to attempt coordinated bargaining. The District took the position that, by sunshining its proposal to OEA, it effectively sunshined its proposal to OSEA. And because the board "couldn't conceive of having separate calendars," it adopted the calendar negotiated with OEA. In addition, the calendars adopted by the board were presented as "Negotiated School Calendars."

The District argues that its unilateral action was justified by operational necessity, namely community pressure and potential confusion in the educational program. In Palos Verdes, supra, Member Gonzales expressly noted that such considerations do not constitute operational necessity. As he stated, "the public's interest at large would appear to be only one of convenience in contrast to that of the employees, which is one of necessity." Further, the problem of coordination among employee units "is a matter inherent in the collective negotiations process whenever an employer must deal with more than one negotiating unit." Palos Verdes, supra, pp. 33-34.

For the same reasons, we reject the District's proffered defense here.

We also reject the District's claim that OSEA suffered no or de minimis harm as a result of the change. The Board has previously indicated that we will consider a violation to be de minimis or technical only where it is promptly rescinded and without affect on employees. Muroc, supra. That is not the case here.

We, therefore, affirm the ALJ's conclusion that the District violated subsections 3543.5(a), (b) and (c) by adopting a 1980-81 calendar which unilaterally changed the date of the Admission Day holiday as provided by contract.

With regard to the adoption of the 1981-82 and 1982-83 calendars, however, we reverse the ALJ. Though McClanahan initially took the position that OSEA had no right to bargain about these calendars until its contracts expired, she subsequently informed the board, which in turn informed OSEA, that McClanahan "would go back to the table as soon as possible to negotiate on the 81-82 and 82-83 calendars." Based on the District's expressed willingness to negotiate these calendars with OSEA, we find that, by its action on July 23, the board intended only to adopt a student calendar and not an employee calendar governing employees represented by OSEA. San Jose, supra.

Moreover, though negotiations to discuss the 1981-82 and 1982-83 calendars were scheduled for August 8, only the 1980-81 calendar was discussed at that time. OSEA introduced no evidence that it requested or that the District refused to bargain regarding the 1981-82 and 1982-83 calendars on August 8 or at any subsequent time. We, therefore, find that OSEA failed to sustain its burden of proving, by a preponderance of the evidence, that the District violated the Act by its conduct with respect to the 1981-82 and 1982-83 calendars. We, therefore, dismiss this portion of the charge.

REMEDY

Subsection 3541.5(c) gives PERB the following remedial powers:

> . . . 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 the instant case, we have found that the District violated subsections 3543.5(a), (b) and (c) by: (1) unilaterally changing its established policy with regard to subcontracting of white collar unit work; (2) unilaterally changing its established method for assigning overtime security watch work; (3) unilaterally reducing the hours and transferring paraprofessional employees; and (4) unilaterally adopting a school calendar for 1980-81.

In addition, the District violated these same sections of the Act by: (1) refusing to provide information regarding the District's subcontracting of white collar unit work and its standardization policy as applied to employees of the paraprofessional unit; and (2) directly negotiating with paraprofessional employees over a change in their hours and bypassing OSEA, the exclusive representative.

Absent unusual circumstances, where an employer has made an unlawful unilateral change, a remedy requiring the restoration of the status quo is appropriate to effectuate the policies of EERA because it restores, to the extent possible, the positions the parties occupied prior to the unilateral change. Rio Hondo Community College District (3/8/83) PERB Decision No. 292; Plycoma Veneer Co. (1972) 196 NLRB 1009 [1008 LRRM 1222]. In addition, it is generally appropriate to order the employer to make affected employees whole for any wages or other benefits lost as a result of the unlawful unilateral change, with interest, from the date of the unilateral change until the status quo is restored or the parties reach agreement or exhaust the statutory impasse procedures. Rio Hondo Community College District (No. 292), supra; NLRB v. Allied Products Corp. (1975) 218 NLRB 1246 [89 LRRM 1441] enforced as modified (6th Cir. 1977) 548 F.2d 644 [94 LRRM 2433].

To remedy the violations found with respect to the subcontracting of white collar unit work, we find it

appropriate to order the District to restore the status quo ante as it existed in June 1979, prior to the District's unilateral increase in subcontracting activity.

Because the District employed its rotation system for assigning overtime watch work for a period of only three months and subsequently restored its previous system for making such assignments, our order with respect to this violation is limited to back pay for this period. The District will be ordered to pay to affected security watchpersons any overtime they would have received during April, May and June 1980 but for the District's unlawful action.

With regard to the unlawful reduction in hours and involuntary transfers of paraprofessional employees, it is appropriate to order a return to the status quo ante as of September 1980, the date that the District acted to apply the hours standardization/reduction policy to incumbent employees in the paraprofessional unit. Specifically, we order that all employees adversely affected by the policy, including those whose hours were reduced and those who were transferred, be reinstated to their former positions and made whole for any wages or benefits lost as a result of the District's unlawful action, retroactive to September 1980. If an equivalent position no longer exists at the former school site, the affected employee should be transferred to a location in the vicinity of the former site as soon as a position is

available. All transfers should be effectuated without prejudice to the seniority or other rights and privileges of the respective employees.

With regard to the change in the 1980-81 school calendar, we find that the ALJ's proposed order is inadequate to remedy the violation. Employees were required to work on September 9, 1980, a contractually designated employee holiday. Both collective bargaining agreements provide for overtime at the rate of 1.5 times the straight rate of pay for "time required to be worked in excess of the normal full-time work day or work week." When a normal work week contains a designated holiday, work performed on the holiday constitutes work "in excess of the normal . . . work week" and, pursuant to the contract, is properly compensated as overtime at a rate of time and one-half. We, therefore, order all employees who worked on September 9, 1980 to be compensated at a rate of 1.5 times their straight pay. However, since employees were provided a holiday at straight pay on February 13, 1981, we will set off the payment received on that day, resulting in net compensation due of one-half day.

Such remedy is consistent with that ordered in Colusa Unified School District (3/21/83) PERB Decision No. 296 and Lodi Unified School District (9/29/82) PERB Decision No. 239 and is justified by the District's bad faith regarding this matter, especially as indicated in McClanahan's memos of

April 7 and 9 and Superintendent Love's misrepresentation of the calendars as "Negotiated School Calendars" which "do not violate any existing contractual agreements and have been negotiated."

In addition, as requested by OSEA, we order payment of any other provable damages (e.g., deposits on vacations) resulting from the change of the Admission Day holiday.

All payments ordered above shall include interest at a rate of 7 percent per annum and shall continue in effect until the status quo ante is restored or the parties reach agreement or exhaust the statutory impasse procedures.

It is also appropriate to order the District to cease and desist from all of the conduct found violative of the EERA, and to post a notice incorporating the terms of this order, indicating that it will comply with the terms thereof. Posting such a 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 to restore the status quo. 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. See Placerville Union School District (9/18/78) PERB Decision No. 69; Pandol and Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580.

The notice shall be mailed to persons employed on or after April 1980 who are no longer employed by the District to insure that they are informed of their rights under the order. See Santa Monica Community College District (9/21/79) PERB Decision No. 103; Oakland Unified School District (4/23/80) PERB Decision No. 126, aff. 120 Cal.App.3d 1007.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to subsection 3541.5(c), it is found that the Oakland Unified School District has violated Government Code subsections 3543.5(a), (b) and (c).

It is hereby ORDERED that the Oakland Unified 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 by taking unilateral action with respect to the subcontracting of white collar unit work, the method of assigning overtime security watch work, the reduction in hours and transfers of paraprofessionals, and the 1980-81 school calendar;

(2) Failing and refusing to meet and negotiate in good faith with the exclusive representative by refusing to provide information regarding the subcontracting of white collar unit work and the standardization of hours of paraprofessional unit employees;

(3) Failing and refusing to meet and negotiate in good faith with the exclusive representative by bypassing the exclusive representative and negotiating directly with paraprofessional employees with respect to reduction of their hours, involuntary transfers or any other mandatory subject of negotiations;

(4) Interfering with employees because of their exercise of rights guaranteed by the Educational Employment Relations Act, including the right to select an exclusive representative to negotiate on their behalf; and

(5) Denying to the Oakland School Employees Association rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

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

(1) Restore the status quo ante with regard to the subcontracting of white collar unit work to the level which existed in June 1979 prior to the District's unilateral increase in subcontracting activity.

(2) Pay to affected security watchpersons any overtime they would have received during April, May and June 1980, but for the District's unilateral change of the method of assigning overtime.

(3) Reinstate, upon request, all paraprofessional employees to their former positions and full hours of employment prior to September 1980, and make affected employees

whole for any loss of pay or benefits which they suffered because of the unilateral reduction in hours and transfers. If such former position no longer exists, reinstate the affected employee to an equivalent position as soon as one is available at a school site in the vicinity of the employee's former work site.

(4) Pay to all employees in the white collar and paraprofessional unit who worked on September 9, 1980, a designated employee holiday, compensation of one-half day at their regular rate of pay and any other provable damages which resulted from the unilateral change of the date of the holiday.

(5) All payments ordered above shall include interest at a rate of 7 percent per annum and shall continue in effect until the status quo ante is restored or the parties reach agreement or exhaust the statutory impasse procedures.

(6) Within thirty-five (35) days after the date of service of this Decision, post copies of the Notice to Employees attached as an appendix hereto. Such posting shall be maintained for at least thirty (30) consecutive workdays at the District's headquarters offices and in conspicuous places at the locations where notices to classified employees are customarily posted. Reasonable steps shall be taken to insure that the notice is not reduced in size, defaced, altered or covered by any material.

Mail copies of the Notice to Employees to all persons employed on or after April 1980 who are no longer employed by the District.

(7) Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with her instructions..

Chairperson Gluck and Member Tovar joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. SF-CE-469, Oakland School Employees Association v. Oakland Unified School District, in which all parties had the right to participate, it has been found that the Oakland Unified School District violated the rights of the Oakland School Employees Association and its members as guaranteed by subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act.

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

A. CEASE AND DESIST FROM:

(1) Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action with respect to the subcontracting of white collar unit work, the method of assigning overtime security watch work, the reduction in hours and transfers of paraprofessionals, and the 1980-81 school calendar;

(2) Failing and refusing to meet and negotiate in good faith with the exclusive representative by refusing to provide information regarding the subcontracting of white collar unit work and the standardization of hours of paraprofessional unit employees;

(3) Failing and refusing to meet and negotiate in good faith with the exclusive representative by bypassing the exclusive representative and negotiating directly with paraprofessional employees with respect to reduction of their hours, involuntary transfers or any other mandatory subject of negotiations;

(4) Interfering with employees because of their exercise of rights guaranteed by the Educational Employment Relations Act, including the right to select an exclusive representative to negotiate on their behalf; and

(5) Denying to the Oakland School Employees Association rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

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

(1) Restore the status quo ante with regard to the subcontracting of white collar unit work to the level which existed in June 1979 prior to the District's unilateral increase in subcontracting activity.

(2) Pay to affected security watchpersons any overtime they would have received during April, May and June 1980, but for the District's unilateral change of the method of assigning overtime.

(3) Reinstate, upon request, all paraprofessional employees to their former positions and full hours of employment prior to September 1980, and make affected employees whole for any loss of pay or benefits which they suffered because of the unilateral reduction in hours and transfers. If such former position no longer exists, reinstate the affected employee to an equivalent position as soon as one is available at a school site in the vicinity of the employee's former work site.

(4) Pay to all employees in the white collar and paraprofessional unit who worked on September 9, 1980, a designated employee holiday, compensation of one-half day at their regular rate of pay, and any other provable damages which resulted from the unilateral change of the date of the holiday.

(5) All payments ordered above shall include interest at a rate of 7 percent per annum, and shall continue in effect until the status quo ante is restored or the parties reach agreement or exhaust the statutory impasse procedures.

DATED: OAKLAND 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 BY ANY MATERIAL.