STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHING PROFESSION/ GOLETA/CTA/NEA,	)	
Charging Party,	)	Case No. LA-CE-1516
v.	)	PERB Decision No. 391
GOLETA UNION SCHOOL DISTRICT,	)	August 1, 1984
Respondent.	)	

Appearances; Charles R. Gustafson, Attorney for United Teaching Profession/Goleta/CTA/NEA; Bruce Barsook, Attorney (Liebert, Cassidy & Frierson) for Goleta Union School District.

Before Tovar, Morgenstern, and Burt, Members.

DECISION

TOVAR, Member: This case is before the Public Employment Relations Board (PERB or Board) on an appeal by the United Teaching Profession/Goleta/CTA/NEA (Association) of an administrative law judge's (ALJ) proposed decision dismissing the charge and complaint against the Goleta Union School District (District). The charge filed by the Association, the exclusive representative of the District's certificated personnel, alleged that the District violated the Educational Employment Relations Act (EERA or Act)[1] by employing persons in the bargaining unit in counselor positions under terms and

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

conditions different from those specified in the collective bargaining agreement (CBA) between the parties; or, alternatively, by unilaterally subcontracting work out of the unit.

After a review of the ALJ's proposed decision in light of the party's exceptions and the entire record in this matter, the Board reverses the ALJ's conclusions of law consistent with the discussion below.

FACTS

At all times relevant to this case, the Association has been the exclusive representative of the District's certificated employee negotiating unit.[2]

The term of the current CBA for this unit is from August 15, 1981 through June 30, 1984. Article I (Recognition) of that agreement describes the classifications included in the certificated bargaining unit, which is comprised of approximately 220 permanent and probationary employees.[3]

2official notice is taken of representation case file LA-R-275, which is maintained in the PERB Los Angeles Regional Office. That file shows that the PERB certified the Association (which was formerly known as the Goleta Educators Association) as the exclusive representative on November 12, 1976.

[3]That provision states as follows:

> ARTICLE I; RECOGNITION
>
> The District recognizes the Association as the exclusive representative for purposes of meeting and negotiating for the certificated employees of the District, as described

The current CBA contains no provision defining or referencing "bargaining unit work." The only language referring to the contracting out of work is found in Article II which reads as follows:

> ARTICLE II: DISTRICT RIGHTS
>
> It is understood and agreed that the District retains all of its powers and authority to direct, manage and control to the full extent of the law. Included in, but not limited to, those duties and powers are the exclusive right to: Determine its organization; direct work of its employees;

> below and as certified by the Educational Employment Relations Board (Case No. LA-R-275), and as recognized by the Board of Trustees of the Goleta Union School District per its Resolution No. 8-76 dated November 10, 1975:
>
> All permanent and probationary certificated employees, excluding those in administrative positions, as follows:
>
> a. Full-time and/or regular part-time teachers: Classroom, Miller-Unruh, Special Education, Preschool, Hearing Specialists
>
> b. Full-time and/or regular part-time Librarians
>
> c. Full-time and/or regular part-time Psychologists and Counselors
>
> d. Full-time and/or regular part-time Nurses
>
> e. Full-time and/or regular part-time Speech Therapists
>
> And excluding all management, supervisory, confidential, and classified employees.

> determine the times and hours of operation; determine the kinds and level of services to be provided, and the methods and means of providing them; establish its educational policies, goals and objectives; insure the rights and educational opportunities of students; determine staffing patterns; determine the number and kinds of personnel required; maintain the efficiency of District operations; determine the curriculum; build, move or modify facilities; establish budget procedures and determine budgetary allocation; determine the methods of raising revenue; lawfully contract out work; and take action on any matter in the event of an emergency. An emergency is defined as: times of extraordinary stress or disaster resulting from storms, floods, fire, or other calamitous events. In addition, the District retains the right to hire, classify, assign, evaluate, promote, terminate, and discipline employees except as restricted by this Agreement.
>
> The exercise of the foregoing powers, rights, authority, duties and responsibilities by the District, the adoption of policies, rules, regulations and practices in furtherance thereof, and the use of judgment and discretion in connection therewith shall be limited only by the specific and express terms of this Agreement.

At the time that the Association was certified as the exclusive representative, the District employed two permanent full-time elementary school counselors, Betty Steinberg and Jack Forrest, herein referred to as "teacher counselors." These two individuals were credentialed classroom teachers before they became counselors. After becoming counselors, they maintained some of their teacher duties and responsibilities which included attending staff meetings, serving on faculty

committees and some classroom teaching. Additionally, each possessed a pupil personnel services credential which is a state requirement for counselors.

As counselors, they provided a broad range of counseling and consultation services to pupils, parents, teachers and staff which were related to the pupils' instructional program and their relationships with teachers, administrators and other pupils. The counselors' duties included providing in-service training to the teachers and other staff in such areas as human relations, child growth and development, and parent conferences. Each teacher counselor was assigned to an individual school and worked under the immediate direction and supervision of the site principal. Their counseling activities were coordinated with those provided by the psychologists who worked at their assigned schools. The counseling services rendered by the teacher counselors overlapped those provided by the psychologists, with one major exception. The psychologists performed individual testing and diagnosis of pupils with learning and behavior difficulties, whereas the teacher counselors were not educationally qualified to perform this function.

At the conclusion of the 1976-77 school year, the District discontinued its use of teacher counselors.

Sometime between 1977 and 1981, the District entered into a contract for counseling services with an organization called

Social Advocates for Youth. The evidence fails to show the exact nature of these services or for what period of time they were actually provided. However, there is evidence that the program was limited to the Isla Vista School, and that this service was not provided during the 1981-1982 school year.

During three of the past four years since the case arose, the District has also had a contract with the University of California, Santa Barbara, school psychologist credentialing program. Through this program, additional counseling services are provided at the Isla Vista School by psychologist interns. These interns serve on a non-paid basis during the time they are working as interns, but receive hourly pay when they are giving counseling services as counselors. During the 1981-82 school year, one intern worked at Isla Vista School.

It was stipulated that the District caused the following advertisement to appear in the Santa Barbara News Press on or about September 13, 1981.

> COUNSELOR (ELEMENTARY SCHOOL). Must possess a valid Calif, pupil Personnel credential. Has successful counseling experience; facility with Spanish language desirable. $11 hourly. Apply Goleta School District 401 North Fairview Avenue by Sept. 18th.

Shortly thereafter, the District hired six persons referred to herein as "consultant counselors," to provide counseling services during the 1981-1982 school year. The hiring procedure, compensation, and other terms and conditions of employment for these individuals were handled according to the

District's established policy for employing consultants. Each entered into an individual "Agreement for Consultant Services"[4] to work for the District from October 23, 1981 through June 18, 1982. The number of hours each person worked per week varied from 4 to 15. They were all paid at the rate of $11.00 per hour. The consultant counselors received none of the employee benefits provided for in the certificated unit CBA, nor is there evidence that any of the common employer deductions such as income tax or social security were made from the fees paid to them.

All consultant counselors hired possessed a pupil personnel services credential. There is no evidence that any of them also possessed a teaching credential. One person, Pauline Mercado, was a credentialed school psychologist for another school district, but did not work as a psychologist for the District. The type of direct and indirect counseling services that consultant counselors provided to the students and staff was similar to that formerly provided by the teacher counselors, although on a reduced scale. For example, there was no responsibility for providing direct services of any kind to parents, and the amount of consultation with teachers and

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[4]It is noted that paragraph two of this agreement expressly states the following:

> It is agreed that the consultant is acting as an independent contractor, not as an agent or employee of the district, and is not eligible for employee benefits.

other staff was extremely limited. The scope of the services rendered by the individual consultant counselor was determined, to a large extent, by the number of hours worked per week.

At the school site where each consultant counselor was assigned, the site principal had responsibility for supervising the utilization of the consultant counselors.

At the assigned school sites, the consultant counselors and the psychologists shared responsibility for providing counseling services. There was functional overlap in the direct counseling services that they provided to both individuals and groups of students, except in the area of individual testing and diagnosis.

Steven Minjarez, the District's director of pupil personnel in special services and the person responsible for the hiring of the consultant counselors, prepared a memorandum with a list of their responsibilities and circulated it to counselors and principals.[5] Other than this list, there is no job

[5]The specific counselor responsibilities were as follows:

> (1) Counsel students individually and in small groups in matters relating to their learning adjustment processes in school (should not include personal or family therapy)? (2) assist the principal in planning and conducting inservice education experiences for the staff in such areas as human relations, child growth and development, and guidance functions of the classroom teacher; (3) maintain liaison with district guidance and counseling services and related services in the community. Will

description for them. He also prepared guidelines for the site principals which were intended to help the principals and the staff differentiate between the two basic types of counseling services to be provided by the psychologists and the consultant counselors.

Those guidelines indicate that the consultant counselors were to give "regular" counseling to augment the counseling services offered by the school psychologists to students in the regular educational program. "Regular" counseling does not require extensive diagnostics or assessment and is intended to provide short-term intervention. For those students enrolled in the special education services (master plan) program, only the psychologists were to offer "designated instructional service" (DIS) counseling. DIS counseling, which involves long-term services focusing on associated learning disabilities of the individual child, requires a comprehensive diagnostic and assessment work-up which becomes part of the basis for the staff's determination of an individualized education program for each eligible student.

The evidence shows that at three schools, El Rancho, Mountain View, and Brandon, the distinction between the types

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assist in making appropriate referrals for community services; (4) maintain communication with district psychologist assigned to the school as directed by the principal.

of students assigned to the psychologists and the consultant counselors was blurred. At these schools, the consultant counselors and the psychologists both provided regular and DIS counseling to the students needing those services.

During the past seven years before the case arose, the number of certificated employees in the negotiating unit has decreased by approximately five. In the 1981-82 school year, the District employed three psychologists, two on a full-time basis and one on four-fifth's time, i.e., four days per week.

Additionally, the District contracts with the Office of the Santa Barbara County Superintendent of School for the part-time services of a school psychologist. That person, Jim Garcia, is a county employee whose salary, hours and other terms and conditions of employment are governed by the contract between the District and the County Superintendent's office. Garcia's salary is paid by the county. His performance evaluations are also done by the county. However, his day-to-day assignments are made by the site principal at his assigned school. The diagnostic and counseling services provided by Garcia are the same as those provided by the psychologists employed by the District. During the 1980-81 school year, Garcia worked three days per week.

In the spring of 1981, Glenn Elliott, the District psychologist who works four days per week, requested to have his hours increased to full-time during the 1981-82 school year, i.e., five days per week. Although Minjarez, who is the

administrative supervisor of the psychologists, acknowledged to Elliott that the District was using less psychologist time than it needed, he denied Elliott's request. Later, when questioned about this by Elliott in the fall of 1981, Minjarez explained that, since the consultant counselors were being hired, the District would not need as much psychological service as before.

In addition to contracting for the counseling services described above, since 1975 the District has contracted with consultants to provide art, music and dance instruction, and language translation to students. Consultants have also been hired to give in-service programs for the teaching faculty and other staff. The consultants hired to perform these services during the 1981-82 school year signed the same kind of individual employment contracts that were signed by the consultant counselors hired in 1981. They were also paid the same $11.00 hourly rate that was paid to the consultant counselors.

There is no evidence that the parties have ever treated or regarded the psychologist interns or the consultants described above as members of the bargaining unit.

In a letter dated October 23, 1981, Bill Gordon, an Association representative, wrote to District Superintendent Frank Schultz inquiring about the District's plans to employ counselors by means of the September 13, 1981 newspaper advertisement. The letter stated that:

> On the face of it, the ad would seem to promote a violation of current contract

> provisions between you and UTP/Goleta, since counselors (full-time and/or regular part-time counselors) are delineated in the Recognition section (Article I) of the contract and since those counselors would seem to be covered by Article X, Salary, which provides a uniform salary schedule for all unit members.

In addition, the letter requested a meeting with the superintendent to discuss the matter.

Through a letter, dated October 27, 1981, Superintendent Schultz responded to Gordon and proposed a meeting on November 21, 1981. The letter also stated that it was the District's position that the persons being hired were "consultants . . . serving in the capacity of independent contractors and not as 'employees' in terms of a collective bargaining unit."

On November 12, Gordon, Grace Altus, a school psychologist, and then Association President Mary Wendel met with Schultz and Wynelle Chase, the District's director of personnel and chief negotiator. During the meeting, the parties reiterated their respective positions taken in the letters of October 23 and 27. The Association demanded that the District rescind its action and "restore the status quo." However, the Association did not make a specific request or demand to bargain over the matter. According to the testimony of Gordon, the reason it did not was because:

> [W]e were very satisfied with the contract in place. We did not feel that it was incumbent upon us to demand to bargain something which we felt that we had by contractual right.

In concluding the meeting, the District representatives promised to consult with their attorneys about the matter and get back to the Association with their decision.

Approximately three weeks later, the District notified Wendel that it was not going to rescind its decision to hire consultant counselors. The parties have had no further contact regarding this matter.

The District did not hire any consultant counselors for the 1982-83 school year; however, funding was included in the budget for such services.

DISCUSSION

Employee or Independent Contractor

Relying primarily on cases decided by the National Labor Relations Board (NLRB), the ALJ concluded that the consultant counselors hired by the District were independent contractors rather than employees because they received an hourly rate of pay for their services and did not receive fringe benefits or entitlement to tenure; they were not assigned extra-duty assignments; their work was not subject to evaluation or supervision by the District; and the technical and creative means by which the consultant counselors carried out their counseling activities was left to their discretion.

In contrast, the Association maintains that the consultant counselors are employees under EERA.

Section 2(3) of the National Labor Relations Act (NLRA), as amended by the Taft-Hartley Act[6], specifically excludes from the definition of employee "any individual having the status of an independent contractor." In interpreting this section, the NLRB and the courts have followed the ordinary tests of the law of agency - specifically the right of control test. That approach considers such factors as who has control over the manner and means by which the result is to be accomplished, the skill required in the occupation, and who supplies the instrumentalities, tools and place of work for the job, and method of payment. See, e.g., Steinberg & Co. (1948) 78 NLRB 211, enforcement denied, 182 F.2d 850 (5th Cir. 1950). This test is reflected in the U.S. Supreme Court's ruling in NLRB v. United Insurance Co. (1968) 390 U.S. 254, 258 [67 LRRM 2649], where the Court concluded that all of the incidents of the relationship must be assessed and weighed with no one factor being decisive. "What is important is that the total factual context is assessed in light of the pertinent common law agency principles."

However, subsection 3540.1(j), which sets forth the definition of employee for purposes of the EERA, makes no specific mention or exclusion of "independent contractor,"

[6]The NLRA is codified at 29 U.S.C, section 151 et seq.

making the language between the two statutes different.[7] In addition, the factors considered under the NLRA deal with specific industrial settings8 which appear to be quite different in focus from the public schools' mission.

Thus, in determining employee status under EERA, we must rely primarily on the statutory language of that Act, though we will consider, in part, indicia of employment which are similar to those developed under the NLRA, where they are appropriate.

Under EERA subsection 3540.1(j), a public school employee is defined as:

> any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

In Palo Alto Unified School District/Jefferson Union High School District (1/9/79) PERB Decision No. 84, the Board found substitute teachers to be employees within the meaning of subsection 3540.1(j) of the Act, and concluded:

> We believe that the [L]egislature intended the definition of 'public school employee'

7The construction only of similar or identical provisions of the NLRA may be used to guide interpretation of the EERA. See, e.g., San Diego Teachers Association v. Superior Court, 24 Cal. 3d 1, 12-13? Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 616.

8For example, under the NLRA, independent contractor or employee status has become a subject of litigation in a few major occupational categories such as over-the-road truck drivers, newspaper vendors, commission salespersons, and truck driver-distributors of various retail goods.

> to be inclusive, and extend broad coverage for representation and negotiating rights for persons who perform services for, and receive compensation from, public school employers.

In subsequent cases, the Board has continued to apply a broad definition of employee.[9]

In the instant case, the consultant counselors fit the definition of employee under the Act in that clearly they work and receive compensation from the District, they provide a service to the District, and are neither appointees of the Governor nor managerial or confidential employees. The fact that each applicant who was subsequently hired signed an employment contract which stated he or she was "acting as an independent contractor, not as an agent or employee of the district, and is not eligible for employee benefits" is not determinative since that is the issue to be resolved by the Board.[10]

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[9]These cases have found that various categories of teachers are appropriately included in a unit of regular classroom teachers, thereby implicitly finding them to be employees under the Act: Dixie Elementary School District (8/11/81) PERB Decision No. 171 (substitute teachers); El Monte Union High School District (10/20/80) PERB Decision No. 142 (home teachers, enrichment teachers, evening continuation teachers); Redwood City Elementary School District (10/23/79) PERB Decision No. 107, and Rio Hondo Community College District (1/25/79) PERB Decision No. 87 (summer school teachers); Palo Alto Unified School District (10/24/83) PERB Decision No. 352 (hourly adult education teachers).

[10]We note, additionally, that the ALJ erred in relying upon such factors as lack of bargaining unit pay and fringe

The counselors in question possess normal indicia of certificated employee status such as the possession of a state-mandated credential, acceptance of counseling assignments from, and supervision by the site principal, performance of their services at the District's school sites and use of its supplies and facilities, and coordination of their counseling activities with work performed by certificated employees in the negotiating unit. There is no evidence that the consultant counselors exercised any greater degree of control over their work than did either the teacher "counselor or the psychologist.

Consequently, we find that the consultant counselors are employees based on the EERA's definition of employee, the Board cases cited above, and the evidence which indicates that counselors did the same work, in the same manner and in the same places as the counselors had always done in the past and as the psychologists had always done and continue to do.

The Unit Question

The ALJ dismissed the allegation of a violation of subsection 3543.5(c) because she found that the persons in question were not certificated unit members. However, the Association maintains that the counselors are part of the counselor classification included in the bargaining unit which

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benefits as a basis for concluding that consultant counselors are independent contractors since those are exactly the matters in dispute and are within the District's control. See Palo Alto Unified School District, supra; El Monte Union High school District *(6/30/82)* PERB Decision No. 220.

it represents. It cites Article I (recognition clause) in support of its position:

> all permanent and probationary certificated employees, . . . [including] full-time and/or regular part-time Psychologists and Counselors . . . [are in the unit].

Further, it contends that the consultant counselors are members of the bargaining unit because they performed bargaining unit work.

The testimony indicates that the consultant counselors did do bargaining unit work. Clearly, the counselors hired in 1980-81 filled a gap which supplemented and supplanted the work that had been performed by counselors in the past who had been members of the unit and by psychologists who are currently part of the unit. The District does not dispute this issue. We thus find that the consultant counselors were performing bargaining unit work.

However, the remaining issue is whether the fact that consultant counselors were performing bargaining unit work is sufficient to find that they are members of the unit. There was no evidence presented to indicate that these consultant counselors were either "permanent" and/or "probationary" - a requirement outlined in the recognition clause of the CBA between the parties. Therefore, even though the consultant counselors are employees of the District, we find that they are not members of the unit represented by the Association.

Transfer of Work Out of the Unit

In Rialto Unified School District (4/30/82) PERB Decision No. 209 and Solano County Community College District (6/30/82) PERB Decision No. 219, the Board held that the decision to transfer work from one bargaining unit to other employees outside of that particular unit is negotiable as long as it impacts upon a subject within the scope of representation.

In the instant case, it has been established that the consultant counselors hired by the District in 1981-82, performed much of the same work previously performed by counselors who were members of the unit and much of the same work currently and always performed by the psychologists who are in the unit. Thus, the District has diminished the work of the until and deprived the counselor or psychologist unit members of actual or potential work opportunities, thereby eliminating the possibility of wages and hours associated with the transferred-out work. Solano County Community College District, supra. The District's action specifically adversely affected Glenn Elliott, a psychologist and member of the bargaining unit who had sought to increase his time from 4 to 5 days per week but was told the District would not need his full-time services since the consultant counselors were being hired. In addition, the diminution of unit work by

[11]The fact that the District discontinued the use of the teacher counselors in 1977 does not result in the removal of either the classification or the work from the bargaining unit.

transferring functions weakens the collective strength of employees in the unit. Rialto Unified School District, supra.

Consequently, we conclude that, absent a valid defense, the District violated subsection 3543.5(c) when it unilaterally transferred the work of certificated unit employees to employees outside of the unit without first negotiating with the exclusive representative of the employees.

The District asserts four defenses for its unilateral action. First, the District maintains that "Article II: District Rights" clause of the agreement reserved to the District the right to "lawfully contract out work." (See pages 3-4.)

Having mischaracterized the District's conduct as subcontracting work, the ALJ found this a valid defense on the part of the District. We do not find that this language represents a waiver on the part of the Association because to "contract out work" refers to subcontracting rights which the District may have. The District's Rights clause is inapplicable to this situation since the instant case deals with transfer of work out of the unit to District employees not covered by the contract, rather than contracting or subcontracting.

The second waiver defense raised by the District asserts that the Association did not make a timely demand to negotiate over the matter. We disagree for the following reasons.

First, Bill Gordon, an Association representative, sent a letter to the District Superintendent making inquiries about the District's plan to employ counselors by means of the newspaper ad and suggesting that to do so would be in violation of the contract between the parties. Gordon also requested a meeting to discuss the matter. At a subsequent meeting, the District reiterated its position that the counselors were independent contractors and not employees. The Association demanded that the District rescind its action and "restore the status quo." The Association did not make a specific request to negotiate because it did not feel it was necessary to demand to negotiate something which it already had by contractual right.

Thus, there was a clear demand on the part of the Association to meet and discuss the matter? there was also a demand that the District rescind its action and restore the status quo. The Association did not request to negotiate per se because it believed the CBA already preserved its position that the consultant counselors were in the unit. In Newman-Crows Landing Unified School District (6/30/82) PERB Decision No. 223, the Board indicated that it is not essential that a request to negotiate be specific or made in a particular form. Moreover, just because the position the Association maintained was erroneous as a matter of law does not constitute a waiver since it vigorously objected to the District's actions in a timely matter.

The District next argues that there has been a waiver on the part of the Association by its failure to object to the District's established past practice of hiring consultants to perform bargaining unit work. We agree with the ALJ that there is insufficient evidence of past practice to support this argument.

Finally, the District maintains that the Association's charge solely involves a breach of contract and that, therefore, its alleged failure to employ counselors pursuant to the terms of the contract does not constitute a violation of EERA.[12] Whether there has been a breach of contract is not at issue here since we have found that the consultant counselors are not members of the unit covered by the contract.

Having rejected each of the District's defenses, we find the District has violated subsection 3543.5(c) by transferring work which had been performed by unit members out of the unit without first meeting and negotiating with the Association. The unilateral action by the District also constitutes a concurrent deprivation of the rights of employees to representation on matters relating to terms and conditions of

[12]Subsection 3541.5(b) states:

> The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

employment in violation of subsection 3543.5(a), and of the rights of the Association to represent its members in violation of subsection 3543.5(b). See Rialto, supra; San Francisco Community College District, supra.

REMEDY

The Association maintains that a return to the status quo is an appropriate remedy. We find that an order to return to the status quo is inappropriate in this case since there is no evidence that any consultant counselors were hired after the 1981-82 school year.

However, it is appropriate to order the District to cease and desist from transferring work out of the unit without first negotiating with the Association. We also order the District to restore Glenn Elliott to a full-time position at his request and to make him whole with interest for the one day a week he was unable to work as a result of the District's action during 1981-82. It is also appropriate that the District post a notice incorporating the terms of the Order. Davis Unified School District et al. (2/22/80) PERB Decision No. 116.

ORDER

Pursuant to subsection 3541.5(a), (b) and (c), and based upon the foregoing findings of fact, conclusions of law, and the entire record in this case, the Public Employment Relations Board hereby ORDERS that the Goleta Union School District shall:

A. CEASE AND DESIST FROM:

1. Unilaterally transferring work out of the certificated unit without first meeting and negotiating in good faith with the United Teaching Profession/Goleta/CTA/NEA as the exclusive representative of employees in the unit.

2. Denying to the United Teaching Profession/Goleta/CTA/NEA rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

3. Interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

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

1. Restore Glenn Elliott to a full-time position upon his request and make him whole for the economic loss he suffered for the one day a week he was not allowed to work as a result of the District's action, with interest at the rate of seven (7) percent per annum, for the school year 1981-82.

2. Within thirty-five (35) days following the date the Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of 30 consecutive workdays.

Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

3. Written notification of the actions taken to comply with this Order shall be made to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with her instructions.

Members Morgenstern and Burt 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-1516, United Teaching Profession/Goleta/CTA/NEA v. Goleta Union School District, in which all parties had the right to participate, it has been found that the Goleta Union School District violated subsection 3543.5(c) of the Educational Employment Relations Act by failing and refusing to meet and negotiate with the United Teaching Profession/Goleta/CTA/NEA with respect to the transfer of work out of the unit, thus affecting matters within the scope of representation. It was further found that this same conduct violated subsection 3543.5(b) since it denied the Association the right to represent its members, and also interfered with employees' rights to be represented by their chosen representative in violation of subsection 3543.5(a) of the Educational Employment Re1ations 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 PROM:

1. Unilaterally transferring work out of the certificated unit without first meeting and negotiating in good faith with the United Teaching Profession/Goleta/CTA/NEA as the exclusive representative of employees in the unit.

2. Denying to the United Teaching Profession/Goleta/CTA/NEA rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

3. Interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

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

Restore Glenn Elliott to a full-time position upon his request and make him whole for the economic loss he suffered

for the one day a week he was not allowed to work as a result of the District's action, with interest at the rate of seven (7) percent per annum, for the school year 1981-82.

Dated: _____ GOLETA UNIFIED SCHOOL DISTRICT

By: _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.