

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



AMERICAN FEDERATION OF TEACHERS)
COLLEGE GUILD, LOCAL 1521,)
)
Charging Party,) Case No.

v.)
) PERB Decision No. 1345
)
LOS ANGELES COMMUNITY COLLEGE)
DISTRICT,) September 2, 1999
)
_____)
Respondent.)

Appearances; Lawrence Rosenzweig, Attorney, for American Federation of Teachers College Guild, Local 1521; Camille A. Goulet, General Counsel, for Los Angeles Community College District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

CAFFREY, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Los Angeles Community College District (District) to the proposed decision (attached) by a PERB administrative law judge (ALJ). In the proposed decision, the ALJ found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ when it reassigned counselors at

¹EERA is codified at Government Code section 3540 et seq. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights

West Los Angeles College from a 12-month workyear to a 10-month workyear without meeting and negotiating with the American Federation of Teachers College Guild, Local 1521 (Union).

The Board has reviewed the entire record in this case including the proposed decision, the District's exceptions and the Union's response thereto. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, it is found that the Los Angeles Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated EERA when during or about the month of May 1998, it reassigned the counselors at West Los Angeles College (WLAC) from D-basis to C-basis. By this conduct, the District violated EERA section 3543.5 (c). Because the action also had the effect of reducing the workyear and the pay of individual employees, the District's conduct also violated section 3543.5(a). Because the District refused to meet and negotiate with the American Federation of

guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

Teachers College Guild, Local 1521 (Union) about its decision to change counselors from D-basis to C-basis, the District's action also violated section 3543.5(b).

Pursuant to EERA section 3541.5(c), it hereby is ORDERED that the District and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally changing the workyear basis of counselors;

2. By the same conduct, interfering with the right of the Union to represent its members;

3. By the same conduct, interfering with the right of individual counselors to participate in the activities of an employee organization.

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

1. Effective immediately upon service of a final decision in this matter, reinstate the D-basis workyear for counselors at WLAC.

2. Within ninety (90) days following the date that this decision is no longer subject to appeal, reimburse all employees affected by the change in counselor workyear from D-basis to C-basis at WLAC for all losses they incurred as a result of the District's unilateral action. The affected employees shall be reimbursed for wages lost as a result of the District's change, augmented by interest at the rate of seven (7) percent. The District also shall take steps to ensure that retirement credits are restored to affected employees.

3. Within ten (10) workdays following the date that this decision is no longer subject to appeal, post at all work locations where notices to members of the certificated employee bargaining unit customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. 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 accord with the director's instructions.

Members Dyer and Amador joined in this Decision.



**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-3945, American Federation of Teachers College Guild, Local 1521 v. Los Angeles Community College District, in which all parties had the right to participate, it has been found that the Los Angeles Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated EERA section 3543.5(c) when during or about the month of May 1998, it reassigned the counselors at West Los Angeles College (WLAC) from D-basis to C-basis. Because the action also had the effect of reducing the workyear and the pay of individual employees, the District's conduct also violated section 3543.5(a). Because the District refused to meet and negotiate with the American Federation of Teachers College Guild, Local 1521 (Union) about its decision to change counselors from D-basis to C-basis, the District's action also violated section 3543.5(b).

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

A. CEASE AND DESIST FROM:

1. Unilaterally changing the workyear basis of counselors;
2. By the same conduct, interfering with the right of the Union to represent its members;
3. By the same conduct, interfering with the right of individual counselors to participate in the activities of an employee organization.

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

1. Effective immediately upon service of a final decision in this matter, reinstate the D-basis workyear for counselors at WLAC.
2. Within ninety (90) days following the date that this decision is no longer subject to appeal, reimburse all employees affected by the change in counselor workyear from D-basis to C-basis at WLAC for all losses they incurred as a result of the District's unilateral action. The affected employees shall be reimbursed for wages lost as a result of the

District's change, augmented by interest at the rate of seven (7) percent. The District also shall take steps to ensure that retirement credits are restored to affected employees.

Dated: _____ LOS ANGELES COMMUNITY COLLEGE
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.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF TEACHERS)	
COLLEGE GUILD, LOCAL 1521,)	
)	
Charging Party,)	Unfair Practice
)	Case No. LA-CE-3945
v.)	
)	PROPOSED DECISION
LOS ANGELES COMMUNITY COLLEGE)	(6/4/99)
DISTRICT,)	
)	
Respondent.)	

Appearances: Lawrence Rosenzweig, Attorney, for American Federation of Teachers College Guild, Local 1521; Camille Goulet, General Counsel, for Los Angeles Community College District.

Before Ronald E. Blubaugh, Administrative Law Judge.

PROCEDURAL HISTORY

A union here challenges a community college district's decision to reduce the work year of counselors at one of its campuses. The union argues that in reducing the work year, the public school employer made a unilateral change in hours, a mandatory subject of bargaining. Therefore, the union asserts, the district failed to negotiate in good faith.

The college district replies that for two reasons it was under no obligation to negotiate about the decision to reduce the hours. First, the district contends, it made the hours reduction in conjunction with a non-negotiable policy decision to change the method of delivering counseling services to students. Second, the district continues, even if the decision was negotiable, the reduction in hours was consistent with a long-time past practice and thus not a unilateral change.

The charge at issue was filed on June 22, 1998, by the American Federation of Teachers College Guild, Local 1521 (Guild or Union), against the Los Angeles Community College District (District). The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint against the District on September 16, 1998.

The complaint alleges that before May of 1998, it was the District's policy that the work year of counselors at West Los Angeles Community College would be 240 days over 12 months. This work year is known as "D-basis." During or about May of 1998, the complaint alleges, the District changed the policy by assigning counselors at West Los Angeles Community College to a 200-day work year coincident with the fall and spring semesters. The complaint alleges that this change was taken without affording the Union the opportunity to negotiate the decision to change the hours and work year and/or its effects. By making this change, the complaint alleges, the District violated Educational Employment Relations Act (EERA) section 3543.5(c) and, derivatively, (a) and (b).¹

¹Unless otherwise indicated, all statutory references are to the Government Code. The EERA is codified at section 3540 et seq. In relevant part, section 3543.5 provides as follows:

It shall be unlawful for a public school employer to do any of the following:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of

The District filed an answer to the complaint on October 20, 1998, admitting all jurisdictional allegations. In the answer, the District also:

(1) "Admits that before May 1998, the District's policy concerning the work year of Counselors at West Los Angeles Community College . . . was as follows: All counselors were employed on a 'D basis,' and counselors were to perform work 240 days between July 1 and June 30."

(2) "Admits that in or about May of 1998, the District changed this policy by requiring all Counselors at [West Los Angeles Community College] to work on a 'C basis.' 'C basis' employees work ten 4-week periods, 200 days, beginning with the opening day of the Fall semester and ending with the last day of the Spring semester."

On December 17, 1998, the District filed a motion to dismiss the charge and defer the matter to arbitration. The Union filed a memo in opposition to the motion on January 19, 1999. On February 2, 1999, the undersigned issued an order denying the motion to dismiss and defer.

this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

A hearing was conducted in Los Angeles on March 1, 1999. With the filing of briefs, the matter was submitted for decision on May 11, 1999.

FINDINGS OF FACT

The District is a public school employer as defined in section 3540.1(k) of the EERA. The Guild is an employee organization as defined in section 3540.1(d). At all times relevant, the Guild has been the exclusive representative, as defined in section 3540.1(e), of the faculty unit, an appropriate unit of academic employees of the District. Counselors are a job classification included within the faculty unit. The events at issue took place at West Los Angeles College which is one of nine community colleges operated by the District.

The District and the Guild are parties to a collective bargaining agreement, effective September 30, 1996, through June 30, 1999, a time span that includes the relevant period. The agreement provides for binding grievance arbitration. However, the dispute at issue is not deferrable because no provision of the agreement arguably prohibits the conduct at issue.

Most employees in the faculty unit have a work schedule which is known between the parties as "C-basis." As defined in the collective bargaining agreement, the C-basis work year consists of ten four-week periods totaling 200 days. It begins with the opening day of the fall semester and ends with the

closing day of the spring semester. In other words, C-basis is the traditional academic year.

Historically, District counselors including those at West Los Angeles College have worked a longer year on what is known between the parties as "D-basis." As defined in the collective bargaining agreement, the D-basis work year is 240 days between July 1 and June 30. Employees are eligible for illness benefits and receive pay for holidays. Employees on D-basis do not earn vacation but are paid for vacation days specified in the faculty contract.

Depending upon the calendar, there are either 260 or 261 work days in any particular year. Because they work a 12-month schedule, employees on D-basis must take either 20 or 21 unpaid days over the course of the year to ensure that they work no more than 240 days. When they were on D-basis, the counselors at West Los Angeles College coordinated their schedules for taking unpaid days so there would be coverage at all times.

To a substantial degree, the change at issue can be traced to dissatisfaction with the work performance of counselors by West Los Angeles College President Evelyn Wong. Dr. Wong became president of the college in 1991 and over a long period of time participated in a number of discussions about improving and re-configuring counseling services.

Dr. Wong testified that she walked around the campus several times a month and on many occasions would encounter students waiting in the counseling center but no counselors were present.

She said the counselors always had a reason for their absence but she was of the view that students should not be kept waiting, regardless. She said that student government officers had told her that counseling services needed to be improved and she had received similar, isolated comments from faculty members. Dr. Wong said it was her view that the college was not doing a satisfactory job of providing counseling services in the evening and on weekends. She said she had told the counselors on several occasions that they need to be available when students wanted to meet with them.

Dr. Wong testified that her growing concerns about problems with counseling services coincided with a campus-wide discussion about a possible change in the academic calendar. While reviewing alternative calendars, Dr. Wong and other administrators discussed the question of how counseling and other support services might be changed to mesh with a different calendar. Although the campus community never reached a consensus on changing the calendar, the discussions led Dr. Wong to conclude in spring of 1997 that she should change counselors at West Los Angeles College from D-basis to C-basis.

Prior to revealing her plans to the counselors, Dr. Wong consulted with the District chancellor and others about whether there were any restrictions on her right to make the change. Concluding that she had the right to change counselors to C-basis, she announced her plans in April of 1997. Dr. Wong met

with the counselors and explained her reasons for making the change.

In a subsequent memo written for distribution to members of the Academic Senate, Dr. Wong identified two reasons for making the change: (1) "Increase and improve counseling services," and (2) "Allocate existing college resources to high priority areas." Dr. Wong wrote that while students are on campus primarily during the morning and evening hours, counselor scheduling occurs primarily in the afternoon. There is no budget for hourly counseling services, she wrote, and there are inadequate counseling services available for evening students.

In the memo, Dr. Wong stated that savings from the change in basis could be used to increase and improve counseling services when they are most needed. This would be done by hiring counselors to work additional time on an hourly basis during the peak demand periods in the fall, spring, summer and evenings. Any savings that remained, Dr. Wong wrote, could be used in other priority areas at the college.

The Guild challenged the change in hours by filing a grievance. There followed a series of discussions between Dr. Wong, the counselors, the Union and the leaders of the Academic Senate. Based upon these discussions, Dr. Wong concluded that it would be possible to address her concerns in a collaborative effort with the Union, the counselors and the faculty leadership. She cancelled her plan to change the

counselors to C-basis. The Union responded by withdrawing the grievance.

Dr. Wong explained her decision not to change the hours of counselors by a memo dated April 22, 1997. In relevant part, her memo reads:

I am writing to inform you that I have decided that, at this time, I will not go forward with my plan to reduce the assignments of the members of the W[est] L[os] A[ngeles] C[ollege] Counseling Department from D basis to C basis. Please understand that my decision not to proceed at this time does not indicate agreement with the arguments about the nature of a D basis assignment that have been raised in the grievance filed by the counselors at West. I think, however, it to be in the best interests of the college that we put in place a process of consultation and discussion on issues relating to maximizing the effectiveness of the W[est] L[os] A[ngeles] C[ollege] Counseling Division for the students of the college.

I am looking forward to engaging in these discussions with you and with representatives of the AFT College Guild. It is my hope that through this consultative process we can improve counseling services to our students.

I have discussed my decision with Guild President Carl Friedlander, and he will inform you of the status of the grievance that has been filed.

I will be contacting you shortly about putting in place a consultation process with clear and reasonable timelines and with the crucial parties involved.

A series of meetings between the administration and the counseling staff followed Dr. Wong's decision not to go forward with the hours change in 1997. David Follosco, vice president of students services at West Los Angeles College, represented

Dr. Wong in the talks. The counselors represented themselves directly in the five meetings that took place between May and October of 1997.

Prior to the first meeting, Mr. Follosco presented to the counselors a list of "issues and concerns" about the counseling division. At the top of the lengthy list, was a change in counselor work scheduling in order "to meet student needs." Entries under this notation included counselor availability on Saturdays and a balance between morning and evening coverage. Also listed was a requirement that more counselors be available during periods of heavy student usage. Other concerns listed on Mr. Follosco's summary of issues included: improved reporting of work schedules to the administration, full participation in the matriculation process, more effective delivery of services, participation in outreach activities at local feeder high schools, implementation of new evaluation processes, improved teamwork and improved participation in professional activities.

The last of the meetings between Mr. Follosco and the counselors took place in October of 1997. Mr. Follosco testified that the meetings resulted in the counselors addressing some of the issues raised in the spring of 1997. However, he testified, the meetings were not as productive as he had hoped.

In the spring of 1998, Dr. Wong decided to implement the change in counselor work year from D-basis to C-basis. She met with the counselors on May 20, 1998, to advise them of her decision. All but one of the nine counselors employed at West

Los Angeles College were present. At the meeting, Dr. Wong reviewed the list of problem areas she had identified a year earlier and discussed what had been done to make the changes she believed necessary. After listening to the responses of the counselors present, Dr. Wong informed them of her decision to change their work hours from D-basis to C-basis.

Dr. Wong testified that her primary reason for moving the counselors from D-basis to C-basis was to change the way counseling services are provided. She said she also wanted to use the salary savings for other college needs.

By reducing the number of pay warrants from 12 to 10 per year, the change of counselors from D-basis to C-basis provided significant salary savings to the District. Although the college re-hired some of the counselors to work peak summer periods at an hourly pay rate, the hourly pay is only 80 percent of the regular pay rate. Moreover, the number of hours counselors worked collectively during the summer of 1998 was fewer than the total number of hours they would have worked when they were on D-basis.

The District had a "consultation meeting" with the Union on May 27, 1998, during which the District advised the Union of its plan to change the counselors to C-basis. By letter of June 14, 1998, the District formally notified the Union "that effective July 1, 1998, West LA College intends to change the status of nine monthly rate counselors from 'D' Basis to 'C' Basis." In the letter, the District further advised the Union that it would be "available to bargain . . . regarding the effects of this

decision." West Los Angeles College was the only District college to change the hours of counselors from D-basis to C-basis.

By letters of June 15, 1998, the District formally notified each employee that his/her "monthly rate counselor assignment will be changed from D basis to C basis, effective July 1, 1998." The letters further stated:

It is anticipated that the college may elect to make additional assignments, in addition to the 200 days of the C basis, during the summer of as many as 21 days.

By letter of June 22, 1998, the Guild responded to the District's notice of the impending change in counselor work year. In relevant part, the Union's letter reads:

As we stated in the consultation meeting of May 27, 1998, we consider this change in assignment a unilateral deviation in working conditions from the established policy at West Los Angeles College and in the Los Angeles Community College District. This change has a generalized effect and a continuing impact on the terms and conditions of employment. As such, we have filed an Unfair Labor action with PERB.

As we stated on May 27, 1998, we seek to negotiate the change in working conditions, not just the effects of this action. In light of the LACCD administration's view that only the effects need be negotiated, we are willing to initially negotiate on the effects of the change while continuing to pursue our action to force the District to negotiate the change itself. By agreeing to negotiate the effects of the change, we are not waiving any rights to negotiate the unilateral change itself.

The District and the Union subsequently bargained on June 29, July 13 and July 27, 1998, about the effects of the change.

On June 30, 1998, the college sent to each counselor a letter advising that it would be hiring counselors for summer session assignments. The letter set out a schedule whereby it would hire two counselors to work a total of 90 hours per week during the month of July. The letter further stated that it would hire four counselors to work a total of 160 hours between August 3 and August 6, 1998. The letter ranked the nine counselors according to their priority for summer positions and specified how the hours would be distributed depending upon the choices made by those with the highest priority. The letter included an accept/decline form by which each counselor could identify his/her preferences for summer counseling assignments.

Each of the several counselor witnesses testified to a loss of income because of the switch from D-basis to C-basis. Eloise Crippens testified that she lost most of two months pay. She said she worked only 25 hours over the summer and those hours were compensated at only 80 percent of her regular pay rate. Moreover, she testified, the change affected her retirement benefits because it lowered her annual pay. Summer service performed as an extra assignment is not creditable compensation for purposes of earning retirement benefits.² As a result, Ms. Crippens testified, she would have to work longer before retirement than she had planned. Anthony Gamble testified that he, too, lost money and would not have left his prior full-time job to accept a ten-month position.

²See Education Code section 22119.2(b)(2).

The District presented computer print-outs showing that individual employees in the faculty unit over several years have moved back and forth between D-basis and C-basis employment. Counselors are among the employees who have made the switch between D-basis and C-basis. There is no evidence in the record, however, about the reasons why the employees listed on the print-outs made the switch between D-basis and C-basis. Moreover, there was no evidence presented to demonstrate that the District ever before involuntarily transferred all employees in a work group from D-basis to C-basis.

Mr. Follosco testified that when he was a counselor he was moved from D-basis to C-basis on the campus where he was employed. However, he was the only counselor whose basis was changed at that time. He was lowest in seniority and he was told that the reason for the change was to reduce costs.

LEGAL ISSUES

Did the District make a unilateral change in a negotiable subject and thereby fail to meet and negotiate in good faith when it reassigned the counselors at West Los Angeles College from D-basis to C-basis?

CONCLUSIONS OF LAW

If an employer makes a pre-impasse unilateral change in an established, negotiable practice that employer violates its duty to meet and negotiate in good faith. (NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].) Such unilateral changes are inherently destructive of employee rights and are a failure per se of the

duty to negotiate in good faith. (Davis Unified School District, et al. (1980) PERB Decision No. 116; State of California (Department of Transportation) (1983) PERB Decision No. 361-S.)

To prevail on a complaint of unilateral change, the exclusive representative must establish by a preponderance of the evidence that (1) the employer breached or altered the parties' written agreement or own established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounts to a change of policy (i.e., has a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members); and (4) the change in policy concerns a matter within the scope of representation. (Grant Joint Union High School District (1982) PERB Decision No. 196 (Grant); State of California (Department of Forestry and Fire Protection) (1993) PERB Decision No. 999-S.)

The District's principal line of defense is that it made a non-negotiable decision when it changed counselors at West Los Angeles College from D-basis to C-basis. "The District retains the exclusive right to reduce or terminate functions at any time," the District argues. "The College has an inherent management right to respond to the operational needs of the campus, including the need for greater or lesser counseling services in a particular time of year. The College exercised that inherent management right in June 1998 based on operational

needs." Therefore, the District concludes, bargaining about the decision was not required and the parties stipulated that bargaining about the effects was conducted in good faith.

The Guild rejects this rationale, asserting that the college made the change "to acquire salary savings" which could be used for other purposes. "President Wong explicitly discussed financial problems when she met with the Guild on this issue," the Guild observes. The college addressed these financial needs, the Union continues, by reducing the income of the counselors.

It was settled long ago that the number of days in the work year is a negotiable matter because it affects hours and wages, subjects specifically listed within the EERA scope of representation.³ Thus, an employer decision to reduce the number of days in the work year is a negotiable decision.

A reduction in work year directly affects items enumerated in subsection 3543.2(a) . . . because it reduces wages and hours. We affirm the ALJ's finding that duration of the work year is a subject within scope. Such finding is in accord with prior Board decisions holding that the number of workdays in the work year is a subject within scope. . . . [Pittsburg Unified School District (1983) PERB Decision No. 318.]

Similarly, the Board has held that an employer decision to change the beginning and ending dates of service and the dates of holidays is negotiable as affecting hours.

. . . [T]he dates of the beginning and ending of certificated service, vacations, and holidays are primarily related to hours of employment as found in section 3543.2,

³Section 3543.2.

and are consequentially negotiable items.
[Palos Verdes Peninsula Unified School District (1979) PERB Decision No. 96.]

It is undisputed that by changing the counselors at West Los Angeles College from D-basis to C-basis the District: shortened the number of days in their work year, reduced their pay, eliminated several holidays, changed the beginning and ending dates of their work year and reduced the rate at which they earn retirement credits. Plainly, the shortening of the work year affected the counselors' hours of work and pay, both mandatory subjects of bargaining.

According to the District, however, these are but effects. Since it willingly negotiated about effects, the District reasons, it discharged its obligation. But in making this argument the District cites no case that permits an employer to reduce employee hours and cut pay in order "to respond to the operational needs of the campus."

The Board decision that most closely supports the District's rationale is Arcata Elementary School District (1996) PERB Decision No. 1163 (Arcata). There, the Board held that if an employer's decision to change the hours of a vacant position,

. . . reflects a change in the nature, direction or level of service [the decision] falls within management's prerogative and is outside the scope of representation. Conversely, a decision to change the hours of a vacant position which is based on labor cost considerations and does not reflect a change in the nature, direction or level of service, is directly related to issues of employee wages and hours and is within the scope of representation. [Fn. omitted.]

The Arcata rationale is not applicable here, however, because Arcata applies only to an employer's modification of the hours of a vacant position. " [T]he Board has never held that an employer can change the hours in an occupied position, without negotiating, even if the purpose is to change the nature, direction or level of service." (State of California (Employment Development Department), (1998) PERB Decision No. 1284-S, adopting the administrative law judge decision at p. 22.) Unlike Arcata, all of the counselor positions affected by the change at West Los Angeles Community College were occupied by incumbent employees.

The record here, moreover, would not support a conclusion that the primary purpose of the reduction in counselor hours was to "change . . . the nature, direction or level of service." I conclude that making a change in direction was the District's least important motivation. This is evident from the fact that the nature and direction of counseling services was unchanged after counselors were switched to a C-basis work year.

The District did not eliminate counselor services at West Los Angeles Community College; it shifted counselor services to different hours in the summer and in the evening. Under the new schedule, more counselors work during some periods than would have worked under the prior schedule. At other times, there are fewer counselors than there would have been under the prior schedule. At all times, however, the nature of the counseling provided to students is the same after the change as it was before. Just the dates and times are different.

I believe that the primary motivation for the shift of counselors to C-basis was to force the counselors to work at the times of the day and on the days of the year Dr. Wong believed most appropriate. Counselors were reluctant to go along with the work hours Dr. Wong wanted. So, she forced them to work at other times by changing them to a C-basis work year. With the change in basis, the counselors had no choice.

I believe that closely behind Dr. Wong's desire to have counselors work at different hours was her desire, also, to save funds for other uses. Because of the change, as Dr. Wong candidly stated, the District could " [a]llocate existing college resources to high priority areas."

All other elements of a prima facie unilateral change case are present. It is undisputed that by long-standing practice the principal work year for counselors at all District colleges has been D-basis. The District admitted the existence of such a practice in its answer. The computer print-outs introduced as evidence by the District do not establish a practice different from what the District has admitted. Although the print-outs show that individual employees in the faculty unit, including counselors, have moved back and forth between D-basis and C-basis, the reasons for the changes are unexplained. The movement between D-basis and C-basis could have been for promotions, reassignments, job changes or a host of other reasons. The existence of such unexplained changes does not rebut the admitted practice that District counselors work

D-basis. Nor is there evidence demonstrating that the District ever before involuntarily transferred all employees in a work group from D-basis to C-basis.

It is undisputed, also, that the District refused to negotiate with the Guild about its decision to transfer West Los Angeles College counselors from D-basis to C-basis. The change, therefore, was made unilaterally, without the consent of the exclusive representative. Finally, the change was an across the board action which, as the Guild observes, affects "all current and future counselors" at West Los Angeles College. It is clear, therefore, that the change from D-basis to C-basis had both "a generalized effect" and a "continuing impact" on counselors at West Los Angeles College. (Grant.)

Accordingly, I conclude that the District failed to meet and negotiate in good faith when during or about the month of May 1998, it reassigned the counselors at West Los Angeles College from D-basis to C-basis. By this conduct the District violated EERA section 3543.5 (c) . Because the action also had the effect of reducing the work year and the pay of individual employees, the District's conduct also violated section 3543.5(a). Because the District refused to meet and negotiate with the Union about its decision to change counselors from D-basis to C-basis, the District's action also violated section 3543.5(b).

REMEDY

The PERB in section 3541.5 (c) is given:

. . . 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.

The District has been found in violation of its duty to meet and negotiate in good faith by unilaterally reassigning the counselors at West Los Angeles College from D-basis to C-basis. This change shortened the number of days in the counselors' work year, reduced their pay, eliminated several holidays, changed the beginning and ending dates of their work year and reduced the rate at which they earn retirement credits.

It is appropriate therefore that the District be directed to cease and desist from making unilateral changes and to reinstate the past practice. It also is appropriate that the District be directed to make whole all counselors at West Los Angeles College for losses they incurred as a result of the District's unilateral action. The affected employees shall be reimbursed for wages they lost as a result of the District's change. The reimbursement shall be augmented by interest at the rate of 7 percent. The District also shall take steps to ensure that retirement credits are restored to affected employees.

It also is appropriate that the District be required to post a notice incorporating the terms of the order. Posting of such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the

purposes of the EERA that employees be informed of the resolution of this controversy and the District's readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, it is found that the Los Angeles Community College District (District) violated the Educational Employment Relations Act (Act), Government Code section 3543.5 (c), (b) and (a). The District violated the Act when during or about the month of May 1998, it reassigned the counselors at West Los Angeles College from D-basis to C-basis. By this conduct the District violated EERA section 3543.5 (c) . Because the action also had the effect of reducing the work year and the pay of individual employees, the District's conduct also violated section 3543.5 (a). Because the District refused to meet and negotiate with the Union about its decision to change counselors from D-basis to C-basis, the District's action also violated section 3543.5(b).

Pursuant to section 3541.5 (c) of the Government Code, it hereby is ORDERED that the District and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally changing the work year basis of counselors;

2. By the same conduct, interfering with the right of the Union to represent its members;

3. By the same conduct, interfering with the right of individual counselors to participate in the activities of an employee organization.

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

1. Effective immediately upon service of a final decision in this matter, reinstate for counselors at West Los Angeles College the D-basis work year.

2. Within ninety (90) days of the service of a final decision in this matter, reimburse all employees affected by the change in counselor work year from D-basis to C-basis at West Los Angeles College for all losses they incurred as a result of the District's unilateral action. The affected employees shall be reimbursed for wages lost as a result of the District's change, augmented by interest at the rate of 7 percent. The District also shall take steps to ensure that retirement credits are restored to affected employees.

3. Within ten (10) workdays of service of a final decision in this matter, post at all work locations where notices to members of the certificated employee bargaining unit customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps

shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the San Francisco Regional Director of the Public Employment Relations Board in accord with the director's instructions.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174

FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit.8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code. Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

Ronald E. Blubaugh
Administrative Law Judge