

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



LOS ANGELES CITY AND COUNTY SCHOOL)	
EMPLOYEES UNION, LOCAL 99, SERVICE)	
EMPLOYEES INTERNATIONAL UNION,)	
AFL-CIO,)	
)	
Charging Party,)	Case No. LA-CE-1091
)	
v.)	PERB Decision No. 252
)	
LOS ANGELES COMMUNITY COLLEGE)	October 18, 1982
DISTRICT,)	
)	
Respondent.)	

Appearances: Mary L. Dowell, Attorney for Los Angeles Community College District; Jeff Paule, Attorney (Geffner & Satzman) for Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO.

Before: Jaeger, Morgenstern and Jensen, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Los Angeles Community College District (District) to a hearing officer's proposed decision finding that the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)¹ by unilaterally changing the shift of approximately 15 custodial employees at Southwest

¹EERA is codified at Government Code section 3540

College without informing and bargaining with the exclusive representative, Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO (Local 99, Charging Party or Union). The District further excepts to the hearing officer's proposed order reinstating all affected custodial employees to their former shift with back pay.

In its exceptions, the District argues that the language contained in a collective bargaining agreement between the parties as well as the negotiating history leading to the agreement indicate a waiver of the right to negotiate on the shift change, that inaction on the part of the Charging Party constituted a waiver of the right to negotiate, that Education

et seq. All statutory references are to the Government Code, unless specified otherwise.

Subsections 3543.5(a), (b) and (c) provide as follows:

It shall be unlawful for a public school employer to:

(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.

(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.

Code section 881832 precludes the remedy ordered by the hearing officer, and that the parties have already negotiated and reached agreement on the matter in dispute.

For the reasons set forth below, we affirm the hearing officer's proposed decision but modify his ordered remedy.

FACTS

Local 99 is the exclusive representative of a maintenance and operations unit of District classified employees, including employees on ten college campuses and including a classification called "Custodian." At some colleges, custodians work in shifts collectively covering 24 hours a day. Where there is a shift system, the "A" shift (7:00 a.m. to 3:00 p.m.) is paid a straight salary schedule. The "B" shift (3:00 p.m. to 11:00 p.m.) is paid on the salary schedule plus a shift differential of 5.5 percent. The "C" shift (11:00 p.m. to 7:00 a.m.) is paid on the salary schedule plus a shift differential of 11 percent.

During the summer of 1978, after the passage of Proposition 13, all custodians in the District were reassigned

2 Education Code section 88183 states as follows:

Assignment to duties for which differential compensation is designated, other than a temporary assignment of less than 20 working days, shall be made on the basis of seniority among those employees within the appropriate class who request such an assignment.

to the "A" shift for a period of three weeks. This action was rescinded, however, when it was discovered that, if the employees remained on the "A" shift for more than 20 days, Education Code section 88183 would permit more senior employees who wanted a "B" or "C" shift assignment to request it if those shifts were reinstated. Thereafter, on an individual college basis, some colleges began to consider eliminating the "C" shift entirely as a cost-saving measure.

Evidence was introduced concerning the experience at five other colleges in the District where elimination of the "C" shift was considered. In every case, Local 99 was apprised of the intended change, engaged in discussions with representatives of the District and/or the college, and reached agreement. At Harbor College and Los Angeles Trade Tech, the "C" shift was ultimately eliminated; at Valley College and Los Angeles City College, the "C" shift was not eliminated; at Pierce College, a compromise was reached wherein the "C" shift hours were modified.

At Southwest College, however, the experience was significantly different. Until late January 1979, Local 99 had no designated representative at Southwest and essentially no presence at the college. Stan Chow, Dean at Southwest College, testified that until January 1979, he did not know that Local 99 was the exclusive representative of custodial employees and did not know that a contract was in existence

between Local 99 and the District. Consequently, Local 99 did not have notice of the shift change until several months after it was implemented.

Southwest College representatives did, however, inform the affected custodial employees of the contemplated change at meetings held on June 26, 1978, December 8, 1978, and January 1979. In the early meetings, the elimination of the "C" shift was presented as a possibility, and transfer options and loss of pay differential were discussed. At the January 1979 meeting, Chow stated that the "C" shift would be eliminated.

According to the testimony of both Chow and the college president, Walter E. McIntosh, the decision to eliminate the "C" shift had been firmly made and was final by the time of the January 1979 meeting.

No representative of Local 99 was notified of or present at the employee meetings. In late January 1979, after the last employee meeting, Local 99 designated Reggie McCoy as shop steward at Southwest. McCoy had been present at two of the employee meetings.

On September 6, 1978, Chow had contacted Ernest Moreno of the District's staff relations department, asking for guidance regarding the procedure to be followed in the elimination of the "C" shift. He was informed that the elimination of the "C" shift was management's prerogative.

Chow recommended elimination of the "C" shift in his proposed budget for the 1979-80 school year, submitted to President McIntosh between October and November 1978.

The custodial "C" shift was eliminated, effective July 1, 1979.

A petition, signed by custodial employees opposing the shift change and dated August 9, 1979, was sent to Local 99. However, Mr. Howard Friedman, secretary-treasurer of Local 99, testified that Local 99 first became aware of the shift change problem in early October.

On November 26, 1979, Friedman wrote to Dr. McIntosh opposing the unilateral shift change, urging rescission of the action, and indicating a desire to negotiate on the subject. A copy of the letter was sent to Dan Means, director of staff relations for the District. This was Means' first formal notification of the shift change. However, he had been unofficially notified of the change by Mr. Moreno's discussions with Chow some six months earlier. Following receipt of the letter, McIntosh asked Chow to handle the matter and Chow called Means for advice. Pursuant to Means' advice, Chow sent a letter to Friedman on November 30, 1979, stating as follows:

For your information the college action was conducted in an appropriate manner. Should you wish to pursue further action I would refer you to Mr. Daniel Means of Staff Relations at the District office.

No further communication between Local 99 and the District took place on this issue and, on December 21, 1979, Local 99 filed the unfair practice charge which is the subject of this case.

At all relevant times, the parties were signatory to a collective bargaining agreement executed on May 24, 1978. The agreement includes a "zipper clause" which states as follows:

The parties agree that during the negotiations which culminated in this Agreement each party enjoyed and exercised without restraint, coercion, intimidation, or other limitations, the right and opportunity to make demands and proposals or counterproposals with respect to any matter not reserved by policy or law from compromise through bargaining and that the understandings and agreements arrived at after the exercise of that right and opportunity are set forth herein.

Except as provided in Section 2 of this Article and Article XXI, the parties agree, therefore, that the other shall not be obligated to negotiate or bargain collectively with respect to any subject or matter, whether referred to herein or not, even through [sic] such subject or matter may not have been in the knowledge and contemplation of either or both of the parties at the time that they negotiated or signed this Agreement.

The agreement also contains a "shift differential" section which states:

All employees covered by this Agreement shall receive a two (2) salary schedule shift differential for each day that 50% of their shift falls within the hours of 5:00 p.m. to 12:00 midnight and a four (4) salary schedule shift differential for each

day that 50% of their shift falls within the hours of 12:00 midnight to 7:00 a.m. An employee receiving a shift differential shall not be paid the differential if reassigned to a shift not qualifying for such payment.

The agreement does not provide for binding arbitration of grievances. No grievance was filed on the shift change at issue here.

As a result of the shift change at Southwest College, approximately 15 employees who formerly worked the "C" shift were transferred to the "B" shift, and their wages were reduced by loss of the 5.5 percent shift differential.

DISCUSSION

The District acknowledges that the elimination of the custodial "C" shift and the reassignment of employees to other shifts affected the wages and hours of employees, that wages and hours are expressly included in the scope of representation, and that the unilateral change of any matter within the scope of representation is considered a violation of the statute.

The District's belated admission of negotiability stands in marked contrast to its actual conduct in this case. In fact, the District took the position that it had no obligation to negotiate regarding the change. In September 1978, Ernest Moreno of the District's staff relations office advised Stan Chow, dean at Southwest College, that the shift change was management's prerogative. Chow, who was not aware that

Local 99 was the exclusive representative of the custodial employees or that a contract between the union and the District existed, followed Moreno's advice. Neither he nor any representative of Southwest or of the District ever notified Local 99 of its intended action. In November 1979, the District director of staff relations, Dan Means, reiterated the District's position by advising Chow to inform Local 99 that the change "was conducted in an appropriate manner."

Thus, the District maintained that the shift change was non-negotiable and that it was not obligated to give Local 99 notice and an opportunity to negotiate about it. This position, and the District's actions in accordance therewith, clearly violate its duty to negotiate in good faith. San Mateo Community College District (6/8/79) PERB Decision No. 94; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51. Where an employer refuses to discuss a proposal because he denies its negotiability, the lawfulness of the employer's position turns on the negotiability of the subject. Sierra Joint Community College District (11/5/81) PERB Decision No. 179.

As its sole defense, the District argues that Local 99 waived its right to negotiate, advancing several alternative theories.

For an employer to show that a union waived its right to negotiate, it must demonstrate either "clear and unmistakable"

language, or demonstrative behavior waiving a reasonable opportunity to bargain over a decision not already firmly made by the employer. Sutter Union High School District (10/7/81) PERB Decision No. 175; San Mateo Community College District, supra; and see Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74. Additionally, a waiver must be an intentional relinquishment of the union's rights under EERA. San Francisco Community College District (10/12/78) PERB Decision No. 105.

Here, the District has failed to show, under any of its several alternative theories, that Local 99 clearly, unmistakably and intentionally waived its right to negotiate the elimination of the custodial "C" shift at Southwest College.

Waiver by Contract

The District argues that the "zipper" and shift differential clauses in its contract, read together, constitute a contractual waiver of the right to negotiate about this shift change, and that the history of negotiations supports this interpretation of the contract.

Contract terms will not justify a unilateral management act on a mandatory subject of bargaining unless the contract expressly or by necessary implication confers such right.

New York Mirror (1965) 151 NLRB 834, [58 LRRM 1465, 1467].

Here, the contract contains no management rights clause and no provision expressly reserving to the District the right to

unilaterally change or eliminate shifts. Nor is such right necessarily implied. Dan Means testified for the District that no management rights clause was included in the contract because he believed that both parties understood that all unnegotiated rights were reserved to management. However, he also testified that no management rights clause was ever put on the table and that he never discussed his philosophy of reserved rights during negotiations. His opinion that the union negotiator shared his philosophy was based on expressions to the effect that, "The District had all the laws, all the rules and regulations in their favor . . . the District had all the rights." These rhetorical remarks and Mean's unspoken philosophy fall far short of evidence sufficient to imply agreement between the parties granting the District the right to unilaterally change shifts.

Similarly, the zipper clause does not constitute a clear and unmistakable waiver as to any specific item. Amador Valley Joint Union High School District, supra. The purpose of a zipper clause is to foreclose further requests to negotiate regarding negotiable matters, even if not previously considered, during the life of a contract. It does not, however, cede to the employer the power to make unilateral changes in the status quo. See Gorman, Labor Law (1976) pp. 471-472. If such power exists, it must be found elsewhere

in the contract. Here, the District erroneously points to the shift differential clause.

The shift differential clause states, in pertinent part, that, "An employee . . . shall not be paid the differential if reassigned to a shift not qualifying for such payment." The hearing officer correctly concluded that this section only specifies the method of payment when an employee changes shifts and not why, how or under what circumstances such reassignment may be made. This section does not expressly or by necessary implication grant the District a right to make such reassignments without prior notice and consultation with the Union. Nor does it have such effect when read in conjunction with the zipper clause.

Thus, the hearing officer properly determined that the contract does not clearly and unmistakably waive the union's right to negotiate regarding a shift change or elimination.

History of Negotiations

The District properly excepts to the hearing officer's failure to consider the bargaining history which resulted in the contract between the parties. Nonetheless, consideration of the bargaining history, as presented by the District,³ fails to reveal a clear and unmistakable waiver.

³The Union presented no testimony regarding the negotiations.

Under the National Labor Relations Act (NLRA or Act), union conduct in negotiations will make out a waiver only if a subject was "fully discussed" or "consciously explored" and the union "consciously yielded" its interest in the matter. Press Co. (1958) 121 NLRB 976. Moreover, where a provision would normally be implied in an agreement by operation of the Act itself, a waiver should be express, and a mere inference, no matter how strong, should be insufficient. NLRB v. Perkins Machine (1st Cir. 1964) 326 F.2d 488, [55 LRRM 2204]; and see American Telephone and Telegraph Co. (1980) 250 NLRB 47. The fact that a union drops a contract proposal during the course of negotiations does not mean it has waived its bargaining rights and ceded the matter to management prerogative. Beacon Piece Dyeing and Finishing Co. (1958) 121 NLRB 953. Where, during negotiations, a union attempts to improve upon or, as in this case, to codify the status quo in the contract and fails to do so, the status quo remains as it was before the proposal was offered. The union has lost its opportunity to codify the matter, it has failed to make the matter subject to the contract's enforcement procedures or to gain any other benefit that might have accrued to it if its effort had succeeded. Where, as here, the contract contains a zipper clause, the union has also lost its right to reinstitute its dropped contract proposal or any similar or related proposal during the term of the contract. But the union has not relinquished its

statutory right to reject a management attempt to unilaterally change the status quo without first negotiating with the union. In a sentence, by dropping its demand, the union loses what it sought to gain, but it does not thereby grant management the right to subsequently institute any unilateral change it chooses. A contrary rule would both discourage a union from making proposals and management from agreeing to any proposals made, seriously impeding the collective bargaining process. Beacon Piece, supra.

Here, the District's testimony and documentary evidence indicate that the zipper and shift differential clauses contained in its contract differ from the Union's proposals on these subjects offered during negotiations. Specifically, the Union's proposed shift differential clause would authorize employees to continue to receive a shift differential if temporarily reassigned to a shift not qualifying for it. The Union's proposed zipper clause contained a number of provisions specifying the Union's right to receive notice and opportunity to negotiate prior to implementation of any proposed change in rules or procedures affecting employees in the unit. Another provision set forth the procedures and time limits to be followed in such cases, including impasse procedures.

The Union had also proposed a section providing that all employees currently assigned as "A," "B" or "C" BASIS employees shall continue to be so assigned. (Though "BASIS" is not

elsewhere explained in the record, it might well refer to shifts.)

The provision regarding the right to negotiate changes simply restates the Union's statutory right under the EERA. The mere fact that this proposal was abandoned by the Union is insufficient to indicate an intent to waive its statutory right to negotiate. Beacon Piece Dyeing and Finishing Co., supra; NLRB v. Perkins Machine, supra; American Telephone and Telegraph Co., supra.

Similarly, the fact that the Union abandoned its proposal on maintenance of "BASIS" assignments does not indicate that the parties thereby contemplated that assignments were to be solely within management's prerogative.

Therefore, the course of bargaining between the parties fails to indicate that the Union "fully discussed," "consciously explored" and "consciously yielded" its right to negotiate the shift elimination at issue here. Press Co., supra.

The District relies on Jacobs Manufacturing Company (1951) 94 NLRB 1214, [28 LRRM 1165], and Radioear Corp. (1974) 214 NLRB 362, [87 LRRM 1330]. Jacobs concerned neither an employer's unilateral change nor a contractual zipper clause. The zipper clause quoted at footnote 13 in that case is pure dicta, referred to in the context of construing section 8(d) of

the NLRA, a section with no counterpart under the EERA.⁴
Therefore, the case is inapposite.

While Radioear tends to support the District's position,⁵ it appears to be an aberration from the federal board's traditional and well-established "clear and unmistakable" waiver standard. The decision has been frequently distinguished, narrowly construed and rarely followed by the NLRB itself, and we decline to follow it here. Consequently, we find no waiver in the course of negotiations.

Waiver by Inaction

Cases decided under the NLRA and several state laws reasonably hold that a union does not waive its right to negotiate by failing to request negotiations where it had no

4Section 8(d) of the NLRA provides as follows:

. . . the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract.

⁵In Radioear, a three-member majority found a "conscious, knowing waiver of any bargaining obligation as to unspecified benefits," based on the fact that the union unsuccessfully bargained for a maintenance-of-benefits clause and ultimately agreed to a zipper clause similar to the one at issue here. Dissenting Members Fanning and Jenkins stated their "opposition to a result that ignores consistent and longstanding precedent and serves only to undercut a basic statutory right." 214 NLRB at 365. The dissenters continue to adhere to their dissent. Tocco Division of Park-Ohio Industries (1981) 257 NLRB No. 44 (fn 7).

notice of the intended change before the decision had been firmly made.⁶

Despite its failure to formally notify Local 99 of its intended change, the District argues that it believed that the Union knew, and should be deemed to have had constructive knowledge of the change by Reggie McCoy's attendance at two employee meetings and/or by the Union's participation in discussions concerning similar shift changes at other colleges in the District. The District's contentions are without merit.

While the union might have acquired notice if it had earlier designated a representative at Southwest or otherwise established an active presence at the college, the record indicates that it did not do so. At least prior to the designation of Reggie McCoy as shop steward, the custodial employees cannot be found to be agents of the union such that their knowledge of the change would be imputed to the union.⁷

⁶ABC Trans-National Transport, Inc. (1980) 247 NLRB 240, [103 LRRM 1116]; P.B. Mutrie Motor Transportation (1976) 226 NLRB 1325; Caravelle Boat Co. (1977) 227 NLRB 1355, [95 LRRM 1003]; Evansville-Vanderburgh School Corp. v. Roberts (Ind.Ct.App. 1979) [102 LRRM 2872]; General Drivers Local 346 (Minn.Sup.Ct. 1979) [102 LRRM 3004].

⁷The Board has held that, as to employers, common law agency principles apply as in the private sector. Antelope Valley Community College District (7/18/79) PERB Decision No. 97. Certainly, the same rule applies to employee organizations. See Aladdin Hotel Corp. (1977) 229 NLRB 499; Local 15, Operating Engineers (Akron Wrecking Corp.) (1977) 231 NLRB 563; Certain-Teed Products Corp. v. NLRB (CA 7, 1977) 562 F.2d 500, [96 LRRM 2504].

There is no evidence whatsoever that any of the custodial employees had, at the time of their meetings with management on this matter, the actual or apparent authority to act for the Union. There is no showing that they were informants for the Union or held any position in the Union which might have led the District to believe that they acted on its behalf, or that the Union instigated, encouraged, ratified or condoned their conduct. Moreland Elementary School District (7/27/82) PERB Decision No. 227. On the contrary, management's representative can hardly maintain that he thought he had informed the Union at the same time he acknowledges his total lack of awareness of the Union's status as bargaining agent.

Mr. McCoy's subsequent designation as shop steward does not, by itself, evidence a sufficiently close relationship to the Union to find him to have been an agent of the Union, since at the time he attended the meetings on this matter, he had not yet been designated as a Union representative.⁸ While McCoy might be found to be an agent of the union following his designation as shop steward in late January 1979, the record contains no evidence of any employee meetings or other notice to McCoy regarding the shift change from January until the change was implemented on July 1, 1979. Moreover, according to

⁸See Certain-Teed Products, supra, where an employee who leafletted, circulated authorization cards and was subsequently elected union president was held not to be an agent of the union.

the District's testimony at hearing, the decision to eliminate the "C" shift was final and was not subject to change by January 1979.

Thus, prior to assuming his duties as shop steward, McCoy had no obligation to inform the Union and, after assuming his position, nothing occurred which would reasonably prompt him to take such action, which would have been futile in any event. In these circumstances, McCoy's knowledge of the shift change cannot properly be imputed to the Union.

Neither did the fact that changes in the "C" shift were discussed at five of the ten District colleges serve to notify the Union that such change was contemplated at Southwest. The fact that the District chose to deal with this matter on a college-by-college basis, rather than districtwide, did not relieve it of its responsibility to notify Local 99 of each proposed change. On several campuses no changes were made, and the Union had every reason to expect notification and prior negotiation whenever a change was contemplated.

Absent notice of the District's proposed action, Local 99 could not have intentionally relinquished its interest in the matter by inaction. San Francisco Community College District, supra (and see cases cited at footnote 6, supra).

Therefore, we find that Local 99 did not waive its right to negotiate the elimination of the shift. Lacking any affirmative defense, the District is found to have violated its

duty to negotiate in good faith regarding its unilateral elimination of the custodial "C" shift at Southwest College, in violation of subsection 3543.5(c) of the EERA, and of subsections 3543.5(a) and (b), concurrently. San Francisco Community College District, supra.

REMEDY

The District contends that Education Code section 88183 precludes it from reinstating the custodial "C" shift, and that this section is not superseded by a PERB order. The District argues that under the Education Code, any employee with more seniority than a member of the former "C" shift would have standing to assert his or her right to work a reinstated "C" shift. Such an employee, not a party to this unfair practice charge, would not be bound by PERB's order, nor would any court.

The hearing officer found that an order to reinstate the affected employees with back pay is not barred by Education Code section 88183. He reasoned that the code section was intended to prevent a district from making shift assignments on a basis other than seniority, but was not intended to prevent the restoration of the status quo as it existed before a violation of the EERA. We agree.

However, we find that reinstatement is inappropriate here for other reasons. As urged by the District, we take judicial notice of the successor agreement entered into between the parties, effective August 20, 1980. The agreement contains at

least five separate sections dealing with shift assignments and differentials. Of particular relevance to the matters at issue here, section 8.1.3 of the agreement states as follows:

Employees' daily hours of work, and shift shall be established at the discretion of the District to meet the operational needs of the District. Elimination of an entire shift at any one of the District's locations will not be made without prior consultation with the Union.

No similar provision was contained in the parties' prior agreement.

Inasmuch as the new contract provides clear evidence that the parties have in fact negotiated and reached agreement regarding any future shift elimination, reinstatement of the shift is not appropriate.

Nonetheless, in order to make whole the 15 employees affected by the unlawful shift change, back pay, computed on the basis of the lost-shift differential together with interest at 7 percent per annum, will be ordered, covering the period from the date of the shift change (July 1, 1979) until agreement was reached on the new contract (August 20, 1980). Long Mile Rubber (1979) 245 NLRB 1337.

Further, the parties will be ordered to "consult," pursuant to the requirements of section 8.1.3 of their August 20, 1980 agreement, regarding the shift elimination at issue here.

Finally, it is also appropriate that the District be required to post a notice incorporating the terms of the

order. Such posting 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 of 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, 587; NLRB v. Express Publishing Co. (1941) 312 U.S. 426, [8 LRRM 415].

ORDER

Based upon the foregoing facts, conclusions of law and the entire record in this case, it is found that the Los Angeles Community College District has violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act. It is hereby ORDERED that the District 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 on matters within the scope of representation with respect to the elimination of the custodial "C" shift at Southwest College in July 1979.

2. Denying the Los Angeles City and County School Employees Union, Local 99, its right to represent unit members

by unilaterally eliminating the custodial "C" shift at Southwest College without meeting and negotiating with Local 99,

3. Interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

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

1. Make the affected employees whole by paying them the shift differential they would have received had the unilateral change not been made, together with interest at 7 percent per annum, from the date of the shift change, July 1, 1979, until agreement was reached on a new contract, August 20, 1980.

2. Upon request, consult with Local 99 with respect to the elimination of the custodial "C" shift at Southwest College.

3. Within seven (7) workdays of service of this decision, post at all school sites and all other work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that said

Notice is not reduced in size, altered, defaced or covered by any other material.

4. At the end of the posting period, notify the Los Angeles regional director of the Public Employment Relations Board, in writing, of the action taken to comply with this order.

Members Jaeger and Jensen concurred.

APPENDIX

NOTICE TO CLASSIFIED 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-1091 in which all parties had the right to participate, it has been found that the Los Angeles Community College District has violated subsection 3543.5(c) of the Educational Employment Relations Act (EERA) by refusing or failing to meet and negotiate with Los Angeles City and County School Employees Union, Local 99, Service Employees International Union, AFL-CIO by taking unilateral action in July 1979 with respect to the elimination of the custodial "C" shift at Southwest College.

It has also been found that this same conduct violated subsection 3543.5(b) of the EERA since it interfered with the right of Local 99 to represent its members.

It has also been found that this same conduct interfered with negotiating unit members' right to be represented by their exclusive representative, thus constituting a violation of subsection 3543.5(a) of the EERA.

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

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action on matters within the scope of representation with respect to the elimination of the custodial "C" shift at Southwest College.
2. Denying Local 99 the right to represent unit members by unilaterally eliminating a shift without meeting and negotiating with it.
3. Interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

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

1. Make the affected employees whole by paying them the shift differential they would have received had the unilateral change not been made, together with interest at 7 percent per annum, from the date of the shift change, July 1, 1979, until agreement was reached on a new contract, August 20, 1980.

2. Upon request, consult with Local 99 with respect to the elimination of the custodial "C" shift at Southwest College.

DATE: LOS ANGELES COMMUNITY COLLEGE 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,