STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 802, Charging Party, v. LOST HILLS UNION ELEMENTARY SCHOOL DISTRICT, Respondent.	Case No. LA-CE-4395-E PERB Decision No. 1652 June 30, 2004

Appearances: Sonja J. Woodward, Attorney, for California School Employees Association & its Chapter 802; Schools Legal Service by Carl B.A. Lange III, Director of Labor Relations, for Lost Hills Union School Elementary District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on exceptions filed by the Lost Hills Union Elementary School District (District) to a proposed decision (attached) of an administrative law judge (ALJ). The ALJ's proposed decision held that the District unilaterally implemented a change in wage formula for composite classifications in violation of the Educational Employment Relations Act (EERA).[1]

The Board has reviewed the entire record in this matter, including the proposed decision, the District's exceptions and the California School Employees Association & its

[1]EERA is codified at Government Code section 3540, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Chapter 802's response. The Board finds the ALJ's decision to be free of prejudicial error and adopts it as the decision of the Board itself.

ORDER

Based on the foregoing findings of fact, conclusions of law and the entire record in this case, it is found that the Lost Hills Union Elementary School District (District) failed to bargain in good faith with the California School Employees Association & its Chapter 802 (CSEA), by unilaterally implementing a change in its policy of calculating wages for composite classifications without providing CSEA with prior notice and opportunity to bargain regarding the change, in violation of the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c).

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

A. CEASE AND DESIST FROM:

1. Refusing or failing to bargain in good faith with CSEA regarding a change in its policy of calculating wages for composite classifications.

2. Unilaterally implementing any change in the formula for calculating wages for bargaining unit employees without providing CSEA with prior notice and opportunity to bargain regarding the change.

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

1. Restore the wage formula for composite classifications to include composite pay for periods when school is not in session.

2. Pay to each employee who performed work in composite classifications, back pay in the amounts which they lost due to the change in the wage formula.

3. Provide notice to CSEA and upon request bargain in good faith regarding any proposed change in the formula for calculating wages for bargaining unit classifications.

4. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all work locations where notices to employees are customarily 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 thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced, or covered by any other material.

5. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions. Continue to report, in writing, to the regional director as directed. All reports to the regional director shall be served concurrently on CSEA.

Members Whitehead and Neima 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-4395-E, California School Employees Association & its Chapter 802 v. Lost Hills Union Elementary School District in which all parties had the right to participate, it has been found that the Lost Hills Union Elementary School District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c) by unilaterally implementing a change in its policy of calculating wages for composite classifications without providing the California School Employees Association & its Chapter 802 (CSEA) with prior notice and opportunity to bargain regarding the change.

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

A. CEASE AND DESIST FROM:

1. Refusing or failing to bargain in good faith with CSEA regarding a change in its policy of calculating wages for composite classifications.

2. Unilaterally implementing any change in the formula for calculating wages for bargaining unit employees without providing CSEA with prior notice and opportunity to bargain regarding the change.

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1. Restore the wage formula for composite classifications to include composite pay for periods when school is not in session.

2. Pay to each employee who performed work in composite classifications, back pay in the amounts which they lost due to the change in the wage formula.

3. Provide notice to CSEA and upon request bargain in good faith regarding any proposed change in the formula for calculating wages for bargaining unit classifications.

Dated: _____

LOST HILLS UNION ELEMENTARY SCHOOL DISTRICT

By: _____
Authorized Agent

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 802, Charging Party, v. LOST HILLS UNION ELEMENTARY SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-4395-E PROPOSED DECISION (3/29/04)

Appearances: Tim Liermann, Senior Labor Relations Representative, for California School Employees Association & its Chapter 802; Schools Legal Service by Carl B.A. Lange, III, Director of Labor Relations, for Lost Hills Union Elementary School District.

Proposed Decision by Ann L. Weinman, Administrative Law Judge.

PROCEDURAL HISTORY

On March 11, 2003, the California School Employees Association & its Chapter 802 (CSEA) filed an unfair practice charge against the Lost Hills Union Elementary School District (District) alleging that the District unilaterally changed its practice of calculating the wages of composite classifications without affording CSEA prior notice or opportunity to negotiate. On May 22, 2003, the Office of General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that the District engaged in the above conduct in violation of the Educational Employment Relations Act (EERA)[1] section 3543(a), (b) and (c). In its answer, the District denied any wrongdoing.

Informal hearings were held on August 5 and September 8, 2003, but the matter was not resolved. Formal hearing was conducted at the Los Angeles offices of PERB on

[1] EERA is codified at Government Code section 3540 et seq.

December 15, 2003, before Administrative Law Judge Thomas J. Allen. Thereafter, the case was reassigned for decision to the undersigned. After the filing of post-hearing briefs, the matter was submitted for decision on March 17, 2004.

FINDINGS OF FACT

The facts are virtually undisputed.

The District is a public school employer within the meaning of EERA section 3540.1(k). CSEA is a recognized employee organization within the meaning of section 3540.1(l).

At the formal hearing, the parties submitted the following stipulations:

> 1. CSEA chapter #802 is Exclusive Representative of the classified bargaining unit and was certified by PERB during calendar year 2000.
>
> 2. Negotiations for the first Collective Bargaining Agreement (2000-2003) began in late 2000 and were concluded by ratification of the Agreement.
>
> 3. Prior to ratification of the 2000-2003 Agreement, wages of employees who worked in two or more job classifications were determined by the following formula:
>
> > Class. #1 pay rate (x) number of hours/day (x) number of work days/year
> > Class. #2 pay rate (x) number of hours/day (x) number of work days/year
>
> 4. Following ratification of the 2000-2003 Agreement in September 2001, wages of employees who worked in two or more job classifications were determined as set forth in Article II, Employee Compensation and Health and Welfare Benefit Package, paragraph A, which states:
>
> > "A. The regular rate of pay for each position in the bargaining unit shall be in accordance with the rates established upon the date of ratification, for each class as provided for in Appendix A."

5. The calculation of wages set forth in the Agreement is expressed in the formula as follows with the change from the prior practice shown in bold:

Class. #1 pay rate (x) number of hours/day (x) number of work days **in class**/year
Class. #2 pay rate (x) number of hours/day (x) number of work days **in class**/year

6. The calculation of 2001-2002 wages pursuant to the new formula became effective with the January 31, 2002 pay warrants.

7. CSEA claims that the method of calculation of pay rates as set forth in Stipulations 5 & 6 constitutes a unilateral change to a mandatory subject of bargaining in violation of the EERA. (Emphasis and underline in original.)[2]

The gravamen of the charge and complaint is that prior to implementation of the new wage formula, the pay of employees who spend part of their work day driving school buses and the rest working in other classifications, e.g., groundsman or custodian, was historically based on pro-rata wages of both classifications, even during the summer, winter and spring school breaks when they were not driving the buses. However, after ratification of the Agreement, bus driver wages were not calculated into their pay during school breaks when they were not driving buses. As bus driver wages were, and still are, considerably higher than the wages of other classifications, this resulted in a pay decrease for these employees.

As recited above in the parties' stipulations, Article II of the Agreement provides that rates of pay for each classification would be in accordance with Appendix A. In turn, Appendix A provides for an 8 per cent total across-the-board-wage increase and lists the hourly wages for each separate classification. However, as noted above, there is no reference

[2] It appears from this stipulation that a new wage formula is contained in the Agreement. However, there is no reference in the Agreement to either a wage formula or to composite classifications. Thus, the stipulation merely recites the new formula used by the District to calculate the wages of employees in composite classifications.

in the Agreement to a wage scale or formula for composite classifications.[3] District witness Susan Hamilton (Hamilton), administrative assistant, testified to a negotiation session on April 10, 2001. At that session, the parties discussed three principal issues: an increase in hours for a teacher's aide; a 5 per cent pay differential for work past 6 p.m., and "pay for services performed," i.e., the issue herein. In that regard, Hamilton testified that District bargaining representative Anthony Leonis (Leonis) stated: "If you are driving a bus, you get bus pay. If you are a custodian, you get custodian pay. If you're grounds, you get grounds pay." Hamilton claimed that Terry Hart, CSEA labor relations consultant, appeared to understand Leonis' statement. However, Hamilton conceded that this was "just a discussion" and that no agreement was reached. Harrison Favereaux (Favereaux), the District's director of business services, who implemented the new pay formula, also testified. He said that he based his calculations on his own understanding of the Agreement and on a conversation with Leonis. Favereaux testified that in December 2000, he told Jeff Hart (Hart), CSEA chapter president, that "there was going to need to be some adjustments made to the salary schedule." According to Favereaux, Hart asked if he were "going to do it now," and Favereaux responded that the adjustments would not take place until January, as the December payroll had already been prepared. Although Leonis himself did not testify, CSEA did not present any evidence in rebuttal, thus I credit the testimony of Hamilton and Favereaux.

The District contends that Leonis' and Favereaux's statements are evidence of CSEA's understanding and acceptance of the new pay formula. The District further contends that the new formula is consistent with the Agreement, that it was negotiated, and that CSEA was aware of the change.

[3] The parties agree that there is no formal "composite" classification. Thus, I use the term merely to identify those employees who drive school buses as well as perform other jobs.

ISSUE

Did the District unilaterally change its policy of calculating the wages for composite classifications in violation of EERA?

CONCLUSIONS OF LAW

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Union High School District (1982) PERB Decision No. 196.)

The District concedes that the formula for calculating wages for composite classifications is a matter within the scope of representation, and that the change in formula has had a generalized effect or impact on the terms and conditions of employment of the bargaining unit employees. The District contends, however, that CSEA had sufficient notice and opportunity to bargain regarding the change in formula, first by Leonis' statement at the April 10, 2001, negotiating session, and second by Hart's conversation with Favereaux in December 2000, and that CSEA agreed to the change, as reflected in the Agreement. In its post-hearing brief, the District cites Marysville Joint Unified School District (1983) PERB Decision No. 314 (Marysville), where the Board held that "where contractual language is unambiguous, it is unnecessary to go beyond the plain language of the contract itself to ascertain its meaning."

I disagree with the District. As noted above, there is no specific reference in the Agreement regarding wages for composite classifications. Thus, unlike Marysville, I find the classification listings in the Agreement to be ambiguous as to whether a new formula was to be used. Rather, as also stated in Marysville, I must examine the bargaining history. In that regard, an employer, to fulfill its bargaining obligation, must provide a notice which is "communicated in a manner which clearly informs the recipient of the proposed change" (Victor Valley Union High School District (1986) PERB Decision No. 565), or, as described by the National Labor Relations Board, the employer must provide "clear and unequivocal notice." (Bottom Line Enterprises (1991) 302 NLRB 373, 374 [137 LRRM 1301].)

In the instant case, Leonis' April 10 statement is hardly clear or unambiguous, one which could inform CSEA of its intent to change the wage formula. Leonis said that when you drive a bus you get bus pay, and when you work as a custodian you get custodian pay, etc. This was exactly the past practice of calculating wages for composite classifications, except that the formula had also been applied to periods when school was not in session and buses were not being driven. I find, therefore, that it could not reasonably be understood from Leonis' statement that the District meant to discontinue the formula during those non-driving periods. Nor could the District's meaning have been reasonably understood from Favereaux's statement that some "adjustments" would be made to the salary schedule, most importantly because adjustments were required by the 8 per cent wage increase specified in the Agreement.

Thus, I cannot find that the District provided CSEA with notice or an opportunity to bargain regarding changing the wage formula for composite classifications prior to the District's implementation of the change. Accordingly, I conclude that the District made an unlawful unilateral change in violation of EERA section 3543.5(c). I further conclude that by the same conduct, the District interfered with the rights of bargaining unit employees to be

represented by CSEA in violation of section 3543.5(a), and denied CSEA its right to represent those employees in violation of section 3543.5(b).

REMEDY

EERA section 3541.5(c) gives PERB:

> ...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,...as will effectuate the policies of this chapter.

Here, the District failed to bargain in good faith with CSEA by unilaterally changing its policy of calculating wages for composite classifications without providing CSEA prior notice or opportunity to bargain. The appropriate remedy is an order that the District restore the status quo, and bargain in good faith with CSEA prior to changing any wage formula for bargaining unit employees. The District should also be ordered to pay, to all employees who worked in composite classifications, backpay in the amounts which they lost due to the District's change in their wage formula.

It is also appropriate that the District be required to post a notice incorporating the terms of this Order at all sites where notices are customarily placed for classified employees. This notice should be subscribed by an authorized agent of the District, indicating that it will comply with the terms therein. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the Act that employees be informed of the resolution of the controversy and will announce the District's readiness to comply with the ordered remedy. (See, e.g., Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that the Lost Hills Union Elementary School District (District) failed to bargain in good faith with the California School Employees Association & its Chapter 802 (CSEA), by unilaterally implementing a change in its policy of calculating wages for composite classifications without providing CSEA with prior notice and opportunity to bargain regarding the change, in violation of the Educational Employment Relations Act (Act), Government Code section 3543.5(a), (b) and (c). Therefore, it is hereby ORDERED that the District, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing or failing to bargain in good faith with CSEA regarding a change in its policy of calculating wages for composite classifications.

2. Unilaterally implementing any change in the formula for calculating wages for bargaining unit employees without providing CSEA with prior notice and opportunity to bargain regarding the change.

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

1. Within ten (10) workdays of the service of a final decision in this matter, restore the wage formula for composite classifications to include composite pay for periods when school is not in session.

2. Within ten (10) workdays of the service of a final decision in this matter, pay, to each employee who performed work in composite classifications, backpay in the amounts which they lost due to the change in wage formula.

3. Provide notice to CSEA and upon request bargain in good faith regarding any proposed change in the formula for calculating wages for bargaining unit classifications.

4. Within ten (10) workdays of service of a final decision in this matter, post at all District sites where notices are customarily placed for classified employees, copies of the notice attached hereto as an Appendix. This notice must be subscribed by an authorized agent of the District, indicating that it will comply with the terms therein. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced, or covered by any other material.

5. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the Sacramento Regional Director of the Public Employment Relations Board (PERB or Board) in accordance with her instructions. Continue to report, in writing, to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the charging party herein.

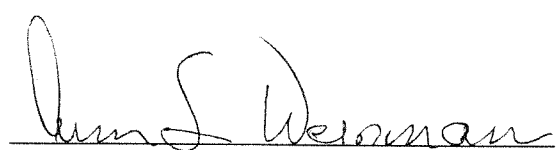
Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

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. (Cal. Code Regs., tit. 8, secs. 32135(a) and 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 California Code of Regulations, title 8, section 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, sec. 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).)



Ann L. Weinman
Administrative Law Judge