

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION,)
) Case No. S-CE-428
Charging Party,)
) Request for Reconsideration
v.) PERB Decision No. 360
)
ARCOHE UNION SCHOOL DISTRICT,) PERB Decision No. 360a
)
Respondent.)
) May 16, 1984
_____)

Appearances; William C. Heath, Attorney for California School Employees Association; Donald R. Morris, Superintendent, for Arcohe Union School District.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

BURT, Member: The Public Employment Relations Board (PERB or Board) having duly considered the request for reconsideration¹ filed by the California School Employees

¹PERB rules are codified at California Administrative Code, title 8, section 31001 et seq. PERB rule 32410(a) provides:

Any party to a decision of the Board itself may, because of extraordinary circumstances, file a request to reconsider the decision The grounds for requesting reconsideration are limited to claims that the decision of the Board itself contains prejudicial errors of fact, or newly discovered evidence or law which was not previously available and could not have been discovered with the exercise of reasonable diligence.

Association (CSEA or Association) hereby grants that request, in part, for the limited purpose set forth below.

DISCUSSION

In Arcohe Union School District (11/23/83) PERB Decision No. 360, the Board affirmed the Administrative Law Judge's (ALJ) finding that the Arcohe Union School District (District) violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)² by subcontracting custodial services formerly provided by unit employees (in this case, two employees funded under the Comprehensive Education and Training Act or CETA).

By way of remedy, the ALJ ordered the District to rescind the subcontract, to return the cleaning work to classified employees of the District, and to negotiate before making any further change. Specifically, he ordered the District to cease

²The EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise indicated.

Section 3543.5 provides that 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.

and desist from subcontracting without negotiating with CSEA, and to refill the custodial positions replaced by the contracting out with District classified employees represented by CSEA.

The Board altered the proposed remedy. It ordered the District to rescind the subcontract, and to cease and desist from:

Engaging in unilateral action regarding matters within the scope of representation by implementing any method of providing the level of custodial services which it furnished prior to expiration of funding of two CETA-funded custodians in April of 1981, without furnishing notice and an opportunity to negotiate regarding any such decision to CSEA.

CSEA requests reconsideration of the Board's remedy in this case, arguing that a return to the status quo includes a return of two custodial positions to the unit.

In Arcohe, supra, the decision to lay off the CETA employees was not that of the District, but rather resulted from the elimination of CETA funding. The District decided to maintain the same level of services, however, through subcontracting. The Board emphasized in its decision that the District was entitled to determine the level of services as part of its management prerogative; however, it could not maintain the former level of services by subcontracting without first negotiating with the exclusive representative. In ordering the work returned to the unit but declining to order the positions restored, the Board left to management the determination of what level of services it would provide while

assuring that the work would remain within the unit. Further, since the District did not decide to lay off these individuals or to eliminate the positions, the Board declined to direct the District to reinstate either the positions or the terminated individuals.

We see no reason to reconsider the Board's remedial order. The Board's Order, as written, adequately protects employees by returning the work to the unit and requiring that the District negotiate with the exclusive representative concerning in-scope matters before restoring the previous level of services in any fashion. We therefore deny reconsideration of the Board's Order.

CSEA also argues that anyone who suffered a monetary loss as a result of the unlawful unilateral transfer should be reimbursed with the specifics of reimbursement to be left to a compliance hearing. The Association, however, offers no hint of what those losses might be, or who may have suffered them, nor does it point to any such evidence in the record. We therefore refuse to reconsider our remedy on those grounds.

Finally, CSEA asks that the order be modified to substitute the "Arcohe School Classified Employees Association" (ASCEA) for "CSEA" in the Board's order, since that organization now represents classified employees in the unit. It notes, however, that it has pursued this matter in order to protect the rights of the unit it formerly represented, and that there

is no prejudice merely because the ASCEA was not joined. The District concurs that there is a new representative.

The Board's representation file, of which we take administrative notice, reveals that the decertification election was conducted at Arcohe in December 1982, and ASCEA was certified as the exclusive representative of classified employees on December 3, 1982.

While both the Respondent's exceptions to the ALJ's decision and the Charging Party's response were apparently filed shortly after the date of the decertification, there is no mention in the parties' papers of that fact until the instant request for reconsideration. CSEA's request for reconsideration and the response thereto were served on the new representative, but the ASCEA has not participated in any way in the case. However, none of the parties allege that the ASCEA was an indispensable party to the proceedings, or that the interests of the employees were not fully protected by CSEA. (See Alum Rock Union Elementary School District (6/27/83) PERB Decision No. 322.) The Board's Order and Notice will therefore be modified to reflect the change in certification.

ORDER

Having shown no "extraordinary circumstances" within the meaning of rule 32410, the request for reconsideration of PERB Decision No. 360 is hereby granted only for the limited purpose of modifying the order in that case to reflect the fact that

CSEA no longer represents classified employees at Arcohe. The Order and Notice are therefore modified as follows:

Upon the foregoing findings of fact, conclusions of law, and the entire record in case No. S-CE-428, and pursuant to Government Code subsection 3541.5(c), it is hereby ORDERED that the Arcohe Union School District board of trustees and superintendent and their respective agents shall:

A. CEASE AND DESIST FROM:

Engaging in unilateral action regarding matters within the scope of representation by implementing any method of providing the level of custodial services that it furnished prior to expiration of funding for two CETA-funded custodians in April of 1981, without furnishing notice and an opportunity to negotiate regarding any such decision to the exclusive representative.

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

1. Rescind the subcontract for custodial services entered into with "Services Unlimited" and/or any other such subcontracts for custodial services.

2. Prepare and post, no later than thirty-five (35) days after service of this Decision, at all work locations where notices to employees are customarily placed, copies of the Notice to Employees 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 this Notice is not reduced in size, defaced, altered or covered by any material.

3. Provide written notification of the actions taken to comply with this Order to the regional director of the Public Employment Relations Board, in accordance with her instructions.

Chairperson Hesse and Member Jaeger 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. S-CE-428 in which all parties had the right to participate, it has been found that the Arcohe Union School District violated the Educational Employment Relations Act, Government Code subsections 3543.5(a), (b) and (c) by subcontracting unit work without providing notice and a reasonable opportunity to negotiate to the exclusive representative of our classified employees.

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

A. CEASE AND DESIST FROM:

Engaging in unilateral action regarding matters within the scope of representation by implementing any method of providing the level of custodial services which it furnished prior to expiration of funding for two CETA-funded custodians in April of 1981, without furnishing notice and an opportunity to negotiate regarding any such decision to the exclusive representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE PURPOSES AND POLICIES OF THE ACT:

Rescind the subcontract for custodial services entered into with "Services Unlimited" and/or any other such subcontracts for custodial services.

Dated: ARCOHE UNION SCHOOL DISTRICT

By: _____
Authorized Representative

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