STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case Nos. SF-CE-1808 SF-CE-1830
v.	)	PERB Decision No. 1242
REDWOODS COMMUNITY COLLEGE DISTRICT,	)	December 19, 1997
Respondent.	)	

Appearances: Madalyn J. Frazzini, Attorney, for California School Employees Association; School and College Legal Services by Patrick D. Sisneros, Attorney, for Redwoods Community College District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Redwoods Community College District (District) to an administrative law judge's (ALJ) proposed decision (attached). 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 failed to meet and

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

negotiate with the California School Employees Association (CSEA) about the contracting out of dormitory services and changes in job classifications at the District's Child Development Center (CDC).[2]

The Board has reviewed the entire record, including the proposed decision and hearing transcript, the District's exceptions and CSEA's response. 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 consistent with the following discussion.

DISCUSSION

This discussion relates only to the District's changes to certain positions at the District's CDC. The complaint in this case alleged that prior to May 1, 1995, the District maintained the classifications of Senior Clerk Typist, Child Development Specialist, and Child Development Aide. The complaint further alleged that on or about that same date, the District changed its

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> to interfere with, restrain, or coerce employees because of their exercise of rights 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.

[2]This appeal involves two consolidated charges. Case No. SF-CE-1808 arose out of the District's subcontracting dormitory services at one of its campuses. Case No. SF-CE-1830 involves the District's changes to job classifications at the CDC.

policy by eliminating those classifications and transferring the duties to new classifications lower on the salary schedule. Thus, the main issue faced by the ALJ was whether the District had violated EERA by unilaterally transferring the duties of existing classifications to new classifications at a lower salary, without affording CSEA an opportunity to negotiate the decision and/or its effects.

The District's exceptions, for the most part, represent a restatement of arguments offered to and rejected by the ALJ. The Board finds the ALJ's analysis to be thorough and correct and sees no need to address the bulk of the District's exceptions.

With regard to Case No. SF-CE-1830 involving changes at the District's CDC, the District argues that its decision to create or abolish job classifications is a non-negotiable matter of management prerogative, citing Alum Rock Union Elementary School District (1983) PERB Decision No. 322 (Alum Rock). As the ALJ noted, under Alum Rock and Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District (1984) PERB Decision No. 375 at p. 50, an employer must negotiate over a decision to replace existing classifications with new classifications if the same essential duties continue to be performed under similar circumstances, and the employer merely transfers duties from one position to another. (Proposed dec. at pp. 27-28.)

Hence, the main issue here is a factual one: whether the incumbents of the new positions at the CDC continue to perform

the same essential duties as the former positions. A review of the record reveals that, while the District did change its organizational philosophy at the CDC, the essential functions performed by the positions in question were not significantly different after the new approach was implemented.

The District asserts that the new Intermediate Clerk Typist position has significantly lowered skill expectations from the former Senior Clerk Typist position. Upon examination of the job descriptions, however, it is clear that both positions are required to perform many of the same essential job duties, although the District has downgraded the classification level being utilized.

The District argues that the new Early Childhood Education (ECE) Program Specialist position is significantly different from the eliminated Child Development Specialist position because the new position is now like a "head teacher" position.

Comparing the job descriptions of the new and former positions, we note that both require the incumbent to train and oversee college students working in the classroom, but neither position officially designates the incumbent as a "head teacher." Both are involved in planning and implementing the curriculum under the direction of the CDC Director, as well as performing several other core duties. After reviewing all the evidence presented, the Board concludes that the same essential duties previously performed by the Child Development Specialist position continue to be performed by the new ECE Program Specialist position.

The District describes the new position of ECE Program Associate as a position "like a teacher," which did not exist before and is unlike the eliminated position of CDC Aide. Again, a review of the job descriptions leads to the conclusion that, although some new duties have been assigned, the same essential job duties previously performed by the CDC Aide continue to be performed by the ECE Program Associate position.

In summary, the District's argument that the changes it made to the job classifications and positions at the CDC are not negotiable is not convincing. The District has transferred duties from one classification to another, but the same essential duties continue to be performed. Therefore, the District had the obligation to negotiate its decision and violated EERA section 3543.5(a), (b) and (c) when it failed to do so.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, the Public Employment Relations Board (Board) finds that the Redwoods Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c), when it unilaterally subcontracted the operation of dormitories.

The Board also finds that the District violated EERA section 3543.5(a), (b) and (c), when it unilaterally created two new classifications and reclassified one position at the Child Development Center (CDC).

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

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate with the California School Employees Association (CSEA) about the contracting out of dormitory operations and the change in job classifications at the CDC.

2. Denying CSEA its right to represent bargaining unit members in their employment relations with the District.

3. Denying bargaining unit members their right to be represented by their chosen representative.

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

1. Within 10 days following service of this Decision, the District shall offer to meet and negotiate with CSEA regarding the contracting out of dormitory operations and thereafter shall meet and negotiate in good faith. If these negotiations do not produce agreement then, upon demand from CSEA, the District shall restore one dormitory assistant/custodian and two assistant dormitory manager positions as existed prior to June 2, 1995, with accompanying salary and benefits and offer the positions to employees incumbent at the time of the unilateral action.

2. Restore the following positions as they existed prior to June 2, 1995, with accompanying salary and benefits, and offer the positions to employees incumbent at the time of the

unilateral action: one Senior Clerk Typist, two Child Development Specialists, and one Child Development Center Aide.

3. Make adversely affected employees whole for losses incurred as a result of the District's unlawful action, including payment of all wages and benefits lost by the unlawful act, with interest on back pay at the rate of 7 percent per annum.

4. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, 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 this 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 San Francisco Regional Director of the Public Employment Relations Board in accordance with the Director's instructions.

Chairman Caffrey and Member Dyer 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 Nos. SF-CE-1808 and SF-CE-1830, California School Employees Association v. Redwoods Community College District, in which all parties had the right to participate, it has been found that the Redwoods Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c) when it unilaterally subcontracted the operation of dormitories and when it unilaterally created two new classifications and reclassified one position at its Child Development Center (CDC).

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

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate with the California School Employees Association (CSEA) about the contracting out of dormitory operations and the change in job classifications at the CDC.

2. Denying CSEA its right to represent bargaining unit members in their employment relations with the District.

3. Denying bargaining unit members their right to be represented by their chosen representative.

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

1. Within 10 days following service of this Decision, the District shall offer to meet and negotiate with CSEA regarding the contracting out of dormitory operations and thereafter shall meet and negotiate in good faith. If these negotiations do not produce agreement then, upon demand from CSEA, the District shall restore one dormitory assistant/custodian and two assistant dormitory manager positions as existed prior to June 2, 1995, with accompanying salary and benefits and offer the positions to employees incumbent at the time of the unilateral action.

2. Restore the following positions as they existed prior to June 2, 1995, with accompanying salary and benefits, and offer the positions to employees incumbent at the time of the unilateral action: one Senior Clerk Typist, two Child Development Specialists, and one Child Development Center Aide.

3. Make adversely affected employees whole for losses incurred as a result of the District's unlawful action, including payment of all wages and benefits lost by the unlawful act, with interest on back pay at the rate of 7 percent per annum.

Dated: _____

REDWOODS 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 WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Charging Party, v. REDWOODS COMMUNITY COLLEGE DISTRICT, Respondent.	)	Unfair Practice Case Nos. SF-CE-1808 SF-CE-1830 PROPOSED DECISION (10/11/96)

Appearances: Madalyn J. Frazzini, Attorney, for California School Employees Association; School and College Legal Services by Patrick D. Sisneros, Attorney, for. Redwoods Community College District.

Before Bernard McMonigle, Administrative Law Judge.

PROCEDURAL HISTORY

A public school employer is accused here of making unilateral changes without fulfilling its obligation to negotiate with the exclusive representative.

In one case, the California School Employees Association (CSEA or Union) contends that the Redwoods Community College District (District) illegally subcontracted the operation of its campus dormitories. In the other case, the Union argues that the employer unilaterally changed job descriptions and salaries at its Child Development Center (CDC) .

The District denies that it has contracted out the operation of the dormitory services and contends that it has abandoned the operation of dormitories and transferred that activity to an auxiliary organization. The District also argues an emergency need for food service and student housing existed such as to

excuse any obligation to bargain. Additionally, the District contends that it was prevented from completing the statutory impasse procedures by a mediator's refusal to certify the matter to factfinding.

Regarding the positions at the CDC, the District asserts there was no obligation to bargain because the decision to create new job classifications is outside the scope of bargaining. The District also contends that the Union waived any right to negotiate the salaries of the new positions.

CSEA commenced the first action alleging subcontracting at the dormitories on June 5, 1995, by filing unfair practice charge SF-CE-1808 against the District. The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint against the District on June 28, 1995. A corrected complaint issued on July 3, 1995.

The complaint alleges that prior to July 1995, it was the policy of the District to provide dormitory operation services at its Eureka campus and to have that work done by District employees, three of whom were in the bargaining unit represented by CSEA. On or about that time, the complaint alleges, the District changed this policy by giving the operational services work at the dormitories to its new food services provider, Lumberjack Enterprises, Inc. (Lumberjack). The complaint further alleges that the District made this change without having afforded CSEA the opportunity to negotiate through impasse, either over the decision to subcontract or the effects of the

change in policy. By these actions the complaint alleges the District failed to negotiate in good faith in violation of the Educational Employment Relations Act (EERA or Act) section 3543.5(c), (a) and (b).[1] The District answered the complaint on July 19, 1995, denying generally the operative allegations against it.

The Union commenced the action involving the changes at the CDC on September 1, 1995, by filing unfair practice charge SF-CE-1830 against the District. The Office of the General Counsel of PERB issued another complaint against the District on October 13, 1995. That complaint alleges that prior to May 1, 1995, the District maintained the classifications of Senior Clerk Typist, Child Development Specialist, and Child Development Aide at CDC. On or about that same date, the District changed the policy by eliminating those classifications, and transferring the

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[1] Unless otherwise indicated, all statutory references are to the Government Code. Section 3543.5 states in relevant 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 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.

duties to new classifications lower on the salary schedule. The complaint also alleges that the District made these changes without having afforded CSEA an opportunity to negotiate the decision to implement the change in policy and/or the effects of that change. By these actions, the complaint alleges, the District failed to negotiate in good faith in violation EERA section 3543.5(c), (a) and (b). The District answered the second complaint on November 8, 1995, again denying generally the operative allegations against it.

On January 10, 1996, CSEA made a motion to consolidate both cases and on January 18, 1996, that motion was granted. On February 14, 1996, CSEA made a motion to amend the complaints in both cases and that motion was denied at the beginning of the formal hearing. The hearing took place on March 5, 6, and 7, 1996, at the District office in Eureka. With the filing of briefs, the matter was submitted for decision on May 17, 1996.

JURISDICTION

The District is a public school employer under the EERA. CSEA is the exclusive representative of a comprehensive unit of the District's classified employees within the meaning of section 3540.l(e) and 3540.1(k). At all relevant times, the District and CSEA have been parties to a collective bargaining agreement with a grievance procedure which culminates in advisory arbitration. Accordingly, the disputes raised in the instant unfair practice charges are not subject to binding arbitration under the agreement.

FINDINGS OF FACT

The Dormitories

Prior to June 2, 1995, the District employed individuals to operate dormitories at its Eureka campus. Those employees included one management employee and three members of the classified bargaining unit. The three bargaining unit employees were Shari Ramirez, a dormitory assistant/custodian and two assistant dormitory managers, Rodney Carter and Wayne Thompson.[2] Their primary duties included planning resident activities, performing maintenance, and insuring student safety and discipline.

Prior to 1987, the District also employed classified employees to perform food service activities at the campus. At that time, CSEA and the District negotiated and reached an agreement regarding the contracting out of food services. The District would contract out the food service operation, but existing food service employees would remain District employees so long as they remained in the same position. Vacancies occurring during the first year of subcontracting would also be filled by District employees. After a five-month bidding process, the District subcontracted the food service operation to Professional Food-Service Management, Incorporated (PFM).

In 1992, the District again accepted bids for the operation of food services. The bids were reviewed by the Food Service

[2]Ramirez was employed half-time for twelve months as a custodian and half-time for ten months as a dormitory assistant. The assistant dormitory manager positions were full-time.

Committee (FSC). That committee consisted of Gary Poertner, the vice-president of business services; Bill Conners, dormitory manager; the college president's secretary; two students; and the head football coach. The committee was advisory to Poertner. The number one choice of the FSC was Lumberjack Enterprises, Inc.[3] However, prior to the awarding of the contract, Lumberjack withdrew from the process. The District then renewed its contract with PFM.

During the fall of 1994, District administrators received numerous student complaints regarding the quality of food service. At that time, Poertner called PFM officials regarding the complaints. He indicated that the PFM campus manager was not performing satisfactorily and that the District was generally displeased with the quality of food service. He informed PFM that changes needed to be made quickly or the District would be reluctant to renew the contract at expiration. Poertner also called Bert Nordstrom the executive director of Lumberjack and informed him of the problems. He asked if Lumberjack would be willing to step in and help the District. Nordstrom indicated that Lumberjack would do what it could to help in the short term and that Poertner should let him know if the situation deteriorated.

Dormitory Manager Bill Conners was also aware of problems with the PFM delivery of food services. According to Conners,

[3]Lumberjack Enterprises, Incorporated is a part of the Humboldt State University Foundation which operates residence halls and food operations at Humboldt State University.

the problems had been ongoing for several years. By the fall of 1994, District staff was very concerned with PFM's service and the dissatisfaction that resident students had with their meal plans. At that time, Conners also contacted an acquaintance at Lumberjack, to find out if Lumberjack would be interested in providing food services. After learning that Lumberjack was indeed interested in providing food services, Conners shared the information with Poertner and the other members of the FSC. At a November 1994 staff meeting, Conners informed the dormitory staff of his impression and hope that Lumberjack would soon be providing food services. While it would be difficult to make the transition over the Christmas break, Conners was hopeful that the transition would take place in the near future.

In December 1994 PFM assigned a new manager to its food service operations at the District and some positive changes were made. The FSC negotiated in January and February with PFM with regard to the rates that would be charged for the 1995/9G school year. The FSC recommended accepting a PFM offer for the following year.

However, by letter dated March 22, 1995, Poertner was informed by PFM that it was operating at a loss at the District and changes were necessary. PFM requested that the District make certain guarantees and financial concessions. Poertner forwarded this letter to other FSC members and noted that he had contacted Lumberjack Enterprises for possible services. He also told them that he had contacted PFM and was told that if the District did

not agree to the financial concessions, PFM would send the District a 90-day notice of cancellation. By letter of March 30, PFM served the 90-day notice to cancel the food services agreement.

Poertner contacted Bert Nordstrom of Lumberjack after receiving each of the March letters from PFM. Nordstrom asked for certain financial information and informed Poertner that Lumberjack would only be interested in operating the food services if the contract also included operation of the dormitories. Poertner was aware that contracting out the dormitory operations would involve some issues that were going to have to be worked out with CSEA. He began discussing the matter with Nancy Yagi, the director of human resources.

On April 26, Yagi met with Carol Polasek, the local CSEA chapter president, and Diane Wolf, a union member who assisted Polasek. They reviewed a list of 14 classified positions which District staff was planning to recommend for layoff at the District's Board of Trustees meeting on May 1st. The list included the three classified unit dormitory employees.

On April 30, 1995, Polasek sent a letter to the Board of Trustees demanding to negotiate the effects of any proposed layoffs and "the determination regarding the bargaining unit work done by the 14 employees." The letter asserted that the contracting out of dormitory work was illegal. The letter also complained that CSEA had not been involved in the dormitory

subcontracting as it had been when the District considered the contracting out of food services in 1987.

By letter of April 27, 1995, Poertner informed the Lumberjack Board of Directors that "following discussions over the past few weeks with executives of your dining and residence hall programs, College of the Redwoods hereby expresses our sincere interest in beginning earnest negotiations concerning your organization providing dining and housing services for our college." The District contacted no other prospective vendors.

On May 1st at the board meeting, Poertner informed the board that Lumberjack would be the District's new food service provider effective approximately July 1st. Also at that meeting, the board approved the resolution laying off the 14 classified bargaining unit members and the dormitory manager effective June 2nd.[4]

The first negotiation session regarding the proposed layoffs took place on May 4th.[5] District representatives discussed the background regarding the changes in the dormitory operation and the sudden notice from PFM to cancel the contract for food services. They asserted that, because of the need for food service to be in place by mid-June for summer classes, there was

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[4]The dormitory manager, Conners, actually worked at the dormitories until July 1st, when he became the coordinator for environmental health and safety.

[5]Gary Poertner testified that he thought conversations were begun with CSEA in early April. However, from the testimony of other participants as well as Poertner's description of the content of the meetings, he appears to have been referring to the negotiations that began in May.

insufficient time to go through a bid process. Poertner also contended that Lumberjack's connection to Humboldt State University would benefit students because activities at Humboldt State would become available to District dormitory residents.

CSEA reiterated its position, which had first been voiced in Polasek's April 30 demand to bargain, that dormitory subcontracting be subject to the same conditions negotiated for food service workers in the 1987. Under such an agreement, dormitory employees would remain employed by the District but work with Lumberjack staff.

Negotiations resumed on May 8th. Nancy Yagi began the meeting by explaining that the dormitory issue was of primary importance to the District because of the need to have food service in place. The District discussed the possibility of offering custodial jobs to the three bargaining unit employees currently assigned to the dormitories. CSEA questioned whether the two assistant dormitory managers were physically capable of performing custodial jobs. Both employees were on disability or sick leave and were not working at the time. No agreement was reached.

The parties met again on May 10th. The District reiterated the importance of settling the dormitory issue and having food service in place by mid-June. CSEA would not agree to the subcontracting. At that meeting, the District also indicated that it had five and a half clerical positions to offer if the Union would agree to the subcontracting of the dormitories.

Again the Union demanded that the dormitory employees remain employed by the District. District representatives explained that Lumberjack was not interested in using the District employees and preferred to use graduate students and a live-in manager.

Another bargaining session took place on May 12th and again discussions centered on the subcontracting of the dormitories. The District indicated that it was willing to offer alternate placements[6] as custodians to the two assistant dormitory managers as well as the five and a half full-time clerical positions for other laid off employees in exchange for agreement on the dormitories. The District also took the position that the emergency clause of the contracting out provision of the collective bargaining agreement would permit them to move forward without first completing the bargaining obligation.[7] The

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[6]Under the parties' understanding of alternate placements, an employee would keep his/her old salary level for two years.

[7]Section 14.2 of the collective bargaining agreement between the parties states, in relevant part, the following:

> Contracting out: The District agrees it will notify the CSEA Chapter President, or in the President's absence, the Vice President, in writing in the event the District is considering contracting out any bargaining unit work. CSEA will respond within five working days of receipt of notification from the District as to whether or not it desires to negotiate. When CSEA requests to bargain, the District will not contract the work until the bargaining obligation is satisfied. Once a demand to negotiate is issued, CSEA shall meet with the District within a reasonable period of time.

District based this position on short notice that it had received from PFM and the need to have replacement services. There was no agreement on the dormitories. The District asked whether the Union would agree to jointly submit the matter to PERB's impasse procedures. The Union declined because there had been no discussion of the layoff of the CDC employees or other positions.

The College of the Redwoods Foundation (Foundation) is a separate, non-profit corporation founded pursuant to Education Code section 72670. That section provides that a community college district may establish an auxiliary organization for the purpose of providing support services and specialized programs, including commercial services. Under its master agreement with the District, the Foundation may engage in those services agreed upon by the District.

Individuals employed by the District are on the Foundation's Board of Directors. The District's president/superintendent is on the Foundation board, as is Gary Poertner. Poertner serves the Foundation as its secretary/treasurer.

At the May 10, 1995, meeting of the Foundation's board, Poertner gave an overview of the situation regarding the food and

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> The District may contract out work without prior notification or bargaining due to an emergency situation as emergency is defined in Article XIV of this Agreement. Within five working days of contracting out work due to an emergency, the District will notify the CSEA Chapter President in writing that it has done so and state the facts upon which the District determined that an emergency existed.

dormitory services. He reported that the District was interested in entering into a contract with Lumberjack. Poertner indicated that if the District was not able to come to an agreement with CSEA, the District would have the Foundation contract with Lumberjack to provide food and housing service. The Foundation's board authorized contracting with Lumberjack to provide food and housing services for the College of the Redwoods by July 1, 1995.

On June 14, 1995, the District and the Foundation executed an amendment to their master agreement which, in relevant part, provides that the Foundation may provide food services and residence hall programs and that the Foundation may contract with third parties for operational and management services. The Foundation did contract with Lumberjack for the services. The contract is signed by two witnesses, Gary Poertner signed as the witness for the Foundation. The contract provides that with regard to any notices pursuant to the contract, notification to the Foundation shall be directed to Gary Poertner. Lumberjack began providing for the operation of the dormitories on July 1, 1995.

On June 27, 1995, PERB notified the parties of its determination that an impasse did exist regarding the dormitory subcontracting. A mediator was appointed. The mediation session took place on August 31, 1995. The mediator was informed that the subcontracting of the dormitories had already taken place. The mediation session was brief and no agreement was reached.

The mediator denied CSEA's request that the parties proceed to factfinding.

The Child Development Center

The District's layoff resolution of May 1, 1995, also included four classified bargaining unit positions at the CDC. These positions included one full-time Senior Clerk Typist, one full-time Child Development Specialist, one Child Development Specialist employed 25 hours per week, and one Child Development Center Aide, a 30-hour per week position for 10 months per year.

CSEA and the District engage in what both refer to as informal problem-solving meetings. Neither side considers these meetings to be formal negotiations. Rather, the meetings are held every two to three weeks on an informal basis to discuss matters of mutual concern and potential problems. Generally, the Union is represented by the chapter president and one of the stewards, and the District is represented by Nancy Yagi, the director of human resources. Sometime during the 1994/95 school year, the parties discussed the fact that there would be changes made at the CDC. Polasek asked Yagi for more information about the changes at several subsequent informal meetings. Yagi generally responded that nothing had been submitted to her office but she would keep CSEA informed.

At an early April 1995 informal meeting, CSEA representatives were advised that there would be some layoffs. Yagi did not then know how many individuals or what positions would be involved. As previously discussed, on April 26 Yagi

gave CSEA the list of proposed layoffs to be submitted to the District's board on May 1st. The list included all four of the classified bargaining unit positions at the CDC.

At the first negotiation session on May 4th, the parties discussed the fact that there were rumors that the District was going to close the CDC. The District responded that it would not have a CDC summer program, but that the CDC would reopen in the fall. At that meeting, and the subsequent negotiations on May 8th and 10th, the parties concentrated their discussions on the subcontracting of the dormitories. At the May 10th negotiations, the Union asked to discuss the CDC positions. District negotiators stated that they were not willing to discuss those positions at that time. Rather, they wanted to settle the dormitory issue before proceeding to other issues. Again, at the May 12th meeting, the parties concentrated primarily on the dormitory issue.

At some point prior to the May 12th meeting, the parties had scheduled a May 15th meeting specifically to discuss the issues regarding the CDC positions that were scheduled for layoff. When the May 12th meeting concluded without an agreement on the dormitories, the May 15th meeting was cancelled. CSEA representatives recall Nancy Yagi cancelling the May 15th meeting. Yagi recalls the meeting being mutually cancelled.

At a June 12th informal meeting, the parties discussed the CDC. Yagi again confirmed that the CDC would reopen for the fall semester. She also indicated that the clerical position would be

a 10-month Intermediate Clerk Typist and there would be academic requirements for other positions. Polasek responded that CSEA reserved its right to negotiate over changes.

On June 18th, the District advertised in a local newspaper for five permanent, 10-month classified positions in the Early-Childhood Education (ECE) program at the CDC. The positions included one full-time ECE Program Specialist, one Intermediate Clerk Typist, and three ECE Program Associates in 30-hour, 10-month per year jobs.

On June 21, Polasek sent Yagi a letter demanding to negotiate over the changes being made at the CDC, including changes in the positions and the salary schedule. Yagi responded that she would meet with Polasek informally to discuss the positions. They met on July 20th and Yagi stated that because thirty days had passed since the CDC layoffs had been announced, CSEA had waived its right to negotiate over the layoffs under the language of the collective bargaining agreement. Polasek responded that the Union had never been given complete information enabling it to formulate proposals with regard to the CDC.

On August 11, Polasek made another demand to negotiate over the changed positions and the salary schedule placement. On August 22, Yagi sent Polasek a memorandum asserting that bargaining over the effects of layoff had been waived, that job descriptions were a management prerogative, and that placement on the salary schedule had never been negotiated at the District.

A comparison of the new job descriptions for the CDC with the classifications which had existed prior to July 1995, indicates that the District transferred existing functions and duties to retitled classifications. The Child Development Specialist classification was subsumed by the ECE Program Specialist classification. Both report directly to the director of the CDC. Both plan and conduct early childhood education and daily curriculum in accordance with CDC policies. Both supervise and direct the work of college laboratory students and evaluate the students participating in the program. Both require an education the equivalent to a Bachelor's degree in Child Development, Early Childhood Education, or a related field. The working environment is the same for both, the CDC.

Similarly, the classification of Child Development Center Aide has had its functions and duties included in the new classification of ECE Program Associate. Under both classifications, the job requires an individual to assist other staff members in providing instructional presentations and educational programs to children, to work cooperatively with work study and work experience students, to provide guidance in meeting the appropriate educational and emotional needs of the children, to assist in maintaining recognized health and safety practices and in stimulating a learning environment. Both jobs require the knowledge of current concepts used in early childhood education. The new classification requires an Associate's degree

while the prior one required certain units in childhood education and staff relations.

The Senior Clerk Typist position at the CDC was eliminated. No new classification was created. Rather, the District merely reclassified the position. The same individual who had been laid off as a Senior Clerk Typist in May, was hired as an Intermediate Clerk Typist in August at a reduced salary and as a probationary employee with fewer benefits. Her job duties remained the same as those performed prior to the May layoff. That employee, Glenda Ashburn, had been aware of the possibility of layoffs at the CDC. Shortly after Sydney Fisher Larson accepted the position as the new director of the CDC in the March 1994, Larson discussed the possibility of layoffs with her staff. According to Ashburn and Lisa Lachnicht, a Child Development Specialist, Larson stated that the current salaries were too high. Ashburn testified that Larson made similar mention of staff salaries over the coming months. Larson recalled discussing the CDC budget with the staff but stated that there was no discussion of salaries.

Director Larson's hire reflected a change in direction for the CDC. Just prior to her hire, the CDC had been moved from student services to the academic side. The director of the CDC would no longer report to the vice president of student services but to the dean of humanities. This change reflected a decision to strongly integrate the curriculum for early childhood education coursework and the curriculum followed at the CDC. The

most recent coursework was based on the child-centered emergent approach. Also to facilitate that integration, a decision was made that the director would be half-time at the CDC and a half-time instructor of early childhood education.

THE ISSUES

1. Did the District violate the EERA by unilaterally contracting out bargaining unit work at the dormitories?

2. Did the District violate the EERA by unilaterally transferring the duties of existing classifications to new classifications at a lower salary?

ANALYSIS AND CONCLUSIONS OF LAW

An employer commits an unfair practice in violation of its duty to bargain in good faith when it unilaterally makes a change in matters within the scope of representation without notifying and affording the exclusive representative an opportunity to bargain. (Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College District (1979) PERB Decision No. 94; San Francisco Community College District (1979) PERB Decision No. 105 (San Francisco).)

The Dormitories

The complaint in SF-CE-1808 alleges that the District contracted out the job duties of the classified employees operating campus dormitories. PERB, following the United States Supreme Court's rulings in Fibreboard Paper Products Corporation v. NLRB (1964) 379 U.S. 203 [57 LRRM 2609] (Fibreboard); First National Maintenance Corporation v. NLRB (1981) 452 U.S. 666 [107

LRRM 2705]; and the National Labor Relations Board's (NLRB) decision in Otis Elevator Company, a wholly owned subsidiary of United Technologies (1984) 269 NLRB 891 [116 LRRM 1075], has held that subcontracting decisions which are based, at least in part, on labor costs are negotiable providing that the decision is otherwise amenable to collective bargaining.[8] (State of California (Department of Personnel Administration) (1987) PERB Decision No. 648-S.)

Labor costs appear to have been at least one factor considered in the decision to subcontract. The layoff resolution adopted by the Governing Board relied on lack of funds as an independent reason for the layoff. District administrators were faced with a choice between monetary concessions to PFM or bringing in a new subcontractor. They effectively determined that the cost of subsidizing the food service made it too expensive to continue using their own employees to operate the dormitories. In negotiations, they stated that if PFM had been retained, it would lead to more layoffs. Accordingly, labor costs were a factor considered.

Recently, the NLRB had occasion to revisit subcontracting of the type discussed by the Supreme Court in Fibreboard. In Mid-

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[8]In Fremont Union High School District (1987) PERB Decision No. 651, the Board adopted the definition of the term "subcontracting" from Justice Stewart's concurring opinion in Fibreboard in which he defines subcontracting as:

> . . . substitution of one group of workers for another to perform the same task in the same [location] under the ultimate control of same employer.

State Ready Mix, a Division of Torrington Industries, Inc. (1992) 307 NLRB 809 [140 LRRM 1137], two employees were replaced with nonunit employees and those of an independent contractor to do the same work under similar conditions. The NLRB stated:

> . . . Such decisions, as the Court in First National Maintenance agreed, do not involve "a change in the scope and direction of the enterprise" and thus are not core entrepreneurial decisions which are beyond the scope of the bargaining obligation defined in the Act. 452 U.S. at 667, citing Fibreboard, 379 U.S. at 223 (Stewart, J., concurring). Thus, when the record shows that essentially that kind of subcontracting is involved, there is no need to apply any further tests in order to determine whether the decision is subject to the statutory duty to bargain. The Supreme Court has already determined that it is. ....

Similarly, in this case, the District dormitory employees were simply replaced with independent contractor employees to do the same work. Their layoff was not the result of an elimination of the type of work they performed. The work is being done and the District continues to make dormitories available to students. The decision to subcontract did not turn upon a change in the nature and direction of the District's operation. Therefore, the decision to subcontract is negotiable. (Arcata Elementary School District (1996) PERB Decision No. 1163.)

The District contends that it did not contract out for dormitory services. Rather, it has abandoned the dormitory operation business. It has delegated to the Foundation the responsibility for dormitory operation as well as food services.

Both CSEA and the District rely on San Diego Community College District (1988) PERB Decision No. 662 (San Diego), rev. in part sub. nom. San Diego Adult Educators v. PERB (1980) 223 Cal.App.3d 1124 [273 Cal.Rptr. 53]. In San Diego the college district offered non-credit classes in several languages. In March 1983, the district decided to discontinue non-credit classes in German, French and Spanish for economic reasons. After pressure from the public to reinstate the classes, in May 1993 the trustees directed the staff to restore the language classes. The result was that the San Diego Community College District Foundation, Inc. was asked to offer the language classes. In June 1983 a contract was entered into between the foundation and the college district providing for the class offerings by the foundation. In August 1993, the district discontinued the remaining non-credit language classes and subcontracted those to the foundation.

The Court of Appeal determined that because the district had clearly discontinued the German, French, and Spanish language courses at an earlier date, the subsequent arrangement with the foundation was not a matter within the scope of bargaining. However, the court upheld PERB's determination that there had been illegal unilateral subcontracting of the remaining classes in August 1983. At that time, there was a contemporaneous determination to terminate the jobs of district employees and transfer the work to an outside contractor. As to that decision, an unfair practice was established.

In this case, there was a contemporaneous decision by the District to terminate the duties of bargaining members and transfer their work to an outside contractor. At no point was there a determination that the dormitories would not continue in operation. As the Board and the court determined in San Diego. such a decision is negotiable.

Also in San Diego, the Board addressed the relationship between a college district and a foundation created pursuant to Education Code section 72760. Where there is no showing that the foundation is an alter ego of the college district, that the two entities are a single employer or that third parties changed position based on ostensible agency relationship, the foundation is a separate entity and not subject to PERB's jurisdiction. As in that case, herein there has been no such showing. Accordingly, the Foundation must be considered a separate entity. Therefore, the District is correct when it argues that it is the Foundation and not the District which contracted with Lumberjack for the operation of the dormitories. However, such a determination does not absolve the District of its obligation to bargain with CSEA. As did the college district in San Diego, the District agreed to contract out part of its operations to its own foundation. This agreement was formalized by the June 14, 1995 amendment to the master agreement between the District and the Foundation. Since that time, work previously performed by bargaining unit members has been performed by outside employees at the behest of the District. Using nonunit employees, the District continues to

offer the same service to students through its contracting out to the Foundation. That the Foundation fulfills its obligation to the District by again contracting out to Lumberjack does not excuse the District's bargaining obligation to CSEA. Nor does the District's compliance with Education Code requirements in its dealings with the Foundation.

The District next argues that it was prevented from completing impasse procedures because the mediator did not certify the matter to factfinding at the end of August 1995. While that may be true, it is no defense to a unilateral action taken three months prior, on May 1. A unilateral change occurs at the time an employer takes any action to change the status quo on a matter within the scope of bargaining without having given the exclusive representative notice and an opportunity to bargain prior to implementing the change. (Pajaro Valley Unified School District, supra, PERB Decision No. 51.) Agreeing to negotiate after the change is made does not negate the unlawfulness of the unilateral change. (San Francisco.) In this case, the District's Governing Board approved the layoff of the dormitory employees at its May 1 meeting. The minutes of that meeting reflect Gary Poertner informing the board that Lumberjack would be the food services provider effective July 1.[9] By May 1, Poertner was well aware that Lumberjack would not provide food services without the dormitories. Once bargaining began, the

[9]Lumberjack did take over the operation of food services and residence halls effective July 1, 1995.

District never wavered from its position that Lumberjack operate the dormitories. With regard to the decision to contract out, CSEA was presented with a fait accompli on May 1.

The District also contends, that CSEA made no proposals regarding the dormitory positions. To the contrary, the Union proposed several times that the workers at the dormitories be treated in a similar fashion to the food service workers when the contracting out of that service was begun several years earlier. However, CSEA need not have made any proposals. A union is under no obligation to make any proposal in response to a unilaterally changed working condition. (Cloverdale Unified School District (1991) PERB Decision No. 911.) As the Board has stated, to do so "would be tantamount to requiring it to recoup its losses at the negotiations table." (San Francisco.) Instead, a union may vindicate its rights through PERB's unfair practice procedures.

According to the District there was no time for lengthy negotiations because it needed a contractor in place by the time PFM departed. A compelling operational necessity may justify an employer's unilateral action prior to the completion of negotiations if the necessity results from a sudden unforeseen occurrence beyond the employer's control, the timing precludes negotiations, and there is no alternative to the action taken.[10]

[10]Article XIV of the collective bargaining agreement, which permits the District to "contract out work without prior notification, or bargaining due to an emergency situation." That article also defines emergency as a sudden serious development "resulting in a relatively temporary change in circumstances and demanding immediate action." The article was not meant to be a waiver of CSEA's bargaining rights when a long-term or permanent

(Calexico Unified School District (1983) PERB Decision No. 357; San Francisco.)

The District has not demonstrated a compelling operational necessity. The sudden occurrence on which the District relies is the loss of PFM as the food service provider, an event neither unforeseen nor out of the District's control. Administrators had been considering a change at least since November of 1994. Additionally, since 1987 the District had agreed to a 90-day cancellation clause in the PFM contract. If that clause resulted in serious time constraints, they were self-imposed.

Nor did the timing preclude negotiations. Gary Poertner knew during discussions with Lumberjack, immediately after receiving PFM's March 30 cancellation, that there were "problems we had to work out internally with CSEA" because of the dormitories. A month passed before the Union was given notice and an opportunity to bargain; meaningful negotiations could have taken place in the interim.

Nor has the District established that no real alternatives existed, only that there was but one alternative preferred. No other options were seriously explored (e.g., other food contractors or self-operation). In sum, the District was not excused from its duty to negotiate and free to take unilateral action by its claim of operational necessity.

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change is made and time is available for negotiations. Accordingly, applicable labor law principles, rather than Article XIV, are used to assess to the District's business necessity defense.

The District's decision to contract out the operation of the dormitories was within the scope of bargaining. For the reasons discussed, the District's defenses are not supported by the evidence or the applicable law. Accordingly, it is concluded that the District violated subdivision (c) of section 3543.5 of the EERA. This same conduct interfered with CSEA's right to represent employees in the bargaining unit in violation of section 3543.5(b).

The District's failure to negotiate in good faith concurrently interfered with individual employees' rights to be represented by CSEA, a right guaranteed by EERA. Therefore, it is found that the District violated subdivision (a) of section 3543.5 of that Act.

The Child Development Center

The second complaint alleges that the District unilaterally eliminated the classifications of Child Development Specialist, Child Development Aide and Senior Clerk Typist at the CDC and replaced them with ECE Program Specialist, ECE Program Associate and Intermediate Clerk Typist at lower salaries. Two classifications were eliminated and replaced by new ones. The change in the typist position involved a decision to reclassify a position. The District argues that neither decision required negotiations.

In Alum Rock Union Elementary School District (1983) PERB Decision No. 322 (Alum Rock), the Board recognized that a public school employer has an overriding interest in determining which

functions are necessary and which functions are not necessary to accomplish its mission. Accordingly, when management creates a new classification to perform a function not previously performed or to abolish a classification and cease engaging in the activity previously performed by employees in that classification, it need not negotiate that decision.[11] However, the mere transfer of existing functions from one classification to another involves no overriding management prerogative. To require negotiations of such a decision does not significantly diminish an essential managerial control. Thus, where an existing classification is merely replaced by a. new classification to do the same work under similar conditions, the decision to transfer duties is negotiable.

Based on its holding in Alum Rock, the Board has also held that an employer has a duty to negotiate over the rights of incumbent employees in existing classifications which are eliminated and replaced by newly created classifications. (Healdsburg Union School District (1984) PERB Decision No. 375.)

This case falls squarely under the case law of Alum Rock and its progeny. As discussed, the duties of Child Development Specialist and Child Development Aide were incorporated into the new classifications of ECE Program Specialist and ECE Program Associate. This conclusion is supported by the clear language of

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•"••"•Management remains obligated to negotiate the effects of its decisions which fall within the scope of representation. (Solano County Community College District (1982) PERB Decision No. 219.)

the job specifications and the testimony of the replaced incumbents. There are some additional and different duties listed in the new classifications. However, all of the duties considered essential on the previous duty statements remain.

There has been some reorganization and change in curriculum at the CDC. The director of the CDC reports to the dean of humanities, integrating the program more with the academic side. However, that change was made in early 1994. There is an emphasis on child-centered and emergent curriculum. However, CDC Director Larson had been making this change with incumbent staff during the 1994-95 school year. Accordingly, neither the reorganization nor the changing curriculum excuse the District obligation to bargain over the new job classifications created in June of 1995. Because most of the primary duties and job conditions remain, the action taken at the CDC in the summer of 1995 was primarily a transfer of existing functions and duties from one classification to another. The creation of the two new classifications was within the scope of bargaining. (Alum Rock.)

The change in the typist job at the CDC did not involve a new classification. The District simply reclassified the position downward and paid less money for performance of the same duties. Such a decision is also clearly within the scope of bargaining. (Healdsburg, supra, PERB Decision No. 375; Alum Rock.)

The District makes two arguments that CSEA waived its right to bargain CDC issues. Neither argument is based on the

contractual waiver originally asserted when the District first refused to negotiate.[12] The District first argues that CSEA made no proposals regarding the CDC and ignored the District's request for proposals at the May 4, May 8 and May 10 negotiations. However, those negotiations were devoted to the dormitory issue and a review of the testimony cited by the District makes no reference to the CDC. Further, the Union had no notice regarding the decision to create two new classifications at the CDC until it was made aware of the newspaper advertisement of June 18. Yagi informed CSEA of the reclassification of the clerical position and possible changes in other positions only days earlier, on June 12. Accordingly, no waiver of bargaining rights was demonstrated during the May negotiations.

The District also contends that, based on a "long-standing practice", CSEA has waived any right to negotiate the salaries of new positions.[13] A waiver defense requires that an employer demonstrate by clear and unmistakable contract language or behavior that a union has waived a reasonable opportunity to

[12]Within 3 days of the newspaper advertisement, CSEA made a demand to bargain over the position changes and salaries. Because the issue was not limited to layoffs and because 30 days had not passed there appears to be no real argument for contractual waiver under Article XV.

[13]The new classification of ECE Program Specialist was assigned a salary of $1626 per month, less than any of the salary steps for the replaced Child Development Specialist under the collective bargaining agreement. The ECE Program Associate was assigned an hourly wage of $7.36, compared to a top step of $7.62 for Child Development Aide.

bargain over a decision not firmly made. (Los Angeles Community College District (1982) PERB Decision No. 252.) To establish a practice, the District primarily relies on two statements by Yagi., who has been the director of human resources since November 1992. The first is her statement that placement on the salary schedule has never been negotiated. That statement is not supported by any examples of past actions which could establish a fixed practice readily ascertainable by both sides. Accordingly, it cannot be the basis for a finding of a "long-standing practice."

The second statement is that it was Yagi's "understanding" that negotiations did not take place regarding the Ewing & Company classification and salary study of January 30, 1989, nearly four years prior to Yagi's employment at the college. No background for the "understanding" was given. However, Carole Polasek, who had become the CSEA chapter president thirty days prior to the delivery of the study recalls meeting with the employer regarding recommended changes of placement on the salary schedule. The Union then ratified those recommendations. Polasek stated that there were no negotiations because the parties agreed on the study's recommendations. Accordingly, the actions of the parties regarding the Ewing study do not evidence a bargaining waiver.

Additionally, CSEA Labor Representative David Young credibly testified that the parties had negotiated over the salary placement for a new classification in 1992 and two reclassified

positions in 1995. The District's burden to establish a clear and unmistakable bargaining waiver has not been met.

The District's decision to create two new job classifications and salary levels and to reclassify one typist position at the CDC were within the scope of bargaining. As determined, the District's defenses to its refusal to bargain are not supported by the evidence and the applicable law. Therefore, it is concluded that the District violated subdivision (c) of section 3543.5 of the EERA. This same conduct interfered with CSEA's right to represent employees in the bargaining unit in violation of section 3543.5(b).

The District's failure to negotiate in good faith concurrently interfered with individual employees' right to be represented by CSEA, a right guaranteed by the EERA. Therefore, it is found that the District violated subdivision (a) of section 3543.5 of that Act.

REMEDY

Under section 3541.5(c), PERB is empowered to:

> . . . issue a decision and order directing an offending party to cease and desist from the unfair practice and 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.

Here it has been found that the District violated EERA when it unilaterally subcontracted the operation of the dormitories to the Foundation. This same conduct was found to interfere with CSEA's rights to represent bargaining unit members and

constituted interference with bargaining unit members' right to be represented by CSEA. It is appropriate to order the District to cease and desist from such activity in the future. It is further appropriate to order the District to restore the status quo ante, that is, to rescind any current arrangement with the Foundation to provide for dormitory operations as were agreed upon in June of 1995. (See San Diego Community College District (1988) PERB Decision No. 662.)

In this case, the parties did meet after the unilateral change and attempt to reach an accommodation regarding contracting out of dormitory operations. An agreement in this area could well be in the best interests of both parties and avoid the necessity of a return to the status quo. Therefore, it shall be ordered that, within 10 days of service of this proposed decision, the District offer to meet and negotiate with CSEA regarding changes at the dormitories and to thereafter meet and negotiate in good faith. If these negotiations do not produce agreement then, upon demand from CSEA, the District will be ordered to reinstate the three bargaining unit employees to the positions which existed prior to the unlawful change. It is further appropriate to pay the employees all wages and benefits lost by the unlawful act, interest on back pay shall be awarded at the rate of 7 percent per annum.[14]

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[14]PERB last considered the appropriate amount of interest to award with back pay in the case of Mt. San Antonio Community College District (1988) PERB Decision No. 691 (Mt. San Antonio). There, the Board adopted the California Code of Civil Procedure (CCP) section 685.010 for determining the rate of interest.

It is also been found that the District violated EERA when it unilaterally created two new classifications and reclassified one position at the CDC. This same conduct was found to interfere with CSEA's rights to represent bargaining unit members and constituted interference with bargaining unit members' rights to be represented by CSEA. It is appropriate to order the District to cease and desist from such activity in the future. It is further appropriate, to order the District to restore the status quo ante, that is, to return the conditions of employment for bargaining unit employees at the CDC to that which existed prior to the unlawful act. (Rio Hondo Community College District (1983) PERB Decision No. 292.) The District will be ordered to reinstate those employees who were laid off as a result of the June decision and make these affected employees whole for any wages or other benefits lost as a result of the unlawful unilateral change. It is further appropriate to restore to the employees all wages and benefits lost by the unlawful act. Interest on such back pay shall be awarded at the rate of 7 percent per annum.[15]

Currently, that section sets the rate at 10 percent. However, subsequent to the Board's decision in Mt. San Antonio, an appellate court concluded that local government entities, including public school districts, are exempted from CCP section 685.010. Therefore, the rate for a public school employer is 7 percent, as specified in California Constitution Article XV, section 1. (See San Francisco Unified School District v. San Francisco Classroom Teachers Association (1990) 222 Cal.App.3d 146 [272 Cal.Rptr. 38].)

[15]CSEA requests that, regarding positions at the CDC, the cease and desist order run the length of the current collective bargaining agreement between the parties. Such request appears

It is also appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. 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 and will comply with that order. It effectuates the purposes of EERA that employees will be informed of the resolution of the controversy and will announce the readiness of the District to comply with the ordered remedy. (Davis Unified School District, et al. (1980) PERB Decision No. 116; 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 the case, and pursuant to the Educational Employment Relations Act (Act), Government Code section 3541.5(c), it is hereby ordered that the Redwoods Community College District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate with the California School Employees Association (CSEA) about the

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to mirror CSEA arguments in its motion to amend the complaint. Therein, CSEA argued that the subject unilateral actions constitute a repudiation of the current agreement, specifically the zipper clause. The remedy request is denied based on the reasons given for the earlier denial of CSEA's motion.

contracting out of dormitory services and the change in job classifications at the Child Development Center.

2. Denying CSEA its right to represent bargaining unit members in their employment relations with the District.

3. Denying bargaining unit members their right to be represented by their chosen representative.

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

1. Within 10 days of service of this proposed decision, the District shall offer to meet and negotiate with CSEA regarding the contracting out of dormitory operations and thereafter shall meet and negotiate in good faith.

2. Upon demand from CSEA, restore one dormitory assistant/custodian and two assistant dormitory manager positions as existed prior to June 2, 1995, with accompanying salary and benefits and offer the positions to employees incumbent at the time of the unilateral action.

3. Restore one Senior Clerk Typist, two Child Development Specialist, and one Child Development Center Aide positions as existed prior to June 2, 1995, with accompanying salary and benefits and offer the positions to employees incumbent at the time of the unilateral action.

4. Pay to the affected employees lost earnings as a result of the eliminated jobs. The back payment shall be augmented with 7 percent per annum interest.

5. Within 10 days of service of this proposed decision, post at all 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 notices are not reduced in size, altered, defaced or covered by any other material.

6. 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 at the headquarters office in Sacramento within 20 days of service of this Decision. 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. (See 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 sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . ." (See Cal. Code Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 1013 shall apply.) 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 and 32140.)

Bernard McMonigle
Administrative Law Judge