STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATED ADMINISTRATORS OF LOS ANGELES, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No.LA-CE-4819-E PERB Decision No. 1884 January 30, 2007

Appearances: Parker & Covert LLP by Spencer E. Covert and Barbara J. Ginsberg, Attorneys, for Associated Administrators of Los Angeles; Paul, Hastings, Janofsky & Walker LLP by Robert F. Walker, Attorney, for Los Angeles Unified School District.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

SHEK, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Los Angeles Unified School District (District) to the proposed decision (attached) of an administrative law judge (ALJ). The ALJ concluded that the District violated the Educational Employment Relations Act (EERA)[1] by refusing to bargain over employees found by the Board to be properly in the certificated supervisors unit represented by the Associated Administrators of Los Angeles (AALA).

The Board has reviewed the entire record in this matter, including the unfair practice charge, complaint, stipulated record, the District's statement of exceptions and AALA's response thereto. The Board finds the ALJ's findings of fact and conclusions of law to be free

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

of prejudicial error and adopts the proposed decision as the decision of the Board itself subject to the following modifications.

DISCUSSION

We replace the portion of the ALJ's "Findings of Facts" that discusses Los Angeles Unified School District (2004) PERB Decision No. 1665 (Los Angeles) to correct a minor factual error.[2] In Los Angeles, the Board adopted the proposed decision of an ALJ in consolidated Case Nos. LA-CE-4248-E and LA-UM-679-E. The unfair practice charge in that case alleged that the district had unilaterally and improperly designated 25 employee classifications as managerial. The association filed a unit modification petition requesting that the Board determine that the 25 disputed classifications were not management employees within the meaning of EERA section 3540.l(g), and were not excluded from the certificated supervisors unit. The Board found that 17 of 25 disputed classifications were properly designated management within the meaning of EERA section 3540.l(g). The Board ordered that employees in eight disputed classifications were not management employees within the meaning of EERA section 3540.l(g) and were therefore not excluded from the certificated supervisors unit.

In contravention of the Board's order, the District refused to bargain with seven of the eight disputed classifications. PERB decisional law has not sanctioned an employer's refusal to recognize an exclusive bargaining representative based on the employer's unilateral determination that the unit is, for some reason, inappropriate. (The Regents of the University of California (1989) PERB Decision No. 722-H (Regents), at p. 4.)

[2]The ALJ misstated on page 3, first paragraph, of the proposed decision that there was "a District unit modification petition requesting that PERB exclude classifications from the unit." The District did not file the unit modification petition.

In the absence of the presentation of newly discovered or previously unavailable evidence or special circumstances, relitigation of PERB's unit determination is not warranted. PERB's unit determination in Los Angeles is therefore binding precedent. (Redondo Beach City School District (1980) PERB Decision No. 140, at p. 3; Dixie Elementary School District (1983) PERB Decision No. 298, at p. 2; Regents, at p. 5.)

We find that the District's refusal to bargain in good faith with AALA over matters within the scope of bargaining for the seven classifications within the certificated supervisors unit to be a violation of EERA section 3543.5(c). By this same conduct, the District concurrently violated Section 3543.5(b) by denying AALA its statutory right as an exclusive representative to represent unit members in their employment relations with the District. The District's failure to meet and negotiate with AALA further interfered with employees because of their exercise of representational rights in violation of Section 3543.5(a). (El Monte Union High School District (1982) PERB Decision No. 220, at p. 11.)

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the Los Angeles Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated EERA by refusing to bargain in good faith.

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

A. CEASE AND DESIST FROM:

1. Refusing to negotiate in good faith with the Associated Administrators of Los Angeles (AALA) over all of the positions in the certificated supervisors bargaining unit;

2. By the same conduct, interfering with the rights of employees to be represented by their exclusive representative; and

3. Denying AALA the right to represent its members.

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

1. Upon request, meet and negotiate with AALA as the exclusive representative of all certificated supervisory employees in the bargaining unit, including:

Director, Professional Development
Director, High School Programs
Director, Middle School Programs
Administrative Coordinator, Child Development
Director, District Nursing Services
Director, Instructional Support Services, Local District

Director, School Services, Local District

2. 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 hereto as an Appendix, signed by an authorized agent of the District indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The District shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on AALA.

Chairman Duncan and Member McKeag 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 review of Unfair Practice Case No. LA-CE-4819, Associated Administrators of Los Angeles v. Los Angeles Unified School District in which all parties had the right to participate, it has been found that the Los Angeles Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c).

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

A. CEASE AND DESIST FROM:

1. Refusing to negotiate in good faith with the Associated Administrators of Los Angeles (AALA) over all of the positions in the certificated supervisors bargaining unit;

2. By the same conduct, interfering with the rights of employees to be represented by their exclusive representative; and

3. Denying AALA the right to represent its members.

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

1. Upon request, meet and negotiate with AALA as the exclusive representative of all certificated supervisory employees in the bargaining unit, including:

Director, Professional Development
Director, High School Programs
Director, Middle School Programs
Administrative Coordinator, Child Development
Director, District Nursing Services
Director, Instructional Support Services, Local District
Director, School Services, Local District

Dated: _____ LOS ANGELES UNIFIED 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

ASSOCIATED ADMINISTRATORS OF LOS ANGELES, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-4819-E PROPOSED DECISION (June 2, 2005)

Appearances: Parker & Covert LLP by Spencer Covert, Attorney, for Associated Administrators of Los Angeles; Paul, Hastings, Janofsky & Walker LLP by Robert F. Walker, Attorney, for the Los Angeles Unified School District.

Before Bernard McMonigle, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that the employer refuses to bargain over seven job classifications previously found by the Public Employment Relations Board (PERB or Board) to be in the collective bargaining unit. The employer's defense is that the PERB decision placing these positions in the bargaining unit was incorrect; it refuses to bargain over the positions because it believes them to be managerial and outside the unit.

On December 14, 2004, the Associated Administrators of Los Angeles (AALA or Association) filed an unfair practice charge against the Los Angeles Unified School District (District). On December 30, 2004, the PERB Office of the General Counsel issued a complaint against the District alleging that it refused to negotiate matters within the scope of bargaining

for supervisory positions represented by the Association in violation of the Educational Employment Relations Act (EERA or Act) section 3543.5(a) (b) and (c).[1]

The District answered the complaint on January 19, 2005, generally denying all allegations and asserting the affirmative defense that the subject classifications are management or confidential and not properly within the bargaining unit represented by the Association.

No settlement conference or formal hearing was held in this matter. Rather, on March 23, 2005, the parties submitted a factual stipulation. With the receipt of the last brief on April 13, 2005, the matter was submitted.

FINDINGS OF FACT

The material facts in this case are not in dispute. The District is a public school employer as defined in section 3540.l(k). The AALA is the exclusive representative as defined in section 3540.l(e) of an appropriate unit of employees.

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

> It is 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. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith.

On July 27, 2004, PERB issued Los Angeles Unified School District (2004) PERB Decision No. 1665 (PERB Decision No. 1665). In that decision the Board adopted the proposed decision of an ALJ in a consolidated case that included an AALA unfair practice complaint alleging the District had improperly removed positions from its bargaining unit and a District unit modification petition requesting that PERB exclude classifications from the unit. The Board found that 17 disputed classifications (16 employees) should be excluded from the unit as management; the other 8 disputed classifications (61 employees) were found to be within the AALA bargaining unit.

On November, 22, 2004, the Association requested that the District meet and negotiate regarding the wages, hours and working conditions of the classifications that PERB determined were within its bargaining unit. On December 2, 2004, and continuing thereafter, the District has refused to bargain over seven of those classifications, specifically,

Director, Professional Development
Director, High School Programs
Director, Middle School Programs
Administrative Coordinator, Child Development
Director, District Nursing Services
Director, Instructional Support Services, Local District
Director, School Services, Local District

The District maintains that the seven classifications of employees, determined by PERB to be within the supervisory unit represented by the AALA, are management and should be excluded from the bargaining unit and the coverage of EERA.

ISSUE

Did the District refuse to bargain in violation of EERA?

CONCLUSIONS OF LAW

This unfair practice case addresses the District's refusal to bargain over job classifications found by PERB to be covered by the EERA and represented by the AALA.

This case is not about whether the seven subject job classifications are properly within the AALA bargaining unit or should be excluded as managerial. That issue was decided by the Board in PERB Decision No. 1665.

The parties stipulated that "this proceeding represents what is referred to as a 'technical refusal to bargain by the District.'" Using this tactic, employers in the private sector have obtained judicial review of labor board unit certification decisions after being found guilty of an unfair labor practice by refusing to bargain with the union. (See, e.g., J. R. Norton Co. v. Agricultural Labor Relations Bd. (1979) 26Cal.3d 1, 160Cal.Rptr. 710; Boire v. Greyhound Corp. (1964) 376 U.S. 473, 84 S.Ct. 894.)[2]

The Board has held that a unit modification may only be accomplished by an agreement of the parties or through PERB's unit modification procedures; a "technical refusal to bargain" is not a means for challenging the parameters of the bargaining unit. (Regents of the University of California (1989) PERB Decision No. 722-H.)[3] Accordingly, no factual findings on the status of the disputed classifications will be made as part of this unfair practice proceeding.

The PERB unit determination made in PERB Decision No. 1665 remains binding on the parties. The AALA is the exclusive representative of an appropriate unit that includes the seven classifications disputed by the District. The District admits that it refused to negotiate

[2] As with EERA (at Gov. Code section 3542), unit determinations under the National Labor Relations Act and California's Agricultural Labor Relations Act are generally not subject to direct judicial review.

[3] In that case, the Board also noted that "[t]he NLRB and the ALRB have condoned the use of a 'technical refusal to bargain' only as a means of attacking initial certification proceedings, immediately following the completion of a representation election." Such is not the case herein, as the AALA was voluntarily recognized by the District in 1991.

matters within the scope of bargaining for these classifications. Such refusal constitutes a violation of section 3543.5(c) and, derivatively, sections 3543.5(a) and (b).

REMEDY

Under section 3541.5(c) the Board is given the remedial authority:

> [T]o 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.

Based on the finding that the District has engaged in and is engaging in unfair practices by refusing to bargain over employees found by the Board to be properly in the bargaining unit represented by the AALA, the District is ordered to cease and desist therefrom, and, upon request, meet and negotiate with the Association as the exclusive representative of all employees in the appropriate unit.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Los Angeles Unified School District violated the Educational Employment Relations Act (Act), Government Code section 3543.5(a) (b) and (c). The District violated the Act by refusing to bargain in good faith.

Pursuant to section 3541.5(c) of the Government Code, it hereby is ORDERED that the Los Angeles Unified School District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to negotiate in good faith with the Associated Administrators of Los Angeles over all of the positions in the certificated supervisors bargaining unit

2. Interfering with the rights of employees to be represented by their exclusive representative by the same conduct; and

3. Denying the Associated Administrators of Los Angeles the right to represent its members by the same conduct.

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

1. Upon request, meet and negotiate with the above-named employee organization as the exclusive representative of all certificated supervisory employees in the bargaining unit, including:

Director, Professional Development
Director, High School Programs
Director, Middle School Programs
Administrative Coordinator, Child Development
Director, District Nursing Services
Director, Instructional Support Services, Local District

Director, School Services, Local District

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the Los Angeles Unified School District customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the charging party.

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 Public Employment Relations Board (PERB or 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).)

Bernard McMonigle
Administrative Law Judge