

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 715, AFL-CIO,)	
)	
Charging Party,)	Case No. SF-CE-155
)	
v.)	INTERIM ORDER
)	
OFFICE OF THE SANTA CLARA COUNTY SUPERINTENDENT OF SCHOOLS,)	PERB Decision No. 233
)	
Respondent.)	August 12, 1982
)	

Appearances: Richard J. Loftus, Jr., Attorney (Littler, Mendelson, Fastiff & Tichy) for the Office of the Santa Clara County Superintendent of Schools.

Before Gluck, Chairperson; Jensen and Tovar, Members.

DECISION

The Office of the Santa Clara County Superintendent of Schools (County) excepts to the proposed decision of an administrative law judge which found that the County violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (ERRA)¹ by unilaterally

¹ERRA is codified at Government Code sections 3540 et seq. All statutory references are to the Government Code, unless specified otherwise.

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

It shall be unlawful for a public school employer to:

requiring one of its employees to terminate his use of a County \ vehicle to commute between his home and work.

FACTS

Tom Lambert, the County's only vehicle service worker,² was assigned a pickup truck to use during the course of his workday when he began employment with the County 13 years prior to the filing of the charge. He was allowed to drive the truck home at night and on weekends and permitted to use it for personal errands during lunch periods.

According to Lambert, he was told by the County when he was hired that if he "wanted a job as transportation manager that there would be a vehicle go (sic) with the job." The record does not indicate that he was ever a transportation manager.

In 1977, the County built a new garage facility and in September of that year decided that all buses and Lambert's truck would be parked there at the end of each workday.

(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.

²Vehicle service workers shuttle buses among different garages and do minor repair work on these vehicles.

Lambert was personally informed of this decision on September 14, 1977. Service Employees International Union, Local 715, AFL-CIO, (Local 715) the charging party and exclusive representative of Lambert's negotiating unit, received notice only regarding the change affecting the buses through the County's offer to negotiate that change.

The move to the new facility entailed certain changes in Lambert's job duties, although the County presented no evidence of what those changes were except that some work that he had done previously had been reassigned to a lead mechanic. Lambert testified that his hours were changed but did not indicate when this change occurred or what the change consisted of.

Local 715 filed an unfair practice charge alleging, inter alia, that the unilateral change in Lambert's hours and the removal of his right to use the truck for commuting purposes violated the County's duty to negotiate as required by subsection 3543.5(c). The hearing officer dismissed that portion of the charge relating to the alleged change of hours; Local 715 filed no timely exceptions to this ruling. The hearing officer did find a violation resulting from the County's removal of Lambert's personal use of the truck and it is to this ruling that the County has filed the only exceptions brought to this Board.

The County specifically excepts to the findings that the personal use of the truck constituted a wage for Lambert and that such use of the truck was offered as an inducement to Lambert to accept employment. The County further argues that such use of the truck by Lambert was only for the County's own convenience and that it is under no obligation to negotiate over the terms and conditions of employment for a single employee, but is required to negotiate only with respect to unit employees in general.

DECISION

We find that the personal use of the truck permitted to Lambert over a 13-year period constituted an established wage provision applicable to the classification of vehicle service worker.

In Anaheim Union High School District (10/28/81) PERB Decision No. 177, the Board determined that a matter is within the scope of mandatory negotiations where it is:

(1) logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that a conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge his freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the [agency's] mission. (Pp. 4-5.)

The use of a County vehicle for personal use, particularly for commuting to and from work, has a tangible dollar value to the employee. At the minimum, it saves on the wear-and-tear of a privately owned vehicle and may produce further economic savings by eliminating all costs pertaining to the ownership and use of a private vehicle. It may free the employee specifically from certain purchases of gasoline, oil, and maintenance costs if these are furnished by the employer-owner of the vehicle in question.³

In Wil-Kil (1970) 181 NLRB 749 [73 LRRM 1556], enf'd. (7th Cir. 1971) 440 F.2d 371 [76 LRRM 2735], the National Labor Relations Board (NLRB) found a seven-year use of company vehicles for home-to-work commuting to be "a valuable term and condition of employment" and ordered a return to the status quo ante and a make-whole reimbursement. In Eagle Material Handling of New Jersey (1976) 224 NLRB 1529 [92 LRRM 1571], the administrative law judge found a similar unilateral employer action to be in violation of the National Labor Relations Act⁴ and in Seafarers, Local 777 v. NLRB (1978) 603 F.2d 862 [99 LRRM 2904], the D.C. Circuit upheld the NLRB's finding that

³There is nothing in the record to indicate what costs Lambert would necessarily incur as a result of the loss of the personal use of the truck or what savings in personal finances have resulted from his past use of the truck for such purposes.

⁴Reversed on other grounds, i.e., charging party lacked representative status when the unilateral change occurred and had failed to renew its demand for recognition or negotiations.

the employer's unilateral imposition of a \$10 take-home fee levied on drivers who took their cabs home after work violated its duty to negotiate.

Accepting as fact that the County found it convenient to allow Lambert to use the car for commuting, we find nothing in the record to support a finding that the County's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of its mission would be significantly abridged by a requirement that it negotiate a change in its policy. The County offered no evidence of such necessity; the word "convenience" does not rise to the level of necessity.⁵

Nor does the fact that the County provided the truck use to Lambert for its own convenience change the nature of the benefit to that employee. It may be assumed that daily starting and quitting times of work, the designation of specific lunch periods and other personnel policies established by the employer are also for its operational "convenience." Yet, there is no doubt that such practices, when established over a sufficiently lengthy period of time, may not be unilaterally altered once an exclusive representative has been recognized or certified without first giving notice to that

⁵The County offered an explanation for its decision for the first time in its post-hearing brief. Since there was no opportunity to litigate the County's contention, the Board does not accept it now as evidence.

representative and providing it with the opportunity to negotiate over proposed modifications.⁶

For these reasons, it is unnecessary to find that the truck was provided to Lambert as an inducement to accept employment. It is sufficient that his compensation for the work he performed did, in fact, include the personal use of the vehicle.⁷

The County provides no authority for its contention that it need only negotiate on matters affecting all unit employees. This argument ignores the realities of negotiations. Lambert was the only employee in his classification. Clearly, the wages, hours and terms and conditions of a classification may be determined through negotiations on a specific and individual basis. It is patently incorrect to assert that an employer is relieved of the duty to negotiate on single-incumbent jobs. The consequence of such a ruling would necessarily require that, irrespective of the nature of such jobs, the incumbent would have to accept the same wages, hours and conditions of employment that are applicable to the unit as a whole. The County's argument is rejected.

⁶NLRB v. Allied Products (6th Cir., 1977) 548 F.2d 644 [94 LRRM 2433]; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51.

⁷The County does not claim that it was unaware of Lambert's use or that he used the truck for personal reasons in contravention of its policy or instructions.

By unilaterally modifying its long-established practice of permitting Lambert to use a County vehicle to commute to and from work, without first notifying the exclusive representative and offering it an opportunity to negotiate, the County violated subsection 3543.5(c) of the EERA by unilaterally modifying the wages of an employee within the representation unit. By this action it concurrently violated subsections 3543.5(a) and (b). San Francisco Community College District (10/12/79) PERB Decision No. 105.

REMEDY

Generally, an order reinstating the status quo ante is appropriate in cases such as this. However, the Board notes that Lambert testified that his hours of work had been changed. The record does not indicate the nature or extent of that change. Local 715 did not except to the dismissal of a charge pertinent to this change. The County gave no evidence as to the nature of the change in hours, nor did it attempt to justify its action in making that change. Thus, the Board is aware that Lambert's hours of work and his duties have somehow been changed but cannot judge whether these changes are impacted upon, or impact upon, his personal use of the vehicle. We find it inappropriate to order the restoration of Lambert's former hours and duties under the circumstances here and, therefore, cannot determine whether an order directing the

County to reinstate Lambert's vehicle usage would be in the best interests of effectuating the Act's purposes.

Nevertheless, Lambert is at least entitled to compensation for the loss of his personal use of the vehicle from the date of the County's unilateral act and for his prospective future use of the vehicle until such time, if any, that the parties negotiate a new wage for Lambert's classification.

Therefore, the Board directs the parties to attempt to reach settlement as to the manner by which Lambert will be reimbursed for the loss of that portion of his wages and the amount of such reimbursement. The Board will retain jurisdiction to review the settlement reached and to incorporate such settlement, if approved, in its final order. In the event that the parties cannot reach settlement within 90 days from the issuance of this Decision, either party may so notify the Board, which will then issue such final Order as it deems appropriate.

The Board will not at this time require posting of this Decision and Order so that settlement discussions may proceed in the most favorable climate.

INTERIM ORDER

Upon the foregoing facts, conclusions of law and the entire record in this case, it is determined that the Office of the Santa Clara County Superintendent of Schools (County) violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA) by unilaterally changing the

wages of an employee, Tom Lambert, by revoking his use of a County vehicle to commute to and from work. It is hereby ORDERED that the County shall:

A. CEASE AND DESIST FROM:

(1) Failing to meet and negotiate in good faith with Service Employees International Union, Local 715, AFL-CIO (Local 715);

(2) Denying Local 715 the right to represent its members and,

(3) Interfering with the right of employees to select an exclusive representative for the purpose of meeting and negotiating in good faith;

All by unilaterally changing the wages of an employee, Tom Lambert, namely, his use of a County vehicle to commute to and from work and by refusing to meet and negotiate in good faith on matters within the scope of representation, specifically, on the wages of said Tom Lambert.

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

Meet with representatives of Local 715 for the purposes of attempting to reach settlement as to the manner by which Tom Lambert shall be compensated for the loss of the use of a County vehicle to commute to and from work and the amount of such compensation. Such settlement, if reached, shall be reduced to writing, signed by the parties, and filed with this Board.

C. The Board itself retains jurisdiction of this case for the purpose of reviewing the settlement, if any, reached by the parties and incorporating said settlement in the Board's final Order or for including in its final Order such relief the Board deems appropriate if either party shall notify this Board no earlier than ninety (90) calendar days following the service of this Decision that the parties have been unable to reach a settlement.

By: Harry Gluck, Chairperson

Virgil W. Jensen, Member

Irene Tovar, Member