

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



UNITED PUBLIC EMPLOYEES LOCAL 390,)	
SERVICE EMPLOYEES INTERNATIONAL UNION,)	
AFL-CIO,)	
)	
Charging Party,)	Case No. SF-CE-490
)	
v.)	PERB Decision No. 274
)	
SAN LORENZO UNIFIED SCHOOL DISTRICT,)	December 29, 1982
)	
Respondent.)	

Appearances; Robert J. Bezemek, Attorney (Van Bourg, Allen, Weinberg & Roger) for United Public Employees Local 390, Service Employees International Union, AFL-CIO; John A. Hudak, Attorney (Breon, Galgani & Godino) for San Lorenzo Unified School District.

Before Tovar, Morgenstern and Jensen, Members

DECISION

JENSEN, Member: This case is before the Public Employment Relations Board on exceptions to the hearing officer's proposed decision filed by both the San Lorenzo Unified School District (hereafter District) and United Public Employees Local 390, Service Employees International Union, AFL-CIO (hereafter SEIU or Union). The hearing officer found the District to have violated subsections 3543.5(a), (b) and (c) of the Educational

Employment Relations Act (EERA)¹ by refusing to negotiate with SEIU before making a recommendation to the personnel commission of the salary range for a newly created position of lead custodian. We find that the recommendation to the personnel commission was not made by the District but by David Horn, acting in his capacity as director of classified personnel for the personnel commission. Inasmuch as the District has at all times been willing to negotiate with SEIU the actual wages for the lead custodian position, we find no violation of EERA and dismiss the charges.

FACTS

Since 1977, SEIU has been the exclusive representative of a

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise specified, all references shall be to the Government Code.

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

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

classified negotiating unit of the District's maintenance and operations employees, including custodians.

In May or June 1980, the District administration began studying reorganization of its custodial services. Specifically, rather than assigning custodians to a particular school site, it was proposed that a roving crew, under the supervision of a new classification of lead custodian, be responsible for the cleaning of several schools.

David Horn serves both the board of trustees and the personnel commission. Horn's responsibility to the board of education is to serve as the coordinator of staff relations and to be responsible for negotiations with all District employees. Horn's responsibility to the personnel commission is to serve as a member of the personnel commission as the director of classified personnel.

Horn testified that whenever a new position is created the board of trustees has the legal responsibility to approve the job description. The personnel commission has the responsibility to assign the new classification to an appropriate range within the classification system in the District.

In early June 1980, Horn met with Union representatives to discuss the new lead custodian classification. In August 1980, Kathryn Haymes, the Union field representative, telephoned Horn and told him that the District was obligated to negotiate the

wages for the new position, and that the subject should be brought up in the pending negotiations between the parties. Haymes testified that Horn expressed unequivocally that the District intended to negotiate wages with the Union. Haymes interpreted Horn's reply to encompass negotiations over both wages and salary range. Horn's memory of this telephone conversation was sketchy, but he did testify that he told Haymes that the District would negotiate salaries, the wages of all District employees.

Horn personally prepared the position description for the lead custodian, based on discussions with the administrator of building and grounds as to the duties which would be assigned to the lead custodian position. In his role as director of classified personnel, and pursuant to the request and direction of the personnel commission, Horn recommended that the new position be assigned to Range 24. He developed his recommendation by looking at other job classifications within the District and finding that the lead custodian position was very similar to that of the assistant high school building foreman's position in that both positions supervise crews of custodians.²

²NO management employee, other than Horn, was directly involved in making the recommendation. Nor were any written recommendations or comments from any District employee (except Horn) in evidence.

At an August 20, 1980 meeting, pursuant to Horn's recommendation, the personnel commission created the position of lead custodian and assigned it to Range 24 on a salary schedule (\$1,002 - \$1,192 per month). Haymes was present and objected to the commission's unilateral assignment of the position to a salary range without first negotiating with the Union. Haymes also said, however, that the range assigned by the commission probably was the appropriate one.

At the meeting, Horn told Haymes that it was the personnel commission's responsibility to set the salary range for the new position, but that the Union could negotiate a general salary increase for the entire negotiating unit so that, in effect, it would be able to negotiate the wages for the new position.³

Before creation of the lead custodian position, the parties had begun contract negotiations in May 1980. The Union's initial proposal on custodians' salaries included a 10-percent "equity" adjustment on top of the general wage increase proposed for the entire unit. At the time of the hearing, the parties' negotiations were still ongoing.

³Even though the new lead custodian positions were not created until the August 20, 1980 personnel commission meeting, the custodial reorganization actually was implemented on June 30, 1980 at the close of the previous school year. Regular custodians temporarily filled the positions at their old rate of pay and, upon approval of the position and salary range by the personnel commission, were given back pay to July 1.

DISCUSSION

Duty to Negotiate

We are faced with the question of whether the District had an obligation to negotiate over the initial salary classification of the newly created job classification of lead custodian. Section 45268 of the Education Code⁴ gives the personnel commission authority to recommend to the governing board salary schedules for classified service. Thus, in this case, the inquiry must focus upon whether the personnel commission's recommendation on the initial salary range for the lead custodian position is negotiable or within the exclusive province of the personnel commission.

The Union's position is that neither the District nor the personnel commission may take any action with respect to the salary of a newly created position until the Union has been

⁴Education Code section 45268 provides:

The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has been established in the classification made by the commission.
[Emphasis added.]

given an opportunity to negotiate the position's placement on the classified salary schedule. The District's position, on the other hand, is that the personnel commission is empowered to initially recommend the salary range for a newly-created position, and only then may the Union and the District negotiate different wage rates. The District's position has merit.

In Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689 [163 Cal.Rptr. 464], the court addressed whether a merit system school district was required to negotiate wages previously set pursuant to the personnel commission's recommendation under Education Code section 45268, supra. The court held the school district could negotiate salaries so long as the relationship between salaries for job classifications within the same occupational group, as established by the personnel commission, remains the same.

The court stated:

. . . [N]o restriction is imposed upon the [School] Board under the provisions of section 45268 in negotiating salary adjustments for individual job classifications within the same occupational group provided that the relationship between such individual positions as established by the [personnel] commission remains intact. (102 Cal.App.3d 681 at 702.)

In Sonoma, the court does not specifically address the issue of who sets the salary range for newly created positions, but suggests that the personnel commission has the statutory

authority to do so. The hearing officer in the instant case so concluded, stating, "If these relationships cannot be disturbed once initial salary levels are set, it is only logical that the personnel commission must have authority to set salary rankings in the first place. The personnel commission's statutory authority to set classification relationships would be effectively thwarted if before it could act, salaries for new positions were negotiated between the Union and the District". (Hearing officer's decision, pp. 8-9.) We conclude that the personnel commission, pursuant to Education Code section 45268, supra, does have the sole statutory authority to set the initial salary ranges. Once established, the District would be under the obligation to negotiate with the Union over wages.

The hearing officer, however, went further, finding that the District effectively recommends to the personnel commission the salary ranges for new positions, and therefore he imposed an obligation upon the District to negotiate over the recommendation for the salary range given to the personnel commission. A review of the record demonstrates that this finding is not accurate. Horn, the director of classified personnel, makes the recommendation to the personnel commission, which, in turn, after accepting or rejecting that recommendation, makes its recommendation to the board of trustees. Horn works for both the board of trustees and the personnel commission. Horn's responsibility to the board of

education is to coordinate staff relations and to serve as negotiator for the board. Horn is also responsible to the personnel commission and serves as its director of classified personnel. Thus, Horn's recommendation to the personnel commission is made in his capacity as director of classified personnel, whose specific responsibility it is to prepare the recommendation of newly created positions to the personnel commission. Under these facts, we can find no duty upon the District to negotiate over the recommendation to the personnel commission. The recommendation comes through the individual delegated the responsibility of making the recommendation to the personnel commission. The record indicates that the District was at all times willing to negotiate over the wages for the new position of lead custodian and was negotiating at the time of the hearing in this case. We, therefore, reverse the hearing officer's finding of a violation.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the Public Employment Relations Board hereby DISMISSES the charge filed by United

Public Employees Local 390, Service Employees International Union, AFL-CIO, against the San Lorenzo Unified School District.

Members Tovar and Morgenstern joined in this decision.