

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,	)	
	)	
Charging Party,	)	Case No. S-CE-428
	)	
v.	)	PERB Decision No. 360
	)	
ARCOHE UNION SCHOOL DISTRICT,	)	November 23, 1983
	)	
Respondent.	)	

---

Appearances: Janae A. Novotny, Attorney for California School Employees Association; James P. Henke, Attorney for Arcohe Union School District.

Before Gluck, Chairperson; Jaeger and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Arcohe Union School District (District) to a proposed decision of an administrative law judge (ALJ). The ALJ, upholding charges filed by the California School Employees Association (CSEA), found that, by unilaterally contracting out custodial work formerly performed by unit employees, the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).<sup>1</sup> The District excepts to

---

<sup>1</sup>EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code, unless otherwise noted.

the ALJ's finding that the decision to contract out unit work is a subject within scope under EERA.

We have reviewed the ALJ's decision in light of the District's exceptions, CSEA's response thereto, and the record as a whole and find that it should be affirmed as modified below.

#### FACTS

The ALJ's findings of fact are free of prejudicial error. Those findings, as set forth in the proposed decision, attached hereto and incorporated by reference herein, are adopted as the findings of the Board itself.

The relevant facts may be briefly summarized as follows: The District is so small that CSEA's chapter there has no officers, stewards or elected officials. It is associated with the Galt area chapter. A bus driver and unit employee, Linda Dulaney, serves unofficially as a "contact" for CSEA. She makes it a practice to attend school board meetings not on behalf of CSEA but, rather, as a parent with children in the District. On about April 19 or 20, 1981, she noticed the subject of contracting out custodial services on the posted agenda for the April 21 meeting. She attended that meeting and heard the matter discussed in open session. The decision to accept the contract for custodial services was made in closed session on April 21, 1981 by the District board of trustees.

Sometime after seeing the agenda item, Dulaney called CSEA Field Representative Jim Reid regarding it. The record does not reflect specifically when this call was made. Reid believes that it was just prior to May 29, 1981, on which date Reid sent a letter of protest to the District on CSEA's behalf. The record is also silent as to the content of the conversation between Reid and Dulaney.

The District does not routinely send CSEA copies of the agendas of board meetings, nor did it do so respecting the April 21, 1981 meeting. The District never gave CSEA specific or general notice of its intent to contract out custodial services, either prior to or following the firm decision to do so on April 21, 1981.

In early April 1981, while they were strolling to the parking lot following a negotiating meeting for a successor agreement, District Board Member Siegalkoff asked Reid about the general notion of contracting out custodial services. Reid told him that it was CSEA's position that it would be unlawful to do so, and that any such decision was subject to negotiations. The record does not indicate that Siegalkoff told Reid that the District was definitely contemplating a concrete plan to contract out custodial services. Rather, it appears that he made a general inquiry as to CSEA's position regarding the general subject matter of contracting out custodial services.

The District employed two classified employees funded under the Comprehensive Education and Training Act (CETA) to perform custodial work.<sup>2</sup> CETA funding for these employees ceased on April 30, 1981. Without providing notice to CSEA, the District, at a board of trustees meeting on April 21, 1981, decided to subcontract the custodial services formerly provided by the CETA-funded unit employees to a private concern.

#### DISCUSSION

The District, faced with cessation of funding for the unit employees performing custodial work, decided to provide the same level of custodial services it had provided prior to the termination of the CETA-funded unit employees. The vehicle the District chose to achieve this goal was to subcontract the custodial work to nonemployees.

We hold that the general subject of subcontracting unit work is within scope under EERA. For the reasons discussed infra, however, we do not hold that a proposal to subcontract custodial work per se would be negotiable.

Scope is defined at section 3543.2 of EERA. The California Supreme Court has validated the Board's test for negotiability regarding matters not specifically enumerated by the statute,

---

<sup>2</sup>The District excepts to the ALJ's finding that the CETA-funded custodians were in the unit represented by CSEA. We find that the uncontroverted testimony of CSEA Field Representative James Reid and other record evidence, including the unit description in the applicable collective negotiating contract, establish that these two employees were in the unit.

as stated in Anaheim Union High School District (10/28/81) PERB Decision No. 177. See San Mateo City School District v. PERB, California School Employees Association v. PERB, Healdsburg Union High School District, et al. v. PERB (May 1983) 33 Cal.3d 850 (\_\_\_Cal.Rptr.\_\_\_). Consistent with the Court's decision in Healdsburg, we apply the Anaheim test to determine the negotiability of subcontracting unit work.

The Anaheim test provides that a subject will be found negotiable even though not specifically enumerated in section 3543.2 if: (1) it is 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 conflict is likely to occur and the mediatory influence of collective negotiation is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge the employer's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission.

Subcontracting custodial work formerly performed by unit employees is a subject logically and reasonably related to wages, hours, and transfer and promotional opportunities for incumbent employees in existing custodial classifications. Actual or potential work is withdrawn from unit employees, and wages and hours associated with the contracted-out work are

similarly withdrawn. Further, such diminution of unit work weakens the collective strength of employees in the unit and their ability to deal effectively with the employer. Such impact affects work hours and conditions, and thus is logically and reasonably related to specifically enumerated subjects within the scope of representation. Rialto Unified School District (4/30/82) PERB Decision No. 209; UAW v. NLRB (General Motors) (D.C. 1967) 381 F.2d 265 [64 LRRM 2489].

Thus, it is clear that subcontracting unit work satisfies the threshold test for negotiability under Anaheim.

Management considerations are also raised by subcontracting decisions. The public school employer may determine that an outside firm can perform a particular task at a lower labor cost than can unit personnel.

It is apparent that subcontracting the work of unit employees is of great concern to employees and management, and their interests will naturally be opposed on the subject so as to make it likely that conflict will occur. Such conflict might well be ameliorated by the mediatory influence of collective negotiating.

The decision to subcontract the work of unit custodians did not involve the exercise of any essential managerial prerogative. The District, by such conduct, did not determine that custodial services would no longer be provided. Rather, it sought to transfer existing functions and duties from unit

employees to persons who are not employees of the District. No decision as to what functions were essential to management's mission was involved. The same functions were still being performed, albeit by persons not employed by the District. While sound fiscal management is a significant concern, such concern is properly addressed at the bargaining table and is not "an excuse to avoid the negotiating obligation entirely." San Mateo County Community College District (6/8/79) PERB Decision No. 94, p. 13. The requirement that the District negotiate prior to subcontracting unit work does not abridge the District's freedom to exercise any essential managerial prerogative.

For the foregoing reasons, we hold that subcontracting of unit work is a subject within the scope of representation. Such a holding is consistent with the dicta of this Board in Alum Rock Union Elementary School District (6/27/83) PERB Decision No. 322, pp. 11-12. Further, the Board has expressly so held in Healdsburg Union High School District (6/19/80) PERB Decision No. 132, remanded in San Mateo City School District et al. v. PERB, supra. There, we noted that numerous other public jurisdictions are in accord.<sup>3</sup> In addition, we have

---

<sup>3</sup>See City of Kennewick (WA 10/5/79) 1 NPER 49-10052; City of Waterbury (CT 12/7/79) 2 NPER 07-11010; Town of Burlington (MA 1/24/80) 6 MLC 1795 [2 NPER 22-11015]; Franklin School Committee (MA 2/22/79) 5 MLC 1659 [1 NPER 22-10033]; Township of Little Egg Harbor (1976) 2 NJPER 5; State of New Jersey (NJ

determined on several occasions that the analogous decision to transfer work out of the bargaining unit is negotiable. Rialto Unified School District, supra; Solano County Community College District (6/30/82) PERB Decision No. 219; Alum Rock Union Elementary School District, supra.

The District enjoyed the prerogative to determine what level of custodial service it would provide. It was free to unilaterally determine that it would provide the same level of custodial service which it provided prior to the loss of the CETA-funded custodians. However, when it unilaterally chose subcontracting as the vehicle for implementing that decision, it violated the duty to negotiate in good faith with CSEA, the exclusive representative of its classified work force. Such unilateral action on a matter within the scope of representation is a per se refusal to negotiate in good faith. NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]; San Francisco Community College District (10/12/79) PERB Decision No. 105.

In California School Employees Association v. Willits Unified School District of Mendocino County, et al. (1966) 243 Cal.App.2d 776 [52 Cal.Rptr. 765], the Court of Appeal for the

---

1/4/80) 6 NJPER 11017 [2 NPER 31-11017]; Saratoga Springs School District (NY 5/17/79) 12 PERB 7008 [1 NPER 33-17008]; Town of Rochester (NY 1/4/79) 12 PERB 4501 [1 NPER 33-14501]; Erie Municipal Airport Authority (PA 1/12/79) 10 PPER 10028 [1 NPER 40-10028]; Phoenixville Area School District (PA 7/3/79) 10 PPER 15178 [1 NPER 40-10178].

First District, Division Three, held that under section 45103 of the Education Code (which was, at the time of the Willits decision, section 13581), janitorial services may not be subcontracted, but rather must be performed by a district's classified employees.

Section 3540 of EERA provides, in pertinent part, "Nothing contained herein shall be deemed to supersede other provisions of the Education Code. . . ." In Healdsburg Union High School District (6/19/80) PERB Decision No. 132, at p. 18, PERB interpreted this language to prohibit negotiations on subjects only where the Education Code "clearly evidences an intent to set an inflexible standard. . . ." The California Supreme Court cited this interpretation with approval in San Mateo City School District, et al. v. PERB (1983) 33 Cal.3d 850 [\_\_\_ Cal.Rptr. \_\_\_], at 33 Cal.3d 865.

Because the Education Code section requiring that custodial services be performed by classified employees is ". . . cast in mandatory terms," (Willits, supra, at 784), we find that a proposal by the District that custodial services be subcontracted is superseded by the "inflexible standard" of the Education Code. However, the fact that a proposal to subcontract custodial services is preempted by the Education Code does not render the entire subject matter of subcontracting nonnegotiable. For example, proposals which sought to restate the prohibition against subcontracting, or to

broaden such prohibition, would be negotiable. In the instant case, the District's unilateral change precluded the Association from making any such valid subcontracting proposals.

The District's remaining exceptions amount to a contention that CSEA waived its right to negotiate by failing to expressly request negotiations. The ALJ found, and we agree, that CSEA did not learn of the decision to contract out until after it was firmly made by the District. The District's obligation to provide notice and an opportunity to negotiate to CSEA adhered when it decided to continue to provide the custodial services formerly performed by the terminated CETA-funded custodians. When it decided to unlawfully subcontract unit work, the time for prior notice had passed.

Prior to unilaterally changing a matter within scope, an employer has the obligation to provide the exclusive representative of its employees with notice of, and a reasonable opportunity to negotiate over, the contemplated change. In order to prove that CSEA waived its right to negotiate over the effects of the District's decision to continue providing the custodial services formerly provided by the CETA-funded unit employees, the District must show demonstrative behavior on the part of CSEA waiving a reasonable opportunity to bargain over the effects of a decision. San Mateo County Community College District, supra. Here, there is no evidence that the District provided CSEA with prior notice of its decision to contract out custodial services.

The general inquiry made by Siegalkoff in early April 1981 was insufficient to place CSEA on notice that the District was actually contemplating a concrete proposal to contract out custodial services. General publication of the board of trustees agenda by the posting at the school site does not constitute effective notice to CSEA of proposed changes in scope matters. Arvin Union School District (3/30/83) PERB Decision No. 300, p. 10. Neither does the fact that an employee of the District, who held no official position with CSEA, happened to gain actual notice of the contemplated change one or two days in advance thereof constitute notice to CSEA. Los Angeles Community College District (10/18/82) PERB Decision No. 252. The fact that CSEA did not expressly request negotiations after the District's acceptance of the contract proposal on April 21, 1981 does not establish a waiver of its right to negotiate. First, it is unclear how long after the District's action CSEA gained knowledge of it. Further, a request for negotiations after acceptance of the proposal by the District would have been an act of futility on the part of CSEA, and the failure to undertake a futile act does not constitute a waiver. Arvin, supra.

#### Oral Argument

The District has requested oral argument before this Board. No reason was given by the District as to why oral argument would be beneficial. The issues in the case are not

particularly novel, and the record is adequate for its resolution. Hence, we deny the request for oral argument.

For the reasons set forth above, we affirm the ALJ's finding that the District violated subsections 3543.5(a), (b) and (c) by subcontracting custodial services formerly provided by the terminated CETA-funded custodians, without providing notice and a reasonable opportunity to negotiate to CSEA, the exclusive representative of its classified employees. To remedy the above-mentioned violation, it is appropriate that the District be ordered to rescind the subcontract for custodial services, thus restoring the circumstances which existed prior to its unlawful unilateral act. The District shall further be ordered to cease and desist from engaging in unilateral action regarding matters within scope by implementing any other method of providing the former level of custodial services without furnishing prior notice and an opportunity to negotiate in good faith to CSEA. In addition, the District shall be ordered to post an appropriate notice to employees.

#### ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Government Code subsection 3541.5(c), it is hereby ORDERED that the Arcohe Union School District board of trustees and superintendent and their respective agents shall:

A. CEASE AND DESIST FROM:

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

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

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

2. Prepare and post, no later than thirty-five (35) days after service of this Decision, at all work locations where notices to employees are customarily placed, copies of the Notice To Employees attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

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

Member Jaeger joined in this Decision.

Chairperson Gluck's concurrence and dissent begins on page 14.

GLUCK, Chairperson, concurring and dissenting: I concur in the majority's finding that the Education Code effectively prohibits the subcontracting of custodial services. Consequently, any proposal which would tend to supersede the Code provision would not be within scope. For this reason, I cannot find the District's refusal to submit such a proposal to CSEA to be in violation of EERA.

However, the school board's attempt to remove custodial work from the bargaining unit clearly raised in CSEA the right to make any pertinent proposal<sup>1</sup> which would not have the effect of superseding the Code. In Healdsburg Unified High School District<sup>2</sup> the California Supreme Court also affirmed PERB's holding that a proposal to include in the negotiated agreement Education Code provisions which relate to wages, hours and negotiable working conditions is itself in scope. The Court said at page 26:

PERB did allow negotiations which might culminate in the inclusion of the terms established by the Education Code within a collectively negotiated contract. Such an agreement would not supersede the relevant part of the Education Code, but would strengthen it.

The record does not reveal what proposal CSEA would have made given the opportunity. But it is notable that CSEA argues

---

<sup>1</sup>Rialto Unified School District (4/30/82) PERB Decision No. 209.

<sup>2</sup>(May 1983) 33 Cal.3d 850 [\_\_\_\_ Cal. Rptr. \_\_\_\_].

two separate points: (1) Willits<sup>3</sup> decided that the subcontracting of custodial services is prohibited by the Education Code, and (2) the subject of subcontracting is negotiable. The apparent inconsistency of these two points is easily resolved. In Healdsburg, the employee organization (CSEA) submitted a proposal to prohibit subcontracting of services essentially matching the characteristics described in the Education Code provision upon which the court relied in Willits.<sup>4</sup> Since CSEA cites Healdsburg here to support its demand to negotiate, it is possible to assume that it intended to submit a proposal to prohibit the subcontracting of the custodial services previously performed by the CETA workers. Whether this is the case, such a proposal - and possibly others - would be negotiable. Since the District did not permit CSEA to make any proposals, it breached its duty to negotiate in good faith and violated subsection 3543.5(c).

---

<sup>3</sup>California School Employees Association v. Willits Unified School District (1966) 243 Cal.App.2d 776 [52 Cal.Rptr. 765].

<sup>4</sup>Administrative notice is taken of the following union proposal set forth in the Healdsburg record:

Restriction on Contracting Out: During the life of this agreement, the District agrees that it will not contract out work which has been customarily performed or is performable by employees in the bargaining unit covered by this agreement unless CSEA specifically agrees to same or contracting is specifically required by the Education Code.

I do not join in that part of the majority's Order which imposes on the District an absolute prohibition against any "unilateral action." As the majority has found, custodial work is included in the bargaining unit and covered by provisions of the negotiated agreement. I find nothing in the law which would preclude the District from filling the custodial vacancies without notice to CSEA provided it did so in accordance with the agreement. I see no distinction between such employer action and that involved in filling any other vacancies in the workforce.<sup>5</sup>

---

<sup>5</sup>It is possible that some contract terms affecting CETA workers would not be appropriate for regular classified replacements; but such an assumption should not be the underpinning of so conclusive a Board order.

APPENDIX

NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
An Agency of the State of California

After a hearing in Unfair Practice Case No. S-CE-428, in which all parties had the right to participate, it has been found that the Arcohe Union School District violated the Educational Employment Relations Act, Government Code subsections 3543.5(a), (b) and (c) by subcontracting unit work without providing notice and a reasonable opportunity to negotiate to California School Employees Association (CSEA), the exclusive representative of our classified employees.

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

A. CEASE AND DESIST FROM:

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

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

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

Dated:

ARCOHE UNION SCHOOL DISTRICT

By \_\_\_\_\_

Authorized Agent

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



STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,	)	
	)	
Charging Party,	)	Unfair Practice
	)	Case No. S-CE-428
v.	)	
	)	
ARCOHE UNION SCHOOL DISTRICT,	)	PROPOSED DECISION
	)	(11/22/82)
Respondent.	)	
_____	)	

Appearances: Janae H. Novotny, attorney, for California School Employees Association; James P. Henke, attorney, for Arcohe Union School District.

Before: Gerald A. Becker, Administrative Law Judge.

PROCEDURAL HISTORY

In this case the California School Employees Association (hereafter CSEA) charges that the Arcohe Union School District (hereafter District) unilaterally contracted out for janitorial services without affording CSEA an opportunity to negotiate. The charge was filed on September 14, 1981 and alleged that the District's action violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).<sup>1</sup>

An informal conference on October 29, 1981 failed to resolve the matter and a formal hearing was held before the

---

<sup>1</sup>The EERA is codified at Government Code section 3540 et seq. All references are to the Government Code unless otherwise specified.

undersigned on July 29, 1982. Briefing by the parties was completed on November 1, 1982 and the matter submitted for proposed decision.

#### FINDINGS OF FACT

CSEA is the exclusive representative of a wall-to-wall classified bargaining unit in the District, consisting of 16 employees. Since it is so small, there are no chapter or local officers, but rather the unit is affiliated with the larger Galt area chapter. Linda Dulaney, a school bus driver for the District, as well as a school parent, is the CSEA contact person for the District.

On April 9, 1981, in an informal discussion following the conclusion of a negotiating session, Mr. Siegalkoff, a school board member, asked Jim Reid, the CSEA field representative, what he thought about contracting out custodial services.

Citing the PERB decision in Healdsburg Union High School District (6/19/80) PERB Decision No. 132, and CSEA v. Willits Unified School District (1966) 243 Cal.App.2d 776

[52 Cal.Rptr. 765], Reid responded that work routinely performed by classified employees cannot be contracted out. Reid was unsure of whether he also said that negotiations regarding contracting out could not be included in the current round of negotiations because no proposal on contracting out had been sunshined. Nothing else was mentioned about

contracting out, including any plans the District might have had.

CETA funding for two custodial positions ended on April 30, 1981. These two CETA employees were in the bargaining unit represented by CSEA.

Instead of replacing the two employees, at an April 21, 1981 meeting, the District's governing board approved a contract with a private concern to provide cleaning services to the District beginning in August 1981. At a later school board meeting in August, the starting date of the contract was changed to September 1, 1981.

The District gave CSEA no prior notice of its intent to contract out for cleaning services. However, Dulaney, the CSEA contact person, attended the April 21 board meeting in her capacity as a parent. Concerned about the board's action, Dulaney called Reid to tell him about the board's action. On May 29, 1981, Reid wrote the District a letter protesting the contracting out. He stated that under the Willits decision, supra, it was illegal for the school district to contract out for classified services. Reid did not request to negotiate.

After the unfair practice charge was filed, the parties met to try to resolve the matter. Although the District attempted to characterize the two meetings as negotiations, these meetings appeared largely to be settlement discussions and thus will not be considered. (PERB Regulation 32176.)

## ISSUES

1. Is contracting out of work previously performed by bargaining unit members within the scope of representation?
2. Did CSEA waive its right to negotiate the contracting out of cleaning services?

## DISCUSSION AND CONCLUSIONS OF LAW

It is an unfair practice for an employer to unilaterally change terms or conditions of employment within the scope of representation without first giving the exclusive representative notice and an opportunity to negotiate. Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; San Mateo County Community College District (6/8/79) PERB Decision No. 94; Davis Unified School District (2/22/80) PERB Decision No. 115.

1. Contracting Out Bargaining Unit Work is Within the Scope of Representation.

The PERB has held that the decision to contract out bargaining unit work is negotiable. Healdsburg, supra.<sup>2</sup> The PERB has reached an analogous result in other cases, holding that transferring work out of a bargaining unit is a negotiable matter. Rialto Unified School District (4/30/82) PERB Decision No. 209; Solano Community College District (6/30/82) PERB Decision No. 219.

---

<sup>2</sup>The Healdsburg decision is not yet final. An appeal is presently pending before the California Supreme Court.

Therefore, it is clear that the contracting out of the cleaning work previously performed by the CETA employees was within the scope of representation and therefore negotiable.

2. CSEA Did Not Waive Its Right to Negotiate.

The District asserts as a defense that since CSEA never requested to negotiate the contracting out of cleaning work, it effectively waived its right to negotiate.

As the PERB stated in San Mateo County Community College District, supra, at pp. 21-22,

In order to prove that the Association waived its right to negotiate over the changes adopted by the District, the employer must show either clear and unmistakable language, Amador Valley, supra, or demonstrative behavior waiving a reasonable opportunity to bargain over a decision not already firmly made by the employer. (Citations omitted.)

The fact that Reid did not request to negotiate after finding out about the school board's April 21, 1981 action to contract out cleaning services is irrelevant. The District had already taken final action and it would have been futile to request to negotiate afterwards. It was the District's obligation to notify CSEA of its intentions before a firm decision was made. Los Angeles Community College District (10/18/82) PERB Decision No 252, at p. 19; San Francisco Community College District (10/17/78) PERB Decision No. 105, at p. 17.

The fact that Mrs. Dulaney was present at the school board meeting at which the decision was made, similarly does not

indicate CSEA waived its right to negotiate. Mrs. Dulaney was only the CSEA contact person, she had no official position such as an officer or shop steward for CSEA. As such, she cannot be found to have been an agent of CSEA so that her knowledge of the change could be imputed to it. Los Angeles Community College District, supra, at p. 17. Furthermore, she only learned of the board's action at the time it was taken. This certainly would not leave any time for CSEA to negotiate the change before final action was taken.

### 3. Conclusion.

Therefore, by unilaterally contracting out bargaining unit work, the District violated its obligation under section 3543.5(c) to negotiate in good faith with the exclusive representative. Derivative violations of sections 3543.5(a) and (b) also are found. San Francisco Community College District, supra.

### REMEDY

Under section 3541.5(c) of EERA, the Public Employment Relations Board has:

. . . the power to 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.

Since it has been found the District committed an unfair practice by unilaterally contracting out bargaining unit work without first negotiating with the exclusive representative, it

is appropriate to order the District to cease and desist from taking unilateral actions on matters within the scope of representation without first affording CSEA an opportunity to negotiate.

Affirmative relief also is necessary to restore the status quo and give CSEA the negotiating opportunity it would have had but for the District's unilateral action. Accordingly, the District will be ordered to rescind its unilateral action of contracting out the cleaning work, and will be ordered to restore the work to classified employees of the District. Of course, before any future change, the District must give CSEA an opportunity to negotiate beforehand.

It also is 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 Arcohe Union School 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 Arcohe Union School District has acted in an unlawful manner and is being required to cease and desist from this activity and to restore the status quo. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and will announce the Arcohe School District's readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69. In

Pandol and Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580, 587, the California District Court of Appeal approved a posting requirement. The U.S. Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to section 3541.5(c), it is hereby ordered that the Arcohe Union School District and its representatives shall:

1. CEASE AND DESIST FROM:

Unilaterally contracting out bargaining unit work or making other changes in matters within the scope of representation without first affording CSEA an opportunity to negotiate.

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

(a) Refill the two custodial positions replaced by the contracting out with District classified employees, to be part of the bargaining unit represented by CSEA.

(b) Within five (5) workdays after this decision becomes final, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, for at least thirty (30) workdays at its headquarters offices and in conspicuous places at the location where notices to classified employees are customarily posted. It must not be reduced in size and

reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(c) Within twenty (20) workdays from service of the final decision herein, give written notification to the San Francisco Regional Director of the Public Employment Relations Board of the actions taken to comply with this order. Continue to report in writing to the regional director thereafter as directed. All reports to the regional director shall be concurrently served on the Charging Party herein.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on December 13, 1982, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board at its headquarters office in Sacramento before the close of business (5:00 p.m.) on December 13, 1982, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently

with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305 as amended.

Dated: November 22, 1982

GERALD A. BECKER  
Administrative Law Judge