STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 477, Charging Party, v. RIO HONDO COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. LA-CE-5389-E PERB Decision No. 2313 March 21, 2013

Appearances: Sonja J. Woodward, Attorney, for California School Employees Association & its Chapter 477; Liebert, Cassidy & Whitmore by Mary L. Dowell and Adrianna E. Guzman, Attorneys, for Rio Hondo Community College District.

Before Martinez, Chair; Huguenin and Winslow, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Rio Hondo Community College District (District), to the proposed decision (PD) (attached) of an administrative law judge (ALJ). The ALJ determined that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] by refusing to bargain with California School Employees Association & its Chapter 477 (CSEA) over the effects of a decision to install security cameras.

The Board has reviewed the entire record in this case, including the hearing record, the ALJ's findings of fact and conclusions of law, the District's exceptions, and CSEA's response thereto. The ALJ's findings of fact are supported by the record and neither party excepts

[1] EERA is codified at Government Code section 3540 et seq.

thereto.[2] Accordingly, we adopt the ALJ's findings of fact as the findings of the Board itself, except as expressly noted below. We also adopt the ALJ's conclusions of law insofar as they are consistent with our discussion below.

FACTUAL SUMMARY

In mid-April 2009, the District informed CSEA of its intent to install security surveillance cameras in its new Learning Resource Center. Thereafter, the District expanded plans for the cameras to include its parking lots. The cameras would show CSEA unit members while coming and going, entering and leaving a break room, cleaning public areas of the building and maintaining outdoor areas of the campus. (PD, p. 2.)

In early June 2009, CSEA requested to negotiate over the decision and effects of the decision to install the surveillance cameras. CSEA's letter stated, in pertinent part:

> This is a formal request by CSEA Chapter #477 at your district to negotiate over the decision and effects of the District's stated intent to install surveillance cameras in select areas on the College campus.
>
> Specifically, CSEA has learned that it is the intention of the District to install surveillance monitoring cameras in the new Learning Resources Center/Library. The decision to install such cameras in areas where CSEA members work impacts the working conditions of our members, including performance evaluations and potential discipline, and is a matter within the scope of bargaining.
>
> Regarding CSEA's request to negotiate over the surveillance cameras, it is not CSEA's intention to prevent the District from using such cameras but rather to ensure that the District does not use the cameras to monitor CSEA bargaining unit employees while they are at work and for the District to use footage or video images to evaluate, monitor and/or potentially attempt to discipline classified employees.
>
> CSEA requests that the District contact Chapter President, Lisa Sandoval, to schedule a date for negotiation of this matter. CSEA

[2] PERB Regulation 32300(c) provides that "[a]n exception not specifically urged shall be waived." (PERB Regs. are codified at Cal. Code Regs., tit.8, sec. 31001 et seq.)

> further requests that the District not implement any aspect of the camera surveillance unless and until the District has completed its bargaining obligation. Thank you for your cooperation.
>
> CSEA looks forward to a cooperative and constructive set of negotiations on this difficult topic.

(PD, pp. 2-3.) The District responded on June 30, 2009, denying CSEA's request to negotiate. (PD, pp. 3-4.)

In September 2009, still seeking to convince the District to negotiate, CSEA provided the District a copy of a memorandum of understanding with another local school district which addressed use of video cameras. (PD, p. 4.) Unconvinced, the District reiterated its opposition to negotiating. (PD, pp. 4-5.)

In October 2009, CSEA brought the instant charge. PERB's Office of the General Counsel issued a complaint in June 2010, alleging, inter alia, that on June 30, 2009 the District violated sections 3543.5(c), (a) and (b) of EERA when it denied CSEA's "request to negotiate the effects the security surveillance cameras will have on employees." A hearing was held in May 2011, and the ALJ issued the PD in mid-September 2011. (PD, p. 1.)

PROPOSED DECISION

The ALJ concluded that CSEA requested effects bargaining on two negotiable areas of impact of the District decision to install security cameras, to wit, performance evaluations and potential discipline. (PD, p. 7.) The ALJ concluded as well that District's decision to install security surveillance cameras did have reasonably foreseeable negotiable effects. Thus, the ALJ concluded that the District's denial of CSEA's request to negotiate over the decision's effects violated EERA sections 3543.5(c), (a) and (b). (PD, pp. 7-8.) The ALJ proposed the traditional remedy for a refusal to bargain violation, consisting of cease and desist, bargaining and posting orders. (PD, pp. 8-10.)

DISCUSSION

The District takes exception to each of the ALJ's principal conclusions of law. The challenged conclusions are: (1) "CSEA's June 2009 letter to the District clearly requested bargaining over the 'effects' of the decision to install security cameras" (PD, p. 7.); (2) "[t]he letter also clearly identified two negotiable areas of impact: performance evaluations and potential discipline" (PD, p. 7.); and (3) "[t]he District's decision to install security cameras had reasonably foreseeable negotiable effects" (PD, p. 8.). The District challenges as well the ALJ's failure to discuss the District's claim that CSEA's effects bargaining demand was tardy and thus waived effects bargaining rights.

We first revisit briefly the legal principles governing effects bargaining and waiver, and then address the District's contentions on appeal.

Effects Bargaining

Upon reaching a firm decision and before implementing a non-negotiable decision, an employer must give notice and bargain upon request over the reasonably foreseeable effects of that decision. (*Mt. Diablo Unified School District* (1983) PERB Decision No. 373 (*Mt. Diablo*); *Trustees of California State University* (2012) PERB Decision No. 2287-H (*CSU*).) The employer must provide notice sufficiently in advance of implementation to permit the union a reasonable amount of time to consider demanding to bargain and to negotiate over the effects. (*CSU*, citing *Victor Valley Union High School District* (1986) PERB Decision No. 565 (*Victor Valley*) and *Compton Community College District* (1989) PERB Decision No. 720 (*Compton*).)

A union's effects bargaining demand should afford the employer "general notice of the union's interest in the effects of the . . . decision." (*Newman-Crows Landing Unified School*

District (1982) PERB Decision No. 223 (*Newman-Crows Landing*).) An effects bargaining demand need not "be specific or made in a particular form" so long as it "adequately signifies to the employer a desire to negotiate on a subject within the scope of representation," to wit, the effects of a non-negotiable decision rather than the decision itself. (*Ibid.*) Further, the demand must identify clearly the areas of impact, viz., matters within the scope of representation, on which it proposes to bargain.

When approaching effects bargaining, parties must anticipate changes yet to flow from the employer's decision. Union and employer may disagree over what effects are possible and within the scope of representation. Thus, clarification is essential. Upon receiving an effects bargaining demand, and before refusing to negotiate, an employer must attempt to clarify through discussions with the union any uncertainty as to what is proposed for bargaining and whether it falls within the scope of representation. (*Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1983) PERB Decision No. 375, at pp.8-10 (*Healdsburg/San Mateo*) [negotiating parties must clarify what is proposed for bargaining and whether it falls within the scope of representation].) Refusing an effects bargaining demand without first attempting to clarify ambiguities and or whether matters proposed for bargaining fall within the scope of representation, violates the duty to bargain in good faith. (*Ibid.*)

Waiver

A waiver of the right to negotiate must be clear and unmistakable. The evidence must indicate an intentional relinquishment of the right to bargain. (*Amador Valley Joint Union High School District* (1978) PERB Decision No. 74; *California State Employees Assn. v. PERB* (1996) 51 Cal.App.4th 923, 937-938.) Public policy disfavors finding a waiver based on inference. (*Long Beach Community College District* (2003) PERB Decision No. 1568.) The

burden of establishing a waiver is upon the party asserting it, whether the claimed waiver is grounded in alleged inaction, contract language or a simple failure to demand bargaining.

An employer receiving a demand for effects bargaining may claim that the union's bargaining demand was inadequate and thus effectively waive the union's right to meet and negotiate over effects. (*Newman-Crows Landing*, *supra*, PERB Decision No. 223.) To succeed with this claim, the employer must demonstrate, inter alia, that: (1) the employer met its *Healdsburg/San Mateo*, *supra*, PERB Decision No. 375 obligation to seek clarification of the union's effects bargaining demand, and (2) even as clarified, the union's effects bargaining demand was inadequate, to wit, it failed to indicate a desire to bargain effects, as opposed to the decision, or it failed to identify clearly a matter within the scope of representation on which the union sought negotiations.

District Contentions

We address now the District's contentions. In the brief supporting its statement of exceptions, the District urges: (1) CSEA waived its right to bargain effects; (2) CSEA failed to clearly identify negotiable effects; (3) the type of evidence used to support discipline and employee evaluations does not constitute a negotiable effect; (4) the ALJ failed to provide analysis on how the purported effects impact the terms and conditions of employment; and (5) cases relied on by the ALJ are distinguishable. We address each.

1. District's claim that CSEA waived the right to bargain over the effects by failing timely to request bargaining.

The record establishes that on April 16, 2009 during a labor relations meeting the District notified CSEA of its decision to install surveillance security cameras. Thereafter, on June 8, 2009, CSEA wrote to the District demanding to bargain the effects of the decision on

discipline and evaluation procedures. The District responded to CSEA on June 30, 2009, declining to negotiate, again during a labor relations meeting.

The District argues two facts supporting its claim of waiver. First, the District asserts that when informed on April 16, 2009 of the District's intent to install the surveillance cameras, CSEA's representative did not demand at that time to bargain but merely acknowledged the District's communication by responding "Okay." Second, the District asserts that CSEA did not tender its demand to bargain until early June.[3] The District urges that the foregoing sufficiently established that CSEA waived its right to negotiate the effects of the decision to install surveillance cameras. We are not persuaded.

Silence, by itself, is never clear and unambiguous. To be deemed sufficient to waive statutory rights, a union's silence must be accompanied by other indicia of intent, for example, unreasonable delay. Whether a delay is unreasonable depends on the circumstances of the particular case. (*Victor Valley*, *supra*, PERB Decision No. 565; *Compton*, *supra*, PERB Decision No. 720.) A silence of more than three months has been deemed sufficient to find waiver of bargaining rights. (*Stockton Police Officers' Assn. v. City of Stockton* (1988) 206 Cal.App.3rd 62, 66.) Where circumstances warrant, a silence of lesser duration could support an inference of intent to relinquish bargaining rights. Thus, where an employer faces an externally imposed deadline for action, and provides a union reasonable notice thereof, failure to request negotiations sufficiently in advance of the employer's deadline, could signal an intentional relinquishment of bargaining rights. Each case will turn on its own facts.

We conclude that here the District has failed to adduce clear and unmistakable proof of waiver. Without more, CSEA's delay alone is insufficient to establish clearly and

[3] The District claims the CSEA demand to bargain was made on June 13, 2009, while CSEA points to its letter dated June 8, 2009. This discrepancy is of no moment to our decision.

unmistakably that CSEA intentionally waived its effects bargaining rights. The District failed to allege or prove that it informed CSEA that the District faced any deadline for implementing its decision to install the cameras. Nor did the District allege or prove that it was prejudiced by CSEA's delay in tendering its effects bargaining demand. Indeed, record testimony reveals that as of the hearing date in early May 2011, two years after the union initially demanded to bargain, the camera installation had not yet occurred. Testimony also establishes that: (1) during the April 16, 2009 labor relations meeting CSEA was represented by only one person, who informed District agents during the meeting that she would need to refer the camera installation issue to her chapter executive board; (2) thereafter this CSEA agent did so; and (3) thereafter the executive board sought guidance from the Chapter's CSEA labor relations representative, who then prepared the letter demanding effects bargaining. In these circumstances, the record does not support an inference that CSEA intended to waive its statutory right to bargain over effects of the decision to install surveillance cameras. Thus, the defense of waiver fails.

2. District's claim that CSEA failed to clearly identify negotiable effects.

The record establishes that in early June 2009 CSEA sent the District superintendent a letter requesting to bargain over the effects of the decision to install cameras on discipline and evaluation procedures. (PD, pp. 2-3.) To this request the District responded at a subsequent labor relations meeting on June 30, 2009, that the District would not negotiate. (PD, pp. 3-4.) The record does not establish that the District made any attempt to seek clarification from the CSEA as to how the camera installation affected evaluation or discipline or otherwise fell within the scope of representation.

The District urges that the ALJ wrongly concluded CSEA's bargaining demand "clearly" requested bargaining over the "effects" of the decision to install surveillance security

cameras. The District contends that to implicate an employer's bargaining duty, a union's effects bargaining demand must "clearly identify negotiable areas of impact" and "absent such identification the employer has no duty to bargain." Thus, concludes the District, its refusal to negotiate was lawful because: (1) CSEA's June 2009 letter demanding to bargain "never identified any negotiable areas of impact," that is, it did not describe "specific working conditions it claimed would be impacted by the District's decision" (District Exceptions, p. 2.); and (2) CSEA failed to identify "any other effects of the installation of cameras" except for "the District's use of video tapes as evidence in evaluating or disciplining employees," which the District contends is non-negotiable. (*Ibid.*) We disagree.

Prior to implementing a non-negotiable decision an employer must give notice and upon request, negotiate over reasonably foreseeable effects upon matters within the scope of representation. (*CSU*, *supra*, PERB Decision No. 2287-H.) The duty to bargain arises when a firm decision is made. (*Ibid.*) Having made a firm decision, an employer must provide the union with notice and a reasonable opportunity to negotiate before taking action that impacts matters within the scope of representation. (*Ibid.*) (*Regents of the University of California* (1987) PERB Decision No. 640-H.) This includes the duty to seek clarification of what is proposed for bargaining and whether what is proposed falls within the scope of representation. (*Healdsburg/San Mateo*, *supra*, PERB Decision No. 375.)

Upon receiving a union's bargaining demand, the employer has three options: (1) accede to the demand and address the union's concerns in negotiations; (2) ask the union for its negotiation justification, viz., seek clarification of (a) the areas of impact proposed for negotiation and (b) whether these areas of impact are within the scope of representation; or (3) refuse the union's demand. In choosing the third option, the employer does so at its peril if

its refusal is later determined to be unjustified. (*CSU*, *supra*, PERB Decision No. 2287-H; *Healdsburg/San Mateo*, *supra*, PERB Decision No. 375.)

The District cites several Board decisions which it claims support its position that CSEA's bargaining demand, as written, was insufficient to implicate the District's duty to bargain over the effects of its decision to install surveillance cameras. We review each.

In *County of Riverside* (2010) PERB Decision No. 2097-M, the Board ruled that a union's bargaining request did not sufficiently indicate that it sought to bargain an effect of an announced-but-not-implemented change to a pay plan, rather than the pay plan change itself. Even though the subject on which the union sought to bargain was itself clear, viz., cessation of pay upgrades for employees with newly-acquired "hot skills," the Board deemed the record contradictory and found that the union's various communications to the employer vacillated between designating the matter to be bargained as an effect of the pay plan change or as the change itself. Thus, relying on *Newman-Crows Landing*, *supra*, PERB Decision No. 223, the Board concluded that the union had failed to demand to bargain over the effects of a non-negotiable decision. Here, by contrast, CSEA's request straightforwardly sought to negotiate over the effects of the decision to install the surveillance cameras.

In *Sylvan Union Elementary School District* (1992) PERB Decisions No. 919, the Board concluded that the union failed to request to negotiate over the effects of a decision to eliminate certain bargaining unit positions. Instead, ruled the Board, the union agent merely expressed the union's "concerns" about the timing and impact of the employer's non-negotiable decision on employee reassignment opportunities, which communication was insufficient to put the employer on notice that the union had requested to negotiate. What was uncertain was the union's desire for negotiations at all, not the nature or extent of the effects

the union deemed implicated by the employer's decision. Here, CSEA's request straightforwardly sought to negotiate.

In *Allan Hancock Community College District* (1989) PERB Decision No. 768, the charge alleged that the employer refused to bargain when it placed a unit member in a new, higher-compensated classification. The union demanded to negotiate over: (1) the "wages, hours and working conditions" of the new classification, and (2) the position "reclassification." Along with its bargaining demand the union sent specific proposals which addressed a different matter, to wit, an upgrade of wages and hours of other unit members. The proposals did not address the wages and hours of the new classification. In reply to a Board agent's warning letter, the union's attorney argued for the first time an effects bargaining theory but alleged no further facts. The Board agent's dismissal letter, adopted by the Board, concluded, inter alia, that the union failed to allege facts sufficient for an effects bargaining violation, because the union's bargaining proposals addressed only wages and hours of other unit members and not the effects of the District's reclassification decision on the reclassified employee. Here, CSEA's request straightforwardly sought negotiations over the effects of the decision to install the surveillance cameras, not an unrelated matter or one already dealt with in the CBA.

In *Beverley Hills Unified School District* (2008) PERB Decision No. 1969-E (*Beverly Hills*), the Board considered allegations of refusal to bargain impacts and effects on working hours of teachers resulting from a change in policy mandating that the teachers release copies of student exams for off-site review. Under the district's prior policy, review of student exams was on-site only. The union alleged that release of exams would sacrifice exam question security and preclude using exam questions from prior years. Thus, each year teachers would need to create new exams and would work longer hours for that purpose. The

Board dismissed the union's effects bargaining allegation, ruling that: (1) the union's written bargaining demands requested negotiation over the "impacts and effects of requiring the tests to be released" without clearly identifying which subjects within the scope of representation, e.g., working hours, which were implicated by the new policy, and (2) the union's unfair practice charge allegations did not allege an "actual impact"[4] on working hours of employees arising from implementation of the policy. Here, by contrast, CSEA's request straightforwardly identified matters within the scope of representation (discipline and evaluation procedures) implicated by the District's installation of security cameras.

The District urges that in *Beverly Hills*, *supra*, PERB Decision No. 1969-E, the Board imposed a further condition, namely, that a union's effects bargaining demand identify "specific effects" on the matters within the scope of representation. We conclude such specificity is unnecessary. We explain.

As the Board's decision in *Healdsburg/San Mateo*, *supra*, PERB Decision No. 375 makes clear, in the first instance the proper place to clarify bargaining demands and proposals is at the bargaining table itself. This is especially true in effects bargaining, where parties must anticipate the future impact of a non-negotiable decision announced but not yet implemented.[5] Grappling with these issues first at the bargaining table enables the parties to reach consensus, or at least clarity, regarding their respective positions on the reasonably foreseeable effects of the employer's decision and enables as well discussions leading to agreement or impasse on

[4] In *CSU*, *supra*, PERB Decision No. 2287-H, we confirmed that when alleging an employer refusal to negotiate in response to an effects bargaining demand, a union need not allege or prove an actual change arising from implementation of the non-negotiable decision, but merely that the impact upon which it sought to bargain was then reasonably foreseeable.

[5] While some non-negotiable decisions, and their reasonably foreseeable effects, may be well understood based on the parties' recent and frequent experience, viz., layoffs due to state budget cuts, others are not. These may include program changes and institutional reorganizations, with which neither the employer nor its employees have much experience.

those effects. Where, following such clarification, an employer remains unconvinced by the union's rationale for negotiation on any or all of the effects proposed by the union for negotiation, the employer may refuse to negotiate, having exhausted its duty under *Healdsburg/San Mateo*, *supra*, PERB Decision No. 375 to discuss what is proposed for bargaining and whether it falls within the scope of representation.

We hold that a union's effects bargaining demand is sufficient if it clearly identifies negotiable areas of impact, viz., subject matters within the scope of representation, and clearly indicates a desire to bargain over the effects of the decision as opposed to the decision itself. Upon receiving such a demand, the duty to bargain obliges the employer either to bargain, or to seek clarification of the union's negotiability rationale. If the employer seeks such clarification, and it thereafter refuses to bargain, it may defend this refusal on the ground that the union's bargaining demand, as clarified, failed to address an impact that was both reasonably foreseeable and within the scope of representation. If the employer refuses to bargain without seeking clarification of the union's negotiability rationale, it fails to meet and negotiate in good faith. (*Healdsburg/San Mateo*, *supra*, PERB Decision No. 375.)

3. District's claim that the type of evidence used to support discipline and employee evaluations does not constitute a negotiable effect.

The hearing record establishes that CSEA requested to bargain over the effects of installation of surveillance cameras on discipline and evaluation procedures. (PD, pp. 2-3.) The District avers in its brief supporting its exceptions, that CSEA expressed to the District its concern that "the District . . . not use the cameras to monitor CSEA bargaining unit members while they are at work" or "use the footage or video images to evaluate, monitor and/or potentially attempt to discipline classified employees." (District's Brief ISO Exceptions, at p. 14.) It is undisputed that one effect of the District's decision to install cameras would be

creation of video records of the work place and the workers -- records not previously available to the District and its managers and supervisors for monitoring, reviewing and assessing employee performance. It is these new video records and their potential use in monitoring, evaluating and disciplining employees which concerns CSEA.

The District contends that the "type of evidence" it uses for evaluation and discipline of employees is not a matter within the scope of representation. Relying on PERB's EERA scope of representation test,[6] the District urges that video records created by the surveillance cameras: (1) are not logically or reasonably related to wages, hours or an enumerated term or condition of employment and that PERB has never ruled to the contrary; (2) do not divide people along management-union lines; and (3) obliging the District to bargain thereon would significantly infringe its management rights. We are not persuaded.

Applying the Board's *Anaheim, supra*, PERB Decision No. 177 test, we first conclude that the type of evidence an employer relies on or is permitted to use to substantiate employee performance evaluations is logically and reasonably related to evaluation procedures, which is an enumerated term and condition of employment in EERA section 3543.2(a). The same can be said for evidence that an employer may rely on for imposing discipline. Using surveillance cameras to monitor employees at work, or their coming and going, and potentially using the product of that surveillance in disciplinary proceedings is logically and reasonably related to

[6] In *Anaheim Union High School District* (1981) PERB Decision No. 177 (*Anaheim*), approved in *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, the Board adopted a three-part test for the scope of representation under EERA section 3543.2, as follows: A subject is within the scope of representation if: (1) it is logically and reasonably related to wages, hours, or an enumerated term and condition of employment; (2) the subject is of such concern to management and employees that 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 its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the district's mission.

disciplinary procedures, a matter which has been held to be within the scope of representation. (*Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262 (*Fairfield-Suisun*); *Arvin Union School District* (1983) PERB Decision No. 300; *Healdsburg/San Mateo*, *supra*, PERB Decision No. 375; *San Bernardino City Unified School District* (1982) PERB Decision No. 255 (*San Bernardino*).) We have held that employer policies or workplace rules concerned with monitoring employee internet usage are negotiable. (*Trustees of the California State University* (2003) PERB Decision No. 1507-H (*Trustees CSU*); *State of California (Water Resources Control Board)* (1999) PERB Decision No. 1337-S.) We deem surveillance camera monitoring of employee compliance with workplace rules to present the same concerns.

We conclude as well that using surveillance cameras to monitor employees is of concern to employees and management, and may lead to disagreements over whether and how to use the video records of employee observations in evaluations or disciplinary proceedings. Employees and employers are interested in the types, sources and reliability of evidence that the employer may use in evaluating and disciplining employees, as well as in the availability to the union and employees of existing records which may contradict eye-witness or other employer evidence. Video, created in real time and ostensibly portraying what "really happened," can be highly persuasive, even inflammatory, viz., the camera "does not lie." Yet the reliability of video turns on factors such as lighting, camera angle and/or security protocols for making, storing and accessing the video record. Video may be proffered merely to corroborate other first-hand accounts or may instead serve as the sole evidence of conduct not otherwise directly observed. These and related matters interest employees and employers, and meeting and negotiating is an appropriate means to resolve inherent conflict.

We conclude that requiring negotiation over the effects on performance evaluations and potential discipline flowing from the District's decision to install security cameras would not significantly abridge the exercise of managerial prerogatives essential to the achievement of the employer's mission. PERB and California courts have found that fundamental managerial or policy decisions include layoffs,[7] contracting out,[8] background investigations required by statute,[9] policies for police officer discharge of firearms,[10] and police review procedures.[11] In contrast, making and using video recordings of employees for purposes of disciplining them and/or evaluating their work performance affects wages, hours and other terms and conditions of employment within the scope of representation, not fundamental managerial or policy matters concerning the nature and quality of public services. As such, these effects of video surveillance of employees are negotiable.

We find unconvincing the District's assertion that negotiating with CSEA over limitations on its claimed unfettered discretion to utilize video records in discipline and evaluation of employees would abridge significantly its freedom to exercise those managerial prerogatives essential to the achievement of the District's mission.[12] The obligation to

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[7] *Newman-Crows Landing*, *supra*, PERB Decision 223.

[8] *Building Material & Construction Teamsters' Union v. Farrell* (1986) 41 Cal.3d 651.

[9] *Sutter County In-Home Supportive Services Public Authority* (2007) PERB Decision No. 1900-M.

[10] *San Jose Peace Officers' Assn. v. City of San Jose* (1978) 78 Cal.App.3d 935.

[11] *Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931.

[12] Nothing in this decision is intended to restrict a public entity's decision to institute surveillance of non-employees, such as students or other members of the public for security purposes, as EERA's jurisdiction reaches only to matters concerning employment relations. To the extent surveillance by a public entity implicates statutory or constitutional interests of non-employees, or of employees not covered by EERA, those issues must be determined in a different forum.

negotiate requires parties "to make a good faith effort to reach agreement." (*Lucia Mar Unified School District* (2001) PERB Decision No. 1440, PD, p. 45.) Thus, were CSEA to propose limitations on use of video footage of employees, the District would be obliged to negotiate in good faith, viz., "make a mutual effort to find solutions to mutual problems," and in the event of impasse to participate in good faith in EERA impasse resolution procedures. (*Ibid.*) If such good faith efforts produced no agreement, the District would retain discretion to implement its last, best and final offer regarding the use of video records for discipline and evaluation of employees to the extent otherwise permitted by law.

In sum, we hold that an employer decision to install security surveillance cameras in areas where employees work or take breaks has reasonably foreseeable effects on discipline and performance evaluations, both matters within the scope of representation. Such effects include, without limitation, disciplining and/or evaluating employees in reliance upon employee conduct observed or recorded by use of the surveillance cameras.

4. District's claim that the ALJ failed to provide any analysis on how the purported effects impact the terms and conditions of employment.

The District contends that the PD is flawed because: (1) it fails to discuss "actual impact" of the installation and use of surveillance cameras on CSEA's unit members terms and conditions of employment, relying on *San Francisco Unified School District* (2009) PERB Decision No. 2048 (*San Francisco*); and (2) it fails to explain how the installation of the cameras would create "new grounds" for discipline or "new procedures" for evaluation. (District's Brief ISO Exceptions, at pp. 15-16.) We disagree.

We hold that a prima facie case of refusal to engage in effects bargaining does not include a demonstration of these matters, and therefore the ALJ's failure to discuss them is of no moment. We explain.

The duty to provide notice and an opportunity bargain over negotiable effects of an otherwise non-negotiable decision arises when the decision is firmly made. (*CSU*, *supra*, PERB Decision No. 2287-H; *Mt. Diablo*, *supra*, PERB Decision No. 373.) At that time the impacts are prospective, not actual. By contrast, "actual impact" becomes relevant only where a union alleges a unilateral change[13] in matters within the scope of representation made without affording the union notice or an opportunity to bargain.

In *CSU*, *supra*, PERB Decision No. 2287-H we ruled that when assessing a charge of failure to negotiate over effects of a non-negotiable decision, the proper focus is on prospective, not actual, impact. We there reviewed and disavowed prior Board decisions, to the extent they require a charging party to establish "actual impact" when alleging failure or refusal to bargain over negotiable effects.[14] For the reasons outlined in *CSU*, *supra*, PERB Decision No. 2287-H, we likewise disavow similar provision in *San Francisco*, *supra*, PERB Decision No. 2048.

In *San Francisco*, *supra*, PERB Decision No. 2048, the Board considered the dismissal of a charge alleging a unilateral change in the location where certain special education aides were to report for duty. The charge alleged that the change implicated working hours of those employees whose new location required them to travel a greater distance from home to work, and cited an example of one such employee. The Board determined that commute time was

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[13] To establish a unilateral change, the charging party must allege and prove that: (1) the employer implemented a change in policy or terms and conditions of employment; (2) the action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the action is not merely an isolated incident, but amounts to a change of policy (i.e., having a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Walnut Valley Unified School District* (1981) PERB Decision No. 160; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

[14] *CSU, supra,* PERB Decision No. 2287-H, at p. 17.

not a term or condition of employment, and rejected the union's contention on appeal that the change in reporting location was also related to another enumerated subject, viz., transfer or reassignment. The Board held, ultimately, that the allegation of change in reporting location did not concern a matter within the scope of representation, and, accordingly, there was no duty to negotiate over the decision itself and thus no unlawful unilateral change when the decision was implemented.

On appeal the union supplemented is allegations, claiming that the change in reporting location also forced employees to begin paying for parking, which prior to the location change had been provided by the employer without charge, and that the parking costs implicated wages. The Board refused to consider this new allegation, as the union failed to explain why it had not raised the issue earlier. However, the Board nonetheless discussed whether the union's new allegation about parking costs articulated a negotiable effect of the employer's change in reporting location. Because the union had not alleged that any employee "actually" paid for parking at the new reporting location, the Board deemed the union's parking claim inadequate to establish a negotiable effect. The Board relied on *Beverly Hills*, *supra*, PERB Decision No. 1969-E and *Salinas Union High School District* (2004) PERB Decision No. 1639 in holding that an alleged failure to bargain over negotiable effects must state "facts establishing an actual impact on employees' terms and conditions of employment." (*San Francisco*, *supra*, PERB Decision No. 2048 [emphasis added].)

As we held in *CSU*, *supra*, PERB Decision No. 2287-H, a prima facie case of refusal to negotiate over the effects of a non-negotiable decision does not require a showing of "actual impact" upon a matter within the scope of representation, but merely a reasonably foreseeable prospective impact. We disavow here that portion of *San Francisco*, *supra*, PERB Decision No. 2048 which purports to require an allegation of "actual impact."

We turn now to the District's contention that the ALJ failed to explain how the installation of the cameras would create "new grounds" for discipline or "new procedures" for evaluation. We consider this contention just a variant of the prior claim, to wit, that the ALJ failed to discuss the "actual impact" of the installation and use of surveillance cameras on CSEA's unit members' terms and conditions of employment. Relying on our analysis of that issue, we conclude that a charging party may state a prima facie case of refusal to negotiate over the effects on discipline and evaluation procedures of a firm decision to install surveillance cameras, without alleging that the employer has created either new grounds for discipline or new evaluation procedures. We explain.

When assessing whether a firm decision has negotiable effects, the parties and PERB do so prospectively. A union seeking to negotiate the effects of a decision not yet implemented, must anticipate the effects. The installation of surveillance cameras has reasonably foreseeable consequences on discipline and evaluations, including without limitation the observation and monitoring of employees remotely by the employer and the use of such observations, and records thereof, in disciplinary and evaluation decisions and procedures. Thus, it is not necessary for CSEA to establish with certainty that the District actually established new grounds for discipline, or new evaluation procedures. Rather, it is sufficient to trigger the duty to bargain that use of the surveillance cameras has a foreseeable effect on discipline and evaluation by affording the District and CSEA's unit members alike a source of evidence concerning employee workplace conduct.

5. District's claim that cases relied on by the ALJ are distinguishable.

The District urges that two PERB decisions and one National Labor Relations Board (NLRB) decision cited by the ALJ in the PD are inapplicable and or inapposite. We disagree.

The Board decisions cited by the ALJ hold, respectively, that discipline criteria and procedures and evaluation procedures are matters within the scope of representation. (*San Bernardino*, *supra*, PERB Decision No. 255 [criteria and procedures for discipline negotiable]; *Modesto City Schools* (1983) PERB Decision No. 347 [evaluation procedures negotiable].) It is for that principle that they were cited by the ALJ. We find no basis to disturb the ALJ's reliance on these cases.[15]

We likewise conclude that the ALJ relied properly on NLRB authority[16] finding negotiable an employer's use of surveillance cameras in the work place. (*Colgate-Palmolive Co.* (1997) 323 NLRB 515.) The District distinguishes this NLRB decision on the ground that the surveillance cameras in question were hidden and that the premises in question were private. We conclude such distinctions (overt vs. covert cameras, and public vs. private premises) are of no moment when assessing whether workplace surveillance of employees presents issues appropriate for meeting and negotiating the effects of an employer's decision to install security cameras. A public or private employer may use an overt camera covertly, by operating the camera on an undisclosed schedule, monitoring only certain employees, or recording only selected persons or events. Likewise, although both employer and employee

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[15] We note that other PERB decisions also support the result reached by the ALJ that installation of surveillance cameras has negotiable effects on discipline and evaluations. (*Jefferson School District* (1980) PERB Decision No. 133 [nature of material to be used for evaluation negotiable]; *Walnut Valley Unified School District* (1983) PERB Decision. No. 289 [criteria and procedures for evaluation negotiable]; *Trustees of the California State University* (2001) PERB Decision No. 1451-H [mandatory employee name tags negotiable]; *Trustees CSU*, *supra*, PERB Decision No. 1507-H [monitoring employee computer use negotiable]; *Fairfield-Suisun*, *supra*, PERB Decision No. 2262 [zero tolerance of failure or refusal to submit to drug test negotiable].)

[16] When construing California public sector labor relations statutes, California courts and PERB rely on NLRB and judicial decisions construing similar language in the National Labor Relations Act. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850; *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

expectations of privacy may differ depending on the location within the workplace (e.g., bathrooms versus reception areas), workplace surveillance in both the public and private sector, using either hidden or overt cameras, is driven by a perceived need to enforce the employer's rules for employee conduct. Workplace surveillance cameras on both public and private property implicate the same concerns, viz., the nature and extent of video records documenting a particular employee's workplace conduct, the reliability of such records, and access to or use of such records when making, substantiating or rebutting a disciplinary or evaluative decision affecting an individual employee.

CONCLUSION

We hold that by refusing to bargain over the effects of a decision to install security surveillance cameras, the District violated EERA section 3543.5(c). We hold that this conduct likewise denied to employees their right to participate in an employee organization for the purpose of representation, thereby violating EERA section 3543.5(a), and that this conduct likewise denied to CSEA, an employee organization, rights to represent employees in their employment relations with the District, thereby violating EERA section 3543.5(b).

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Rio Hondo Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by refusing to bargain with the California School Employees Association & its Chapter 477 (CSEA) about the effects of a decision to install security cameras.

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

A. CEASE AND DESIST FROM:

Refusing to bargain with CSEA about the effects on employee discipline and performance evaluations of the District's decision to install security cameras.

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

1. Bargain with CSEA upon request about the effects on employee discipline and performance evaluations of the District's decision to install security cameras.

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 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, 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 CSEA.

Chair Martinez and Member Winslow 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 No. LA-CE-5389-E, in which all parties had the right to participate, it has been found that the Rio Hondo Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by refusing to bargain with the California School Employees Association & its Chapter 477 (CSEA) about the effects of a decision to install security cameras.

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 bargain with CSEA about the effects on employee discipline and performance evaluations of the District's decision to install security cameras.

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

1. Bargain with CSEA upon request about the effects on employee discipline and performance evaluations of the District's decision to install security cameras.

Dated: _____

RIO HONDO 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 AND ITS CHAPTER 477, Charging Party, v. RIO HONDO COMMUNITY COLLEGE DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-5389-E PROPOSED DECISION (September 16, 2011)

Appearances: Brian Lawler, Labor Relations Representative, for California School Employees Association and its Chapter 477; Liebert Cassidy Whitmore by Mary L. Dowell and Adrianna E. Guzman, Attorneys, for Rio Hondo Community College District.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that an employer refused to bargain the effects of a decision to install security cameras in violation of Educational Employment Relations Act (EERA) section 3543.5(c).[1] The employer denies any violation.

The California School Employees Association and its Chapter 477 (CSEA) filed an unfair practice charge against the Rio Hondo Community College District (District) on October 12, 2009. The Office of the General Counsel of the Public Employment Relations Board (PERB) issued an unfair practice complaint against the District on June 3, 2010. The District filed an answer to the complaint on June 17, 2010.

PERB held an informal settlement conference on September 15, 2010, but the case was not settled. PERB held a formal hearing on May 2, 2011. With the receipt of post-hearing briefs on July 5, 2011, the case was submitted for decision.

[1] EERA is codified at Government Code section 3540 et seq.

FINDINGS OF FACT

The District is a public school employer under EERA, and CSEA is an exclusive representative under EERA.

On April 16, 2009, at a labor relations meeting, the District informed CSEA of its intent to install security cameras in its new Learning Resource Center (LRC). The minutes of the meeting state in part:

> [District Vice President of Finance] Teresa [Dreyfuss] showed [CSEA Chapter President] Lisa [Sandoval] where cameras will be installed, only in hallways away from personnel work station [sic].
>
> 1st floor-2 outside, 4 inside in hallways.
>
> 2nd floor-1 reading room, 2 stairs
>
> Rationale for cameras: theft, vandalism of the LRC and to protect District property and assets.

The District later expanded its plans to include the installation of security cameras in its parking lots.

In the LRC, the cameras would show CSEA unit members (as well as members of the public, the student body and the faculty) coming and going during the workday. At least one camera would show unit members entering and leaving an employee break room. When unit members were cleaning public areas of the LRC, the cameras would show them at work. In the parking lots, the cameras would show unit members at work maintaining outdoor areas.

In June 2009, CSEA sent the District a letter stating:

> This is a formal request by CSEA Chapter #477 at your district to negotiate over the decision and effects of the District's stated intent to install surveillance cameras in select areas on the College campus.
>
> Specifically, CSEA has learned that it is the intention of the District to install surveillance monitoring cameras in the new

> Learning Resources Center/Library. The decision to install such cameras in areas where CSEA members work impacts the working conditions of our members, including performance evaluations and potential discipline, and is a matter within the scope of bargaining.
>
> Regarding CSEA's request to negotiate over the surveillance cameras, it is not CSEA's intention to prevent the District from using such cameras but rather to ensure that the District does not use the cameras to monitor CSEA bargaining unit employees while they are at work and for the District to use footage or video images to evaluate, monitor and/or potentially attempt to discipline classified employees.
>
> CSEA requests that the District contact Chapter President, Lisa Sandoval, to schedule a date for negotiation of this matter. CSEA further requests that the District not implement any aspect of the camera surveillance unless and until the District has completed its bargaining obligation. Thank you for your cooperation.
>
> CSEA looks forward to a cooperative and constructive set of negotiations on this difficult topic.

At a labor relations meeting on June 30, 2009, the District responded that the issue was not negotiable. The minutes of that meeting state in part:

> The District stated that this item is not negotiable but is willing to discuss the matter. Placed legal reason on the agenda (privacy) as to why District believes this..... [Ellipsis in the original.]
>
> CSEA requests that an MOU [Memorandum of Understanding] be signed with the District not to use cameras to evaluate or discipline CSEA employees and that this information be placed in writing to protect employees. [District Director of Human Resources] Yolanda [Emerson] asked if a classified employee is viewed stealing on the campus do they have immunity? Will the District not have the right to discipline/terminate because of an MOU?
>
> CSEA states that other colleges have MOU agreements with District regarding the use of cameras. CSEA will get copies of agreements between Districts and the unions used in other Districts.
>
> Matter discussed:

1. Goal is to have a discussion so we can resolve items and share comments.

2. Cameras used as pre-measurable matter for preventable measures. Some employees in the bargaining unit have a sense of mistrust for some of the Administrators. CSEA Membership is worried about Administration who are already targeting employees and always checking their whereabouts.

Both the District and the union agree on a common interest- we need to work on identifying ways we can share information.

CSEA wants to know who is bonded and trained to look at this? CSEA asked who is looking at this information and reporting it to whom? Where will the information be retained and what will it be used for?

For clarification and communication purposes, [District Vice President of Academic Services] Paul [Parnell] explained the current practices of the Security Department (security department [sic] staff who have security concerns reports them to appropriate supervisor(s).

In September 2009, CSEA provided the District an example of a Memorandum of Understanding (MOU) on the subject. That MOU with a local school district provided:

1. Effective upon the date of approval by the District and ratification by CSEA, the parties agree to a pilot program ending August 1, 2009, regarding the impact of the District's use of video cameras on CSEA bargaining unit employees.

2. As of July 2008, there are two cameras available which are used on an as needed basis when there is an incident of vandalism or criminal activity. Beginning in 2009, it is anticipated that cameras will be installed on the exteriors and hallways at all District campuses for the purpose of deterring and recording vandalism, as well as other criminal activity.

3. Tapes will only be reviewed when there is an incident of vandalism or criminal activity. The sole purpose of viewing these tapes is to determine the source of incidents of vandalism or criminal activity. More specifically, they

will be viewed from the date on which there is a reasonable suspicion of alleged criminal activity or vandalism, retroactive to the date the action reasonably may have occurred (usually the period of review is not more than 72 hours).

4. The District shall provide prior notice to CSEA of the number and location of video cameras to be used.

5. When a District site has installed video cameras, signs will be posted to notify students, parents, and all staff that video recording may occur at exterior locations and hallways at their site.

6. No camera will be installed where there is a reasonable expectation of privacy, in accordance with applicable law, such as bathrooms or locker rooms.

7. The District's video cameras will not record sounds/audio.

8. During this pilot period, the District will not use video footage to attempt to discipline CSEA bargaining unit employees, and/or evaluate employee work performance, except in the sole circumstance when the footage reviewed suggests that a CSEA employee may be engaged in an act of vandalism or criminal activity.

The District still maintained that the issue was not negotiable. The District was willing to discuss the matter without negotiations, but CSEA was not.

ISSUE

Did the District unlawfully refuse to bargain effects?

CONCLUSIONS OF LAW

In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy

concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (*Walnut Valley Unified School District* (1981) PERB Decision No. 160; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

In *State of California (Department of Corrections & Rehabilitation, Avenal State Prison)* (2011) PERB Decision No. 2196-S (*Avenal*), PERB recently summarized its precedents concerning effects bargaining:

> "Where a change is made to a matter that is not within the scope of representation, or where the right to demand bargaining over the decision to change has been waived by the employee organization, the employer is obligated to provide notice and an opportunity to bargain over the negotiable effects of the decision, but not the decision itself." (*County of Riverside* (2010) PERB Decision No. 2097-M (*County of Riverside*), citing *Sylvan Union Elementary School District* (1992) PERB Decision No. 919 (*Sylvan*), *Mt. Diablo Unified School District* (1984) PERB Decision No. 373b and *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223 (*Newman-Crows Landing*).) Thus, an employee organization is entitled to reasonable notice and an opportunity to bargain over the "reasonably foreseeable" negotiable effects of a non-negotiable decision. (*Fremont Union High School District* (1987) PERB Decision No. 651; *Trustees of the California State University* (2007) PERB Decision No. 1926-H; *Newman-Crows Landing*.)

PERB further summarized its precedents as follows:

> In order to make a prima facie case of violation of the duty to bargain in good faith over the effects of a non-negotiable decision, the employee organization must demonstrate that it made a valid request to bargain the negotiable effects of the employer's decision. (*State of California (Department of Corrections)* (2006) PERB Decision No. 1848-S (*Department of Corrections*); *County of Riverside*; *Sylvan.*) The request must clearly identify negotiable areas of impact and must clearly indicate the employee organization's desire to bargain over the effects of the decision, as opposed to the decision itself. (*County of Riverside*; *Sylvan*; *Newman-Crows Landing*; *Allan Hancock Community College District* (1989) PERB Decision No. 768; *Beverly Hills* [*Unified School District* (2008) PERB Decision

> No. 1969 (*Beverly Hills*)].) In the absence of such an identification, the employer has no duty to bargain. (*Trustees of the California State University* (2009) PERB Decision No. 1876a-H (*Trustees*); *Beverly Hills*.) Furthermore, the employee organization must show that the change had an actual effect or impact on a negotiable matter. (*Trustees*, citing *Regents of the University of California* (1999) PERB Decision No. 1316-H.)

Under *Avenal* and the precedents summarized therein, an employee organization must have properly requested effects bargaining, and there must be bargainable effects.

In the present case, CSEA's June 2009 letter to the District clearly requested bargaining over the "effects" of the decision to install security cameras. The letter also clearly identified two negotiable areas of impact: performance evaluations and potential discipline. PERB has long held that these areas are within the scope of representation. (*Modesto City Schools* (1983) PERB Decision No. 347 [evaluations]; *San Bernardino City Unified School District* 1982) PERB Decision No. 255 [discipline].) CSEA properly requested effects bargaining.

With regard to bargainable effects, PERB has not previously ruled on the "reasonably foreseeable" effects of security cameras. The National Labor Relations Board (NLRB), however, has addressed the issue, in *Colgate-Palmolive Co.* (1997) 323 NLRB 515. The NLRB found that such cameras were "investigatory tools" that could be used to monitor misconduct and thus subject employees to disciplinary actions. The NLRB stated:

> Accordingly, the installation and use of surveillance cameras has the potential to affect the continued employment of employees whose actions are being monitored.

The NLRB further stated:

> The installation and use of surveillance cameras in the workplace are not among that class of managerial decisions that lie at the core of entrepreneurial control. The use of surveillance cameras is not entrepreneurial in character, is not fundamental to the basic direction of the enterprise, and impinges directly on employment security. It is a change in the Respondent's methods used to reduce workplace theft or detect other suspected

> employee misconduct with serious implications for its employees' job security, which in no way touches on the discretionary "core of entrepreneurial control." [Footnote omitted.]

The NLRB concluded that there was a duty to bargain over the installation of security cameras.

I find the NLRB's analysis persuasive and applicable to the present case. The District's decision to install security cameras had reasonably foreseeable negotiable effects. I therefore conclude that the District's refusal to bargain with CSEA about the effects of its decision violated EERA section 3543.5(c). Because this conduct also interfered with the rights of employees and denied the rights of CSEA, it also violated EERA section 3543.5(a) and (b).

REMEDY

EERA section 3541.5(c) states:

> The board [PERB] shall have 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, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

In the present case, the District has been found to have violated EERA by refusing to bargain with CSEA about the effects of a decision to install security cameras. It is therefore appropriate to order the District to cease and desist from this refusal and to bargain with CSEA. It is also appropriate to order the District to post a notice incorporating the terms of PERB's order. (*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, it is found that the Rio Hondo Community College District (District) violated the Educational Employment Relations Act (Act), Government Code section 3540 et seq., by

refusing to bargain with the California School Employees Association and its Chapter 477 (CSEA) about the effects of a decision to install security cameras.

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

A. CEASE AND DESIST FROM:

Refusing to bargain with CSEA about the effects of its decision to install security cameras.

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

1. Bargain with CSEA about the effects of its decision to install security cameras.

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 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 CSEA.

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 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 95811-4124
(916) 322-8231
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, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 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, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 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, §§ 32300, 32305, 32140, and 32135, subd. (c).)

Thomas J. Allen
Administrative Law Judge