Several years ago, the Ventura Community College District entered into a formal agreement with the Ventura County Sheriff to provide a POST-certified academy for college credit. The agreement with the Sheriff established a joint employment arrangement: the instructors were paid by the Sheriff and were required to be local law enforcement personnel, but the College maintained the right to control the instructors while they provided instruction. The mutual benefits of the joint employment status were that the college district would receive state funds for the courses and provide degree credit, while the Sheriff would maintain control over the employees’ activities as local law enforcement officials.

When AFT demanded to negotiate the District's decision to enter into the agreement with the Sheriff, the College refused to negotiate because these new instructors were not employees of the District, and because the decision to enter into the arrangement was not motivated by cost considerations. Evidence also showed that no AFT jobs lost to the academy, and that the paid hours for the College instructors actually increased. Nonetheless, AFT filed an unfair practice charge on the District’s refusal to negotiate the decision to contract unit work with the Sheriff.

The Administrative Law Judge dismissed the Union’s unfair practice on the basis that the type of subcontracting involved in this instance (no cost considerations) did not require negotiation of the decision itself. On appeal, PERB reversed the ALJ’s decision, ruling that the District engaged in an unlawful transfer of unit work without providing the opportunity to negotiate the decision. The Board ordered the restoration of the status quo as a remedy. *(Summary of Ventura County Community College District (2003) PERB No. 1547)*

*continued on next page*
PERB Requires Employer To Negotiate The Decision To Transfer Work To Sheriff (continued)

1. Because of the joint employment relationship, PERB was able to designate the arrangement with the Sheriff as a transfer of unit work, and not subcontracting. The distinction between "subcontracting" and "transfer of unit work" may seem esoteric, but with the "transfer of unit work" the employer must negotiate the decision to establish the new unit work. Even though the Sheriff paid these employees and maintained general control as local peace officers, PERB decided that because the employees were under the College's direct control while instructing they met the statutory test of "employee." Thus the District was transferring the unit work from the AFT unit to non-unit District employees.

2. PERB's order to return to the status quo ante allowed the District 120 days to negotiate with the Union over the decision and the effects of transferring instruction work to non-unit members. Because the program had been in operation for several years before PERB's decision, the Union was given the right to request a return to the status quo, and the District was given 120 days to negotiate with the Union over the transfer back of the academy instructional work. In addition, PERB ordered back pay with 7% interest and lost union dues, if any.

3. PERB distinguished "subcontracting, not subject to negotiations" from "subcontracting, subject to negotiations," and "transfer of unit work."

<table>
<thead>
<tr>
<th>Type of Activity</th>
<th>Definition</th>
<th>Negotiate Decision</th>
<th>Negotiate Effects</th>
</tr>
</thead>
<tbody>
<tr>
<td>Transfer of unit work</td>
<td>The transfer of unit work to non-unit employees of the same employer.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Subcontracting subject to negotiations</td>
<td>The transfer of unit work to employees of another employer based on cost considerations.</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Subcontracting not subject to negotiations</td>
<td>The transfer of unit work to employees of another employer based on non-cost entrepreneurial factors.</td>
<td>No</td>
<td>Yes</td>
</tr>
</tbody>
</table>

SIGNIFICANCE TO LOCAL AGENCIES UNDER PERB

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