In a recently released decision involving the Desert Sands Unified School District, PERB again demonstrated the subtleties of the law involved in transferring bargaining unit work, changing work rules, and assigning bargaining unit work. This case is significant because it applies to many agencies currently struggling with labor relations problems stemming from the economic crisis.

Several years ago, the Desert Sands Unified School District implemented a number of changes while attempting to reduce costs and make operations more efficient. The District did not provide the union with notice and opportunity to negotiate before implementing those changes. The District, among other actions:

- Laid off all health technicians, and reallocated the technicians’ work to the remaining higher-level nursing staff and the lower-level paraeducators;
- Changed the duties of bus mechanics by assigning them work previously performed by a fleet supervisor;
- Changed the District policy on assigning extra-work to bus drivers, using charter buses instead of District buses; and
- Changed the unwritten practice for compensating bus drivers for training required to renew their license.

In a hearing before a PERB ALJ, the union prevailed on all the issues in the unfair practice charge. The charge involved a number of “per se” violations of the duty to bargain. The District appealed
the ALJ’s decision to PERB. PERB’s lengthy decision is instructive for employers who are currently working through similar issues during this economic crisis.

**Transfer Of Bargaining Unit Work And Overlapping Duties**

PERB rejected the District’s claims that management could transfer the duties of the laid off health technicians to the higher level nurses and the lower level paraeducators. The District contended that because the duties of the three positions overlapped, the District did not have to bargain the transfer of unit work from the health technicians.

Although it is well established that both the decision and effects of a transfer of bargaining unit work to non-unit employees is a mandatory subject of bargaining, there is also a well-established exception to this rule. If the unit and non-unit employees perform overlapping duties, then a change in the degree of overlapping does not constitute a transfer of unit work.²

In order to qualify for this exception, however, the employer must show that either: (1) the change in the overlapping duties did not result in the complete elimination of the unit employees; or (2) the change in the overlapping duties did not involve work that was exclusively performed only by unit members. Because the District laid off all the health technicians, the overlapping-duties exception did not apply.

The District was guilty of a per se failure to bargain in good faith, and was required to reinstate the status quo – meaning reinstatement with back pay and seven percent interest.

**Allocation Of Work Duties To A Classification Compared With Transfer Of Unit Work**

On the other hand, the District prevailed on its argument that the reassignment of work from a prior classification to an existing job class did not require bargaining. The fleet supervisor reviewed daily bus reports, diagnosed repair needs, ordered parts, and wrote up work orders. When the fleet supervisor position was eliminated, these duties were assigned to the bus mechanics, with each mechanic made responsible for a group of buses. PERB determined this assignment of duties was not an unlawful transfer of bargaining unit work.

PERB has long recognized that the direction of the work force and the determination of the work to be performed is a management right. The assignment of duties reasonably comprehended within an existing job description is an extension of this management prerogative, even if such duties have never been performed previously.³ But even though the assignment of duties is not subject to negotiations, any impact on the amount of work performed (workload) must be negotiated before the change of duties is implemented.

Reminder from CALPELRA Academy 6: This case reinforces the new reality of “high risk negotiations” and “complexities of bargaining unit work.”
In this instance, PERB determined that the impact on additional work was indirect and speculative. Because the union provided no direct evidence that the new assignments resulted in additional workload, PERB rejected the union’s claim that both the decision and the effect of the change was subject to negotiations.

**Change In Policy Regarding Use Of Charter Buses**

When the District changed its written policy to allow expanded use of private charter buses instead of school buses on lengthy field trips, the union claimed that the policy revision required negotiations. The District claimed, among other things, that management had the right to change the District’s policy regarding selection of buses for field trips. PERB, however, determined that the increased use of charter buses reduced work opportunities, which in turn reduced wages, constituting a mandatory subject of bargaining.

**Change In Unwritten Practice Regarding Pay For Bus Driver Training**

The District also changed its unwritten practice of paying bus drivers for specialized behind-the-wheel training that was necessary to maintain a bus driver’s license. Because there was no contract provision covering the issue, and because the District believed the practice had evolved and changed over a period of years, the District did not offer to bargain about the change in practice.

PERB has long recognized that the status quo for a mandatory subject may be defined by a past practice that is unequivocal, clearly enunciated, readily ascertainable over a reasonable period of time, and accepted by both parties.4 In this case, PERB determined the agency did not provide credible evidence to overcome the union’s evidence of an unequivocal, consistent practice known and informally accepted by both parties.
Current Academy Schedule

March 5, 2010
Labor Relations Academy 6
Bargaining Your Way Through Economic Crisis
CALPELRA Offices (Exponent Building), Menlo Park, California

March 19, 2010
Labor Relations Academy 3
The Negotiations Process
CALPELRA Offices (Exponent Building), Menlo Park, California

April 9, 2010
NEW! Labor Relations Academy 7
Impasse And Unilateral Adoption During Economic Crisis
CarrAmerica Conference Center, Pleasanton, California

June 11, 2010
Labor Relations Academy 1
The Foundation Of Labor Relations
CarrAmerica Conference Center, Pleasanton, California

November 15, 2010
Labor Relations Academy 3
The Negotiations Process
Portola Hotel And Spa, Monterey, California

November 16, 2010
Labor Relations Academy 1
The Foundation Of Labor Relations
Portola Hotel And Spa, Monterey, California

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2 Eureka City School District (1985) PERB Decision No. 481.
3 Desert Sands USD, supra, citing Rio Hondo Community College District (1982) PERB Decision No. 279.