

CLIENT NEWS BRIEF

School and Community College Districts Must Negotiate Calendar Changes and Generally May Not Rely Upon Operational Necessity As a Defense

Serving the public is the main business of public agencies, and school and college districts must publish a reliable and predictable schedule of instruction each school year so that students, staff, and the community may plan around it. This has always created tension for public school employers as they must plan the non-negotiable instructional calendar for students and also bargain over the negotiable work year calendar for staff members.

In a recent decision, the Public Employment Relations Board (PERB) held that a community college district (District) violated the Educational Employment Relations Act (EERA) when it adopted and implemented a revised academic calendar without exhausting the EERA's statutory bargaining and impasse process. (*Pasadena Area Community College District* (2015) PERB Dec. No. 2444). The decision reminds us about which aspects of a school calendar are negotiable, and when a district may unilaterally implement a calendar.

For many years, the District utilized a traditional semester system which included Fall and Spring semesters and Winter and Summer intercessions. In May 2012, the District's governing board adopted a proposal by the college's calendar committee to continue using the semester system for 2012-2013. During faculty association (Association) bargaining sessions, the District proposed a switch to the trimester system for 2012-2013 in order to increase revenues. The trimester system would eliminate the Winter intercession.

At the time that the District proposed the trimester system, it offered to negotiate the impacts, or effects, of the calendar change while the Association demanded to bargain over the decision itself. After holding two bargaining sessions where the trimester issue was on the table and before any agreement was reached, on August 29, 2012 the District's Board of Trustees adopted a revised tentative academic calendar for 2012-2013. The new calendar incorporated the trimester system starting on January 7, 2013, and set October 1, 2012 as the date of "operational necessity" when the District could implement the proposed calendar even without the Association's agreement. The parties met in September 2012 but reached no agreement. On October 1, 2012, the District implemented the proposed 2012-2013 calendar.

The Association filed an unfair labor practice charge with PERB, alleging that the District's adoption of the 2012-2013 trimester calendar was an unlawful unilateral action on a negotiable subject. PERB found in favor of the Association.

Under the EERA, an employer commits a "per se" violation of its duty to meet and negotiate with a unit representative when it unilaterally establishes any term or condition of employment within the scope of representation prior to completion of the bilateral negotiations process. With regard to the scope of representation claim, the District asserted that it had adopted an academic calendar, rather than a work calendar, and that prior PERB decisions allow for such action if it is adjusted to accommodate a negotiated work calendar.

PERB rejected the District's defense, finding that while the District may have a

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prerogative to generally determine the hours of instruction and the distribution of working days, “the school calendar is within the scope of negotiations.” PERB also rejected the District’s assertion that it had only adopted a student calendar while continuing to negotiate in good faith over the work calendar. While this has been condoned in prior PERB decisions, PERB noted that in this case, the District’s actions constituted a simultaneous adoption of both student and work calendars that left no room for post-adoption bargaining. PERB held that the implementation of a trimester calendar forced such “dramatic differences” onto the work calendar that it necessarily encroached upon collective bargaining rights.

PERB also rejected two of the District’s other arguments. First, PERB found that the Association had not waived the right to negotiate through its participation in the calendar committee (which had recommended the semester calendar) or by refusing to accept the District’s proposals at the bargaining table. Second, PERB found that the District’s need to plan for the coming school year did not constitute an operational or business necessity that justified the District’s unilateral action. According to the decision, the District could not establish an operational or business necessity defense unless “an actual financial emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before taking action.”

While PERB conceded that October 1, 2012 may have been the date of operational necessity if it had no 2012-2013 calendar in place for the 2013 Spring semester, PERB found that the Board’s May 2012 adoption of a semester-based calendar provided an existing default for the District to use. In this context, PERB found that the District’s desire to start the trimester calendar in January 2013, and the District’s prerequisite need to start planning for it as of October 1, 2012, did not constitute a business necessity. According to PERB, such circumstances “(did) not convert the District’s desire into a business necessity and (did) not absolve the District of its bargaining obligation.”

This decision is instructive regarding the scope of bargaining for public school and community college employers, and the limitations on the ability to engage in unilateral actions on the basis of operational or business necessity.

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