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San Juan Teachers Association and California Staff Organization. Case 20-CA-34254

April 30, 2010

DECISION AND ORDER

BY CHAIRMAN LIEBMAN AND MEMBERS SCHAUMBER
AND PEARCE

On November 4, 2009, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and Charging Party filed answering briefs. The General Counsel also filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,¹ findings,² and conclusions and to adopt the recommended Order,³ as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, San Juan Teachers Association, Carmichael, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 1(b).

¹ The Respondent excepts to the judge's ruling permitting counsel for the Union to testify at the hearing and, alternatively, to the judge's refusal to strike the testimony. It is clear from the judge's decision, however, that he did not rely on the counsel's testimony, and we do not rely on it in adopting his decision. Accordingly, we deny the Respondent's exception.

² In adopting the judge's finding that the Respondent violated Sec. 8(a)(5) and (1) by reducing the weekly work hours of two unit employees, we find it unnecessary to pass on the General Counsel's exception to the judge's failure to apply *Bottom Line Enterprises*, 302 NLRB 373 (1991). Under the rule of both that case and the case relied on by the judge, *Stone Container Corp.*, 313 NLRB 336 (1993), a respondent that has made changes with respect to a mandatory subject of bargaining will be found to have violated the Act unless it can establish that it provided the union with adequate notice and an opportunity to bargain. Here, we agree with the judge, for the reasons set forth in his decision, that the Respondent failed to meet that burden.

³ In his exceptions and supporting brief, the General Counsel seeks compound interest computed on a quarterly basis for any backpay or other monetary award. Having duly considered the matter, we are not prepared at this time to deviate from our current practice of assessing simple interest. See, e.g., *Cardi Corp.*, 353 NLRB No. 97, slip op. at 1 fn. 2 (2009); *Rogers Corp.*, 344 NLRB 504, 504 (2005).

“(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”

Dated, Washington, D.C. April 30, 2010

Wilma B. Liebman, Chairman

Peter C. Schaumber, Member

Mark Gaston Pearce, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Shelley Brenner, Atty., for the General Counsel.
Robert L. Rediger, Atty. (Rediger, McHugh, & Hubbert), of Sacramento, California, for the Respondent.
Eleanor I. Morton, Atty. (Leonard Carder, LLP), of San Francisco, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. I heard this case on June 2 and 3, 2009, at Sacramento, California, pursuant to a complaint and notice of hearing issued by the Regional Director for Region 20 of the National Labor Relations Board (NLRB or Board). The complaint alleges Respondent, San Juan Teachers Association (Respondent or SJTA), violated Section 8(a)(1) and (5) of the National Labor Relations Act (Act) by unilaterally reducing the weekly work hours of the employees in an appropriate bargaining unit represented by the California Staff Organization (CSO or Charging Party). Respondent filed an answer denying that it engaged in the unfair labor practices alleged and interposing certain affirmative defenses.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed on behalf of General Counsel, Charging Party, and Respondent, I make the following

FINDINGS OF FACT

Respondent is, and has been at all material times, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and it would effectuate the purposes of the Act for the Board to exercise its jurisdiction to resolve this labor dispute.

Respondent, a labor organization, is an unincorporated association with a place of business in Carmichael, California, where it represents employees employed by the San Juan Unified School District. In the course of its business operations during the 12-month period ending January 31, 2009, Respondent derived gross revenues in excess of \$500,000, and pur-

chased and received at its Carmichael, California place of business materials or services valued in excess of \$5000, which originated from points outside the State of California. Based on the foregoing, I find that the Board should exercise its statutory jurisdiction to resolve this labor dispute.

At relevant times, CSO, a labor organization within the meaning of Section 2(5) of the Act, has been the exclusive collective-bargaining representative under Section 9(a) of the Act for the SJTA's secretarial and clerical employees.

The complaint alleges and the answer admits that CSO is a labor organization within the meaning of Section 2(5) of the Act.

At relevant times, Respondent employed the following individuals: (1) Steve Duditch, president; (2) Tom Alves, executive director; (3) Sandra Galindo, associate executive director; (4) Lucia Guzman, secretary, and (5) Judy Mannis, secretary. All five have been permanently employed by Respondent throughout the period covered by this proceeding. Guzman and Mannis began working for Respondent in 1995. Throughout their employment history until November 2008, they worked a "24/32" schedule, meaning that they alternated working 32 hours one week and 24 hours the next week.

In April 2006, Guzman and Mannis designated the CSO as their agent for collective-bargaining purposes and Respondent voluntarily recognized CSO as the exclusive collective-bargaining representative of its secretarial and clerical employees (the clerical unit) on April 17, 2006. The clerical unit is an appropriate unit for purposes of collective bargaining within the meaning of Section 9(b) of the Act. Since June 20, 2006, Respondent and CSO have met in 12 negotiating sessions attempting to conclude an initial collective-bargaining agreement. By the time of the hearing, the parties had not reached a final agreement.

In September 1998, Respondent executed a Non-Bargaining Unit Beneficiaries Participation Agreement (NBU Participation Agreement or 1998 Agreement) with the California Teachers Association Health and Welfare Trust (CTA Trust) that contained a provision requiring participating employers to enroll all permanent employees working more than 20 hours per week in the Trust's benefit plans.

Duditch, on behalf of SJTA, executed a NBU Participation Agreement on September 14, 1998, with the intention of providing Alves and Galindo with certain fringe benefits available through the CTA Trust so they would be on a par with their counterparts employed by the CTA. (Jt. Exh. 16.)

Section A,1 of the Agreement recites that the California Teachers Association (CTA), the CSO, and the California Associate Staff (CAS) established the Trust "for certain eligible . . . employees and employee dependents." The Agreement provides for participation by certain other "labor organization employers." Respondent qualified under the terms of the Agreement as a "California affiliate of the National Education Association."¹ The CTA Trust provides insurance for medical, den-

tal, and vision care as well as other incidental forms of coverage.

Section B,1,b of the 1998 Agreement obligated SJTA to enroll "all eligible employees in the Plans selected for coverage, and perform administration services in connection with such enrollment." Section B.3.a defines an "eligible employee" as a "permanent employee who is actively at work a minimum of twenty (20) hours of week [sic] at his or her customary place of employment, and who complies with the eligibility requirements set forth Exhibit 'B'" attached to the 1998 Agreement. The Exhibit B eligibility requirements are twofold; the first requires eligibility under the chosen insurance plans and the second requires qualification under the previously mentioned 20-hour rule. The 1998 Agreement designates covered employees "beneficiaries." By its terms, retirees cannot qualify as beneficiaries.² Agreement, section B,3,c; Agreement Exhibit B, section II, 4.

At the time Duditch executed the 1998 Agreement, the SJTA employed the aforementioned five individuals, to wit, Duditch, Alves, Galindo, who worked full time, and the two statutory employees, Guzman and Mannis, who worked an alternating schedule in excess of 20 hours per week.

In the period following the execution of the 1998 Agreement, Respondent contributed to the CTA Trust to pay for the active fringe benefit plans it provided to Alves and Galindo, and a retiree health benefit plan for all five individuals employed by SJTA.

After signing the 1998 Agreement, SJTA only enrolled Alves and Galindo in the CTA Trust fringe benefit plans. They continued to receive coverage from this source at least up to the time of the hearing.³ (Jt. Exh. 16, Individual Employee Benefits Election Form—1998–1999 Plan Year.) Respondent never enrolled Guzman and Mannis in the CTA Trust fringe benefit plans. Instead, it obtained health insurance coverage for Guzman through a special arrangement with the San Juan School District. Mannis always elected the health insurance coverage available to her through her husband's employer; she has never relied on the SJTA for her health insurance. Duditch described the insurance Alves and Galindo receive under the CTA Trust as a "Cadillac" plan, implying that their coverage was superior to that the SJTA provided for Guzman.

In addition to the contributions made to the CTA Trust on behalf of Alves and Galindo's health and other miscellaneous fringe benefits, the SJTA contributed 8 percent of its payroll to the Trust to enroll all five employees in the retiree health bene-

by "other labor organization employers" makes them eligible to share in governing the Trust.

² A subsequent edition of the CTA Trust NBU Participation Agreement as well as its Bargaining Unit Participation Agreement provide for retiree medical benefits. Jt. Exh. 12; R. Exh. 6. The latter presupposes the existence of a collective-bargaining agreement, also requires coverage for all permanent employees who work at least 20 hours per week, and contains a very questionable mandatory union membership requirement.

³ The SJTA selected and paid for the following fringe benefits through the CTA Trust for Alves and Galindo: medical, dental, vision and behavioral health insurance, life insurance, accidental death and dismemberment insurance, and a salary protection plan.

¹ The bottom strip on the SJTA's stationery also implies that it is a CTA affiliate. The General Counsel characterized the Trust as a "multi-employer trust." In fact, the recitals in the Participation Agreement indicate otherwise and no evidence establishes that participation

fit plan provided by the CTA Trust.

In April 2008, the CTA Trust determined that the SJTA failed to comply with the terms of the 1998 Agreement over the past 9 years by failing to enroll and pay for active fringe benefits on behalf of all eligible employees.

In late 2007, the CSO negotiators bargaining on behalf of the clerical unit learned from the employees that SJTA paid the CTA Trust to provide retiree medical benefits for all of its employees but only paid it to provide current fringe benefits for its two managerial employees. Marilyn Arden, one of the CSO negotiators who also had been an alternate trustee for the Trust since 2000, contacted a CTA Trust representative seeking explanation of the SJTA's unusual arrangement with the Trust and learned that the Trust representative was also looking into the situation.⁴ (Tr. 60–61.)

By a letter dated January 15, 2008, Nathan Hartman, one of the CTA Trust administrative managers, wrote to SJTA seeking certain specific information. Hartman predicated his inquiry on SJTA's practice of paying for the current fringe benefits Alves and Galindo but also paying for retiree medical benefits on behalf of five employees even though the 1998 Agreement contained no provision for "any contribution to fund the retiree medical benefits." Hartman requested that Respondent provide the following information: (1) whether any of the employees covered by both types of contributions were bargaining unit employees; (2) the reason Respondent submitted contributions as it had been doing for two employees while also contributing to the retiree plan on behalf of five employees; and (3) whether Respondent employed any others for whom it made no contributions. (Jt. Exh. 1.)

The SJTA responded in a letter dated January 31, that Mannis prepared and Duditch signed. That letter explained that the SJTA had been paying the CTA Trust to cover the active (current) fringe benefits for Executive Director Alves and Associate Executive Director Galindo, and the retiree medical benefits for all five SJTA employees because "[w]e understood that all employees working more than 20 hours per week were enrolled in the retiree health plan."⁵ The letter stated that there were no other employees for whom SJTA did not make contributions but it never really answered the bargaining unit question posed by Hartman. Instead, it described the CSO membership history of Alves, Galindo, Guzman, and Mannis.

In a letter dated April 1, Hannah Sutton, another manager for the CTA Trust administrator, wrote to Duditch explaining that the SJTA "is reporting incorrectly" to the Trust. (Jt. Exh. 4.) She explained that as the SJTA executed a "non-bargaining unit participation agreement," it could only report on non-

bargaining unit employees. The SJTA violated the Agreement, Sutton explained, by remitting payments for retiree benefits on behalf of two bargaining unit employees. According to Sutton, "[U]nless you sign a bargaining unit participation agreement you may not contribute on behalf of any bargaining unit employee." (Emphasis added.) For that reason, Sutton stated that the CTA Trust would no longer accept payments made on behalf of the unit employees. However, Sutton told Duditch that, if SJTA signed a bargaining unit participation agreement, it would be obliged to purchase the Trust's active fringe benefits for the bargaining unit employees. She also told him that he could apply to the Trust for a refund of the retiree benefit payments made on behalf of the unit employees and that he could even cancel SJTA's participation in the CTA Trust with a timely notice.

Duditch responded to Sutton on April 17 attempting to correct certain representations made in his January 31 letter. Thus, he clarified the earlier answer that arguably implied four of the SJTA employees were bargaining unit members based on their current or prior CSO membership. Duditch explained that the correct answer to the first question Hartman posed in his January 15 letter should have been that none of those for whom SJTA had been submitted contributions were unit employees. He then went on to state that the SJTA contributed to the CTA Trust for the "two part-time employees," i.e., Guzman and Mannis, because they "believe that they were entitled to claim retiree health benefits" even though they "do not claim the [Trust] benefit package." Duditch asked Sutton to clarify for him which of the two participation agreements (non-bargaining unit or bargaining unit) SJTA should sign so that it "can participate as an Option two affiliate that only has employees who work for the [SJTA]." Although the quoted portion of that particular sentence seemed to muddle the situation all over again, he explained in a subsequent paragraph that if "SJTA must contribute the cost of health plan benefits for part-time employees regardless of whether there is any collective bargaining agreement" he wanted to know the rationale and he asked that the SJTA be granted "a waiver from such a stipulation." Duditch explained that the SJTA had provided health care benefits to the part-timers independent of the Trust "for more than twenty years for cost-saving reasons."

Two weeks later, Sutton acknowledged Duditch's April 17 letter and explained that she would get back to him after discussing his questions with legal counsel for the CTA Trust and "possibly the Trustees." In a letter dated June 13 (Jt. Exh. 6), Sutton informed Duditch that the trustees had denied his request for a waiver from the requirement, in effect, that all of the SJTA employees be covered with active benefits by reason of the 20-hour rule. She went on to advise (seemingly contrary to the position taken in her April 1 letter) that the CTA Trust Participation Agreement, section B, 3 a. required SJTA to contribute on behalf of "all eligible employees" including "the two employees not currently being reported." Sutton told Duditch that compliance would be required by August 1 and the cost for the two unit employees would be the same as what SJTA paid for Alves and Galindo.

Duditch sought reconsideration of his request for a waiver. Although the CTA Trust rescinded the August 1 compliance

⁴ In other words, Arden would have me believe that her inquiry and the Trust's realization after 9 years that the SJTA might not be paying all that it should was a mere coincidence. I do not credit Arden's claim as to what the CTA Trust representative told her. Instead, I strongly suspect that the CSO negotiators used the CTA Trust tactically to shortcut bargaining over health benefits.

⁵ Apparently, Duditch receives his current fringe benefits from another source altogether. Although it is of little or no significance, his January 31 letter seems contradictory (compare par. 1 with par. 2) as to whether the SJTA contributed to the Trust on his behalf for retiree health benefits.

deadline, it notified the SJTA in a letter dated October 27 that the trustees had denied the requested waiver and advised that the unit employees had to be covered or coverage for SJTA's other employees (Alves and Galindo) would cease as of January 1, 2009. The letter also advised that if SJTA desired to continue its participation in the retiree health program, it would "need to sign a new Participation Agreement that calls for such contributions." The letter requested that the SJTA respond to the Trust administrators by December 1 as the Trustees would meet soon thereafter "to finalize this matter." (Jt. Exh. 9.)

To comply with the CTA Trust directive, Respondent reduced the regular work week of Guzman and Mannis to 19.5 hours effective November 17 in order to preserve the fringe benefits enjoyed by Alves and Galindo through the CTA Trust.

Respondent's answer to the complaint admitted that it reduced the weekly work hours of each unit employee on or about November 17 and that this matter amounted to a mandatory subject of bargaining. (GC Exh. 1(f): Answer to complaint par. 1.)

The evidence shows likewise. Following receipt of the October 27 ultimatum from the CTA Trust, the SJTA board of directors met on November 4 and decided to reduce the hours of Guzman and Mannis so they would not be eligible employees under the terms of the Participation Agreement. On November 12, Duditch and SJTA Vice President Christina Williams gave Guzman and Mannis each a letter informing them that as of November 17, their work schedules "will consist of 19.5 hours per work week." The letter states that the reduction in hours "is the result of a decline in work at the office as well as the need for SJTA to avoid having to pay a premium on your behalf to the [CTA Trust] for duplicative benefits." The letter goes on to state that the CTA Trust denied the SJTA's request for a waiver of the 20-hour rule and concluded with the assertion that it was in "both of our interest to maintain the health benefits you are currently receiving, and SJTA not incurring . . . unnecessary costs by having to remit a premium on your behalf to the Trust." (Jt. Exhs. 10 and 11.)

That same day Duditch sent the CTA Trust a new NBU Participation Agreement (2008 Agreement) to cover Alves and Galindo along with a letter stating that the "other two part-time employees in question no longer meet the eligibility requirements for enrollment." (Jt. Exh. 12.)

CONCLUSIONS OF LAW

Respondent violated Section 8(a)(1) and (5) of the Act by reducing the workweek of Guzman and Mannis without properly notifying the CSO and providing it with an opportunity to bargain over the reduction in their hours of work.

Section 8(a)(5) of the Act makes it an unfair labor practice for an employer to refuse to bargain collectively with the representatives of his employees. Section 8(d) defines the term "bargain collectively" as the mutual obligation of the employer and the employee representative to "meet . . . and confer in good faith with respect to wages, hours and other terms and conditions of employment." Those matters falling within the scope of Section 8(d) are mandatory subjects of bargaining. *NLRB v. Borg-Warner Corp.*, 356 U.S. 342, 349 (1958). An employer violates Section 8(a)(5) of the Act by making a "uni-

lateral change in conditions of employment under negotiation . . . for it is a circumvention of the duty to negotiate which frustrates the objectives of § 8(a)(5) much as does a flat refusal." *NLRB v. Katz*, 369 U.S. 736, 742 (1962). Here, I find Respondent needed only to notify CSO and provide it with an opportunity to bargain about a proposal to change the employee hours in order to comply with its obligations to the CTA Trust, a discreet, separable issue independent of the negotiations for a complete collective-bargaining agreement. *Stone Container Corp.*, 313 NLRB 336 (1993).

In its defense, Respondent's answer affirmatively alleged in its answer to the complaint that it provided notice to the CSO and an opportunity or it to bargain over the reduction in hours question; that the CSO "delayed and avoided bargaining" over this subject; and that economic exigencies compelled Respondent to act promptly to reduce the hours of the unit employees. (GC Exh. 1(f): Answer to Complaint, First, Second, and Third Affirmative Defenses) SJTA argued in its posthearing brief that it notified the CSO that the unit employees hours would be reduced on several occasions but the union failed to avail itself to the opportunity to bargain about that subject. Respondent had the burden of proving its affirmative defenses. For reasons detailed below, I find Respondent failed to meet its burden.

Duditch's wrote a letter dated July 7 that arguably contains a proper notice and request to bargain over a proposed change in unit employees' hours of work, but the evidence concerning receipt of that letter by the addressee, CSO Counsel Eleanor Morton, or any other CSO agent, is problematic.⁶ For purposes of receipt, Respondent needed to obtain an admission binding on the CSO or its counsel that the letter had been received, or to produce evidence sufficient to warrant a presumption of receipt.

Respondent obtained no admission from CSO's counsel or any other CSO agent that the July 7 letter had been received in due course. Likewise, Respondent failed to prove facts sufficient to establish that this letter was ever mailed or faxed to CSO's counsel so as to give rise to a presumption of receipt.

Federal common law follows the so-called "mail box rule" which provides that the proper and timely mailing of a document gives rise to a rebuttable presumption that the document has been received by the addressee in the usual time. *Schikore v. Bankamerica Supplemental Retirement Plan*, 269 F.3d 956, 961 (9th Cir. 2001). The evidence in this case does not warrant a presumption that Morton or any other CSO representative received the July 7 letter. Thus, Duditch could not recall with any adequate degree of certainty that he mailed or faxed the letter.⁷ In addition, Respondent failed to produce a facsimile

⁶ In the final paragraph of that letter, Duditch wrote: "I am requesting that the parties meet during the month of July to discuss this matter and potential solutions. SJTA is contemplating reducing the hours of the two employees in the bargaining unit to 19.5 per work week effective August 1, 2008 to meet its business needs and to avoid having to incur the unnecessary cost of including them in the Trust." R. Exh. 4.

⁷ For example, Duditch's testified as follows on cross-examination by General Counsel:

Q. But you have no memory of you personally mailing that letter to Ms. Morton?

A. No. I do have a memory though, the memory clearly that it was such an urgent matter for us that we hired counsel, it was

transmission confirmation for the letter, an essential prerequisite to invoking a presumption of receipt where the letter is transmitted by that means. See, e.g., *Mulder v. Commissioner of Internal Revenue*, 855 F.2d 208, 212 (5th Cir. 1988) (return receipt for a letter sent by certified mail required in order to establish a rebuttable presumption that the document has been received by the addressee.) As the evidence is insufficient to show the letter was actually mailed or faxed, or to warrant a presumption of receipt by Morton or the CSO, no burden to rebut receipt arose.⁸ See Rule 301, Federal Rules of Evidence. Hence, this letter does not satisfy the notice requirement under Section 8(a)(5).

In addition, Respondent claims that the CSO's agents were told orally several times over the course of its 2008 compliance controversy with the CTA Trust that the reduction in hours of the unit employees was an option it might have to consider. By failing to request bargaining after learning of that SJTA was considering the reduction in hours option, Respondent argues that the CSO, in effect, waived its right to bargain about this subject and, therefore, SJTA did not violate the Act by implementing this change when it did.

In support, Respondent points to a brief conversation on June 7 when Duditch purportedly told DePue that "if we don't get the waiver, we have various options and one of the options will be to reduce the hours of Judy and Lucia." (Tr. 209.)

Respondent also points to an October 27 meeting attended by SJTA Managers Duditch, Alves and Galindo, CSO Representative DePue, and CTA Trustee Stephens.⁹ DePue arranged this meeting so that Stephens, in his capacity as a CTA Trustee, could provide information to the SJTA officials about the cost that would be involved to cover the two unit employees with the CTA Trust benefits. This discussion was actually between Stephens and the SJTA officials; DePue said little if anything during the entire meeting. At the time, the SJTA had not yet learned that CTA Trust had denied their last waiver request. After Stephens calculated the cost for covering the two unit employees, Alves purportedly stated that the cost was "prob-

lematic" and that it "would be more strategic for the organization to cut their hours." Stephens cautioned against taking that step, suggesting instead that the SJTA might want to consider employee only-coverage for the unit employees as a means of bringing the SJTA into compliance and preserving coverage for Managers Alves and Galindo. At the end of the meeting, Duditch explained they had "to take this information back to our Executive Board" because they were not comfortable with precluding Lucia from covering her dependents (an option Stephens suggested) and that they "were going to have to take a look at cutting their hours to 19.5 hours."

I disagree with Respondent's contention that these verbal exchanges sufficed to put CSO on notice of the type of change ultimately implemented here so that the CSO, in effect, waived its right to bargain over the reducing the work hours of the unit employees by failing to request or engage in bargaining.¹⁰ The June 7 exchange amounted to little more than an offhanded remark that reducing the hours of the unit employees might be one of several options Respondent would have to consider in order to solve the problem raised by the CTA Trust investigation. At the October 27 meeting, DePue's role was essentially that of an onlooker to the discussion between Stephens in his capacity as a representative of the CTA Trust and Respondent's officials about the precise cost of compliance with the CTA Trust's demand that SJTA provide coverage for all employees. Respondent's contention that the October 27 meeting amounted to a bargaining session with the CSO that resulted in an impasse over the workweek change issue is not supported by the evidence. Duditch's reference to presenting the information gained to the SJTA Executive Board for a decision shows that no clear proposal had yet emerged from the Respondent over which there could be meaningful bargaining. Although Duditch, Alves, and presumably Galindo all favored the workweek reduction as a solution to SJTA's issue with the CTA Trust, Duditch's own statement at the conclusion of the October 27 meeting made it clear that decision actually rested with the SJTA Executive Board. At no time, did Respondent notify the CSO about a proposed change after the SJTA Executive Board's meeting.

The NLRB does not require a labor organization to demand negotiations every time an employer mentions a potential, future change in order to avoid the risk of waiving its right to bargain under the *Katz* doctrine. More than general statements about changes that might be necessary are required. *Pan American Grain Co.*, 343 NLRB 318 (2004), citing with approval Judge Joan Wieder's formulation in *Gannett Co.*, 333 NLRB 355, 357 (2001) at that, to be adequate under the Act, "[t]he prior notice must afford the union with a reasonable opportunity to evaluate the proposals and present counter proposals before implementing [the] change." An inchoate and imprecise announcement of the type made here is insufficient to trigger an obligation to bargain. *Oklahoma Fixture Co.*, 314 NLRB 958, 960 (1994), enf. denied on other grounds 79 F.3d

such an urgent matter to get the letter out, it was such an urgent matter because it was affecting the retirement of Alves and Galindo but, I cannot say I can remember mailing a letter. I would like to say I can remember it but, I cannot say I remember putting it in the mail.

Q. Okay. And you have no memory of you personally faxing this letter to Eleanor Morton?

A. No, I don't. [Tr. 238-239.]

⁸ Morton denied that she saw Duditch's July 7 letter until counsel for General Counsel provided a copy to her during the investigation of this charge, long after the employees' hours had been reduced. I find it unnecessary to consider her denial. Even if I struck Morton's testimony as requested in Respondent's posthearing brief, no basis would exist to conclude that Morton or any other CSO representative received Duditch's July 7 letter in due course.

⁹ Stephens works for the CTA and is represented by, and belongs to, the CSO. He has held various positions with the CSO and has long served as a union-appointed trustee on the CTA Trust. He had no known involvement with the SJTA-CSO negotiations. Respondent tacitly acknowledged that Stephens was not acting on behalf of CSO at the October 27 meeting by arguing that DePue sat idly by without making an attempt to bargain on this occasion.

¹⁰ Respondent also cites a verbal exchange between Alves and Ted Bynum, another trustee of the CTA Trust in April 2008. However, I find this exchange too vague and remote to merit consideration as a notice of a proposal to change wages, hours, or working conditions.

1630 (10th Cir. 1996).

No clear formulation occurred here until the SJTA Executive Board chose the reduced workweek option on November 4. Respondent never notified the CSO of that decision. Instead, Duditch and Williams bypassed the CSO and presented the decision directly to the unit employees on November 12 as a fait accompli with the explanation that they had been forced to take this step as a means of meeting the obligations undertaken with the CTA Trust to obtain fringe benefits for Alves and Galindo. Having concluded that Respondent failed to provide a proper notice and opportunity for bargaining, it follows that a finding cannot be made that the CSO delayed and avoided bargaining as Respondent alleged in its answer.

Finally, for two reasons I find Respondent failed to show an economic exigency existed that would warrant the immediate implementation of the reduced workweek without prior bargaining. First, Respondent offered no evidence concerning its economic condition. All that was shown was the belief of the leadership that reducing employee hours made more economic sense for the SJTA. I find this evidence insufficient to find enough of economic exigency existed to bypass bargaining. Secondly, Respondent had ample time in which bargain with the CSO over a proposal to change hours as it had nearly a full month following the November 4 SJTA Executive Board meeting before it needed to respond to the CTA Trust's final ultimatum.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

As Respondent violated the Act by unilaterally reducing the weekly hours of the unit employees, it will be required to restore the status quo ante. *Larry Geweke Ford*, 344 NLRB 628 (2005). Accordingly, Respondent will be required to rescind the November 12, 2008 notices to Guzman and Mannis, and restore their workweek to the level that existed prior to the change implemented on November 17. Respondent will also be required to reimburse the unit employees for the pay lost by reason of the reduction of their work hours commencing on November 17. Reimbursements to employees shall be computed as prescribed in *Ogle Protection Service*, 183 NLRB 682 (1970), enf'd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).¹¹

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

¹¹ The General Counsel requests that the interest award be compounded quarterly instead of the present practice of awarding simple interest. The Board, as presently constituted, has in several recent cases declined to change the method for calculating interest. As I am bound by the Board's established policy, the request for compound interest is denied.

¹² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be

ORDER

The Respondent, San Juan Teachers Association, Carmichael, California, its officers, agents, successors, and/or assigns, jointly and severally, shall

1. Cease and desist from

(a) Failing and refusing to bargain with the California Staff Organization (CSO) by unilaterally reducing the hours of employment of its secretarial and clerical employees represented by CSO without first providing that labor organization with an appropriate notice and an opportunity to bargain over changes in their hours of work.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of the Board's Order, rescind the change in the weekly hours of work provided to its secretarial and clerical employees implemented on November 17, 2008, and restore their workweek schedule to that which existed prior to that date.

(b) Reimburse the unit employees for the loss in pay they suffered by reason of the change in their weekly hours of employment that commenced on November 17, 2008, as described in the remedy section of this decision with interest as prescribed by law.

(c) Within 14 days after service by the Region, post at its office facility in Carmichael, California, copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 17, 2008.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that Respondent has taken to comply.

Dated, Washington, D.C., November 4, 2009.

APPENDIX

NOTICE TO EMPLOYEES

adopted by the Board and all objections to them shall be deemed waived for all purposes.

¹³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

- Form, join, or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities

WE WILL NOT fail or refuse to bargain with the California Staff Organization (CSO) as the representative of the employees employed in the following appropriate unit: All secretarial and clerical employees.

WE WILL NOT change the wages, hours, and terms and condi-

tion of employment for the employees in the above unit without first providing CSO with an appropriate notice of any proposed change and provide it with an opportunity to bargain over the proposed change.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days from the date of the NLRB Order, rescind the change in the weekly hours of work provided for employees in the above unit that we implemented on November 17, 2008, and restore their workweek schedule to that which existed before that date.

WE WILL reimburse the unit employees for any loss of pay they suffered by reason of the change in their weekly hours of employment that commenced on November 17, 2008, with interest as proscribed by law.

SAN JUAN TEACHERS ASSOCIATION