STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 658, Charging Party, v. PLACERVILLE UNION SCHOOL DISTRICT, Respondent.	Case No. S-CE-36 PERB Decision No.69 September 18, 1978

Appearances; Gifford D. Massey for California School Employees Association, Chapter 658; Edna E.J. Francis, Attorney (Paterson and Taggart) for Placerville Union School District.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

California School Employees Association, Chapter 658 (hereafter CSEA) excepts to the attached hearing officer's recommended decision that Placerville Union School District (hereafter District) did not violate Educational Employment Relations Act[1] section 3543.5(b) or (c) by ratifying the

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[1] The Educational Employment Relations Act (hereafter EERA) is codified at Government Code section 3540 et seq.

Gov. Code sec. 3543.5(b) and (c) provides:

> It shall be unlawful for a public school employer to:
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> . . . . . .
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative...

All statutory references hereafter are to the Government Code unless otherwise specified.

tentative agreement, excluding the organizational security clause, reached by CSEA and the District in negotiations. Specifically, CSEA excepts to the hearing officer's conclusions that there exists no evidence of District motivation in opposition to collective negotiations; that ratification by the District of less than the entire tentative agreement was a rejection and counteroffer of a new tentative agreement; that CSEA should have accepted the new tentative agreement or rejected it and demanded additional negotiations; and that it was proper for the District's governing board to allow citizens to speak against the tentative agreement at a public meeting of the governing board immediately prior to the time set for its ratification of the tentative agreement.

The parties entered into a stipulation of facts in lieu of presenting evidence at a formal hearing. This decision is based upon both the stipulated facts and matters alleged in CSEA's unfair practice charge which the District in its answer either admitted or failed to respond to or deny.[2]

FACTS

The findings of fact set forth in the attached recommended decision of the hearing officer accurately summarize the

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[2]Board rule 35008(c), codified in Cal. Admin. Code, tit. 8, sec. 35008(c), effective both when the District filed its answer, and at the present time as Board rule 32635(c), provides:

> If the answer fails to deny or respond to a particular allegation, the Board may find such failure constitutes an admission of the truth of the facts stated therein and a waiver of respondent's right to contest the particular allegation.

stipulated facts and are hereby adopted by the Board itself. Additionally, the following facts are based upon CSEA's charge and the District's answer.

On January 14, 1977, the District's negotiator sent a letter to the president of CSEA, informing her that the governing board had ratified the tentative agreement with the exclusion of the organizational security clause. The letter read:

> Please be advised that the Board of Education at their January 11, 1977 meeting ratified the proposed tentative agreement between your organization and the Board with the exclusion of the Organization Security Article.
>
> As you know, they did so on my recommendation; the basis of which is:
>
> 1. In view of the Community concern and the Boards' view on Organizational Security, as contained in the tentative proposals, it seemed in the best interest of both parties to remove or isolate those areas of difference.
>
> 2. Secondly, since we are on the threshold of successor proposals, it is vitally important to all of us that those proposals be made without the present emotional climate.
>
> 3. Thirdly, and most importantly, there are components of the agreement that employees need, e.g. salary, health benefits, grievance machinery, leaves, etc.
>
> I am as disappointed as I know you are in our inability to reach a smooth conclusion to our negotiation efforts - especially for our first contract.
>
> I shall be most happy to meet with you and your representatives.

The organizational security clause which the District refused to ratify on December 14 and January 11 had been proposed by the District as a counteroffer to CSEA's initial proposal on organizational security.

DISCUSSION

The central issue in this case is whether the District refused or failed to meet and negotiate in good faith with CSEA, which is the exclusive representative of the District's classified employees, in violation of section 3543.5(b) and (c).[3]

The purpose of the EERA is:

> to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative

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[3]Section 3543.5(b) and (c) is quoted, supra, at footnote 1.

See also section 3540.l(h) which provides:

> "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties....

of the employees in an appropriate unit....[4]

Thus the collective negotiations process is the means by which the EERA's purpose of improving personnel, management and employer-employee relations is to be realized.

The duty to meet and negotiate in good faith is the core of the collective negotiations process. Collective negotiations refers to a bilateral process whereby the employer and exclusive representative jointly, in good faith, seek to resolve issues of wages, hours and other terms and conditions of employment.[5] Parties which meet and negotiate in good faith should resolve their differences at the negotiating table rather than through unilateral actions which may cause discord in the employer-employee relationship.[6]

In the present case, the District avoided the bilateral negotiations process when the governing board unilaterally

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[4]Section 3540.

[5]"[C]ollective bargaining" is a shared process in which each party, labor union and employer, has the right to play an active role. General Electric Company (1964) 150 NLRB 192, 194 [57 LRRM 1491].

[6]The case of NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177] speaks generally to the requirement that an employer refrain from unilateral actions in derogation of the bilateral negotiating process. See also Pajaro Valley Education Association (5/22/78) PERB Decision No. 51.

The EERB takes cognizance of cases decided under the Labor Management Relations Act, as amended, codified at 29 U.S.C, sec. 151 et seq. (hereafter LMRA), when the language of the EERA and LMRA is identical or similar. Fire Fighters v. City of Vallejo (1974) 12 Cal.3d 608; Sweetwater Union High School District(ll/23/76) EERB Decision No. 4.

deleted a significant portion of the tentative agreement and ratified only the remainder. This action occurred at a meeting of the governing board where the give and take of negotiations was absent. CSEA did not have the opportunity to comment upon the District's action in further negotiations, and it did not have the opportunity to negotiate for another provision in place of the deleted organizational security provision. The Board finds that CSEA should have had these opportunities and therefore concludes that the District committed an unfair practice by its unilateral action.

The Board does not decide whether an offer by the District to return to the negotiating table would have cured the unlawful partial ratification. A return to negotiations may have enabled CSEA to gain other benefits in the contract in exchange for giving up the organizational security clause. However, the District made no such offer. Rather, it unilaterally declared the negotiations had been concluded in the January 14 letter.

The District's failure to negotiate in good faith is further found in the fact that it stripped the organizational security provision from the tentative agreement upon the advice of the District's negotiator who had previously agreed with CSEA in the "Agreement for Negotiations" that he would endorse and support the total tentative agreement. The District negotiator's pledge of support was a key negotiations guideline directed toward establishing a basic trust between the parties and toward ensuring that the District's negotiator would act

only within the authority extended to him by the governing board. It was an unfair practice for the negotiator, the District's agent, to renege on his agreement to support the entire tentative agreement. This is especially so in the present case because the organizational security provision severed by the governing board had originally been proposed by the District.

CSEA in its exceptions claims the District acted unlawfully when it allowed members of the public to address it at the December 14 meeting regarding their opposition to the organizational security clause. CSEA argues that section 3547 provides for public participation in the negotiations process only at the presentation of the parties' initial proposals at public meetings of the employer, and thereafter the public should not be allowed to comment to the governing board on negotiations or a tentative agreement.[7]

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[7]Section 3547 provides:

> (a) All initial proposals of exclusive representatives and of public school employers, which relate to matters within the scope of representation, shall be presented at a public meeting of the public school employer and thereafter shall be public records.
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> (b) Meeting and negotiating shall not take place on any proposal until a reasonable time has elapsed after the submission of the proposal to enable the public to become informed and the public has the opportunity to express itself regarding the proposal at a meeting of the public school employer.
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> (c) After the public has had the opportunity to express itself, the public

The Board finds that the District did not act improperly by allowing the public to address it at the December 14 meeting. Section 3547 sets forth only a minimum requirement for public participation in the negotiations process at the time the initial negotiations proposals are developed. It does not suggest that additional public involvement is prohibited thereafter. The District is, after all, a public employer, financed by public funds paid in the form of taxes by members of the public. Thus, public participation to the extent of addressing a district's governing board at a public meeting is entirely appropriate. Additionally, it is noted that this conclusion is consistent with the recent case of City of Madison, Joint School District No. 8 v. Wisconsin Employment Relations Commission (1976) 429 U.S. 167 [50 L.Ed.2d 376, 97 S.Ct. 421], which held that it was proper for an individual

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> school employer shall, at a meeting which is open to the public, adopt its initial proposal.
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> (d) New subjects of meeting and negotiating arising after the presentation of initial proposals shall be made public within 24 hours. If a vote is taken on such subject by the public school employer, the vote thereon by each member voting shall also be made public within 24 hours.
>
> (e)The board may adopt regulations for the purpose of implementing this section, which are consistent with the intent of the section; namely that the public be informed of the issues that are being negotiated upon and have full opportunity to express their views on the issues to the public school employer, and to know of the positions of their elected representatives.

teacher to address a school district governing board at a public meeting regarding a proposal the district was negotiating with an exclusive representative.

Based on the foregoing discussion, it is concluded that the District refused or failed to meet and negotiate in good faith with CSEA both when it unilaterally deleted a significant portion of the tentative agreement and ratified only the remainder, and when the District's negotiator failed to support the total tentative agreement, in violation of section 3543.5(c). It is also concluded that the District did not violate section 3543.5(c) when it allowed members of the public to address it at the December 14 meeting.

CSEA argues that the District also violated section 3543.5(b) by its actions in that CSEA was denied its right under section 3543.1(a) to represent its unit in their employment relations with the District because the District refused or failed to meet and negotiate in good faith with CSEA.[8] However, having found a violation of section

[8]Section 3543.1(a) provides:

> Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

3543.5(c), the Board does not also find a derivative violation of section 3543.5(b). Section 3543.5(c) specifically addresses the refusal or failure to meet and negotiate in good faith. It is unnecessary to find that section 3543.5(b) was also designed to protect that right since such a finding would not afford additional relief to CSEA.[9]

The District argues in its defense in the present case that the governing board did not vest in its negotiator authority to reach a full and binding agreement on contract terms with CSEA, that CSEA knew the governing board would have to ratify the tentative agreement, and that the action taken by the governing board was consistent with the parties' "Agreement for Negotiations." This argument does not, however, address the real issue presented by this case, which is whether it was proper for the District to unilaterally sever the organizational security provision from the tentative agreement and ratify only what remained.

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[9]See Magnolia School District (6/27/77) EERB Decision No. 19.

The National Labor Relations Board finds derivative violations of section 8(a)(l) when it finds violations of section 8(a)(2), (3), (4) and (5) of the LMRA. However, the relevant statutory language of the LMRA is different than in the present case, and the finding of derivative violations is based on the legislative history underlying the LMRA. Art Metals Construction Co. v. NLRB (1940) 109 F.2d 945 [6 LRRM 732]. See also, Oberer, The Scienter Factor in Sections 8(a)(l) and (3) of the Labor Act; Of Balancing, Hostile Motive, Dogs and Tails (1967) 52 Cornell Law Quarterly 491.

REMEDY

As a remedy for the violations, the Board orders that the parties shall return to the negotiations table, should CSEA so request, to negotiate any and all proposals presented by CSEA on subjects within the scope of representation in return for CSEA's loss of the organizational security provision. The present agreement shall remain in effect until superseded by any subsequent agreement reached by the parties. The District's negotiator shall endorse and support any tentative agreement presented to the governing board for ratification.

The District will be required to post copies of the order. Section 3541.3 provides:

> The Board shall have all of the following powers and duties:
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> . . . . . .
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> (i) To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.
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> . . . . . .
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> (n) To take such other action as the board deems necessary to discharge its powers and duties and otherwise to effectuate the purposes of this chapter.

And section 3541.5 provides:

> The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the Board ....
>
> . . . . . .
>
> (c) The Board 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.

The Board finds that to effectuate the policies and purposes of the EERA, it is important that the employees affected by this decision and order be notified of their rights under the EERA and the findings of the Board in relationship thereto. Posting copies of the order will inform the District's employees that the District's conduct of partially ratifying the tentative agreement violated the EERA.

A posting requirement has been upheld by the United States Supreme Court interpreting section 10(c) of the Labor Management Relations Act, as amended,[10] which is nearly identical to section 3541.5(c), in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415]. New York's highest court has upheld a posting requirement ordered by the New York Public Employment Relations Board against a public agency. City of Albany v. Helsby (1972) 327 N.Y.S.2d 658 [79 LRRM 2457].

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[10]The Labor Management Relations Act (hereafter LMRA) amended the National Labor Relations Act and, as amended, is codified at 29 U.S.C, sec. 151 et seq.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

1. The partial ratification by the Placerville Union School District of the tentative agreement between it and California School Employees Association, Chapter 658, excluding

the organizational security clause, constitutes a refusal or failure to meet and negotiate in good faith in violation of Government Code section 3543.5(c).

2. The District negotiator's failure to endorse and support the total tentative agreement when it was presented to the District's governing board for ratification, contrary to his agreement with CSEA that he would endorse and support it, constitutes a refusal or failure to meet and negotiate in good faith in violation of Government Code section 3543.5(c).

3. The District and CSEA shall return to the negotiations table, should CSEA so request, to negotiate any and all proposals presented by CSEA on subjects within the scope of representation;

4. The agreement ratified by the District's governing board shall remain in effect until superseded by any subsequent agreement reach by CSEA and the District.

5. The District's negotiator shall endorse and support any tentative agreement presented to the District's governing board for ratification.

FURTHER, The Public Employment Relations Board ORDERS that Placerville Union School District shall:

1. Prepare and post copies of this Order at each of its school sites for 20 workdays in conspicuous places, including all locations where notices to employees are customarily placed;

2. Notify the Sacramento regional director of the Public Employment Relations Board of the actions it has taken to comply with this Order.

By Raymond J. Gonzales, Member

Harry Gluck, Chairperson

Jerilou Cossack Twohey, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD

STATE OF CALIFORNIA

In the Matter of:	) Unfair Practice
	) Case No. S-CE-36
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,	)
	)
Charging Party,	)
	)
-vs.-	)
	)
PLACERVILLE UNION SCHOOL DISTRICT,	)
	)
Respondent.	)
	)

Appearances: Gifford D. Massey, for California School Employees Association; Edna E. J. Francis, Attorney (Paterson and Taggart), for Placerville Union School District.

Before Sharrel J. Wyatt, Hearing Officer.

STATEMENT OF THE CASE

On January 28, 1977, California School Employees Association (hereinafter Charging Party) filed an unfair practice charge against Placerville Union School District (hereinafter Respondent) alleging violation of Government Code Section 3543.5(b) and (c) [1] with the Educational Employment Relations Board.

Charging Party essentially alleges that an agreement was negotiated with the Respondent and that the Respondent,

[1] All references are to sections of the Government Code unless otherwise indicated.

at the regularly scheduled meeting of its Governing Board, refused to approve the agreement which contained a security-clause and refused to sever the organizational security . agreement from the remainder of the agreement and allow a vote of the members in the negotiating unit. After severing the organizational security clause, the Respondent allegedly ratified the balance of the agreement.

Respondent filed an answer in which it essentially admitted the above allegations and alleged that, pursuant to the negotiation procedures agreed to between the parties, all agreements were tentative only until ratified by the Respondent's Governing Board.

An informal conference was held on March 24, 1977 and a formal hearing on April 27, 1977. At the formal hearing, the parties entered into a stipulation of facts.

FINDINGS OF FACT

Respondent is located in El Dorado County and has an average daily attendance of approximately 1100 students attending three schools. In May of 1976, Respondent recognized Charging Party as the exclusive representative for all classified employees excluding management, confidential and supervisory positions. After presentation of Charging Party's initial proposal and a public meeting to present the proposal, the parties commenced to bargain. At their first negotiating session, the parties signed an "Agreement for Negotiations" which provided, in pertinent part, as follows:

"2(a). There shall be no final agreement on particular portions of the contract being negotiated by the parties until a total written agreement on all parts of the contract is reached and ratified. However, as written proposals are considered by the parties, tentative written agreements on various articles and/or sections of the contract being negotiated may occur. These tentative written agreements shall only become final and binding on the Board of Education after they have been submitted to, received by, and ratified by the Board of Education, such ratification being subsequent to the Board's prompt receipt of an official and signed letter from the Placerville Association of Classified Employees verifying the Placerville Association of Classified Employees complete and total ratification of the agreed-to contract between the parties.

3. The Negotiators for both Board of Education and the Placerville Association of Classified Employees agree to endorse and support the total tentative agreement at ratification.

4. The Placerville Association of Classified Employees agrees that members of its negotiating team are authorized to negotiate and make tentative agreements for the Association subject to ratification by the Association.

7. As tentative agreements are reached, they shall be initialed by the Placerville Association of Classified Employees and the Board's representatives."

Charging Party's initial proposal contained a proposal relating to organizational security. During negotiations, Respondent's negotiator, with the awareness of Respondent's Governing Board, presented a counter-proposal relating to organizational security. The final tentative agreement reached by the parties' negotiators in November of 1976 contained an organizational security clause.

The parties then signed a memorandum of understanding which provided for retroactive pay in the December salary warrant based on the tentative agreement they had reached. The memorandum

of understanding recognized that Charging Party would need to obtain membership ratification and legal review of the tentative agreement subsequent to ratification by the Board of Education and provided for pro-rata repayment of the retroactive pay from future salary warrants in the event that ratification was not obtained.

When the Governing Board met on December 14, 1976, the Respondent's negotiator recommended that the Governing Board ratify the agreement reached by the parties. Members of the public who were present at the meeting of the Board of Education voiced opposition to the organizational security clause and, following executive session, the Board of Education voted to table ratification of the tentative agreement until they could consult with legal counsel. Thereafter, on January 11, 1977, the Governing Board met and ratified the tentative agreement reached by the negotiators for the parties excluding the organizational security clause.

The stipulated facts do not reflect refusal by Respondent to sever the organizational security clause for a separate vote by the members of the appropriate negotiating unit.

ISSUE

Whether the Respondent violated Section 3543.5(b) or (c) of the Act by failing to ratify the tentative agreement reached by the parties including the organizational security clause.

CONCLUSIONS OF LAW

There is no allegation nor is it argued that Respondents refused or failed to meet and negotiate in good faith or denied to Charging Party rights guaranteed to it by the EERA up to the time that the tentative agreement reached by the parties was acted upon by the Respondent's Governing Board. The unfair charges arise out of an alleged breach of the Agreement for Negotiations entered into by the parties. It is undisputed that Respondent received the entire tentative agreement, severed the organizational security clause, and "ratified" the balance of the tentative agreement.

Charging Party argues:

1. that Respondent was obligated to ratify or reject the agreement negotiated by its designated representative in toto;

2. that in failing to ratify or reject the agreement in toto, Respondent unilaterally took away a clause gained by Charging Party in the give and take of negotiating.

The Agreement for Negotiation provides that the tentative agreement reached by the parties shall only become final and binding after it has been "submitted to, received by and ratified by the Board of Education." It further provides that such ratification shall be <u>subsequent</u> to the Board's prompt receipt of an official signed letter from Charging Party verifying complete and total ratification.

In the Memorandum of Understanding entered into between the parties on November 29, 1976, they agreed to implement retroactive pay based on the tentative agreement they had reached. They also reversed the sequence for ratification and provided for membership ratification by Charging Party subsequent to ratification by the Board of Education.

Thus the parties had agreed to reverse the order in which ratification was to occur, placing the burden on the Respondent to act first.

"Meeting and negotiating" means meeting, conferring, negotiating and discussing...in a good faith effort to reach agreement on matters within the scope of representation,"[2] and, like the Labor Management Relations Act,[3] as amended(LMRA), good faith negotiations do not require that the parties reach agreement, but that each party make a good faith effort to reach agreement.[4]

The Agreement for Negotiations entered into between the parties contemplates that neither side was authorized to enter into a binding agreement. Each side was to work toward tentative agreement which would then have to be ratified.

Under LRMA precedent, refusal to ratify a contract to which representatives had tentatively agreed because of the union security clause was held not to be a violation of that act by the NLRB. (Milwaukee Electric Tool Corporation, (1954), 110 NLRB 977). There, as here, each side had sufficient authority to accept

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[2]Section 3540.l(h).

[3]Section 8(d).

[4]NLRB v. American Insurance Co., (SSC 1952), 30 LRRM 2147, at 2149.

tentative commitments which each deemed would have a strong likelihood of acceptance and there, as here, there was no evidence of motivation in opposition to collective negotiations.

Ratification in this context contemplates acceptance of all of the terms and conditions of the tentative agreement which had been reached by the representatives of the parties. It is basic to contract law that an acceptance must conform to the terms of the offer and must not propose new terms. If acceptance varies from the offer, it is no longer an acceptance, but constitutes a counter-offer[5] and a rejection.[6]

Thus ratification by the Respondent's Governing Board of something less than the entire tentative agreement reached by the representatives of the parties is a rejection and a counter-offer. Charging Party, at its option, may treat such an action as a counter-offer and accept it by means of the ratification procedure set forth in the Memorandum of Understanding of November 29, 1976, or Charging Party may treat a ratification that varies the terms of the tentative agreement as a rejection and request that Respondent meet and negotiate. Since the record does not reflect that Respondent refused to meet and negotiate subsequent to rejection of the tentative agreement, no violation of Sections 3543.5(c) is found.

The stipulated facts do not reflect that Respondents refused to sever the organizational security clause for a separate vote

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[5]Apablasa v. Merritt and Co., (1959), 176 CA 2d 719, 726, 1 C.R. 500. Howard v. Chow (1938) 27 CA 2d 755, 757, 81 P. 2d 994. Also see Civil Code Section 1585.

[6]Landberg v. Landberg (1972), 24 CA 3d 742, 752, 757, 101 C.R. 335.

by members of the appropriate unit. Since the right to have the organizational security clause severed and voted upon separately vests in the public school employer under Section 3546(a)[7] and not the exclusive representative, such a refusal by a public school employer would not be a denial of rights guaranteed to employee organizations in violation of Section 3543.5 in any event. Thus, no violation of Section 3543(b) is found.

RECOMMENDED ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record of this case, and pursuant to Government Code Section 3541.5(c), it is hereby ordered:

1. The unfair practice charge against the Placerville Union School District is hereby DISMISSED.

Pursuant to Title 8, California Administrative Code Section 35029, this recommended decision and order shall become final on Sept. 14, 1977, unless a party files a timely statement of exceptions. See 8 Cal. Admin. Code Sec. 35030.

Dated: September 2, 1977

Sharrel J. Wyatt
Hearing Officer

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[7]Section 3546(a) states: "An organizational security arrangement, in order to be effective, must be agreed upon by both parties to the agreement. At the time the issue is being negotiated, the public school employer may require that the organizational security provision be severed from the remainder of the proposed agreement and cause the organizational security provision to be voted upon separately by all members in the appropriate negotiating unit, in accordance with rules and regulations promulgated by the board. Upon such a vote, the organizational security provision will become effective only if a majority of those members of the negotiating unit voting approve the agreement. Such vote shall not be deemed to either ratify or defeat the remaining provisions of the proposed agreement."