STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

PALM SPRINGS TEACHERS ASSOCIATION,	
Charging Party,	Case No. LA-CE-1148
v.	PERB Decision No. 249
PALM SPRINGS UNIFIED SCHOOL DISTRICT,	September 30, 1982
Respondent.	

Appearances: Charles R. Gustafson, Attorney for the Palm Springs Teachers Association; Charles R. Field, Attorney {Best, Best & Krieger) for the Palm Springs Unified School District.

Before Gluck, Chairperson; Morgenstern and Jensen, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Palm Springs Unified School District (District) to the attached hearing officer's proposed decision. The District excepts to the hearing officer's conclusion that the unilateral increase of girls' athletics coaches' salaries was a violation of subsection 3543.5(c) of the Educational Employment Relations Act {EERA).[1] They also

[1]EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code, unless otherwise specified.

Subsections 3543.5(a), (b) and (c) provide as follows:

except to the finding that the unilateral change was a concurrent violation of subsections 3543.5(a) and (b) of EERA.

The Board has considered the entire record in this case in light of the exceptions. We affirm the findings of fact and conclusions of law made by the hearing officer to the extent that they are consistent with this opinion.

The Palm Springs Teachers Association (Association) had charged that the unilateral change was a separate violation of 3543.5(a), in that the District discriminated against Association members. The parties did not present arguments on this charge; the hearing officer made no finding on the charge, and no exceptions were filed to the hearing officer's failure to make a finding. We find no evidence to support such a charge and hereby dismiss it.

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (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.

REMEDY

The hearing officer ordered the District to post a cease and desist order, and that the posting include all of the language of subsection 3543.5(a). The District contends that the posting makes it appear that the District is in violation of all proscriptions of the subsection.

The Board has long held that conduct which constitutes a unilateral change in violation of subsection 354 3.5(c) is concurrently a violation of subsection 3543.5(a) because it is a derogation of the duty to negotiate with the exclusive representative and necessarily interferes with the employees in the exercise of protected rights. San Francisco Community College District (10/12/79) PERB Decision No. 105.

The facts of this case do not indicate any other violation of subsection 3543.5{a) beyond the interference with the exercise of protected rights. We, therefore, hold that the language of the proposed posting is overbroad and is herein modified to reflect more specifically the nature of the violation.

ORDER

Upon the foregoing finding of facts, conclusions of law, and the entire record in this case, and pursuant to Government Code subsection 3541.5 (c), it is hereby ORDERED that Palm Springs Unified School District and its representatives will:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action on matters within the scope of representation, as defined by section 3543.2, with particular reference to the modification of the salaries of coaches of girls' athletics.

2. Denying the Palm Springs Teachers Association its right to represent unit members by failing and refusing to meet and negotiate about matters within the scope of representation.

3. Interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

Within thirty (30) calendar days after the date of service of this decision, prepare and post copies of the Notice to Employees, attached as an appendix hereto, for thirty {30) workdays at its headquarters offices and in conspicuous places at the locations where notices to classified employees are customarily posted. It must not

be reduced in size, and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

Chairperson Gluck and Member Jensen concurred.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-1148, Palm Springs Teachers Association v. Palm Springs Unified School District, in which all parties had the right to participate, it has been found that the District violated Government Code subsections 3543.5{a), (b) and (c) by unilaterally modifying the salaries of coaches of girls' athletics.

As a result of this conduct, we have been ordered to post this Notice and will abide by the following. We will:

A. CEASE AND DESIST FROM:

(1) Failing and refusing to meet and negotiate in good faith with the exclusive representative by taking unilateral action on matters within the scope of representation, as defined by section 3543.2.

(2} Denying the Palm Springs Teachers Association its right to represent unit members by failing and refusing to meet and negotiate about matters within the scope of representation.

{3} Interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

Dated:

PALM SPRINGS UNIFIED SCHOOL DISTRICT

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

PALM SPRINGS TEACHERS ASSOCIATION, Charging Party, v. PALM SPRINGS UNIFIED SCHOOL DISTRICT, Respondent.	)	UNFAIR PRACTICE Case No. LA-CE-1148 PROPOSED DECISION {1/26/81)

Appearances: Charles Gustafson, Esq., for the Palm Springs Teachers Association; Charles Field, Esq., {Best, Best & Krieger) for the Palm Springs Unified School District.

Before Terry Filliman, Hearing Officer

PROCEDURAL HISTORY

On May 6, 1980, the Palm Springs Teachers Association {hereinafter Association or Charging Party) filed an unfair practice charge against the Palm Springs Unified School District (hereinafter District) alleging a violation of section 3543.5{a), (b) and (c)[1] of the Educational Employment Relations Act.

The charge alleges that during the 1979-1980 school year the District unilaterally increased the salary of certain unit members serving as coaches of girls' sports while retaining the

[1]The EERA is codified at Government Code section 3540 et seq. All future references are to the Government Code unless otherwise indicated.

existing salary for other coaches as set forth in the existing collective bargaining agreement. This salary increase awarded to some nonmembers of the Association is alleged to have discriminated against the organization and its membership.

The District filed an answer denying the charge on June 19, 1980. The parties failed to resolve the matter at an informal conference on June 23, 1980, and the case was set for formal hearing on October 10, 1980.

In an effort to expedite a decision, the parties agreed to waive a transcript and to consider immediate findings of fact made by the hearing officer. The parties were afforded an opportunity to object to tentative findings and file briefs regarding legal conclusions.

FINDINGS OF FACT

A* History of Coaching Salaries

The Association is an employee organization and the District is a public school employer within the meaning of section 3540.1 of the EERA.

The parties executed a three-year collective bargaining agreement effective from September 1, 1976 through August 31, 1979. The agreement fixed the wages for teachers for the first two years and allowed a reopener for wages during 1978-79 school year. The contract incorporated a certificated employees' salary schedule and a separate schedule of lump sum payments for various extended workday duties including coaching

(Association exhibits 2 and 2-B), The supplementary schedule listed each boys and girls coaching assignment separately by sport. A separate lump sum salary was provided for coaching each sport for a season based upon a weighted factoring system. The salary determining factor assigned to each sport was based upon the complexity of the sport, the number of students participating, the number of contests, etc. For example, the coach of girls' freshman basketball was paid $325.00 per season because the sport was given a factor of 2.7 while the coach of boys' varsity basketball was paid $950.00 based on a 6.7 factor.

Of the sports offered by the District at the junior high and high school levels, a few are offered for boys only (wrestling, water polo, handball), and a few are offered for girls only {volleyball, gymnastics, softball). In six sports the District sponsors separate or co-ed teams for boys and girls. The sports are cross-country, track, basketball, tennis, badminton and swimming. When the contract was negotiated in 1976, unit members coaching girls' teams in each of these sports received a lower salary than boys' coaches based upon the factoring system. For those sports relevant to this case, the difference in salary between the coaching assignments were:

Sport	Salary	Factor
Varsity Basketball (B)[2]	$950.00	(6.7)
Varsity Basketball (G)	$740.00	(5.3)
Varsity Tennis (B)	$800.00	(5.6)
Varsity Tennis (G)	$710.00	(5.0)
Junior Varsity Basketball (B)	$710.00	(5.2)
Junior Varsity Basketball (G)	$500.00	{3.6)
Frosh Basketball (B)	$575.00	(4.2)
Frosh Basketball (G)	$325.00	(2.9)

(Association exhibit no. 2)

Between 1976 and 1978 several sports were added as student interest increased. In addition, title 9[3] was adopted by Congress to enhance the participation of women in sports in public educational institutions.

In February 1978 the parties commenced negotiations for the basic and extended workday salary reopeners under the third year of the 1976 contract. The parties failed to reach an early agreement and the negotiations continued for 15 months until June 26, 1979. On that date they extended the 1976 contract for one year without significant change and the employees received a salary increase for 1979-80. No adjustments were made to the extra-duty salary schedule. Thus, despite the addition of new coaching assignments and the changes in coaching duties mandated

[2](B) boy's team; (G) girls team.

[3]Title 9 is the popular name for a portion of Public Law codified at 20 U.S.C. 1681 (Pub.L,No. 92-318), adopted in June 1972 and implemented by federal regulation 45 C.F.R. 86.1 et seq.

by title 9, the same coaching salary schedule has remained in place for the past four years.

The parties dispute whether side agreements were reached concerning certain coaching duty changes and salary changes during negotiations in 1978 and 1979 which were never reflected in the extended workday salary schedule when readopted in June 1979. This dispute is resolved elsewhere herein.

B. Changes in Coaches Salaries 1979-80

The Association alleges that of the six frosh and varsity coaches who coach girls' teams similar to boys' teams, the District unilaterally increased the salary of four coaches during 1979-80 while refusing to increase the salary of two others. Of the four who received increases, three were not Association members. The two coaches not receiving increases were Association members. The coaches receiving increases were Larry Zino, Chris Monica, Dave Willson, and Barbara Jo Graves. Randy Svoboda and Victoria Kilgore, who coached girls' frosh basketball, received no increase.

1. Changes in Basketball Coaches Salary

While the facts surrounding the salary increase of coaches Zino and Monica are different than those accounting for the increase of coaches Willson and Graves, the timing and impact of the federal title 9 requirements upon the salaries of all coaches of girls' sports added to the confusion of the case.

Without deciding its legal mandates, title 9 generally conditions federal funding for education upon a commitment of substantial parity of effort and financial resources between male and female participation in athletics. While the law was adopted in 1972 its implementation through federal rules and state and local task forces has proceeded in phases. A plan to implement title 9 was before the District in 1979-80 at the same time the coaches' salaries were changed.

Marge Johnson has taught physical education in the District and has been a member of the Association for years. During the 1978-79 and 1979-80 school year she was temporarily appointed assistant principal at the high school, a position designated management. Her duties in that position included being athletic director. At the same time she served as title 9 coordinator for the District. During her temporary assignment Johnson refrained from participation in the Association but continued to pay dues.

As title 9 coordinator Johnson worked to assist the coaches of girls' sports and personally believed that title 9 mandated equal salaries between coaches of similar girls' *and* boys' teams. Based upon this belief Johnson told Larry Zino in September 1979 and Victoria Kilgore in November 1979, when they inquired, that their coaching

salaries would be increased for the 1979-80 school year to be comparable to that of the boys' coaches in their sport.

As athletic director, Johnson was responsible for turning in a payroll form to the District indicating the name of the high school coach and the salary to be paid from the extended workday salary schedule. The form was necessary prior to each coach being paid a lump sum at the end of the coaching season. Based upon her understanding of a September 1979 discussion with Jim Workman, director of certificated employees, Johnson unilaterally increased the salary turned in for Larry Zino, girls' varsity basketball coach, and Chris Monica, girls' junior varsity basketball coach to be equivalent to the boys' coach, These two were the first girls' team coaching assignments to be concluded during the school year at the high school.

Girls' basketball at the junior high level for the 1979-80 season was coached by Randy Svoboda and Victoria Kilgore. As Johnson was not responsible for athletics at the junior high level, she did not turn in forms for these two coaches. Apparently the person responsible turned in the forms indicating the salary for girls' frosh basketball and boys' frosh basketball based on the extended day salary schedule for Svoboda and Kilgore. The salary difference is $250 between the boys and girls assignment.

The discussion between Johnson and Workman to authorize the increased payment to Zino and Monica is disputed. Johnson testified that while Workman did not say precisely that the girls' coaches would receive a salary increase in 1979-80 due to title 9, she understood his comments to mean that. Workman testified that he confirmed the District's intent to comply with title 9, but that he meant no final decision on the exact salaries at that time. Workman's version is accepted because he had been a participant in negotiations in the spring of 1979 to change the coaches' salaries in part in response to title 9. The plan negotiated provided comparable salaries between boys and girls coaches based upon recognized differences in responsibilities. Even though the negotiated change was not finalized, it shows that Workman knew that the subject had to be negotiated. Thus, it is likely that Johnson confused his expression that title 9 would be implemented by the District.

Workman also testified that when he received the payroll forms from Johnson for Zino and Monica he inadvertently signed them without noting that the salary proposed was higher than the girls' coaching salary on the extended day schedule.

Following the end of the basketball season in March, Zino received a check for $950.00, the same salary

authorized to be paid the boys' varsity basketball coach. The contract provided that he should have been paid $740.00. Monica received $710.00, the salary for the boys' junior varsity basketball coach. He was contracted to receive $500.00. Svoboda and Kilgore received $325.00 for coaching frosh girls' basketball while the boys' frosh coaches received $575.00.

On March 25, 1980, Svoboda and Kilgore filed grievances with the District claiming the inequity was a violation of the contract and title 9 (Association exhibit no. 1). On April 24, 1980, Workman notified Monica and Zino that they had *been* overpaid in error, His letter inferred that the District had not known of the increased payment to Zino and Monica prior to the filing of the grievance (Association exhibit no. 3). On that date the District demanded repayment of the excess amount. The two employees testified that because of legal advice and the filing of the unfair practice charge they have not yet repaid the amount.

Although designated management by the District, nothing in the record supports a finding that Marge Johnson was a management employee[4] as defined by the EERA while

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[4]Section 3540.l(g). See also Lompoc Unified School District (3/17/77) EERB Decision No. 13.

serving as athletic director. Johnson may or may not have been acting as a supervisor. Such a determination is not necessary because her actions in filling out the coaching salary request forms and talking to Zino and Monica about their salary are found to be ministerial acts rather than actions requiring independent judgment. Johnson indicated she filed for the higher salaries for Zino and Monica based upon her understanding that the change was authorized by Workman. Although the change in Zino's and Monica's salaries were based upon a confusing but honest set of circumstances rather than upon animus against the Association, their salaries were nevertheless unilaterally increased by the District. Workman is a management employee and must be held to his action in fact of approving the increases despite his claim of unintentional error. Any attempted recission of the salary increase must be considered as a legal defense.

2. Changes in Track and Tennis Coach Salaries

While the increase in salaries of the girls' track and tennis coach in 1979-80 appeared to be interrelated to the increase in salaries of the basketball coaches described above, it is found that the incidents in fact were not closely related. Dave Willson has been the boys[1] track

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[5]Section 3540.1(m).

coach for several years. He has also been a member of the Association. In 1978-79 new girls' track and cross-country teams were formed clue to student demand. Willson volunteered for the extra coaching jobs without salary. During November 1978 Willson approached Frank Castner, Association negotiator, to request the District to negotiate a salary for coaching girls' track.

Castner and the District agree that an agreement was made to temporarily increase Willson's salary by $160 for coaching both the boys and girls varsity track teams for the 1978-79 school year. They presented extremely conflicting testimony as to whether the agreement was a verbal side agreement to the contract not required to be ratified by the Association or whether it was a tentative agreement reached during negotiations for salary reopeners in February 1979. The conflicting evidence is not restated here because: (1) The parties' testimony and exhibits (Association exhibit no. 5) indicated that the increase was a temporary one for the 1978-79 season and (2) Willson testified he did not receive the salary increase during the spring of 1979 for the 1978-79 duties. The District's version of the tentative agreement also indicated that following the 1978-79 year a separate girls varsity track coaching assignment would be paid $800. (Association exhibit no. 5.) Willson testified that he did receive an

extra $160 in the spring of 1980 for coaching both track teams during the 1979-80 season. The $160 does not relate directly to the coaches' salary schedule In that no category is listed for girls varsity track.

Whether or not as under Caster's view, the parties reached a binding verbal agreement or under the District's view they reached a written tentative agreement during negotiations, it is apparent that the 5160 increase in salary for the track coach was to be in effect only for the 1978-79 school year. The tentative agreement was not ratified by the Association membership as was required by the ground rules for negotiation. Even if ratified, it would not have authorized the District to wait over one year until the spring of 1980 to implement the $160 increase. Such action would also have modified the tentative agreement which required a new varsity girls track assignment to be placed on the salary schedule as a separate position and paid at a rate of $800. Under any interpretation the District's action in paying Willson an additional $160 during the spring of 1980 was a unilateral act not authorized by any agreement between the parties.

Barbara Jo Graves was the girls[1] varsity tennis coach. In 1979 the District started a co-educational badminton team and Graves agreed to coach it. The salary schedule did not provide for the new team. According to

the salary schedule, Graves should have received $710.00 to coach girls' tennis. In December 1979 she received a check for $800.00 for coaching the sport. This was an amount equal to the salary the boys' tennis coach received. Graves is not a member of the Association. While Graves testified that she thought she received the increase because of the mandates of title 9, no District employee told her why it was granted. Mo one testified as to the reason for the increase.

The parties also differ on whether a tentative agreement was reached to increase the salary of the girls' tennis coach during the January-February 1979 negotiation sessions. Castner testified that the parties reached a tentative agreement on a restructuring of the extra-duty pay schedule to equalize salaries for coaches of women's sports. He stated that while the exact salary increase for all coaches was not discussed because of the freeze imposed by the Legislature on salary increases, the parties agreed in principal on the restructuring and realignment. He also stated that the discussion of a salary increase for the girls' tennis coach was only an example of increases to be granted to all coaches of women's sports and was never agreed upon separately. Charles Field, attorney for the District, and Jim Workman testified that a separate agreement was reached to increase the girls' tennis coach's

salary. Neither recalled why the increase was agreed upon for the tennis coach alone bat both indicated that the Association had raised the matter.

In a February 8, 1979, letter to the District superintendent, Field summarized the tentative agreements reached between the parties as to the track coach and the tennis coach along with four other tentative agreements providing office space and release time to the Association among other benefits. The letter stated "Upon ratification by a PSTA, duly transmitted in writing to the District, I recommend that the Board ratify the below provisions . . . ." Workman also testified that he understood that all tentative agreements including changes in the track and tennis coach salaries were required to be ratified by the Association membership.

The months immediately following the reaching of the several tentative agreements in February 1979 reveal a frustrating and confusing pattern of communication between the parties. Shortly after the agreements were reached, the California Supreme Court overturned the statutory freeze upon public employee salary increases and the parties commenced negotiating a salary increase. The District operated under three superintendents during the negotiations. The parties proceeded through impasse and factfinding. In June 1979, following 15 months of

negotiations, the Association changed its entire negotiating team and officers. When a salary increase was agreed upon in June 1979 and the prior contract extended for an additional year, the parties apparently made no mention of the tentative agreements reached the prior February. The current officers of the Association claim no knowledge of either Castner's authority to reach a side agreement over certain coaches' salaries or any tentative agreements reached on issues other than salary. Such events do not immunize the Association from being bound by any agreements reached by the predecessor negotiators if such agreements were ever ratified. Ratification was understood to be a ground rule by both parties. In fact, the tentative agreements were never presented to the Association membership for ratification.

Based upon the above facts, it is unnecessary to determine whether a tentative agreement was reached over the girls' tennis coach alone or regarding a readjustment of all coaches of girls' sports in February 1979. Workman testified that the District had in fact implemented the salary increases for the track and tennis coaches and each of the other tentative agreements reached by the parties. No matter what the scope of the tentative agreement regarding the coaches of girls sports, such agreement was neither ratified by the Association nor incorporated in the

successor contract. The action of the District in paying Barbara Joe Graves an increased salary in December 1979 was a unilateral change, as was the extra payment to Dave Willson during the 1979-80 school year.

ISSUES

Did the District unilaterally change the extra-duty pay of Coaches Zino, Monica, Willson and Graves in violation of Government Code section 3543.5(a), (b) and (c).

CONCLUSIONS OF LAW

An employer's unilateral change of a matter within the scope of representation, without affording the exclusive representative notice of an opportunity to bargain on the matter is failure or refusal to bargain in good faith.[6] San Francisco Community College District (10/12/79) PERB Decision No. 105; San Mateo Community College District (6/8/79) PERB Decision No. 94; Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177J.

The District raises the defense that any unilateral action it took was a "de minimis" violation and should be dismissed.

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[6]Section 3543.5(c) states:

> It shall be unlawful for a public school employer to:
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> (c) Refuse of fail to meet and negotiate in good faith with an exclusive representative.

The Public Employment Relations Board {hereafter PERB) has recognized that under certain circumstances a technical refusal to bargain may nave such minimal impact that no violation may be found. In Muroc Unified School District (12/15/78) PERB Decision No. 80 the Board held that a "de minimis" or technical violation with no discernible impact, and which is immediately retracted is scant evidence of a refusal to negotiate. In Muroc an employer's brief conduct at a single negotiating session which was soon retracted was not found sufficient to constitute "surface bargaining."

The Muroc precedent applies where "good faith" of a party in its overall bargaining conduct is being decided. In contrast PERB, following the National Labor Relations Board, has adopted a "per se" view of a unilateral action rather than reviewing the subjective intent of the wrongdoer.

Furthermore, the later reversal or recission of a unilateral action or subsequent negotiation on the subject of a unilateral action does not excuse a violation. Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74,

The District cites a hearing officer decision, Moreno Valley Unified School District [7] (3/13/80) LA-CE-398 [4 PERC 11022] apparently to show that the agency has applied the "de minimis test" to unilateral actions. In Moreno a

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7The decision is on appeal and provides no precedent.

districtwide change in work schedule was rescinded before it was implemented. Inadvertently the schedule was implemented at one school for one hour before the error was caught and corrected.

The circumstances surrounding the District's two unilateral actions in the present case are not de minimis. The attempt by Mr. Workman to rescind the increase to Coaches Zino and Monica occurred only after other coaches filed a grievance over the matter. The first attempt to rescind the action occurred one month after its effect was known. In fact, no recission occurred and the increases have not been repaid.

The District's modification and/or unilateral implementation of the tentative agreements reached about salary increases to Coaches Willson and Graves are not validated by subsequent negotiations between the parties.

The fact that no direct negotiations occurred with the affected individuals or that no direct harm resulted does not remove the unlawful nature of the District's acts.

As stated in San Mateo Community College District (6/8/79) PERB Decision No. 94, unilateral actions are disfavored: (a) because of their destabilizing and disorienting impact on employer-employee affairs; (b) such actions derogate the representative's negotiating power and ability to perform as an effective representative in the eyes of employees and undermine exclusivity; (c) such action denigrates negotiations consistent

with statutory design under EERA; and finally, (d) such action unfairly shifts community and political pressure to employees and their organizations, and at the same time reduces the employer's accountability to the public. Thus, a violation of section 3543.5(c) is found.

A unilateral change in wages in violation of section 3543.5(c) necessarily interferes with the employee's rights to representation under section 3543.5(a) and denies the employee organization its rights of exclusive representation through section 3543.5(fo). San Francisco Community College District (10/12/79) PERB Decision No. 105. A violation of section 3543.5(a) and (b) is therefore found.

REMEDY

Under Government Code section 3541.5(c), the Public Employment Relations Board is given:

> . . .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, . . . as will effectuate the policies of this chapter.

In the present case, it has been found that the District has violated the EERA by unilaterally implementing an increase in the stipend of four coaches without meeting and negotiating, by denying the Association rights guaranteed by the EERA, and by interfering with and discriminating against members of the

unit because of the exercise of rights guaranteed by the EERA. Pursuant to the remedial powers of the PERB, it is appropriate to order the District to cease and desist from taking any unilateral action about extra-duty pay.

It is also an appropriate remedy to restore the parties to the status quo prior to the violation. Implementation of a remedy is difficult where the result of the violation was to award a well-deserved benefit to certain employees while depriving other employees of the benefit.[8] While the parties were specifically requested to propose an appropriate remedy, the Association proposed none.

PERB has no authority to require a payment to those coaches not originally receiving the unilateral increase.[9] On the other hand, the status quo between the parties cannot reasonably be achieved by requiring the District to demand repayment from Coaches Zino, Monica, Willson and Graves, The effect of such a remedy is that while the District committed the wrong, the repayment requirement would only serve to

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[8]Specifically, of the six coaches of girls' teams where boys' teams existed for the sport, four received temporary increases and two did not. It is unclear whether a coach of girls' swimming existed in 1978-79.

9The U.S. Supreme Court has held that it is improper for the government to determine a substantive contract term (H.K. Porter Co. v. NLRB (USSC 1970) 397 US 99 [73 LRRM 2561]) because the statutory structure favors private determination of contract terms and does not require the making of concessions.

undermine the exclusive representative further in the eyes of the employees.

The increases in coaching stipends were paid on a one-time basis. The parties also have recognized the need to negotiate over future restructuring of stipends to implement changes in coaching duties and title 9, federal law. The only remaining alternatives would be to authorize the Association to bargain on behalf of the remaining affected coaches for 1978-79 or allow the Association to elect repayment by coaches who received the increased stipend. Because the Association proposed no remedy, no retroactive bargaining or repayment will be ordered.

It is appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity and to restore the status quo. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and will announce the District's readiness to comply with the ordered remedy. See Placerville Onion School District (9/18/78) PERB Decision No. 69. In Pandol and Sons v. ALRB and UFW (1979) 98 Cal.App.3d 580, 587,

the California District Court of Appeal approved a posting requirement. The U.S. Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to section 3541.5(c), it is hereby ordered that the Palm Springs Unified School District, its governing board and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Threatening to or imposing reprisals on employees, threatening to discriminate against employees or otherwise interfering with, restraining or coercing employees because of the exercise of rights guaranteed by the EERA.

(b) Denying the exclusive representative its rights guaranteed by EERA by unilaterally increasing the extra-duty pay of certain coaches.

(c) Failing and/or refusing to meet and negotiate in good faith with the Association on matters within the scope of representation.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT.

(a) Within five (5) calendar days after this decision becomes final, prepare and post copies of the NOTICE TO

EMPLOYEES attached as an appendix hereto, for at least thirty (30) workdays at its headquarters offices and in conspicuous places at the location where notices to classified employees are customarily posted. It must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(b) Within 40 workdays from service of the final decision herein, give written notification to the Los Angeles Regional Director of the Public Employment Relations Board, of the actions taken to comply with this Order. Continue to report in writing to the Regional Director thereafter as directed. All reports to the Regional Director shall be concurrently served on the charging party herein.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on February 17, 1981, unless a party files a timely statement of exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief.[10] must be actually received by the executive assistant to the Board at the headquarters office of the Public Employment Relations Board in Sacramento before the

[10]Because the parties waived transcript to expedite this matter, they may request to defer filing briefs and instead request a transcript at the time the statement of exceptions is filed, if any.

close of business {5:00 p.m.) on February 17 , 1981, in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrent with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305 as amended.

Dated: January 26, 1981

W. Terry Filliman
Hearing Officer

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. LA-CE-1148, Palm Springs Teachers Association v. Palm Springs Unified School District, in which "all parties had the right to participate, it has been found that the District violated Government Code section 3543.5(a), (b) and (c).

As a result of this conduct we have been ordered to post this Notice, and will abide by the following. We will:

1. CEASE AND DESIST FROM:

{a) Threatening to or imposing reprisals on employees, threatening to discriminate against employees or otherwise interfering with, restraining or coercing employees because of the exercise of rights guaranteed by the EERA.

(b) Denying the exclusive representative its rights guaranteed by the EERA by unilaterally changing the extra-duty pay of certain coaches of girls' teams.

(c) Failing and/or refusing to meet and negotiate in good faith with the Association on matters within the scope of representation, specifically with respect to extra-duty pay for coaches.

Dated: _____

PALM SPRINGS UNIFIED SCHOOL DISTRICT

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.