

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



COAST CALIFORNIA TEACHERS
ASSOCIATION, CTA/NEA)

Charging Party,)

v.)

COAST COMMUNITY COLLEGE DISTRICT,)

Respondent.)

Case No. LA-CE-213

PERB Decision No. 251

October 15, 1982

COAST CALIFORNIA TEACHERS
ASSOCIATION, CTA/NEA,)

Charging Party,)

v.)

COAST COMMUNITY COLLEGE DISTRICT,)

Respondent.)

Case No. LA-CE-465

Appearances; A. Eugene Huguenin, Jr., Attorney (California Teachers Association) for Coast California Teachers Association, CTA/NEA; Dennis A. Gladwell, Attorney (Gibson, Dunn & Crutcher) for Coast Community College District.

Before Gluck, Chairperson; Morgenstern and Jensen, Members.

DECISION

GLUCK, Chairperson: In these cases, consolidated for a formal hearing and appeal, the Coast California Teachers Association CTA/NEA (CTA) alleges that the Coast Community College District (District) violated subsections 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA)¹

¹The EERA is codified at Government Code section 3540, et

by cancelling teaching assignments of certain employees because of their union activity.² Both parties have filed exceptions to the hearing officer's proposed decision.

CASE LA-CE-213

FACTS

The District consists of three campuses: Golden West, Orange Coast, and Coastline Colleges. It employs approximately 600 full-time faculty and 900 part-time instructors at its Golden West and Orange Coast campuses. The part-time instructors teach during evenings and weekends. Approximately 800 part-time instructors teach the entire curriculum at Coastline.

Employment decisions of part-time teachers are essentially autonomously made at the individual colleges. For example, the dean of instructional services at Golden West College (Loren Moll) and the chairperson of the technical division at Orange Coast College (Bill Abernathy) are authorized to renew contracts and to cancel classes of part-time teachers. The District does not consider such cancellations or failures to renew contracts to be discharges for cause and the campuses are not required to receive approval for such action from the District's vice chancellor of employment relations.

seq. Unless otherwise noted all statutory references are to the Government Code.

2A charge that one teacher received adverse performance evaluations for this reason was dismissed by the hearing officer and not raised on appeal by exception. See Government Code section 32300.

In 1976, CTA began organizing to become the exclusive representative of all of the District's certificated employees. Its efforts concentrated on part-time teachers and their apparent lack of job security. Part-time instructors are employed on a one-semester basis conditioned upon sufficient class enrollment, the possibility of being "bumped" by a full-time faculty member who is in need of a class and the District's determination that continuation of the class is not desirable. In 1977, the American Federation of Teachers (AFT) filed a petition to represent all certificated employees of the District. CTA filed an intervention petition which closely paralleled that of the AFT. The District opposed both petitions preferring separate units for full-time and part-time employees.

In October 1977, CTA created a ten-member campaign committee that included six part-time instructors: Christine Maitland, Alan Webber, Juliette Graff, Garnet Sandeen, George Willard and Carol Kingsberg.

Maitland and Webber

In December 1977, Moll decided to cancel Philosophy 100 which was one of two classes that Maitland was scheduled to teach in the coming spring 1978 semester. Maitland had begun teaching philosophy on a part-time basis in the District in 1974 and was one of two part-time philosophy instructors, Webber being the other, at Golden West College. There were three full-time philosophy teachers at that campus.

Maitland maintained a visible profile as a union activist. She participated in the CTA organizing campaign from its inception and was selected as chair of the CTA organizing committee in October 1977. She attended and spoke at several on-campus meetings where part-time issues were discussed. At a joint academic senate - Board of Trustees meeting in December 1977 she debated District officials on a matter which had appeared in the CTA newsletter, for which she was a principal writer. She also represented CTA in certain proceedings before this Board in 1977 and lobbied on behalf of her organization before the California Legislature.

In February and May 1977, Maitland, Graff and Sandeen had set up organizing stations in front of the faculty mailboxes at Golden West and Orange Coast Colleges where literature was distributed to the faculty and signatures in support of CTA were solicited. Each person had a name tag which clearly identified CTA, and a large brightly colored sign that said "CTA/NEA Faculty Power" was displayed at their stations. At Golden West College the administration offices were adjacent to this distribution site.

It is Maitland's contention that college officials, including Moll and his assistant, Bill Foley, had noticed her at the CTA organizing station as they walked to and from their offices. Moll testified that he does not remember CTA's distribution activities. He claimed that if he did meet or

converse with organizers he did not realize what they were doing since he regularly saw them and exchanged pleasantries going to and from his office.

He further claims that he cannot remember having discussions with anyone about Maitland's organizing activities or even whether she was involved with CTA or not. He knew that she was a member of the organization but did not recall when he learned of this fact. He attended no meetings when Maitland spoke and denies having ever discussed CTA activities with her. He received CTA newsletters in his mail but claims that with few exceptions he did not read them.

Other District officials did, however, observe Maitland's activities. The assistant dean of the evening program at Golden West attended a December 1976 CTA meeting and the dean of educational development, William Shawl, attended two Board of Trustees meetings at which Maitland appeared and spoke. The president of Coastline College met Maitland in Sacramento while she was there testifying before an Assembly committee and several other officials saw her at the PERB hearings. Further, Shawl kept a file of CTA literature as well as of other organizational materials which came across his desk, but contends he rarely read the material.

In the fall of 1977, Maitland taught Philosophy 100 and Philosophy 109 and was scheduled to teach both classes in the following spring semester. In late November Maitland realized

that she had not yet received her textbook requisition forms for the spring semester. These forms serve as notice to the part-time faculty that they will be teaching in that coming semester. Moll's office sends out these forms except to teachers about whom division chairpersons have some concern.

According to Maitland she called the division chairperson of the social science department, Ms. Brazier, to find out why her notice had not been forwarded. Brazier's secretary informed her that the form had been held up because of her evaluations. However, Brazier later informed Maitland that there were no problems with her evaluations and that Brazier did not know the reason for the delay.³

Maitland further testified that several days later Brazier told her that she would be teaching two classes in the next semester and asked if she would like to teach a class on "philosophy of love," a class that Webber was scheduled to teach.

On or about December 1, Maitland met with Moll. By the time of this conversation Moll had already discussed Maitland's situation with Brazier and learned that her evaluations were good. He confirmed to Maitland that she would probably be

³Brazier did not testify at the hearing.

teaching two classes in the spring and asked if she would consider teaching the philosophy of love class.

On or about December 9, Moll met with Brazier and Shawl who was in charge of faculty evaluations. This meeting was held to discuss the philosophy department and especially whether Maitland and Webber would be teaching in the coming semester. During this meeting reference was made to the lack of master's degrees among part-time teachers and to the department's generally declining enrollment. All three felt that Maitland had received good evaluations but Shawl felt that she had overreacted in a written response to the comments of one of the evaluators. He also considered Maitland to be under-qualified because she did not have a master's degree.⁴ Full-time teachers are required to have such a degree and Shawl wanted to maintain the same standards and quality of education for both the day and evening programs. Moll responded that Maitland was a good instructor and indicated that Brazier's opinion paralleled his.

Over the previous several semesters, the social science division, and the philosophy department in particular, was experiencing declining enrollment.⁵ In the spring of 1977

⁴At this time Maitland was enrolled in a PhD program but did not have a master's degree.

⁵Enrollment in the philosophy department for fall 1975 to fall 1977 was as follows:

the philosophy department cancelled one evening class and two part-time teachers were relieved of their assignment by a full-time instructor whose classes had been cancelled and who had bumping rights in order to maintain a full teaching load.

To avoid a recurrence of this problem in the forthcoming semester, Moll and the others decided to cancel Webber's evening section of Philosophy 125. They also discussed the possibility of cancelling Maitland's Philosophy 100 class and Webber's Philosophy 122. However, no decision was made on these matters during the course of that meeting.

Moll finally decided on December 14 to cancel both classes because of the generally low enrollment and the desire to improve daytime attendance. The District followed a general policy that 15 students would be the minimum number required to avoid cancellation of a part-time instructor's class and that classes with an enrollment of less than 20 may be cancelled.

Day Classes

Fall 1975	444
Spring 1976	414
Fall 1976	369
Spring 1977	384
Fall 1977	369

Evening Classes

Fall 1975	358
Spring 1976	285
Fall 1976	293
Spring 1977	276
Fall 1977	250

On the same day, Moll informed Maitland that she would be teaching only one class. He did not explain why the class was cancelled and claims that it was the policy of the school not to impart the reasons for such action to part-time teachers. Maitland asserts that Moll informed her that her lack of a master's degree was the reason for the cancellation. However, she later contradicted herself by saying that she did not learn why the class was cancelled until the PERB hearing.

After being informed that her class was cancelled, Maitland protested to the District's vice chancellor of employee relations and to the president. However, Moll's decision was not reversed.

Moll also cancelled two of Alan Webber's classes. He had been teaching at Golden West as a part-time philosophy instructor since 1974. He joined CTA in late January or early February of 1977. His organizational activities included attending the December 1976 CTA meeting and the March and December 1977 joint academic senate - Board of Trustees meetings where he spoke and asked questions. He occasionally assisted in stuffing mailboxes with organizational literature and at one time helped to print and distribute a newsletter. In October 1977 he was appointed as treasurer of the CTA organizing committee.

In the spring of 1977, Moll replaced Webber in a class that he had been assigned to teach with a full-time teacher who

needed a class to round out his schedule. Webber threatened to file a grievance and met with Garnet Sandeen, CTA's grievance representative. In March, Webber dropped the grievance, apparently because Moll had informed him that the loss of his class was temporary and that he would be teaching the same course during the following semester. Moreover, Webber was assigned to a new class on March 30, 1977 to replace a teacher who had resigned.

In November 1977 Moll suggested to Webber that he resign from the District for having falsified a time card. Webber had turned in a completed time card for his October 31 class. Because of Halloween and low attendance, he had dismissed that class early and had reconvened it at a local pizza parlor where a philosophy discussion had ensued. upon discovering that the class was vacant before the end of the scheduled period and that Webber had reported on his time card that he had taught the full three hours, Moll called Webber into his office. Webber contends that Moll immediately requested his resignation but Moll disputes this and said that he only requested the resignation after Webber told him that he did not dismiss his class until 9:15 or 9:30 p.m. He claims that he terminated people in the past for similar conduct and asserts that if Webber had been more forthright he would have only demanded that he correct the time card.

Webber appealed the resignation request to the vice chancellor for employee relations who decided that the resignation was unnecessary since Webber lacked an intent to falsify the card.

Subsequently, on November 14, a CTA newsletter reported Webber's version of the incident. Moll acknowledges that he read the story when it was brought to his attention.

Webber had been evaluated twice during the fall 1977 semester. On one evaluation he received "needs improvement" in two of nine areas, but was rated "satisfactory" overall. The evaluator, a sociology professor, suggested that he was not necessarily competent to conduct an evaluation of a philosophy instructor and suggested that a second evaluation be conducted. The second evaluator recommended that Webber was in need of overall improvement and was deficient in four areas. Prior to these occasions, Webber had received satisfactory evaluations.

Moll decided to cancel Webber's Philosophy 125 class, assertedly because of low enrollment, on December 9. The class had been offered in both day and evening sessions in the previous semester and both classes had enrollments of less than 14 students. Moll testified that the administration felt that it would be wise to cancel the evening class in the hopes that it would improve the daytime enrollment. On December 14, Moll cancelled Webber's other class, Philosophy 122, for the same

reason, although this course was not scheduled to be offered during the day. Again, Moll did not inform Webber of the reasons for his decisions, assertedly in accordance with District policy. Moll cancelled approximately 28 to 30 classes for the spring semester and during that semester more than 500 other classes were cancelled throughout the District.

With the cancellation of Webber's and Maitland's classes, Maitland's remaining course was the only philosophy course scheduled to be taught by a part-time instructor. However, in January of 1978, the District held interviews for a part-time instructor to teach Philosophy 111, assertedly because the full-time teacher scheduled to teach that class was unable to do so. A full-time teacher and mentor to Maitland and Webber testified that, contrary to standard District policy, no job announcement had been circulated within the department; rather, the division sent out letters to potential applicants. Neither Maitland nor Webber was offered the opportunity to apply for the job. There is no evidence in the record to indicate that they were qualified to teach the class. To the contrary, Webber's second evaluator testified that he did not think either teacher was qualified.

Graff

Graff began teaching Spanish in the District as a part-time instructor in the fall of 1976. She joined CTA in December of that year and her activities on behalf of the union included

attending the December 1976 CTA meeting and the March 1977 academic senate - Board of Trustees meeting though she did not speak at either affair. She did participate in the solicitation and distribution efforts at Golden West campus. She testified that she remembers seeing Moll and other administrators while she was performing in this function. She became a member of the organizing committee in October 1977 and helped to prepare a CTA organizing luncheon.

Moll disclaims any knowledge of Graff's CTA membership or activity prior to January of 1978 when he met with her and her CTA grievance representative concerning her termination. Moll testified that his decision not to reemploy Graff was based on a recommendation of the communications division chairperson who had earlier recommended Graff's dismissal in both the spring and fall semesters of 1977. Of the 40 to 45 teachers in this division, the chairperson considered Graff to be one of the three or four weakest.

Moll had not followed the chairperson's original recommendations because in the spring of 1977 he had already notified Graff that she would be reemployed and felt morally bound to honor this notice, and in the fall Graff had threatened Moll with a Title VII suit and Moll wanted to be sure that he could properly document her dismissal before taking such action.

During the evaluation period in the fall of 1977, a full-time Spanish instructor was assigned to observe Graff's performance. This instructor concurred with the chairperson's opinion that Graff was a weak teacher. Moll indicated that this information was one of the bases for his decision not to reemploy Graff.

Sandeen

Sandeen had been a part-time aviation teacher in the District since 1965, teaching at both Orange Coast and Golden West colleges. He joined CTA in 1976 and later became chair of its grievance committee and a member of its organizing campaign committee. He had represented other employees before various District administrators and had participated in the spring 1977 CTA literature distribution campaign.

Bill Abernathy became aware of Sandeen's activities with CTA when he attended a CTA function in November 1977. Abernathy, himself, has been a member of CTA for over 16 years and served for several years as its counsel representative at Coast College.

In the fall of 1977 two aviation instructors were assigned to evaluate Sandeen. The events surrounding the evaluation are in dispute. Sandeen claims that procedures followed by the evaluators were irregular because they came into his classroom unannounced to conduct an unscheduled evaluation, interrupted his class and told him that they had the power to hire and fire

him. He informed them that he was going to talk with CTA and the college president about these alleged inproprieties.

The evaluators acknowledged that they entered the classroom unannounced but contend that the division had notified Sandeen that the evaluation visits were going to take place. The evaluators attended both halves of the three-hour class, which was unusual, but claim that it was necessary because there had been little instruction during the first half of the class. They claim that after the class they had asked Sandeen to sit down with them to discuss his evaluation but that Sandeen had refused to do so and had terminated the conversation by threatening to "get" the evaluators by going to the union and the college president.

The following day Sandeen went to Abernathy to protest the evaluation. Abernathy said that he could not do anything about the matter until he received the evaluations. However, the evaluations were never forwarded because the required conference between evaluators and teacher did not occur.

On November 14 Sandeen's version of the attempted evaluation and his discussion with Abernathy appeared in the CTA newspaper without identifying the participants. On January 4, 1978 Abernathy wrote two letters to Sandeen. In the first he told Sandeen that he was bothered by the misquotes in the CTA news account of their meeting and by his name not (sic) being mentioned. He testified that he felt that the article

implied that he was insensitive to the problems of teachers. The hearing officer observed that Abernathy was still quite agitated about this incident during the hearing.

The second letter informed Sandeen that the division had to cancel his Air 132, class which was to be offered in the spring, because of the unavailability of classroom facilities and the low retention of students in his fall course. Abernathy testified that he typically does not inform part-time teachers of the reason for class cancellations, claiming that this has been the procedure in the District during his tenure of 16 years. However, in this instance, he did inform Sandeen.

Abernathy had initially intended to offer two sections of Air 132, one day and one evening. Sandeen had received a notice of employment in October and a textbook requisition form. However, in mid to late November, the associate dean of instruction informed Abernathy that the division had lost a classroom and that consequently three of the department's scheduled classes were without rooms. The dean testified that final schedules had to be turned in to the printer between November 20th and 23rd and that he had just a few days to find classrooms or the classes would have to be deleted from the schedule. His staff did locate two rooms and Abernathy was then required to decide which two courses the college would offer. Abernathy testified that he decided to cancel Sandeen's

class because it was the only one of three courses that had two sections.

Abernathy also testified that while the lack of classrooms was the paramount reason for his decision, the low retention rate of students Sandeen had experienced in the fall of 1977 was an additional factor. Sandeen's class in the previous semester had only 11 students though it had an initial enrollment of approximately 24.

Sandeen testified that he then met with the president and dean concerning his evaluation and was told that the CTA bulletin had had some effect on the administration's position. According to Sandeen, the president confirmed this by saying that a wall had been drawn between Sandeen and the administration by that article. The dean, however, testified that the discussion with Sandeen had been over his evaluation and that he and the president had commented that the newspaper article "did not tend to lighten the situation" and that "it was not the best way to establish good relations with the two evaluators." He further stated that he never indicated to Sandeen that his involvement in CTA activities affected his assignments.

Despite the cancellation of his Orange Coast class, Sandeen nevertheless continued to teach at Golden West College during the spring of 1978.

Hearing Officer's Proposed Decision

The hearing officer found Maitland's involvement in CTA activities to be substantial and the cancellation of her class by the District to be inherently destructive of employee rights and therefore in violation of section 3543.5(a) and (b). He found that Abernathy had cancelled Sandeen's 1978 class because of Sandeen's organizational activities, and particularly because of the CTA article concerning Sandeen's evaluation. He found a similar violation of section 3543.5 (a) and (b) here.

The hearing officer found Webber's CTA activity to be limited and the harm to employee rights therefore slight. Although he found the District's justification to be pretextual, he found other sufficient legal justification for its decision to cancel the class. Like Webber, Graff's activities were found to be minimal and consequential harm to employee's rights slight and outweighed by the District's justification of not wanting to retain a teacher it considered to be weak.

CTA's Position

CTA excepts to the hearing officer's failure to find that the District violated the Act by cancelling Webber's classes and failing to rehire Graff. The union contends that the hearing officer erred (1) by not finding that the District and its agents collectively conspired to discriminate against CTA by reducing or eliminating the class loads of union organizers;

(2) by not finding that the District harbored improper motives when it acted against all four employees; (3) by not finding that the District's conduct taken in toto was inherently destructive and (4) by finding that the business justification proffered by the District was sufficient to outweigh the harm caused by the actions against Webber and Graff.

The District's Position

The District excepts to the hearing officer's findings:

(1) that the CTA bulletin concerning Sandeen's evaluation was a motivating factor in the cancellation of his classes; (2) that the District's proffered justifications for his class cancellation were vague and subjective and (3) that Maitland's class cancellations caused inherently destructive harm to employee rights.

DISCUSSION

For the forthcoming reasons the Board dismisses the charge in its entirety.

In Carlsbad Unified School District (1/30/79) PERB Decision No. 89/ the Board set forth the test for determining when employer actions interfere with the rights of employees guaranteed by the Act. Subsequently, in Novato Unified School District (4/30/82) PERB Decision No. 210, the Board clarified Carlsbad by setting forth a test to be applied in specific cases of alleged discrimination or reprisal against employees for their participation in protected activities. The

distinction between "interference" and "discrimination" cases is often blurred. Discrimination against organizers clearly interferes with the right of employees to form and participate in employee organizations. The facts here lend themselves either to a Carlsbad or a Novato analysis. The termination of the services of four of the six part-time teachers on the organizing committee in the spring of 1979 potentially interfered with the exercise of protected rights of all unit employees. At the same time it arguably constituted discrimination and reprisal against the individuals because of their organizing and other activities on behalf of CTA.

Interference Charge;

The record indicates that the District's actions against the four employees caused or tended to cause at most only slight harm to the employees' right to organize. Maitland, the most active of the four employees, continued to teach at Golden West, teaching one class in the spring 1978 and two classes in the fall of 1978, and to have access to employees at the campuses as well as to be a CTA activist.

Sandeen did lose his position at Orange Coast but continued to teach at Golden West as well as to serve as chair of the grievance committee of the organization and to represent employees on a District-wide basis. The record further indicates that Sandeen's organizing activities had been limited since May 1977, well before losing his position.

Webber's and Graff's activities on behalf of the union apparently did terminate with the end of their employment. However, their organizational activities were minimal, especially during the six months immediately preceding their departure from the campuses.

CTA has presented no evidence that the District's actions tended to have a chilling effect on the exercise of employee rights. The cancellation of classes of Maitland, Sandeen and Webber was not unique. In the spring 1978 semester, Golden West, Orange Coast and Coastline Colleges in combination cancelled over 500 such classes. Accordingly, it cannot be assumed that teachers in general would conclude that the cancellation of these three teachers' classes was based on their union activity and that the exercise of employee rights was hazardous and likely to result in adverse employer action. Similarly, Graff was not the only teacher who was not rehired for the spring semester.

Further, accepting that some slight harm did result from the employer's actions, the Board, upon application of the balancing test set forth in Carlsbad, reaches the same conclusion.

The District's asserted justification for the cancellation of Maitland's and Webber's philosophy classes was low enrollment. We do not find, as did the hearing officer, that this justification was pretextual. The hearing officer based

his conclusion on the facts that some other low-enrollment classes had not been cancelled. He concluded that this action was inconsistent with Moll's asserted policy of increasing daytime enrollment.

With one exception, the low-enrollment classes which were continued were taught by full-time instructors who would have been paid if the classes had been cancelled. Philosophy 111, the exception, was originally to be taught by a full-time instructor who withdrew and was replaced by a new part-time teacher.

Moll was not called upon by CTA to explain the latter matter nor did he volunteer an explanation. By itself, Moll's decision cannot be considered pretextual, particularly in view of the contrary opinion of Webber's second evaluator, and the fact that CTA's leading activist, Maitland, was retained on an evening schedule.

In summary, the Board finds that the District's proffered explanation for its actions was reasonable and legitimate and outweighed the harm done to employee rights by the cancellation of Maitland's class.

Similarly, we cannot find that the justification for cancelling Sandeen's class was pretextual. The evidence was uncontroverted that the department lacked the facilities to accommodate the three classes originally planned and that Air 132, Sandeen's class that was cancelled, was the only one that had two sections.

There is no evidence to refute the District's claim that its failure to renew Graff's contract was due to her undisputed poor evaluations.

Discrimination and Reprisal

In summary, despite the inconsistency noted above, we find the District's proffered business justification to be both reasonable and legitimate and to outweigh the harm, if any, to the employees' rights under the Act.

Application of the criteria established in Novato inevitably lead to the same conclusions. Absent a finding of inherently destructive employer conduct,⁶ a finding of anti-union motive must be established by pertinent evidence. Novato, supra. The record fails to support such a finding.

CTA's assertion that a conspiracy among District officials existed is unfounded. The decisions to cancel and/or not rehire Maitland, Webber, Graff and Sandeen were made by Moll and Abernathy respectively at the local college levels. There was no input from District officials. Abernathy consulted with no one regarding his decision to cancel Sandeen's class while Moll received recommendations from Brazier, Shawl and the communications department chairperson who spoke with Moll during the course of their regular job duties. There is no

⁶The Board has not yet defined the term "inherently destructive." It finds no need for a definition here having found that the harm, if any, was slight. See NLRB v. Great Dane Trailers, Inc. (1967) 388 U.S. 26 [65 LRRM 2465].

evidence that the discussions involved CTA or the employees' activities on behalf of that organization or that these administrators harbored anti-union animus.

It may be argued that the proximity in time between the employees' organizational activity and the District's actions and the District's inconsistent justification constitute circumstantial evidence of improper motive. However, none of this evidence is so clear or persuasive that it permits a reasonable inference of such motive. The evidence that protected activity was a motivating factor in the District's decision with respect to Graff is even more limited, simply that the District may have had knowledge of her activities.

The publication of the evaluation incident concerning Sandeen in the CTA newspaper did seem to impact on the attitude toward Sandeen. But, accepting that CTA has thus established unlawful animus towards this employee, the question remains whether the District would have, nonetheless, made the same decision to cancel his class. Novato, supra. As we have previously indicated, Abernathy's decision to cancel Air 132 appears to have been reasonably based on the existence of a room shortage and the fact that this was the only one of the three courses that had two sections. In view of this legitimate explanation for the District's action with respect to Sandeen, the union's burden of proving that but for the District's animus toward Sandeen, his class would not have been cancelled has not been met.

ORDER

Based upon the record in this case and the parties' exceptions and responses, the Board ORDERS that unfair practice charge LA-CE-213 filed by the Coast California Teachers Association, CTA/NEA, against the Coast Community College District be DISMISSED.

CASE LA-CE-465

On April 30, 1979, CTA filed this charge alleging that the District violated subsections 3543.5(a) and (b) and (d) by effectively discharging Maitland and Sandeen through cancellation and reassignment of their classes.⁷

FACTS

After the cancellation of Philosophy 100 in 1978, Maitland continued to teach Philosophy 109 at Golden West College in the spring and fall of the 1978 semesters. She was scheduled to teach the same course in the spring of 1979 but Dean Frank Shawl⁸ cancelled the class on the Friday prior to the first day of instruction because it had a pre-enrollment of only two students.

⁷The charge was later amended to include another employee but this aspect of the charge was withdrawn prior to hearing.

⁸In the period intervening between the hearings of LA-CE-213 and the instant decision, a reorganization of instructional services occurred at the Golden West campus.

Shawl testified that the school began a new policy during this semester of cancelling courses before the first day of instruction, having learned that it was not economically wise to let registration proceed in the face of low enrollment. He claimed that experience had demonstrated that a class would generally lose a certain percentage of its first day enrollment.

The college also cancelled classes of other instructors where there were pre-enrollments of eight or nine students. It did not cancel classes of certain full-time teachers whose initial enrollments were 16, 14 and 9 respectively. Shawl contended that he did not cancel these classes because the full-time teachers were under contract and would have had to be paid their full salary regardless of whether they taught that class or not.

After cancelling Maitland's class, the philosophy department employed no part-time instructors. Maitland argued that the District had deliberately tried to undermine her enrollment by moving her class from Monday to Wednesday nights and by not listing her name in the class schedule. She stated that her class was the only one which had its time changed to another night.

Shawl responded that there was no guarantee that classes would be offered on the same day of each year and that scheduling will vary depending on the number of courses planned to be offered and the number of rooms available. He further

asserted that since becoming dean it had been his practice not to include the names of part-time teachers in the class schedules.

As a consequence of the cancellation, Maitland did not teach in the spring of 1979. Instead she became a paid staff representative of CTA. She did return to teaching in the fall of 1979, teaching two classes at Orange Coast College.

After the cancellation of his Air 132 class, Sandeen continued to teach Air 130 at Golden West College in the spring and fall semesters of 1978. He was scheduled to teach the course again in the spring of 1979 but the college replaced him with a full-time teacher who needed the course hours in order to complete his required work schedule.

Moll, who had now become the dean of business technology and public service, had cancelled approximately 18 hours of courses that were scheduled to be taught by full-time teachers in the institute. Consequently, he had to make reassignments which affected the scheduled classes of part-time instructors as a result of the full-time teachers' bumping rights.

One of the full-time teachers in need of class hours had the necessary credentials to teach Air 132 and was assigned to teach two sections of the course, displacing Sandeen and another part-time instructor. As a consequence, the aviation department had no part-time instructors teaching during that semester.

afraid she was going to lose her job and did not want to be active in any sense. This hearsay evidence was never corroborated. We further note that CTA, although it lost the full-time unit election, did win the representational rights among part-time instructors who allegedly had been "chilled" by the District's actions.

ORDER

Based on the entire record in this case and the parties' exceptions and responses, the Board ORDERS that unfair practice charge LA-CE-465 filed by the Coast California Teachers Association, CTA/NEA, against the Coast Community College District is hereby DISMISSED.

Members Morgenstern and Jensen concurred.

The hearing officer found that the District's actions were inherently destructive of employee rights but dismissed the charge involving Maitland on the grounds that the District had no recourse other than to cancel her class. However, he found a violation as to the termination of Sandeen's services, concluding that the District could have paid the full salaries to full-time teachers whose classes were cancelled instead of permitting them to exercise their bumping rights.

DISCUSSION

As we did in Case LA-CE-213, the Board dismisses the charge in its entirety. CTA has produced no evidence that Maitland's or Sandeen's participation in union activities was the motivating factor in the District's actions. Further, there can be no dispute that the District advanced legitimate business justification for its actions with respect to both teachers. As we pointed out in the companion case there is no evidence of harm to employee rights nor has CTA demonstrated that the District's actions had a chilling effect on the teachers in general. While a union witness and Maitland both claimed that numerous teachers were afraid to participate in CTA activities because of expected District retaliation, between them they could recall only one individual who was so affected. Maitland testified that a member of the 1977 organizing committee became inactive after the cancellations of the classes and that the employee had informed her that she was