STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED HEALTH CARE EMPLOYEES, SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 660, AFL-CIO, CLC,	)	
Charging Party,	)	Case No. LA-CE-10-H
v.	)	PERB Decision No. 267-H
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA (UCLA),	)	December 21, 1982
Respondent.	)	

Appearances: Helena S. Wise, Attorney (Geffner & Satzman) for United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC; Susan M. Thomas, Attorney for the Regents of the University of California.

Before Tovar, Jaeger, Morgenstern and Jensen, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC (SEIU), and the Regents of the University of California (University or UCLA) to the hearing officer's attached proposed decision. The University excepts to the finding that it violated subsection 3571(b) and subsection 3571(a), derivatively, of the Higher Education Employer-Employee Relations Act[1] (HEERA or Act) by unilaterally

[1]HEERA is codified at Government Code section 3560

increasing the workday of laboratory technologists employed in the UCLA blood bank from 10 hours to 10.5 hours per day without providing SEIU, the nonexclusive representative, with an opportunity to meet and discuss the change prior to implementation. SEIU excepts to the hearing officer's dismissal of its allegation, first raised in its post-hearing brief, that the University violated subsection 3571(a) by threatening employees to discourage opposition to the change in work hours. Both parties except to the hearing officer's proposed order.[2]

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

Section 3571 provides, in pertinent part:

> It shall be unlawful for the higher education 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.
>
> . . . . . .

[2]SEIU does not except to the hearing officer's dismissal of its allegation that the University's conduct constituted reprisal against employees because they were engaged in organizing, in violation of subsection 3571(a). In dismissing this charge, the hearing officer found that the record is totally devoid of any anti-union animus, and that the University had established operational necessity for the change

The Board has reviewed the record in light of these exceptions and finds that the hearing officer's findings of fact are free from prejudicial error and adopts them as the findings of the Board itself.

For the reasons set forth below, the Board affirms the hearing officer's proposed decision and order.

DISCUSSION

In California State University, Sacramento (4/30/82) PERB Decision No. 211-H, decided after the hearing officer's proposed decision in this case, the Board held that HEERA requires higher education employers to provide nonexclusive representatives with notice and an opportunity to discuss projected changes in access policy. After a careful examination of the statutory language, the Board concluded that, in enacting HEERA, the Legislature intended to preserve representation rights previously enjoyed by nonexclusive representatives under the George Brown Act[3] until such time as an exclusive representative is selected. Quoting from the Board's decision in Professional Engineers in California Government (PECG) (3/19/80) PERB Decision No. 118-S, which

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in that the unique work schedule at the blood bank was contrary to University policy and was creating personnel problems because other employees sought like treatment. No exception having been taken to these findings, they are not now before us.

[3]The George Brown Act is codified at Government Code section 3525 et seq. HEERA became effective July 1, 1979. Concurrent with HEERA's effective date, section 3526 of the

concerns the representation rights of nonexclusive representatives under the State Employer-Employee Relations Act, the Board stated, at page 8:

> . . . It would be anomalous for the Legislature in enacting a new law which generally expands the rights of employees, to strip employees in units with no exclusive representative of any voice in a matter as basic as wages.

The obligation to meet with nonexclusive representatives is not the same as that imposed under HEERA with regard to an exclusive representative. While the full extent of this obligation must be defined on a case-by-case basis, it is clear that the obligation exists as to matters which are "fundamental to the fulfillment of the representational function of the

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George Brown Act was amended to remove those employees covered by HEERA from coverage under the George Brown Act.

Section 3529 defines the scope of representation as including:

> . . . all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment.

Section 3530 provides, in pertinent part, that:

> The state . . . shall meet and confer with representatives of employee organizations upon request, and shall consider as fully as such representatives deem reasonable such presentations as are made by the employee organization on behalf of its members prior to arriving at a determination of policy or course of action.

nonexclusive representative as embodied in HEERA's statutory scheme." California State University, Sacramento, supra, at page 32.

In the instant case, hours of work were directly affected by the change. Blood bank employees were required to work an additional one-half hour per day with no change in pay. Clearly, hours of work are as fundamental as wages in Professional Engineers in California Government (PECG), or as the access policy at issue in California State University, Sacramento. Therefore, we affirm the hearing officer's conclusion, reached without benefit of the Board's decision in California State University, Sacramento, that the University had a duty under HEERA to provide SEIU with a reasonable opportunity to meet and discuss the change of hours before it was implemented.

In California State University, Sacramento, supra, the Board reviewed the representational rights enjoyed by nonexclusive representatives under the George Brown Act prior to the effective date of HEERA. The Board expressly declined to hold that nonexclusive representatives lost these representational rights once HEERA became effective. Therefore, cases defining the obligation to meet with nonexclusive representatives under the George Brown Act are persuasive in determining the extent of that similar obligation under HEERA.

Under the George Brown Act, the obligation to meet and confer includes the implied element of good faith (State Association of Real Property Agents v. State Personnel Board (1978) 83 Cal.App.3d 206 [147 Cal.Rptr. 786]; and see Liplow v. Regents of University of California (1975) 54 Cal.App.3d 215 [126 Cal.Rptr. 515]).

The George Brown Act does not provide for exclusivity. By virtue of this fact, an employer may not agree to a negotiated settlement with a nonexclusive representative which would discriminate against any other nonexclusive representative not a party to the agreement. Therefore, unlike an employer's duty to meet and negotiate in good faith with an exclusive representative, in dealing with a nonexclusive representative, good faith requires neither an obligation to reach agreement nor to continue to meet until impasse.

Nonetheless, good faith in this context does require meeting, listening and considering proposals with an open mind prior to arriving at a determination of policy or course of action. Absent such requirement, the obligation to meet would be meaningless.

Having previously determined that, in enacting HEERA, the Legislature intended to preserve representation rights enjoyed by nonexclusive representatives under the George Brown Act until such time as an exclusive representative is selected (California State University, Sacramento, supra), we here decide that under HEERA, as under the George Brown Act, the

obligation to meet and discuss with a nonexclusive representative includes the good faith requirement discussed above. Accordingly, we reject the University's argument to the contrary.

The question of good or bad faith is primarily a factual one which involves consideration of all facts of a particular case and involves a finding of motive or state of mind, which must be inferred from the evidence as a whole. State Association of Real Property Agents, supra.

Here, we find, as did the hearing officer, that the equities are weak on both sides. In such a case, the demeanor and credibility of the witnesses are significant in the determination of subjective good faith. We, therefore, consider this an appropriate case for deferral to the hearing officer. Santa Clara Unified School District (9/26/79) PERB Decision No. 104. Moreover, based on our careful review of the record, as follows, we find no reason to disturb the hearing officer's conclusion that the University evidenced a lack of good faith, meeting "in form only" with "a fixed course of action in mind" and without "openly seeking discussion that could bring about a deviation from that fixed course."

Laboratory employees were first informed on July 24, 1979, that the University proposed to change their work schedule when the lab moved to new facilities in "late September." A firm date for the move had not yet been set, and the record indicates, not totally without justification, that employees

believed the University would not go through with the change in long-standing practice.

Nonetheless, when Caroline Altman, coordinator of SEIU's organizing campaign at UCLA, learned of the proposed change in late July or early August, she immediately called Greg Kramp, UCLA's labor relations manager, to protest the change. Several conversations between Altman and Kramp followed, during which Altman "was hoping that [Kramp] could talk the clinical labs out of implementing this change."

At a staff meeting on September 25, 1979, Carma Rippee, blood bank supervisor, informed employees that, because the remodeling project for the blood bank was behind schedule, the change in work hours would not be implemented until October 15. Kramp testified that October 15 was the "original planned implementation date."

Upon learning of this date, Altman called Kramp, pointed out the past practice on hours and accused the University of interfering with SEIU's organizing campaign. By letter dated October 4, 1979, Altman requested to meet and confer regarding the proposed change. According to Altman's uncontroverted testimony:

> . . . we talked about dates vaguely even before I wrote the letter. I mean, he knew a letter was coming, but the letter was written way after we first discussed the meet and confer.

Based on the foregoing, we conclude that SEIU acted

promptly to protest the change and to request a meeting as soon as a firm implementation date was set. We, therefore, find that SEIU did not unreasonably delay its request for a meeting.

Kramp and Altman tentatively proposed to meet on October 17, 18 or 22. Kramp, therefore, agreed to postpone the October 15 implementation date to provide an opportunity to meet with SEIU. October 29 was selected as the implementation date because it coincided with the end of daylight savings time and would thereby minimize the number of schedule changes.

Altman subsequently informed Kramp that she was not available to meet on any of the proposed dates. The parties presented conflicting testimony regarding their several telephone conversations discussing possible alternative dates, and the record does not satisfactorily resolve the question of why no meeting was scheduled during the week of October 22 through October 29. In any event, Altman and Kramp agreed to meet on October 29, the date of the proposed change, with Altman requesting that implementation be postponed until after the meeting and Kramp refusing to do so.

On the morning of October 29, 1979, the changed schedule was implemented, requiring employees to arrive 15 minutes earlier and leave 15 minutes later. Later that morning, the parties met to discuss the change.

The hearing officer found that the University's refusal to delay implementation until after the parties met on October 29

was evidence of bad faith. The University claims that its refusal was based on sound business judgment, including consideration of the lengthy advance notice, two prior delays, and inconvenience to employees who were in the process of making adjustments to meet the changed schedule. The University further claims that, by postponing the tentative meetings scheduled for October 17, 18 or 22, SEIU, not the University, was responsible for delaying the meeting until after implementation of the change. We disagree.

The selection of October 29 as the implementation date was not motivated by any compelling operational necessity. The only reason advanced for selecting this date was the fact that it coincided with the end of daylight savings time so that the number of schedule changes experienced by employees would be minimized. As the first date set by the University, October 15, did not meet this criteria, it can hardly be considered critical. The University similarly argues that an additional postponement would have been inconvenient to the affected employees. Certainly, postponement would have been no more inconvenient than working an additional half-hour per day, and the testimony of several employees indicates that they would not have considered it inconvenient to delay the change for as long as possible. Thus, we find the University's proffered justification based on convenience to employees to be pretextual.

The University also relies on the fact that the immediate supervisor, Carma Rippee, stated that she did not want to delay again. However, when Kramp asked Rippee, "if she wanted to delay again," he gave no reason for the request and specifically did not inform her that SEIU had requested the delay to provide an opportunity to meet and discuss the change. This was in contrast to Kramp's conduct when he earlier asked Rippee to postpone the October 15 date and advised her of the reason. Given Rippee's general resistance to the proposed change, Kramp's failure to provide her with information, which might well have persuaded her to agree to another postponement, renders Rippee's input insubstantial justification for the University's refusal to delay and raises an inference of bad faith on Kramp's part.

The University further claims that it refused postponement because of the lengthy advance notice and because the date had already been postponed twice. We find these arguments lacking in merit. The lengthy advance notice serves to undercut, rather than support, the University's position. The 10-hour schedule had been in effect for eight years. The University first informed employees that it proposed to change the schedule in July 1979. Yet, October 15 was the first date set for implementation of the change. No date in "late September" was ever set. Moreover, any alleged "delay" from late September to October 15 was made by the University solely for

its own purposes, not at SEIU's request. Thus, the University's conduct failed to demonstrate any urgency for the change. The University's own dilatory behavior does not justify its subsequent refusal to agree to an additional delay of a few days, as requested by SEIU, to provide an opportunity to meet and discuss the change prior to implementation.

Though we agree that SEIU's cancellation of tentatively scheduled meetings may have evidenced poor judgment or lack of all due diligence, we do not find this conduct sufficient to constitute a waiver of its right to meet and discuss the change.[4] Neither is there any evidence in the record to suggest that the purpose of the delay was to frustrate discussion or otherwise indicate bad faith. Even if a waiver could be implied by this conduct, any waiver was vitiated by SEIU's subsequent renewed demand for a meeting and by the parties' mutual agreement to meet at a later date. Anaheim Union High School District (3/26/82) PERB Decision No. 201. Absent a waiver, the University was not relieved of its obligation to provide an opportunity to meet prior to its implementation of the schedule change.

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[4]See McLean v. NLRB (6th Cir. 1964) 333 F.2d 84 [56 LRRM 2475], enforcing 142 NLRB 235 [53 LRRM 1021], where the court upheld the Board's view that the union's failure to negotiate during an eight-month period, while arguably "lax and negligent," was no defense to the employer's subsequent refusal to meet and negotiate since, ". . . it seems to us that it constituted more of a violation of duty owing to its members than to [the employer]."

Based on all of the above, and given that the 10-hour per day schedule had been the past practice for eight years, the hearing officer could reasonably conclude that the University evidenced bad faith by refusing to delay implementation beyond October 29.

The hearing officer also found evidence of bad faith in the University's failure to inform SEIU of the procedure for applying for an exception to University policy and the grounds on which such exception could be granted. At the hearing, the University consistently maintained that the only way the 10-hour per day schedule could be continued would be by an exception to University policy granted by systemwide administration in Berkeley, and that grounds for such exception did not exist in this case. Carma Rippee was so informed by the personnel consultant in July 1979 and, as a result, abandoned her efforts to seek an exception. No one from systemwide administration, the only body with authority to grant an exception, attended the October 29 meeting. Nor was SEIU informed of the exception procedures. SEIU was not given an opportunity to make its own arguments for an exception to the properly authorized officials, and even information on its right to do so was consciously withheld. In fact, the University's position is that such information would have been misleading, since no basis for procuring an exception existed.

Therefore, it appears the hearing officer could reasonably conclude that the University engaged in this meeting in bad faith, without an open mind or willingness to reconsider the schedule change which it had already put into effect.

We, therefore, affirm the hearing officer's conclusion that the University evidenced a lack of good faith, meeting in form only and without openly seeking discussion that could bring about a deviation from that fixed course, in violation of subsections 3571(a) and (b) of the Act.

We also affirm the hearing officer's dismissal of SEIU's attempted amendment to its charge in its post-hearing brief, where it alleged that Carma Rippee threatened and coerced employees by urging them not to pursue their right to file an unfair practice charge. The hearing officer properly found that the original charge lacked allegations sufficient to put the University on notice that it would be called upon to defend Rippee's comments to employees at staff meetings, and that the charge is barred by the six-month limitation period of subsection 3563.2(a)[5] in that the conduct occurred between

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[5]Subsection 3563.2(a) provides:

> Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

July and October 1979 while the allegation of violation was first made in April 1981.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Government Code section 3563.3, it is hereby ORDERED that the Regents of the University of California and its representatives shall:

A. CEASE AND DESIST FROM:

1. Denying to United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, rights guaranteed by HEERA.

2. Denying to employees the right to representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS WHICH ARE NECESSARY TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

1. On request by United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, return employees of the UCLA blood bank to the status quo ante of a 4-day/10-hour-per-day work week, including one-half hour paid lunch, and meet with that organization regarding hours of employment of those employees.

2. If the above-stated request is made, retain the status quo ante for employees of the UCLA blood bank until completion of discussion of hours of employment with United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, but for not more than 30 workdays after service of this Decision; except that, in the event that the parties mutually agree that a reasonable basis exists for filing exceptions to the

University's policy prohibiting paid lunch periods, then file the request for exception and retain the status quo ante work schedule until the request for exceptions has been approved or denied.

3. Within five (5) workdays after the date of service of this decision in this matter, prepare and post copies of the Notice to Employees attached as an appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for at least thirty (30) workdays at all work locations where notices to employees of the UCLA blood bank customarily are placed. Such Notice must not be reduced in size and reasonable steps shall be taken to ensure that it is not defaced, altered or covered by any material.

4. Within twenty (20) workdays from service of this decision, notify the Los Angeles regional director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this ORDER. Continue to report in writing to the regional director periodically thereafter as directed. All reports to the regional director shall be served concurrently on the charging party herein.

C. The allegation that the Regents of the University of California violated subsection 3571(a) because of comments by Carma Rippee is DISMISSED.

Members Jaeger **and Jensen joined in this Decision.**

Member Tovar's concurrence begins on page 18.

TOVAR, Member, concurring: In California State University, Sacramento (4/30/82) PERB Decision No. 211-H, I expressed my disagreement with the majority's view that the Higher Education Employer-Employee Relations Act imposes upon higher education employers the legal duty to provide prior notice to, and meet with, an employee organization which is the nonexclusive representative of employees covered by the Act before making changes in terms and conditions of employment. Particularly in light of the Legislature's express direction, at Statutes 1978, Chapter 766, that the George Brown Act (and thus obligations derived therefrom) should no longer apply to higher education employees, I was unwilling to join the majority in distilling a contrary legislative intent from little more than dues and hints garnered from the Act. It seemed to me that if the Legislature had intended that employers should continue to bear Brown Act obligations it could have and would have made that clear.

It seems to me still that, inasmuch as the heart of the HEERA is its system of exclusive representation, the Legislature, if intending to authorize two concurrent modes of representation, could simply have amended the Brown Act to add the alternative of exclusive representation and in that way achieve the end which the majority continues to endorse. That it chose instead to draft an entirely new act for the regulation of higher education labor relations, which itself

makes no express provision for a system of nonexclusive meeting and conferring,[1] suggests to me that there exists no Legislative authorization for the dual system of representation endorsed by the majority. Because of these considerations, I am unpersuaded by the majority's assertion that the Legislature's purpose in enacting the HEERA was merely to tack on additional employee rights to the Brown Act.

It seems to me that in abandoning the Brown Act and creating the HEERA the Legislature's purpose was to scrap the California experiment with nonexclusive representation and opt instead for the private sector model embodied in the National Labor Relations Act (NLRA), as amended. It is apparent that, while not identical, the HEERA fits quite comfortably on the NLRA structural framework, while being a substantially different creature than the Brown Act. The NLRA, it is clear, makes no provision for obligatory meeting and discussing between an employer and a nonexclusive representative; under Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 87 LRRM 2453, therefore, we should, by virtue of this guidance, be compelled to conclude that the HEERA is similarly without such a provision, unless the Legislature's contrary direction is

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[1]I note, for example, that the HEERA makes specific provision for released time for "representatives of an exclusive representative" (emphasis added) for negotiating sessions. No such provision is made, however, for released time for nonexclusive representatives for the would-be purpose of meeting and discussing.

express. Of course, as the majority acknowledges, there is no such express direction in the Act. I note in this connection that the other two acts administered by this agency - the Educational Employment Relations Act and the State Employer-Employee Relations Act - make somewhat different provisions for the rights of employee organizations to represent their members. For this reason I leave to another day and another case any consideration of possible meet-and-discuss rights under those acts.

I am pursuaded, however, to modify my previously expressed strict denial of any surviving Brown Act rights in the HEERA. I have considered the HEERA's unit determination provisions and this Board's efforts in that regard, and note that as of the date of this decision (nearly three and a half years after the effective date of the HEERA) a substantial portion of the employees covered by the Act have as yet had no opportunity to elect an exclusive representative. Thus, while I continue to interpret the HEERA as a clear mandate by the Legislature that California higher education labor relations should be regulated under a system redrawn in the federal mode, I find not a shred of evidence or reason which suggests that the Legislature intended that higher education employees should experience an interim period in moving from the old system to the new during which there should be no system of representation whatever available to them. I think it can sensibly be inferred, after

examining the Legislature's actions in this area, that it was intended that the approved form of employee representation should move from the Brown Act's nonexclusive system to the HEERA's program of exclusive representation without leaving employees entirely disenfranchised in the interim. Until the opportunity to elect an exclusive representative has been made available to employees now covered by the HEERA, therefore, I think we give effect to the intention of the Legislature by finding that their nonexclusive representatives have the right to receive prior notice and an opportunity to meet on and discuss proposed changes in the terms and conditions of employment of their members. These vestigial Brown Act rights survive to this degree in the HEERA itself.

The record in the instant case shows that the employees had not, at the time in controversy, had an opportunity to elect an exclusive representative because the Board had not (and has not) yet approved an appropriate representational unit, pursuant to Article 5 of the Act, which includes those employees. I therefore join the majority in finding that the University had an obligation under HEERA to meet and confer in good faith with SEIU.

I join the majority as well in finding that the University failed to meet its obligation. In so finding, I do not rely, as does the majority at p. 11 of their opinion, on the fact that the University's labor relations manager failed to inform

Supervisor Rippee that SEIU had requested a delay beyond October 29 when he called to ask how she felt about such a delay. It appears to me that Kramp only wanted Rippee's neutral, business-based opinion. I cannot make a finding here that Kramp deliberately manipulated the conversation in an effort to serve his own bad faith purposes. Had Kramp in fact informed Rippee of SEIU's request for delay, and Rippee nevertheless expressed the same opposition to further delay, it could as easily be suggested that Supervisor Rippee only gave that response because of anti-union bias. I am loathe, therefore, to count against the University the fact that it solicited a neutral opinion of Rippee. So, too, I dissociate myself from the criticism, at p. 13, of the University's failure to have a representative from systemwide administration at the October 29 meeting. There is no proof, in my view, that the University could not adequately discuss the disputed subject matter with SEIU via the representatives who in fact attended the meeting. The case law I have reviewed indicates that both parties are free to choose their own representatives unless their selection will make good faith participation in the meeting impossible. See, e.g., General Electric Co. v. NLRB (1969), 412 F.2d 512 [71 LRRM 2418].

I reach ultimate agreement with the majority in reliance on the finding that the refusal to delay the meeting beyond October 29 raises a strong inference of an unwillingness to

genuinely consider SEIU's input on the matter in good faith. I join the majority in finding that while "SEIU's cancellation of tentatively scheduled meetings may have evidenced poor judgment or lack of all due diligence" as the majority notes, this behavior is not so egregious, nor the need for schedule change so urgent, as to dispel that inference. This, in conjunction with the University's unwillingness to be more cooperative with SEIU in providing information on the substantive and procedural grounds involved in obtaining a variance in policy from systemwide administration, leads me to conclude, as did the majority, that the University did not fulfill its minimum obligation under the Act.

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-10-H, in which all parties had the right to participate, it has been found that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act by denying United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, rights guaranteed by HEERA by denying to it the right to represent its members in discussion regarding hours of employment at the UCLA blood bank and denying to employees the right to representation. As a result of this conduct, we have been ordered to post this Notice and we will abide by the following:

A. CEASE AND DESIST FROM:

1. Denying to United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, rights guaranteed by HEERA.

2. Denying to employees the right to representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS WHICH ARE NECESSARY TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

1. On request by United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, return employees of the UCLA blood bank to the status quo ante of a 4-day/10-hour-per-day work week, including one-half hour paid lunch, and meet with that organization regarding hours of employment for those employees.

2. If the above stated request is made, retain the status quo ante for employees of the UCLA blood bank until completion of discussion of hours of employment with United Health Care Employees, SEIU, Local 660, AFL-CIO, CLC, but for not more than 30 workdays after this Order becomes final; except that in the event that the parties mutually agree that a reasonable basis exists for filing exceptions to the University's policy prohibiting paid lunch periods, then file

the request for exception and retain the status quo ante work schedule until the request for exceptions has been approved or denied.

Dated: Regents of the University of California

By: _____
Authorized Representative

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

STATE OF CALIFORNIA

PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED HEALTH CARE EMPLOYEES SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 660. AFL-CIO, CLC,	)	
Charging Party,	)	Unfair Practice Case No. LA-CE-10-H
v.	)	
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	Proposed Decision (7/30/81)
Respondent.	)	

Appearances: Helena S. Wise, Geffner & Satzman, for United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC; Susan Thomas, staff of the General Counsel, for the Regents of the University of California.

Decision by Sharrel J. Wyatt, Hearing Officer.

PROCEDURAL HISTORY

Allegations that hours of employment were unilaterally changed without meeting and conferring form the basis for the unfair practice charge filed on November 23, 1979, by the United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC (herein SEIU or Charging Party) against the Regents of the University of California (herein University).[1] The sections allegedly violated were

[1]Charge filed in the name of Service Employees International Union, Local 660 (University Division) AFL-CIO v. University of California at Los Angeles and was subsequently changed as now reflected.

sections 3565 and 3571(a), (b) and (c).2 The matter was set for informal conference on December 20, 1979. At the request of the parties it was consolidated with several other cases for informal conference and reset for January 21, 1980. It did not settle, but was placed in abeyance at the request of the parties. At the request of the parties it was scheduled for formal hearing and heard on January 29 and 30, 1981. During the hearing, the charge was amended to allege that the University's conduct constitutes reprisals because of its knowledge that clinical lab employees were actively engaged in organizing. The University moved to dismiss the amendment and that motion was taken under consideration for determination in this decision. The alleged violation of section 3571(c) was dismissed because Charging Party was not the exclusive representative. By letter of March 24, 1981 joint exhibits were admitted in evidence. Briefs were filed in April and reply briefs were filed June 5, 1981. Because the hearing officer who initially heard the case for the Public Employment Relations Board (herein PERB), left the agency to enter private practice, this matter was reassigned for decision on July 2, 1981 pursuant to California Administrative Code, title 8, section 32168(b).

2All references are to the Government Code unless otherwise indicated.

FINDINGS OF FACT

The Regents of the University of California is an employer as defined in section 3562(h). The United Health Care Employees, Service Employees International Union, Local 660, AFL-CIO, CLC is found to be an employee organization as defined in section 3562(g) based on the record herein which establishes that it has gathered authorization for representation, and has sought to meet and consult on behalf of employees of the employer herein.

In 1972, the University initiated a pilot program regarding the structure of the workweek for employees of its blood bank at the UCLA medical facility. Prior to the pilot program, employees worked five days per week eight hours per day[3] and were present at the facility for an unpaid one-half hour lunch period and were entitled to paid rest periods. Carma Rippee, the current clinical laboratory manager at the blood bank, was a supervisor in 1972. She applied for approval of the pilot program which provided for a 4-day/10-hours per day work week, also referred to as 4-40. This change in work week schedule required approval at the campus level only. After a short period, the program providing for a 4-40 work week became the standard workweek at the blood bank.

3The Blood Bank is open 24 hours per day, seven days per week.

Because the blood bank was understaffed, employees frequently were unable to take lunch or breaks. On the new schedule, employees were actually at the facility for 10 hours, but they were told by supervisors, personnel and payroll to sign their time sheets to reflect 10 1/2 hours. Thus, the practice evolved that employees worked from 8:00 a.m. to 6:00 p.m. and filled in time sheets from 8:00 a.m. to 6:30 p.m. Carina Rippee did not seek an exception to University policy from the administration in Berkeley which was required in order for employees to have a paid lunch break.[4] Nonetheless, informal policy at the blood bank was to permit the 4-40 including a one half hour paid lunch because employees frequently missed lunch and breaks due to the heavy work load.

By 1975-76 staffing had increased substantially and it was no longer necessary for employees to work through lunch and breaks to get their work done. All employees regularly took two 15 minute breaks and a one-half hour lunch. But the practice of being present at the facility for 10 hours per day 4 days per week and filling in time cards for 10 1/2 hours per day continued for several years.

Then, in 1979, two employees in another area of the UCLA laboratories requested the 4-40 schedule. Because blood bank employees were receiving a paid one-half hour lunch within a

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[4]Exceptions were granted for good cause such as security personnel who were required to be on call when eating lunch.

ten hour workday rather than a ten and one-half hour workday with an unpaid lunch, the two employees requested the same schedule. Their supervisor raised the issue at a management meeting. In April or May 1979, Dr. George Smith, director of the UCLA clinical laboratory approached Rippee about the personnel problems created by the work schedule of employees under her supervision and told her that to continue on that schedule she would have to apply to the administration in Berkeley for an exception to the policy that prohibited a paid lunch period. Rippee put together her justification for retaining the 10-hour workday with paid lunch and spoke with the personnel consultant. In mid-July 1979 the personnel consultant informed Rippee that there were no unusual circumstances at the blood bank that would justify an exception to the policy prohibiting paid lunch periods. Personnel informed Rippee that ordinarily, two weeks are permitted to come into compliance with University policy. Since the blood bank was scheduled to move, Rippee suggested that the change in hours coincide with the move. It was agreed that the change in hours should occur no later than the end of September.

In July, Rippee announced to her staff at a weekly staff meeting that they would have to go to the schedule with an unpaid half hour lunch break on October 15.

At weekly lab meetings, the change in hours was discussed with Dr. Smith and Carma Rippee. The unrebutted testimony of several witnesses is that employees were told that if they did not fight the change in hours, everything would remain nice and flexible at the blood bank; otherwise privileges and flexibility could be lost. For example, employees could be required to return to a 5-day/8-hours per day work week; that personnel could come in with a fine tooth comb and regiment them. Carma told employees that Dr. Smith wanted them on an 8-hour day. The schedule employees had worked since 1972 was described by Carma as a privilege, a gift that was now being taken away. It was better to give up one thing, like the half hour, so there would not be anything else taken away.

Meanwhile, SEIU had been involved in organizing employees at the lab. As early as February 1979 Ann Marie Capuzzi, a clerical laboratory technician, brought in SEIU leaflets. Shortly thereafter she requested bulletin board space from Rippee and was assigned space in the hall right outside Rippee's office. Caroline Altman, the coordinator of the University hospital campaign at the University for SEIU, had had ongoing conversations with Greg Kramp, the University's UCLA labor relations manager. Altman and Capuzzi discussed where to hold a demonstration with Kramp in June, 1979 which was then held near the blood bank. Altman also told Kramp SEIU would file

its petition with PERB on September 28, her birthday. It was filed on October 4, 1979. Thus it is concluded that the employer's representatives were aware that an organizing campaign was in progress at the UCLA laboratories.

Although rumors of the change in hours had spread to employees in June and the announcement was made in July, it was not until Capuzzi returned from vacation in August that she learned that a decision to move work hours into compliance with University policy had been made. Until the change in hours was officially announced, no one believed it would really happen. They hoped that they could make it go away by ignoring it. When they announced that the blood bank would move in October and new hours would be effective October 15, Capuzzi contacted Altman at SEIU. Altman called Kramp and pointed out the past practice on hours, accusing the University of trying to do something quickly and interfering with SEIU's organizing campaign. Altman then wrote to Kramp on October 4, 1979 and demanded to meet and confer.[5]

Kramp received Altman's letter on October 5 and called her within a couple of days to set up a time to meet. Initially the parties had October 17, 18 or 22 available to meet. At Altman's request, Kramp asked Rippee to delay implementation.

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[5]Kramp's first recollection of a problem regarding hours at the blood bank was receipt of the demand to meet and confer on October 4. Nevertheless, Altman's testimony that she had telephoned him on an earlier date is found credible.

She moved implementation from October 15 to October 29, advising employees that this would coordinate with daylight savings time. No mention was made that the delay was to permit the Opportunity to meet and confer or consult.

According to Altman, she told Kramp she could not meet on October 17, 18 or 22 because she had a leadership conference with the International she had to attend. She said Kramp proposed October 29. She called him to protest meeting on the date set to implement new hours, saying they had worked the 10 hour day for 7 to 8 years and a few more days would not hurt. She said Kramp said he had asked the lab to delay and they absolutely would not do it. She said Kramp was not available October 22 and that he had been available to meet October 17, 18, 22 or 29 only.

Kramp's version differs substantially. He testified that the meeting was delayed from October 17 to 22, then to October 29 because the SEIU representatives said they had to meet with their attorney before the session. This is corroborated by Terry Toles, a witness for SEIU, who testified the delays were to permit them to meet with the attorney before meeting with the University. SEIU's attorney was not available because he or she had other court appearances.

Kramp stated he was available to meet everyday from October 23 through 28 or could have rescheduled his calendar to be available. He said he told Altman he would try to be

available to meet whenever possible. She proposed October 29 and he agreed to that date but explained that implementation was scheduled for that date. She suggested that implementation be delayed and he refused because (1) it is highly unusual to postpone a change in working conditions, especially when there has been long advance notice, and (2) implementation had already been delayed for two weeks. He said he told Altman there was sufficient time to meet and he was willing to meet anytime from October 23 to October 29. He denied that he ever asked the blood bank to delay the October 29 implementation day. In fact, he asked Rippee if she would be willing to delay implementation again, but did not tell her why according to Rippee.

Altman indicated that when she told Kramp she could not meet on October 22, she did not propose any other date except October 29 and that she did discuss delaying implementation stating that they had been out of compliance for eight years and two more days would not hurt.

On October 19, Kramp wrote the following letter to Altman:

> I have met with the management of the Clinical Laboratories, and they are most willing to meet with you and certain Blood Bank employees whom you have designated on Monday, October 29, 1979.
>
> It is unfortunate that you were unable to meet with management on October 17, 18 or 22, 1979, as we had previously discussed. As you know, the department had announced

> its intention to change the hours of work of Blood Bank employees on July 24, 1979. The effective date of change was postponed from October 15, 1979 to October 29, 1979, which should have made a meeting possible prior to the implementation date.
>
> Therefore, while we will be glad to discuss the concerns of employees on October 29, 1979, you should know that management intends to implement the new work schedule effective that same date.

From the foregoing, it is found that the University did not bring about the delay in meeting with SEIU. Rather, SEIU representatives delayed until October 29 to meet with their attorney and the University would not delay implementation of the change in hours.

On October 29, blood bank employees on the day shift reported to work at 7:45 a.m. and worked until 6:45 p.m. Swing shift also increased its workday by one-half hour. Graveyard was retained on the ten-hour workday which included a paid one-half hour lunch because only one employee works that shift. No exception to University policy was sought or received as to that employee's work schedule.

Representatives from each side met to discuss the change in schedules on October 29 after implementation.

SEIU felt no one in management indicated willingness to reconsider the change in hours, that they had changed the hours and were going forward with the change. At the meet and confer session, SEIU protested implementation of the change, made

proposals and submitted a petition signed by nearly all affected employees. The University later declined those proposals.

The University did not tell SEIU what had to be done to obtain an exception to University policy which prohibited paid lunch periods. Carma Rippee indicated that employees did suggest some new ideas that could be used to justify an exception to the University's no paid lunch policy.

The organizing campaign was described as going well both before and after the change in hours.

ISSUES

1. Whether the Charging Party may amend:

A. During the hearing to allege that the unilateral changes contained in the charge were made as reprisal for an active organizing campaign?

B. Based on fact not alleged in the charge but presented at the hearing and argued in brief?

2. Whether the change in hours was a reprisal for an active organizing campaign?

3. A. Did the University have an obligation to meet and discuss with SEIU prior to implementing the change in hours?

B. If so, did the University breach that duty?

CONCLUSIONS OF LAW

I. The Amendments

A. During Hearing

During the hearing, SEIU amended to allege that the University's conduct constitutes reprisals because of its knowledge that clinical lab employees were actively engaged in organizing.

The unfair practice charge alleges violation of sections 3565 and 3571(a) and (b).[6] The specific allegations state:

> Since 1972, the clinical laboratory technologists had worked a 10-hour day, 4-day work week, in the blood bank of the clinical laboratory at UCLA. The past practice of the technologists has been, for example, to sign in at 8:00 a.m. and leave at 6:00 p.m.; however, to write 6:30 p.m. on their time sheets.
>
> On or about July 1979, in anticipation of collective bargaining, the technologists were instructed that their work day would become 10-1/2 hours. The technologists requested to meet and confer about the proposed change in hours and working conditions. Prior to any meeting and conferring taking place, management unilaterally implemented the change in hours and working conditions. (Emphasis added.)

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[6]These sections read as follows:

> 3565. RIGHT TO FORM AND PARTICIPATE IN EMPLOYEE ORGANIZATION: RIGHT OR REFUSAL TO JOIN OR PARTICIPATE
>
> Higher education employees shall have the right to form, join and participate in the activities of employee organizations of

This amendment will be permitted because the sections alleged to be violated combined with the specific allegations of the charge provide enough notice and are related to the amendment closely enough that the amendment is not found to prejudice[7] the rights of the University.

> After the issuance of a complaint, the Board may allow an amendment to the answer upon written or oral motion on the record, unless a party objects to the amendment and the Board determines that such party shall be prejudiced by the amendment. Any such amendment allowed by the Board shall be automatically incorporated as part of the complaint.

> their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring. Higher education employees shall also have the right to refuse to join employee organizations or to participate in the activities of these organizations subject to the organizational security provision permissible under this chapter.
>
> 3571. UNLAWFUL PRACTICES: EMPLOYER
>
> It shall be unlawful for the higher education 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.

[7]See Cal. Admin. Code, title 8, section 32655(b).

The amendment relates to the intent of the University in making the changes contained in the charge and not to additional factual allegations against which the University would be required to call witnesses to defend.

Any claim of prejudice to the University was further ameliorated by the ruling of the hearing officer that on request, the University would be granted a continuance. Therefore, this amendment is permitted.

B. Amendment by Brief

In its brief, SEIU argues for a finding that the University violated HEERA because of the threats and coercion of Carma Rippee in urging employees not to pursue their right to file an unfair practice charge (see facts, p. 5-6). In the charge itself, there is not even the slightest hint that the University would be called upon to defend such a charge. Because the charge does not contain allegations to put the University on notice that it will be called upon to defend Rippee's comments to employees at staff meetings, the arguments made by the Charging Party regarding this are dismissed.

This argument based on evidence presented at the hearing is essentially a brand new charge. Since it was first presented in January 1981, and first urged as a violation in briefs filed in April and June of 1981, it must be dismissed. The facts

arose between July and October 1979 and are barred by the six-month limitation period contained in section 3563.2 (a)[8]

II. No Reprisals

The PERB fashioned a test for analysis of alleged violations of section 3543.5(a). Since the wording of that section is nearly identical to the wording of section 3571(a), it is appropriate to apply that test to alleged violation of section 3571(a). The test set forth is Oceanside Carlsbad Unified School District (1/30/79) PERB Decision No. 89 reads in relevant part as follows:

> The Test
>
> To assist the parties and hearing officers in this and future cases, PERB finds it advisable to establish comprehensive guidelines for the disposition of charges alleging violations of section 3543.5(a):
>
> 1. A single test shall be applicable in all instances in which violations of section 3543.5(a) are alleged;
>
> 2. Where the charging party establishes that the employer's conduct tends to or does result in some harm to employee rights granted under the EERA, a prima facie case shall be deemed to exist;

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[8]Section 3563.2 (a) reads:

> Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge.

3. Where the harm to the employees' rights is slight, and the employer offers justification based on operational necessity, the competing interest of the employer and the rights of the employees will be balanced and the charge resolved accordingly;

The University has established that permitting employees at the blood bank to work shorter hours was creating personnel problems because employees in other areas of the laboratory were seeking like treatment. Thus, the record reflects some justification based on operational necessity.

Nothing in the record supports a finding that any part of the University's motive in making the change in hours was because of the organizing campaign. Indeed, the record is totally devoid of any evidence of union animus[9] in arriving at the decision to implement the change in hours. It is therefore found that the University did not make the decision to change hours as a reprisal for employees organizing and did not violate section 3571(a).

III

A. The University had a Duty to Meet and Discuss

The University urges a finding that it had no obligation to meet and consult with a non-exclusive representative because

[9]Rippee's comments to employees to discourage them from protesting the change in hours reflects intent to discourage exercise of the right to file an unfair practice, but does not relate to animus because employees were actively organizing. Further, her comments were after the decision to change hours and do not relate to any union animus in reaching that decision.

Higher Education Employer Employee Relations Act (herein HEERA or Act) lacks the specific statutory language contained in the State Employer-Employee Relations Act (herein SEERA) at section 3515.5 which expressly provides that non-exclusive representatives have "the right to represent their members in their employment relations with the state" until selection of an exclusive representative.

In Professional Engineers in California Government (3/19/80) PERB Decision No. 118-S the Board, among other things, decided that the non-exclusive representative had the right to meet and discuss the issue of wages with the employer, stating:

> If we were to adopt respondent's argument that non-exclusive representatives have no right to meet and discuss wages with the state employer, employees would be left with fewer rights than they had before SEERA. It would be anomalous for the Legislature in enacting a new law which generally expands the rights of employees, to strip employees in units with no exclusive representative of any voice in a matter as basic as wages.

The Board concluded that,

> . . . the obligation imposed by the statute on the state employer with respect to nonexclusive representatives is to provide a reasonable opportunity to meet and discuss wages with them prior to the time the employer reaches or takes action on a policy decision. (Emphasis added.)

In Professional Engineers in Cal. Government v. Department of Transportation (1980) 114 Cal.App.3d 93 the court held that a meet-and-confer controversy arising under the George Brown Act had become moot with the passage of the SEERA. However, the court recognized that non-exclusive employee organizations had the right to represent their members pending the selection of the negotiating agent, and that the state employer had been continuing to do so. "Such communication," said the court, "seems consistent with SEERA."

In interpreting SEERA, both PERB and the Court of Appeals in the above cited cases have recognized that SEERA provided expanded rights of representation to state employees. It would thus be anomalous to permit lesser rights during the hiatus prior to selection of an exclusive representative than employees enjoyed prior to passage of SEERA.

Likewise, HEERA provides expanded rights of representation to employees of higher education employers. While lacking the specific provision of section 3515.5, HEERA does provide specific stated purposes. Section 3565 states:

> Higher education employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring. Higher

> education employees shall also have the right to refuse to join employee organizations or to participate in the activities of these organizations subject to the organizational security provision permissible under this chapter. (Emphasis added.)

It is noted that representation and meeting and conferring are treated as separate functions by this section. Only an exclusive representative can "meet and confer" with the employer. (Section 3562(d).) No such restriction is placed on the right of representation per se. Indeed, one portion of the Act apparently permits an individual or a non-exclusive employee group to represent employees in the adjustment of grievances after the selection of the exclusive negotiating agent. (Section 3567.)

Additionally, section 3560(e) of the Act, which sets forth the legislative purpose to provide:

> . . . an atmosphere which permits the fullest participation by employees in the determination of conditions of employment which affect them. It is the intent of this chapter to accomplish this purpose by providing a uniform basis for recognizing the right of the employees of these systems to full freedom of association, self-organization, and designation of representatives of their own choosing for the purpose of representation in their employment relationships with their employers and to select one of such organizations as their exclusive representative for the purpose of meeting and conferring. (Emphasis added.)

Further indication of legislative intent to extend representation rights to employee organizations prior to achieving exclusivity is found in section 3562(g):

> Employee organization means any organization of any kind in which higher education employees participate and which exists for the purpose, in whole or in part, of dealing with higher education employers concerning grievances, labor disputes, wages, hours, and other terms and conditions of employment of employees. (Emphasis added.)

The legislative design of both HEERA and SEERA is so similar and the intent to expand employee rights so basic that even without a provision similar to section 3515.5, the intent to provide the reasonable opportunity for a non-exclusive representative to discuss a matter as fundamental to employment relations as hours of employment is the only interpretation which would further the "fundamental interest in the development of harmonious and cooperative labor relations between the public institutions of higher education and their employees." (Section 3560(a).)

It is therefore found that SEIU had the right to a reasonable opportunity to meet and discuss the proposed change and hours of employment.

B. The Breach of Duty

Very little can be said in defense of either parties' position regarding the implementation of the change in hours on October 29, 1979.

The University had had the practice of a 4-40 work week for seven to eight years. They set the date of implementation for October 15, 1979 without the benefit of input from employees or employee organizations. The reasons (supra, p. 8) for their adamant refusal to move it beyond October 29 when that became the agreed upon date on which they would meet with SEIU are weak and certainly do not rise to the level of business necessity. Thus, the approach of the University is indefensible from the viewpoint of good faith discussion. One two-week delay does not exhibit an open mind.

Conversely, employees knew the date set for implementation on July 24. Their union representative knew the date in early August. But it was not until October 4 that they wrote to the University requesting to meet and confer When a date was agreed upon and implementation delayed until October 29, the employee organization requested a delay in the meeting to October 29 for reasons that are in conflict, one SEIU witness stating it was to attend a leadership conference of the International, another SEIU witness stating it was to confer with their attorney. With the extensive testimony by SEIU witnesses that they felt that the University was going through the motions with a set determination to implement the change in hours and the poor record made by SEIU as to its need to delay the meeting to October 29 it raises the suspicion that the real

purpose of SEIU was to delay the inevitable for as long as possible.

In this setting of weak equities on both sides, a further examination of the surrounding facts tips the scale in favor of SEIU.

Rippee had met with personnel regarding seeking an exception to University policy that prohibited paid lunches. In her testimony, she indicated that SEIU gave her an additional reason she had not previously considered at the October 29 meeting. However, at the October 29 meeting the representatives of the University did not inform SEIU that an exception was necessary to obtain a deviation from University policy or the reasons for which the University would be willing to grant an exception to the policy. This failure on the part of the University leads to the conclusion that they met with SEIU in form only, that they had a fixed course of action in mind and were not openly seeking discussion that could bring about a deviation from that fixed course of action. This, combined with the rigid refusal to move the date of implementation, leads to the conclusion that the University did not meet with an open mind, but in form only.

While the Board itself has not yet defined the extent of rights of non-exclusive representatives in discussion with the employer, the purposes of HEERA cannot be fulfilled by mere form.

It is therefore found that the University violated section 3571(b) by denying to SEIU rights guaranteed by the HEERA. Denial of the right to represent also constitutes a denial of the right to be represented and is therefore a derivative violation of section 3571(a).

REMEDY

Section 3563.3 of the Act provides that:

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

Based on the facts in this case, it is appropriate to order the University to cease and desist from denying to SEIU rights guaranteed by HEERA, denying to members the right to representation guaranteed by HEERA, to return to the status quo ante by reinstating the 4-day/10-hours per day work week including therein a paid one-half hour lunch period and retain that schedule until they have met with SEIU and provided the necessary information for meaningful discussion on how to obtain an exception to the University's policy and retain that work schedule until after discussions are complete or, if a reasonable basis for exception to the policy is found, until the request for exception to the policy has been granted or denied.

Because the facts in this case reflect that SEIU has not pursued its rights diligently, the order will require that if SEIU does not arrange to meet with the University and complete discussion on requesting an exception to the University's policy within 30 workdays after this decision becomes final, the University will have no further obligation to maintain the status quo ante work schedule. While this proviso is unusual in nature, it is necessary to assure good faith on the part of both parties to this case.

It is also appropriate that the University be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the University indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting will provide employees with notice that the University has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the HEERA that employees be informed of the resolution of the controversy and announces the University's readiness to comply with the ordered remedy. See Placerville Union 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 this case, and pursuant to Government Code section 3563.3, it is hereby ordered that the Regents of the University of California and its representatives shall:

A. CEASE AND DESIST FROM:

1. Denying to United Health Care Employees, SEIU Local 660, AFL-CIO, CLC rights guaranteed by HEERA.

2. Denying to employees the right to representation.

B. Take the following affirmative action which is necessary to effectuate the policies of the Higher Education Employer-Employee Relations Act:

1. Return employees of the UCLA blood bank to the status quo ante of a 4~day/10-hours per day work week including one-half hour paid lunch; and

2. On request, meet with the United Health Care Employees, SEIU Local 660, AFL-CIO, CLC, regarding hours of employment for employees of the UCLA blood bank, subject to the proviso of part B. 3. herein.

3. Retain the status quo ante for employees of the UCLA blood bank until either:

(a) Completion of discussion of hours of employment with United Health Care Employees, SEIU Local 660 AFL-CIO, CLC, but not more than 30 workdays after this order becomes final; or

(b) In the event that the parties arrive at a reasonable basis for filing exceptions to the University's policy prohibiting paid lunch periods, then file the request for exception and retain the status quo ante work schedule until the request for exceptions has been approved or denied.

4. Within five (5) workdays after the date of service of a final decision in this matter, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for at least thirty (30) workdays at all work locations where notices to employees of the UCLA blood bank customarily are placed. Such notice must be reduced in size and reasonable steps shall be taken to ensure that they are not defaced, altered or covered by any material;

3. Within twenty (20) workdays from service of the final decision herein, notify the Los Angeles Regional Director of the Public Employment Relations Board, in writing, of the steps the employer has taken to comply with the terms of this ORDER. Continue to report in writing to the regional director periodically thereafter as directed. All reports to the regional director shall be served concurrently on the charging party herein.

C. The allegation that the Regents of the University of California violated section 3571(a) because of comments by Carma Rippee is DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on August 19, 1981, unless a party files a timely statement of exceptions within twenty (20) calendar days following the date of service of the decision. The statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on August 19, 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 concurrently 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: July 30, 1981

Sharrel J. Wyatt
Hearing Officer