STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES AND ITS COLUSA CHAPTER NO. 574,	)	
Charging Party,	)	Case No. S-CE-400
v.	)	PERB Decision No. 296
COLUSA UNIFIED SCHOOL DISTRICT,	)	March 21, 1983
Respondent.	)	

Appearances; Robert A. Galgani and John I. Meeker, Attorneys (Breon, Galgani, Godino & O'Donnell) for Colusa Unified School District; Siona D. Windsor, Attorney for California School Employees Association and its Colusa Chapter No. 574.

Before Gluck, Chairperson; Tovar and Burt, Members.

DECISION

TOVAR, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Colusa Unified School District (District) to the attached proposed decision of a hearing officer which finds, inter alia, that the District unilaterally changed its policy on paid holiday leave and thereby violated subsection 3543.5(b) and (c) of the Educational Employment Relations Act (EERA).[1]

[1]The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise indicated. Subsections 3543.5(b) and (c) provide as follows:

> It shall be unlawful for a public school

For the reasons discussed below, the Board affirms the hearing officer's findings of fact and conclusions of law, adopting his proposed decision and order as the Decision and Order of the Board.

DISCUSSION

The hearing officer's factual basis for concluding that the District violated the EERA was his determination that the collective bargaining agreement between the parties had, since 1977, made provision for paid holiday leave for classified employees whenever the District's governing board should declare a District holiday, and that the District declared such holidays for November 18, 1980 and February 13, 1981 but refused to grant its classified employees paid leave. On exceptions, the District initially asserts that the hearing officer's finding that the collective bargaining agreement mandated paid leave on those two days was in error. The District relies on the dictionary and the Education Code in advocating a different interpretation of the pertinent contract provision.

The hearing officer's determination as to the meaning of the contractual provision on holiday leave was based upon the

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employer to:

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

testimony of persons who actually participated in the negotiation of the contract. He credited the report of those witnesses that, at the time the holiday leave provision was negotiated, it was understood on both sides of the table that the agreed-upon provision would mandate paid leave for classified employees whenever the District declared a local holiday as it did on the two days here at issue. Upon a review of the record, we find nothing which would give us reason to reverse the hearing officer's factual findings. Santa Clara Unified School District (9/26/79) PERB Decision No. 104. In light of the credited testimony of first-hand witnesses as to the intent of the parties upon entering the contract, the District's argument in support of a different construction, relying as it does solely on a facial interpretation of the contractual language, is unpersuasive.

The District's second ground for excepting to the hearing officer's proposed decision is that his findings of fact rely upon evidence of negotiating history which the union failed to offer when the holiday leave dispute came before the school board on a grievance hearing. To permit the union to present before PERB evidence which it chose to withhold at the prior grievance hearing, argues the District, would encourage litigants to engage in this undesirable practice in the future; the Board, therefore, should strike this evidence from the record.

This exception raises an issue which the District never raised before the hearing officer in any manner. It is a well-established rule of administrative appellate procedure that a matter never raised before the trial judge is not properly reviewed by the appellate tribunal on appeal. See Fresno Unified School District (4/30/82) PERB Decision No. 208, at p. 23; and see Butte View Farms v. Agricultural Labor Relations Board (1979) 95 CA.3d 961, 971 [157 Cal.Rptr. 476]. We therefore dismiss the District's second ground for exception to the proposed decision.

The District's final ground for excepting to the proposed decision is that the hearing officer erred in exercising jurisdiction over this matter because the substance of the charge is nothing more than a contract dispute and "PERB is without authority to enforce a contract solely on the basis of a charge of unilateral action."[2]

In Grant Joint Union High School District (2/26/82) PERB Decision No. 196, the Board held that a contractual breach which amounts to only an isolated default in the performance of a contractual obligation is beyond the express legislative grant of jurisdiction vested in PERB. Where, however, an

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[2]EERA subsection 3541.5(b) provides as follows:

> (b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge

employer has unilaterally deviated from contractual terms in a way that has a "generalized effect or continuing impact upon the terms and conditions of bargaining unit employees," such action may amount to a failure to negotiate in violation of EERA subsection 3543.5(c), and is thus not beyond the limitation placed on PERB's jurisdiction by EERA subsection 3541.5(b).

In the instant case, the hearing officer's decision to exercise jurisdiction is entirely consistent with the rule of law articulated in Grant, supra. We therefore affirm the hearing officer's conclusions of law, and adopt the order he proposes, together with the notice attached thereto as an appendix, as the Order and Notice of the Board.

ORDER

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

The findings of fact, conclusions of law and order set forth in the attached proposed decision are adopted in their entirety and herein incorporated as the findings, conclusions and Order of the Board itself.

Chairperson Gluck and Member Burt joined in this Decision.

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based of alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS COLUSA CHAPTER NO. 574, Charging Party, v. COLUSA UNIFIED SCHOOL DISTRICT, Respondent.	)	Unfair Practice Case No. S-CE-400 PROPOSED DECISION (12/7/81)

Appearances; Siona Windsor, Attorney, for the California School Employees Association and its Colusa Chapter No. 574; John I. Meeker, Attorney (Breon, Galgani & Godino) for the Colusa Unified School District.

Before Ronald E. Blubaugh, Hearing Officer.

PROCEDURAL HISTORY

This case raises basic questions about the ability of the Public Employment Relations Board (hereafter PERB or Board) to interpret contracts between school employers and exclusive representatives. In essence, the case involves an exclusive representative's claim that the employer denied employees certain holidays, thereby breaking the contract between the parties while simultaneously committing an unfair practice. Also presented is the question of whether the employer improperly interfered with employee rights to participate in the activities of an employee organization. The employer

contends that the holiday dispute is a contractual matter outside the PERB's jurisdiction. The employer also denies that it interfered with protected employee rights.

The California School Employees Association and its Colusa Chapter No. 574 (hereafter CSEA) filed the present charge on February 25, 1981, alleging that the Colusa Unified School District (hereafter District) had violated Government Code section 3543.5(a), (b) and (c).l The District answered the charge on March 17, 1981 and raised the affirmative defense that the principal issue presented involved contract interpretation and was therefore outside the jurisdiction of the PERB. An informal settlement conference proved unsuccessful and a complaint and notice of hearing were issued by the PERB on April 30, 1981.

On May 27, 1981, a pre-hearing motion to dismiss the charge was denied. A formal hearing was conducted in Colusa on

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[1]In relevant part, Government Code section 3543.5 provides as follows:

It shall be unlawful for a public school employer to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

June 16, and 17, 1981. The final brief was filed on November 9, 1981 and the matter was submitted for decision.

FINDINGS OF FACT

The Colusa Unified School District is located within the Sacramento Valley county of Colusa. The District has an enrollment of approximately 1,136 students. At all times relevant, CSEA has been the exclusive representative of a comprehensive unit of classified employees, totaling about 35. It was stipulated that the District is a public school employer and that CSEA is an employee organization.[2]

In the years prior to the recognition of CSEA as exclusive representative, classified employees were required to work on certain days which were holidays for certificated employees. These tended to be days which preceded or followed state and national holidays. Typically, the day after Thanksgiving was one such day. The District also would declare a local holiday for students and certificated employees whenever Veteran's Day, Lincoln's Birthday or Washington's Birthday occurred on a Thursday or a Tuesday. It was the District's experience that large numbers of students would miss school on the Friday following a Thursday holiday and the Monday preceding a Tuesday holiday. Because such a drop in enrollment adversely affects

[2]The term "public school employer" is defined at Government Code section 3540.1(k). The term "employee organization" is defined at section 3540.1(d). Unless otherwise indicated, all references are to the Government Code.

the amount of money the District receives from the state, the District chose to avoid the problem by declaring local holidays in such situations.

In the 1975-76 school year, there were local holidays for certificated employees and students on November 21 (the day after Thanksgiving) and on February 13 (the day after Lincoln's Birthday). Neither day was a holiday for classified employees. In 1976-77, there was a local holiday for certificated employees on November 26 (the day after Thanksgiving). Classified employees were required to work the day after Thanksgiving in 1976.

The parties commenced negotiations in 1977 for their first contract. In its opening proposal, CSEA requested an extensive provision on holidays. The proposed article specifically listed the day after Thanksgiving as a holiday for classified. It also contained the following provision:

> Additional Holidays: Every day declared by the President or Governor of this state as a public fast, mourning, thanksgiving, or holiday, or any day declared a holiday by the Governing Board under Education Code section 5202, 5202.1, or 377 or their successors shall be a paid holiday for all employees in the bargaining unit.

Neil McAfee, the CSEA field representative who negotiated the 1977 contract with the District, testified that the proposal was specifically designed to halt the District practice of denying local holidays to classified employees. He said he had discovered this practice during preparations for

the 1977 negotiations and wanted to change the practice. Mr. McAfee's testimony is credited. Initially, the District rejected the CSEA proposal on "additional holidays." George Egling, the then superintendent who represented the District during the 1977 negotiations, took the position that classified employees were not entitled to local holidays under the Education Code. In negotiations Supt. Egling stated that he would put into the contract any benefit which was required by the Education Code. He would not, however, agree to benefits not already required by law. Mr. McAfee argued that the District was required to grant local holidays to classified employees and was in violation of the law by not giving classified employees local holidays during previous years.

At the bargaining session of November 17, 1977, after the parties had annunciated their respective positions on local holidays, Mr. McAfee promised to obtain and give to the District legal authority for his position. The negotiating minutes kept by CSEA for the November 17 meeting contain the statement that "Neil [is] to get law cases on Thanksgiving Holiday." At the negotiating session of December 1, 1977, Mr. McAfee provided the District with copies of a 1973 Butte County Superior Court decision and a 1975 Los Angeles County counsel's opinion. The negotiating minutes kept by the CSEA team describe the presentation of the legal authority with these words:

Neil presented District copies of court cases regarding holiday (day after Thanksgiving).

The Superior Court decision presented by Mr. McAfee concerned the day after Thanksgiving in 1970 and 1971. It directed the Oroville Union High School District to make a retroactive payment to classified employees for the day after Thanksgiving in those two years. The Los Angeles County counsel's opinion involved a school district inquiry about whether the district would have to give classified employees holidays on September 15, 1975 and February 13, 1976 if those days were holidays for certificated employees. The county counsel concluded that classified, too, would have to be given holidays under the provisions of the Education Code.

Following Mr. McAfee's presentation on December 1, Supt. Egling said he would have to take the information back to the school board for review and decision. The superintendent did take the matter back to the school board and conducted lengthy discussions with board members about the holiday pay issue. The next negotiating session took place on December 8, 1977. The minutes kept by the two sides show that on December 8, 1977, the two sides agreed that classified employees thereafter should receive a paid holiday for the day after Thanksgiving. The District minutes for that negotiating session contain the following summary of the agreement:

> The District spokesperson stated that we have reviewed the legal cases and the opinions related to the day after Thanksgiving and recognize that this should be declared a local holiday for classified personnel as well as certificated.[3]

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[3]In relevant part, the minutes kept by the District for the December 8, 1977 negotiating meeting read as follows:

> The District spokesperson stated that we have reviewed the legal cases and the opinions related to the day after Thanksgiving and recognize that this should be declared a local holiday for classified personnel as well as certificated. With this admission the classified personnel now have one other holiday this year in lieu of Admission Day, a day that school was held. The classified employees stated that they wished December 31 to be this in lieu [of] holiday.
>
> It is still the board's position that only one-half day be granted for Christmas Eve and one-half day be granted for spring vacation day.
>
> CSEA returned and they said that they would reluctantly accept the board's proposal in that they feel a full day before Christmas is appropriate. They wish the holiday schedule to be in effect for this current year.
>
> The district spokesperson stated that we would accept this in that the legal cases make December 31st a legal holiday for classified employees anyway and we would grant the one-half day spring vacation day for most of the employees anyway. The meaning for the district is that we will have to pay cooks and aides for these days in that they are on paid status per the preceding day. . . . . .

The CSEA minutes for the December 8, 1977 session contain this summary: Day after Thanksgiving OK.[4]

The contract ultimately signed by the parties lists 10 holidays, two half days and states that the Friday after Thanksgiving is a holiday "if school is not in session."5

> 13.2 is accepted as written with the correct Ed. Code section inserted. . . . . .

[4]In relevant part, the minutes kept by CSEA for the December 8 meeting read as follows:

> 2:10 p.m. HOLIDAYS-board response is no to additional 1/2 day at Christmas Eve. Day after Thanksgiving OK; New Year's Eve in place of Admission Day. Dropped 13.1 as it is related to 13.1.7 as stated in contract. Caucus held 2:30-2:40 p.m. CSEA reluctantly accepted District's proposal on holidays-section 13.1.

[5]With respect to scheduled holidays, the contract which resulted from the 1977 negotiations provides as follows:

11.1 Scheduled Holidays:

The District agrees to provide all employees in the bargaining unit with the following paid holidays:

11.1.1 New Year's Day - January 1
11.1.2 Lincoln Day - February 12
11.1.3 Presidents Day - Third Monday in February
11.1.4 Spring Vacation Day - (1/2 day) Friday of the week of spring recess.
11.1.5 Memorial Day - last Monday in May
11.1.6 Independence Day - July 4
11.1.7 Labor Day - the first Monday in September
11.1.8 Admission Day - September 9 or December 31 if school in session September 9
11.1.9 Veteran's Day - November 11
11.1.10 Thanksgiving Day - the Thursday proclaimed by the President and the following Friday if school is not in session.
11.1.11 Christmas Eve - December 14 (1/2 day)
11.1.12 Christmas Day - December 25

The contract also contains a clause on additional holidays which parallels the language in the original CSEA proposal. That section reads as follows:

> 11.2. Additional Holidays; Every day declared by the President or Governor of this State as a public fast, mourning, thanksgiving, or holiday, or any day declared a holiday by the Governing Board under Education Code section 37222 or their successors shall be a paid holiday for all employees in the bargaining unit.[6]

It is apparent from the negotiations minutes that most of the discussions about holidays involved the day after Thanksgiving. Nonetheless, the evidence also supports the conclusion that while they did not talk much about other holidays, it was understood that bargaining unit members would be entitled to all additional holidays declared by the Colusa School Board. This is the explicit meaning of contract article 11.2 and there is no evidence to suggest that the parties intended any other meaning. Moreover, the rationale which CSEA used to obtain a paid holiday on the day after Thanksgiving pertained not just to that day but to all days on which

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[6]Education Code section 37222 provides as follows:

> Declaration of holiday by governing board. Notwithstanding any other provision of sections 37220 to 37231, inclusive, and section 52370, the governing board of any school district may declare a holiday in the public schools under its jurisdiction when good reason exists.

certificated employees received a holiday. CSEA's theory was that the Education Code required equal treatment between certificated and classified employees and, during the 1977 negotiations, the District became convinced that CSEA was correct. The District accepted the CSEA rationale when it granted classified employees the day after Thanksgiving "if school is not in session."

Furthermore, Supt. Egling made a comment during negotiations which shows that the District knew it was agreeing to grant classified employees other local holidays in addition to the day after Thanksgiving. It was the uncontradicted and credited testimony of CSEA witnesses Sharon Robinson and Neil McAfee that after the parties agreed to the holiday article the District's negotiator said that if the District "had to pay local holidays . . . he foresaw in the future that there would be no local holidays in the school calendar." Thus, while the District was agreeing to grant classified employees local holidays whenever certificated employees received local holidays, it planned to avoid additional costs by not granting local holidays to anyone.

In early 1978, Mr. Egling was replaced as superintendent by James Mark who took over immediately as one of the District's representatives during negotiations. By that time the parties already had reached a tentative agreement on the contract language about holiday pay and they did not return to the

subject at any time after Mr. Mark entered the negotiations.

On the basis of this evidence, it is concluded that the District agreed in 1977 to grant classified employees any holiday which the school board might give to certificated employees. The contract clause which made this change in the conditions of employment was carried forward without change in the 1979-1982 contract between the parties.

Other than the day after Thanksgiving, there were no local holidays in the 1978-79 or the 1979-80 school years. In 1980, Lincoln's Birthday (February 12) occurred on a Tuesday. This is the type of situation where the District in previous years would have declared a local holiday on Monday, February 11, in order to avoid the loss of state funds due to a high student absentee rate. However, no local holiday was granted on February 11, 1980.

In the 1980-81 school year, the District declared two local holidays in addition to the day after Thanksgiving. The two local holidays were November 10, a Monday which preceded the Veteran's Day holiday, and February 13, a Friday which followed the day after Lincoln's Birthday.

On November 3, 1980, CSEA field representative Suzanne Cassell wrote the Colusa, Williams and Marysville CSEA chapters and advised their officers that classified employees in those districts should get paid local holidays on November 10, 1980 and February 13, 1981. Ms. Cassell, who had

replaced Mr. McAfee as CSEA field representative in the mid Sacramento Valley, directed the chapter officers to immediately inform their local superintendents that under Education Code section 45203[7], classified employees were entitled to be paid

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[7]At the time the parties entered the agreement, Education Code section 45203 provided as follows:

> Paid holidays. All probationary or permanent employees a part of the classified service shall be entitled to the following paid holidays provided they are in a paid status during any portion of the working day immediately preceding or succeeding the holiday: January 1, February 12 known as "Lincoln Day", the third Monday in February known as "Washington Day", the last Monday in May known as "Memorial Day", July 4, the first Monday in September known as "Labor Day", November 11 known as "Veterans Day", that Thursday in November proclaimed by the President as "Thanksgiving Day," December 25, every day appointed by the President, or the Governor of this state, as provided for in subdivisions (b) and (c) of section 37220 for a public feast, thanksgiving or holiday, or any day declared a holiday under section 1318 or 37222 for classified or certificated employees. School recesses during the Christmas and Easter periods shall not be considered holidays for classified employees who are normally required to work during that period; provided, however, that this shall not be construed as affecting vacation rights specified in section 45203.
>
> Regular employees of the district who are not normally assigned to duty during the school holidays of December 25 and January 1 shall be paid for those two holidays provided that they were in a paid status during any portion of the working day of their normal assignment immediately preceding or succeeding the holiday period.

for any local holidays given to certificated employees. Ms. Cassell enclosed copies of decisions and opinions supporting her position. Copies of the letter were sent to

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> When a holiday herein listed falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. When a holiday herein listed falls on a Saturday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed. When a classified employee is required to work on any of said holidays, he shall be paid compensation, or given compensating time off, for such work, in addition to the regular pay received for the holiday, at the rate of time and one-half his regular rate of pay.
>
> The provisions of Article 3 (commencing with section 37220) of Chapter 2 of Part 22 of this division shall not be construed to in any way limit the provisions of this section, nor shall anything in this section be construed to prohibit the governing board from adopting separate work schedules for the certificated and the classified services, or from providing holiday pay for employees who have not been in paid status on the days specified herein. Notwithstanding the adoption of separate work schedules for the certificated and the classified services, on any school day during which pupils would otherwise have been in attendance but are not and for which certificated personnel receive regular pay, classified personnel shall also receive regular pay whether or not they are required to report for duty that day.
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> This section shall apply to districts that have adopted the merit system in the same manner and effect as if it were a part of article 6 (commencing with section 45240) of this chapter.

various local school officials, including Colusa Unified Supt. Jim Mark. No mention was made in Ms. Cassell's letter of the local holiday contract provision in the Colusa agreement.

At the time she wrote the letter, Ms. Cassell was unaware of the article in the Colusa CSEA contract which pertained to local holidays. The letter dealt solely with her contention that the Education Code required the District to give classified employees the same local holidays as are given to certificated employees. When Supt. Mark received the letter, he interpreted it to be nothing other than a claim that the District was obligated under the Education Code to give classified employees holidays on November 10 and February 13. He notified the school board of this contention and sent a copy of the letter to Robert Galgani, an attorney retained by the District for advice on employee relations matters.

On November 14, 1980, Ms. Cassell wrote to members of the District school board, again asserting her contention that classified employees were entitled to a paid holiday on November 10, 1980 and February 13, 1981. Once more, her assertion was based on the Education Code. The question of whether classified employees were entitled to the two local holidays next arose at a negotiating session on November 20, 1980. Supt. Mark stated that the District was not obligated under the Education Code to give classified employees paid holidays on November 10 and February 13. He distributed

copies of an opinion, dated November 19, 1980, which had been supplied to the District by Mr. Galgani. The opinion, which is an analysis of relevant Education Code sections, contradicts the legal authority earlier supplied by CSEA and concludes that courts would not follow the various county counsel and attorney general opinions which CSEA had given to the District.

Ms. Cassell responded that if the District refused to pay employees for the November 10 holiday, she would file a grievance against the District. The participants at the November 20 negotiating session have slightly differing versions of what occurred next. Ms. Cassell testified that Mr. Mark stated that CSEA as a state organization should stay out of the dispute over the holiday pay at the Colusa Unified School District and allow the local employees to decide whether to fight the District's position. Ms. Cassell testified that she advised Mr. Mark that state and local CSEA are the same organization and that CSEA would pursue the issue. She testified that Mr. Mark next said that if CSEA pursues the issue it would cost the District*money and that "win or lose, CSEA loses." She testified that Mr. Mark stated that the costs of the litigation over holidays would have to come out of money available for negotiations.

Mr. Mark testified that at the time of the November 20 negotiation session CSEA had yet to raise the contention that the holiday pay dispute involved the interpretation of the

contract between the parties. Thus, Mr. Mark testified, he believed that CSEA was preparing to litigate the question under the Education Code. From that frame of reference, he testified, he could not see why the question had to be raised in Colusa when it could be litigated in some larger school district that could better afford the legal costs. Accordingly, Mr. Mark urged Ms. Cassell and the local committee to consider letting the holiday pay issue be resolved elsewhere because Colusa would be bound to the result, anyway. He said he advised the negotiating team that the District was under financial stress and that the cost of litigating the holiday issue had not been budgeted, meaning that the money would have to come from the reserve. He testified that he told the committee that the litigation "would be using up dollars to resolve an Education Code issue that other districts were better equipped to handle."

Mr. Mark was under some tension at the meeting because of the recent death of his mother. He arrived about 40 minutes late for the session because of funeral arrangements he had to make as a result of the death. Members of the CSEA committee knew of the death and knew that Mr. Mark was under some pressure in his personal life. Both District and CSEA witnesses testified that the negotiating atmosphere became strained after Mr. Mark's arrival.

The testimony of both Ms. Cassell and Mr. Mark is credited. Their respective versions of what was said on November 20 are not inconsistent and the differences can be explained by their differing perspectives on the issue of holiday pay.

Formal grievances about the holiday pay issue were filed on November 21, 1980, the day following the animated negotiating session the parties held on the issue. The grievances specifically listed contract section 11.2, "additional holidays" as the applicable section which had been violated when the District failed to give classified employees a holiday on November 10, 1980. Despite this statement on the face of the grievance that the dispute concerned an alleged violation of contract section 11.2, the District continued to focus on the earlier CSEA contention that the Education Code required the holiday pay. On November 25, 1980, the District received a lengthy legal opinion from its counsel, Robert Galgani, to the effect that classified employees were not entitled to paid holidays on all non-work days for teachers.

After the grievances were filed, Supt. Mark again raised the issue of why CSEA was pursuing the holiday question in Colusa. This time he put the question directly to CSEA chapter President Jerry Steele. Mr. Mark urged Mr. Steele to take the matter up elsewhere unless it was a priority issue with members of the Colusa CSEA chapter. Mr. Steele told the superintendent

he would discuss the issue with members of the local chapter.

After considering the issue at a special membership meeting called by Mr. Steele, CSEA elected to go forward with the grievance. A hearing before the District school board was held on January 12, 1981. When the hearing commenced, the superintendent, Mr. Galgani and several, if not all, of the members of the school board still believed the grievance concerned an alleged violation of the Education Code. It was not until after Ms. Cassell began her presentation that the superintendent and then Mr. Galgani and members of the school board realized that CSEA was asserting a violation of article 11.2 of the contract between the parties. Ultimately the hearing was recessed to permit the District to gather all available materials on the history of the 1977 negotiations which led to the inclusion of Article 11.2 in the contract. Ms. Cassell was invited by the District to present any materials she might have on the negotiating history and told that the hearing could be continued for several days if she desired to research the issue. Ms. Cassell responded that CSEA had no need for further research because the members of the 1977 negotiating committee already had assured her that article 11.2 was intended to guarantee that classified employees would receive all local holidays given to certificated employees.

On January 19, 1981, members of the Colusa school board met in executive session and voted to reject the grievance. The

written decision, which board members signed that evening, denies the grievance on the ground that the Education Code does not require classified employees be paid on a holiday basis for either November 10, 1980 or February 13, 1981. The decision also states that "in view of the intent of the parties in adopting the agreement, characterizing a day on the school calendar as a 'local holiday[1] does not mean that this is to be a 'holiday' for pay purposes."

During the executive session, board member Jim Erdman told his fellow board members that he had prepared a statement which he intended to read when the board went back into public session. The statement expressed his disappointment that CSEA had elected to pursue the grievance and stated that the good will and trust between the District and CSEA had been eroded because of the grievance.[8] After he had read the statement

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[8]The text of Mr. Erdman's statement was as follows:

> Since I have been on the school board, it has always been my desire for all of us to feel we have been working for the benefit of the students in the Colusa Unified School District. We should be working with one another, not for some bureaucratic entity.
>
> Only a few short years ago, the school, the administration, the board and the community were widely divided. Until recently I had felt we were united once again, striving for the same goals.
>
> It only takes one small step backward to undo all the good that has been achieved

in executive session, board president Gar Rourke stated that he did not know whether reading the statement in the public meeting would be worthwhile or not because it might be misconstrued. Another board member, Dave Forry, responded that the statement was to be member Erdman's personal statement and as a personal statement Mr. Erdman should be able to say what he wished. There was no other discussion on the issue and the board did not vote on whether or not to take a position on the Erdman statement.

After the executive session, the school board returned to public session. The board voted to reject the CSEA grievance and then Mr. Erdman read his statement which he characterized

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> over the past years. In a community such as ours, we not only work together, but we also live together. When this issue is finally resolved, your CSEA representative will return to her home and we will be left here working and living together again. I hope you realize the good will and trust between us has been eroded because of this grievance.
>
> We have always tried to be open and honest with you. We planned salary increases in our budget and have always said that if there were more than a 5% reserve we would give it to our employees. Last year, due to prudent spending by all the staff, we were able to grant a 3% off the schedule salary increase for this year. We hoped this would be a strong expression of our desire to be fair with you. This apparently is not the case and I am saddened that you no longer have the confidence in your school board that we once had in you.
>
> S/Jim Erdman

as a "personal" statement. There was no discussion of the statement and the other board members offered no comment about it. Following the board action, the superintendent personally notified the employees in whose names the grievances had been filed that the grievances were denied. One of those grievants was Sharon Robinson, a CSEA negotiator. During their brief conversation, the superintendent told her that the District had spent $1,000 on the issue as of that date and that sometimes local chapters could possibly resolve their own problems rather than looking toward organized representation. He did not make similar remark to the other grievants when he personally notified them of the school board's decision.

Classified employees were required to work on both November 10, 1980 and February 13, 1981. Those employees who took one or both days off were required to use vacation or leave time. Those who worked were paid at their regular rate. Certificated employees and students were not required to be present on either day. The agreement between the parties does not provide for binding arbitration of rights disputes. Review by the District governing board is the final step in the grievance process. After the school board rejected the claim for holiday pay, the grievants had no other contractual remedy to pursue.

LEGAL ISSUES

1) Does the PERB have jurisdiction to consider whether

conduct arguably in violation of a negotiated agreement is an unfair practice?

2) If so, did the District violate section 3543.5(c) and/or (b) by denying holidays to classified employees on November 10, 1980 and February 13, 1981?

3) Did the District, through the comments of the superintendent and a member of the school board, threaten or otherwise interfere with the protected rights of employees in violation of section 3543.5(a)?

CONCLUSIONS OF LAW

Jurisdiction of the PERB

Under the Educational Employment Relations Act (section 3540 et seq., hereafter EERA), the PERB has the authority to investigate unfair practice charges and to take action and make determinations about them.[9] However, in cases where the disputed conduct arguably is a violation of a negotiated agreement, the PERB's jurisdiction is subject to a statutory prohibition. Specifically, the EERA precludes the PERB from enforcing agreements between the parties and provides that the

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[9]Section 3541.3(i) grants the PERB the power:

> (i) to investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

agency may not issue "a complaint on any charge based on an alleged violation of such an agreement that would not also constitute an unfair practice under this chapter."10

10Section 3541.5 provides as follows:

> The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:
>
> (a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge except that the board shall not do either of the following: (1) 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; (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, had been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it

The present case, the respondent contends, is the kind from which the EERA has divested the PERB of jurisdiction. Specifically, the District argues, the matter at issue can be resolved only through an interpretation of the negotiated agreement. The PERB would be entitled to construe the contract, the District argues, if the District were defending its action on a theory of waiver. In that circumstance, the District continues, the PERB could examine the contract to determine whether or not the exclusive representative actually had waived its right to negotiate over the matter at issue. Absent a claim of waiver, the District argues, the PERB is prohibited from interpreting the contract.

> shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.
>
> (b) The board shall not have authority to enforce agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.
>
> (c) The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

As authority for this proposition, the District cites the federal labor relations cases of NLRB v. C & C Plywood Corp. (1967) 385 U.S. 421 [64 LRRM 2065] and Mastro Plastics Corp. v. NLRB (1956) 350 U.S. 270 [37 LRRM 2587]. Both cases involved contract interpretation by the National Labor Relations Board in order to determine whether or not an exclusive representative had waived its right to negotiate about certain matters. In addition, the District cites several public sector decisions from other states, New York in particular.

The charging party likewise relies on C & C Plywood Corp. and its progeny. However, the charging party does not read the federal cases as narrowly as does the respondent and contends that under them the PERB does have authority to interpret the negotiated agreement to determine whether the District has made an unlawful unilateral change. The charging party argues that it is not asking the PERB to enforce the collective agreement but is asking the PERB to direct the respondent to stop making mid-term unilateral changes about matters within scope. In order to make this determination, CSEA continues, the PERB must be able to look at the contract language, the intent of the parties and the past practice.

In Baldwin Park Unified School District (4/4/79) PERB Decision No. 92, the Board upheld the dismissal of an unfair practice charge because the charge as stated constituted only an accusation of a contract violation. The Board observed that

unless the allegations at issue would constitute a violation of the EERA, independent from any contractual violation, the PERB is without authority to act.

The present case, however, involves more than an alleged contractual violation. It is contended here that the District made a unilateral change in a term and condition of employment, i.e., the holiday schedule of classified employees. A unilateral change in a term and condition of employment would be a failure to negotiate in good faith in violation of section 3543.5(c).

Still, in order to determine whether or not there was a unilateral change, it is necessary to examine and interpret the negotiated agreement between the parties, something which the District contends the PERB may not do unless the District claims waiver. It is concluded that in asserting this proposition the District reads the federal cases far too narrowly. In Sea Bay Manor Home (1980) 253 NLRB No. 68 [106 LRRM 1010], a case cited by CSEA, the National Labor Relations Board observed that while a breach of contract is not necessarily an unfair labor practice, it does not follow that "conduct . . . of a kind condemned by the act . . . must be ruled out as an unfair labor practice simply because it happens also to be a breach of contract." 106 LRRM 1010 at 1012. No defense of waiver was asserted in Sea Bay Manor Home and the National Labor Relations Board interpreted the contract in

order to find if an unfair labor practice had been committed.

Similarly, in Anaconda Aluminum Co. (1966) 160 NLRB 35 [62 LRRM 1370] the National Labor Relations Board interpreted the terms of a collective bargaining agreement in order to ascertain whether the employer had made a unilateral change. In finding a violation, the administrative law judge and ultimately the NLRB considered both the literal terms of the agreement and custom and usage in the plant.

These federal decisions are consistent with the very wording of the applicable section of the EERA. The statute does not divest PERB of authority whenever a contract exists. Rather, it states simply that the PERB shall not enforce agreements and shall not issue a complaint on conduct in alleged violation of an agreement unless that conduct also would constitute an unfair practice. Plainly, the PERB has authority to consider any act which might be a violation of the EERA, regardless of whether it independently violates a negotiated agreement. The only restriction is that cases involving both contractual and statutory violations ordinarily must be deferred to the grievance machinery of the contract if, unlike the present case, it provides for binding arbitration. (See section 3541.5.) Because the allegations in the present case involved conduct that independently would violate the EERA, regardless of whether it also might violate the contract, the PERB has jurisdiction to consider the issues presented.

The Alleged Unilateral Change

CSEA contends that in refusing to grant holidays to classified employees on November 10, 1980 and on February 13, 1981 the District made a unilateral change in a matter within the scope of representation.![1] This change was made, CSEA continues, without prior notice to CSEA and without prior opportunity to negotiate. Citing PERB decisions as precedent, CSEA argues that such a change was per se a failure to negotiate in good faith and thus a violation of Section 3543.5(c).

In disputing this claim, the District contends that the record simply fails to establish that the parties intended to give local holidays to classified employees when they wrote the

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[11]The scope of representation under the EERA is set forth in Section 3543.2. In relevant part, that section provides:

> The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedure to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code . . . . . .

contract. Furthermore, the District continues, the past practice shows that classified employees worked five local holidays in 1975 and 1976. Nothing in the 1977 negotiations constituted an abandonment of this past practice, the District concludes.

It is well-established that an employer which makes a pre-impasse unilateral change about a matter within the scope of representation violates the EERA. Such unilateral changes are inherently destructive of employee rights and are a failure per se of the duty to negotiate in good faith. For this reason, the PERB frequently has found such changes to be in violation of section 3543.5(c). See generally, Davis Unified School District (2/22/80) PERB Decision No. 116, San Francisco Community College District (10/12/79) PERB Decision No. 105 and San Mateo Community College District (6/8/79) PERB Decision No. 94.

The subject matter of the present dispute is paid holidays. Although paid holidays is not a subject specifically listed within the EERA's scope of representation, it is a matter logically and reasonably related to both wages and hours. It is a matter of concern to both management and employees and could be a cause of conflict without the mediatory influence of collective negotiations. Requiring negotiations about holidays will not significantly abridge the

employer's freedom to exercise the managerial prerogatives essential to achievement of the District's mission.[12] It is not difficult, therefore, to conclude that paid holidays is a mandatory subject of negotiations. In seeking to obtain a paid holiday an employee organization negotiates about wages and hours. It is a fundamental subject.

The District contends, however, that it made no change because classified employees in Colusa never have been entitled to local holidays.

This argument ignores the 1977 negotiations. The evidence establishes that it was CSEA's intent in 1977 to stop what it perceived as an inequality of treatment between classified and certificated employees. CSEA sought and won the right to

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[12]The PERB test for determining whether a matter is within the scope of representation is concisely set forth in Anaheim Union High School District (10/28/81) PERB Decision No. 177. The test provides that:

> . . . a subject is negotiable even though not specifically enumerated if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge his freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission.

receive local holidays. This was CSEA's specific intention and the record establishes that the then superintendent understood the implications of contract section 11.2, "Additional Holidays." That classified employees did not receive local holidays prior to 1977 is irrelevant. The practice changed when the agreement was negotiated and beginning with the signing of the contract, the condition of employment was that classified unit members would receive all local holidays.

When the District refused to give classified employees the day off on November 10, 1980 and February 13, 1981, it unilaterally changed a term and condition of employment. It made this change without notice to the exclusive representative and without an opportunity to negotiate. Davis Unified School District, supra, PERB Decision No. 116. This action per se was a failure to negotiate in good faith and a violation of section 3543.5(c). Because the action was taken without giving the exclusive representative the opportunity to negotiate, it also deprived the organization of its right to represent its members[13] and was a concurrent violation of section 3543.5(b).

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[13]In relevant part, section 3543.1 provides that:

> (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1

Alleged Interference With Protected Rights

CSEA's other contention is that the District, through the statements of the superintendent and a school board member, interfered with the protected rights of employees to be represented by CSEA. This conduct, it is contended, was in violation of section 3543.5(a). The comments, CSEA argues, effectively disparaged the grievance procedure as "disruptive, divisive, time consuming and personally injurious to those who chose to participate in it." The comments, CSEA contends, fall outside any rights of speech which employers might possess in order to express their views to employees.

The District responds that nothing in the comments of either Supt. Mark or board member Erdman rise to the level of a statutory violation. There was no threat of reprisal nor any comments from which a threat could be inferred, the District asserts. Citing both PERB and federal precedent, the District argues that an employer is allowed to discuss economic consequences outside of its control and the comments made by the superintendent and board member went no further.

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or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

Public school employees are assured by the EERA of the right to form, join and participate in the activities of employee organizations.[14] If a public school employer interferes with protected rights or makes threats, imposes reprisals or discriminates against employees because of their exercise of these rights, the employer will have violated section 3543.5(a). The conduct in which employees engaged at Colusa was the filing of grievances over the holiday pay issue. The filing of grievances is protected conduct under the EERA. See generally, South San Francisco Unified School District (1/15/80) PERB Decision No. 112; Baldwin Park Unified School District (4/4/79) PERB Decision No. 92; Mount Diablo Unified School District (12/30/77) EERB Decision No. 44. CSEA

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[14]In relevant part section 3543 provides:

> Public school 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. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer . . . .

contends that the District interfered with the right of employees to engage in this conduct and made threats of reprisal. Both contentions are based upon statements made by the superintendent and board member Erdman.

Employers are not precluded by the EERA from expressing their views on employment-related matters. This right of employer speech necessarily includes the ability to make critical as well as favorable comments about a union's position, so long as the communication is not used as a means of violating the statute. A violation occurs only when an employer's speech contains a "threat of reprisal or force or promise of benefit." Rio Hondo Community College District (5/15/80) PERB Decision No. 128. In making a determination about whether certain speech by an employer was a violation, the PERB will consider the speech in light of its actual or probable impact on the person receiving the communication.[15]

In this case, the contested employer speech amounted to a criticism of CSEA for pursuing the holiday pay issue in Colusa. Supt. Mark criticized the organization's decision at the November 20 negotiating session where he questioned whether

[15]Other relevant PERB cases analyzing the legality of employment or organization related speech by an employer include: San Diego Unified School District (6/19/80) PERB Decision No. 137; Antelope Valley Community College District (7/18/79) PERB Decision No. 97; Clovis Unified School District (8/7/78) PERB Decision No. 61.

local CSEA people actually agreed with the decision to raise the issue in Colusa. The superintendent raised the issue again on at least one occasion after November 21, that time to CSEA chapter President Steele. Board member Erdman's comments at the January 19, 1981 school board meeting involved the same theme. Mr. Erdman stated that pursuing the grievance had been a "step backward" and that it had adversely affected the improving relationship between the school board and the members of the negotiating unit.

These comments are not unlike the employer speech which the PERB found lawful in Rio Hondo, supra. In Rio Hondo, the employer was critical of an employee organization's decision to file a lawsuit against the employer. One communication at issue in Rio Hondo was a memo from an assistant superintendent in which he criticized the lawsuit and sought to persuade employees to convince the employee organization to withdraw the civil action. The other document, which was written by the Rio Hondo superintendent, expressed the employer's dissatisfaction with the employee organization response to an employer proposal. In that communication, the superintendent also expressed dissatisfaction with the conduct of the president of the employee organization. The superintendent stated that the organization officer's conduct had adversely affected the cooperative relationship which the parties previously had

enjoyed. In its analysis, the PERB concludes that neither of these comments amounted to a threat of reprisal or force or a promise of benefit.

The similarity of the speech in Rio Hondo to that in Colusa is obvious. There was only one comment made in Colusa which might rise to the level of a threat of reprisal. That comment was Supt. Mark's statement at the November 20, 1980 negotiating session that if CSEA were to further pursue the grievance it would cost the District money and that "win or lose, CSEA loses." The superintendent stated that the costs of litigation over holidays had not previously been provided for in the District budget. The money thus would have to be drawn from the District's undistributed reserve, the same source of funds from which negotiated benefits would be drawn, thus leaving less money for contractual improvements.

In context, however, not even Supt. Mark's "win or lose" comment can be considered a threat of reprisal. In essence, the remark was a statement that the District had limited funds and any expenditure of money for litigation would bring a corresponding reduction in money available for other purposes, including negotiated benefits. This statement was made only once, during a negotiating session which both sides have described as strained. The superintendent made the remark at a time he was under personal stress due to the recent death of

his mother. He arrived at the negotiating session just after he had made funeral arrangements. This fact was known to the CSEA negotiating team at the time. The superintendent's remark was made to an experienced CSEA field representative. The remark was not repeated in subsequent meetings and no other comments which might be interpreted as threats were made by the superintendent.

Under these circumstances, the superintendent's remark should not reasonably have been interpreted as a threat. It was an angered expression in a tense negotiation session by a man known to be under personal, emotional stress. The remark was made to a professional employee organization representative who possessed the experience to evaluate the circumstances in which it was made.

For these reasons, it is concluded that the remarks of Supt. Mark and board member Erdman did not constitute interference with protected rights nor threat of retaliation for participation in protected rights. CSEA, therefore, has failed to prove its allegation that the District violated section 3543.5(a).

REMEDY

The charging party seeks an order that the District be directed to reinstate the terms and conditions of employment which the District unilaterally abandoned. The charging party also asks that employees be made whole for any losses they

incurred because of the District's unilateral change. Specifically, the charging party asks that employees be retroactively given the holidays of November 10, 1980 and February 13, 1981. As to employees who worked on those days, the charging party asks that they be paid in accord with the contractual provision for work on holidays. As to employees who did not work, the charging party asks that those who took the day or days off as vacation or compensating time or leave time have restored to them the amount of vacation or compensating time or leave time they used on the holidays. As to employees who did not work and who were not paid because they used no vacation, leave or compensating time, the charging party asks that they be paid for the holiday at the regular rate of pay.

Under Government Code section 3541.5(c), the PERB is given:

> . . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

In cases involving unilateral changes in matters within the scope of representation, the PERB has ordered the restoration of the status quo ante, including interest at the rate of seven percent. San Mateo Community College District, supra, PERB Decision No. 94. Here, the remedies sought by the charging

party are appropriate to restore the status quo ante and to make unit members whole for the loss of the two vacation days in the 1980-81 school year.

It also is appropriate that the District be directed to cease and desist from its unfair practices. It is appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and announces the District's readiness to comply with the order 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, conclusions of law, and the entire record of this case, and pursuant to Government Code section 3541.5(c) of the Educational Employment Relations

Act, it hereby is ordered that the Colusa Unified School District, Board of Trustees, superintendent and their respective agents shall:

A. CEASE AND DESIST FROM:

Making unilateral changes in matters within the scope of representation, specifically, by refusing to grant members of the classified negotiating unit as paid additional holidays those days "declared a holiday by the governing board under Education Code section 37222."

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. In accord with the existing practices within the District for setting the rate of pay for work on holidays, make retroactive payment plus interest at the rate of seven percent to those members of the classified negotiating unit who worked on November 10, 1980 and/or February 13, 1981.

2. Make whole those employees who did not work on November 10, 1980 and/or February 13, 1981 and as a result were either docked pay or expended vacation, leave or compensating time. Pay to employees who did not work and were not paid, all lost wages plus interest at the rate of seven percent, in accord with existing practices within the District for setting the rate of pay for persons who do not work on holidays. Restore to employees who did not work but were paid because they used either vacation, leave or compensating time, the

amount of vacation, leave or compensating time they used on the holiday(s).

3. Within five (5) workdays after the date of service of a final decision in this matter, post at all work locations where notices to employees customarily are posted, copies of the notice attached as an appendix hereto signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notices are not altered, reduced in size, defaced or covered with any other material.

4. Within twenty (20) consecutive workdays from the service of the final decision herein notify the Sacramento Regional Director of the Public Employment Relations Board in writing of what 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.

It further is ordered that the present charge be DISMISSED in all other respects.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on December 28, 1981 unless a party files a timely statement of exceptions. See California Administrative

Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the executive assistant to the Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on December 28, 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 PERB itself. See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.

Dated: December 7, 1981

Ronald E. Blubaugh
Hearing Officer

APPENDIX A

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. S-CE-400, California School Employees Association, Chapter No. 574 v. Colusa Unified School District, in which all parties had the right to participate, it has been found that the Colusa Unified School District violated the Educational Employment Relations Act, Government Code section 3543.5(b) and (c).

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:

Making unilateral changes in matters within the scope of representation, specifically, by refusing to grant members of the classified negotiating unit as paid additional holidays those days "declared a holiday by the governing board under Education Code section 37222."

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ERRA:

1. In accord with the existing practices within the District of setting the rate of pay for work on holidays, make retroactive payment plus interest at the rate of seven percent to those members of the classified negotiating unit who worked on November 10, 1980 and/or February 13, 1981.

2. Make whole those employees who did not work on November 10, 1980 and/or February 13, 1981 and as a result were either docked pay or expended vacation, leave or compensating time. Pay to employees who did not work and were not paid, all lost wages plus interest at the rate of seven percent, in accord with existing practices within the District for setting the rate of pay for persons who do not work on holidays. Restore to employees who did not work but were paid because they used either vacation, leave or compensating time, the amount of vacation, leave or compensating time they used on the holiday(s).

3. Within five (5) workdays after the date of service of a final decision in this matter, post at all work locations where notices to employees customarily are posted, copies of this notice signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notices are not altered, reduced in size, defaced or covered with any other material.

4. Within twenty (20) consecutive workdays from the service of the final decision herein notify the Sacramento Regional Director of the Public Employment Relations Board in writing of what 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.

COLUSA UNIFIED SCHOOL DISTRICT

Dated: _____ By _____
Authorized Representative

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR 30 WORKING DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, REDUCED IN SIZE, DEFACED OR COVERED WITH ANY OTHER MATERIAL.