STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SALINAS VALLEY FEDERATION OF TEACHERS, LOCAL 1020, AFT, AFL-CIO, Charging Party, v. SALINAS UNION HIGH SCHOOL DISTRICT, Respondent.	)	Case No. SF-CE-552 PERB Decision No. 339 August 22, 1983

Appearances: Vincent A. Harrington, Jr., Attorney (Van Bourg, Allen, Weinberg & Roger) for Salinas Valley Federation of Teachers, Local 1020, AFT, AFL-CIO; Patricia W. Mills, Attorney (Breon, Galgani, Godino & O'Donnell) for Salinas Union High School District.

Before Tovar, Morgenstern and Burt, Members.

DECISION

BURT, Member: This case is before the Public Employment Relations Board (Board) on exceptions filed by the Salinas Valley Federation of Teachers, Local 1020, AFT, AFL-CIO (Federation) to the attached Administrative Law Judge's (ALJ) proposed decision dismissing the Federation's charges that the Salinas Union High School District (District) unilaterally changed the terms and conditions of employment in violation of subsections 3543.5(b) and (c) of the Educational Employment Relations Act,[1] by conducting in-service training at a

[1]The Educational Employment Relations Act is codified at

faculty meeting, even though there was no provision for in-service training in the contract, and during negotiations the District had given up its right to conduct in-service training after school hours.

In its exceptions, the Federation disputes minor factual findings made by the ALJ and contests his interpretation of those facts, urging the Board to conclude that the District had no right to conduct in-service training after school hours.

We have carefully reviewed the entire record, including the exceptions filed by the Federation and the District's response to those exceptions. We find that the ALJ's findings of fact are free of prejudicial error, and we adopt them as our own. We further agree with the ALJ that the Federation has not met its burden of proving that the District made a unilateral change, and we therefore adopt his conclusions of law and affirm his dismissal of the charges against the District.

Government Code section 3540 et seq. Section 3543.5 provides in relevant part as follows:

> It shall be unlawful for a public school 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.

ORDER

Upon the foregoing Decision and the entire record in this case, the complaint against the Salinas Union High School District is hereby DISMISSED.

Members Tovar and Morgenstern joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SALINAS VALLEY FEDERATION OF TEACHERS, LOCAL 1020, AFT, AFL-CIO,	)	
Charging Party,	)	Unfair Practice Case No. SF-CE-552
v.	)	
SALINAS UNION HIGH SCHOOL DISTRICT,	)	PROPOSED DECISION (4/12/82)
Respondent.	)	

Appearances: Vincent A. Harrington, Jr. (Van Bourg, Allen, Weinberg & Roger), attorney for the charging party Salinas Valley Federation of Teachers, Local 1020; Patricia W. Mills (Breon, Galgani & Godino), attorney for the respondent Salinas Union High School District.

Before: Barry Winograd, Administrative Law Judge.

PROCEDURAL HISTORY

On April 20, 1981 the Salinas Valley Federation of Teachers, Local 1020, AFL-CIO (hereafter Federation), filed an unfair practice charge against the Salinas Union High School District (hereafter District). The charging party alleges, in essence, that the employer unilaterally required teachers to participate in an in-service training workshop beyond the regular school day, during a contractually-provided faculty meeting. The collective agreement between the parties contained no express provision for in-service training, and the employer had abandoned such a proposal during previous contract

negotiations. Under these circumstances, according to the charging party, the District violated subsections 3543.5(b) and 3543.5(c) of the Educational Employment Relations Act (hereafter EERA or Act).[1]

On May 11, 1981 the District filed its answer, admitting certain particulars regarding the negotiating history and the workshop session, but denying that a unilateral change in a term or condition of employment had taken place or that it had waived the right to conduct in-service training during a faculty meeting. The District also claimed that the subject matter (as distinct from "hours") of faculty meetings or in-service training sessions was not within the scope of representation under the Act.

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[1]The EERA is codified at Government Code section 3540, et seq. and is administered by the Public Employment Relations Board (hereafter PERB or Board). All references hereafter are to the Government Code unless otherwise indicated. Section 3543.5 provides that it shall be unlawful for a public school 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.
>
> . . . . . .

An informal settlement conference was conducted on May 14, 1981 but the dispute was not resolved. On May 27, 1981 a complaint and notice of hearing was issued.

On June 19, 1981 respondent filed a motion to dismiss, asserting that the employer had accepted an advisory arbitration award of April 29, 1981 based on the same facts as those underlying the unfair practice charge. The arbitrator concluded that the District could conduct in-service training during a faculty meeting as long as the time involved did not extend the normal time for faculty meetings beyond the regular workday. The District's acceptance of the award, according to the respondent, rendered the charge "moot" and justified dismissal in accord with the deferral requirement of subsection 3541.5(a) of the Act.[2] The charging party opposed the motion, contending that the dispute was neither moot nor subject to deferral because the advisory arbitration did not constitute a binding settlement of the conflict and, further, the arbitrator had not considered the statutory issues that

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[2]The relevant portion of subsection 3541.5(a) prohibits the issuance of 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, has been exhausted, either by settlement or binding arbitration.

were raised by the present charge. A copy of the arbitrator's decision was appended to the charging party's opposition.

On July 22, 1981, the motion to dismiss was denied, without prejudice to renewal of the motion if further evidence would show that the charging party agreed to accept the advisory arbitration award as a full settlement of all matters relating to the contractual dispute. (Accord Pittsburg Unified School District (3/15/82) PERB Decision No. 199.) The motion to dismiss was not expressly renewed at or after the formal hearing, although respondent continued to make reference to the earlier proceeding in support of its arguments in this case.

By order of July 22, 1981, upon the motion of respondent and with the agreement of opposing counsel, the venue for the trial was changed from San Francisco to Salinas, California.

A formal hearing was conducted on August 24 and 25, 1981. Post-hearing briefs were filed by both parties and, on November 30, 1981, when no final reply was received from the charging party on the date that had been set, the matter was submitted for decision.

FINDINGS OF FACT

A. Background and past practice.

In 1976 the District adopted a job description for teachers. This statement, Policy No. 4197, provided for certain adjunct duties for teachers, including: parent conferences, assigned extra-curricular supervision,

roll-taking, service on school and district committees, back-to-school nights and open houses, departmental and general faculty meetings, and in-service training sessions.

According to the evidence, faculty meetings involved day-to-day aspects of local school administration, typically dealing with report cards, attendance policies, testing schedules, committee formations and reports, school and cafeteria hours, and so on. Faculty meetings were usually held no more than once a month, sometimes less often, except for occasional emergency meetings. The meetings took place after the regular teaching day (and sometimes in the early morning before class) and lasted no more than one to one-and-a-half hours. The agenda for faculty meetings was set by the site principal, with some teacher input on particular items.

There was evidence introduced that in a few instances faculty meetings were largely concerned with single topics, such as a state accreditation evaluation report, incidents of local gang or student violence, and reports on minority relationships. In addition to nuts-and-bolts subjects, other evidence indicated that certain topics were occasionally raised in order to impart information about student health, social and/or cultural issues. For example, presentations had been offered touching upon drug use, alcoholism, child abuse, special education programs, truancy abatement and burglary. Most of these issues were discussed by District officials or

employees, but sometimes outside police or social service personnel spoke.[3]

In-service training sessions under Policy No. 4197 were distinguishable from faculty sessions. The general statement of this adjunct duty provided for:

> Participation in school inservice training sessions by all staff members individually or in groups as planned mutually by the instructional staff and principal. Participation shall be not less than five hours nor more than twenty-five hours per academic year beyond the teacher workday. The nature and length of such inservice programs shall be tailored by the instructional staff and principal to fit the particular needs of the school. Inservice time requirements may be exceeded where such training is related to a Stull Act Plan of Assistance.

Teachers and adminsitrators agreed that individual and group in-service programs were designed to increase teacher career advancement, and ethnic and cultural awareness, as well as to improve basic instructional skills. A wide variety of activities satisfied the credit requirements, including

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[3]One repeat speaker (Bellizio) worked for a community half-way house and social service program that was a joint venture project in which the District participated. There was no clear evidence that this person was actually a District employee, even though part of his salary may have been derived from District resources. Another outside speaker, a police officer, presented the information about truancy abatement and burglary in March 1981 after the workshop presentation at issue in this case. For this reason, this example is not accorded the same weight as other evidence introduced about established practice.

workshop attendance, book reviews, and course work. In-service training was supervised either by a local volunteer committee, department chair, and/or site principal. District approval in advance was required if the in-service training was not sponsored by the District itself. No credit was given for subjects akin to in-service training activity that were presented during faculty meetings. In sum, there was substantial evidence that, under established practice and perception, faculty meetings and in-service training for credit were considered to be separate teacher activities.

B. Contract negotiations.

Once the Federation became the exclusive representative in the District, the parties began negotiations for a first agreement in 1979. In the District's initial proposals, in September 1979, the employer sought a block of 179 hours for adjunct duties comparable to those set forth in Policy No. 4197, including faculty meetings and in-service training. The union opposed the block concept and proposed dealing with adjunct duties individually. The union vigorously objected to continuation of the program for in-service training credit as it had existed under Policy No. 4197. Janet Hedlund, union president and one of the chief negotiators, testified:

> The history of the District on in-service training and the response of the teachers to that had been and has been one of, the teachers felt that the in-service training, by and large, was not meeting a purpose,

> not helping them in any way, was a waste of their time, an inefficient use of their time, that it took away from their teaching duties and their paperwork and their other responsibilities that were directly related to the classroom.

During negotiations, including mediation and factfinding, the dispute over in-service training persisted. Early in negotiations the District had dropped its block concept for adjunct duty time. Thereafter, regarding separate in-service duty, the District progressively lowered its demand from thirty hours of in-service to five hours. The union remained firm in its opposition to any after-school in-service credit requirements. Eventually, after the factfinder recommended against a separate specification for in-service duty, the District abandoned this proposal. When other issues were also resolved, an agreement was reached. The final contract included provision for as many as ten faculty meetings a year.[4]

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[4]The contract was effective May 16, 1979 through June 30, 1980. Article VII(B)(1)(f) describes those adjunct duties that were part of a teacher's hours of employment:

> Classroom teachers and those employees listed in paragraph 3.a-j may be required to perform all or part of the following duties beyond the regular workday. The number of and assignment to the following duties shall be on a reasonable and equitable basis, and shall be scheduled by

Substantial evidence was introduced about the negotiating history in order to shed light on the agreed terms. It is undisputed that there were no negotiations about in-service training during the regular school day. It is also undisputed that compensation for all adjunct duties was built into the salary scale, without separate pay for individual assignments. Beyond these points, the precise intent of the parties is contested.

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the District with regard to individual preferences insofar as possible.

(1) Attendance at up to ten (10) faculty meetings; attendance at a reasonable number of regularly scheduled and special department meetings.

(2) Performing assigned supervision of students beyond the required on-site workday, not covered by District Policy 4143.1.

(3) Participation in non-extra pay cocurricular programs of the school, e.g., club sponsorship and class sponsorship.

(4) Attendance at no more than one back to school night and no more than one (1) open house.

(5) Participation in the school's guidance program.

(6) Attendance at parent conferences at the request of a parent, counselor or administrator by appointment with the teacher at times other than during the required on-site work hours.

(7) Service on school and District committees.

Keith Breon, an attorney for the District and its chief negotiator, testified that he had specifically exempted the content or subject matter of adjunct duties, including faculty meetings, from negotiations. Breon viewed negotiations as limited to the impact of those duties upon teacher hours of employment, including the frequency of specified activities such as faculty meetings. The union did not contradict Breon's testimony that content was excluded. One of the union's chief negotiators, Marshall Brewer, admitted that Breon might have stated such a reservation. The union claimed, however, that although it had not raised the issue of the content of either faculty meetings or in-service training sessions, it assumed that established practice under Policy No. 4197 defined how those duties were understood in negotiations.

Other evidence was offered regarding the District's decision to abandon the in-service proposal. Breon testified that the demand was dropped after informal confirmation that there was no union objection to in-service sessions being conducted on minimum session school days. Federation witnesses testified that this was in accord with their view at the time and possibly was stated at the bargaining table.

A testimonial dispute exists, however, over Breon's further hearsay testimony that Hedlund assured the District's superintendent that in-service sessions could also be conducted during faculty meetings, and that this understanding formed a

basis for the District's decision to drop its demand. Hedlund flatly denied ever having made the statement or heard such an explanation during negotiations. The District did not call the hearsay declarant as a witness. Thus, Hedlund's testimony on this point is credited:

> . . . . I don't believe we discussed the issue from either side once we got into the last part of negotiations, once the report was presented. It never was, my recollection that it was not on the table again. It was never discussed. It was just dropped. Where the District was coming from, we didn't know. We just didn't see it on the table and we were very glad for it. Since it had been a separate item from faculty meetings, we assumed that it was still separate and that it was dropped. Since the District didn't tell us otherwise, we had no other reason to believe that it was otherwise.

With the expiration of the 1979-1980 contract, the parties began negotiations for a successor agreement. There is no allegation, other than the issue raised in this case, that the employer failed to abide by applicable terms of the expired agreement pending the next contract. An agreement was eventually achieved covering the term of November 26, 1980 through June 30, 1982. This agreement included a provision for adjunct duties that was identical in relevant aspects to the term in the previous contract. The contract, therefore, did not reflect any change in this article to take into account the intervening dispute over in-service training that arose in October 1980 and that led to a grievance and the instant charge.

C. The October 1980 violence and vandalism workshops.

During summer 1980, a committee of District officials, classified employees, teachers, students, counselors, and a few others met as a local working group that grew out of long-term concerns over incidents of school violence. In the words of a principal District organizer, the working group decided that a program should be established,

> . . . to inform our staff, as we had been informed, of the gang potential in Salinas and how that, how tensions are raised in classroom through, maybe comments that teachers aren't even aware of that produce racial tensions and add to gang activity on campus.

There was no evidence introduced that the Federation participated in the summer working group or the subsequent planning.

To implement the program, the District contacted outside authorities to give presentations to District personnel, both certificated and classified, on October 21 and 22, 1980. The theme of the program was "violence and vandalism." One of the speakers was from Los Angeles and had expertise on youth and gang issues. He also contributed an analysis of local samples of graffiti taken from the Salinas area. The other speaker conducted a series of small group workshops, designed to simulate classroom interactions and potential teacher-student tensions.

The two-day October program was conducted at several District schools. The District adopted minimum-day formats for two consecutive days, limited however by an assumption that state law required that one minimum day last 180 minutes, and the other 240. In order to accommodate the length of the programs, about two to two-and-one-half hours each day, the need to shuttle the speakers between different school sites, and the shorter minimum day for one session, the District decided a few weeks before the sessions that it had to utilize some time beyond the regular classroom day. Two high schools were selected for these extra-time programs. The programs were completed within the regular day at the other schools.

During the planning stage, District administrators recognized that the contract made no separate provision for programs similar in nature to in-service training and decided that the workshops beyond the regular day at the two schools would be carried over as "faculty meetings." These administrators realized that the use of faculty meeting time would constitute one of the ten meetings per year authorized by the contract.

The Federation was aware of the District's faculty meeting decision about two weeks before the sessions. Although no express demand to negotiate was made, Hedlund told District officials that some individuals (for example, Brewer) might file a contract grievance, even if she probably would not grieve the presentation at her high school. There was

insufficient evidence to determine whether this reflected a split within Federation ranks on the issue, or merely a tactical decision by the union about how to raise an objection since the contract permitted only individual employee grievances. Regardless, the District went ahead with its plans, asserting to the union that the District believed it had a right, unaffected by the contractual history, to determine the subject matter of faculty meetings. Significantly, Hedlund conceded in her testimony that, from her point of view, the District's action utilizing faculty meeting time would have been consistent with established practice if the violence and vandalism subject matter had been presented in the form of a committee report, as other topics had been, and not as an outside lecture and workshop presentation.

Finally, there is no persuasive evidence that the District's decision to conduct the workshop had any impact on teacher hours of employment beyond the faculty meeting time presently in dispute. There was a speculative assertion offered by Brewer that the preparation period for many teachers at one school was eliminated because the minimum day structure was used. However, other documentary evidence setting forth the daily class scheduling casts doubt on this possible impact. Hedlund also testified that there was no impact on teacher hours beyond mere attendance. In any event, other Federation testimony conceded that the District could have

understood when it dropped the in-service demand during negotiations that the union would not object to in-service sessions conducted on minimum school days. This understanding was consistent with contractual language expressly allowing for waiver of preparation periods on minimum school days.[5]

ISSUE

Did the District unilaterally establish a term and condition of employment by conducting an in-service training workshop during a faculty meeting?

CONCLUSIONS OF LAW

The Federation claims, based on established practice, that faculty meetings and in-service training constituted distinct adjunct duties. The union contends that the 1979-1980 contract language and negotiating history are in accord with this view. Further, the Federation maintains that the District's abandonment of its proposal for in-service training during contract negotiations amounted to a waiver of the right to assign that duty, precluding, under any guise, a District requirement of in-service training beyond the regular working day.

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[5]In addition to their presence on October 21 and 22, some teachers did spend about five minutes filling out a short questionnaire evaluating the workshops. This appears to have been a request for voluntary feedback. The District initially offered a summary of the survey results as evidence, but the employer withdrew its offer when questions were raised about the survey's methodology.

In response, the District argues that neither past practice, the terms of the agreement, nor the negotiating history support the sweeping claims of the union, including the waiver theory. The District asserts that negotiations involved only the basic issue of hours (and extra-hours) of employment, and not the content or subject matter of particular assignments. Respondent also argues that the in-service session in October was not unilateral employer action creating a new term and condition of employment because the session was sufficiently consistent with established faculty meeting practice and the traditional exercise of managerial prerogative over the content of those meetings. In this last regard, the employer claims, as a last defense, that the content of faculty meetings is beyond the scope of negotiations under the Act.

The PERB has held that under the EERA an employer is prohibited from unilaterally establishing terms and conditions of employment within the scope of representation without first giving an exclusive representative notice and an opportunity to meet and negotiate. San Mateo Community College District (6/8/79) PERB Decision No. 94, citing with approval NLRB v. Katz (1962) 369 U.S. 736.[6] In this case, there is no dispute

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[6]The construction of similar or identical provisions of the National Labor Relations Act (hereafter NLRA), 29 U.S.C. section 151, et seq., may be used to guide interpretation of

that the general subject of hours of employment is within the scope of representation under the Act.[7] Nor is there any dispute that the impact of teacher activity outside the regular working day upon the hours of employment is also within the scope of representation. See San Mateo City Schools (5/20/80) PERB Decision No. 129.

In determining whether an employer's action constituted a unilateral change, the trier of fact may examine the established practice of the employer. Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51. And, in resolving whether a waiver of a course of action or bargaining rights was "clear and unmistakable," express contractual terms as well as the negotiating history can be weighed. Amador Valley Joint Union High School District (10/2/78) PERB Decision No. 74; Oakland Unified School District v. Public Employment Relations Bd. (1981) 120 Cal.App.3d 1007 enf. (4/23/80) PERB Decision No. 126.

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the EERA. See, e.g., San Diego Teachers Assn. v. Superior Court (1979) 24 Cal.3d 1, 12-13; Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608, 618. Compare subsection 3543.5(c) of the Act with section 8(a)(5) of the NLRA (29 U.S.C. sec 159(a)(5)) proscribing a refusal to bargain in good faith.

[7]Section 3543.2 provides, in relevant part:

> The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. . . .

Ultimately, the charging party here has the burden of persuasion that a new term or condition of employment was established, amounting to a policy change in violation of the contractual terms, and that the case does not involve merely a conflict over an alleged misapplication of the agreement. Grant Joint Union High School District (2/26/82) PERB Decision No. 196.

At the heart of this case is a dispute over whether the District expressly negotiated the content or subject matter of faculty meetings. Contradictory inferences can be drawn from the record. For example, there is no direct evidence, in the express terms of the agreement or from testimony about the negotiating history, that the District negotiated a limitation on the specific content of faculty meetings. Yet, the negotiating history, and the plain meaning of the contract article, indicate that the District did discuss the general parameters of adjunct duties for identification purposes. On balance, however, as explained more fully below, the evidence substantially supports the District's claim, as Breon testified, that it was negotiating only the overall impact of these adjunct duties on hours of employment, and not the precise content of the duties themselves.

Thus, the negotiating history demonstrates that the employer's abandonment of its in-service training proposal was cast in terms of a specified time allotment, and not a general

repudiation for all purposes of the concept of in-service training. Breon's credited reservation about content and subject matter is consistent with this view. Also, the Federation makes no claim that in-service was precluded during the regular working day, nor does it dispute the District's understanding that in-service could be conducted on minimum days. Hedlund, too, confessed a lack of knowledge about why the employer dropped its demand. At most, the negotiating history supports a conclusion, as the District concedes, that the employer consciously yielded its proposal for separate in-service training time and credit after regular hours.

Nevertheless, an argument implied in the District's defense that all extra-duty contract time is interchangable should be rejected. The specification of distinct adjunct duties did carry with it an understanding of the parameters of these duties. If this were not the case, as the union properly argues, why were discrete duties identified? Hence, for contract administration purposes, a reasonable restriction would necessarily apply to the employer's ability to substitute one type of assignment for another. But since this case, for example, does not involve an unrealistic substitution of an in-service session for a patently unrelated duty (e.g. club sponsorship), there is no need to rely on the District's overbroad claim about the interchangable nature of, and employer discretion over, all duties that were negotiated.

This being so, the question to be resolved is whether the in-service sessions in October were reasonably related to the traditional subject matter of faculty meetings and to the employer's established prerogative to regulate the agenda and content of those meetings.

Applying this analytical approach, it is concluded that the District was not barred from using contractual faculty meeting time for the type of in-service training session conducted in October 1980. Even though the weight of the evidence supports a finding that under established practice faculty meetings and in-service training were distinct activities, the nature of the duties were not so dissimilar or inconsistent as to be mutually exclusive.

There is substantial, uncontradicted evidence that on certain occasions, admittedly infrequently, faculty meeting time was utilized to dispense information or to educate teachers about subjects comparable to those subjects within the scope of in-service training programs. These subjects included student health, social and cultural issues, and even included presentations about student violence, the principal focus of the October meetings. In this regard, Hedlund, the union's president and a key negotiator, conceded that if the format of the October meeting had been different, that is, a committee report on the issue of violence and vandalism, then the session would have been more in keeping with established and acceptable faculty meeting practices.

Additionally, it may be observed that the previous distinction between faculty meetings and in-service training under Policy No. 4197 was arguably modified by implication as a result of the contract negotiations and the District's decision to abandon a separate category for in-service training credit. In past years, teachers could not receive credit for in-service subjects presented during faculty meetings. For this reason, if the 1979-1980 contract had provided instead for distinct in-service credit, then the union's position about the improper mixing of the two activities might be more persuasive because the District's action, in light of the practice under Policy No. 4197, would have been a clear contract violation, depriving teachers of credit they otherwise would have earned. But since the contract altered established practice, eliminating separate in-service credit requirements, it is not unreasonable to assume that the District could exercise its traditional faculty meeting discretion by modifying the usual format to accommodate other, compatible management needs.

In this regard, the evidence overwhelmingly establishes that the agenda and content of faculty meetings had been within the practical discretion of management. Faculty meetings, as shown by cumulative testimony and sample agendas, ranged over a variety of subjects related to internal site administration as well as broader topics.

Given the context of the bargaining history and the established practice, there is thus no persuasive evidence that the District clearly and unmistakably waived in-service sessions during contractually permitted faculty meetings. At best, from the union's viewpoint, the contract language and history is ambiguous, requiring the trier of fact to reconcile the delineation of specific adjunct duties with the absence of any express language precluding the exercise of District discretion over particular meeting content. Under these circumstances, the District's abandonment of the in-service training proposal for separate time and credit cannot justifiably be elevated to produce the more comprehensive waiver and faculty meeting limitation argued by the union. Compare Beacon Piece Dyeing and Finishing Company, Inc. (1958) 121 NLRB 953, 960 [42 LRRM 1489 (no implication of union waiver by virtue of giving up negotiating demand); also see Gorman, Labor Law (1976) at pp. 466-469, 472-475.

Indeed, in light of the dispute over interpretation of the contract's faculty meeting clause that is the basis of this case, recent Board precedent suggests that no violation of the Act should be found because the evidence reveals a conflict over contract application, and not a dispute over the clear establishment of a new policy. Grant Joint Union High School District, supra.[8]

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[8]An alternative argument could be made that even if the

For the reasons set forth above, the charge against the District should be dismissed.[9]

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the complaint against the Salinas Union High School District is hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on May 3, 1982, 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 at the headquarters office of the Public Employment Relations Board in Sacramento before the close of business (5:00 p.m.) on May 3, 1982, in

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District was creating a new policy, there was no express negotiating demand made by the Federation, thereby waiving its right to charge a violation of the Act. San Mateo Community College District, supra, at pp. 21-22. However, although this possible defense was not thoroughly litigated, the limited evidence on this point suggests that the District's program plans were firm, the union's objection understood, and an express demand would have been futile.

[9]The final defense urged by the District, that the content of faculty meetings is beyond the scope of representation and within management's discretion, need not be resolved given the sufficiency of the other grounds for rejecting the charge.

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: April 12, 1982

BARRY WINOGRAD
Administrative Law Judge