STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SIERRA COLLEGE FACULTY ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. S-CE-488
v.	)	PERB Decision No. 345
SIERRA JOINT COMMUNITY COLLEGE DISTRICT,	)	September 22, 1983
Respondent.	)	

Appearances: Diane Ross, Attorney for Sierra College Faculty Association, CTA/NEA; and Douglas A. Lewis, Attorney for Sierra Joint Community College District.

Before Gluck, Chairperson; Jaeger and Burt, Members.

DECISION

GLUCK, Chairperson: The Sierra Joint Community College District (District) excepts to an administrative law judge's (ALJ) finding that it violated subsections 3543.5(a) and (b) of the Educational Employment Relations Act (EERA)[1] by (1) refusing to place certain items which were submitted by the Sierra College Faculty Association, CTA/NEA (CTA or Association) for its board of trustees' agenda; (2) barring the Association representative from speaking to the board of

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise noted, all references are to the Government Code.

trustees on a matter placed on the agenda; and (3) adopting a bylaw which discriminated against employee organizations with respect to the right to place matters on its monthly agenda. The Association excepts to the ALJ's failure to order rescission of the bylaw.

FACTS

On January 26, 1982, the Association, through its president, Harry Allen, submitted to the District three items for inclusion on the trustees' February 1982 agenda. Allen was neither a member of CTA's bargaining committee nor involved in negotiations.

CTA's first item proposed that the board not extend the employment contracts of the District's president/superintendent and two assistant superintendents of instruction and student services. In recent years, the District had followed a practice of annually extending the multi-year agreements of these employees by adding a year to the contract. The Association considered this to be a poor management/fiscal policy in that, if one of the administrators were discharged, the District would have a large contract liability.

The second item requested that the Association and District jointly retain a management consultant to determine whether the District was being properly administered in light of its financial problems. Among the specific CTA concerns expressed in the proposal was the District's 1981-82 budget which "added

new and expanded programs but did not include any funds for cost-of-living adjustments."

The third item requested that CTA be permitted to present, discuss, and compare the results of its 1980 and 1981 staff satisfaction surveys which sought teachers' opinions on such matters as the District's procedures for evaluating employees, sabbatical and other leave policies, supervision, and general working conditions. Because CTA believed all three requests could involve references to District personnel, it suggested that the board might prefer that discussions take place in closed session.

According to Allen, on January 28, Gerald Angove, the District's superintendent and president, informed him that the first two proposals would not be placed on the agenda because Angove and the District's counsel and negotiator, John Bukey, did not think they concerned negotiable matters. Allen testified that Angove had given no additional explanation for his decision and that he, Allen, had responded by agreeing that none of the proposals concerned negotiable or "consultable" items and that the Association did not present them to the board for such purposes.

By letters dated the same day, Angove confirmed that he was denying the requests because the subjects did not appear to be within the scope of representation as defined in EERA

subsection 3543.2(a).[2] He suggested that if the Association questioned the negotiability or consultability of the proposals, it should contact John Bukey. He also suggested that the Association could raise the question of negotiability by bringing the matter up through the normal negotiating process.

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[2]Subsection 3543.2(a) states:

> (a) 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, procedures 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. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

Angove testified that to assure efficient trustees' meetings, he normally reviews agenda proposals to determine whether they require further refinement and often rewrites the proposals himself

> if they are related to the business of the District and provide the [b]oard with the appropriate information to take action as it relates to District policy and practice.

He said that he had rejected both proposals after speaking with Bukey and concluding that the topics were not appropriate for the board to consider directly and should be referred to the District negotiator to be handled through the consulting process. He claimed that the District had never refused to discuss any issue at the negotiating table.[3]

Angove said that he had found the management consultant proposal to be unclear and referred it to Bukey because he did "not want to place the District in a position where we might be moving into an area that could have been negotiable." He said that his letter conveyed that, while he did not think that this proposal was negotiable, he wanted the matter to be reviewed. He said that he did not personally seek clarification of the proposal, even though he thought it to be unclear, because he wanted CTA to meet with the District representative in the meet and consult process. He acknowledged that if some other

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[3]Angove apparently referred to the District's willingness to consider "consultable" items at the bargaining table.

organization had submitted the proposal, he would have met with it to try to understand its concerns and that, if the organization insisted, he probably would have placed the matter on the agenda with the recommendation that the board take "evasive action." He further testified that he has often directed proposals such as the Association's to other forums for resolution, but he could recall only one instance when he had done so.

At the trustees' February 9 meeting, Allen was prepared to make a presentation related to the 1981 staff satisfaction survey which had been placed on the agenda. However, when the matter arose, the board received the document but refused to allow him to discuss the matter in either open or closed session, although the District claimed at the hearing that it would have permitted Allen to speak during a separate "public comment" period following the consideration of agenda items.

The trustees acted pursuant to their Bylaw B-9.32 which reads, in part:

> The order of business of any official meeting will include an opportunity for the public to address the board on any item of business which is included in the agenda. The board reserves the rights to fix such time limits on presentations as it deems appropriate to the occasion and may limit the number of spokesmen who appear before it in opposition to or in support of a given issue being considered by the board. The agenda of regular meetings shall provide an opportunity for citizens to address the board.

> Persons wishing to comment on the nature of a position to be filled may do so in open meeting, but comments on the qualifications or fitness of any employee or prospective employee shall be made only in writing and be signed by the person submitting them; additional verbal comments shall be made to the board only in closed sessions on personnel matters, at the will of the board . . . . (Emphasis added.)

Allen testified that he believes that he did not protest the board's denial of his request because he was both surprised by it and unfamiliar with the bylaw. Rather, during the public comment portion of the meeting which followed consideration of items placed on the agenda, he read a prepared statement protesting Angove's refusal to place the contract extension and management consultant proposals on the agenda and suggested that the board may have violated section 72121.5 of the Education Code.[4]

According to Allen's uncontroverted testimony, Placer County County Counsel Doug Lewis then advised the trustees that the right of an exclusive representative to place matters, such as those proposed by the Association, on the agenda is distinguishable from that of other organizations and individuals because EERA does not grant such a right to an exclusive representative.

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[4]This section sets forth State requirements particularly applicable to the right of the public to address the governing bodies in the public school system.

In late February, the Association resubmitted the contract extension and management consultant proposals for inclusion on the board agenda of March 9. By letter of March 4, Angove again denied the requests, again suggesting that, if the Association believed that they were either negotiable or "consultable," it should submit the requests to the District's representative for consideration. He advised the Association that it could address the board during the public comments section of the agenda, and would be able to speak to the matter of the superintendents' contracts at such time as their renewal was placed on the agenda.

At the March 9 meeting, the board considered a revision of its Bylaw B-9.3 which established the procedure for placing items on the board's monthly agenda. The revision stated in part:

> The Board of Trustees welcomes participation of interested organizations and individual members of the public. Any individual member of the public may place a matter directly related to community college district business on the agenda of the community college district Board of Trustees meeting.

Allen testified that a representative of the League of Taxpayers objected to the proposal because it would exclude organizations from placing matters on the board's agenda and that, when Bukey acknowledged that this would be the effect of the revision, the board made it clear that it did not intend to

preclude all organizations from access to the agenda but only bargaining agents. Though the trustees also considered other objections to the revision, Allen's testimony was not discredited. Subsequently, a redrafted revision was adopted on April 13, 1982. It reads, in part:

> An organization or individual member of the public may place a matter directly related to community college district business on the agenda of the community college district Board of Trustees meetings, subject to the following conditions:
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> . . . . . .
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> 4. An organization which is an employee organization, within the meaning of Government Code section 3540.1(d) shall submit negotiable and/or consult items, as those terms are defined by Government Code section 3543.2, to the Board's representatives for consideration under the provisions of the Educational Employment Relations Act. The Board reserves the right to consider such items through the collective bargaining process or in its discretion may place such items on the Board's regular agenda for consideration. (Emphasis added.)

During the discussion which preceded adoption of the revision, Allen unsuccessfully objected that the proposal discriminated against employee organizations by requiring them to go through special procedures.

On March 10, 1982, the Association filed an unfair practice charge that Angove's and the board's conduct prior to and at the February board meeting violated EERA subsections 3543.5(a)

and (b)[5] by discriminating against employees because of their exercise of protected rights and by interfering with the Association's right to represent its members in their employment relations. The charge was amended on March 15 and then again on April 29, to include the District's conduct prior to and at the March and April board meetings.

In its 21 exceptions, the District contests virtually all of the ALJ's conclusions of law and certain of his findings of fact. We find it appropriate to consider the issues on the basis of the entire record of the proceedings below. The foregoing statement of facts is based on our independent review of that record.

DISCUSSION

In San Ramon Valley Unified School District (8/9/82) PERB Decision No. 230, this Board concluded that under section

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[5]Subsections 3543.5(a) and (b) state:

> It shall be unlawful for a public school employer to:
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> (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.

3543.16 of EERA employee organizations have the right to address school board meetings, but recognized that the right is limited because of their concurrent obligations under the Act to meet and negotiate with the public school employer. Relying upon City of Madison v. Wisconsin Employment Relations Commission (1976) 429 U.S. 167 [93 LRRM 2970] and Henrico Professional Firefighters Association, Local 1568 v. Board of Supervisors of Henrico County (4th Cir 1981) 649 F.2d 237 [107 LRRM 2432], the Board found that the negotiating scheme established by EERA forbids the parties from dictating who the other side's negotiators shall be, and that the bargaining process would be subverted if the exclusive representative could bypass the employer's negotiators and bargain directly with the school board. Accordingly, we distinguished between an employee organization's right to advocate or present its

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[6]Subsection 3543.1(a) states:

> (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 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.

position on a matter and its right to negotiate or litigate grievances at a public meeting of the school board. Although we found a violation in that case because the district had prohibited all discussion without knowledge of what the organization intended to say, we indicated that a public school employer could lawfully prohibit a public presentation by an employee organization when the latter attempts to either negotiate or litigate grievances.

Because, in San Ramon, supra, the association attempted to speak to the matter of an advisory arbitration award issued in the course of processing an employee grievance, a matter on which an organization has the right to represent unit employees,[7] the Board did not consider whether there were other limits to the protection afforded by EERA when employee organizations seek to discuss matters before the school board. Consequently, we must address the following questions:

1. Did CTA seek to address the board in public session on matters which fall within its statutory right to represent unit employees "in their employment relations with the public school employer?"

2. If so, did CTA wish to negotiate directly with the board?

3. Did the District violate CTA's right to place matters on the board's agenda or speak to such matters at a public meeting of the board?

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[7]See Mt. Diablo/Santa Ana/Capistrano Unified School Districts (12/30/77) EERB Decision No.44. Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board.

In King City Joint Union High School District (3/3/82) PERB Decision No. 197, which concerned the permissible uses of nonmember service fees by the exclusive representative, we concluded that the range of representational activities protected by subsection 3543.1 goes well beyond the subjects listed in subsection 3543.2 as negotiable or subject to consultation and includes a broad spectrum of concerns which arise out of the employment relationship and employee rights granted by EERA. While the Board did not list every activity which lies within the boundaries of "employment relations," it did intend to fashion a working definition of the phrase. Our application of that definition here to indicate those kinds of matters which could be addressed by CTA at the trustees' meeting as a matter of EERA right is consistent with the courts' holdings in City of Madison and Henrico, and with our jurisdiction over charges alleging violations of EERA.

The superintendents' contracts; The choice of its managerial staff and the terms and conditions of their employment are matters reserved to the discretion of the employer.[8] In such matters, the employer is not obligated to seek the approval of the exclusive representative or to negotiate or consult with the organization prior to taking action. While virtually every action by a school employer is

[8]See KONO-TV-Mission Telecasting Corp. (1967) 163 NLRB 1005 [65 LRRM 1082].

likely to have some impact on its relations with its employees, the employer's need to select its own management cadre is too fundamental to be burdened by the requirement that it submit its decisions to the scrutiny and comment of its employees or their organizations. For that reason, and because we also find the connection between the Association's proposal and employee concerns too attenuated to fall within the compass of protected employer-employee relations, we conclude that CTA has no protected right under EERA to address the matter in public session.[9] The charge with respect to the superintendents' contracts must be dismissed.

The consultant proposal presents a close issue of fact. The proposal refers to the failure of the District to budget funds for cost-of-living wage adjustments. This reference was sufficient to alert the District that some areas of "employment relations" falling within CTA's protected representational range would be addressed by its speaker.

While we do not know precisely what Allen would have said, we are satisfied that the proposal included matters on which CTA is entitled to represent its unit constituency. Particularly in view of his assurance that he did not intend to negotiate with the trustees, we find no justification for the

[9]In so holding we do not imply that CTA is without recourse in another form.

District's arbitrary rejection of Allen's request.[10] Consequently, we find that as to this matter, the District violated subsection 3543.5(b), and concurrently, subsection 3543.5(a).

The satisfaction surveys; It is beyond dispute that employee evaluation procedures and sabbatical and other leaves of absence are matters of employment relations within the range of CTA's right of representation. Indeed, they are specifically listed as negotiable matters in subsection 3543.2. "Working conditions" is a broad term which may or may not include negotiable elements but, in all, is certainly an aspect of employment relations. We do not dispute the District's right to require that negotiations on these matters be limited to the bargaining table. But it cannot, by asserting that right or by the mere public receipt of the Association's document, deny the employee organization its right to address the trustees in public session even on such subjects, provided that the organization does not intentionally or inadvertently attempt to negotiate.

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[10]At the hearing, the District conceded that CTA's proposal was unclear and that Angove had not sought clarification before refusing CTA's request. Yet, it formed the opinion that the subject was neither negotiable nor subject to consultation. Presumably, this attempted limitation was predicated on the District's narrow interpretation of the right of representation.

Since CTA was denied the right to talk to this subject, we cannot determine whether it would have exceeded EERA's permissible limits of speech. We can and do accept the assurances it conveyed to the District that it did not wish to negotiate and did not consider its proposal to be negotiable. Absent any information to the contrary, the District was obligated to do the same. As in the matter of the consultant proposal, we find the District violated subsections 3543.5(a) and (b).

District Bylaw B-9.3; We find no violation in the District's effort to protect itself from the requirement that it negotiate in public session by establishing a screening procedure applicable to employee organizations. While the procedure involved may be unique or different from that required of other organizations and individuals, it is not unreasonable in light of the circumstances created by EERA which certainly provides to labor organizations unique and exclusive procedures for doing business with the school employer.

However, in reserving the blanket right to consider organizational submissions either through the collective bargaining process or through its regular public meeting agenda, the bylaw exceeds the District's authority to regulate presentations. The Association is entitled by law to negotiate on negotiable matters just as it is otherwise entitled to a

public hearing short of negotiations on matters within its range of representation.

Furthermore, in reserving discretion to refuse agenda position to "consultable" matters and to assign them to the bargaining table, the bylaw precludes an employee organization from public presentation of matters which the District itself acknowledges to be nonnegotiable.

In summary, we find that section 4 of District Bylaw B-9.3, with the exception of the "screening" procedure contained therein, violates subsection 3543.5(b) by interfering with CTA's right to represent unit employees in their employment relations with their public school employer and, concurrently, violates subsection 3543.5(a) by interfering with the right of the employees to participate in the activities of their representative organization.

ORDER

Based on the record and the arguments of the parties on appeal, the Public Employment Relations Board ORDERS that:

1. The Sierra Joint Community College District cease and desist from denying to the Sierra College Faculty Association, CTA/NEA, the right to place matters concerning the employment relations of the District's employees in the certificated unit on an agenda of the District board of trustees, including proposals for appointment of a management consultant to consider District policy and practice affecting such employee

relations, and consideration of employee satisfaction surveys conducted by the Association.

2. The District rescind those portions of its Bylaw B-9.3 which reserves to the trustees the discretion to consider organizational presentations either through collective bargaining or at public meetings of the trustees.

3. The District shall prepare and post the Notice to Employees attached hereto as Appendix A at all locations where the District's notices to certificated employees are customarily placed and maintain such posting for a period of not less than thirty (30) consecutive workdays commencing 30 days after service of this Decision and Order on the District.

4. The District shall notify the Sacramento regional director of its compliance with this Order within forty (40) days of service of this Decision and Order.

Members Jaeger and Burt joined in this Decision.

APPENDIX A

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

Pursuant to a hearing in unfair practice case No. SF-CE-488, the Sierra Joint Community College District was found to have unlawfully interfered with the right of the Sierra College Faculty Association, CTA/NEA to represent employees in the certificated representation unit by denying it the opportunity to address the District board of trustees in public session on the employment of a management consultant to be jointly selected by the District and the Association, and on certain employee satisfaction surveys conducted by the Association.

The District's board of trustees Bylaw B-9.3 was also found to unlawfully interfere with the Association's right to represent unit employees through negotiations by reserving to the trustees the discretion to consider organizational submissions either through the bargaining process or at public meetings of the trustees.

As a consequence of these findings, the District has been ordered to post this NOTICE and will:

1. CEASE AND DESIST from denying the Association the right to present proposals for the employment of a management consultant and/or employee satisfaction surveys which it has conducted, at a public meeting of the District board of trustees, and

2. Rescind those portions of the District's Bylaw B-9.3 which reserves to the trustees the discretion to consider organizational presentations either through collective bargaining or at public meetings of the trustees.

SIERRA JOINT COMMUNITY COLLEGE DISTRICT

Dated: By: _____
Authorized Agent

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