STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS CHAPTER #411, Charging Party,	)	Case No. SF-CE-623
v.	)	PERB Decision No. 383
SAN MATEO CITY SCHOOL DISTRICT, Respondent.	)	April 30, 1984

Appearances; William E. Brown and Penn Foote, Attorneys (Brown and Conradi) for San Mateo City School District.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

MORGENSTERN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the San Mateo City School District (District) to the proposed decision of an administrative law judge (ALJ) finding that the District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA or Act)[1] by

[1]The EERA is codified at Government Code section 3540 et seq. All statutory references herein are to the Government Code unless otherwise indicated.

Section 3543.5 provides, in relevant part, that:

> 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

refusing to meet and negotiate with the California School Employees Association and its Chapter #411 (CSEA or Association) regarding certain proposals. Specifically, the District excepts to the ALJ's finding that, with certain exceptions discussed infra, two articles proposed for negotiation by CSEA -- Article 12, Disciplinary Action, and Article 13, Layoff and Reemployment -- are within the scope of representation under the Act.[2]

The District does not deny that, during collective negotiations which commenced in June 1981, it refused to negotiate regarding CSEA's proposals. Indeed, the parties stipulated that the District took the position during bargaining sessions that the proposals were outside the scope of representation.

The parties further stipulated that the disputed proposals are substantially the same or identical with the language of the proposals at issue in Healdsburg Union High School District (6/19/80) PERB Decision No. 132 (Healdsburg I). Therefore, in

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> 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.

[2]The District does not except to the ALJ's finding with respect to the negotiability of proposed Article 15 - Contracting and Bargaining Unit Work. We, therefore, affirm his conclusions pro forma.

his proposed decision in this case, the ALJ expressly relied on the Board's decision in Healdsburg I. However, subsequent to the issuance of the ALJ's proposed decision, in San Mateo City School District et al. v. PERB (1983) 33 Cal.3d 850, the California Supreme Court vacated the Board's Healdsburg I decision and remanded the case to this Board for further consideration in light of its decision. Thereafter, the Board issued its decision on remand in Healdsburg Union High School District et al. (1/5/84) PERB Decision No. 375 (Healdsburg II).

We find that Healdsburg II is dispositive of the issues raised herein. Consistent with that decision, we affirm in part and reverse in part the proposed decision of the ALJ for the reasons stated in the discussion which follows.

DISCUSSION

In Anaheim Union High School District (10/28/81) PERB Decision No. 177, the Board articulated a three-part test interpreting EERA's scope of representation provision.[3]

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[3]Section 3543.2 provides, in relevant part:

> (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 . . ., leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security . . ., procedures for processing grievances . . ., and the layoff of probationary certificated school district employees . . . In addition, the

Under that test, a subject not expressly enumerated in section 3543.2 will be found negotiable 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 its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission.[4]

Inasmuch as the ALJ properly relied on the Anaheim test here, we proceed to consider the substance of CSEA's proposals.

> 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.

[4]The Supreme Court expressly approved the Board's Anaheim test, finding that it "conforms to the language and purpose of the EERA." San Mateo v. PERB, supra, 33 Cal.3d 850, 859. Therefore, the District's exception to this test is without merit.

Article 12 - Disciplinary Action

12.1 Exclusive Procedure; Discipline shall be imposed upon bargaining unit employees only pursuant to this Article.

12.2 Disciplinary Procedure;

12.2.1 Discipline shall be imposed on permanent employees of the bargaining unit only for just cause. Disciplinary action is deemed to be any action which deprives any employee in the bargaining unit of any classification or incident of employment or classification in which the employee has permanence and includes, but is not limited to, dismissal, demotion, suspension, reduction in hours or class, or transfer, or reassignment without the employee's voluntary written consent.

12.2.2 Except in those situations where an immediate suspension is justified under the provision of this Agreement, an employee whose work or conduct is of such character as to incur discipline shall first be specifically warned in writing by the supervisor. Such warning shall state the reasons underlying any intention the supervisor may have of recommending any disciplinary action and a copy of the warning shall be sent to the Job Site Representative. The supervisor shall give a reasonable period of advanced warning to permit the employee to correct the deficiency without incurring disciplinary action. An employee who has received such a warning may appeal the warning notice through the grievance procedure, and in addition, shall have the option of requesting a lateral transfer under the provisions of this Agreement.

12.2.3 Discipline less than discharge will be undertaken for corrective purposes only.

12.2.4 The District shall not initiate any disciplinary action for any cause alleged to have arisen prior to the employee becoming permanent nor for any cause alleged

to have arisen more than one (1) year preceding the date that the District files the notice of disciplinary action.

12.2.5 When the District seeks the imposition of any disciplinary punishment, notice of such discipline shall be made in writing and served in person or by registered or certified mail upon the employee. The notice shall indicate the following: (1) the specific charges against the employee which shall include times, dates, and location of chargeable actions or omissions, (2) the penalty proposed, and (3) a statement of the employee's right to make use of the grievance procedure to dispute the charges or the proposed penalty. A copy of any notice of discipline shall be delivered to the Job Site Representative within twenty-four (24) hours after service on the employee.

12.2.6 The penalty proposed shall not be implemented until the employee has exhausted his/her rights under the Grievance Article.

12.2.7 An employee may be relieved [sic] of duties without loss of pay at the option of the District. However, CSEA shall be notified should this occur.

12.3 Emergency Suspension:

12.3.1 CSEA and the Distric [sic] recognize that emergency situations can occur involving the health and welfare of students or employees. If the employee's presence would lead to a clear and present danger to the lives, safety, or health of students or fellow employees, the District may immediately suspend the employee with pay for three (3) days. No suspension without pay shall take effect until three (3) working days after service of a notice of suspension.

12.3.2 During the three (3) days, the District shall serve notice and the statement of facts upon the employee, who shall be entitled to respond to the factual

contentions supporting the emergency at Level IV of the Grievance Procedure.

12.4 Disciplinary Grievance;

12.4.1 Any proposed discipline and any emergency suspension shall be subject to the Grievance Procedure of this Agreement and the employee, at his/her option, may commence review either at Level II, III, or IV.

12.4.2 An employee upon whom a notice of discipline has been served, may grieve any emergency suspension without pay at Level IV of the Grievance Procedure. The grievance meeting shall be held and a response made within three (3) days of the submission of the grievance. Notwithstanding any separate grievance meeting held in accordance with the preceding sentence, the employee may also grieve the emergency suspension along with the notice of discipline.

12.5 Disciplinary Settlement; A disciplinary grievance may be settled at any time following the service of notice of discipline. The terms of the settlement shall be reduced to writing. An employee offered such a settlement shall be granted a reasonable opportunity to have his/her Job Site Representative review the proposed settlement before approving the settlement in writing.

The ALJ found Article 12 generally negotiable under Anaheim, except that the requirement implicit in proposal 12.4 that disciplinary disputes be submitted to binding arbitration and the part of proposal 12.2.4 which limits discipline to events arising within the prior year had been found not negotiable in Healdsburg I.

The District denies that any portion of Article 12 is negotiable. It claims that Article 12 would supersede the

Education Code in violation of section 3540[5] in that the subject of discipline is fully covered by Education Code subsection 45101(e) defining disciplinary action, section 45113 pertaining to cause and procedures for discipline, and section 45116 requiring notice of disciplinary action.[6] 6

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[5]Section 3540 provides, in relevant part:

> Nothing contained herein shall be deemed to supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

[6]Education Code subsection 45101(e) provides:

> (e) "Disciplinary action" includes any action whereby an employee is deprived of any classification or any incident of any classification in which he has permanence, including dismissal, suspension, demotion, or any reassignment, without his voluntary consent, except a layoff for lack of work or lack of funds.

Education Code section 45113 provides:

> The governing board of a school district shall prescribe written rules and regulations, governing the personnel management of the classified service, which shall be printed and made available to employees in the classified service, the public, and those concerned with the administration of this section, whereby such employees are designated as permanent employees of the district after serving a

In Healdsburg II, based on our previous application of the Anaheim test in San Bernardino City Unified School District

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> prescribed period of probation which shall not exceed one year.
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> Any employee designated as a permanent employee shall be subject to disciplinary action only for cause as prescribed by rule or regulation of the governing board, but the governing board's determination of the sufficiency of the cause for disciplinary action shall be conclusive.
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> The governing board shall adopt rules of procedure for disciplinary proceedings which shall contain a provision for informing the employee by written notice of the specific charges against him, a statement of his right to a hearing on such charges, and the time within which such hearing may be requested which shall be not less than five days after service of the notice to the employee, and a card or paper, the signing and filing of which shall constitute a demand for hearing, and a denial of all charges. The burden of proof shall remain with the governing board, and any rule or regulation to the contrary shall be void.
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> No disciplinary action shall be taken for any cause which arose prior to the employee's becoming permanent, nor for any cause which arose more than two years preceding the date of the filing of the notice of cause unless such cause was concealed or not disclosed by such employee when it could be reasonably assumed that the employee should have disclosed the facts to the employing district.
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> This section shall apply only to districts not incorporating the merit system as

(10/29/82) PERB Decision No. 255 and Arvin Union School District (3/30/83) PERB Decision No. 300, we held that both procedures and criteria for imposing discipline are negotiable. However, inasmuch as these cases concerned certificated employees, we have not previously had occasion to consider the effect of the Education Code sections governing classified employees which are cited by the District here.

The Supreme Court has expressly approved the Board's interpretation of section 3540 as prohibiting negotiations only

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> outlined in Article 6 (commencing with Section 45240) of this chapter.

Education Code section 45116 provides:

> A notice of disciplinary action shall contain a statement in ordinary and concise language of the specific acts and omissions upon which the disciplinary action is based, a statement of the cause for the action taken and, if it is claimed that an employee has violated a rule or regulation of the public school employer, such rule or regulation shall be set forth in said notice.
>
> A notice of disciplinary action stating one or more causes or grounds for disciplinary action established by any rule, regulation, or statute in the language of the rule, regulation, or statute, is insufficient for any purpose.
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> A proceeding may be brought by, or on behalf of, the employee to restrain any further proceedings under any notice of disciplinary action violative of this provision.
>
> This section shall apply to proceedings conducted under the provisions of Article 6 (commencing with Section 45240) of this chapter.

where "the statutory language [of the Education Code] clearly evidences an intent to set an inflexible standard or insure immutable provisions," and the provisions of the Education Code would be "replaced, set aside, or annulled by the language of the proposed contract clause." San Mateo v. PERB, supra, 33 Cal.3d 850, 865. We, therefore, apply that supersession test here.

Proposal 12.2.1 essentially seeks to incorporate into the collective bargaining agreement the definition of disciplinary action contained in Education Code subsection 45101(e) and the just cause requirement of Education Code section 45113. As the Supreme Court has indicated, "such an agreement would not supersede the relevant part of the Education Code, but would strengthen it." San Mateo v. PERB, supra, 33 Cal.3d 850, 867.

Similarly, proposal 12.2.5 restates the notice requirement contained in Education Code sections 45113 and 45116, and does not supersede those sections.

The remaining provisions of Article 12 seek to provide procedural rights and protections in addition to those specified in the Education Code. Proposal 12.2.2 requires written advance warning prior to discipline; 12.2.3 requires that discipline less than discharge will be undertaken for corrective purposes only; 12.2.6 requires exhaustion of the grievance procedure prior to implementing a penalty; 12.2.7 grants the District the option to relieve an employee of duties on notice to CSEA; 12.3 permits emergency suspension after

three days' notice; 12.4 establishes a grievance procedure; 12.5 provides for disciplinary settlements.

The requirement in Education Code section 45113 that "[t]he governing board shall adopt rules of procedure for disciplinary proceedings" does not mandate specific criteria. Rather, the nature and content of disciplinary rules are left discretionary and, therefore, this section does not conflict with the procedures specified in CSEA's contract proposals. The District points to no other language in the Education Code, and we find none, which directly conflicts with these proposals or which would be replaced, set aside, or annulled by the language of the proposed contract clauses. We, therefore, reject the District's contention that these proposals are superseded by the Education Code.

In addition to the proposals on discipline found to be negotiable by the ALJ and excepted to by the District, two proposals found nonnegotiable in Healdsburg I and in the ALJ's proposed decision were found to be negotiable in Healdsburg II. Though neither the District nor CSEA excepts to the ALJ's finding on these matters, it is necessary to consider them sua sponte to avoid serious errors of law. Mt. Diablo Unified School District (12/30/83) PERB Decision No. 373.

Following our decision in Healdsburg I, the ALJ found nonnegotiable the requirement implicit in proposal 12.4 that disciplinary disputes be submitted to binding arbitration. However, in Healdsburg II, after careful consideration of the

statutory language, the legislative history, the development of disciplinary arbitration and collective bargaining, the legal limitations of school districts' general authority, and judicial interpretation of similar language, we concluded that the Legislature intended to permit negotiation of binding arbitration procedures with respect to all negotiable matters, including disciplinary disputes. We, therefore, found the subject of disciplinary arbitration negotiable.

Similarly, the ALJ relied on the Board's decision in Healdsburg I to find that portion of proposal 12.2.4 which limits discipline to causes arising within the prior year superseded by Education Code section 45113, which prohibits discipline for "any cause which arose more than two years preceding the date of the filing of the notice of cause."

In Healdsburg II, we did not separately address Education Code section 45113, but found proposal 12.2.4, like all provisions of Article 12, to be negotiable. We affirm that conclusion here.

The two-year limitation of the Education Code protects employees against disciplinary action for conduct which occurred "more than two years" previous. It, therefore, establishes a maximum which would conflict with a proposal to permit discipline for conduct "more than two years" old, but does not preclude negotiation of a shorter period. Thus, the one-year limitation of proposal 12.2.4 is not superseded by the Education Code and is negotiable.

We, therefore, find that Article 12, in its entirety, is properly within the scope of representation.

Article 13 - Layoff and Remployment

> 13.1 Reason for Layoff; Layoff shall occur only for lack of work or lack of funds. Lack of funds means that the District cannot sustain a positive financial dollar balance with the payment of one (1) further month's anticipated payroll.
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> 13.2 Notice of Layoff; Any layoffs under this Article shall only take place effective as of the end of an academic year. The District shall notify both CSEA and the affected employees in writing no later than April 15th of any planned layoffs. The District and CSEA shall meet no later than May 1st following the receipt of any notices of layoff to review the proposed layoffs and determine the order of layoff within the provisions of this Agreement. Any notice of layoffs shall specify the reason for layoff and identify by name and classification the employees designated for layoff. Failure to give written notice under the provisions of this section shall invalidate the layoff.
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> 13.3 Reduction in Hours; Any reduction in regularly assigned time shall be considered a layoff under the provisions of this Article.
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> 13.4 Order of Layoff; Any layoff shall be affected [sic] within a class. The order of layoff shall be based on seniority within that class and higher classes throughout the District. An employee with the least seniority within the class plus higher classes shall be laid off first. Seniority shall be based on the number of hours an employee has been in a paid status in the class plus higher classes.
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> 13.5 Bumping Rights; An employee laid off from his/her present class may bump into the next lowest class in which the employee has

greatest seniority considering his/her seniority in the lower class and any higher classes. The employee may continue to bump into lower classes to avoid layoff.

13.6 Layoff in Lieu of Bumping: An employee who elects a layoff, in lieu of bumping, maintains his/her reemployment rights under this Agreement.

13.7 Equal Seniority; If two (2) or more employees subject to layoff have equal class seniority, the determination as to who shall be laid off will be made on the basis of the greater bargaining unit seniority or, if that be equal, the greater hire date seniority, and if that be equal, then the determination shall be made by lot.

13.8 Reemployment Rights;

13.8.1 Laid off persons are eligible for reemployment in the class from which laid off for a thirty-nine (39) month period and shall be reemployed in the reverse order of layoff.

13.8.2 Reemployment shall take precedence over any other type of employment, defined or undefined in this Agreement.

13.8.3 Employees shall have the right to apply for promotional positions within the District and use their bargaining unit seniority therein for a period of thirty-nine (39) months following layoff. An employee on a reemployment list shall be notified of promotional opportunities in writing.

13.9 Voluntary Demotion or Voluntary Reduction in Hours; Employees who take voluntary demotions or voluntary reductions in assigned time in lieu of layoff shall be, at the employee's option, returned to a position in their former class or to positions with increased assigned time as vacancies become available, and with no time limit, except that they shall be ranked in accordance with their seniority on any valid reemployment list.

13.10 Retirement in Lieu of Layoff:

13.10.1 Any employee in the bargaining unit may elect to accept a service retirement in lieu of layoff, voluntary demotion, or reduction in assigned time. Such employee shall within ten (10) work days prior to the effective date of the proposed layoff complete and submit a form provided by the District for this purpose.

13.10.2 The employee shall then be placed on a thirty-nine (39) month reemployment list in accordance with this Article; however, the employee shall not be eligible for reemployment during such other period of time as may be specified by pertinent Government Code Sections.

13.10.3 The District agrees that when an offer of reemployment is made to an eligible person retired under this Article, and the District receives within ten (10) working days a written acceptance of the offer, the position shall not be filled by any other person, and the retired person shall be allowed sufficient time to terminate his/her retired status.

13.10.4 An employee subject to this Section who retires and is eligible for reemployment, and who declines an offer of reemployment equal to that which laid him/her off, shall be deemed to be permanently retired.

13.10.5 Any election to retire after being placed on a reemployment list shall be retirement in lieu of layoff within the meaning of this section.

13.11 Seniority Roster: The District shall maintain a currently updated seniority roster indicating employees' class seniority, bargaining unit seniority, and hire date seniority. The seniority rosters shall be available to CSEA at any time upon request.

13.12 Notification of Reemployment Opening: Any employee who is laid off and

is subsequently eligible for reemployment shall be notified in writing by the District of an opening. Such notice shall be sent by certified mail to the last address given the District by the employee, and a copy shall be sent to CSEA by the District, which shall acquit the District of its notification responsibility.

13.13 Employment Notification to District; An employee shall notify the District of his/her intent to accept or refuse reemployment within ten (10) working days following receipt of the reemployment notice. If the employee accepts reemployment, the employee must report to work within thirty (30) working days following receipt of the reemployment notice. An employee given notice of reemployment need not accept the reemployment to maintain the employee's eligibility on the reemployment list, provided the employee notifies the District of refusal of reemployment within ten (10) working days from receipt of the reemployment notice.

13.14 Reemployment in Highest Class; Employees shall be reemployed in the highest rated job classification available in accordance with their class seniority. Employees who accept a position lower than their highest former class shall retain their original thirty-nine (39) month rights to the higher paid position.

13.15 Improper Layoff; Any employee who is improperly laid off shall be reemployed immediately upon discovery of the error and shall be reimbursed for all loss of salary and benefits.

13.16 Seniority During Involuntary Unpaid Status; Upon return to work, all time during which an individual is in involuntary unpaid status shall be counted for seniority purposes not to exceed thirty-nine (39) months, except that during such time the individual will not accrue vacation, sick leave, holidays or other leave benefits.

The ALJ determined that Article 13 is negotiable, except that proposals 13.1, reason for layoff, and 13.2, notice of layoff, are nonnegotiable to the extent they would interfere with the employer's prerogative to determine the need for and timing of layoffs.

The ALJ's decision is consistent with a long line of Board decisions which hold that, while the decision to lay off is a managerial prerogative (Newman-Crows Landing Unified School District (6/30/82) PERB Decision No. 223), management is obligated to negotiate the effect of its layoff decision. Newark Unified School District (6/30/82) PERB Decision No. 225; Kern Community College District (8/19/83) PERB Decision No. 337; Oakland Unified School District (11/2/81) PERB Decision No. 178 (Oakland I); Solano County Community College District (6/30/82) PERB Decision No. 219; Oakland Unified School District (7/11/83) PERB Decision No. 326 (Oakland II); Mt. Diablo Unified School District (12/30/83) PERB Decision No. 373. The Board has specifically held that effects related to the implementation of layoffs, including notice and timing of layoffs, are negotiable. Oakland I, supra; Oakland II, supra; Solano County Community College District, supra; Mt. Diablo Unified School District, supra.

In the instant case, CSEA's proposals address issues related to the implementation of layoffs, including the circumstances, timing and notice of layoffs, seniority, options in lieu of layoff, bumping and reemployment rights, and

voluntary demotions or reductions in hours. Considering identical proposals at issue in Healdsburg II, the Board itself concluded, as did the ALJ here, that the Article is generally negotiable, except that those provisions which would establish a definition of "lack of funds" and impose a deadline for layoffs by restricting layoffs to the end of the academic year and limiting notice to April 15 unlawfully intrude on management's right to effect layoffs for lack of work or lack of funds. Finding Healdsburg II dispositive of the issues raised here and the District's exceptions lacking in merit for the reasons discussed below, we affirm the ALJ's decision regarding Article 13.

The District generally excepts to the finding that any portion of Article 13 is negotiable. It claims first that PERB misapplied its scope test by finding layoffs "logically and reasonably related to wages and hours." We reject this contention out of hand. As we stated in Healdsburg II, at p. 59:

> The layoff of employees terminates the employment relationship and, therefore, has a direct impact on virtually every subject of bargaining enumerated in section 3543.2.[7]

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[7]Addressing the issue of layoffs resulting from a plant closing, the United States Supreme Court recognized the relationship between layoffs and terms and conditions of employment in First National Maintenance Corp. v. NLRB (1983) 452 U.S. 666, 677:

> Some management decisions . . . have only an indirect and attenuated impact on the

The Board has further recognized that, in addition to the impact on employees laid off, a layoff "may concurrently impact upon those employees who remain." Newman-Crows Landing Unified School District, supra, pp. 12-13. A majority of the Board concluded that effects of a layoff on employees who remain are negotiable to the extent that "the decision to lay off would have a reasonably foreseeable adverse impact on employees' working conditions and [a] proposal is intended to address employee concerns generated by that anticipated impact." Mt. Diablo, supra, p. 51.[8]

> employment relationship. (Citations omitted.) Other management decisions, such as the order of succession of layoffs and recalls . . . are almost exclusively "an aspect of the relationship" between employer and employee. (Citation omitted.) The present case concerns a third type of management decision, one that has a direct impact on employment, since jobs were inexorably eliminated by the termination, but . . . involving a change in the scope and direction of the enterprise is akin to the decision whether to be in business at all . . . [T]his decision touches on a matter of central and pressing concern to the union and its member employees: the possibility of continued employment and the retention of the employees very jobs.

[8]In his concurring and dissenting opinion in Mt. Diablo, Member Morgenstern finds effects of layoff on retained employees "less certain." He would find no violation in management's refusal to negotiate over a reasonably foreseeable impact on retained employees "if in good faith [management] foresees no such impact and, in fact, no such impact occurs." Mt. Diablo, supra, p. 77.

However, inasmuch as CSEA's proposals are limited to effects on employees to be laid off, the relationship to wages, hours and other enumerated subjects is not merely reasonably foreseeable, it is certain.

The District next argues that PERB misapplied its scope test by failing to find that management's prerogative to layoff is negated by requiring it to negotiate effects and implementation before any layoffs take place, especially in view of the lengthy statutory impasse procedures of EERA.

This exception is equally misplaced. Here, the District refused to negotiate CSEA's layoff proposals in the course of normal contract negotiations. There is no evidence that layoffs were imminent or even contemplated at that time.

The Board has recognized that, where a request to negotiate follows management's announcement of its decision to lay off, mandatory notice dates set by the Education Code create "deadlines for the completion of negotiations concerning the notice to be provided employees targeted for layoff and the method of determining the identity of those employees who will be laid off." Mt. Diablo, supra, p. 36. In Mt. Diablo, we also found that, where the parties had already negotiated and included in their collective bargaining agreement provisions covering layoff effects, the Association waived its right to renegotiate the issue when a layoff was announced. Mt. Diablo, supra, pp. 46, 62.

In the instant case, CSEA properly sought to negotiate the effects of layoff "before the fact, when such dialogue can potentially be of the greatest value." Newark, supra, p. 6. Negotiations at such time not only avoid the heated emotions and crisis atmosphere engendered by impending layoffs, they also avoid the statutory time constraints which arise once the decision to lay off has been firmly made. Indeed, successful negotiations over the effects of layoff during regular contract negotiations avoid any danger of the concern alluded to by the District, that its ability to lay off would be compromised by requiring it to negotiate through impasse on layoff effects. For these reasons, negotiations over the effects of layoff during normal contract negotiations serve a salutory purpose and are viewed favorably by the Board.

Finally, the District argues that the subject of layoff in general is superseded by Education Code section 45117.[9] The

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[9]Education Code section 45117 provides:

> (a) When, as a result of the expiration of a specially funded program, classified positions must be eliminated at the end of any school year, and classified employees will be subject to layoff for lack of funds, the employees to be laid off at the end of the school year shall be given written notice on or before May 29 informing them of their layoff effective at the end of the school year and of their displacement rights, if any, and reemployment rights. However, if the termination date of any specially funded program is other than June 30, the notice shall be given not less

Board has previously considered the effect of Education Code section 45117 on several occasions and concluded that it does not supersede the subject of layoff in general. Oakland I, supra; Oakland II, supra; and Healdsburg II. Our findings as to the negotiability of the proposals at issue herein reflect the determinations reached in those cases that Education Code section 45117 permits negotiation of the notice and timing of layoffs, including a notice period longer than 30 days, but precludes negotiation of a deadline for layoffs as well as a definition of "lack of funds."

> than 30 days prior to the effective date of their layoff.
>
> (b) When, as a result of a bona fide reduction or elimination of the service being performed by any department, classified employees shall be subject to layoff for lack of work, affected employees shall be given notice of layoff not less than 30 days prior to the effective date of layoff, and informed of their displacement rights, if any, and reemployment rights.
>
> (c) Nothing herein provided shall preclude a layoff for lack of funds in the event of an actual and existing financial inability to pay salaries of classified employees, nor layoff for lack of work resulting from causes not foreseeable or preventable by the governing board, without the notice required by subdivision (a) or (b).
>
> 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).

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to subsection 3541.5(c), it is hereby ORDERED that the San Mateo City School District, its governing board and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Failing or refusing to meet and negotiate in good faith with the California School Employees Association and its Chapter #411 to the extent its proposals for disciplinary action, layoff and reemployment, and contracting and bargaining unit work have been found to be within the scope of representation;

(b) Interfering with the right of employees to freely select an exclusive representative to meet and negotiate with the employer;

(c) Denying the California School Employees Association and its Chapter #411 its right to represent unit members by failing or refusing to meet and negotiate with that organization.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

(a) Meet and negotiate upon request with the California School Employees Association and its Chapter #411 with respect to those subjects enumerated above to the extent found to be within the scope of representation.

(b) Within thirty-five (35) days following the date of service of this Decision, prepare and post copies of the Notice to Employees, attached as an Appendix hereto, for a period of thirty (30) consecutive workdays at the District's headquarters office and in conspicuous places at all locations where notices to classified employees are customarily posted. Reasonable steps should be taken to ensure that such notices are not reduced in size, defaced, altered or covered by any material.

(c) Written notification of the actions taken to comply with this Order shall be made to the San Francisco Regional Director of the Public Employment Relations Board in accordance with her instructions.

Members Jaeger and Burt joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. SF-CE-623, California School Employees Association and its Chapter #411 v. San Mateo City School District, in which all parties had the right to participate, it has been found that the District violated Government Code subsections 3543.5(a), (b) and (c).

As a result of this conduct, we have been ordered to post this Notice, and will abide by the following. We will:

1. CEASE AND DESIST FROM:

(a) Failing or refusing to meet and negotiate in good faith with the California School Employees Association and its Chapter #411 to the extent its proposals for disciplinary action, layoff and reemployment, and contracting and bargaining unit work have been found to be within the scope of representation;

(b) Interfering with the right of employees to freely select an exclusive representative to meet and negotiate with the employer;

(c) Denying the California School Employees Association and its Chapter #411 its right to represent unit members by failing or refusing to meet and negotiate with that organization.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

Meet and negotiate upon request with the California School Employees Association and its Chapter #411 with respect to those subjects enumerated above to the extent found to be within the scope of representation.

Dated: _____ SAN MATEO CITY SCHOOL DISTRICT

By _____
Authorized Agent

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