STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN MATEO COMMUNITY COLLEGE FEDERATION OF TEACHERS, AFT LOCAL 1493, AFL-CIO,	)	
Charging Party,	)	Case No. SF-CE-804
v.	)	PERB Decision No. 486
SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT,	)	February 13, 1985
Respondent.	)	

Appearances: Van Bourg, Allen, Weinberg & Roger by Blythe Mickelson for San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO; Brown and Conradi by Penn Foote for San Mateo County Community College District.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: The San Mateo County Community College District (District) excepts to the finding of an administrative law judge (ALJ), attached hereto, that it violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] by unilaterally rescinding a paid sick leave policy for summer school teachers.

The San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO (AFT) is the exclusive representative of a certificated unit which includes summer school employees.

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[1]EERA is codified at Government Code section 3540 et seq.

These employees were added to the original unit by agreement of the District and the previous exclusive representative. Prior to this negotiated unit modification, the District had promulgated a regulation providing paid sick leave for summer school employees. During the parties' first negotiations subsequent to the unit modification, AFT proposed that District regulations applying to summer school employees be incorporated into the contract. The District agreed to include certain provisions other than the sick-leave regulation.

A three-year contract was executed in March 1982. In April 1983, the District placed on its public meeting agenda, a resolution to rescind the sick-leave regulation. However, it withdrew the item when AFT informed the District that it wished to negotiate the matter. Meetings between the District and AFT then took place at which the District maintained that it had the legal right to unilaterally rescind the provision. It acted to do so in June. AFT filed this unfair charge in August.

In concluding that the District violated EERA, the administrative law judge relied largely on the following language in Los Angeles Community College District (10/18/82) PERB Decision No. 252 at pg. 13-14:

> . . . union conduct in negotiations will make out a waiver only if a subject was "fully discussed" or "consciously explored" . . . . The fact that a union drops a contract proposal during the course of negotiations does not mean it has waived its bargaining rights and ceded the matter to

> management prerogative . . . . Where, . . . a union attempts . . . to codify the status quo in the contract and fails to do so, the status quo remains as it was before the proposal was offered. . . . the union has not relinquished its statutory right to reject a management attempt to unilaterally change the status quo . . . .

The ALJ further found that,

> [C]ontract terms will not justify a unilateral management act on a mandatory subject . . . unless the contract expressly or by necessary implication confers such right . . . . (Los Angeles Community College District, supra) at p. 10.)

Therefore, the ALJ concluded, Article 18.2 of the parties agreement, which reads:

> This agreement shall supersede any rules, regulations or practices of the [District] which shall be contrary to or inconsistent with its terms[.]

does not constitute a waiver of AFT's negotiating rights. He reasoned that since the contract contains no provision for sick leave for summer school employees, there is no agreement on the matter which supersedes existing regulations. Absent a superseding provision, a waiver, or a cession of unilateral power to the District, the principle to be applied is that expressed in Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51, San Mateo County Community College District (6/8/79) PERB Decision No. 94, and NLRB v. Katz 369 U.S. 736 [50 LRRM 2177]:

> An employer's unilateral change in a negotiable subject without first notifying the exclusive representative and affording

> it the opportunity to negotiate, constitutes a per se violation of the employer's duty to bargain in good faith.

The ALJ also considered the District's argument that by dropping its demand to include the sick leave regulation in the contract, AFT yielded its right to bargain on the subject. He pointed out that, by its action, AFT did not cede to the District the right to later make changes in negotiable matters. The ALJ's remedy included restoration of the sick-leave policy, crediting affected employees with sick-leave accrual lost as a result of the rescission, and make-whole pay for employees whose salary was docked as a result of the loss of sick leave benefits.

DISCUSSION

The District contends that the ALJ erred by looking to the bargaining history first to determine what the parties intended with respect to AFT's bargaining rights. It argues that he should have looked to the contract which, it asserts, is clear and unambiguous in its denial of AFT's right to negotiate the matter of sick leave for summer school workers. In its second exception, the District also asserts that Article 16.1 of the contract specifically states that summer school employees shall not have sick leave benefits.

Although it would be inappropriate to inquire into the bargaining history where the contract language is clear and unambiguous, the Board does not find that the ALJ erred here.

The District's claim that the contract is of such unequivocal character does not make it so. The contract articles relied on by the District clearly demonstrate that there is no provision covering sick leave for summer session employees and, further, make it clear that existing rules and regulations are superseded only by conflicting provisions of the contract.

Article 16.1 reads:

> The only articles of this Agreement which apply to summer session employees are the following:
>
> Article 1: Recognition
> Article 2: Organizational Rights
> Article 4: Management Rights
> Article 5: Peaceful Settlement of Differences
> Article 14: Safety Conditions of Employment
> Article 15: Grievance Procedure

The ALJ correctly concluded that this article means only that there is no contract provision for summer session sick leave, and does not mean that there is no District policy on summer session sick leave, or that the existing sick leave regulation was rescinded. Absent conflicting contractual language, supersession of existing rules and regulations does not occur. It was this analysis of the contract provisions cited by the District that led the ALJ to look to collateral evidence of the parties intentions, including testimony provided by the District.

Finally, the District argues that even if the contract is ambiguous, the bargaining history establishes that AFT yielded

its right to bargain. It tried to get the sick leave policy in the contract and failed, accepting instead Article 16.1. The ALJ correctly disposed of this argument, relying quite properly on Los Angeles Community College District, supra.

Absent a finding that the contract wiped out all existing policy or practice on sick leave for summmer session teachers, or, expressly or by necessary implication, gave the District the untrammeled right to act on the matter, the District was foreclosed from taking unilateral action without first notifying AFT and providing it with the opportunity to negotiate.[2]

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to subsection 3541.5(c) of the Government Code, it is hereby ORDERED that the San Mateo County Community College District shall:

1. CEASE AND DESIST FROM:

(a) Failing and refusing to meet and negotiate in good faith with the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO as the exclusive representative of its employees by making unilateral reductions in the sick leave policy for summer session employees.

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[2]Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; San Francisco Community College District (10/12/79) PERB Decision No. 105; NLRB v. Katz (1962) 369 U.S. 739 [50 LRRM 2177].

(b) By the same conduct, denying to the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

(c) By the same conduct interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

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

(a) Reinstate section 3.80 D of the District's rules and regulations.

(b) Credit each bargaining unit summer session employee with the sick leave they would have accumulated had it not been for the District's unilateral actions.

(c) Make whole any employee for any loss of pay due to the deletion of rule 3.80 D, including interest at the rate of ten (10) percent per annum.

(d) Within thirty-five days following the date this Decision is no longer subject to reconsideration, prepare and post copies of the Notice to Employees attached as an appendix hereto for at least thirty (30) consecutive workdays at its headquarters offices and in conspicuous places at those locations where notices to certificated employees are customarily posted. It must not be reduced in size and

reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(e) 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 his/her instructions.

Chairperson Hesse and Member Morgenstern 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-804, San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO v. San Mateo Community College District, in which all parties had the right to participate, it has been found that the District violated Government Code section 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 and refusing to meet and negotiate in good faith with the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO as the exclusive representative of its employees by making unilateral reductions in the sick leave policy for summer session employees.

(b) By the same conduct, denying to the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

(c) By the same conduct interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

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

(a) Reinstate section 3.80 D of the District's rules and regulations.

(b) Credit each bargaining unit summer session employee with the sick leave they would have accumulated had it not been for the District's unilateral actions.

(c) Make whole any employee for any loss of pay due to the deletion of rule 3.80 D, including interest at the rate of ten (10) percent per annum.

Dated: _____ SAN MATEO COMMUNITY COLLEGE DISTRICT

By: _____
Authorized Representative

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SAN MATEO COMMUNITY COLLEGE FEDERATION OF TEACHERS, AFT LOCAL 1493, AFL-CIO, Charging Party, v. SAN MATEO COUNTY COMMUNITY COLLEGE DISTRICT, Respondent.	)	Unfair Practice Case No. SF-CE-804 PROPOSED DECISION (5/25/84)

Apperances: Blythe Mickelson, (Van Bourg, Allen, Weinberg & Roger) attorney for Charging Party; Penn Foote (Brown and Conradi), attorney for Respondent.

Before: James W. Tamm, Administrative Law Judge.

PROCEDURAL HISTORY

On August 1, 1983, the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO (hereafter AFT or Charging Party) filed this charge against the San Mateo County Community College District (hereafter District or Respondent). The charge, as amended, alleges that the District took unilateral action by deleting from its rules and regulations a section providing one day of sick leave for summer session instructors in violation of sections 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).[1]

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[1]The EERA is codified at Government Code section 3540

An informal settlement conference was held on September 13, 1983, however, the matter remained unresolved. A formal hearing was held November 17, 1983. A transcript was prepared, briefs were filed, and the case was submitted for decision February 2, 1984.

FINDINGS OF FACT

From December 1977 through May 1982 the certificated employees of the District were represented by an affiliate of the California Teachers Association (CTA).[2] Summer session employees were not included within that bargaining unit. In May 1982 the Charging Party decertified the incumbent as exclusive representative.[3] On May 3, 1983, just prior to the

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et seq. All references are to the Government Code unless otherwise specified. Sections 3543.5 states in pertinent part

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

[2]PERB Case No. SF-R-517.

[3]PERB Case No. SF-D-89 (R-517).

decertification election, the parties agreed to modify the existing bargaining unit to include summer session certificated employees.[4]

When the AFT and the District began contract negotiations, the AFT used the contract previously negotiated between the District and CTA for 1979 through 1982 as its starting point. The CTA-District contract did not include summer session employees because they had not been in the unit at the time the contract had been negotiated. AFT sought in its initial proposal to apply all sections of the old contract to summer session employees.

The District initially proposed that summer session compensation remain the same as the previous spring semester and it sought, among other things, to limit summer session inclusion in the contract.[5] One of the articles that the District did not want to apply to summer session was Article 2:

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[4]PERB Case No. SF-UM-247.

[5]The District's proposal was written in the negative. It proposed that the following articles would not apply to summer session employees. Article 6: Workload; 7: Hours of Employment; 11: Leaves; 12: Transfers and Reassignments; 13: Performance Evaluation Procedures; and 15: Grievance Procedures. The District also proposed that Article 2: Organizational Rights, be deleted from the contract entirely. By implication, the following articles would apply: 1: Recognition; 3: Payroll Deduction; 4: Management Rights; 5: Peaceful Settlement of Differences; 8: Pay and Allowances; 9: Health and Welfare Benefits; 10: Retirement; 14: Safety Conditions of Employment; 16: Miscellaneous; and 17: Duration.

Leaves. That article included the following sections:

11.1-sick leave;
11.2-industrial accident or illness leave;
11.3-immediate family illness leave;
11.4-bereavement leave;
11.5-personal necessity leave;
11.6-exchange teaching leave;
11.7-military leave; 11.8-jury duty;
11.9-maternity leave.

The sick leave section included 11 subsections. The pertinent subsections are as follows:

> 11.1 Leave of absence for illness or injury will be provided by the Board.
>
> 11.1.1 An employee who is employed five (5) days per week for the full academic year shall be entitled to ten (10) days leave of absence for illness or injury per year. An employee who is employed for fewer than five(5) days per week, or for less than a full academic year, will receive the proportional number of days of leave.

Prior to the new negotiations, sick leave for summer session was provided in section 3.80 D of the rules and regulations of the District. That section read as follows:

> Certificated employees shall be granted one day of sick leave if employed for the full summer session. This sick leave may be accumulated along with other District sick leave. Any sick leave granted or accumulated through continued employment in this District may be used for illness or accident during Summer Session.

During a mediation session on February 2, 1983, the District modified its summer session proposal by offering to make article 15: grievance procedure, applicable to summer session employees. During that same mediation session, the

Charging Party dropped its demand that all articles be applicable and agreed that only a limited number would be applicable. One of those articles that AFT agreed would not apply to summer session employees was article 11: leaves.

Both the Charging Party's executive secretary and its chief negotiator testified that they agreed to the District's proposal that article 11 would not apply to summer session employees, at least in part, because sick leave for those employees was already provided in the board's rules and regulations. According to the District, it was under the impression that when the Charging Party agreed that article 11 would not apply to summer session employees, it was in fact agreeing that summer session employees were giving up all rights to sick leave. Unfortunately, neither the Charging Party's reasons for dropping its proposal that article 11 apply to summer session employees, nor the District's understanding of what that meant, was ever discussed among the two parties.

The parties eventually reached agreement on a contract on March 9, 1982. The contract contained the following article regarding summer session employees.

ARTICLE 16: SUMMER SESSION EMPLOYMENT

16.1 The only articles of this Agreement which apply to summer session employees are the following:

Article 1: Recognition
Article 2: Organizational Rights
Article 4: Management Rights
Article 5: Peaceful Settlement of Differences

Article 14: Safety Conditions of Employment
Article 15: Grievance Procedure

16.2 Compensation for summer session is provided for in Section 8.9.

In reaching this agreement, there was never any discussion regarding sick leave for summer session employees. Furthermore, the parties stipulated that during the negotiations no specific rules or regulations of the District, including rule 3.80 D (providing sick leave for summer session employees) was ever discussed.

The final contract also contained the following section under the Miscellaneous article:

18.2 This Agreement shall supersede any rules, regulations or practices of the Board which shall be contrary to or inconsistent with its terms. The provisions of the Agreement shall be incorporated into and be considered part of the established policies of the Board.

This section was carried forward from the previous CTA-District contract. There was testimony from members of both bargaining teams that there was never any discussion in negotiations about the effect this section would have on preexisting rules of the District.

Back in early 1980, after concluding negotiations with CTA on the 79-82 CTA-District contract, the District purged its rules of all items which were covered in the contract. The District then inserted the reference section into its rules which indicated that policy regarding such matters could be

found in the agreement between the District and the exclusive representative. That reference section in the rules was never discussed during the AFT-District negotiations.

On April 11, 1983, the Charging Party received the agenda for the board meeting scheduled for April 13. Included on the agenda was the deletion of section 3.80 D of the rules and regulations. On April 12, 1983, the AFT executive secretary requested that the District delete the item from the agenda because it was a negotiable item. The Charging Party followed that request with a letter from AFT's chief negotiator, which was hand-delivered to the District that same day. After additional phone calls from AFT representatives to the chancellor on April 13, the chancellor agreed to remove the item from the agenda of the board meeting that night.

On May 26, 1983, the parties met to discuss whether the summer session sick leave issue had, in fact, been negotiated and agreed upon. At the meeting, the District argued that the issue had already been negotiated and that further negotiations were unnecessary. The Charging Party took the position that the issue had never even been mentioned, much less negotiated. No substantive negotiations regarding the sick leave issue itself took place at that meeting, and the parties were unable to agree on whether sick leave for summer session employees had been covered during negotiations.

The Charging Party heard nothing more about the issue until

it received the agenda for the June 15, 1983, board meeting. Deletion of section 3.80 D of the rules and regulations was once again on the agenda. The board acted to delete the section despite a request from the AFT that it not do so.

The parties stipulated that no certificated employees employed for the summer session 1983 received a day of sick leave. Additionally, there was testimony that at least one summer session instructor, and possibly more, had pay reduced because of the absence of any sick leave allowance.

ARGUMENTS OF THE PARTIES

The District argues that by specifically excluding the leaves article from its initial proposal, it was stating that it did not want summer session employees to receive sick leave. Additionally, by agreeing that the leave article would not apply, the Charging Party agreed that summer session employees would not receive sick leave and thereby waived its right to bargain a different provision.

The District also argues that once the parties agreed that article 11 would not apply to summer session employees, it was inconsistent with the board's rules and regulations providing for sick leave for those employees. Thus, according to article 18.2 of the contract, the rules and regulations would be superseded by the contract provision and summer session employees could properly be denied sick leave.

The Charging Party argues that it did not waive its right

regarding sick leave because there was never any intentional relinquishment of those rights expressed in clear and unmistakable terms. Further, that article 18.2 of the contract does not require that the rules and regulations be superseded by the contract, because there is no conflict or inconsistency between the contract and the rules and regulations.

ISSUES

1. By dropping its proposal that article 11 apply to summer session employees, did the Charging Party agree that those employees lost sick leave rights, thereby waiving its right to bargain over the issue?

2. Was rule 3.80 D inconsistent or contrary to article 11 and therefore properly deleted by the District?

DISCUSSION AND CONCLUSIONS OF LAW

As to the first issue, the law is clear and well-settled. The Charging Party made a proposal to codify existing sick leave rights of summer school employees into the contract. When it dropped its proposal it cannot be seen as an agreement that sick leave rights were given up. PERB has dealt with that precise issue in Los Angeles Community College District (10/18/82) PERB Decision No. 252.

> [U]nion conduct in negotiations will make out a waiver only if a subject was "fully discussed" or "consciously yielded" its interest in the matter. Press Co. (1958) 121 NLRB 976. . . . The fact that a union drops a contract proposal during the course of negotiations does not mean it has waived

> its bargaining rights and ceded the matter to management prerogative. Beacon Piece Dyeing and Finishing Co. (1958) 121 NLRB 953. Where, during negotiations, a union attempts to improve upon or . . . to codify the status quo into the contract and fails to do so, the status quo remains as it was before the proposal was offered. The union has lost its opportunity to codify the matter, it has failed to make the matter subject to the contract's enforcement procedures or to gain any other benefit that might have accrued to it if its effort had succeeded. . . . But the union has not relinquished its statutory rights to reject a management attempt to unilaterally change the status quo without first negotiating with the union. In a sentence, by dropping its demand, the union loses what it sought to gain, but it does not thereby grant management the right to subsequently institute any unilateral change it chooses. A contrary rule would both discourage a union from making proposals and management from agreeing to any proposals made, seriously impeding the collective bargaining process. (Beacon Piece, supra.) (Los Angeles Community College District, supra, at pp. 13-14.)

In this case there was no full discussion or intentional relinquishment of the sick leave rights. Quite the contrary is true. Loss of sick leave rights was never raised by either party, nor was the effect articles 11 or 16 would have on rule 3.80 D or the impact that article 18.2 would have on the issue. Thus, it cannot be found that the District acquired the right to delete rule 3.80 D through the Charging Party's waiver of the issue at the bargaining table.

As to the District's second argument that articles 16 and 18.2 of the contract constitute a contractual waiver of the

Charging Party's right to negotiate about changes in the sick leave policy, the Charging Party must again prevail.

> Contract terms will not justify a unilateral management act on a mandatory subject of bargaining unless the contract expressly or by necessary implication confers such right. (New York Mirror (1965) 151 NLRB 834 [58 LRRM 1465, 1467].) (Los Angeles Community College District, supra, at p. 10.)

In this case the District argues that because article 16 did not make the leaves article applicable to summer session employees, the leaves article is contrary to rule 3.80 D. Therefore, according to the District, it was proper for it to delete rule 3.80 D.

However, merely because the leaves article does not apply to summer school employees does not make it inconsistent with rule 3.80 D. The District confuses silence on the issue with capitulation. The District's position is that article 16 specifically excludes sick leave for summer session employees, when, in fact, all it says is that the leaves article will not apply to summer session employees. By its very nature, if the leaves article is not even applicable to summer session employees, it can hardly be considered inconsistent with rule 3.80 D.

Thus, it cannot be said that articles 16 and 18.2 constitute clear and unmistakable contract language demonstrating an intentional relinquishment of the right to negotiate over the changes to the sick leave policy for summer

session employees. San Francisco Community College District (10/12/78) PERB Decision No. 105; Oakland Unified School District (8/31/82) PERB Decision No. 236.

The District's reliance on Grossmont Union High School District (5/26/83) PERB Decision No. 313 is misplaced. In Grossmont, the PERB held that since a contract specifically identified certain teaching positions that were excluded from the "normal" work schedule, the contract was clear and unambiguous that all other employees were subject to the schedule, regardless of past practice. In that case, the issue being litigated was whether the union waived its right to negotiate over changes in the work schedule of a class of employees specifically covered by the contract language, not the work schedule of employees excluded from coverage. Grossmont does not offer justification for a district to unilaterally change past practice for those employees excluded from coverage by the contract, as is the issue in this case.

The District also argues that it acted consistently with a past practice of deleting provisions from the board's rules and regulations once they were included in the collective bargaining agreement. This argument is not persuasive. The most obvious reason is that sick leave for summer session employees was not, in fact, included in the contract. The section dealing with sick leave did not even apply to summer session employees. Although the District assumed that the

Charging Party was by its action agreeing to give up sick leave coverage for summer session employees, that assumption was never discussed and was not, in fact, accurate.

An employer's unilateral change of a matter within the scope of representation,[6] without affording the exclusive representative notice of and an opportunity to negotiate over the matter, constitutes a per se refusal to negotiate in good faith in violation of section 3543.5(c). Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51; San Mateo County Community College District (6/8/79) PERB Decision No. 94; NLRB v. Katz (1962) 369 U.S. 736 [59 LRRM 2177].

In San Francisco Community College District, supra, the Board determined the employer's violation of section 3543.5(c) was also a violation of section 3543.5(b) because such conduct denied to the exclusive representative its right to represent unit members in their employment relations with the employer. PERB further found that section 3543.5(a) rights were violated by section 3543.5(c) violations, because the failure to negotiate with the exclusive representative necessarily interfered with the employees in the exercise of protected rights to representation.

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[6]Section 3543.2 specifically enumerates leave policy as a matter within the scope of representation.

REMEDY

Section 3541.5(c) empowers PERB,

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

The remedy for violations such as those found in this case should be designed to restore so far as possible the status quo ante. Santa Clara Unified School District (9/26/79) PERB Decision No. 104. It is therefore appropriate that the District be ordered to reinstate section 3.80 D of the District's rules and regulations. The District should also make whole those employees detrimentally affected by the deletion of rule 3.80 D. Thus, all bargaining unit summer session employees who were denied sick leave should be credited for that loss. Additionally, any bargaining unit summer session employees whose pay was reduced due to a lack of sick leave availability should be reimbursed to the extent applicable, had rule 3.80 D not been deleted.

The exact amount of back pay for each affected faculty member need not be determined at this stage of the proceeding, but may be left to the compliance procedure if the parties are unable to come to an agreement based on a general back-pay

order. Santa Monica Community College District (9/21/79) PERB Decision No. 103; Alum Rock Union School District (9/22/81) PERB Decision No. Ad-115.

When the restoration of the status quo requires a payment of money, the PERB has included interest at the rate of seven (7) percent. San Mateo Community College District, supra.

It also is appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity and to restore the status quo ante. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and will announce the District's 's readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69; Pandol and Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587; NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

Attorneys fees requested by the Charging Party are denied. The District has not engaged in repeated and flagrant violations of the law. The District's defenses against the charges were not frivolous and unwarranted, but were rather at

least debatable. King City Union High School District (3/3/82) PERB Decision No. 197. See also D & H Manufacturing Co. (1978) 239 NLRB 51 [99 LRRM 1624] and Tydee Products (1972) 194 NLRB 1234 [79 LRRM 1175].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the San Mateo County Community College District violated subsections 3543.5(a), (b) and (c) of the Educational Employment Relations Act. Pursuant to subsection 3541.5(c) of the Government Code, it is hereby ordered that the District and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Failing and refusing to meet and negotiate in good faith with the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO as the exclusive representative of its employees by making unilateral reductions in the sick leave policy for summer session employees.

(b) By the same conduct, denying to the San Mateo Community College Federation of Teachers, AFT Local 1493, AFL-CIO rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

(c) By the same conduct interfering with employees in the exercise of rights guaranteed by the Educational Employment

Relations Act, including the right to be represented by their chosen representative.

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

(a) Reinstate section 3.80 D of the District's rules and regulations.

(b) Credit each bargaining unit summer session employee with the sick leave they would have accumulated had it not been for the District's unilateral actions.

(c) Make whole any employee for any loss of pay due to the deletion of rule 3.80 D, including interest at the rate of seven (7) percent per annum.

(d) Within ten (10) workdays after this decision becomes final, prepare and post copies of the NOTICE TO EMPLOYEES attached as an appendix hereto, for at least thirty (30) consecutive workdays at its headquarters offices and in conspicuous places at the location where notices to certificated employees are customarily posted. It must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered or covered by any material.

(e) Within twenty (20) workdays from service of the final decision herein, give written notification to the San Francisco Regional Director of the Public Employment Relations Board of the actions taken to comply with this order. Continue to report in writing to the regional director

thereafter as directed. All reports to the regional director shall be concurrently served on the Charging Party herein.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on June 14, 1984, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board at its headquarters office in Sacramento before the close of business (5:00 p.m.) on June 14, 1984, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305.

Dated: May 25, 1984

JAMES W. TAMM
Administrative Law Judge