

May 12, 1987, the date on which impasse procedures were exhausted by the parties.

In Compton Community College District (1989) PERB Decision No. 720, the Board found that the District made an unlawful unilateral change when it reduced its contribution to the benefit plan from \$2,682 to \$2,500 per employee. The unilateral change took place in the context of reopener negotiations in 1983, during the term of the parties' 1982-1985 contract. Although the record revealed that the parties had completed factfinding on the reopener negotiations, there was no indication of whether further proceedings took place. The Board took notice of the parties' next contract and ordered that liability would end on its effective date of July 1, 1988.

The Board's normal practice is to cut off liability if and when the parties reach a subsequent agreement or exhaust impasse procedures when the subject matter is covered. (See, e.g., San Diego Community College District (1988) PERB Decision No. 662, p. 19; Antioch Unified School District (1985) PERB Decision No. 515, pp. 18-20; Pittsburg Unified School District (1984) PERB Decision No. 318a, pp. 3-5; Rio Hondo Community College District (1983) PERB Decision No. 279a, p. 5.) This policy is based on the theory that once either event takes place, the bargaining obligation is satisfied and the aggrieved party is "made whole" because it is in the same position that it would have been in had the violation not occurred. (Pittsburg, supra. PERB

Decision No. 318a, pp. 4-5; Rio Hondo Community College District, supra, PERB Decision No. 279a.)

Since we now know that the parties did exhaust impasse procedures in negotiations for a successor agreement to the 1982-1985 contract, that there are apparently no other intervening events that would affect the liability period and that the implemented last and best offer includes a provision on the District's benefit contribution, it is appropriate to end the District's liability on May 12, 1987. We reject the District's argument that the retroactive effective date of its implemented policy should be used as the cutoff date. The District's bargaining obligation was not satisfied until May 12, 1987 and, unlike the situation of a negotiated contract, there was no mutual agreement on retroactivity. We also reject the argument of the California School Employees' Association (CSEA) that the information concerning the exhaustion of impasse procedures and unilateral implementation was not newly discovered evidence that was not previously available, as required by Regulation 32410(a).¹ The critical events did not take place until after this case was already before the Board. The information was not

¹PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32410(a) provides in pertinent part:

The grounds for requesting reconsideration are limited to claims [of] . . . newly discovered evidence . . . which was not previously available and could not have been discovered with the exercise of reasonable diligence.

discoverable prior to the closing of the record. Furthermore, the lawfulness of the post-impasse implementation was at issue until the issuance of Compton Community College District (1988) PERB Decision No. 704, on November 22, 1988.

ORDER

The Order in Compton Community College District (1989) PERB Decision No. 720, is AMENDED to read as follows:

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to section 3541.5(c) of the Educational Employment Relations Act, it is hereby ORDERED that the Compton Community College District (District), its Board of Trustees, Superintendent and its agents shall:

A. CEASE AND DESIST FROM:

1. Failing to meet and negotiate through statutory impasse procedures with the exclusive representative by taking unilateral action on matters within the scope of representation, including the unilateral reduction of the benefit plan contribution in September 1983.

2. Denying to the California School Employees Association (CSEA) and its Chapter 45 rights guaranteed by the Educational Employment Relations Act, including the right to represent members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Compensate any affected unit employee for monetary losses incurred as a result of the reduction of the benefit plan contributions from the date of the change (September 6, 1983) until the date the District could legally implement its last and best offer on the benefit plan (May 12, 1987). All monetary losses will include interest at the rate of 10 percent per annum.

2. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

3. Written notification of the actions taken to comply with this Order shall be made to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with her instructions.

IT IS FURTHER ORDERED that that portion of the complaint alleging that the Compton Community College District unilaterally eliminated classified positions in July and September of 1983,

without first negotiating the effects of this Decision with CSEA,
is DISMISSED.

Chairperson Hesse joined in this Decision.

Member Porter's dissent begins on page 7.

Porter, Member, dissenting: Adhering to my position that the record in this case does not establish an Educational Employment Relations Act violation, I cannot join my colleagues in imposing any penalty on Compton Community College District.



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. LA-CE-1865, California School Employees Association, Chapter 45 and Jimmie Thompson v. Compton 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, subdivisions (b) and (e) by unilaterally reducing its benefit plan contributions for classified unit employees without affording the exclusive representative notice and the opportunity to negotiate.

As a result of this conduct, we have been ordered to post this notice and we will:

A. CEASE AND DESIST FROM:

1. Failing to meet and negotiate through statutory impasse procedures with the exclusive representative by taking unilateral action on matters within the scope of representation, including the unilateral reduction of the benefit plan contribution in September 1983.

2. Denying to the California School Employees Association and its Chapter 45 rights guaranteed by the Educational Employment Relations Act, including the right to represent members.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Compensate any affected unit employee for monetary losses incurred as a result of the reduction of the benefit plan contributions from the date of the change (September 6, 1983) until the date the District could legally implement its last and best offer on the benefit plan (May 12, 1987). All monetary losses will include interest at the rate of 10 percent per annum.

Dated: COMPTON 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 ANY MATERIAL.