STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

OAKLAND SCHOOL EMPLOYEES ASSOCIATION,	)	
Charging Party,	)	Case No. SF-CE-1275
v.	)	PERB Decision No. 818
OAKLAND UNIFIED SCHOOL DISTRICT,	)	June 21, 1990
Respondent.	)	

Appearances: Andrew Thomas Sinclair, Attorney, for Oakland School Employees Association; Peter N. Hagberg, Attorney, for Oakland Unified School District.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Oakland Unified School District (District) to a proposed decision of a PERB administrative law judge (ALJ), in which it was found that the District unilaterally changed its contribution to a supplemental annuity plan (Plan),[1] in violation of Educational Employment Relations Act (EERA or Act) section 3543.5, subdivision (c) and, derivatively, subdivision (b).[2] The

[1]The ALJ referred to the Plan as the trust supplemental annuity plan and the complaint calls it the Tax Sheltered Annuity Plan. The Oakland School Employees Association (OSEA or Association) alleged at the hearing that the terms were synonymous. The District argues otherwise. For ease of reference, it will be called the Plan.

[2]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5, subdivisions (b) and (c) provide:

District has filed numerous exceptions which assert, generally, that it had no duty to negotiate its decision to use nonvested forfeitures to reduce its future contributions.

FACTUAL AND PROCEDURAL BACKGROUND

In 1971, prior to the enactment of EERA, the District adopted its first Plan. At that time, the Plan provided that the District would contribute 1-1/2 percent of each employee's salary to the tax-deferred Plan. The Plan was set up to qualify as a defined contribution plan under the Internal Revenue Code. A board of trustees (Trustees) was selected to administer the Plan. In 1977, the District and the Association[3] negotiated an initial collective bargaining agreement (CBA or contract), on behalf of the "white collar" unit, which incorporated the Plan by reference. That contract provided for an 8-percent contribution by the District, and contained a provision which stated that the Association would support a change in the Plan that would require a 3-year vesting period for eligibility to receive funds from the

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

[3]The Association represents two units of employees with the District, a "white collar" unit and a "paraprofessional" unit.

Plan.[4] The 1979-81 "white collar" agreement contained the 3-year vesting requirement. In 1979, the parties negotiated a CBA on behalf of the paraprofessional unit which also incorporated the Plan, provided for an 8-percent contribution,[5] and contained a similar vesting requirement.

As a result of the vesting requirement, contributions made on behalf of employees who left employment before they vested in the Plan were forfeited. The nonvested forfeitures accumulated in the Plan's account. In 1984, pursuant to the parties' agreements, participation in the Plan was abolished for new hires; however, contributions continued to be made for employees already participating in the Plan. Nonvested forfeitures, therefore, have not continued to accumulate.[6] The District and the Association are now parties to two separate CBAs,[7] each of which incorporates the Plan by reference, contains a vesting

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[4]The original Plan did not provide for a vesting period.

[5]The District delayed payment of 2 percent,of the 8-percent contribution pursuant to its budget proposal. The Association challenged that delay. The issue was ultimately decided by the Board in Oakland Unified School District (1982) PERB Decision No. 236. Decision No. 236 will be discussed, infra.

[6]The ALJ found that the District was not obligated to contribute on behalf of paraprofessional unit members hired after June 6, 1985. There were no exceptions filed to this factual determination. The parties apparently agreed that no further nonvested forfeitures are accumulating.

[7]Both agreements are effective July 1, 1987 through June 30, 1990.

requirement,[8] and mandates that the District contribute 8 percent of each employee's salary to the Plan.

Even though nonvested forfeitures do not continue to accumulate, at the time of the hearing, the account contained in excess of $600,000[9] and interest continues to accumulate on this amount. It is the disposition of this money that is the basis for the Association's unfair practice charge. Neither the parties' CBAs nor the Plan contain an explicit directive for the disposition of nonvested forfeitures.[10] In an effort to remedy that deficiency, the District passed Resolution 32435 on

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[8]Although Article 7 of the "white collar" contract continues to contain a vesting requirement, it expressly limits participation in the Plan to employees who were hired prior to February 22, 1984. The "paraprofessional" contract contains a similar vesting requirement in Article 8; however, that article does not contain a similar limitation on new hires.

[9]As of May 18, 1988, the nonvested forfeitures totaled $607,023.58.

[10]Section 11.11 of the Plan provides for the disposition of forfeitures which result from the inability of the Plan Trustees to find participants. That section provides:

> If any benefits payable to Participant or Beneficiary under this Plan cannot be paid by reason that such person cannot be located for three years after reasonable efforts have been made to locate him, the Trustees may declare such benefits forfeited and in such event all liability for the payment thereof shall terminate. Any amounts forfeited in accordance with this Section shall be used to reduce the current or next succeeding contribution of the Employer.

August 24, 1988.[11] Resolution 32435 amended Section 11.11 of the Plan to provide, in pertinent part:

> The Trustees [of the Plan], their agents, those they contract with and the District shall credit and allocate as Employer contributions to the current next succeeding required contribution(s) of the Employer amounts equal to the amount of the unvested forfeitures including interest thereon.
>
> If the total amount of unvested forfeitures exceeds the amount of the next required Employer contribution, the amount of the unvested forfeitures shall be credited and allocated as Employer contributions as follows:
>
> (1) An amount equal to 95% of the next required contribution shall be credited to the Employer as 95% of its next required contribution;
>
> (2) Any additional amount of extant unvested forfeitures shall be credited as an Employer contribution toward the next succeeding required Employer contribution up to 95% of the full amount of said required contribution;
>
> (3) Should the amount of unvested forfeitures exceed the next succeeding required contribution, the remainder shall be credited to the next succeeding required contribution in the manner described above.
>
> Upon crediting the Employer with the contributions, the Trustees, their agents, and those they contract with and the District shall allocate the amounts credited, along with any additional Employer contribution made to satisfy the required Employer contribution, to the individual accounts of the individual participants as the current required Employer contribution to their annuity.

[11]The District has passed 12 prior resolutions relating to the Plan.

. . . . . .

> The term "unvested forfeitures" means the amount of contributions, interest and any-other benefits contributed for and/or allocated to the accounts of employees and individual participants who terminate employment prior to the vesting of the account, benefits and contributions, including interest.

Pursuant to this resolution, the District would have reduced its direct out-of-pocket contributions by 95 percent and replaced that percentage of the contribution with the nonvested forfeitures. Thus, the employees would continue to receive the same 8 percent of their salaries as contributions to their Plan accounts.

The resolution itself indicates that the amendment was necessary to conform to Internal Revenue Code section 401, subdivision (a)(8). The resolution states, however, that, "at all times," the Plan "has provided that forfeitures be allocated to future Employer contributions." The resolution also provides that it would become effective immediately to prevent any allocation or use of the nonvested forfeiture funds in violation of the amendment. However, it additionally provides for a 60-day waiting period prior to the first crediting of nonvested forfeitures to the District's contributions for

> an opportunity for any necessary or desirable discussion of the implementation of the crediting and allocation procedure with the Classified Annuity Board of Trustees, participants and/or exclusive representatives.

This resolution was presented to the District board of trustees at its August 24, 1988 meeting. It appeared as an item on the agenda received by the Association Executive Director William Freeman on August 23. The agenda described the matter as "Resolution 32435 - Amending the Classified Supplemental Annuity Plan. For consideration—action on 9/14." Freeman made several attempts on August 23 and 24 to obtain a copy of the resolution, but by the time of the board meeting on the evening of August 24 he had not succeeded in securing a copy. At the meeting, the District board of trustees voted to suspend its usual practice and vote on the resolution immediately.[12] Freeman requested, and was granted, an opportunity to speak, and, at that time, he received a copy of the resolution. Freeman told the District board of trustees that the issue was bargainable and requested that the District not pass the resolution until the parties had bargained. The board of trustees passed the resolution over this objection.

The Association then filed its charge which alleged that the District's contribution to the Plan is a part of the wage package and, therefore, within the scope of representation. Furthermore, the Association alleged that the District agreed that the unvested forfeitures would remain in the Plan account. The Association relied on a 1982 PERB decision which requires the District to make "its TSA contributions at eight percent in

[12]The normal procedure for the District board of trustees was to review a matter at one meeting and vote on it at the next board of trustees' meeting two weeks later.

accordance with past practice . . . with OSEA." (Oakland Unified School District, supra, PERB Decision No. 236, p. 20.) The thrust of its argument is that the District violated its duty to bargain by unilaterally implementing an amendment to the Plan "so as to diminish Employer contributions." The Association also alleged that the District violated its duty to bargain in good faith by failing to provide Freeman a copy of the resolution prior to the August 24 meeting.

The District denied the charges generally and raised the following affirmative defenses: (1) the passage of the resolution was not a change in wages or working conditions within the meaning of the Act; (2) the matter was a contract dispute and subject to contract enforcement procedures, and was, therefore, deferrable pursuant to Lake Elsinore School District (1986) PERB Decision No. 603; (3) it did negotiate the passage of the resolution; (4) its actions were proper under the Plan and applicable law; and (5) any failure to provide the Association with the timely copy of the resolution was de minimus.

A formal hearing was held on February 21, 22, and 23, 1989. In addition to testimony of the principal negotiators from the District and the Association, witnesses included two tax and benefit plan experts, the Plan administrator, and a consultant who prepared a bid proposal to send to potential carriers.

THE ALJ'S PROPOSED DECISION

On the preliminary jurisdictional matter, the ALJ found that both contracts had grievance procedures which culminated in

binding arbitration and that the unilateral modification of the Plan was arguably a contract violation because the Plan was incorporated in the contracts. However, the contracts expressly limit the right to file grievances to employees and, thus, the ALJ found that the Association had waived its right to grieve. Therefore, the ALJ held that the matter was not deferrable to arbitration under EERA section 3541.5[13] and Lake Elsinore School District, supra, PERB Decision No. 603, because the Association

[13]EERA section 3541.5 provides, in pertinent part:

> (a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the board shall not do either of the following: . . . (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. The board shall have discretionary jurisdiction to review such settlement or arbitration award reached pursuant to the grievance machinery solely for the purpose of determining whether it is repugnant to the purposes of this chapter. If the board finds that such settlement or arbitration award is repugnant to the purposes of this chapter, it shall issue a complaint on the basis of a timely filed charge, and hear and decide the case on the merits; otherwise, it shall dismiss the charge. The board shall, in determining whether the charge was timely filed, consider the six-month limitation set forth in this subdivision to have been tolled during the time it took the charging party to exhaust the grievance machinery.

could not have filed a grievance nor pursued binding arbitration. He relied on the Board's decision in Temple City Unified School District (1989) PERB Order No. Ad-190, in which the Board held that a matter is not deferrable where the Association has no right to pursue binding arbitration. This issue is not on appeal.

The ALJ next addressed whether the adoption of the resolution was an unlawful unilateral action. He first looked at the Board's prior decision involving the District's Plan, Oakland Unified School District, supra, PERB Decision No. 236. In Oakland, the Board held that the District's obligation to make payments to the Plan was within the scope of representation and, hence, a mandatory subject of bargaining. The ALJ relied on the following language of that decision:

> The District's payment into the employees' TSA fund represents a fixed 8 percent of the employees' salary and, as such, is part and parcel of the employees' wages. This TSA contribution is of equal concern to both management and employees whose interests are appropriately represented at the negotiating table. Furthermore, there is nothing in the record to support a finding that the District's freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of its mission would be significantly abridged by a requirement that it negotiate a change in its practice and policy with respect to the TSA. (Id. at pp. 8-9, relying on Anaheim Union High School District (1981) PERB Decision No. 177.)

Relying on other PERB precedent, the ALJ concluded that contributions to the Plan were a significant form of supplemental

compensation. The ALJ then discussed what possible uses could have been made of the nonvested forfeitures. He found that the funds could have been used to reduce the significant administrative costs of the Plan which, by its terms, were first charged against the employer contribution. He reasoned that no evidence was submitted which would indicate that such use of the nonvested forfeitures would contravene the Internal Revenue Code or Internal Revenue Service regulations. He concluded that "such an amendment to the Plan would alter it and the . . . [contracts] as to a subject matter within scope so as to achieve a result not reached by the parties at the bargaining table."

The ALJ also rejected the District's argument that the Association waived its right to negotiate the amendment by virtue of the management rights clause in the Plan document. Section 9.01 of the Plan provides:

> The Employer reserves the right by appropriate action of its governing board to modify or amend this Plan in whole or in part at any time and from time to time, and such amendment may be made retroactively by delivery to the Trustees and Insurer of a written copy of such modification or amendment signed by the Employer; . . .

He reasoned that the clause does not clearly waive the Association's right to negotiate the use or application of nonvested forfeitures, because the clause pertains only to the District's reserved rights as trustor prior to the inclusion of the Plan in the parties' contracts.

He further found that since the parties knew how to phrase explicit language relating to forfeitures, e.g., in section

11.11,[14] he would not infer that the Association meant to waive any right to bargain on this issue.

The ALJ also found that the District breached its duty to bargain by failing to timely provide a copy of the resolution to the Association prior to the District board of trustees' meeting. He found that the information was necessary and relevant to the Association's duty to represent its members, and that the Association made a clear and unconditional demand on the District. He reasoned that the delay in providing the information would only have been "inappropriate or di minimus" if the District board of trustees' action on the matter had not been taken that night. However, since the District board of trustees took action on the resolution the same night, and the Association had received the resolution only minutes before, the delay in providing the resolution amounted to a refusal to provide information.

THE DISTRICT'S EXCEPTIONS

The District excepted to numerous factual and legal determinations made by the ALJ which supported his ultimate conclusion that the District violated the Act by: (1) unilaterally determining how to spend the nonvested forfeitures; and (2) failing to timely provide a copy of the resolution to the Association. The District argues, generally, that the matter was not within the scope of representation because the amount of the contribution to the Plan on behalf of the employees did not

[14]For text of Section 11.11 of the Plan, see footnote 10.

change, and it was obligated to adhere to the Internal Revenue Service (IRS) rules and regulations governing the Plan.

DISCUSSION

The ALJ, relying primarily on the Board's decision in Oakland Unified School District, supra, PERB Decision No. 236, found that modifications to the Plan were matters within the scope of representation and, thus, negotiable. Oakland, however, is not dispositive.

In Oakland, the District unilaterally decided to defer 2 percent of its 8-percent contribution, with payment of the deferred amount to be paid out of the anticipated reserves of the subsequent fiscal year. (Id. at pp. 1-2.) The effect of this deferral was to reduce the District's contribution to 6 percent, from September 1979 until July 1980. (Id. at p. 7.) The exclusive representatives requested negotiations which the District refused because it contended that the decision was not negotiable. (Id. at p. 5.)

The Board rejected the District's argument that the deferral was consistent with its past practice of not negotiating the timing of its payments. The Board reasoned that, even though the District may have deferred the payment of its 8-percent contribution during the same fiscal year, the District was obligated by the terms of the contract to make the full 8-percent contribution. (Id. at p. 11.) The Board ordered the District to "henceforth make its contractually mandated payments at 8 percent in accordance with its past practice." (Id. at p. 19.)

Despite the Association's characterization that the District was reducing its contribution by 95 percent, this case does not involve a reduction in contribution levels. Under the District's resolution, the contribution level would remain at 8 percent. Rather, we must address the negotiability of the disposition of the accumulated nonvested forfeitures. That issue cannot be determined solely on the basis of the Board's prior decision in Oakland Unified School District, supra, PERB Decision No. 236.

The District and the trustees for the Plan are mandated by the Plan itself to abide by the Internal Revenue Code. Section 1.01 of the Plan states, in pertinent part:

> The Plan is intended to comply with all requirements for qualification under Sections 401-404 of the Internal Revenue Code of 1954 . . . .

Section 401, subdivision (a)(8) of the Internal Revenue Code outlines the requirements for qualification. That section provides:

> A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.
> (26 U.S.C, sec. 401, subd. (a)(8).[15])

The parties agree that the Plan is a defined contribution plan. As the experts testified, there are two general types of defined contribution plans, money-purchase plans and profit-

[15]Section 401, subdivision (a)(8) was amended in 1986 to substitute "defined benefit plan" for "pension plan." This amendment does not affect the law governing the Plan at its inception, nor when the vesting requirement was adopted in 1977.

sharing plans. Myron Sugarman, expert witness for the District, explained the differences:

> [A] money purchase pension plan was required to state an annual contribution that would be made for the employees. And it could not be varied on a year to year basis. For example, it might state that the employer would contribute five percent of each employee's contribution [salary] on an annual basis. . . . That is to be contrasted with a profitsharing [sic] plan, where the employer might determine on an annual basis what if any contribution would be made to the plan. And . . . [the] contribution, if made, could only be made out of current or accumulated profits. . . . There was a second basic difference between those two types of plans. And it has to do with the subject of forfeitures. . . . A forfeiture is a portion of a contribution which an employee loses because he or she terminates employment. . . . With a money purchase pension plan, forfeitures which occur as a result of employees terminating employment must be used to reduce subsequent contributions of the employer to the plan. That is to be contrasted with a profitsharing [sic] plan. In a profitsharing [sic] plan, the plan can provide a number of alternatives with respect to forfeitures. One is they can be used to reduce subsequent contributions. Second, and probably more common in a profitsharing [sic] plan, is that forfeitures, when they occur, are allocated to the accounts of the remaining employees.

Both experts agreed that, when established in 1971, the Plan was intended to be a money-purchase plan.

The Association relies heavily on the testimony of its expert, Luke Bailey, that he could convince the IRS that, with the vesting requirement, the Plan changed from a money-purchase plan to a profit-sharing plan and, thus, the nonvested forfeitures could be used to increase the contributions to the

remaining participants. This argument, however, must fail. First, as the charging party and proponent of this theory, the Association failed to meet its burden of proof. (See PERB Reg. 32178 which provides that the charging party must prove the complaint by a preponderance of the evidence.) The statement of one tax expert that he believed he could convince the IRS that the Plan had changed from a money-purchase plan to a profit-sharing plan is speculative and, therefore, insufficient to prove the Plan is a profit-sharing plan. Secondly, the Association's argument is in direct conflict with its position in Oakland Unified School District, supra, PERB Decision No. 236, where it successfully argued that the District could not choose to reduce its contribution, but rather was obligated to contribute 8 percent of the employees' salaries to the Plan. Therefore, the Board finds that the Plan is indeed a money-purchase plan.

The regulations adopted to interpret section 401, subdivision (a)(8) of the Internal Revenue Code provide:

> In the case of a trust forming a part of a qualified pension plan, the plan must expressly provide that forfeitures arising from severance of employment, death or for any other reason, [16] must not be applied to increase the benefits any employee would otherwise receive under the plan at any time prior to the termination of the plan or the complete discontinuance of employer contributions thereunder. The amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the

[16]As indicated infra, the Plan provided that forfeitures resulting from an inability to locate recipients were to be used to reduce future employer contributions. (See section 11.11, quoted at fn. 10)

> plan. However, a qualified pension plan may anticipate the effect of forfeitures in determining the costs under the plan. Furthermore, a qualified plan will not be disqualified merely because a determination of the amount of forfeitures under the plan is made only once during each taxable year of the employer.
> (26 CFR 1.401-l(b)(1)(i).)

Pursuant to the provisions of section 401, subdivision (b)(8) and the regulations, in order to maintain its status as a qualified pension plan, the Plan must provide that nonvested forfeitures will be used to reduce future employer contributions.[17] However, the IRS has determined that a money-purchase pension plan which provides that forfeitures will be used to reduce reasonable administrative expenses, with any excess to be used to reduce further employer contributions was not inconsistent with Internal Revenue Regulation 1.401-7(a) that requires forfeitures be used as soon as possible to reduce employer contributions. (IRS Rev. Rul. 84-156.)

The Association argued, and the ALJ found, that the nonvested forfeitures could be used to pay for administrative costs without jeopardizing the Plan's qualified status. However, the Plan document specifically provides for the source of payment of administrative costs. Section 6.01 provides:

> All contributions shall first apply to the administrative costs of the Plan, with the

[17]The IRS has ruled that it is unnecessary for a plan, in order to qualify, "to contain a specific statement regarding the application of forfeitures" as long as the plan makes it otherwise clear that forfeitures must not be applied to increase the benefits any employee would otherwise receive under the Plan. (IRS Rev. Rul. 67-68.)

balance applied to the purchase of Accumulation units.

As the Plan has always generated forfeitures (see section 11.11, quoted at fn. 10), the parties could have provided that the forfeitures be used for reasonable administrative costs. The Plan could have been set up to anticipate the effect of forfeitures on administrative costs. Instead, the parties established a mechanism for payment of administrative costs, i.e., they are to be paid from the District's contributions. As mentioned, the Plan is incorporated by reference in the parties' contracts. The issue of administrative costs, or any other item in the Plan, has been open for negotiation at the parties' bargaining sessions. Furthermore, since the Plan specifically provides that it is intended to comply with all requirements for qualification under section 401-404 of the Internal Revenue Code, we must assume that the parties knew of the section 401, subdivision (a)(8) requirements for qualification when they determined the payment of administrative costs.

Although the Association argues that the District agreed to keep the nonvested forfeitures in the Plan account, it failed to meet its burden of proof on this issue. The Association presented the testimony of Ann Sprague, Plan administrator and former OSEA president, who participated in the 1976-77 negotiations which resulted in the vesting requirement. Sprague testified that the District represented at the table, in a response to an October 13, 1977 OSEA inquiry, that the

forfeitures would remain in the Plan account with no savings to the District.[18] The District, however, subsequently indicated, in its November 6, 1977 bargaining proposal, that the forfeitures would revert to the District.[19] Additionally, in a 1982 bid specification, prepared by the Trustees to solicit contractors for the annuity fund, the consultant represented that "forfeitures are used to reduce future District contributions." In a 1984 certified public accountant report on the District annuity plans, prepared for the Trustees, the consultants stated that they started with the following assumption:

> District contributed funds for employees who leave the District prior to being vested and related earned interest revert to the District. Such amounts should be recovered monthly by the District by reducing the next month's contribution.

Moreover, even the Association's attorney, in a document prepared in 1984 describing the Plan agreement for Connie Sloan, the then-president of OSEA, quoted the applicable regulations as follows:

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[18]The District's written response to that inquiry stated:

> Funds freed by the early departure of an employee remain in the fund and these assets as well as the interest generated become assets of the fund. No cost savings to the district.

[19]That proposal stated:

> Contributions for employees who terminate with less than three years' service return to District. Potential savings attained from reduction in administrative costs remain with program.

> The amounts so forfeited must be used as soon as possible to reduce the employer's contributions under the plan.

Given the above evidence and the tax rules and regulations, we find that the District had no duty to bargain over the disposition of the nonvested forfeitures.[20] Section 401, subdivision (a)(8) makes clear that nonvested forfeitures must be used to reduce future employer contributions. The fact that the District had not, in the past, complied with this requirement does not justify continued noncompliance. The District and the Trustees have an obligation to maintain the Plan's qualified status. Although, under the applicable Internal Revenue Code sections and regulations, the parties could have agreed that administrative costs be paid out of nonvested forfeitures, the parties instead agreed that administrative costs be paid out of the District's contributions. Therefore, the District had no duty to negotiate over its decision to use nonvested forfeitures to reduce its future contributions.

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[20] Assuming a copy of the resolution was relevant and necessary to the Association's duty to monitor compliance with the CBA, we nevertheless reverse the ALJ's finding of a violation based upon a failure to provide information. In light of our holding that the disposition of nonvested forfeitures was nonnegotiable, coupled with the fact that the resolution provided for a 60-day delay in implementation to allow for discussions with exclusive representatives, we find that the short delay in providing a copy of the resolution was insufficient to constitute a violation.

ORDER

The Board, therefore, REVERSES the ALJ and finds that the District did not breach its obligation to negotiate in good faith. The unfair practice charge in Case No. SF-CE-1275 is hereby DISMISSED.

Chairperson Hesse and Member Camilli joined in this Decision.