STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES,	)	
Charging Party,	)	Case No. SF-CE-294-H
v.	)	PERB Decision No. 891-H
REGENTS OF THE UNIVERSITY OF CALIFORNIA,	)	July 3, 1991
Respondent.	)	

Appearances: Ron Reeves, Representative, for the American Federation of State, County and Municipal Employees; Joyce Harlan, Representative, for the Regents of the University of California.

Before Hesse, Chairperson; Camilli and Carlyle, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Regents of the University of California (University) to the attached proposed decision of an administrative law judge (ALJ). The ALJ found that the University violated subdivision (c) of section 3571, and derivatively subdivision (b) of the Higher Education Employer-Employee Relations Act (HEERA or Act).[1]

[1]HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571 states, in pertinent part:

> It shall be unlawful for the higher education employer to do any of the following:
>
> (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

Specifically, the ALJ found that the University failed to provide requested information that was necessary and relevant for the American Federation of State, County and Municipal Employees (AFSCME) to fulfill its duties under the Act. The University filed four exceptions to the proposed decision contending that the ALJ failed to consider that: (1) the University did provide information; (2) the information came forward slowly because of the University's decentralized decision-making process; (3) AFSCME did not request that implementation of the budget cuts be delayed; and (4) AFSCME declined to meet with the University concerning the impact of the cuts. AFSCME filed a brief response to these exceptions.

We have carefully reviewed the entire record, including the proposed decision, the transcript, the University's exceptions,

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> employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.
>
> (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

and AFSCME's response thereto, and, finding the ALJ's findings of findings of fact and conclusions of law to be substantially free of error, adopt the ALJ's proposed decision as the decision of the Board itself. We write separately, however, to address one minor factual error made by the ALJ and to briefly address the University's exceptions. We also write separately to address the alleged (a) violation which the ALJ did not discuss.

DISCUSSION

Factual Error

The ALJ states at page 12 in his Findings of Fact and at page 19 in his Conclusions of Law that the University's representative, Debra Harrington (Harrington), informed AFSCME's, representative, Michael Votichenko (Votichenko), of impending layoffs in the Recreational Sports Department by telephone on April 4, 1989.[2]

The University excepted to this finding contending there is no evidence that Harrington and Votichenko actually spoke to each other on April 4. We agree that the administrative record does not support a finding that the parties spoke to each other on this date. Rather, it appears from the exhibits entered into the record that Harrington merely left a message at Votichenko's office on April 4. The record does establish, however, that Harrington followed that message with a letter dated April 5, then spoke with Votichenko by telephone on April 7. Further, both the April 5 letter and April 7 conversation appear to cover

[2]Unless otherwise identified, all dates refer to 1989.

the same subject matter that the ALJ incorrectly identified as discussed on April 4 (i.e., layoff of the storekeeper in the Recreational Sports Department). Thus, although the ALJ identifies April 4 as the date of their discussion, the conversation did not, in fact, occur until April 7. Notwithstanding this mistake, the ALJ's reference to April 4 constitutes harmless error since his findings concerning the subject matter of their conversation were not dependent upon the precise date of the conversation.

Exceptions

In addition to the above, the University also states four general exceptions to the ALJ's proposed decision.[3] Specifically, the University contends:

> A. [The ALJ failed] to Find that the University Provided Charging Party with the Information Necessary to Meet Its Legal Obligations and to Find that the Collective Bargaining Agreement Governed the Parameters and Procedures by Which Personnel Actions Are to Occur.
>
> B. [The ALJ failed] to Consider the Fact that Due to the Decentralization of the Decisions Regarding the Budget Cut-Backs [sic] and the Freeze Information Came Forward Slowly and Was Not Available as Late as June, 1989.
>
> C. [The ALJ failed] to Consider the Fact that Charging Party Declined to Meet with the University Regarding the Impact of the Cuts.

[3]Since, as discussed below, we do not find the University's exceptions meritorious, it is unnecessary to restate in detail the alleged errors or each of the University's arguments made in support of its exceptions.

D. [The ALJ did not] Consider the Fact that AFSCME Never Requested that the University-Delay Implementation of the Cuts Until AFSCME Had All Information It Deemed Necessary.

In reviewing these exceptions, it is important to note the University does not contend that AFSCME had no right to the information, i.e., that it was not relevant to AFSCME's duties as an exclusive representative. The University also does not dispute that Harrington possessed two memos, one dated February 2, and the other dated February 23, and that each contained information that would have addressed some of AFSCME's inquiries. Further, there appears to be no dispute that AFSCME's requests were clear and unambiguous with respect to its interest in obtaining information or the subjects of the information sought. Also not disputed in the exceptions is the ALJ's finding that the University was placed on notice as to AFSCME's interest in obtaining information as a result of a February 9 telephone conversation between Votichenko and Harrington, and Votichenko's letter to Harrington dated February 14. Finally, the University does not dispute that Libby Sayre (Sayre), a local representative for AFSCME, acted at Votichenko's request by sending Harrington a letter on February 27 requesting further information, or that Sayre's letter merely particularized Votichenko's request. Instead, the University primarily contends that information was provided as it became available and that the ALJ failed to consider those facts in arriving at his decision.[4]

[4]PERB Regulation 32300(a) provides that a statement of exceptions shall specify the issues, pages and grounds with which

The University's exceptions, however, are without merit for the following reasons.

First, the exceptions merely restate arguments made before the ALJ at the formal hearing. Thus, while the Board applies a de novo standard of review and is free to draw its own conclusions from the record (Santa Clara Unified School District (1979) PERB Decision No. 104), we find no justification in this case to deviate from the ALJ's analysis since his findings of fact and conclusions of law are amply supported by the record.

We also do not find persuasive the University's contentions that it provided the requested information or that the ALJ failed to consider certain evidence favorable to the University in arriving at his decision.

The record establishes that Harrington failed to disclose the February 2 and February 23 memos which the ALJ determined contained the requested information, or otherwise provide the information contained in the memos. The University attempts to justify its conduct by arguing that Harrington discussed the information covered in those memos with Votichenko during their telephone conversation on February 9 and followed their conversation with a letter dated March 6.

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each exception is taken to the ALJ's proposed decision. Subdivision (c) of Regulation 32300 further provides that any exception not specifically argued is waived. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

This argument fails, however, because providing information on February 9 in a telephone conversation does not satisfy the University's obligation to provide relevant information requested both during and subsequent to that conversation.[5] This is particularly true where the accuracy of that information is later placed into question by the February 17 publication of an article in The Daily Californian which quoted extensively from the University's February 2 memo and, arguably, contradicted information provided by Harrington to Votichenko. Furthermore, irrespective of the article's accuracy,[6] the fact it quotes from a University memo clearly portrayed the University as having significant information of concern to AFSCME.

Thus, while AFSCME might not have been entitled to specific copies of internal University memorandum, it was certainly

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[5]Harrington, in characterizing her discussions with Votichenko, testified she discussed the "basic elements" of the February 2 and 23 memos but admitted under examination by the ALJ that she did not provide Votichenko with all of the information contained therein. In reference to providing a list of departments funded by the registration and education fees, Harrington testified that the University knew which departments were funded by the registration and education fees and that such information could have been provided at the time she received Sayre's February 27 letter.

[6]The University states in one of its exceptions that the ALJ failed to consider that Harrington believed the information contained in The Daily Californian article was inaccurate. Harrington's state of mind, however, is irrelevant. Furthermore, a close examination of her testimony reveals that Harrington never testified she informed Votichenko that the article contained inaccurate information. The University's reliance on the alleged inaccuracies contained in the memo is therefore rejected. Moreover, even if the article misstated the contents of the memo, AFSCME, under the circumstances in this case, would be entitled to verify the accuracy of the information Harrington allegedly provided in the telephone conversation.

entitled to some definitive source of information other than a mere telephone discussion of the "basic elements" of the memos. We find that Sayre's February 27 letter, which the ALJ determined merely stated more specifically Votichenko's general inquiry, constitutes a request for more definitive information. We further find that the University did not respond to this inquiry but merely advised Votichenko to relay the contents of their February 9 telephone conversation to Sayre.

Also without merit is the University's argument that the ALJ failed to consider the decentralized decision-making process utilized by the University. Although no specific finding was made on this issue, after reviewing the evidence and the arguments presented in the post-hearing briefs and exceptions, it is apparent the ALJ discounted the significance of that process. We agree with his approach. Further, the Board has held that any unreasonable delay in providing information may constitute a violation of the Act. (Azusa Unified School District (1983) PERB Decision No. 374, pp. 8-9.) Accordingly, the fact that various departments were in the process of developing individual plans for meeting their budgeting goals does not justify the University's failure to provide relevant and readily available information contained in the February memos.

The University further contends AFSCME's right to the information only arises once the decisions have been made. We note, however, the University provides no legal authority for its hypothesis. Moreover, its theory contravenes a fairly clear line

of decisions, which the Board has generally followed, by the National Labor Relations Board (NLRB) and federal courts concerning the duty to provide information.[7] (See generally, Morris, The Developing Labor Law (2d ed. 1983) pp. 617-621; Id. (1982-1988 supp.) pp. 323-234.) The University's argument is therefore rejected.

In its third exception, the University contends the ALJ erred by failing to consider that AFSCME failed to meet with the University concerning the impact of the cuts. The exception is without merit. Requests for information are not contingent upon scheduling a meeting with the employer.

The University's final exception, contending that AFSCME failed to request that the cuts be delayed until it had all necessary information, also is rejected. The obligation to provide information in response to a request is simply not conditioned upon another request that the employer delay taking some action.

For the reasons expressed above, each of the University's exceptions and arguments are rejected.

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[7]A1though the Board is not bound to follow NLRB decisions, ' it will take cognizance of them where appropriate as an aid in interpreting analogous requirements under state labor legislation. (Carlsbad Unified School District (1979) PERB Decision No. 89; Los Angeles Untied School District (1976) EERB Decision No. 5 (prior to January 1, 1978, PERB was known as the Educational Employment Relations Board); Regents of the University of California (Statewide University Police Association) (1983) PERB Decision No. 356-H; Fire Fighters Union Local 1186 v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].)

Violation of HEERA section 3571 fa)

The complaint, as amended, alleged that the University violated subdivisions (a),* (b) and (c) of section 3571 of the Act. At the conclusion of the formal hearing, the ALJ determined that the University violated subdivisions (c) and (b);[8] he did not, however, address the (a) violation in the proposed decision.

Inasmuch as we have found that the University's conduct violated subdivisions (b) and (c) of HEERA section 3571, we further find that this conduct also violated section 3571(a). Under HEERA section 3565, higher education employees have the right to participate in the activities of the employee 'organization of their choosing for the purpose of representation on all matters of employer-employee relations and for the purpose of meeting and conferring with the employer about matters within the scope of bargaining. The University, by failing to provide requested information in a timely fashion to AFSCME, effectively interfered with the rights of employees under HEERA section 3565- to have, their exclusive representative bargain on their behalf. This interference constitutes a violation of HEERA section 3571(a).

[8]Although the ALJ did not articulate his analysis in finding that the (b) violation was derived from the (c) violation, we nevertheless agree the University's actions justify that finding. Under HEERA section 3570 the exclusive representative has the right to bargain on behalf of its exclusively represented members. By refusing to provide information, the University effectively denied AFSCME its right to bargain on behalf of its members for whom it is designated the exclusive representative. This conduct violates HEERA section 3571(b).

ORDER

Based upon the foregoing findings of fact, conclusions of law and the entire record in this case, it is found that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act section 3571(a), (b) and (c). Pursuant to section 3563(h), it is hereby ORDERED that the Regents of the University of California, its president, chancellor(s) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to provide, upon demand, to AFSCME, as an exclusive representative of University employees, all information that as necessary and relevant for AFSCME to discharge its duty of representation.

2. Denying to AFSCME rights guaranteed to it by the Higher Education Employer-Employee Relations Act.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

1. Within thirty-five (35) days following the date the Decision is no longer subject to reconsideration, post at all work locations where notices to employees are customarily placed at the University of California, Berkeley campus, 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 other material.

2. 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.

Chairperson Hesse and Member Carlyle joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. SF-CE-294-H, American Federation of State, County and Municipal Employees v. Regents of the University of California, in which all parties had the right to participate, it has been found that the Regents of the University of California violated the Higher Education Employer-Employee Relations Act, Government Code section 3571(a), (b) and (c).

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 provide, upon demand, to AFSCME, as an exclusive representative of University employees, all information that is necessary and relevant for AFSCME to discharge its duty of representation.

2. Denying to AFSCME rights guaranteed to it by the Higher Education Employer-Employee Relations Act.

Dated: _____

REGENTS OF THE UNIVERSITY OF CALIFORNIA

By _____
Authorized Agent

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.

STATE OP CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Unfair Practice Case No. SF-CE-294-H PROPOSED DECISION (11/15/90)

Appearances: Ron Reeves for the American Federation of State, County and Municipal Employees; Joyce Harlan for the Regents of the University of California.

Before Allen R. Link, Administrative Law Judge.

PROCEDURAL HISTORY

On June 15, 1989, the American Federation of State, County and Municipal Employees (hereafter AFSCME or Charging Party) filed an unfair practice charge with the Public Employment Relations Board (hereafter PERB or Board) against the Regents of the University of California (hereafter Respondent or University) alleging a violation of subdivisions (b) and (d) of section 3571 of the Higher Education Employer-Employee Relations Act (hereafter HEERA).[1]

[1] The Higher Education Employer-Employee Relations Act is codified at Government Code §3560 et seq. All section references, unless otherwise noted, are to the Government Code. Section 3571 states:

3571. UNLAWFUL EMPLOYER PRACTICES

It shall be unlawful for the higher education employer to do any of the following:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

On January 16, 1990, the General Counsel of PERB, after an investigation of the charge, issued both a Partial Dismissal and a Complaint. The Complaint alleged a violation of subdivisions (a) and (b) of section 3571. The Partial Dismissal disposed of the alleged violation of section 3571(d). On February 8, 1990, the Respondent filed its Answer to the Complaint.

On February 27, 1990, an informal conference was held to explore voluntary settlement possibilities. No settlement was reached.

The formal hearing was held on May 29, 1990. The parties briefed their respective positions. The case was submitted for decision on September 4, 1990.

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against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another. However, subject to rules and regulations adopted by the board pursuant to Section 3563, an employer shall not be prohibited from permitting employees to engage in meeting and conferring or consulting during working hours without loss of pay or benefits.

INTRODUCTION

In February 1989, the University announced its decision to institute budgetary reductions, including a freeze in hiring and promotions in units funded by student registration fees. In February AFSCME, in its role as representative for various University employees, requested information from the University concerning the effect(s) of this freeze on University employees. In mid-June, when it believed it had not received the requested information, it filed this charge.

AMENDMENT OF COMPLAINT

Pursuant to a motion of the Charging Party, and without objection by the Respondent, paragraph 3 of the Complaint was amended to delete the reference to the Charging Party seeking such information solely for non-exclusively represented University employees. This amendment added to the disputed issues the matter of whether the University improperly failed to provide requested information to AFSCME in its role as an exclusive representative of University employees. Paragraph 5 of the Complaint, which sets forth the specific subdivisions of section 3571 that were alleged to have been violated, was not amended to include a specific reference to a section 3571 subdivision (c) violation.[2] However, once the motion to include

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[2] Section 3571 subdivision (c) states

> It shall be unlawful for the higher education employer to do any of the following:
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

the represented employees was granted (without objection), the Respondent was on notice that its actions vis-a-vis its represented employees was at issue in the hearing.

JURISDICTION

The parties stipulated, and it is therefore found, that the Charging Party is an employee organization and the Respondent is a higher education employer within the meaning of section 3562.

FINDINGS OF FACT

In early February 1989, the Berkeley campus of the University of California learned that it would be receiving only a portion of the recently increased student educational and registration fees (hereafter ed/reg fees) revenue. Ed/reg fees are fees paid directly by the students and are used to support student services on the campus. The campus management shortly thereafter learned that it would be necessary to implement 1990-91 budget cuts in those units that were dependent on ed/reg fees. It was told that there would be a hiring freeze, but that specifics with regard to the budget shortfall would be determined by the individual units. Each unit was to be given a targeted budget level and it would be responsible for meeting this figure.

Berkeley Vice Chancellor Roderic B. Park notified the campus management of the freeze by means of a February 2, 1989, memo which described, in general terms, the effect the budgetary cutbacks and the freeze would have on units that depended on ed/reg fees. The memo set forth specific rules regarding the cutbacks and freeze, and the manner in which exceptions to these

could be effected. These rules were set forth with regard to (1) :Personnel Actions, (2) Supplies and Expenses and (3) Equipment and Facilities. The first time AFSCME saw this memo was approximately two to three weeks before the formal hearing in this case.

On February 7, 1989, Berkeley's Acting Provost for Undergraduate Affairs, William M. Banks, sent a letter to the units under his control explaining the freeze and anticipated budgetary cutbacks. One of the addressees of this letter, Michele Woods Jones, testified that she was given an actual percentage reduction figure by her supervisor. She worked with her staff to reach this figure. She believed that the Personnel Department's role was to assist her in implementing the applicable university rules and regulations with regard to any impact the budgetary cuts had on personnel.

Debra Harrington, Berkeley's Manager of Labor and Employee Relations, informed management that she would have to notify both the exclusive representatives and the non-represented employees of any impact the budget cuts would have on employees' terms and conditions of employment. She asked that she be notified as soon as any such plans were developed so she could discuss with the appropriate management personnel the action(s) that must be taken to comply with the labor relations requirements.

Ms. Harrington contacted the designated employee representatives on or about February 9, 1989, to notify them of the anticipated budget cuts and hiring and promotional freeze.

She contacted them by phone as the budget situation was to be made public shortly thereafter. As a part of this notification process she called Michael Votichenko, a representative and employee of AFSCME, Council 10, and the person designated by AFSCME International, an exclusive representative, and the Charging Party in this case, as the person to whom all notices should be sent.[3]

She told him that (1) there was a hiring and promotional freeze, (2) the specific budgetary cuts had not been finalized, (3) supplies and equipment would be the first area affected by the cutbacks, and (4) she did not know whether the cuts would impact the people represented by AFSCME. She also told him that exceptions could be made. Votichenko asked her for additional details. She said she would get back to him when more information was available. In the notes she made from that telephone conversation she added the following: "units responsible for coming up with plans - would then contact our office and we Would work through as appropriate with AFSCME."

On February 14, 1989, Votichenko wrote a letter to Harrington. The entire text of the letter is as follows:

> The Union would like to meet with the University to discuss plans for freezing vacant positions and the possibility of layoffs in the Registration and Education funded units. When you have provided the Union with specific information about the

[3] AFSCME has three locals on the Berkeley campus, all within Council 10. These locals represent (1) service employees, (2) clerical employees and (3) the non-exclusively represented employees.

> impact of the cuts on the employees represented by the three locals on the Berkeley campus, we will contact you to finalize Plans for a meeting. (Emphasis added.)

Three days later, on February 17, 1989, the campus newspaper, The Daily Californian, ran an article on the anticipated cuts. That article quoted extensively from the February 2 memo from Vice Chancellor Park. The newspaper article also stated that "the university would be able to complete hirings that had already been initiated. The campus would also be able to fill vacancies due to dismissal and to releases during probationary periods" and "the hiring freeze would not be allowed to interfere with any hiring essential to the health and safety of campus populations, the operation of campus programs and the fulfillment of legally mandated contracts." The newspaper also quoted Park as stating "the campus would also refuse to reimburse employees for all entertainment and most travel." Votichenko was particularly interested in one statement in the article:

> Effective immediately, the hiring of all new employees, promotion or transfer of existing employees regardless of fund source . . . will not be acted upon . . .

On February 23, 1989, Vice Chancellor Park sent a five page memo to all Managers of Student Fee Funded Units. He began his memo with the following paragraph

> The purpose of this memorandum is to relate proposed reductions in the budgets of units and programs supported from registration fees and educational fees to the financial problems confronting the State, the University and the campus during the coming year and to provide additional information on

> the general procedures that will be followed in implementing the cut. (Emphasis added)

He went on to explain the reasons a budget cut was necessary. He described the traditional uses of reg/ed fees and set forth the 1988-89 Actual and the 1989-90 Projected Budgets with the accompanying changes. The memo also set forth guidance on priorities to follow when making budgetary cuts and described the proper procedures to be followed when requesting a waiver of the freeze. The first time AFSCME saw this memo was at the formal hearing in this case. Near the end of February, Votichenko discussed the situation with Libby Sayre, the president of AFSCME!s Berkeley campus Local 3212. He asked her to send a letter to Harrington setting forth the specific information AFSCME was seeking regarding the freeze and budgetary cuts.

On February 27, 1989, Sayre, using the information contained in The Daily Californian as a guide, sent the following letter to Harrington:

> We have received word that the Berkeley campus intends to freeze hiring in some cases, and that there may be layoffs in departments and units which are funded by registration and educational fees. Michael Votichenko tells me that you telephoned him with some sketchy information; the February 17 Daily Cal provides other (incomplete and unclear) information. I am writing to ask for clarification of this situation. Please provide a written response to the following questions, as they pertain to non-supervisory service, clerical, and non-exclusively represented employees, within the next fifteen days:

1. Have any employees been affected by this hiring freeze?

2. Is there any possibility that any employees will be or have already been laid off as a result of the freeze?

3. Have reclassification requests, or reclassification procedures, been "frozen" or affected in any way?

4. What is, or was, the effective date of any freeze on hiring and/or posting of vacancies? Will the freeze extend into the next fiscal year? Will it affect currently-listed positions?

5. What Departments and/or units are funded by reg and educational fees at Berkeley? Has the freeze affected only these units or have all transfers, promotions been frozen (as suggested in the Daily Cal)?

6. Will any positions now held by employees be eliminated or left temporarily unfilled? How will this affect preferential rehire rights of employees on layoff? Have any employees on layoff status been affected as of this date?

7. By what method have you notified non-exclusively represented employees of the freeze? How may they obtain additional information? How may they meet with UC management to discuss the situation?

We need this information to represent our constituents, particularly with regard to layoff and reclassification. Mike Votichenko has asked me to contact you directly for information in my capacity as Campus Representative.

I am disappointed that you have not felt it necessary to provide any written notification

> or information to the union concerning something so basic as a hiring freeze, especially in light of the fact that you have supplied information to the Daily Cal. And you have apparently supplied no information at all to all non-exclusively represented employees. Is it necessary to remind you that it is not sufficient to notify AFSCME of changes in terms and conditions of employment when these changes affect non-exclusively represented employees? You have a legal obligation under HEERA to notify affected employees. If you need information about this distinction, please contact the Office of the General Counsel; they have handled Unfair Labor Practice Charges in connection with this basic principle of notification of non-exclusively represented employees. If you contend that we are not entitled to the information we have requested in this letter, or if you do not intend to provide the information for any reason, please notify me in writing within the next ten days. If you do intend to supply the information requested, but not within fifteen days, please let me know this within ten days.

On March 3, 1989, Harrington contacted all of the appropriate management personnel telling them that AFSCME "has expressed a strong interest in the effects of any plans to resolve the Education and Registration Fee reductions upon staff employees . . ." She asked these managers to remind their units of the need to contact the Personnel Office as soon as proposed plans were developed.

On March 6, 1989, Harrington sent the following letter to Votichenko:

> Please be advised that I received the attached letter from Libby Sayre. First, I think it would be helpful if you would relay to Ms. Sayre the information which I provided to you over the telephone before the article in the Daily Californian. Second, you have been identified as the contact person for

> these matters. If AFSCME would like to redelegate this issue to Ms. Sayre for handling, I would appreciate written confirmation of this redelegation. I understand Nadra Floyd is the individual who is empowered to make such redelegation. Finally, an update on the status of the situation. As I advised you on the telephone, departments are being charged with the responsibility to come up with proposed plans for handling the budget cuts. Also, as I advised you on the telephone, when the proposed plans are developed, the Personnel Office will review them and contact your office as appropriate regarding issues affecting employees. Please be advised that the plans have yet to come forward. Also, it is my understanding that no layoff, classification freeze actions have occurred as a result of the freeze.
>
> I do expect to be receiving information shortly. Therefore, I would appreciate an early response from Ms. Floyd with respect to redelegation of the matter to Ms. Sayre so that the information can be appropriately directed.

Harrington never received a response from Votichenko, Sayre or Floyd regarding a change in the designated AFSCME representative. She continued to contact Votichenko exclusively.

The Berkeleyan, a campus newspaper for faculty and staff of the University of California at Berkeley, in its March 8-21, 1989 issue, discussed the budgetary cutback in an article entitled "Programs Funded by Student Fees are Facing Budget Cuts." That article quoted extensively from Vice-Chancellor Park's February 23 memo. The newspaper stated the "only exceptions to the hiring freeze are positions needed for health and safety, performance of essential services, or fulfillment of contractual and legal obligations. Also exempt from the spending

freeze are office supplies and informational materials that are essential to a program's continued operation." It ended the article with the following paragraph

> The Student Fee Committee and topranking officials overseeing the affected units will recommend targets for budget cuts. Park will make the final decision.
>
> The deadline for determining how to cut budgets is July 1.

On April 4, 1989, Harrington and Votichenko talked on the telephone. She told him of impending layoffs in the Recreational Sports Department. He asked for more general information about the manner in which the budgetary cuts and freeze would be implemented. She said she had no new information but would get to him as soon as it was available.

Recreational Sports Department Personnel Actions

On April 5 Harrington wrote a letter to Votichenko notifying AFSCME that a Storekeeper in the locker room facility in the Recreational Sports Department would be laid off effective May 31, 1989. She invited AFSCME to submit written comments concerning the impact of the layoff or to call regarding the scheduling of a meeting on the matter. This was one of a series of layoffs in this Department. On April 13 AFSCME agreed to the layoff process. On April 19, 1989, some of the affected employees were notified of their impending layoffs.

On April 25, 1989 Harrington sent a letter to Votichenko which referred to their discussion of April 13. She notified him

that pursuant to that discussion "the university will be issuing layoff notices."

Student Activities and Services Department Personnel Actions

On May 10, 1989, Harrington wrote to Votichenko. The letter, in its entirety, is as follows:

> This follows my previous correspondence to you regarding education and registration fee budget cuts on the Berkeley Campus, and your expressed interest in being notified regarding the effects of such actions on personnel.
>
> Please be advised that the Student Activities and Services (SAS) Department is planning a reorganization in order to meet education and registration fee budget cuts. The following actions are proposed:
>
> 1. The Program Analysis and Development Component and the Project Liaison and Coordination Component will be phased out July 1, 1989. The staff in these two components will be reassigned to the Student Group Advising Component and the Orientations and Information Service Component and downward reclass of one Student Affairs Officer IV position to a Student Affairs Officer III position. Plans call for the retention of the incumbent, a probationary employee, in the position at the lower level in order to avoid a layoff.
>
> 2. Legal Services will report directly to the Director.
>
> 3. A Secretary II position, currently assigned to Program Analysis and Development will be reassigned to Orientation and Information Services.
>
> 4. The plan calls for the re-establishment of four Student Affairs Officer positions as 11 month positions. Currently two of the positions are twelve month positions and two of the positions are 10 month positions.

5. Project Liaison and Coordination will be reassigned to Orientation and Information Services.

6. The Spirit Group function will transfer from SAS to the Department of Recreational Sports. Please be advised that no employees are involved in this transfer.

7. The Multicultural/Ethic Specific Programming, Program Development, Cultural Enrichment, and Residential Life functions will transfer from SAS to the Office of the Dean of Students. Please be advised that no employees are involved in this transfer.

As you will note a number of the changes represent reassignments within the Department or reassignments of functions to other departments that do not include staff. This information is being provided to you to assist you in understanding the organization changes that are being planned.

If you wish to submit comments regarding the effects of the planned changes on personnel, please submit them to my office by May 30, 1989. If your organization wishes to meet to discuss the effects of the planned changes upon personnel, please contact Cynthia Burnham at 642-0429 to arrange a meeting. Please make this contact as soon as possible so that a mutually agreeable meeting time prior to May 30, 1989 can be arranged.

AFSCME submitted neither comments nor a request for a meeting to discuss the personnel changes or the reorganization.

Relations With Schools Department Personnel Actions

On May 24, 1989 Harrington notified Votichenko of a planned layoff in the Relations with Schools Department. She told him that the University "would like to issue the layoff notice to the employee on June 1, 1989, with an effective date of June 30, 1989." As this time-line could impact AFSCME's right to meet to

discuss the effect of the layoff action, she asked if the "above described process is acceptable to AFSCME". Votichenko contacted Harrington on June 1, 1989, and stated AFSCME had no objections to her proposal regarding the layoff of the employee in the Relations with Schools Department. She renewed her offer to meet on the effects of the layoff. AFSCME did not communicate any request to meet on this matter.

On June 7, 1989, Frank I. Ketcham, Budget Officer, wrote Harrington the following memo:

> Your April 11, 1989 memo noted that AFSCME had requested a listing of those units that have received cuts in their Educational and/ or Registration Fee budgets. Some decision makers have yet to totally finalize the cuts they will assign to specific units (though agreeing to achieve their overall target). However, rather than further delaying my response, I thought I would sent you what I have. As you know the reductions that will be assessed were determined in consultation with the (ASUC) Committee on Student Fees.

Accompanying this memo was a list of ed/reg fee units.

On June 13, 1989 Harrington wrote to Votichenko as follows:

> This follows your request for identification of the units which may be affected by the Education and Registration Fee cuts described in previous correspondent. A list of the units is provided below. Please be advised that this list is tentative. Furthermore, please be advised that the budget cut plans will not necessarily impact personnel.

Attached was a list of thirty-three units. She concluded the letter with "If you have any questions, please contact me."

The actions in the three described departments were the only personnel actions taken as a result of the ed/reg fees funding

cutbacks. In general the cutbacks were achieved through a reduction in supplies, equipment and travel or in new or increased user fees.

The University has met in the past regarding layoffs pursuant to AFSCME's request. On some occasions, changes in the proposed plans have been made, and, in at least one instance, a proposed layoff action was reversed.

ISSUES

Did the University fail to provide specifically requested information that was relevant and necessary for the Association to fulfill its responsibilities, in violation of subdivisions (a) (b) or (c) of section 3571?

CONCLUSIONS OF LAW

As a general rule, employers are required to provide all information that is necessary and relevant for their employees' representative to discharge its duty to represent them. Azusa Unified School District (1983) PERB Decision No. 374; Mt. San Antonio Community College District (1982) PERB Decision No. 224; Stockton Unified School District (1980) PERB Decision No. 143. This policy is designed to facilitate effective bargaining and dispute resolution. Failure to provide relevant information to an exclusive representative is a refusal to bargain, a violation of section 3571(c).

However, a non-exclusive representative is granted no independent right to such information. The University does have a duty to provide such information to its non-represented

employees, but the rights of the non-exclusive representative, to the extent that they exist, are derivative; they are the rights of an agent or representative of the employees. Regents of the University of California v. PERB (1985) 168 Cal. App.3d 937, [214 Cal.Rptr. 698.]

There was no evidence proffered at the formal hearing, nor was there an allegation in the charge that AFSCME was requesting such information as an agent of a specific employee(s). Both the February 14th and 27th letters were written on AFSCME letterhead and signed by AFSCME officials. Its failure to identify its derivative right to such information is fatal to its charge. AFSCME was not entitled to such information in its own name. Therefore, its cause of action with regard to non-exclusively represented employees is denied.

In any "failure to provide information" charge the first issue that must be examined is whether the material requested was necessary and relevant to the representative's duty to represent its members.

AFSCME was attempting to obtain information regarding a budgetary cutback and a hiring freeze in ed/reg fees departments. It was given little or no information regarding either the procedures to be followed or the extent to which such cutback and freeze would impact terms and conditions of employment. It requested additional information from the University so as to inform its members about the potential impact of such actions on their employment status. It is therefore determined that such

information was necessary and relevant to AFSCME's representational responsibilities.

The second issue that must be examined is whether AFSCME made a clear and unconditional demand on the University for such material.

On February 9, 1989, after Harrington's initial notification, Votichenko asked her for additional information. She replied that she would provide it when it became available. On February 14 he wrote Harrington regarding a meeting that he would schedule once she "provided the Union with specific information about the impact of the cuts on the employees . . ." On February 27, 1989, Sayre, at Votichenko's request, asked Harrington for a clarification of the information she (Harrington) had supplied to him by phone on February 9.

She asked for, among other things, specific information regarding (1) the hiring freeze, (2) reclassifications, (3) the potential for layoffs, (4) the chronological parameters of the hiring freeze, and (5) a list of the campus' reg/ed fee departments. The only information given to AFSCME after the initial contact on February 9 concerned specific layoffs or actions that directly affected employees' terms and conditions of employment. There was no information supplied regarding the procedures by which the individual units were to exercise their discretion or the parameters of such discretion.

More specifically, the University failed to tell AFSCME (1) that the freeze on hiring, promotions, and transfers of employees was only effective until the unit had "effected its assigned cut", (2) that reclassifications would "continue to be submitted through normal channels", (3) anything about the potential of layoffs until April 4, 1989, when Harrington called Votichenko and told him that a Storekeeper in the Recreational Sports Department would be laid off shortly, (4) the freeze was effective on February 2 and would continue in effect for each unit until it met the predetermined budget reduction targets and (5) which campus departments were funded by ed/reg fees and therefore subject to the freeze.[4]

All of the listed information was readily available in Park's two memos dated February 2 and February 23, 1989.

The University's contention that it was not obligated to respond to Sayre's inquires is not sufficient to absolve it of a violation in this case. Votichenko's general inquiry to Harrington on February 9 and his letter of February 14 were sufficient to put the University on notice that AFSCME was interested in obtaining information regarding the procedural aspects of the implementation of the hiring freeze and budgetary cutbacks and not just asking for a notification of the decisions made by the University that affected the terms and conditions of

[4] The fact that the University on June 13, 1989, finally provided AFSCME and Votichenko with a "tentative" list of units "which may be affected " by the ed/reg fee cutbacks does not absolve the University from the consequences of its failure to provide such information for over four months.

employment. Sayre's letter merely particularized Votichenko's general request.

Based on all of the foregoing, it is determined that the University did refuse to provide requested information that was necessary and relevant for AFSCME to fulfill its duty of representation to those employees for whom it was an exclusive representative.

With regard to those employees for which AFSCME is the exclusive representative this failure to provide interferes with AFSCME's duty to effectively negotiate on their behalf and the duty to monitor compliance with the collective bargaining contract, a violation of section 3571(c). This same conduct denied AFSCME its right to represent bargaining unit members in violation of subdivision (b) of section 3571.

With regard to AFSCME's request for information on behalf of those University employees that have no exclusive representative, the University has no duty to directly provide such information. As AFSCME's request was in its own name, and not derivatively through specific employee(s), the University did not violate the Act when it failed to provide such information.

SUMMARY

Based on the foregoing Findings of Fact and Conclusions of Law, and a thorough examination of the entire record, it is determined that there is sufficient evidence upon which to determine that the District has violated subdivision (c) of section 3571, and derivatively subdivision (b), when it failed to

provide requested information that was relevant and necessary for AFSCME to fulfill it duties under the Act.

REMEDY.

PERB, in section 3563(h), is given the power to

> . . . . investigate unfair practice charges or alleged violations of this chapter, and to take such action and make such determinations in respect of such charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.

In order to remedy the unfair practice of the University and to prevent it from benefiting from its unfair labor practice, and to effectuate the purposes of the Higher Education Employer-Employee Relations Act, it is appropriate to order the University to cease and desist from failing to provide necessary and relevant information to AFSCME in both its exclusive representative and its non-exclusive representative status.

It is also appropriate that the Respondent be required to post a notice incorporating the terms of this order. The notice should be subscribed by an authorized agent of the University, indicating that it will comply with the terms thereof. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that the Respondent has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the act that employees be informed of the resolution of the controversy and will announce the Respondent's readiness to comply with the ordered remedy. See Placerville Union School District (1978)

PERB Decision No. 69. In Pandol and Sons v. Agricultural Labor Relations Board (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584], the California District Court of appeal approved a similar posting requirement. See also, NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Based upon the forgoing Findings of Fact, Conclusions of Law and the entire record of this case, it is found that the Regents of the University of California violated subdivision (c) and, derivatively, subdivision (b), of section 3571 of the Higher Education Employer-Employee Relations Act. Pursuant to section 3563(h) it is hereby ORDERED that the Regents of the University of California, its president, chancellor(s) and its representative shall:

1. CEASE AND DESIST FROM:

A. Failing to provide, upon demand, to AFSCME, as an exclusive representative of University employees, all information that is necessary and relevant for AFSCME to discharge its duty of representation.

B. Denying to AFSCME rights guaranteed to it by the Higher Education Employer-Employee Relations Act.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OFF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT.

A. Within ten (10) workdays of service of a final decision in this matter, post at all work locations where notices are customarily placed at the University of California, Berkeley

campus, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the University of California, indicating that the University shall comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, altered, defaced or covered by any other material.

B. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the San Francisco Regional Director of the Public Employment Relations Board in accordance with her instructions. 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.

It is further ORDERED that all other aspects of the Charge and Complaint are hereby dismissed.

Pursuant to California Administrative Code, title *8,* section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations; the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.)

on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . ." See California Administrative Code, title 8, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, sections 32300, 32305 and 32140.

Dated: November 15, 1990

ALLEN R. LINK
Administrative Law Judge