

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



FERNELEY H. ROBERTS,)
)
 Charging Party,) Case No. LA-CE-3140
)
 v.) PERB Decision No. 977
)
 SIERRA SANDS UNIFIED SCHOOL) February 23, 1993
 DISTRICT and DESERT AREA TEACHERS)
 ASSOCIATION, CTA/NEA,)
)
 Respondents.)
 _____)

Appearances; National Right to Work Legal Defense Foundation, Inc. by W. James Young, Attorney, for Ferneley H. Roberts; California Teachers Association by Charles R. Gustafson, Attorney, for Desert Area Teachers Association, CTA/NEA.

Before Blair, Chair; Caffrey and Carlyle, Members.

DECISION

CAFFREY, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Ferneley H. Roberts (Roberts), to a PERB administrative law judge's (ALJ) proposed decision (attached hereto). The ALJ found that the Sierra Sands Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA)¹ by

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

It shall be unlawful for a public school 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 employees because of their exercise of rights guaranteed by

discriminating against Roberts and his colleagues when they were denied the opportunity to use employee mailboxes to distribute leaflets in opposition to the imposition of agency fees. In refusing to set aside the agency shop election result, the ALJ found no probable or actual impact on the employee vote as a result of the violation. The ALJ concluded that Sierra Sands Concerned Teachers (Concerned Teachers) is not an employee organization within the meaning of EERA and, therefore, dismissed the allegation that denial of the use of mailboxes violated EERA section 3543.5(b).

The Board has reviewed the entire record in this case, including the transcript, exhibits, proposed decision, Roberts' exceptions and the Desert Area Teachers Association, CTA/NEA's response thereto. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself.²

CHARGING PARTY'S EXCEPTIONS

On appeal, Roberts contends that the ALJ erred when he concluded that Concerned Teachers is not an employee organization under EERA and dismissed the alleged EERA section 3543.5(b) violation.

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.

²Accordingly, Roberts' request for oral argument before the Board is denied.

Roberts further asserts that the ALJ erred by refusing to set aside the agency shop election result. Roberts urges the Board to revise its rule that an election should not be set aside unless a probable or actual impact on the employee vote has been shown as a result of an unfair practice. Roberts argues that an election should be voided unless the party which committed the unfair practice can establish that the election result was not impacted by the unlawful activity.

DISCUSSION

With regard to the dismissal of the alleged EERA section 3543.5(b) violation, the evidence clearly establishes that Concerned Teachers was formed to campaign against the imposition of agency fees. The decision to impose agency fees is a matter decided by the members of a bargaining unit which effects the internal dealings of the union. Roberts has not shown that Concerned Teachers had as a primary purpose, representation of its members in their relations with the District. Therefore, this exception is rejected.

Roberts further urges the Board to revise its well-established rule that an election should not be set aside unless a probable or actual impact on the employee vote has been shown as a result of the unfair practice. Roberts argues that an election should be voided unless the party which committed the unfair practice can establish that the election result was not impacted by the unlawful activity.

As discussed in the "Remedy" section of the ALJ's proposed

decision, PERB has determined it will not overturn an election result where it is unlikely the outcome was affected by the unlawful conduct. Roberts provides no legal basis for revision of this long established Board precedent. Therefore, the Board rejects this exception.

ORDER

Upon the findings of fact and conclusions of law and the entire record in this case, it is found that the Sierra Sands Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (EERA). The District violated EERA when it prohibited teachers opposed to the imposition of agency fees from using teacher mailboxes to distribute flyers. Because the action had the effect of interfering with the right of unit members to engage in protected conduct, the mailbox prohibition was a violation of EERA section 3543.5(a).

Pursuant to EERA section 3541.5(c), it is hereby ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

Regulating employee use of teacher mailboxes in a manner that discriminates against those who wish to engage in protected conduct.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

1. 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 hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the District will 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 ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Make written notification of the actions taken to comply with this Order to the Los Angeles Regional Director of the Public Employment Relations Board in accord with the director's instructions.

Chair Blair and Member Carlyle joined in this Decision.



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-3140, Ferneley H. Roberts v. Sierra Sands Unified School District and Desert Area Teachers Association. CTA/NEA, in which all parties had the right to participate, it has been found that the Sierra Sands Unified School District (District) has violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a). The District violated this provision of the EERA when it prohibited teachers opposed to the imposition of agency fees from using teacher mailboxes to distribute flyers. This action was discriminatory because the District previously had permitted employees to place other materials unrelated to school district activities in teacher mailboxes.

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

CEASE AND DESIST FROM:

Regulating employee use of teacher mailboxes in a manner that discriminates against those who wish to engage in protected conduct.

Dated: _____ SIERRA SANDS UNIFIED
SCHOOL DISTRICT

By: _____
Authorized Agent

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



FERNELEY H. ROBERTS,)
)
 Charging Party,) Unfair Practice
) Case No. LA-CE-3140
 v.)
) PROPOSED DECISION
 SIERRA SANDS UNIFIED SCHOOL) (10/27/92)
 DISTRICT and DESERT AREA TEACHERS)
 ASSOCIATION, CTA/NEA,)
)
 Respondents.)
 _____)

Appearances; W. James Young, National Right to Work Legal Defense Foundation, Inc., Attorney for Ferneley H. Roberts; Phil Lancaster, Schools Legal Service, for the Sierra Sands Unified School District; Charles R. Gustafson, California Teachers Association, Attorney for the Desert Area Teachers Association, CTA/NEA.

Proposed Decision by Ronald Blubaugh, Administrative Law Judge.

PROCEDURAL HISTORY

A teacher contends here that an agency fee election should be invalidated because he and others were prevented from using teacher mailboxes to distribute opposing leaflets. The teacher was a leader of a group attempting to defeat agency fees. The teachers' union, which supported agency fees, replies that the teacher and his associates were not entitled to use the mailboxes. But even if they were, the union continues, the complaining teacher has not demonstrated that denying him use of the mailboxes affected the election result.

Ferneley H. Roberts commenced this action on November 4, 1991, by filing an unfair practice charge against the Sierra Sands Unified School District (District). The general counsel of the Public Employment Relations Board (PERB or Board) followed on

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.

March 3, 1992, with a complaint against the District alleging violations of Government Code section 3543.5(a) and (b).¹

The complaint alleges that on or about October 1, 1991, the District superintendent denied the use of teacher mailboxes to the Sierra Sands Concerned Teachers (Concerned Teachers). The complaint alleges further that the Concerned Teachers is an employee organization,² a contention which, if proven, would give it the right to use mailboxes.³

¹Unless otherwise indicated, all statutory references are to the Government Code. The Educational Employment Relations Act (EERA) is codified at section 3540 et seq. In relevant part, section 3543.5 provides as follows:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. . . .

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

²"Employee organization," under Government Code section 3540.1(d),

. . . means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

³Under Government Code section 3543.1(b),

Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use

The District answered the complaint on March 23, 1992, denying any wrong-doing. The Desert Area Teachers Association, CTA/NEA, (Union) filed a motion on April 9, 1992, asking that it be joined as a party. The motion was granted on April 20 by a PERB administrative law judge. The Union followed on June 10, 1992, with an answer denying certain factual allegations and that the District's actions constituted an unfair practice.

A hearing was conducted in Bakersfield on June 10, 1992, by PERB Administrative Law Judge W. Jean Thomas. With the filing of briefs, the matter was submitted for decision on September 16, 1992. The matter was transferred to the undersigned on October 19, 1992, for the issuance of a proposed decision.⁴

FINDINGS OF FACT

The District is a public school employer under the EERA. The Charging Party, Ferneley Roberts, is a teacher employed by the District since 1973. The Union at all times relevant has been the exclusive representative of the District's teachers. The District operates 12 schools and, at the time of the election, employed 303 teachers in the primary certificated

institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.

⁴The transfer was made pursuant to California Administrative Code, title 8, Part III, section 32168(b), in order to equalize work loads within the Division of Administrative Law.

bargaining unit. The District headquarters is in the Kern County town of Ridgecrest.

On or about September 26, 1991, the District and the Union entered a new collective bargaining agreement covering the period from July 1, 1991, through June 30, 1992. A feature of that agreement guaranteed the institution of agency fees, provided that a majority of employees voting in an election favored the proposal. The District and the Union entered an agreement with the State Mediation and Conciliation Service to conduct the election on October 21, 1991. Under the agreement, the election was conducted by on-site secret balloting at four locations. A tally of ballots showed 146 voters in favor of agency shop and 76 opposed. A majority of valid votes cast were thus in favor of the proposal and the District thereafter implemented the agency shop provision.

On or about September 19, 1991, when it became known that the District and the Union would soon agree to an agency fee election, Mr. Roberts arranged a meeting in District facilities for teachers opposed to agency fees. He prepared a leaflet announcing the date, time and location of a meeting "to discuss strategies for fighting Agency Shop." Without incident, Mr. Roberts placed copies of the flyer into the teacher mailboxes at Burroughs High School where he is employed.

The events which gave rise to this case occurred when Barbara Roberts, who is married to the Charging Party, attempted to distribute the leaflet at three schools. She encountered no

trouble at two but at the third school, Richmond Elementary, the principal was uncertain about permitting her to place the flyer into the teacher mailboxes. The principal called Bruce Auld, the District's acting superintendent. Following that conversation, the principal told Mrs. Roberts that the superintendent had denied permission to place the flyers in teacher mailboxes. However, the principal continued, the flyers could be left in teacher lounges.

Upon learning of the problem from his wife, Mr. Roberts called Superintendent Auld. Mr. Roberts complained that he previously had known of no restrictions on the use of the mailboxes. He testified that the superintendent told him that the mailboxes could not be used by anyone but the Union. However, the superintendent promised to check with his legal counsel and get back to Mr. Roberts. Mr. Roberts testified that the superintendent subsequently contacted him and affirmed the District's position.

Mr. Roberts continued to pursue the question and, after securing a copy of the EERA, contacted the superintendent and read to him the provision dealing with use of mailboxes. The superintendent, again consulted with his legal counsel, but then called Mr. Roberts and reaffirmed the prohibition. Mr. Roberts wrote a letter to the superintendent complaining about the District's position but the District maintained the ban.

Despite the ban on mailbox usage, Mr. Roberts was able to spread notice about his meeting. Eleven teachers who work in

seven different schools attended the September 26 gathering. Those in attendance agreed to form the Sierra Sands Concerned Teachers. Mr. Roberts identified the purpose of the organization as to "encourage people . . . to turn out and vote against" the agency shop provision. He described defeating agency shop as "our primary focus." He said the members "planned strategies and tactics to deal with that particular election." He testified that at meetings, "a number of different issues . . . came up regarding employment with the District." The organization had no formal structure, collected no dues and elected no officers. Mr. Roberts conducted most of the meetings.

Some Concerned Teachers' literature was successfully placed in teacher mailboxes even after the superintendent announced the restriction. Mr. Roberts made at least one more distribution through the mailboxes at Burroughs. In addition, Concerned Teacher literature was placed in various teacher lounges. The organization also conducted two press conferences in District facilities which resulted in at least one article in a local newspaper.

The District had not previously enforced a rigid ban on non-school use of teacher mailboxes and several witnesses testified that they knew of no restrictions. There was credible testimony that flyers and leaflets about scouting and city and military base recreation activities have been routinely placed in mailboxes. Two witnesses also testified that leaflets and flyers involving political endorsements had been placed in their

mailboxes. Material involving parent-teacher association activities also are routinely placed in teacher mailboxes.

LEGAL ISSUE

Did the District by its prohibition against the use of teacher mailboxes by the Sierra Sands Concerned Teachers thereby:

A) Interfere with the right of the Sierra Sands Concerned Teachers to have access to teacher mailboxes in violation of section 3543.5(b)?

B) Interfere with the protected right of employees to refuse to join or participate in the activities of an employee organization in violation of section 3543.5(a)?

CONCLUSIONS OF LAW

Denial of Organizational Rights

Employee organizations under the EERA are granted certain rights that exist apart from the protected rights of individual employees. Among these are the right of an employee organization to represent its members, to have its dues deducted by checkoff, to have a reasonable amount of released time for members during meeting and negotiating, and "to use institutional . . . mailboxes, and other means of communication, subject to reasonable regulation."⁵

In order to benefit from these rights, however, an organization must fit within the statutory definition of

⁵All of these organizational rights are set out in section 3543.1.

"employee organization."⁶ This requires that the organization have among its members public school employees and that "one of its primary purposes [be] representing those employees in their relations with that public school employer." It is undisputed that the Concerned Teachers includes employees of a public school employer, the District. The only question is whether the organization has among its primary purposes the representation of employees in their relations with the District.

The Charging Party argues that "both conceptually and practically" the Concerned Teachers meets the standard. The Charging Party cites testimony that the organization's primary concern was to defeat the agency shop clause. Whether an agency shop clause would be imposed, the Charging Party argues, "is clearly an issue of the nonmembers' 'relations' with their employer." In addition, Charging Party notes that its members also discussed "a number of different issues . . . regarding employment with the District." It is not necessary that an organization seek status as an exclusive representative in order to qualify as an employee organization, the Charging Party contends. This, the Charging Party argues, would require reading into the statute a requirement that in order to qualify an organization intend representation in "all" employment relations.

The Union argues that the Concerned Teachers is not an employee organization under the EERA because it does not have as a primary purpose the representation of employees in their

⁶See footnote no. 2, supra.

relations with the District. Rather, the Union asserts, the sole purpose of Concerned Teachers was to convince bargaining unit members to vote "no" in the agency fee election. The Union argues that Concerned Teachers has none of the attributes that the PERB has found necessary for qualification as an employee organization. "In short," the Union concludes, "Concerned Teachers was not involved with its members' relations with the district, but rather with their relations with [the Union]." ⁷

It is undisputed that the Concerned Teachers was composed of employees of the District, a public school employer. There is no evidence, however, that the organization had as one of its primary purposes the "representation" of those employees. Its purpose was solitary, to defeat agency fees. Attempting to defeat a union security clause is not representation.

Nor can it be said that the singular focus of the Concerned Teachers, agency fees, involves employee relations with the District. Indeed, consistent with the Union's argument, the PERB once observed that "the exaction of agency fees is fundamentally a matter between the exclusive representative and bargaining unit members." ⁸ Contrary to the argument of the Charging Party, therefore, I find that the Concerned Teachers did not have as any organizational purpose an involvement of itself in the

⁷There are no District arguments to consider because the District elected not to file a brief.

⁸See San Ramon Valley Unified School District (1989) PERB Decision No. 751. In that case the Board concluded that an unfair practice charge could not be filed against an employer to challenge the amount of an agency fee.

relationship between employees and the District. Its sole purpose was to affect the terms of the relationship between the employees and the Union.

For these reasons, I conclude that the Concerned Teachers was not an employee organization under the EERA. Accordingly, the allegation that the denial of the use of mailboxes violated section 3543.5(b) must be dismissed.

Interference With Employee Rights

This determination, however, does not resolve the question of whether the denial of the right to use mailboxes interfered with protected individual rights. Public school employees have the protected right

. . . to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer⁹

It is an unfair practice under section 3543.5(a) for a public school employer "to interfere with, restrain, or coerce employees because of their exercise of" protected rights.

In an unfair practice case involving an allegation of interference, a violation will be found where the employer's acts interfere or tend to interfere with the exercise of protected rights and the employer is unable to justify its actions by

⁹Section 3543.

proving operational necessity. (Carlsbad Unified School District (1979) PERB Decision No. 89.)¹⁰ In an interference case, it is not necessary for the charging party to show that the respondent acted with an unlawful motivation. (Regents of the University of California (1983) PERB Decision No. 305-H.)

There is no statutory right that affords individual teachers access to a school mail system¹¹ or to teacher mailboxes. The District, however, made available the use of teacher mailboxes for the distribution of such non-school materials as political statements, and flyers on scouting and local government

¹⁰The Carlsbad test for interference provides, in relevant part, as follows:

(2) Where the Charging Party establishes that the employer's conduct tends to or does result in some harm to employee rights granted under the EERA, a prima facie case shall be deemed to exist;

(3) Where the harm to the employees' rights is slight, and the employer offers justification based on operational necessity, the competing interest of the employer and the rights of the employees will be balanced and the charge resolved accordingly;

(4) Where the harm is inherently destructive of employee rights, the employer's conduct will be excused only on proof that it was occasioned by circumstances beyond the employer's control and that no alternative course of action was available;

(5) Irrespective of the foregoing, a charge will be sustained where it is shown that the employer would not have engaged in the complained conduct but for an unlawful motivation, purpose or intent.

¹¹See generally, Los Rios Community College District (1990) PERB Decision No. 833.

recreational activities. Once the District opened the forum for leaflets about these non-school activities, it could not then ban employees from using the mailboxes to engage in protected conduct.¹²

The statutory right to refuse to participate in the activities of an employee organization includes within it a protected right to oppose the imposition of agency fees.¹³ Mr. Roberts and his colleagues were therefore engaged in protected activities when they attempted to circulate leaflets in opposition to the imposition of agency fees. By discriminating against Mr. Roberts and his associates, the District interfered with their protected rights to engage in protected conduct in violation of section 3543.5(a).

REMEDY

The PERB in section 3541.5(c) is given:

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

12

An otherwise valid no-solicitation rule will violate employees' protected rights if the rule is discriminatory either in scope or application. (State of California (Department of Transportation) (1981) PERB Decision No. 159b-S.) Thus, where an employer permitted the distribution of personal mail at the work site, it could not selectively prohibit personal mail sent to employees by a union. (Id.)

¹³This conclusion is implicit in Chaffey Joint Union High School District (1988) PERB Decision No. 669. There, the Board accorded standing to an individual employee who was attempting to challenge an agency fee election.

Mr. Roberts argues that the appropriate remedial order would be a declaration setting aside the election held on October 21, 1991. He argues in addition that "actions taken pursuant to the voided election—i.e., seizure of agency fees from nonunion teachers—should also be remedied." Specifically, he asserts, all agency fees collected since the election should be refunded to the agency fee payers who request it.

The Union argues that even if unlawful activity is found, it is PERB's well-established rule that an election should not be set aside unless an impact on employees' votes has been shown. The Union argues that although access to mailboxes was denied at some school sites, it was granted at others. In addition, the Union continues, Concerned Teachers had the opportunity to advance their position by other means including the use of District facilities. In light of these facts, the Union concludes, no demonstration of probable impact has been shown.

Although this charge does not involve objections to an election, the remedy sought by Mr. Roberts parallels that appropriate in an objections case. It is proper, therefore, to test the requested remedy against the standards used in objections cases. Since its very first decision, the Board has consistently held that for election objections to be sustained, some effect on the election result must either be shown or logically inferred. In that first decision,¹⁴ the Board wrote:

¹⁴Tamalpais Union High School District (1976). EERB Decision No. 1. Prior to 1978, the Public Employment Relations Board was known as the Educational Employment Relations Board.

In the absence of evidence that voters were discouraged from voting, we would sustain the Association's . . . objections only on [a] finding that those events had the natural and probable effect of discouraging voter participation in the representation election.

In that case, the Board eschewed the per se rules often followed in National Labor Relations Board decisions and dismissed the objections to election.

In subsequent cases, the Board has held that even the demonstration of unlawful conduct in the election environment is but "a threshold question." (State of California (Department of Personnel Administration et al.) (1986) PERB Decision No. 601-S.)¹⁵ The Board will not in every situation where conduct tantamount to an unfair practice has been demonstrated, order that the election be rerun. The basic question is whether taken collectively the various unlawful activities establish a "probable impact on the employees' vote." (Jefferson Elementary School District (1981) PERB Decision No. 164.)¹⁶

In deciding whether to set aside an election result, the Board will look "upon the totality of circumstances raised in each case and, when appropriate, the cumulative effect of the conduct which forms the basis for the relief requested." (Clovis Unified School District (1984) PERB Decision No. 389.) Thus,

¹⁵See also, San Ramon Valley Unified School District (1979) PERB Decision No. 111 and Clovis Unified School District (1984) PERB Decision No. 389.

¹⁶It is unnecessary that actual impact be proven. (San Ramon Valley Unified School District, supra; Clovis Unified School District, supra.)

even where some impact on voters can be inferred, the election result in some circumstances still may not be set aside.

As the Union argues, there is no evidence here which would establish a "probable impact on the employees' vote." Mr. Roberts and members of the Concerned Teachers got some leaflets into teacher mailboxes and distributed prior to when the ban went into effect. They even had limited access to mailboxes in some schools after the ban. They were permitted to use District facilities for meetings and they were permitted to put literature in teacher lounges. They successfully placed an article explaining their position in a local newspaper. There is no evidence the Concerned Teachers encountered any restrictions upon personal solicitations of support from co-workers during non-work periods. Under these circumstances, there is no evidence that would establish a probable or actual impact upon the election result. Accordingly, there is no basis for setting aside the election result.

The primary remedy will be an order that the District cease-and-desist from its unlawful conduct and post a notice incorporating the terms of the order. Posting of such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of the EERA that employees be informed of the resolution of this controversy and the District's readiness to comply with the

ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in the case, it is found that the Sierra Sands Unified School District (District) violated section 3543.5(a) of the Educational Employment Relations Act (Act). The District violated the Act when the superintendent discriminatorily prohibited teachers opposed to the imposition of an agency fee from using teacher mailboxes to distribute flyers. Because the action had the effect of interfering with the right of unit members to engage in protected conduct, the mailbox prohibition was a violation of section 3543.5(a).

Pursuant to section 3541.5(c) of the Government Code, it hereby is ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

Regulating employee use of teacher mailboxes in a manner that discriminates against those who wish to engage in protected conduct.

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

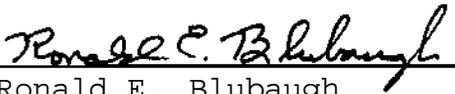
1. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to certificated employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the

District will 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 ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the Los Angeles Regional Director of the Public Employment Relations Board in accord with the director's instructions.

Pursuant to California Code of Regulations, 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 Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)



Ronald E. Blubaugh
Administrative Law Judge