STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BAKER VALLEY TEACHERS ASSOCIATION, Charging Party, v. BAKER VALLEY UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-4941-E PERB Decision No. 1993 December 19, 2008

Appearances: Reich, Adell & Cvitan by William Y. Sheh, Attorney, for Baker Valley Teachers Association; Atkinson, Andelson, Loya, Ruud & Romo by Sherry G. Gordon, Attorney, for Baker Valley Unified School District.

Before McKeag, Rystrom and Dowdin Calvillo, Members.

DECISION

DOWDIN CALVILLO, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Baker Valley Unified School District (District) to the proposed decision of an administrative law judge (ALJ). The ALJ found that the District violated the Educational Employment Relations Act (EERA)[1] by seeking the resignation of teacher Ken Zear (Zear) and deciding to nonrenew teacher Dan Bressler (Bressler) in retaliation for their protected activities on behalf of the Baker Valley Teachers Association (Association).

The Board has reviewed the entire record in this case, including but not limited to, the complaint and answer, the hearing transcripts and exhibits, the ALJ's proposed decision, the District's exceptions and supporting brief, and the Association's response thereto. Based on

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

this review, the Board finds that the District retaliated against Bressler but not against Zear, for the reasons discussed below.

BACKGROUND

The District consists of an elementary school, middle school and high school, all on a single campus in the Mojave Desert town of Baker approximately 60 miles east of Barstow and 90 miles southwest of Las Vegas. Mark Kemp (Kemp) became the District's superintendent on July 1, 2002 and served in that position at all times relevant to this matter.

Because it has fewer than 250 students, the District is a "necessary small school district" under Education Code section 42280 et seq. As a result, the District's teachers do not automatically become permanent upon reelection to a third consecutive year as do teachers in larger districts. However, the school board may grant teachers permanent status on an individual basis. The Education Code provides that all teachers in a necessary small school district, whether permanent or probationary, are entitled to a written statement of charges and an opportunity for a hearing before being nonrenewed for the next school year. These requirements do not apply when a teacher resigns.[2]

The Association represents the District's approximately 15 teachers. While the Association had been certified for a number of years, it was largely inactive until the 2004-2005 school year. At the beginning of that school year, only three teachers were

[2]Education Code section 44948.5(b) provides that a probationary certificated employee in a school district with less than 250 students must be provided no later than March 15 with written notice "that his or her services will not be required for the ensuing year." The notice must contain the reasons for the nonrenewal and must advise the employee of his or her right to "a hearing to determine if there is cause for not reemploying him or her for the ensuing year." Education Code section 44949(a) provides identical notice requirements for permanent certificated employees in all school districts.

Association members. By January 2006, all but one of the District's teachers had joined the Association.

Ken Zear

The District first hired Zear as a middle school and high school mathematics teacher for the 1992-1993 school year. In 2000 or 2001, the school board gave Zear permanent status. Thus, Zear could only be nonrenewed for cause and was entitled to a written statement of charges and the opportunity for a hearing before nonrenewal.

At the beginning of the 2004-2005 school year, Zear was one of only three members of the Association. As a result of the prior president's retirement, Zear became acting president of the Association and was later elected as its president. As president, Zear began to hold more union meetings, personally solicited teachers to join the Association and involved Dawn Murray (Murray), the local California Teachers Association representative, in Association meetings and contract negotiations. Also during this school year, Zear attempted to speak with Kemp about employment concerns on behalf of two teachers. In April 2005, Zear wrote to Kemp requesting to begin negotiations for the next year's collective bargaining agreement (CBA). At some point during those negotiations, Zear wrote and hand delivered to Kemp a letter requesting various financial records from the District.

Zear's performance evaluations during his first two years with the District indicated that he had problems with "classroom management and student control." Kemp noticed similar problems with Zear soon after he became superintendent in 2002. During the 2002-2003 school year, Kemp sent Zear to a classroom management class and Zear attended an additional management class on his own initiative. In November 2004, Kemp removed Zear from the classroom because of concerns about Zear's lack of control over students. Zear was assigned to work with students one-on-one and in small groups.

In the spring of 2005, Kemp assigned Zear to a classroom to replace a teacher who had quit mid-year. During this time, Zear was formally reprimanded for failing to prevent a student from dialing 911 from the classroom phone as a prank. Zear's personnel file contained no other disciplinary actions and his performance reviews since Kemp became superintendent made no mention of classroom management problems.

In early October 2005, Kemp called Zear to his office. During this meeting, Kemp offered to approach the school board about buying out Zear's contract. When Zear asked why the District wanted him to resign, Kemp responded that it was because of Zear's classroom management problems.[3] After speaking with Murray and the Association's attorney, Zear signed a settlement agreement on November 22, 2005. The agreement provided for the District to pay Zear his full salary and maintain his full benefits through June 30, 2006 in exchange for Zear's resignation effective November 23, 2005.

Dan Bressler

The District first hired Bressler as a middle school and high school language arts teacher for the 2004-2005 school year. Soon after he was hired, Bressler joined the Association and served on its bargaining team for the 2004-2005 CBA negotiations. For reasons not disclosed by the record, Bressler was not a member of the Association during the fall of 2005. Upon rejoining the Association in January 2006, Bressler became a member of its bargaining team for the 2005-2006 CBA negotiations. Kemp was a member of the District's bargaining team both years. CBA negotiations reached a standstill in late January 2006. On

[3]Zear testified that at this same meeting Kemp said the school board had told him of a "moral charge" that could serve as the basis for nonrenewal. However, the record shows that Kemp first learned of this charge when he approached the school board about buying out Zear's contract. Because this occurred after the early October 2005 meeting with Zear, he could not have told Zear about the charge during that meeting.

February 24, 2006, PERB certified that the parties were at impasse. Following mediation, the parties reached agreement on the 2005-2006 CBA.

Also in January 2006, Bressler was selected as the Association's grievance chair. On January 18, 2006, Bressler filed three grievances with Kemp on behalf of the Association. These were the first grievances the Association had filed with the District since Kemp became superintendent.

On March 15, 2006, Kemp called Bressler into his office to discuss Bressler's formal performance evaluation. During the meeting, Kemp told Bressler that he would not be reemployed for the next school year. When Bressler asked Kemp why he was not being renewed, Kemp responded that it was because of "inconsistencies" in Bressler's classes. When Bressler pressed for a further explanation, Kemp left the office. The following day, Kemp approached Bressler in the teachers' lounge and asked Bressler what he was going to do about the nonrenewal. Later that day, Bressler drafted a resignation letter, signed it and delivered it to Kemp's office. Bressler continued in his position until the end of the 2005-2006 school year.

At the PERB hearing, Kemp testified that the "inconsistencies" he observed in Bressler's classroom were that the students were not always engaged in learning activities. Bressler's 2004-2005 performance evaluation, given by Principal Robert McGrew (McGrew), instructed him to "maximize your time with the students each period – each day." However, it did not identify any specific deficiencies relating to students not being properly engaged during class time. Similarly, Bressler's 2005-2006 evaluation, given by Kemp in March 2006, made no mention of classroom deficiencies. Further, Bressler's personnel file showed he had never been counseled or disciplined for <u>any</u> reason.

ALJ's Proposed Decision

The ALJ concluded that the District retaliated against Zear and Bressler because of their activities on behalf of the Association. The ALJ found the protected activity, adverse action and timing elements easily met and therefore focused primarily on the remaining nexus factors. She found the District departed from standard procedures by not giving the two teachers a written statement of charges and notice of the opportunity for a hearing. She also found the District failed to provide "adequate justification" for its actions at the time it sought Zear's resignation and when it informed Bressler of his nonrenewal. Finally, the ALJ found the District failed to establish a "legitimate basis" for its decisions to terminate the two teachers. As a remedy, the ALJ ordered reinstatement of Zear and Bressler with back pay and interest, as well as notice posting. The ALJ denied the Association's requests for a mailing of the notice to employees, a public reading of the notice, and attorneys' fees and costs.

District's Exceptions

The District concedes that the elements of protected activity, the District's knowledge of that activity, adverse action and timing are all satisfied here. Thus, the District's exceptions focus solely on the ALJ's finding that the District failed to provide a legitimate reason for seeking Zear's resignation and deciding to nonrenew Bressler. The District argues that the two teachers were not treated any differently than other non-Association member teachers who had resigned in lieu of nonrenewal and that their "performance problems" justified the District's actions. The District further argues that the Education Code "has preempted the issue of termination of tenured and probationary teachers in public school districts."[4]

[4]The District also makes numerous exceptions to the ALJ's factual findings. We find no merit to these exceptions, and, even if erroneous, these findings do not affect the outcome of this case.

Association's Response

The Association responds that a nexus existed between Zear's and Bressler's protected activity and the District's adverse actions against them because: (1) the District failed to provide a legitimate justification for its actions; (2) the District violated the Education Code by not providing Zear and Bressler with a written statement of charges and notice of the opportunity for a hearing; and (3) the District exhibited animosity toward the Association by its conduct. The Association also asserts that the District failed to prove it would have taken the adverse actions against Zear and Bressler even if they had not been involved in Association activities.

DISCUSSION

1. Retaliation

a. Prima Facie Case

To establish a prima facie case of retaliation in violation of EERA section 3543.5(a), the Association must show that: (1) Zear and/or Bressler exercised rights under EERA; (2) the District had knowledge of the exercise of those rights; and (3) the District imposed or threatened to impose reprisals, discriminated or threatened to discriminate, or otherwise interfered with, restrained, or coerced Zear and/or Bressler because of the exercise of those rights. (Novato Unified School District (1982) PERB Decision No. 210 (Novato USD); Carlsbad Unified School District (1979) PERB Decision No. 89.)

In its exceptions, the District concedes that Zear and Bressler engaged in protected activity and that the District had knowledge of that activity. Further, the District does not except to the ALJ's findings that the District's decisions to seek Zear's resignation and nonrenew Bressler constituted adverse action.

This leaves the Association to demonstrate a "nexus" between Zear's and Bressler's protected activity and the District's adverse actions. In other words, the Association must show that the District acted with discriminatory intent. Because direct evidence of discriminatory intent is rarely possible, the Board has held that "unlawful motive can be established by circumstantial evidence and inferred from the record as a whole." (Novato USD.)

The occurrence of the adverse action close in time to the employee's protected activity is an important indicator of unlawful motive. (North Sacramento School District (1982) PERB Decision No. 264 (North Sacramento).) However, timing alone is insufficient to establish a nexus. (Moreland Elementary School District (1982) PERB Decision No. 227.) Facts establishing one or more of the following additional factors must also be present: (1) the employer's disparate treatment of the employee (State of California (Department of Transportation) (1984) PERB Decision No. 459-S); (2) the employer's departure from established procedures and standards when dealing with the employee (Santa Clara Unified School District (1979) PERB Decision No. 104); (3) the employer's inconsistent or contradictory justifications for its actions (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S); (4) the employer's cursory investigation of the employee's misconduct (Trustees of the California State University (1990) PERB Decision No. 805-H); (5) the employer's offering of exaggerated, vague, or ambiguous reasons for its actions (McFarland Unified School District (1990) PERB Decision No. 786 (McFarland)); (6) employer animosity towards union activists (Cupertino Union Elementary School District (1986) PERB Decision No. 572); or (7) any other facts which might demonstrate the employer's unlawful motive (Novato USD; North Sacramento).

The timing of the adverse actions supports an inference of unlawful motive. Kemp offered to approach the school board about a buy out of Kemp's contract just as negotiations

for a new CBA were getting under way. Bressler was notified of the District's nonrenewal decision just weeks after PERB certified that the parties were at impasse and approximately two months after Bressler filed the Association's first grievances since Kemp became superintendent.

Contrary to the ALJ, we find the District did not depart from standard procedures by failing to follow the notice requirements in Education Code sections 44948.5 and 44949 when it verbally sought Zear's resignation and verbally notified Bressler that he would not be reemployed for the 2006-2007 school year. While PERB has no jurisdiction to enforce provisions of the Education Code, it has the authority to interpret the Education Code as necessary to carry out its duty to administer EERA. (Whisman Elementary School District (1991) PERB Decision No. 868; San Bernardino City Unified School District (1989) PERB Decision No. 723.) PERB has found that an employer's failure to comply with the Education Code can be circumstantial evidence of a retaliatory motive. For example, in Novato USD, the Board found that the school district's failure to notify a teacher that derogatory material had been placed in his personnel file, as required by Education Code section 44031.10, constituted a departure from established standards indicative of a retaliatory motive. The Board's finding was based on the fact that the principal only kept a "secret file" on the teacher against whom the district was found to have retaliated.

Here, the uncontradicted evidence shows the District routinely offered teachers the option to resign in lieu of involuntary separation from service. In none of these cases did the District provide the affected teachers with a written statement of charges or notice of the opportunity for a hearing. Thus, even if the District's conduct violated the Education Code, it does not establish a retaliatory motive because all teachers were treated the same, whether

Association members or not. Consequently, the District did not single out Zear and Bressler for different treatment based on their protected activity.

As another basis for finding a nexus, the ALJ relied on the reasons Kemp gave to Zear for seeking his resignation and to Bressler for his nonrenewal. An employer's vague or ambiguous reason(s) for an adverse action supports an inference of unlawful motivation. (McFarland.) PERB and National Labor Relations Board cases establish that to be vague or ambiguous, the reason must be essentially meaningless to the employee under the circumstances. (E.g., Los Angeles Unified School District (2003) PERB Decision No. 1532 [application for employment failed as to "quality/recency/appropriateness"]; Novato USD [employee transfer was "for the best interest of the department"]; Keller Ford (2001) 336 NLRB 722 [169 LRRM 1423] [employee discharged because he was "non supportive of dealership goals"]; Sam Tanksley Trucking (1972) 198 NLRB 312 [81 LRRM 1044] [employees discharged for "unsatisfactory" work].)

Applying this standard, we find that Kemp did not give Zear a vague or ambiguous reason when he offered to approach the school board about buying out Zear's contract. Kemp told Zear he was seeking Zear's resignation because of his "classroom management" difficulties. While Kemp provided no further detail, in light of Zear's history of classroom management problems this statement was not meaningless to Zear under the circumstances.

We reach the opposite conclusion regarding Bressler. On March 15, 2006, Kemp told Bressler that he was being nonrenewed because of "inconsistencies" in Bressler's classroom but did not provide any explanation. When pressed by Bressler, Kemp refused to explain and left the room. The District argues that this reason was not vague or ambiguous because Kemp had previously spoken with Bressler about his observations that Bressler's students were not

always engaged in learning activities. However, the record does not show that Kemp ever had such a conversation with Bressler.

Bressler's testimony contains no mention of a conversation with Kemp about classroom inconsistencies before March 15, 2006, nor did any witness other than Kemp testify to such a conversation. Thus, any finding on this issue must be based solely on Kemp's testimony. On direct examination, Kemp testified consistently with Bressler that he spoke with Bressler about inconsistencies in Bressler's classroom for the first time on March 15, 2006. Yet on cross-examination the following day, Kemp testified that he first spoke with Bressler about classroom inconsistencies sometime between March 7 and 15, 2006, but then admitted that he may have first discussed inconsistencies with Bressler during the March 15 meeting. Later in his testimony, Kemp stated that he and McGrew had raised these same inconsistencies with Bressler following a classroom observation in November 2005. Kemp also testified that McGrew had discussed classroom inconsistencies with Bressler on several other occasions.

Because no other witness testified about McGrew's conversations with Bressler, Kemp's testimony on this point is uncorroborated hearsay that cannot support a factual finding. (PERB Reg. 32176.)[5] Further, we find Kemp's contradictory and shifting testimony about his pre-March 15, 2006 conversations with Bressler lacks credibility. Therefore, because the record does not establish that Bressler was aware of the classroom inconsistencies before Kemp gave them as the reason for Bressler's nonrenewal, Kemp's reason was vague and ambiguous under the circumstances and supports an inference of unlawful motive.

[5]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq. PERB Regulation 32176 provides, in relevant part: "Hearsay evidence is admissible but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions."

As a further ground for finding a nexus, the Association argues that the District demonstrated animus toward the Association by its conduct. The Association claims that the District warned new teachers not to associate with Association members. However, as the ALJ correctly noted, this argument is based solely on uncorroborated hearsay testimony that cannot by itself support a factual finding. The Association also asserts that the District displayed animus by refusing to provide requested information and failing to bargain in good faith. Either of these standing alone could constitute an unfair practice. However, because both allegations were raised for the first time in the Association's post-hearing brief, the District did not have adequate notice and opportunity to defend the allegations at hearing and thus the Board cannot make a finding regarding them. (Tahoe-Truckee Unified School District (1988) PERB Decision No. 668.) Finally, the Association points to Kemp's refusal to discuss the employment concerns of two bargaining unit members with Zear as evidence of animus. Zear testified he could not remember any details of the conversations he had with Kemp on behalf of these two teachers. Absent such details, we cannot find that Kemp's statements during those conversations showed that he or the District harbored union animus.

In sum, the Association has failed to establish a prima facie case of retaliation against Zear because it has not shown a nexus between Zear's protected activity and the District's decision to seek his resignation. The Association has, however, established a nexus between Bressler's protected activity and the District's nonrenewal decision based on the timing of the decision and Kemp's vague and ambiguous reason for the decision. Accordingly, we now turn to the District's affirmative defense that it would have nonrenewed Bressler even if he had not engaged in protected activity.

b. District's Affirmative Defense

Once the charging party establishes a prima facie case of retaliation, as the Association has done here regarding Bressler, the employer then bears the burden of proving that it would have taken the adverse action even if the employee had not engaged in protected activity. (Novato USD; Martori Brothers Distributors v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 721, 729-730 [175 Cal.Rptr. 626] (Martori Brothers); Wright Line (1980) 251 NLRB 1083 [105 LRRM 1169].) Thus, where, as here, it appears that the employer's adverse action was motivated by both valid and invalid reasons, "the question becomes whether the [adverse action] would not have occurred 'but for' the protected activity." (Martori Brothers.) The "but for" test is "an affirmative defense which the employer must establish by a preponderance of the evidence." (McPherson v. Public Employment Relations Bd. (1987) 189 Cal.App.3d 293, 304 [234 Cal.Rptr. 428].) For the following reasons, the District has failed to meet this burden.

The District claims that it decided to nonrenew Bressler because of problems with student engagement in his classroom. Yet neither McGrew's February 2005 evaluation nor Kemp's March 2006 evaluation indicated that Bressler had a problem with student engagement or any other performance deficiency. Bressler's personnel file did not contain any documentation of counseling or discipline for any performance problems. Moreover, as discussed above, Kemp never spoke with Bressler about classroom inconsistencies before he notified Bressler of the nonrenewal decision on March 15, 2006. That Bressler had no documented performance problems, and had never been spoken to by Kemp about classroom inconsistencies, strongly suggests that Bressler's performance was not the basis for the District's decision to nonrenew him. (See Simi Valley Unified School District (2004) PERB Decision No. 1714 [principal's testimony at hearing regarding teacher's performance problems failed to establish affirmative defense when teacher's personnel file contained no evidence of the problems about which

principal testified].) Instead, that the decision was made within two months after Bressler filed the first grievances since Kemp became superintendent, and within two weeks after impasse was declared, indicates that his activities as the Association's grievance chair and as part of its bargaining team were the true motivation for the District's decision. Accordingly, the District failed to prove it would have nonrenewed Bressler even if he had not engaged in protected activity.

2. Education Code Preemption

The District also argues in its exceptions that the ALJ had no authority to "second-guess" its proffered reasons for deciding to seek Zear's resignation and nonrenew Bressler. This is so, the District claims, because the administrative hearing procedure under Education Code sections 44948.5 and 44949 provides the exclusive means for evaluating the sufficiency of the District's cause for nonrenewal of a certificated employee. The District further argues that these sections may not be superseded by EERA because they "establish and regulate tenure or a merit or civil service system."[6]

The District's argument misconstrues PERB's inquiry in a retaliation case. PERB does not determine whether the employer had cause to discipline or terminate the employee. (San Bernardino City Unified School District (2004) PERB Decision No. 1602.) Rather, PERB weighs the employer's justifications for the adverse action against the evidence of the employer's retaliatory motive. Thus, PERB's inquiry is not whether the employer had a lawful reason for the action but whether it took the action for an unlawful reason. (See McFarland

[6]EERA section 3540 provides, in relevant part:

> This chapter shall not supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system. . . .

Unified School Dist. v. Public Employment Relations Bd. (1991) 228 Cal.App.3d 166, 169 [279 Cal.Rptr. 26] [stating "the District has cited no authority, nor can it, for the proposition that its power to deny tenure for any lawful reason insulates it from the scrutiny of the PERB when an unfair labor practice complaint alleges that tenure was denied in retaliation for the exercise of a protected right"].) For this reason, there is no conflict between the procedure for determining cause for nonrenewal contained in Education Code sections 44948.5 and 44949, and PERB's inquiry into whether an employee was nonrenewed because of protected activity. Accordingly, the District's preemption argument fails. (See Fremont Unified School District (1997) PERB Decision No. 1240 [Education Code did not preempt EERA when no conflict existed between Education Code and collective bargaining agreement provision at issue in PERB proceeding].)

Moreover, as a practical matter, adopting the District's position would give employers a "free pass" in most retaliation cases. As discussed above, an employer must prove by a preponderance of the evidence that it would have taken the adverse action even in the absence of the employee's protected activity. The District's proposed standard would in effect remove the employer's burden of proof because the employer would only need to produce a minimally plausible justification for its action to successfully defend against a retaliation charge. Because the District has provided no persuasive legal or policy reason for adopting such a standard, we decline to discard over 25 years of PERB precedent by doing so.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is found that the Baker Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a) by deciding to nonrenew Dan Bressler (Bressler) for the 2006-2007 school year in retaliation for

his engagement in protected activity. It is also found that this conduct violated EERA section 3543.5(b) by denying the Baker Valley Teachers Association (Association) its right to represent its members. The Board finds no violation regarding Ken Zear and therefore the allegation that the District retaliated against him is DISMISSED WITHOUT LEAVE TO AMEND.

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:

1. Nonrenewing or otherwise retaliating against employees because of their engagement in protected activity.

2. Denying recognized employee organizations the right to represent their members.

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

1. Offer Bressler reinstatement to his former position of employment at his former employment status.

2. Make Bressler whole for lost benefits, monetary and otherwise, which he suffered as a result of the District's conduct, including back pay, plus interest at the rate of 7 percent per annum, from the end of the 2005-2006 school year to the date his offer of reinstatement is made.

3. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where notices to employees are customarily posted, copies of the Notice attached hereto. The Notice must be signed by an authorized agent of the District, indicating 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.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, or the General Counsel's designee. The District shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Association.

Members McKeag and Rystrom joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-4941-E, Baker Valley Teachers Association v. Baker Valley Unified School District, in which all parties had the right to participate, it has been found that the Baker Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by deciding to nonrenew Dan Bressler (Bressler) for the 2006-2007 school year because of his protected activities on behalf of the Baker Valley Teachers Association.

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

A. CEASE AND DESIST FROM:

1. Nonrenewing or otherwise retaliating against employees because of their engagement in protected activity.

2. Denying recognized employee organizations the right to represent their members.

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

1. Offer Bressler reinstatement to his former position of employment at his former employment status.

2. Make Bressler whole for lost benefits, monetary and otherwise, which he suffered as a result of the District's conduct, including back pay, plus interest at the rate of 7 percent per annum, from the end of the 2005-2006 school year to the date his offer of reinstatement is made.

Dated: _____

BAKER VALLEY UNIFIED SCHOOL DISTRICT

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 WITH ANY OTHER MATERIAL.