STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ORCUTT EDUCATORS ASSOCIATION, Charging Party, v. ORCUTT UNION ELEMENTARY SCHOOL DISTRICT, Respondent.	Case No. LA-CE-6145-E PERB Decision No. 2626 February 22, 2019

Appearances: California Teachers Association by Brenda E. Sutton-Wills, Staff Counsel, for Orcutt Educators Association; Dannis Woliver Kelley by Ellen C. Wu, Attorney, for Orcutt Union Elementary School District.

Before Banks, Shiners, and Krantz, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the Orcutt Educators Association (Association) to the attached proposed decision of an administrative law judge (ALJ). The complaint alleged that the Orcutt Union Elementary School District (District) unilaterally implemented a change to existing payroll practices in December 2015 in violation of its duty to meet and negotiate with the Association under the Educational Employment Relations Act (EERA).[1] Following an evidentiary hearing, the ALJ dismissed the complaint and underlying unfair practice charge as untimely, finding the Association did not file its charge within six months of the date it knew or should have known that the District had made a firm decision to change its payroll practices.

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

Based on our review of the proposed decision, the entire record, and relevant legal authority in light of the parties' submissions, we conclude that the ALJ's factual findings are supported by the record and that his conclusions of law are well reasoned and consistent with applicable law. We therefore adopt the proposed decision as the decision of the Board itself, as supplemented by the following discussion.

BACKGROUND[2]

The Santa Barbara County Education Office (County Office) provides payroll processing services for school districts throughout the county, including the District. The County Office, not the District, thus maintains the hardware and software systems necessary to process payroll. Historically, the County Office offered a split payroll option each December, providing classified employees with their December paycheck at the end of that month while certificated employees received that paycheck on the first business day in January.

In February 2014, the County Office contracted with a private corporation for the provision of a new payroll processing system. Following mock testing of the new payroll system in September 2015, the County Office decided to eliminate the split payroll option. The County Office notified the District of its decision on October 14, 2015. The District notified the Association of the County Office's decision on October 15, 2015, and offered to bargain over the potential effects of the change in payroll procedures.

On December 17, 2015, during bargaining over a successor collective bargaining agreement, the Association requested to bargain the change in payroll timing and its impacts. The District reiterated that it had no control over the County Office's decision to eliminate

[2] We summarize the material facts here to provide context for our discussion of the Association's exceptions. A full recitation of the facts and procedural history can be found in the attached proposed decision.

split payroll. That same day, at the Association's request, the District contacted the County Office to ask whether it could postpone the change. The County Office confirmed that it would eliminate the split payroll as planned, and the District's lead negotiator immediately relayed this information to the Association's bargaining team.

As a result of the County Office's elimination of the split payroll, certificated District employees received their December paycheck on December 30, 2015, rather than on the first business day in January. The parties continued bargaining over the effects of the payroll change through July 7, 2016, when the District rejected an Association proposal that the District compensate certificated employees for the costs of income tax liabilities caused by the receipt of an additional paycheck in 2015. The parties engaged in no further effects bargaining thereafter.

The Association filed its initial charge on June 29, 2016, which states, in relevant part:

> The Orcutt Union School District unilaterally changed the timing of payroll . . . The timing of the additional check resulted in tax ramifications for bargaining unit members. While the District took the position that the change was a business necessity caused by its payroll provider, the District did not bargain with the Association on the effects of the change.

The Association included a request that PERB hold its initial charge in abeyance pending the outcome of the parties' ongoing effects bargaining. On July 12, 2016, the Association filed an amended charge withdrawing its abeyance request. The amended charge was otherwise identical to the June 29 charge.

DISCUSSION

The Association disputes various findings and conclusions in the proposed decision but notably does not challenge the ALJ's conclusion that the six-month statute of limitations period began to run on December 17, 2015, when the Association knew that the County Office

would eliminate the split payroll and that the District would take no further action to delay the County Office's implementation of its decision.[3] Instead, the Association argues that the District's allegedly bad faith conduct during post-implementation effects bargaining should excuse its failure to timely file the charge within the statute of limitations period. Most of the Association's arguments are adequately addressed in the proposed decision and need not be addressed again here. (*Hartnell Community College District* (2018) PERB Decision No. 2567, p. 3.) We therefore discuss only the Association's argument that the statute of limitations should be tolled in this case.

The Association argues that the statute of limitations period should have been tolled while the parties negotiated over the foreseeable effects of the County Office's decision.[4] Under EERA, the six-month limitations period may be equitably tolled while the parties utilize a non-binding dispute resolution procedure if: (1) the procedure is contained in a written agreement negotiated by the parties, (2) the procedure is being used to resolve the same dispute that is the subject of the unfair practice charge, (3) the charging party reasonably and in good faith pursues the procedure, and (4) tolling does not frustrate the purpose of the statutory

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[3] We express no opinion as to whether the District was privileged to change its payroll procedures before the completion of effects bargaining with the Association. (See *Compton Community College District* (1989) PERB Decision No. 720, p. 14 (*Compton CCD*) [recognizing that under certain circumstances an employer may implement a non-negotiable decision prior to the completion of effects bargaining].) Because the Association has not claimed the District violated the *Compton CCD* test, we also do not reach the question of what occurrences might commence the limitations period for bringing such a claim.

[4] The statute of limitations may be tolled either by statute or the doctrine of equitable tolling. Though it does not appear the Association argues the former, we conclude that such an argument would be unavailing nevertheless. Under EERA section 3541.5, subdivision (a)(2), the limitations period shall be tolled during the time it takes to exhaust any grievance machinery that ends in binding arbitration and "covers the matter at issue" in the unfair practice charge. (*Los Angeles Unified School District* (2014) PERB Decision No. 2359, p. 10.) The Association filed no such grievance. We therefore address whether the doctrine of equitable tolling applies.

limitation period by causing surprise or prejudice to the respondent. (*Jurupa Unified School District* (2012) PERB Decision No. 2283, pp. 13-14; *Long Beach Community College District* (2009) PERB Decision No. 2002, p. 15.)

The parties' effects bargaining was not a mutually negotiated dispute resolution procedure contained in a written agreement; rather, such bargaining obligations are derived from the parties' statutory duty to meet and negotiate in good faith under EERA. Moreover, the effects bargaining procedures were not used to resolve the same dispute that is the subject of the Association's unfair practice charge, viz. whether the District unilaterally changed the split payroll option. Consequently, even assuming the third and fourth elements are met, the Association has not established that equitable tolling applies in this case.

Rather than addressing PERB's existing equitable tolling doctrine, the Association urges the Board to adopt a new rule tolling the statute of limitations in a unilateral change case while the parties engage in effects bargaining related to the change. According to the Association, such a rule is necessary to prevent an employer from going through the motions of effects bargaining to induce an employee organization to refrain from filing its unfair practice charge during the six-month limitations period, as the Association claims the District did here.[5] We decline to adopt such a rule under the facts of this case. Rather, the Association could have filed its unilateral change charge by June 17, 2016—six months from the date it knew or should have known the District had made a firm decision to change its payroll practices—or

[5] The Association's original and amended charges belie its claim of duplicity by the District. The charges each alleged, at paragraph 16: "On June 9, 2016, [California Teachers Association staff representative] Andrew Oman informed the District that the Association would be filing the instant charge to preserve its claims based on the unilateral change of December 31, 2015." Thus, it appears the Association miscalculated the six-month statute of limitations period as beginning to run on the date that it believed the change was implemented (December 31), not the date the Association had actual knowledge of the District's intent to take no further action to prevent or delay the change (December 17).

could have alleged in its June 29, 2016 charge other violations for which the limitations period had not yet closed.[6] Moreover, if, as the Association claims, it came to believe on July 7, 2016, that the District had bargained in bad faith over the effects of the payroll change, it could have filed a surface bargaining charge within six months of that date. Instead, the Association waited until its post-hearing brief to raise a surface bargaining allegation.

For the foregoing reasons, we find no cause to create a new tolling doctrine that would cure the Association's untimely filing of its unilateral change charge.

ORDER

The complaint and underlying unfair practice charge in Case No. LA-CE-6145-E are DISMISSED.

Members Banks and Krantz joined in this Decision.

[6] A charging party may also, as the Association attempted to do here, timely file a unilateral change charge and ask that it be placed in abeyance while the parties continue negotiating over the effects of the change. This would allow the parties to complete effects bargaining without expending PERB's resources while preserving the timeliness of the charge in case no agreement is reached.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ORCUTT EDUCATORS ASSOCIATION, Charging Party, v. ORCUTT UNION ELEMENTARY SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-6145-E PROPOSED DECISION (October 12, 2017)

Appearances: California Teachers Association by Brenda E. Sutton-Wills, Staff Counsel, for Orcutt Educators Association; Dannis Woliver Kelley by Ellen C. Wu and Chelsea Olson Murphy, Attorneys, for Orcutt Union Elementary School District.

Before Kent Morizawa, Administrative Law Judge.

This case concerns allegations that a public school employer violated the Educational Employment Relations Act (EERA)[1] when it unilaterally changed the manner in which it issued paychecks to certificated employees. The employer denies any violation.

PROCEDURAL HISTORY

On June 29, 2016, the Orcutt Educators Association (Association) filed the instant unfair practice charge against the Orcutt Union Elementary School District (District). An amended charge was filed on July 12, 2016.

On October 5, 2016, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging the District violated EERA section 3543.5, subdivisions (a), (b), and (c), when it unilaterally changed existing policy in

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

the 2015 calendar year by issuing 13 paychecks to employees who previously received 12 paychecks and 11 paychecks to employees who previously received 10 paychecks.

On October 25, 2016, the District answered the complaint, denying any violation of EERA and asserting several affirmative defenses.

On December 5, 2016, the parties participated in an informal settlement conference, but the matter was not resolved.

On May 4, 2017, the District filed an amended answer containing two new affirmative defenses—impossibility and business necessity.

Formal hearing was held on May 15, May 17, and June 13, 2017. The Administrative Law Judge (ALJ) bifurcated the hearing to address only the issue of the District's liability and reserved the issue of damages for a future hearing if necessary. On the first day of hearing, the Association made a motion to deny the District's amended answer for failure to timely file. The motion was taken under submission. On the last day of hearing, the District made a motion to dismiss the case. That motion was also taken under submission.

The matter was submitted for proposed decision with the filing of post-hearing briefs on September 18, 2017.

Motion to deny the amended answer

The authority of an ALJ to accept an amended answer is implicit in PERB Regulations. (See PERB Regulation 32170.[2]) Furthermore, the Board has held that affirmative defenses can be allowed even if not set forth in an answer where there is no demonstrated prejudice to the charging party. (*Beverly Hills Unified School District* (1990) PERB Decision No. 789, pp. 13-14.) Here, there is no prejudice to the Association in accepting the District's amended answer

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 and following.

because the facts and argument underlying the District's impossibility and business necessity defenses have been known to the Association since the District filed its position statement. The Association's charge and amended charge even reference the District's business necessity defense. Accordingly, the Association's motion is denied, and the District's amended answer is accepted.

Motion to dismiss

For the reasons set forth below, the District's motion to dismiss is granted on the basis of timeliness.

FINDINGS OF FACT

The parties

The Association is an exclusive representative within the meaning of EERA section 3540.1, subdivision (e), and represents a bargaining unit of certificated employees in the District.

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k).

Background

The Santa Barbara County Education Office (County Office) provides payroll processing services for school districts in Santa Barbara County. If a school district wishes to process its own payroll, it must become "fiscally accountable." To do this, the school district must submit an application to the County Office by September 1, then undergo an audit by the County Office and the Santa Barbara County Auditor-Controller to determine whether the district has the necessary management structure and capabilities. If approved, the district's fiscal accountability begins the next school year and is subject to annual review. The Santa

Barbara Unified School District is the only school district in Santa Barbara County that has been deemed fiscally accountable and processes its own payroll. All other school districts, including the District, rely on the County Office to process their payroll.

The County Office maintains the hardware and software systems necessary to process payroll for each school district. The school districts' responsibility is to input employee data by certain deadlines each month that are determined by the County Office. These deadlines are set in order to allow the County Office sufficient time to ensure payroll will issue correctly.

There are two scheduled payrolls each month—the regular payroll and the supplemental payroll. The regular payroll occurs at the end of the month and is payment for services rendered during that month. The supplemental payroll occurs earlier in the month and is a "clean up" payroll meant to correct any errors that occurred during the regular payroll the prior month. In addition to these two payrolls, the County Office can generate manual warrants to correct small errors, such as an employee's failure to submit a timesheet. Manual warrants are small in volume, limited to paper paychecks, and require considerable manpower to process.

Historically, the regular payroll for certificated and classified employees occurred at the end of the month in which services were rendered. The one exception was services rendered in December. Classified employees received their paycheck for work performed in December at the end of that month whereas certificated employees received that paycheck on the first business day in January. This was referred to as "split payroll" and had been in effect since the 1970's. Split payroll is not mandatory and some school districts opted to eliminate the practice while others, such as the District, opted to keep it. The school districts that opted to eliminate split payroll did so through official action by their respective governing boards.

The current dispute

Beginning in 2012, the County Office began the process of searching for a new payroll processing system. The system at the time was housed on hardware that was no longer supported by the manufacturer, and the County Office was concerned that it would no longer be supported by anyone in the near future. In February 2014, the County Office contracted with Escape Corporation to provide an integrated, server-based payroll system. Escape Corporation assured the County Office that its system would be able to maintain split payroll.

The Escape system went live on July 1, 2015. With the system up and running, the County began running mock payrolls each month before running the actual payroll. The purpose of the mock payroll was so the County Office could check its work and make sure the Escape system functioned properly and there would be no problems with the actual payroll.

During the September mock payroll, an issue arose where the entire payroll system was halted for three days and no action could be taken. A halt can occur because of a glitch in the programming code or when there is an error in the entry of payroll data, like when a stipend or other item is keyed incorrectly. When the system is halted, the entire payroll system is stopped and payroll cannot issue for the entire county.

After the September mock payroll, the County Office grew concerned about the January split payroll. The Escape system cannot process multiple payrolls simultaneously. Therefore, it would be necessary to close the December regular payroll before opening the January split payroll. The December payroll closed on December 30, and the split payroll closed on January 4. A three-day halt before the January split payroll would not leave enough time to process payroll and would prevent the County Office from issuing payroll as scheduled. The County Office investigated different ways to maintain the split payroll, but ultimately determined it

was not feasible with the new Escape system and decided to eliminate split payroll entirely. It did not consult with any school districts prior to making this decision.

On October 14, 2015, Bill Ridgeway and Denice Cora from the County Office met with Deborah Blow and Walter Con, the District's Superintendent and Assistant Superintendent of Business Services, respectively. Ridgeway stated the County Office was eliminating the split payroll system for all school districts. The decision was based on the three-day halt during the September mock payroll and the inordinate risk that a halt before the January split payroll would cause the County Office to miss that payroll completely. Moving forward, both certificated and classified employees would receive their paychecks for work performed in December at the end of December. That meant for the 2015 calendar year, certificated employees would receive an additional paycheck since the paycheck they would have received in early January 2016 would now be issued to them in December 2015. Con stated there was a very short time frame to notify employees of the change and asked if there were options for the decision to be postponed. Ridgeway stated the decision to eliminate split payroll had already been made. Before they left, Ridgeway and Cora handed the District a memorandum outlining the rationale for its decision. Following the meeting, Blow and Con discussed the need to inform the Association about the County's decision.

On October 15, 2015, Con met with Monique Segura, the Association President, and informed her of the County Office's decision to eliminate split payroll. He stated the District had no choice in the matter and that it had to comply with the County Office's decision. Segura stated she was disappointed the County Office had given such a short timeframe and that the parties would have to bargain the effects of the County Office's decision. Following the meeting, Con sent Segura a letter that stated in relevant part:

> On October 14, 2015, the District was informed by the [County Office] that effective in December 2015, the County Office will no longer offer the split pay option for certificated payroll. I am writing to provide you with the opportunity to request to bargain possible effects of the change in payroll options.
>
> [¶]
>
> If there are identifiable effects to matters within the scope of representation, please provide a request to bargain those effects to Don Nicholson, Assistant Superintendent, Human Resources and proposed dates to do so, by November 15, 2015.

Con testified he picked the November 15 deadline because it provided a month for the parties to negotiate the issue and left time to take care of any implementation that might be required before December 18, 2015, the deadline by which the District was required to input its data for December into the payroll system.

On October 16, 2015, Con sent a memorandum to certificated employees informing them of the County Office's decision to eliminate split payroll. The memorandum stated the change may have an impact on employees' tax liability and encouraged them to consult with their tax professionals to determine the impact on their specific circumstances.

Beginning in October 2015, the Association and the District were engaged in bargaining for a successor collective bargaining agreement (CBA). The parties held bargaining sessions on October 20, 2015, and November 17, 2015. The Association did not raise the issue of split payroll at either bargaining session, and the issue was not discussed.

On December 8, 2015, Andrew Oman, a staff representative for the California Teachers Association who advises the Association, emailed the District and demanded to bargain the elimination of split payroll. The email stated in relevant part:

> I have discussed this with the [Association] bargaining team and, to protect the financial interests of members, they have authorized me to demand to bargain this proposed change in the terms and

> conditions of employment. This change is within the scope of bargaining as defined in [EERA]. As this issue is bargained, we respectfully demand that the status quo be maintained.

The District did not respond to Oman's email.

The parties held a bargaining session on December 17, 2015. Segura handed the District's bargaining team a reiterated demand to bargain that stated:

> Concerning the split payroll issue, the proposed change has an impact on the bargaining unit and the parties have failed to bargain a resolution. The Association reiterates its demand to bargain the change in timing of payroll and its impacts on members.
>
> The known impacts of this change in a nearby chapter include one family that will lose an American Opportunity Tax Credit worth approximately $4,000, [sic] others who will lose their ability to contribute to ROTH IRAs.
>
> Many will be disqualified from or receive reduced financial aid for their children due to the higher tax-year income reported on the FAFSA. One member has reported that the additional reporting of income between him and his wife will lead to a denial of financial aid for their family as their third child prepares to enter college.
>
> All will see that additional check taxed at their highest nominal tax rate, and many will be pushed into a higher tax bracket.
>
> There undoubtedly will be additional impacts that will be revealed once bargaining unit members prepare their 2015 tax returns. While these impacts are not yet clearly measurable, they are clearly foreseeable.

At the bargaining session, Con stated the District had no say in the County Office's decision to eliminate split payroll. The Association's bargaining team asked the District to contact the County Office to see if it would postpone the change. In response, Blow contacted the County Office and spoke to Ridgeway, who said there was nothing the County Office could do and

that split payroll was going to be eliminated as planned. Daniel McElhinney, the District's lead negotiator, relayed Ridgeway's statement to the Association's bargaining team later that day.

The County Office implemented its decision to eliminate split payroll as planned, and certificated employees in the District received an additional paycheck at the end of December 2015 that they had not received before. In the 2016 calendar year, they received their usual number of paychecks (either 10 or 12 based on how they opted to be paid).

In February 2016, the parties discussed the elimination of split payroll and the scheduling of dates to discuss the issue. However, the matter was placed on the back burner as the parties focused on resolving disputes surrounding negotiations for the successor CBA. The parties ultimately entered into a successor CBA in April 2016.

On May 19, 2016, the parties met to discuss the elimination of split payroll and to clarify what the issues were. They decided to schedule a meeting in June 2016 to discuss the matter further. They also agreed on the need for additional information sharing. Specifically, that the Association would provide the District with information supporting its claim that the elimination of split payroll had resulted in increased income taxes for its members.

The parties next met on June 9, 2016. The Association presented the District with a spreadsheet that purported to show a sampling of individuals who were forced to pay increased income taxes because of the elimination of split payroll. The Association also made two proposals: (1) teachers would voluntarily present their tax returns to the District to verify they had paid additional incomes taxes, and the District would reimburse teachers for that amount; or (2) the District would pay each teacher in the District a lump sum equivalent to one day's pay at their daily rate. The District stated it would consider the proposals and respond at a later date.

On June 15, 2016, Oman sent the District's bargaining team a corrected version of the spreadsheet that fixed errors that were discussed at the bargaining session. He also provided a written explanation for how the spreadsheet was organized and what the values in each cell represented.

On July 6, 2016, McElhinney emailed the Association's bargaining team to inform them that the District had rejected the Association's proposals because the District did not believe the Association had sufficiently identified the impact the elimination of split payroll had on its members. Furthermore, even if those impacts had been sufficiently identified, the District did not believe it was required to make employees whole for increased tax liability stemming from a change made by the County Office that the District had no control over. The District did not present a counter proposal, but McElhinney stated the District remained open to further negotiations on the issue.

The parties met the next day on July 7, 2016. The District reiterated its position as stated in McElhinney's email. Following this meeting, there were no further negotiations regarding the elimination of split payroll.

ISSUE

Was the Association's unfair practice charge timely filed?

CONCLUSIONS OF LAW

EERA section 3541.5, subdivision (a)(1), prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge." Generally, the limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177, p. 4, citing

Fairfield-Suisun Unified School District (1985) PERB Decision No. 547.) At hearing, the respondent bears the burden of demonstrating that the charge was filed outside the six-month limitations period. (*Los Angeles Unified School District* (2014) PERB Decision No. 2359, p. 3.)

"In a unilateral change case, the statute of limitations begins to run on the date the charging party has actual or constructive notice of the respondent's intent to implement a change in policy. . . [A] charging party that rests on its rights until actual implementation of the changes bears the risk of running afoul of the statute of limitations." (*County of Riverside* (2010) PERB Decision No. 2132-M, p. 8, citing *South Placer Fire Protection District* (2008) PERB Decision No. 1944-M.) There is no distinction between the respondent's decision and its effects for statute of limitations purposes. (*Id.* at p. 9.) Whether the intended change is subject to decision and/or effects bargaining, it is the charging party's knowledge of respondent's intent to unilaterally implement the change that starts the six-month statute of limitations period. (*Ibid.*)

Here, the District first notified the Association on October 14, 2015, that the County Office intended to eliminate split payroll. The District was clear it had no control or veto power over the County Office's decision. However, it did make an effort to contact the County Office and determine whether an exception could be made so the District could maintain split payroll temporarily. The County Office stated it could not make any exceptions and was proceeding with the elimination of split payroll of all school districts as scheduled. The District made this known to the Association at the bargaining session on December 17, 2015. At that time, the Association knew the District had made the firm decision to take no further action to stop the County Office from eliminating split payroll, and the six-month statute of limitations

began to run on this date. Since the Association did not file its charge until June 29, 2016, the charge is untimely.

The Association asserts the District should be equitably estopped from asserting timeliness as a defense because it engaged in surface bargaining. For the doctrine of equitable estoppel to apply, all of the following elements must be proven: (1) a representation or concealment of material facts; (2) made with knowledge of the true facts; (3) to a party ignorant of the truth; (4) with the intention that the ignorant party act on the representation or concealment; and (5) the party was in fact induced to act on the representation or concealment. (*Los Angeles Unified School District* (2012) PERB Decision No. 2299-E, pp. 6-7.) The doctrine of equitable estoppel will only be invoked if each of the elements is proven. (*Id.* at p. 7, citing *Southern Cal. Edison Co. v. Public Utility Com.* (2000) 85 Cal.App.4th 1086 and *Amarawansa v. Superior Court* (1996) 49 Cal.App.4th 1251.)

Here, even assuming the District engaged in surface bargaining,[3] it is unclear how that would be sufficient to satisfy the elements of equitable estoppel. The record does not reflect that the District made any representations or concealed material facts in order to induce the Association to delay filing its unfair practice charge. The Association was not ignorant of the truth. It knew as early as October 14, 2015, that the District intended to comply with the County Office's decision to eliminate split payroll. By December 17, 2015, the Association knew with certainty that the District had made a firm decision to comply. At no time did the

[3] The Association's surface bargaining claim is not alleged in the complaint or the unfair practice charge. It also does not meet the requirements for an unalleged violation because it is untimely. (See *Fresno County Superior Court* (2008) PERB Decision No. 1942-C, p. 14 [an unalleged violation must be within the applicable statute of limitations].). The Association did not raise the surface bargaining claim until its post-hearing brief, which was filed well after six months of when the violation is alleged to have occurred. Accordingly, the Association's surface bargaining claim will not be considered and no determination will be made on that issue.

District misrepresent its intentions regarding split payroll. That the parties were bargaining the effects of the County Office's decision to eliminate split payroll (and whether the District engaged in surface bargaining during that time) does not change the fact that the Association knew a change was made in December 2015 to eliminate split payroll. Accordingly, equitable estoppel does not act to bar the District's statute of limitations defense.

Based on the above, the Association's charge is dismissed as untimely.

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No. LA-CE-6145-E, *Orcutt Educators Association v. Orcutt Union Elementary School District*, are hereby DISMISSED.

Right to Appeal

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 within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960
E-FILE: PERBe-file.Appeals@perb.ca.gov

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. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).)

A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090, 32091 and 32130.)

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 Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)