STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JEFFERSON CLASSROOM TEACHERS)
ASSOCIATION, CTA/NEA,)

Case Nos. SF-CE-33
SF-CO-6

Charging Party,)

v.)

PERB Decision No. 133

JEFFERSON SCHOOL DISTRICT,)

Respondent.)

June 19, 1980

Appearances; Duane B. Beeson, Attorney (Brundage, Beeson, Tayer and Kovach) for Jefferson Classroom Teachers Association, CTA/NEA; Ned A. Fine and Claudia Cate, Attorneys (Morrison and Foerster) for Jefferson School District.

Before Gluck, Chairperson; Gonzales and Moore, Members.

DECISION

The Jefferson Unified School District (hereafter District) has filed exceptions to a proposed decision issued by a Public Employment Relations Board (hereafter PERB) hearing officer adjudicating the negotiability of certain proposals submitted by the exclusive representative, the Jefferson Classroom Teachers Association (hereafter JCTA) on behalf of a unit of certificated employees in the District. The employer objects to a ruling that numerous subjects discussed herein are within the scope of representation. The JCTA did not file exceptions in accordance with PERB rule 32300, but merely filed a response to the District's exceptions which incorporated its

post-hearing brief. We, therefore, considered only those portions of the proposed decision specifically excepted to.

FACTS

The facts here are not in dispute. The Association was certified as the exclusive representative on June 21, 1976, as a result of a consent election. The parties began negotiating on contract proposals in August of 1976. During the initial sessions, the District made clear that it considered a substantial number of the Association's proposals to be outside the scope of bargaining. Although the District asked the JCTA to explain its reasons for considering the proposals which were negotiable, the District made no effort to articulate its rationale for claiming that they were outside scope. The counterproposals submitted by the District in September did not address any of the subjects which it considered beyond scope. Instead, the District's representative suggested that the Association could consult with the superintendent over the purported non-negotiable items.

In November of 1976, the parties filed unfair practices, each alleging that the other was violating EERA sections 3543.5 (c) and 3543.6 (c), respectively[1]. The District alleged

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[1]Government Code section 3543.5 states:

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

that the Association violated its duty to bargain in good faith by proposing to negotiate on subjects outside the scope of representation. The hearing officer dismissed this charge, to which the District excepted.

The Association claimed in its initial charge and through subsequent amendments that the District failed to negotiate in good faith by refusing to bargain over various proposals which it claimed to be outside scope. The JCTA charge also complained of certain unilateral actions taken by the District prior to and during negotiations. The hearing officer dismissed one of the charges alleging unilateral action, and sustained the other. Neither the District nor the Association filed exceptions to that determination. The surviving issues, then, are the negotiability of certain specific subjects set forth hereafter and whether the JCTA violated Section 3543.6(c) by seeking to negotiate proposals beyond the scope of representation.

DISCUSSION

The scope of negotiations is found in section 3543.2 of the Act:

> (c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

Hereafter all statutory references will be to the Government Code unless otherwise noted.

> The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, and the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code. In addition, the exclusive representative of certified personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

The District's objections are both general and specific in nature. Its broad-based arguments may be summarized as follows:

(a) By finding all matters relating to enumerated items negotiable, everything the employer does, or may do, would inevitably be within scope. The appropriate test should be one of degree: only matters having a significant impact on the employees' job interests should be included.

(I) Any matter covered by existing state law is thereby preempted and should be excluded from scope. The employer

should not be forced to negotiate on rights already guaranteed or on rights it has no power to grant.

(c) The hearing officer's requirement that the District must "refine" proposals made by the Association to determine their meaning and relationship, if any, to enumerated subjects improperly opens up an unlimited new category of negotiable subjects.

(d) The Association has failed to provide evidence of the relationship of its proposals to enumerated subjects and, therefore, has failed to sustain its burden of proof.

The Appropriate Test of Negotiability

There is merit to the District's argument that virtually all matters subject to employer action may, in some way and to some degree, relate to an enumerated subject. Without citing examples or hypotheticals, this point may be conceded.

In San Mateo City School District (5/20/80) PERB Decision No. 129, the Board faced a similar question concerning the meaning of the term "matters relating to . . . ." There, the question arose as an aspect of the general task of determining negotiability. It was the Board's conclusion that, in deciding whether a subject is one on which the employer is required to negotiate, the threshold question is whether the disputed subject logically and reasonably relates to hours, wages, or an enumerated term and condition of employment, San Mateo, supra, p. 13.

The Board's test in San Mateo did not stop, however, with establishing the threshold question, for it was recognized that the determination of logical and reasonable relationship is not always facially evident. To cope with proposals that are arguably included or excluded, there is a further yardstick against which disputed issues could be measured:

> a) Whether the subject is of such concern to both management and employees that conflict is likely to occur and whether the mediatory influence of collective bargaining is the appropriate means of resolving the conflict and b) whether the employer's obligation to negotiate would significantly abridge his freedom to exercise those managerial prerogatives essential to achievement of the District's mission. Supra, p. 14.

That test is applicable here.

THE DISTRICT'S ARGUMENTS

The Test of Relationship

The weakness of the District's proposed test of significant impact lies largely in its requirement that someone other than the employees would be required to determine what is significant to them. Certainly, the Legislature did not undertake to make such judgments. The statute unquestionably excludes certain matters which significantly impact on employee job interests; it does so simply because, irrespective of the fact, the Legislature decided to leave these matters to managerial discretion. On the other hand, those matters on which the Legislature required negotiation are stated

unequivocally. Further, the statute contemplates a fixed and permanently defined arena in which negotiations are to take place. Stable employer-employee relations cannot exist if they are founded on shifting sands of ever-changing scope. Yet, such would be the case if the District's test were to be adopted, for today's de minimus may well be tomorrow's far-reaching consequence.

The Effect of Existing Statutory Provisions

The District's absolute position that any matter covered by existing statute is excluded from scope is not persuasive. Matters excluded from negotiations are specified in the latter portion of section 3543.2, supra. No reference to existing statutory provisions is made. Thus, if an enumerated item is to be excluded, some other statutory prohibition must be located. Section 3540 states, inter alia:

> Nothing contained herein shall be deemed to 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 or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

It thus precludes supersession of Education Code provisions which:

(1) establish and regulate tenure,

(2) establish a merit or civil service system, or

(3) establish other methods of administering employer-employee relations.

Construing this complex provision most favorably to the District's postion,[2] supersession would occur where an Education Code provision is annulled or replaced by a collective agreement. But, does supersession occur where the negotiated provision is permitted by the Education Code, even though that provision's terms may vary from those of the Code? Where the Code sets forth wage, hour or working conditions matters, but neither explicitly, nor by inference, precludes a negotiated variance, would section 3540 be violated? We hold that it would not be. The distinction lies between a statutory provision which mandates a specific and an unalterable policy and one which authorizes certain policy but falls short of being absolutely obligatory. As we read section 3540, those proposals which otherwise meet our test of negotiability are within scope, unless a conflicting Education Code provision precludes variance from its terms.

The District's further argument that the mere existence of <u>any</u> statutory provision precludes incorporating that provision in the agreement is without foundation. First, the only statutory restriction is on provisions found in the Education

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[2] For example, it is possible to construe the prohibition in section 3540 as pertaining only to "systems" (such as civil service) rather than to specific, individual personnel policies.

Code. Second, incorporating a statutory mandate in the agreement, assuming the subject matter is or relates to a subject specified in section 3543.2, certainly does not constitute supersession of that statute whether it is the Education Code or any other statute. On the other hand, there is a clearly recognizable value to the "improvement of personnel management and employer-employee relations"[3] in permitting inclusion of such matters within the negotiated contract. Employees are entitled to know the rules, regulations, and policies which govern their employment rights and obligations. Employer-employee relations are inherently improved when the respective parties are well informed as to their mutual rights and obligations. There can be little doubt that employees will be more easily and fully informed when pertinent matters are to be found in a single document such as a collective agreement rather than in a plethora of statutory provisions which are not readily accessible to them. Certainly, the inclusion of such provisions in the agreement cannot be seen as an interference with management's necessary freedom to direct the enterprise. The employer's obligation to

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3 Section 3540 provides in part:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California...

adhere to statutory requirements is not magnified by their inclusion in a negotiated agreement.

We find no provision in the Educational Employment Relations Act (hereafter EERA) which limits the negotiability of matters covered by statutes other than the Education Code. Assuming that the subject matter in question meets our test of negotiability, PERB is without power to exclude it from scope. Our duty is the enforcement and administration of the statutes given us, in this case, the EERA. We are without authority or right to enforce or administer any other law. Whatever statutory conflicts may arise because a particular matter is determined by this Board to be in scope must be resolved in a different forum.

We find, therefore, that proposals to include in the agreement matters covered by the Education Code or other statutes are proper and lawful, provided the subject matter is or is related to an enumerated item and further provided that the proposal does not supersede a mandatory Education Code provision.

The Employer's Duty to Interpret the Proposal

As the Board interprets the hearing officer's admonition, he would hold the employer responsible for evaluating any proposal to determine the extent of his duty to negotiate. We find nothing wrong in this position.

We do not read into the hearing officer's words a requirement that the employer search out negotiable words and

phrases or struggle against the odds of deciphering the meaning of obscure and dubious demands or that he negotiate on matters he sincerely believes to be excluded. Taken in its reasonable context, the hearing officer's instruction requires the employer receiving a proposal to make a good-faith effort to seek clarification of questionable terms and proposals, to voice its reasons for believing that a proposal is outside scope, and to enter into negotiations on those aspects of proposals which it finally views as covered by section 3543.2. What the hearing officer seeks to proscribe is the perfunctory refusal to consider matters which are not patently negotiable without affording the opportunity for clarification or explanation. The obligation to negotiate includes the obligation to express one's opposition in sufficient detail to permit the negotiating process to proceed on the basis of mutual understanding.[4] Of course, this does not mean that the employer must finally agree that any particular proposal is within scope. Nor, does it excuse the organization from making a concomitant good-faith effort to clarify its proposals and establish that they are within scope. To the extent of the foregoing, we find the hearing officer's point well taken.

4Because the District refused to discuss those matters which it declared to be outside the scope of representation, those Association proposals were not clarified; consequently, it has not been possible to be more specific in determining the precise limits of their negotiability.

The Association's Burden of Proof

The District misconceives the nature of the Association's obligation and confuses questions of facts and questions of law. Whether the subject of the proposal is within the purview of section 3543.2 is a matter for this Board to determine as a matter of law. The Association's obligation is to present factual evidence. That evidence is the proposal itself. While the Association is entitled to argue the law—and did in this case—the "burden" of deciding the issue rests solely on PERB's shoulders.

With all of the foregoing in mind, it is now appropriate to turn to the specific proposals and findings and the exceptions taken thereto:

ARTICLE III — PROFESSIONAL DUES OR FEES AND PAYROLL DEDUCTIONS

> 5. Upon appropriate written authorization from the Certificated Employee, the District shall deduct from the salary of any Certificated Employee and make appropriate remittance for annuities, credit union, savings bonds, charitable donations, or any other plans or programs jointly approved by the Association and the District.

The District appears to object to the phrase "or any other plans or programs jointly approved by the Association and the District." It also contends that the other proposed deductions would supersede provisions of the Education Code. Two primary arguments are advanced in support of the District's claim that the proposal is outside of the scope of negotiation. First, it

contends that payroll deductions need only be negotiated as they relate to organizational security. Second, the District implies that the proposal is otherwise unlawful according to Abood v. Board of Education (1977) 431 U.S. 209 [95 LRRM 2411].

Since Abood requires unions to finance expenditures for any ideological causes by means other than dues deductions, the proposal fails, according to the District, because it would allow financing of noncollective bargaining projects from union dues.

At the outset, we find that "payroll deductions" may bear a strong relationship to wages. This latter term, specified in section 3543.2 as negotiable, must be construed to include other forms of economic benefit arising out of the employment relationship. There is an inseparable nexus between an employee's current compensation and his future economic welfare and security.5 Where deductions from wages are applied to annuities, savings bonds, or other programs designed to enhance the employee's current or future economic status, they become an integral part of the compensation structure and are no less a matter of employee-employer concern than is the basic wage rate. That certain payroll deductions, at least, are a matter of employer concern which do not interfere with lawful

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[5] We borrow liberally from Inland Steel Co. (1948) 77 NLRB 1 [21 LRRM 1310] enforced (7th Cir., 1948) 170 F.2d 247 [22 LRRM 2506], cert, denied (1949) 336 U.S. 960 [24 LRRM 2019].

management prerogatives is evident from the obligation imposed by the very statute the District contends exempts it from the bargaining requirement. As to that claim of exemption, we have already responded in our general comments.

We find the District's reliance on Abood, supra to be misplaced. There, the court prohibited the use of union dues for purposes unrelated to the organization's collective bargaining and representational obligations on behalf of government employees unless specifically authorized by the membership. Here, of course, the proposal calls for deductions directly from the employee's wages. No union dues are involved and "appropriate written authorization" of the individual employee is required, thus circumventing the evil which Abood prohibits—involuntary employee contributions to noncollective bargaining causes.

Nevertheless, this holding should not be construed as finding that any or all payroll deductions must be negotiated. The relationship of the deduction to an enumerated subject in section 3543.2 must be demonstrated. We find that relationship, as indicated above, with respect to deductions for annuities, savings bonds, and credit union accounts. We do not see the same relationship in deductions for charitable causes and, therefore, find this portion of the proposal to be outside of the mandatory scope of bargaining. Since the remaining portion of the proposal deals with "other plans and

programs jointly approved by the Association and the District," (emphasis added), we find this aspect also within scope. The employer obviously need not agree to negotiate on such plans or programs which fall outside the relationship test we have established.6 At a minimum, the District cannot refuse to negotiate deductions for plans or programs without affording to the Association the opportunity to demonstrate that such a relationship does or will exist.

ARTICLE IV — NONDISCRIMINATION

This proposed article reads:

> There shall be no discrimination by the District against any Certificated Employee on account of membership in or activity on behalf of the Association, particularly as this may relate to employment, retention or dismissal. There shall be no discrimination by the Association or the District against any Certificated Employee, or Certificated Employee applicant because of sex, sexual orientation, physical disability, race, color, creed, national origin, marital status, or political affiliation.

This proposal logically and reasonably touches on virtually all aspects of the employment relationship. The prohibition of discrimination assures that wages will be paid on an equal

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6 For examples of plans and programs on which the employer is not obligated to bargain, see Carpenters' Local 2265 (1962) 136 NLRB 769 [49 LRRM 1842], enforced (6th Cir., 1963) 317 F.2d 269 [53 LRRM 2311]. Sheet Metal Workers Local 38 (1977) 231 NLRB 699 [96 LRRM 1190]. These cases pertain to employer contributions, but the principle is equally applicable here.

race, union activism, etc.; that transfers and reassignments will be accomplished in an even-handed fashion; that evaluations will not reflect non-job-related biases.

A work place free from discrimination is of fundamental interest to employees as it may surely be assumed to be to employers alike. Indeed, statutory obligations imposed on employers in this regard emphasize the point. (See Education Code sections 44100-44105, 44830; 42 U.S.C. 2000e et seq., 42 U.S.C. 1981, 1983). The negotiating process is well suited to the airing and resolution of the parties' concerns on this subject. A collective agreement may well provide through its administration processes a convenient and inexpensive means of resolving future related disputes.

Requiring negotiations on a proposal such as this is not seen as abridging the District's "freedom to exercise those managerial prerogatives essential to the achievement of the District's mission," San Mateo, supra p. 14. This proposal requires the employer to do nothing it is not already obligated to do under applicable law. The District's argument that the proposal supersedes the Education Code is rejected. The proposal does not conflict with that Code. We, therefore, find the proposal within the scope of representation.

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[7]See Jubilee Mfg. (1973) 202 NLRB 272 [82 LRRM 1482] affirmed (DC Cir., 1974) 504 F.2d 271 [87 LRRM 3168].

The Association proposed the following article:

ARTICLE VI--PUBLIC CHARGES

1. In accepting the obligation to protect academic freedom and to defend its Certificated Employees from unjust accusations, the District shall within three (3) calendar days report any public charge or complaint to the Certificated Employee(s) involved.

2. Should the involved employee(s) believe that the allegations in the complaint are sufficiently serious to warrant a meeting, the employer(s) shall schedule such with the complainant. An Association representative may be present at such meeting.

3. If the matter is not resolved at the meeting to the satisfaction of the complainant, the complainant shall set forth the complaint in writing within five (5) calendar days, and submit such to the Certificated Employee(s) involved and the principal or immediate supervisor. The Certificated Employee(s) involved shall be given compensated release time for the purpose of initialing and dating the written complaint and preparing a written response. The response shall be attached to the written complaint. If no written complaint is received within five (5) calendar days of the meeting above, the matter shall be dropped.

4. The written complaint and attached response shall be placed in a separate complaint file, and not in the Certificated Employee's personnel file. If the Certificated Employee challenges the allegations contained in the complaint, a grievance may be initiated in accordance with Article XXVIII of this Agreement. A finding that such allegations are untrue shall result in the immediate destruction of all paper

work pertaining to the complaint. The failure by a Certificated Employee to file a grievance shall not be construed as an admission that the allegations contained in the complaint are true.

5. The District shall not take any adverse action against a Certificated Employee on the basis of allegations in a citizen or parent complaint or finding of fact, unless such constitutes cause in accordance with this agreement or applicable laws of the State of California.

The District excepts to the hearing officer's finding that this proposal was within the scope of negotiations for two reasons: 1) there was no evidence showing the relationship between this proposal and an enumerated subject, and 2) the Education Code already covers the subject of how public charges are to be handled and is, therefore, superseded in violation of section 3540.

This proposal prescribes a method available to employees for answering public complaints made to their employer about their job performance and for dealing with the removal from employees' personnel files of unjustified and derogatory material. Section 3543.3 specifically authorizes negotiations on "procedures to be used for the evaluation of employees. . . ." The procedure proposed here can readily be seen as bearing on an enumerated item. Since it may be safely assumed that teacher evaluation procedures include a review of complaints including file material pertinent to performance, the general subject matter of the proposal seems well within

the range of negotiable aspects of such evaluation procedures. In short, the proposal's relationship to evaluation procedures, a specifically enumerated term and condition of employment, brings it within the scope of mandatory negotiations.

However, we find certain aspects of the proposal fall outside the contemplation of Section 3543.2.

Paragraphs 2 and 3 purport to impose duties on third parties who are strangers to the employment relationship. To establish meetings with complainants and require them to set forth a complaint in writing is beyond the legal power of the employer to effectuate. However, this proposal is an illustrative example of one which triggers a duty of the employer to express its specific objections to the proposal and explain the reasons therefor. Far from fashioning acceptable proposals for the Association, this form of objection would allow the employee organization to refine its own proposals and bring them within the legal scope of bargaining.

The District's exceptions based on the alleged supersession of the Education Code are dismissed in accordance with our previous discussion. We find no conflict between the Education Code sections cited by the District and the terms of this proposal. By refusing to discuss any aspect of this proposal, the District has violated section 3543.5 (c).

ARTICLE VII—EMPLOYMENT CLASSIFICATIONS AND ASSIGNMENT

This proposed article reads:

1. The District and the Association recognized that in providing continuity of instruction the welfare of students and Certificated Employees must be the foremost factor of consideration in the assignment and classification of Certificated Employees. Moreover, there shall be no unnecessary interruptions in the continuity of instruction.

2. For purposes of this Agreement, Certificated Employees shall be classified as Regular Full-time, Regular Part-Time, Temporary, or Home Teacher.

   A. Regular Full-Time Certificated Employee - A Certificated Employee who is regularly employed to render services on a predetermined basis for thirty-five (35) hours per week. A Regular Certificated Employee shall accumulate and receive all fringe benefits as provided in this Agreement.

   B. Regular Part-Time Certificated Employee - A Certificated Employee who is regularly employed to render services on a predetermined basis that is more than seventeen and one-half (17.5) hours per week, but less than thirty-five (35) hours. A Regular Part-Time Certificated Employee shall receive salary prorated in ratio to number of hours worked as compared to a Regular Full-Time Employee and shall accumulate and receive all fringe benefits as provided in the Agreement.

   C. Other Part-Time Certificated Employee - A Certificated Employee rendering less than seventeen and one-half (17.5) hours of service on a predetermined basis per week,

shall receive salary and fringe benefits prorated in ratio to the number of hours worked as compared to a Regular Full-Time Certificated Employee.

D. Temporary Certificated Employee - A Certificated Employee who is regularly employed to render services on a predetermined basis for one (1) school term plus one (1) day in the position of a Regular Certificated Employee absent from service. A Temporary Certificated Employee shall accumulate and receive all fringe benefits as provided in this Agreement, which in the instance of reclassification shall be retroactive to the first day of continuous assignment.

1. Sections 13336 through 13337.3 of the Education Code are incorporated herein and supplemented as follows:

2. In filing positions for the ensuing school year, the District shall not consider applicants for employment unless there are no Certificated Employees who served as temporary Certificated Employees the preceding school year who are credentialed and willing to fill such positions.

3. In choosing among properly credentialed temporary Certificated Employees who have applied to fill a position for the ensuing school year, the District shall use the following criteria:

4. Length of service the preceding school year - e.g., a Certificated Employee who served

the full school year shall be given preference over a Certificated Employee who served one school semester.

5. If two (2) Certificated Employees have served the same length of time the preceding school year, the Certificated Employee with the longer service to the District, including substitute service, shall be selected.

6. "In a position", as that phrase appears in Sections 13336 through 13337.3 of the Education Code, means "any position which the temporary Certificated Employee filled the preceding school year.

E. Home Teacher - A Certificated Employee who is regularly employed to render services on an availability or predetermined basis in the home of pupils. Certificated Employees so classified shall accumulate and receive all fringe benefits prorated in ratio to the number of hours worked as compared to a Regular Full-Time Certificated Employee. Time spent in rendering services to the District shall include, for computational purposes, conferencing with parents, classroom teachers, travel, and relief periods.

F. Certificated Employees shall not be assigned to positions requiring qualifications, training, and experience other than is currently held by a Certificated Employee.

By establishing a classification system which determines which employees will receive specified fringe benefits and establishes rates of pay, this Article clearly relates to wages

and health and welfare benefits.[8] The subject of the proposal must be negotiated.

In its exceptions, the District points to several Education Code sections which allegedly supersede this proposed classification scheme. We have considered all of the Education Code sections cited by the District and find that the proposals do not conflict with the Education Code sections.

Some of the proposals seek to create benefits greater than the statute provides. For example, section 2.B. of Article VII, classifies a part-time employee as one who works more than 17.5 hours/week but less than 35 hours. Education Code section 13503.1 (now section 45025) provides that a teacher who works less than a minimum day *may* contract with the district to be classified as a part-time teacher. "Minimum day," as defined in the statute, amounts to approximately 19.2 hours per week in elementary schools and 20 hours per week in high schools. This proposal seeks to accomplish two things. It lowers the number of hours per week which render teachers eligible to be classified as part-time employees, and it addresses a class of employees not covered by the statute—those who work more than a "minimum day" or week, but less than full time. There is no conflict between this proposal and the statute, as the statute

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[8]Although "fringe benefits" as used in this proposal is not defined, we presume, because of its traditional meaning in the private sector, that it includes health and welfare benefits as defined in Education Code section 53200.

does not <u>require</u> the district to perform any act different from what is contemplated in the proposal. Therefore, the District is not relieved of its obligation to negotiate section 2.B.

By the same token, the District's supersession argument against the negotiability of section 2.D. is without merit. Education Code sections 44918, 44919 and 44921 all prescribe certain rights of temporary employees. For example, Education Code section 44918 provides one year of credit as a probationary employee to a temporary employee who has served for at least 75 percent of the days in which schools are open and who is hired as a probationary for the following year. Education Code section 44919 requires the District to classify as temporary those employees hired to teach temporary classes not to be held after the first three school months. Section 44921 allows the District to hire, and classify as temporary, employees assigned to teach for the first semester only due to reduction in enrollment. We find nothing in section 2.D. that conflicts with any of these provisions. Rather, the proposal's definition supplements the statutory rights of temporary employees.

<u>Section 2.D.(1)</u> poses a different problem. Substitute employees were specifically excluded from the unit agreed to by the parties.[9] The District, therefore, is not obligated to

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[9]The PERB certification of election describes the unit for which the Association was certified as follows:

bargain with the JCTA over proposals which affect the interests of employees outside the unit represented by JCTA. But, it must negotiate to the extent that the proposed section 2.D(1) concerns temporary and other unit employees.

Sections 2.D.(2) through (6) outline a procedure for filling positions for the ensuing school year and essentially give re-employment rights to employees who were temporaries with the District during the previous year. Because the question of re-employment necessarily involves future entitlement to wages and benefits and affects hours worked by bargaining unit teachers who are re-employed, these sections are within scope.

All certified employees excluding substitute teachers, managerial employees, supervisory employees, confidential employees as described in the Act. The following positions are specifically excluded: district superintendent, assistant superintendent administrative services, assistant superintendent educational services, director of certified personnel and administrative services, director of food services, director of ESAA project, coordinator of special programs, special services, principal, assistant principal, special services, principal, assistant principal, director of maintenance operations and transportation, school psychologists, director of research and evaluation, head music teacher, head social studies teacher-ESAA, head reading and math teacher-ESAA, head guidance specialist-ESAA, head bilingual teacher.

2.E., concerning home teachers, directly relates to the hours and benefits of those employees in that it defines what activities will be deemed working hours for the purpose of compensation and it prescribes the method of benefit accrual. This proposal does not conflict with any portion of the Education Code and, therefore, must be negotiated.

2.F. presumably seeks to assure that teachers will not be assigned to work which requires training qualifications or experience other than that required of a certificated employee. As such, it proposes an aspect of a transfer/reassignment policy and is within scope.

ARTICLE VIII—COMPENSATION

The disputed sections of this proposed article read:

> 2. D. Substitute and Temporary Certificated Employees who are reassigned as Regular Certificated Employees will be given one (1) year credit for previous experience on the salary schedule for each nine (9) months service in the School System providing that such Certificated Employees must have worked at least 75% of the school days in any previous year considered for credit.
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> 15. Payday - The regular payday for Certificated Employees shall be the last working day of every month. Moreover, warrants shall be available at the site where a Certificated Employee is performing services on the last working day of the month.
>
> 17. Notification - Certificated Employees shall be notified by October 15 of each

year, their position on the salary schedule and their annual salary.

The District argues that section 2.D. above is related not to any enumerated item, but to permanent employment, a management prerogative. Such an assertion reveals a basic misunderstanding of the proposal which does not dictate to the District whom it can or cannot hire. This proposal merely sets forth a crediting system related to pay and benefits very similar to that contained in Education Code section 44920, which specifies credit for previous experience in the event substitutes and temporary employees are hired as regular full-time teachers. This proposal, which calls for increased benefits and wages based on previous experience, is clearly within scope.

Because the scheduling of payday is addressed in Education Code section 45048, the District argues that paragraph 15 of Article VIII is non-negotiable. That statute, along with section 45038, gives the District discretion to establish pay periods on a monthly, bi-weekly, or weekly basis and establishes time periods within which warrants must be distributed. Nothing in the proposal contravenes the requirements of the statute. On the contrary, the statutory discretion as to frequency of pay periods vested in the District points to the proposal's negotiability, provided the subject is related to an enumerated item. That when and how

often employees are paid relates to wages seems hardly debatable.

The proposal contained in paragraph 17—Notification, merely seeks to have the employer notify employees of their new wage rates and schedules. The proposal's relationship to wages is obvious, and we can discern no interference with the employer's basic managerial prerogative. To the contrary, the proposal is in harmony with the statutory purpose of improving personnel management and employer-employee relations.

ARTICLE X — WORKING CONDITIONS

The disputed portions of this article read:

> 1. Each Certificated Employee shall be provided with a classroom appropriate to their (sic) teaching assignment.
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> 4. Building administrators shall consult with their Certificated Employees regarding the scheduling of classes, assignments, faculty meeting agenda and time, pupil attendance accounting, and other educational matters that are decided on an individual school basis.
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> 8. All Certificated Employees shall request the supplies necessary to implement the program through their immediate supervisor. Supplies will be provided in a timely manner so as not to cause a disruption in the educational process of the classroom teachers.
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> 10. Adjunct duties may be defined as those assigned and mutually agreed upon responsibilities performed during the course of the regular work day but outside the classroom. A fair and equitable rotation of adjunct duties will be assigned at the beginning of the school year.

12. Certificated Employees who are not assigned a single classroom shall have a central location where material, equipment, secure storage, desk and filing cabinet will be provided.

The District refused to bargain on this entire proposal because it claimed that it was only indirectly related to any enumerated subject and because it allegedly interfered with certain management prerogatives.

The claim of indirectness is not determinative of the negotiability of this proposal. Rather, the test is whether the proposal logically and reasonably related to an enumerated item. We find such a relationship arguably present in this article.

In Paragraph 1, the relationship between the physical dimension of a classroom and the size of the class itself (the number of students) appears to be established by the phrase "appropriate to their teaching assignment." The dependence of physical size on the number of students in the class is self-evident. It is not unreasonable to assume that the teacher's ability to provide effective instruction may be impaired by crowded classroom conditions that can lead to disruptions, loss of attention, pupil discontent, or other conditions concerned with the adverse to an appropriate educational atmosphere. It is also reasonable to assume that school administration would be equally concerned. It can be acknowledged that optimal facilities are not always available.

However, the employer response to proposals of this sort is the means by which it can deal with such limitations. We see nothing in this proposal itself which interferes with the employer's freedom to achieve the particular mission with which it is charged.

The District objects to the negotiability of paragraph 4 above, on the grounds that it usurps management's right to allocate and assign duties during the course of the working day. This objection may have merit if the effect of the proposal would be limited only to class assignments during working hours. But, on its face, this paragraph speaks *inter alia* to "faculty meeting agenda and time, pupil attendance accounting . . ." These items might relate, for example, to the overtime teachers are required to put in when attending faculty meetings occurring beyond the regular working day, hours of teaching time, and the overall workday. Similarly, the scheduling of pupil attendance accounting may very well impact on teachers' preparation requirement or rest breaks and, thus, increase their working hours.

Consulting with employees on the scheduling of duties which may affect their hours of employment, frequency and duration of overtime, etc., will not interfere with or abridge significant managerial prerogatives. The procedural nature of this proposal does not prevent the District from conducting faculty meetings or assigning the task of pupil attendance accounting

to the bargaining unit. It merely requires discussion over the scheduling of those events.

To the extent that this paragraph does relate to the hours worked by the bargaining unit, it must be negotiated.

The requirement that teachers be consulted on "other educational matters that are decided on an individual school basis" we find to be a mandatory subject of bargaining as well. Although the actual substance of educational matters need not be negotiated, the procedures for consultation must be. The right of consultation is guaranteed in section 3543.2 ante p. 4. Since this proposal seeks only to establish the mechanism for implementing that right, the proposal conforms to the mandates of section 3543.2, and the employer may not refuse to bargain over this proposal.

Although employees have an understandable interest in obtaining supplies in an efficient and timely manner, the proposal contained in Paragraph 8 does not meet the threshold test of negotiability; it is not logically and reasonably related to an enumerated subject. The Association and the hearing officer relate the proposal to evaluations on the theory that teachers[1] job performance (and necessarily, evaluations) would be adversely affected by the absence of supplies. Granted, this may be so, but the relationship is too speculative and attenuated. Using this theory, every aspect of a teachers' working life would be related to evaluations, as the performance or nonperformance of various tasks could

conceivably affect evaluations of performance. We do not believe that the Legislature, in mandating that "matters relating to . . . procedures to be used for the evaluation of employees . . ."be negotiated, intended such a broad interpretation as is urged by the Association.

The District complains that the proposal in Paragraph 10 intrudes on the managerial right to assign duties during the course of the day. In so doing, it ignores the distinction between "working day" and "working time."[10] The former refers to the hours during which employees are required to be on the employer's premises and may include time during which they are not actually performing duties. The latter refers to the actual time engaged in performing duties required by the job. For example, it does not include time spent at breaks and lunch.

It is not clear from the proposal itself or the record precisely what duties would be included within the ambit of "adjunct duties," although by the proposed definition they would not be performed on overtime. The duties are those performed during the course of the regular workday. There is some indication from the District's witness that adjunct duties could include committee work done by teachers. Presumably,

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[10] For a discussion of this distinction in the private sector, see Essex International, Inc. (1974) 211 NLRB 749 [86 LRRM 1411].

the term may also encompass duties that not every teacher is required to perform and/or duties that teachers performed during their rest periods, lunch or breaks, or preparation periods. To this extent, adjunct duties may very well impinge on teachers' ability to engage in other activities, both duty and non-duty, thus affecting their working hours. For this reason, the proposal is logically and reasonably related to hours.11

The interest which employees have in a fair rotation of duties as a method of assignment of tasks is obvious.12 Under the terms of this proposal, the burden of working during free time or preparation periods is spread evenly throughout the bargaining unit. No single teacher will be forced to work longer hours than any other.

On the other hand, duty rotation does not illegally interfere with the employer's legitimate interest in seeing that the work gets done, for this proposal does not prevent the District from assigning work to the bargaining unit. The proposal is, therefore, negotiable.

For the reasons articulated in the discussion of Article X, paragraph 8, paragraph 12, as written, is beyond the scope of representation.

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[11] San Mateo, supra.

[12] See Central Cartage, Inc. (1978) 236 NLRB 1232 [98 LRRM 1554]; American Cyanamid Co. (1970) 185 NLRB 981 [76 LRRM 1480].

ARTICLE XI — HOURS OF WORK

The disputed sections of this proposed article read:

1. Daily school sessions shall be published by the District prior to the commencement of the school year. The proposed schedule of daily school sessions shall be forwarded to the association as soon as possible before the 1st day of school. These daily schedules shall be mutually agreed upon by the principal and faculty.

5. The time for regularly scheduled faculty meetings will be mutually agreed upon by the Certificated Employees and their immediate supervisors. Grade level meetings, department chairman meetings and other faculty meetings shall not exceed four (4) hours per month beyond the normal teaching day unless mutually agreed upon.

6. Yard duty schedules shall be mutually agreed upon by the principal and faculty.

7. Preparation Time - Classroom teachers shall, in addition to their lunch period, have daily preparation time during which they shall not be assigned to any other duties as follows:

   K-3 teachers - one (1) hour within the school day.

   4-6 teachers - one (1) hour within the school day.

   7-8 teachers - two (2) hours within the school day.

   A. Teachers shall utilize their preparation period for the development of lesson plans and such other activities as relate directly to the improvement of instruction.

B. Teachers who find it necessary to leave the school building during their preparation period to obtain materials, etc., for classroom presentations must first notify their immediate supervisor. If the immediate supervisor is not available, notification will be made with the designated alternate.

9. Ten (10) staff development days per school year will be allowed and encouraged for staff development training. The following times will be followed:

Grades 1-3	1150 minutes per week
Grades 4-8	1200 minutes per week

Additional staff development days up to one per week may be scheduled. However, the minimum instructional time shall be 1200 minutes per week for grades 1-3 and 1400 minutes for grades 4-8, exclusive of recesses and lunch periods.

Exceptions to this policy will be: The one week of minimum days scheduled in the fall and spring semester for parent conferencing. During these two (2) weeks the following state minimums will be followed:

Grades 1-3	1150 minutes
Grades 4-6	1200 minutes

13. The instructional time for children in Special Education shall be in accordance with the State Education Code.

The District claims that these proposals are outside the scope of bargaining because they intrude on the legitimate entrepreneurial rights of the District. This is especially

true, the District claims, with regard to paragraph 7— Preparation Time, which, it asserts, relates only to the allocation of duties during the regular working day.

We find that paragraph 1 is related to hours in the same way that article VIII, paragraph 17 is related to wages, (supra, p. 27) Employees have a fundamental right to be informed of the hours which they are expected to work. The proposal does not define "daily school sessions." To the extent the term embraces the numbers of hours the teachers are required to be present—the hours between starting and quitting time—the requirement that it be mutually agreed upon is within scope and must be negotiated.[13]

The general subject of paragraph 5 relates to hours of work because it touches on the amount of overtime employees may be required to work. Faculty meetings may be scheduled outside the regular teaching day. If they are scheduled then, the limitation on the number of hours of faculty meetings per month is nothing more than an attempt by employees to negotiate the number of hours they work during a month. The scheduling of the meetings is also an appropriate subject for bargaining, as

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[13]Amalgamated Meatcutters v. Jewel Tea Co. (1965) 381 U.S. 676 [59 LRRM 2376J; Palos Verdes PeninsHIa Unified School District/Pleasant Valley School District, (7-16-79) PERB Decision No. 96.

it is determinative of whether these requirements fall within overtime and, if so, when the overtime hours of work occur.

Yard duty schedules relate to hours because yard duty may fall during the duty-free periods of teachers, thereby increasing their working time. Even if this task were not performed during duty-free periods, the proposal impacts on hours that teachers are required to work.

Because the Association does not attempt to preclude the District's right to assign the task of yard duty to the bargaining unit, but merely seeks to bargain over the method of work assignment, this proposal does not intrude on any significant managerial prerogatives.[14]

The issue of preparation time has been addressed in San Mateo City School District (5/20/80) PERB Decision No. 129, where we found that the employer had violated section 3543.5(c) by unilaterally reducing the amount of preparation time available to the teachers. By reducing preparation periods, the employer lengthened the working day because the requirement that teachers prepare was not altered and the reduction impinged on nonduty time. The change in preparation time was, thus, a matter within scope because it affected hours of work.

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[14]West Orange, New Jersey PERC. 4 NJPER 4136 (1978); see also Central Cartage (1978) 236 NLRB 1232 [98 LRRM 1554] holding that the employer's unilateral change instituting set job descriptions for employees who rotated their jobs previously was bad faith bargaining.

Though the San Mateo employer claimed that the change in preparation time merely constituted a reshuffling of assignments within the regular workday, the Board answered: "Had the District's actions not impinged on the employees' personal time, both during and outside the working day, that argument might be given greater consideration here." (San Mateo p. 17).

Here, the District claims that the preparation time proposal interferes with its ability to assign duties within the regular working hours.

By proposing that teachers be given time off from their regularly assigned duties for the purpose of preparation, the Association seeks to shorten the duty day in order to perform work-related activities. The time spent during the normal workday preparing for class may represent time that employees will not spend at other duties. The proposal clearly relates to hours.15 Consequently, the JCTA's proposal on preparation time is within scope and must be negotiated. The District's expressed concerns can be accommodated through its response to the proposals.

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[15] In Palos Verdes/Pleasant Valley supra., PERB held that the length of the teachers' instructional day is negotiable. See also Camp & McInnis, Inc. (1952) 100 NLRB 524 [30 LRRM 1310]; Weston and Brooker Co. (1965) 154 NLRB 747 [60 LRRM 1015].

Paragraph 9 seems to propose employees[1] release from normal working day obligations for the purpose of pursuing job-related training and development. The proposal does not indicate where or how or for whom the training would be provided or what pay considerations may be involved. To the extent the proposal is manifest, it calls for a reduction in the number of hours of work for the purpose stated. Whether the purpose behind the request for reduction of hours or the pay consequences that may result is acceptable to the employer or not, the negotiations process is the proper vehicle for the expression of management's point of view. But the subject of reduction of working hours is certainly within the scope of representation, and the District is obligated to respond to the Association's proposal.16

Paragraph 13 is not negotiable. As we pointed out in Palos Verdes/Pleasant Valley,17 teacher instructional time and pupil instruction time are not necessarily the same. The time that students spend receiving instruction is not related to an enumerated subject in a manner which brings the subject into the field of mandatory negotiation. The determination of the time students will spend in instructional activities is a

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16palos Verdes/Pleasant Valley, supra; San Mateo, supra.

[17]Palos Verdes/Pleasant Valley, supra.

matter of educational policy fundamental to the mission of the District and left to managerial prerogative.

ARTICLE XIV -- SCHOOL CALENDAR

3. School Year Calendar -

A. There is to be established a Joint District and Association Calendar Committee consisting of the Bargaining Team and the District's agent.

B. The purpose of such Joint Committee is to develop and prepare a School Calendar. Such task shall be undertaken and completed no later than May 15 of the school year preceeding [sic] the effective dates of such calendar.

C. The Calendar for the school year covered by this Agreement shall be that Calendar as set forth in Appendix B, attached to and incorporated herein.

Appendix B to the proposed contract, which is referred to in paragraph 3.C above, sets the total number of teaching days at 175 and lists the various school holidays during the year.

Despite the District's claim that the school calendar is a matter which impacts primarily on the public and should, therefore, be nonnegotiable, we find that its relation to hours is indisputable.18 AS the Board pointed out in Palos Verdes/Pleasant Valley, supra, the days and hours per day that schools are open for instruction do not always coincide with

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[18] Palos Verdes/Pleasant Valley, supra.

days or hours that teachers are required to work, but there is a sufficient nexus between the calendar (the beginning and ending dates of the school year, the scheduling and duration of holidays, etc.) and the hours of employment to render the calendar a negotiable subject.

However, to the extent that this proposal attempts to determine the hours of instruction students receive, as contrasted with the hours that teachers teach, it intrudes on an area of educational policy that interferes with the District's freedom to fulfill its obligation to achieve its basic mission. To that extent, the District is not required to negotiate on the matter.[19]

ARTICLE XV — SUMMER SCHOOL

> 6. Districtwide special programs for Summer School will be defined as any program unique to the District and not offered in any school within the District. Any Districtwide special program will be staffed from applicants throughout the District after the posting of the vacancies. Applicants will be interviewed by the Summer School Director, and the Head Teacher of the special districtwide program.
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> 7. All Certificated Employees in the District are equally eligible for Summer School employment including those who plan to resign at the end of the regular school year.

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[19] San Mateo, supra.

9. All Certificated Employees desiring Summer School employment shall be placed in teaching positions before other personnel.

10. Where there are two or more applicants for the same Summer School position who, considering all relevant factors, are qualified, seniority of employment in the District shall govern, unless one of the applicants has developed a specific program that has brought a large class enrollment.

Because this article concerns the selection procedure for summer school appointments, the District claims it is outside of scope in that it intrudes on management's prerogative to select employees for extra duties. We disagree with this argument.

Selection procedures applied to bargaining unit members for extra duties that involve extra pay, extra benefits, and extra hours worked bear a logical and obvious relationship to wages, hours, and health and welfare benefits. Since summer employment is also different work, perhaps done at a different school than a teacher's regular school, this article also arguably relates to transfer and reassignment policies. Hence, the district is obligated to bargain over this proposal; provided that summer school positions are included in the unit.[20]

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20 The hearing officer found that the record was insufficient to determine whether summer school teachers were included in the parties' recognition agreement. We affirm this conclusion, and note that PERB rule 33260 et seq, sets forth procedures for disputes such as this one.

We would note, however, that the last sentence of paragraph 6, above, seems to dictate duties of the summer school director and the head teacher, both of whom may be supervisory or management employees. If so, the exclusive representative of the certificated employees may not seek to prescribe their duties and the District need not negotiate on that subject.

ARTICLE XVIII -- LEAVES

> 1. Code Incorporation - The benefits as provided Certificated Employees in section 13453 through 13470 and 13522 through 13552.5 of the Education Code are incorporated into this Agreement except as supplemented in this and the following sections pertaining to leave of absence.

The Education Code sections contained in the article all concern leave rights of certificated employees. The subject of leaves is an enumerated item and, as discussed earlier, the incorporation of related Education Code provisions is an appropriate subject of negotiation. The District may not refuse to consider this proposal.

ARTICLE XVIII — LEAVES

> 6.G. The District shall not refuse to do any of the following because of a Certificated Employee's pregnancy:
>
> (1) hire or employ.
>
> (2) select her for a training program leading to employment or promotion.
>
> (3) bar or discharge her from employment

(4) bar her from training programs leading to employment, reassignment or promotion.

(5) discriminate against her in compensation or in terms, conditions, or privileges of employment.

We find this proposal within scope for the same reasons we found Article III—Discrimination negotiable. By proposing this, the Association attempts to ban employment discrimination against pregnant women. It, thus, touches on virtually all enumerated items: wages, hours, reassignments, transfers, etc.

However, the District is not obligated to negotiate Article XVIII, 6.G.(1). Hiring of new employees is not an enumerated item.

ARTICLE XXI — CERTIFICATED EMPLOYEE EVALUATIONS

3. Q. Only evaluations conducted in accordance with this Agreement may be included in a Certificated Employee's personnel file.

The District interprets this article as an attempt by the Association to control the content of personnel files which, the District claims, are the sole property of the employer. It asserts that maintenance of records is a matter which should remain in the District's total control.

The "ownership" of the employees' personnel files is irrelevant. This proposal is designed to assure compliance with the negotiated evaluations procedure by excluding from personnel files evaluations completed by a process other than that prescribed by the contract. The Association seeks to

prevent the District from relying on non-contract evaluations. As such, this proposal is part of or related to the matter of evaluation procedure and is negotiable.

ARTICLE XXII — RESIGNATION AND DISMISSALS

> 4. Rescinded Notices - The District shall reimburse a Certificated Employee in the amount of three hundred ($300) dollars whenever and at the same time that it rescinds a written notice of intent to dismiss, or notice to dismiss. Moreover, the District shall also reimburse any Certificated Employee who has received either of the above written notices for any expenses incurred in connection with such Certificated Employee's search for other employment.

The District objects to this proposal, claiming that its purpose is to impose an illegal penalty on the District when it rescinds notices of dismissal. The Association maintains that this is related to wages in that it is akin to severance pay, an unarguably negotiable subject in the private sector.

In its present form, the requirement that the District reimburse affected employees $300.00 is a penalty. The proposal seeks damages for an administrative error. It bears no relation to actual expenses which employees may incur as a result of their dismissal notices being rescinded nor does it contemplate compensation for actual termination of employment. Additionally, the penalty aspect of this proposal may be

prohibited by the California Constitution, Article XI, section 10a.[21]

ARTICLE XXIII -- EARLY RETIREMENT

This proposed article reads:

1. The District shall provide an early retirement program for those Certificated Employees eligible; providing that applications for participation submitted to the District by February 1st for the following year. Eligible Certificated Employees shall be those who have attained fifty (50) years of age, have completed a minimum of ten (10) years service to the District.

2. No more than five percent (5%) of the total Certificated staff may enter this program per year, entrance and cutoff requirement being based on seniority.

3. Certificated Employees participating in this program shall be designated as Consultants to the District; and as Consultants they will be considered independent contractors; a contract for which must be entered into for a period not to exceed five (5) years or to age sixty-five (65) , whichever comes first; providing that an Early Retirement Consultant may choose to discontinue the program at the end of any contract year. A Certificated Employee may be reinstated to full-time status, if so requested. If reinstated, the employee shall retain all rights held previous to entering the program.

21(a) A local government body may not grant extra compensation or extra allowance to a public officer, public employee, or contractor after service has been rendered or a contract has been entered into and performed in whole or in part, or pay a claim under an agreement made without authority of law.

4. Early Retirement Consultants shall perform such services for the District as may be mutually agreed upon; for a minimum of twenty (20) days per year.

5. Participation in health and welfare benefit as provided in this Agreement may be continued with the District incurring the cost of premiums involved.

6. The annual compensation shall be $4,000.00.

The District has interpreted this proposal as one which interferes with the State Teachers' Retirement System by supposedly trying to lower the age at which employees would be eligible for benefits.

The content of this proposal would very likely conflict impermissably with the Education Code if it was intended to modify State Teachers' Retirement System benefits. As we read it, however, the purpose of this proposal seems to be to establish a program of reduced working hours and appropriate wages for employees over the age of 50. As such, it is unrelated to the Retirement System and, to the extent that it does not conflict with Education Code provisions, we find it within the scope of representation.

Teachers may have an interest in providing for a reduced workload near the age of retirement. We find that an obligation to negotiate such a proposal, within the parameters set by the Education Code sections pertaining to retirement (e.g., Education Code section 22724) and reduced workloads

(Education Code sections 44922 and 23919), would not significantly interfere with those managerial prerogatives which the District must retain in order to provide an educational system.

The District also argues that this proposal is nonnegotiable because it creates the status of "independent contractors," a category incompatible with that of employee. According to the District, independent contractors are not in the unit, and proposals concerning them are, therefore, outside the scope of representation.

Although the term, "independent contractor" creates some confusion as it is used in this proposal, we do not believe that it turns the entire article into an attempt to bargain about employees outside the unit. The primary intent of this proposal is to provide a future reduced workload scheme and pay for current employees in the unit.[22] To this extent, it concerns the hours and wages of bargaining unit employees.

ARTICLE XXIV — PARTNERSHIP TEACHING

This proposed article reads:

> 1. Definition - Partnership teaching refers to two (2) Certificated Employees sharing one (1) teaching assignment. Such positions may be

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[22] We do note that there is no obligation to bargain over proposals that affect only the rights and benefits of former employees and retirees, Allied Chemical and Alkali Workers v. Pittsburgh Plate Glass (1971) 404 U.S. 157 [78 LRRM 2974] Cf. Titmus Optical Co. (1973) 205 NLRB 974 [84 LRRM 1245], holding that the employer must bargain over changes in retirement benefits of current employees.

created to meet the legitimate and educational special needs of the District and Certificated Employees.

2. Any assignment openings may be available to certificated staff who have indicated in writing to the Personnel Director their desire to teach in partnership. The deadline shall be the same as for all other applications or transfer requests from any of the present certificated staff.

3. Partnership assignments shall be filled only by Certificated Employees who have jointly requested to work together.

4. Partnership position holders may request to be transferred to a full-time assignment.

5. There shall be no discrimination against those who have previously taught in partnership in such consideration for full-time assignments,

6. Responsibilities of an assignment by two (2) partners may be divided and/or allocated according to a plan designed by the partners, with the concurrence of their immediate supervisor. This shall include but not be limited to attendance at regular staff meetings, district meetings, and parent conferences.

7. Absences of three (3) or fewer days at one time may be covered by the other partner providing they have mutually agreed to such a plan. No penalty shall be levied by the District against a partner for such absences.

8. Partners shall be given a pro rata amount of the released time allowed other Certificated Employees for preparation.

9. Partnership Certificated Employees shall be placed appropriately on the Salary Schedule, receive one (1) step increment for each year of service, be given appropriate added increments for advanced degrees, tenure, or longevity, and receive District-paid fringe benefits provided full-time Certificated Employees.

10. In every relationship with the employer and other certificated staff, partnership position holders shall be treated like all staff, except as provided heretofore.

Because this proposal supposedly interferes with the public school employer's ability to decide the nature and level of educational programs, the District objects to the hearing officer's finding of negotiability. If this proposal actually did dictate the District's decisions about the educational programs to be provided, this objection may be well founded. However, the District overlooks the nonmandatory language in paragraph 1; "Such positions [partnership teaching positions] may be created to meet the legitimate and educational special needs of the District and certificated employees," (emphasis added). This article does not require the District to establish partnership teaching positions; it does not even specify guidelines which rob the employer of its ultimate discretion in establishing these positions. By the terms of this article, the District retains full authority to decide when, if, and how many partnership positions to create and, thus, retains essential control of decisions which may be within management's sole prerogative.

The substance of this proposal does relate to the wages and hours of teachers. In describing a partnership teaching arrangement, it impliedly establishes half-time positions which necessarily involve reduced hours and pay for those teachers participating in the program. Paragraph 9 prescribes the rate of compensation (one step increment for each year of service) and the amount of fringe benefits partnership teachers shall receive (the same benefits which are provided to full-time teachers).

This article touches upon transfer and reassignment policies, as it creates a new option for employees who wish reassignment or transfer. In addition to being able to request the traditional transfer to another school or reassignment to teaching another subject, teachers, under the terms of this article, may request reassignment to a partnership position.

Partnership teaching is an understandable matter of concern to employees and management. It provides a system for reduced hours and compensation for those teachers wishing to participate, and affects the professional relationships teaching partners have with each other. Management, on the other hand, has an interest in overseeing an efficient school district with minimum interruption in the educational process. As discussed above, this proposal makes no intrusion on the District's ability to fulfill the public mission of the

school system. We, therefore, find this proposal within the scope of representation.

ARTICLE XXV — CERTIFICATED EMPLOYEE SAFETY

The disputed portions of this article read:

> 1. A Certificated Employee may use that degree of physical control over a student reasonably necessary to maintain order, protect self, property, and the health and safety of pupils.
>
> 2. The District shall give full support, including legal protection and other advisory assistance, to any Certificated Employee assulted while acting in an official capacity.
>
> 4. Certificated Employees shall immediately report cases of assault or attack suffered by them in conjunction with their immediate superior, and to the local police. Such notification shall be immediately forwarded to the Superintendent who shall comply with any reasonable request from the Certificated Employee for information in the possession of the Superintendent relating to the incident or the persons involved, and shall act in appropriate ways as liaison between the Certificated Employee, the police and the courts.

Although traditional health and safety concerns of employees have been generally limited to those conditions brought about by either the negligence of the employer, or hazardous substances or physical conditions peculiar to the occupation, we find no reason to limit the concept of health and safety to those factors. Teachers of public schools are quite legitimately concerned with the threats to physical

safety which may be posed by aggressive and unruly students. This proposal, then, which seeks to offer some guidelines to teachers and management regarding self-protection from students, logically relates to health and safety.

The employees' interest in an article relating to their safety is obvious. Safety and health stand with wages as one of the more fundamental areas of concern in a collective bargaining relationship. The District does not advance and we cannot adduce any manner in which negotiating this proposal would impermissibly intrude on the District's ability to fulfill its mission.

The District does argue that this article supersedes the Education Code and is nonnegotiable for that reason. Education Code section 44807, cited by the District, recognizes teachers' right to use the force reasonably necessary to maintain order and protect the health and safety of pupils. There is nothing in this statute which undermines the teachers' right of self-protection or suggests that teachers do not have the privilege to defend themselves against physical assault. There is no supersession of the Education Code because there is no conflict between the statute and the proposal.

ARTICLE XXVI ~ ASSOCIATION AND CERTIFICATED EMPLOYEE RIGHTS

> 4. In order for the Association to administer this Agreement properly for the benefit of the Certificated Employees and the welfare of the District and to otherwise properly

> represent the members of the negotiating unit, representatives of the Association shall have access to all school buildings to transact official business, for the purpose of observing conditions of employment, and for processing grievances.

In giving Association representatives access to all school buildings, this paragraph bears a logical relationship to grievance procedures. Access is a necessary prerequisite for adequately representing grievants, as it allows the representative to gather evidence, to discuss the grievance with the affected employee, and to generally insure the collective bargaining agreement is being complied with. Access is also usually necessary to present grievances to the employer and, for that reason, has a direct relationship to the grievance procedure.

Furthermore, this proposal bears direct relation to the administration of the collective bargaining agreement itself, as organization representatives may very well require access to school premises to observe whether various terms of the agreement are being complied with. It is well settled that administration of a contract is an essential part of the collective bargaining process.[23] AS the Supreme Court noted in Conley v. Gibson (1957) 355 U.S. 41, 46, [41 LRRM 2089]:

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23 Morris, The Developing Labor Law, Ch. 11, p. 340, and the **protection of** employee rights already secured by contract (emphasis added)

> Collective bargaining is a continuing process. Among other things, it involves day-to-day adjustments in the contract and other working rules, resolution of new problems not covered by existing agreements, and the protection of employee rights already secure by contract. (emphasis added).

Consequently, proposals such as this one, which directly relate to and facilitate the ongoing collective bargaining process, are necessarily within the scope of representation. That the Legislature intended this result is supported by its enactment of Sec. 3543.1(b).[24] This proposal, then, is merely an incorporation of those rights guaranteed by the Act.

ARTICLE XXVI — ASSOCIATION AND CERTIFICATED EMPLOYEE RIGHTS

> 5. Information - The District will, upon request, provide the Association with any documents and/or data which will assist it in developing accurate, informed, and constructive programs on behalf of Certificated Employees and students, together with any other available information which may be necessary for the Association to fulfill its role as the exclusive bargaining representative.

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> 3543.1(b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use 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.

5.A. The Association will be provided with copies of minutes of official Board of Trustees meetings and all other documents related to matters set forth in the above paragraph that are distributed to Board of Trustees members at official meetings.

To the extent that this proposal applies to information necessary to the Association for fulfilling its role as exclusive representative of the certificated employees, we find it negotiable. Paragraphs 5 and 5.A. potentially relate to all enumerated subjects because access to information in the employer's control is a necessary prerequisite for meaningful bargaining on any subject.[25] For example, the Association would be precluded from effectively bargaining over wages and other economic issues unless it had the projected income of the District and other financial data. Similarly, a grievance procedure would be rendered meaningless without access to the information necessary to police the contract, (accord, J. I. Case, supra). Negotiating over the proposed obligations would not significantly add to the District's already existing legal duties to make information public[26]

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[25]Aluminum Ore Co. v. NLRB (7th Cir., 1942) 131 F.2d 485 [11 LRRM 693]; J. I. Case v. NLRB (1958) 253 P.2d 149 [41 LRRM 2679], holding "that wage data is necessary in order for union to fulfill its obligation to police and administer the collective bargaining agreement.

[26]See California Public Records Act, California Government Code section 6250 et. seq.

However, there is nothing in EERA which requires the District to negotiate access to information that is not related to the employment concerns of the teachers (it need not, for example, negotiate over the requirement to provide data and information to assist the Association in developing programs on behalf of the students).

ARTICLE XXVI — ASSOCIATION AND CERTIFICATED EMPLOYEE RIGHTS

> 10. District School Board Meeting - The District will furnish the Association with nineteen (19) copies of the board agenda and five (5) copies of the board agenda with supporting data for all district school board meetings to be distributed as designated by the Association three (3) days prior to the meeting.

We find this proposal within the scope of representation for the same reasons and with the same limitations stated under paragraph 5 above. If the District believes that this proposal encompasses more than that information concerning the employment relationship, it should voice its objections in sufficient detail to permit negotiations to proceed.

ARTICLE XXVI -- ASSOCIATION & CERTIFICATED EMPLOYEE RIGHTS

> 13. Officials of the Association will be released from regular duties for the purpose of carrying out Association business, without loss of pay, at such times and for such periods as deemed necessary; with appropriate notice to their building principal or immediate supervisor.

This proposal addresses a reduction of working hours. In addition, the proposal seeks compensation for time not worked on behalf of the District. As stated earlier, a reduction of working hours is a mandatory subject for negotiations. What does not appear in this proposal is the limit, if any, on the use or purpose of the released time. If, for example, "Association business" means or includes processing grievances or consulting with the employer on appropriate matters, the proposal would certainly be within scope. (See EERA 3543.1(c)). The record fails to indicate that the scope of the proposal was determined or clarified during the negotiating process. The employer's obligation to voice its objections, confusion, or concerns is paralleled by the organization's obligation to clarify its position and demonstrate the propriety of its proposals. This Board cannot provide that clarification, nor can it write proposals for the exclusive representative. In this instance we are limited to finding that, to the extent this proposal relates to a reduction of working hours without loss of pay, the employer cannot arbitrarily refuse to respond to it. Whether a clarification of the proposal subsequently reveals matters outside of scope must be dealt with at that time.

14. Classroom Privacy -

A. No Recording and/or listening device may be used in a classroom without prior knowledge and

approval of the Certificated Employee.

This article may well seek to prohibit the District's use in evaluations and disciplinary actions of material obtained from covert surveillance. Admittedly, the District has a need to know how its employees are performing in the classroom, but it could easily gather this information by in-person review teams of supervisors. In fact, there is nothing in the proposal which prevents tape recorders from being used, so long as the teacher being recorded knows and approves of the machines' use.

Not only will the mission of the District be unaffected by the proposal, but personnel relations will, no doubt, benefit by the prevention of observation.

14. Classroom Privacy -

B. The contents of Certificated Employees' desks and file cabinets shall be considered the Certificated Employee's private property during that Certificated Employee's employment in the District and shall not be subject to inspection without the knowledge and consent of the Certificated Employee. Substitute Certificated employees shall be permitted to enter a Certificated Employee's desk for the purpose of obtaining needed material.

While this proposal arguably relates to evaluations because it prohibits, by implication, the employer's use of material gleaned from unauthorized inspections of teachers' desks and file cabinets, we find it objectionable. If the proposal were

more clearly directed at that end and did not mandate that the contents of the desks and cabinets be considered the teachers[1] private property, we may have found otherwise. As it reads, it represents an impermissible infringement on the District's ability to function. Any employer must have access to its own files. In this case, the District has a definite need to have at its disposal student records, personnel files, and various other documents which may be kept in teachers' desks or file cabinets. The Association cannot rob the District of its legal rights by declaring off-limits a portion of the working area. For this reason, we find the content of the proposal, as written, nonnegotiable.

ARTICLE XXVII — NEGOTIATIONS PROCEDURES

> 4. Number of Representatives - The Association shall designate not more than nine (9) representatives who shall each receive a sufficient number of hours per week of release time without loss of compensation to prepare for and attend negotiations and impasse proceedings.

By its very terms, this proposal encompasses an apportionment of hours during the working day with concomitant pay considerations for purposes relating to the determination of wages, hours, and enumerated terms and conditions of employment. The proposal does more than "relate to" such matters. It is a proposal which directly deals with both hours of work and wages and, consequently, is negotiable.

ARTICLE XXXII — CONFIDENTIAL FILES

This proposed article reads:

1. The District shall not base any adverse action against a Certificated Employee upon materials which are not contained in such Certificated Employee's personnel file. Moreover, the District shall not take any adverse action against a Certificated Employee upon materials which are contained in such Certificated Employee's personnel file unless the materials had been placed in the file at the time of the incident giving rise to such materials and the Certificated Employee had been notified at such time that such materials were being placed in the file.

2. Unless otherwise agreed to by the involved Certificated Employee, a Certificated Employee's personnel file shall not include ratings, reports or records which (1) were obtained prior to the employment of the Certificated Employee, (2) were prepared by identifiable examination committee members, or (3) were obtained in connection with a promotional examination.

3. Certificated Employees shall be provided any negative or derogatory material before it is placed in their personnel file. They shall also be given an opportunity during the school day and with compensated release time to initial and date the material and to prepare a written response to such material. The written response shall be attached to the material.

6. The District shall keep a log indicating the persons who have requested to examine a personnel file as well as the dates such requests were made. Such log shall be available for examination by the Certificated Employee or Association representative, if so authorized by the Certificated Employee.

7. Access to personnel files shall be limited to the members of the District administration on a need to know basis. Board of Education members may request the review of a Certificated Employee's file at a personnel session of the entire Board of Education. The contents of all personnel files shall be kept in the strictest confidence.

8. Negative or derogatory material in a Certificated Employee's personnel file shall be destroyed after remaining in the file for a period of two (2) years.

9. The District shall maintain the Certificated Employees' personnel files at the District's central office. Any files kept by the Certificated Employee's immediate supervisor shall not contain any material not found in the district's files.

Although this proposal is entitled "Confidential Files," its purpose relates primarily to evaluation procedures. The first paragraph prohibits any adverse action by the employer based on materials not contained in the employee's personnel files. Although "adverse action" is not precisely defined, we assume that it includes suspensions, dismissals, and other disciplinary actions and negative evaluations of employee performance.

Paragraph 2 also attempts to limit the material on which evaluations of performance are to be based by requiring the personnel file, a likely source of evaluative material, to be free of specified material. Similarly, employees would have a chance to comment on negative evaluatory material under the

terms of paragraph 3, a common procedure in evaluation processes.

The remaining paragraphs all relate in the same way to evaluations, either by limiting the nature of material which could be used to evaluate, or by requiring negative assessments to be destroyed after two years, or by limiting management's access to files containing evaluations.

The District claims that this proposal supersedes the Education Code and is, therefore, nonnegotiable. Education Code sections 44031 and 35283 are offered as the alleged superseded statutes. Section 44031 grants employees the right to inspect their personnel files and provides released time for reviewing and commenting on derogatory material. It does not conflict in any way with the proposal. Accordingly, we reject the District's claim of preemption. Section 35253 gives the District discretion to destroy records under certain conditions. There is no conflict between the proposed article and this statute because of the specific grant of discretion to the District.

The District further argues that the maintenance of files and their location are within the purview of managerial prerogative. We do not find this argument persuasive in light of the minimal intrusion into managerial decision making that procedural matters such as location of files and their

destruction schedules represent. The primary effect of this article concerns access to pertinent records. Accordingly, this article roust be negotiated.

The Section 3543.6(c) Charge

I affirm the hearing officer's finding that the Association did not insist to impasse on negotiating matters outside the scope of representation and, for that reason, his dismissal of the District's unfair practice charge. At any rate, I find the District is not obligated to negotiate those proposals determined to be outside scope and would dismiss related portions of the Association's charge.

By: / Harry Gluck, Chairperson

Member Moore's concurrence and dissent begins on page 65.

The order in this case begins on page 144.

Barbara D. Moore, Member, concurring in part and dissenting in part:

Perhaps the most pivotal part of any collective negotiating statute is the scope of representation. The Legislature's enactment of a system of bilateral decision making begins and ends with negotiability. Interpretation of the typically laconic phrases used to define the negotiating parameters requires acknowledgment that, while certain decisions will be outside of scope and will remain within the employer's domain, an overly restrictive view of negotiability may result in substantially obstructing the very purpose of the legislation.

In San Mateo City School District (5/20/80) PERB Decision No. 129 and in Healdsburg Union High School District (6/19/80) PERB Decision No. 132, I have set forth my interpretation of the scope of representation language found in section 3543.2 of the EERA. As the Chairperson notes, (Ante, p. 6)], the test for determining negotiability begins by assessing whether the subject matter addressed in the proposal bears a logical and reasonable relationship to wages, hours, or the statutorily enumerated terms and conditions of employment. This relationship is a threshold matter and, as I stated in Healdsburg, supra, p. 13, that analysis must be applied to each proposal under submission. The balancing of competing employer and employee interests is thereafter undertaken not, as the Chairperson appears to suggest, (Ante, p. 6), in order to

determine whether the requisite relationship exists between proposals and enumerated subjects but in order to accomplish the equally important task of insuring that the accommodation which is implicit in the negotiating process is appropriate. In my view, the determination of negotiability is most aptly rendered through reliance on a two step process. (See Healdsburg, supra, p. 12). The difficult task of considering and weighing the relative interests of the employees and the employer is unnecessarily obfuscated by relying on an analysis which injects these balancing factors into a determination of the requisite relationship.

As stated in San Mateo, supra, p. 36, each proposal that is logically and reasonably related to wages, hours, or the enumerated terms and conditions of employment is then analyzed in terms of its degree of concern to the employees and employer, the suitability of the negotiating process as a means of resolving the dispute and whether the employer's obligation to negotiate would significantly abridge its managerial prerogatives or educational and public policy considerations.

The Chairperson posits that the District's test of significant impact is inappropriate because it removes from the employees' province the task of assigning significance to various subjects contained in negotiating proposals. I am in agreement that the employer's obligation to negotiate will not be excused because the District concludes that the proposal

does not significantly impact on employee concerns. I do not agree, however, that the Legislature, in enacting this statute, drafted the language of section 3543.2 without judging whether specific items bore significance to employees. As set forth in my opinion in San Mateo, supra, p. 34, I view the scope language as exemplifying the Legislature's response to critical concerns of employees, employee organizations, employers, other interested parties and to the concerns of the Legislature itself.

In my view, the District's test requiring a significant impact is problematic because it in fact imparts no "test" but, instead, submits unilaterally determined conclusions. Indeed, the need to independently consider the threshold relationship analysis and the balancing of competing interests is made manifest by the District's formula. The employees' concerns and the employer's interests and prerogatives coupled with educational and public policy considerations are all components of a delicate and essential balance.

In this case, as in Healdsburg, supra, the District argues that various negotiating proposals are nonnegotiable because, based on the language of section 3540 of the EERA, they supersede provisions of other existing laws. My disagreement with certain of the District's specific assertions regarding supersession is set out infra. However, as I stated in Healdsburg, supra, EERA's supersession prohibition can only

exist where actual conflict with Education Code sections is revealed.[1] Therefore, I am in agreement with the Chairperson that proposals which concern matters merely addressed by portions of the Education Code are not, for this reason, rendered nonnegotiable. As I stated in Healdsburg, supra, p. 18, to attach such an interpretation to the supersession language could have the anomalous result of severely restricting the purpose of the EERA. I therefore conclude that, where a provision of the Education Code impels the public school employer to take certain action or where the statutory language evidences an intent to set an inflexible standard or to insure immutable provisions, the parties are prohibited from negotiating a provision which directly conflicts with the imperative portions of the Education Code.

I am in general agreement with the Chairperson's discussion regarding the employer's duty to interpret and evaluate proposals submitted for negotiation. As stated in Healdsburg, supra, p. 8-9, both parties' obligation to participate in good faith in the negotiating process requires that positions be

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[1]As the Chairperson states, the language which prohibits supersession is complex and admittedly susceptible of varying interpretations. However, I am unable to agree with the Chairperson's suggestion that the language of section 3540 lends itself to a construction that it pertains only to systems, such as the civil service system, rather than to specific, individual personnel policies. I find that a labored construction which is not consistent with the overall statutory scheme.

delineated, that proposals be refined and, through discussion, that the parties attain clarification and mutual understanding of the proposal's intent.

In its exceptions, the District asserts that many of the hearing officer's conclusions are erroneous because, due to the paucity of evidence presented at the hearing, the decision rendered is not supported by the evidence. Perhaps this resulted because there was a failure to fully utilize the process of negotiation to explore the parameters of the proposals and the relationship to enumerated subjects. Whatever the cause, had additional evidence been presented at the hearing, both the hearing officer and the Board itself could have rendered a more precisely delineated decision. However, I do not perceive the relative scarcity of evidence as a fatal flaw in the hearing officer's decision.

I am in essential agreement with the Chairperson's discussion regarding the burden of proof and his conclusion that the question of negotiability is one of law to be decided in accordance with the language of the EERA and, specifically, with section 3543.2 of the Act. The conclusions set forth in this discussion are based on the language contained in the proposals and, on this basis, the question of negotiability can properly be decided. Unquestionably, had there been more evidence as to the meaning and intent of certain proposals, the Board's determinations of negotiability could have been

somewhat more precise. That difficulty has been dealt with by setting the parameters of negotiability and leaving to the parties the task, which is rightfully theirs, of refining the proposals through the bilateral give and take of negotiating. The Chairperson affirms the hearing officer's dismissal of the 3543.6 (c) charge against the Association. I agree with this result.

Article III - Professional Dues or Fees and Payroll Deductions

Article III concerns professional dues or fees and payroll deductions. The District objected that the Association's listed payroll deductions would supersede provisions of the Education and Government Codes that set forth specific authorized deductions. The District also declined to negotiate as "out of scope" "any other plans or programs jointly approved by the Association and the District."

Preliminarily, I agree with the conclusion of the hearing officer and the Chairperson that payroll deductions are negotiable because they relate to wages. The hearing officer's decision summarizes the matter succinctly:

> The subject of wages includes not only how much compensation an employee will receive for services performed, but also the manner in which the compensation will be disbursed to the employee. [Citation] Payroll deductions are one mode of dispersal and, therefore, fall within the scope of representation. (H.O. Proposed Decision, p. 20).

I also agree with the Chairperson's finding that not all payroll deductions must be negotiated, only those deductions where the relationship to an enumerated subject in section 3543.2 can be demonstrated. Each proposed payroll deduction must be examined to determine a nexus between the deduction and an enumerated subject in section 3543.2.

I further agree with the Chairperson that deductions for annuities, savings bonds and credit union accounts are within scope.

I concur with the Chairperson's interpretation of Abood v. Board of Education (1977) 431 U.S. 209 and find it inapplicable to the current facts.

Although I agree with the District's characterization of the King Radio Corp. v. NLRB (10th Cir. 1968) 398 F.2d 14 [68 LRRM 2821] case as inapplicable to the current facts, I nonetheless find that the proposal is negotiable because of the relationship to wages.

The District asserts that the subject of payroll deductions has been preempted by the Legislature which has specifically authorized certain payroll deductions (e.g., sections 1152 (savings bonds); 1155 (credit unions); 1156 (insurance premiums, employee organization dues, credit union shares, payments to state agencies); 1157.1 (dues for employee associations); 1157.2 (charitable organizations); 1157.3 (dues in employee organizations, i.e. unions); 1157.6 (retired employee organizations); and 3543.1 (giving employee

organizations the right to have the employer deduct membership dues pursuant to Education Code sections 45060 and 45168)). However, the statutes authorizing certain payroll deductions do not preclude other payroll deductions from being negotiated. To the contrary, the Legislature's authorization of payroll deductions buttresses the Association's position that this is a proper method of distributing wages.

Finally, I agree with the Chairperson's conclusion that the remaining portion of the proposal dealing with "other plans and programs . . ."is within scope for the reasons articulated in his opinion. So long as the Association can show the nexus between a payroll deduction proposal and an enumerated subject in section 3543.2, the employer has the duty to negotiate on that issue.

Article IV—Nondiscrimination

Article IV of the proposals, which concerns nondiscrimination, was found by the hearing officer to be negotiable to the extent that it relates to transfers, evaluation procedures and other enumerated subjects. In excepting to this conclusion, the District argues that the negotiability of this proposal is pre-empted by existing laws which afford employees adequate protections. Therefore, the District asserts, subjecting this proposal to the negotiating process would require the parties to engage in an idle act.

With regard to several proposals addressed in the Healdsburg case, I expressly rejected the argument that the the availability of alternative remedies is a basis for rendering a proposal nonnegotiable. While the discriminatory acts which would be prohibited by the instant proposal may also be challenged on the basis of other statutory provisions, the Association is nonetheless free to exercise its judgment in determining that a benefit is derived from including this protection in their negotiated agreement. I therefore do not conclude that the Association's right to negotiate an agreement covering matters which are within the scope of representation or this Board's power to enforce that right is vitiated by the existence of provisions in the Education Code which provide similar protections unless those provisions expressly reveal an intent that they serve as the exclusive forum. The Education Code provisions cited by the District impose no such limitation.[1]

I find, therefore, that this proposal is negotiable to the extent that it relates to wages, hours, enumerated terms and conditions of employment and matters related thereto. As I

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1 In Local 12, United Rubber, Cork, Linoleum & Plastic Workers of America, AFL-CIO (1964) 150 NLRB 312 [57 LRRM 1535], the NLRB similarly concluded that its powers and duties were "in no way limited by Title VII" of the Civil Rights Act of 1964 noting the Congress' rejection of proposed language to the Civil Rights Act which would have created exclusive jurisdiction with the Equal Employment Opportunities Commission.

concluded in Healdsburg, supra, with regard to the nondiscrimination clause, there is a clear and strong employee interest in insuring nondiscriminatory treatment, and this interest is not overridden by any legitimate employer concern. I concur with the Chairperson's determination that requiring negotiations on this proposal abridges no managerial prerogative and with his finding that the negotiation process is well suited to the airing of the parties' concerns.

Article VI—Public Charges

The Chairperson suggests that the breadth of this proposal is limited to prescribing a "method available to employees for answering public complaints made to their employer about job performance . . ." and as such is related to an enumerated term and condition of employment, i.e., "procedures to be used for the evaluation of employees." I agree with the Chairperson that the subject matter of this proposal is negotiable, but only to the extent it relates to evaluation procedures or any of the other enumerated items within scope. By its express terms the proposal is not limited to job performance complaints, but, instead, may be broadly read as encompassing any type of public complaint involving a certificated employee.

The Chairperson also states that "it may be safely assumed that teacher evaluation procedures include a review of

complaints . . . pertinent to performance." The testimony was to the contrary; in this District the evaluation handbook does not provide for utilization of public complaints as a part of the evaluation procedure. This current practice of nonuse of such complaints by the District in conducting employee evaluations does not however render this item nonnegotiable. It is negotiable notwithstanding the District's present practice because it is nonetheless related to an enumerated term and condition of employment namely, the employees' interest in negotiating a procedure regulating the use of public complaints for evaluation purposes.

Certain aspects of paragraphs 2 and 3 of this proposal would impose a duty on parties who are strangers to the employment relationship, but the overall thrust of those paragraphs is to ensure that the affected employees are afforded minimal due process rights. These paragraphs are negotiable to the extent that they incorporate due process considerations into the evaluation procedure. While the proposal in its present form is objectionable in that it seeks to impose duties on third parties, the proposal could be refined by removing the mandatory requirement in paragraph 2 that the complainant meet with the employee and in paragraph 3 that the complainant set forth the complaint in writing and provide, instead, that if the complainant does not do so the complaint shall not be considered. I share the Chairperson's

view that this proposal is an example of one which requires refinement by the parties.

The provision in paragraph 3 for released time to initial and comment on the complaint does not conflict with Education Code section 44031. (See discussion regarding Article XXXII, infra.) Likewise, the grounds for adverse action by the District against an employee set forth in paragraph 5 does not conflict with the grounds for dismissal of a certificated employee set forth in Education Code section 44932.[2]

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[2]Education Code section 44932 provides that:

> No permanent employee shall be dismissed except for one or more of the following charges:
>
> (a) Immoral or unprofessional conduct.
>
> (b) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.
>
> (c) Dishonesty.
>
> (d) Incompetency.
>
> (e) Evident unfitness for service.
>
> (f) Physical or mental condition unfitting him to instruct or associate with children.
>
> (g) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.

The District claims that the requirement contained in paragraph 4 that allegations which are found to be untrue be destroyed immediately violates section 6200.[3] I have found in my discussion concerning Article XXXII, _infra_, that the District may only destroy public records in accordance with the procedure set forth in California Administrative Code, title 5, sections 16020, et seq. That procedure does not permit the "immediate" destruction of any records and thus, the aspect of paragraph 4 requiring the "immediate" destruction of untrue

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> (h) Conviction of a felony or of any crime involving moral turpitude.
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> (i) Violation of section 51530 of this code or conduct specified in section 1028 of the Government code, added by Chapter 1418 of the Statutes of 1947.
>
> (j) Violation of any provision in sections 7001 to 7007, inclusive, of this code.
>
> (k) Knowing membership by the employee in the Communist Party.

[3]Section 6200 provides:

> Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, wilfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person to do so, is punishable by imprisonment in the State prison not less than one nor more than 14 years.

allegations regarding a certificated employee conflicts with those regulations. This aspect of paragraph 4 is therefore nonnegotiable.

This proposal is negotiable to the extent indicated in the above discussion.

Article VII - Employment Classi]fication and Assignment

Article VII concerns classification and assignment of employees. In its exceptions, the District argues that this proposal is nonnegotiable because it contains "an impermissible restatement and/or revision of a multitude of Education Code sections," and because it evidences a "blatant attempt to infringe on management's right to select, classify, assign, and direct its personnel."

While I am in agreement with the Chairperson's determination that certain portions of the Article are negotiable, I find that paragraph one is outside of scope. That proposal provides that assignment and classification of certificated employees be directed with foremost consideration given to student welfare and continuity of instruction. This proposal bears a logical and reasonable relationship to employees' wages, hours and benefits because disruption of educational programs can undeniably impact on the certificated employee's working conditions. However, in my view, this

relationship is outweighed by the employer's legitimate interest in educational policy concerns and its managerial prerogatives in structuring and directing its workforce.

As I indicated in my opinion in San Mateo, supra, educational policy concerns as well as managerial interests must be considered in the balancing phase of negotiability decisions. In reference to this proposal, the employer may not be compelled to negotiate with the organization as to educational continuity itself. It is up to the District to structure and direct the continuity of instruction. The manner in which such policy decisions impact on employees' wages, hours, or benefits will, of course, be subject to negotiations. However, the employer is warranted in refusing to negotiate with regard to decisions which intrude on the educational process and the instructional program. (See New Rochelle (7/29/71) 4 PERB 3704, in which the New York PERB held that the public school employer must determine the manner and means by which educational service is rendered; Yorktown Faculty Association (5/13/74) 7 PERB 3051, in which curriculum development was held nonnegotiable as a matter of educational policy; Federal Way Education Association v. WPERC 1977-78 PBC 36827, in which the Washington state court held that educational programs were the sole responsibility of school officials.) Thus, paragraph one of Article VII is nonnegotiable.

The Chairperson finds that the classification system set forth in paragraph 2.A.-C. of this article is negotiable because it clearly relates to wages and health and welfare benefits and because the proposal does not conflict with the Education Code nor does it require acts at variance with those statutorily demanded. I agree with the Chairperson that these proposals relate to wages. I note that, while the term "fringe benefits" is not defined in EERA, I would interpret this phrase to encompass subjects which relate to wages, leave, health and welfare benefits and other enumerated subjects.

The classifications addressed in paragraph 2 A-C are offered for purposes of definition within the negotiated agreement and, as the Chairperson observes, the Education Code sections which pertain to these employee groupings do not _compel_ the employer to act in a manner which would _conflict_ with the proposals. In _Healdsburg_, _supra_, I addressed the supersession language found in section 3540 of EERA and concluded that if a proposal pertains to a subject which is covered in the Education Code, the negotiability of that proposal is not precluded so long as it does not directly conflict with the code provision. Unless the statutory language clearly evidences an intent to set an _inflexible_ standard or insure _immutable_ provisions, negotiability should not be precluded.

In reviewing the Education Code provisions which are pertinent to paragraph 2.A-C, I find no such statutory impediment. Paragraphs 2.A.,B., and C of this proposal divide certificated employees into three categories which do not exactly parallel the divisions of employees as set out in the Education Code. In Education Code section 45024, full-time employees are defined as persons employed for not less than the minimum day.[4] That section specifically permits that such employees can be required to work a longer period than the minimum day as defined. Education Code section 45025 permits any certificated person to serve as a part-time employee, defined as service for less than the minimum day. It provides a salary rate which, like paragraph 2B, is based on a ratio to full-time employees. No category of employees as is defined in paragraph C is contained in the Education Code.

The categorization of employees contemplated by paragraphs 2.A., B., and C does not impermissibly conflict with the Education Code sections referenced above. The stated purpose of these paragraphs is to delineate employee groupings and, as to those groupings, to incorporate the provisions of the agreement which relate to compensation and benefits. The

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[4]As the Chairperson notes, the minimum day when computed on a weekly basis amounts to approximately 20 hours. Education Code sections 46112 through 46116 and section 46141 define the minimum school day for various grade levels.

categories do not in any sense interfere with the employer's right to direct the workforce or obstruct educational policy considerations. I therefore find that the proposals set forth in paragraphs 2.A.,B., and C are negotiable.

Paragraph 2.D. (1-6) of this article pertains to the employment security of temporary employees.[5] In my view, employment security is a matter of vital concern to temporary certificated employees. While I recognize that the employer shares an interest in selecting employees for work assignments, I do not conclude that this concern overshadows the employees' interests in a manner which would require that the subject be excluded from the negotiating process. As stated, infra, with regard to article XV and the selection of summer school positions, the selection of temporary employees for regular positions does not raise the same concerns as are evident in an initial hiring decision. The temporary employees have an employment relationship with the District which is significantly different than the potential employment

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[5]paragraph 2 D (1) refers to sections 13336-13337.3 of the Education Code. These are now contained in sections 44917-44920 of the reorganized Education Code. Although some of these sections refer to substitute employees, since the heading of the proposal is Temporary Certificated Employees I assume the Association seeks to negotiate only as to those employees. To the extent that the proposal is meant to include substitutes, I agree with the Chairperson that it is nonnegotiable since those employees are specifically excluded from the unit.

relationship that a prospective employee has. The employer's right to exercise its judgment with regard to employment qualifications is insured when it initially hires the temporary employees.

While the impact of this proposal raises legitimate concerns relevant to the District's financial situation and its flexibility in administering the educational system, which may entail educational and public policy considerations, I do not view these as outweighing the strong employee interests also involved. As I stated in my concurring opinion in San Mateo, supra, the mere presence of educational or public policy considerations does not render a proposal nonnegotiable (at p. 37). Here, educational and public policy issues other than flexible administration are raised by the proposal to the extent that rehiring or reassignment of experienced teachers may result in benefits to educational goals and, perhaps, the continuity of instruction to students. Therefore, I view the negotiating process as an appropriate forum for resolution of these interests. I also find that no Education Code provision compels action by the District which directly conflicts with the mandate of paragraph 2.D.(1-6). I agree with the Chairperson's conclusion that this proposal permissibly provides supplemental rights to temporary employees and is negotiable.

Similarly, with regard to paragraph 2.E. which refers to home teachers, am in agreement with the Chairperson's finding that this proposal relates to hours and benefits of home teachers. The employer's interest in assigning such work and in implementing educational policies to include such instruction is not intruded upon by this otherwise negotiable proposal.

Paragraph 2.F. of article VII seeks to preclude any assignment of certificated employees to positions requiring qualifications, training or experience beyond that maintained by the individual employee. This proposal bears a clear relationship to reassignment and transfer policies.[6] It also may relate to evaluation procedures. The District's interest in insuring a sound educational program is not offset by this proposal but may in fact be furthered by this item. I therefore am in agreement with the Chairperson's conclusion that it is negotiable.

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[6] I am aware of the fact that reassignment was not an enumerated subject at the time this case arose. However, in accordance with my discussion in San Mateo, supra, pages 33-36, I am unable to conclude that reassignment as a negotiable item was specifically added because it bears no logical or reasonable relationship to wages, hours or other enumerated terms of employment. To the contrary, I view reassignment as affecting the employees' wages and hours because it has the effect of specifically continuing the employment relationship.

Article VIII—Compensation

Article VIII concerns compensation. I am in agreement with the Chairperson that article VIII is negotiable, and I essentially agree with his discussion.

I would also note that the District's assertion that all of the reemployment rights of temporaries and substitutes are addressed in and preempted by Education Code sections 44917-44921 is without merit. These sections deal with classification of substitute and temporary employees and their reemployment rights. Paragraph 2.D. does not conflict with these provisions. Rather, it seeks to determine a method by which regular certificated employees who have been substitutes or temporary employees can obtain credit (and presumably greater pay) based on that experience and in large part tracks Education Code section 44918.

As to paragraph 2, it is entirely consistent with Education Code sections 45038 and 45048 as the Chairperson notes. The latter section specifically provides that payment may be made on the last working day of the month. The District argues that this paragraph is nonnegotiable because it relates to summer school employees and because Education Code section 45049 controls. As to the latter argument, this proposal does not conflict with Education Code section 45049 and is negotiable provided that summer school positions are in the unit. As

discussed with reference to article XV, *infra*, that issue cannot be determined here, and there are unit modification procedures to deal with such disputes (PERB rule 33260 et. seq.).

Paragraph 15 is negotiable. The hearing officer notes that both public and private sector cases are in accord. (H.O. Proposed Decision, p. 39)

Paragraph 17 is negotiable for the reasons set forth in the Chairperson's opinion.

Article X—Working Conditions

Article X relates to working conditions. The Association asserts that each disputed paragraph relates to evaluation procedures.

Paragraph 1 can arguably impact evaluation procedures since a lack of appropriate classroom facilities could adversely affect a teacher's evaluation. This proposal may also relate to class size, as the Chairperson suggests, since the size and type of classroom may vary depending on class size. I would permit employee organizations to compel negotiations on a narrower proposal which would insure that a lack of classroom facilities would not negatively affect evaluations. The current proposal, however, poses too substantial an interference with the employer's interest in directing and

managing the certificated workforce, in making appropriate work assignments and in parceling out available facilities and is therefore not negotiable.

The Chairperson notes that employees' concern with this proposal is the same as they have with their overall ability to perform their job. To the extent this relates to evaluation procedures, I agree. I note, though, that overall ability to perform one's job must be tied to the enumerated terms and conditions of EERA, or matters related to them, to be in scope.

Paragraph 4 attempts to secure a consultation right with building administrators regarding scheduling, assignments, faculty meetings, accounting requirements, and other educational matters.

While section 3543.2 prescribes consultation on certain matters and permits consultation on all other matters, consultation itself is not listed among items within the scope of negotiation. If an item is within the scope of negotiation, the parties are free to propose merely <u>consulting</u> about the item rather than negotiating about it. The Association cannot, however, add to the subjects about which management must confer with it by proposing to negotiate a right to consult about items which are otherwise outside the scope of negotiation and on which consultation is not required by the statute. This would serve to circumvent the statute and bootstrap into

negotiations "consultation" on items which would otherwise be within management's prerogative.

I agree with the hearing officer that the paucity of the record makes it difficult to determine whether the proposed items impact on hours of employment or only on the internal structuring of the normal work day.

As set forth in San Mateo, supra, and Palos Verdes Peninsula Unified School District/Pleasant Valley School District (7/16/79) PERB Decision No. 96 if scheduling or assignments impacts on the number of hours in a day that a teacher would be required to work or the distribution of hours of work, then it is reasonably related to "hours of employment" and is negotiable.

Alternatively, if scheduling or assignments refers to the internal ordering of classes or duties, the item falls within the ambit of management prerogative and is not negotiable.

Presumably the proposal on faculty meetings pertains to meetings required by the District. If such faculty meetings occur outside the normal workday, or if the meetings cut into an instructor's preparation, lunch, rest time or similar time, the item relates to hours of employment and is negotiable.

Similarly, to the extent that accounting requirements placed on teachers impact on available preparation, rest time or similar time periods, the item is negotiable since it relates to hours.

"Other educational matters" is so vague as to defy categorization. I disagree with the Chairperson that this

seeks a mechanism for implementing consultation rights that the Association possesses pursuant to EERA. I agree that procedures for implementing the consultation rights set out in EERA are negotiable. I view this proposal, however, as seeking to give the employees the right to consult about "other educational matters that are decided on a individual school basis." To the extent that this encompasses only those educational matters set forth in EERA, e.g. course content and curriculum, it is negotiable. To the extent it encompasses other matters, it is not.

Like paragraph 1, paragraph 8 may have an impact on employee evaluation procedures because inadequate supplies could obstruct satisfactory work performance. However, as written, this proposal is nonnegotiable because it intrudes on management's right and responsibility to allocate funds for supplies as it deems necessary in order to best implement educational policy. Again, a narrower employee proposal which specified that a lack of adequate supplies would not reflect on a teacher's evaluation would be negotiable as related to evaluation procedures.

Paragraph 10 refers to "adjunct duties". Although management has a right to assign duties during the course of the day, if these duties affect a teacher's preparation time,

rest periods, lunch or breaks, the proposal is logically related to hours and thus negotiable.[7]

Further, I agree with the Chairperson's opinion that employees have a legitimate interest in a fair assignment of tasks and can negotiate to insure that this goal is accomplished.

Paragraph 12 is a nonnegotiable proposal, in my view, because it infringes on management's authority to allocate funds in a manner best designed to effectuate educational policy. While employees may legitimately be concerned with attaining those facilities by which property is secure and safe, this concern is overridden by management's interests.

Article XI—Hours of Work

I agree with the Chairperson that the subject of paragraph 1 is negotiable to the extent the Association seeks to negotiate the number of hours the teachers are required to be present during the workday (Palos Verdes Peninsula Unified School District/ Pleasant Valley School District, supra; San Mateo, supra). However, to the extent the Association seeks to negotiate what classes will be held and when, as the last sentence of paragraph 1 may imply, the proposal is nonnegotiable because it intrudes on the area of the employer's

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[7] San Mateo, supra, and Palos Verdes, supra.

right to direct its workforce and significantly impinges on educational policy issues. It is thus outside scope. The Association's desire to be provided timely notice of the schedule is negotiable.

I agree with the Chairperson that the subject of paragraph 5, i.e., timing of faculty meetings, is negotiable for the reasons he expresses. The District has an interest in controlling its workforce and there are clear educational policy aspects to the number and timing of faculty meetings. These are outweighed in this instance by the employees' interest in negotiating the number of hours they are required to work. However, the scheduling of faculty meetings which are timed so as not to impinge on the employee's nonworking time or preparation time is nonnegotiable.

The Chairperson finds that the establishment of "yard duty schedules [the subject of paragraph 6] which may impinge on nonworking time, i.e., during lunch or breaks, are a required subject of negotiation." I agree. Further, I view such schedules as negotiable if they impact on an employee's preparation time.

The subject of paragraph 7, i.e., preparation time, is negotiable for the reasons expressed in San Mateo, supra. In his dissent in San Mateo, Member Gonzales states that to make preparation time negotiable, if that is defined to include other than ministerial tasks which must be done on campus, is to demean teaching as a profession and turn it into merely a

job. To the contrary, to require teachers to prepare is a job requirement and to prohibit them from negotiating over a requirement which clearly affects the hours they must work is to demean the worth of the teachers' time to the employer. It is manifestly unfair to require work and extract it without pay because it is denominated as "professional" work.

As to paragraph 9, I view this proposal as outside of scope because it is overbroad. While its provisions clearly refer to employees' hours, and possibly evaluation procedures (since training may affect evaluations) it would nonetheless require that the employer agree to a specific and fixed allocation of time for staff development for an undisclosed purpose. While this proposal may be an area of legitimate employee concern and may seek to incorporate a laudable program of needed development, it fatally interferes with management's authority to direct its workforce. The number and timing of such training days may also have strong educational policy implications.

To the extent paragraph 9 addressed providing training relating to, for example, safety procedures, it would be negotiable since this is an expressly enumerated term and condition of employment. However, the proposal in its present form cannot be read so narrowly and in the absence of further refinement it is nonnegotiable.

The hearing officer found the subject matter of paragraph 13 outside scope and thus nonnegotiable. The District excepted

on the ground that there was not sufficient evidence in the record to enable the hearing officer to make that determination. Notwithstanding the District's objections, I agree with the hearing officer and the Chairperson that this matter is outside scope. While this proposal has a relationship to teachers' hours, it unduly encroaches upon the managerial prerogative of the District to establish the requisite amount of instructional time it deems necessary for children in special education.

Article XIV—Committees; Appendix B - School Calendar

I agree with the result reached by the Chairperson and his rationale supporting that result.

The Chairperson did not, however, mention that the District opposes negotiability on the ground that this proposal conflicts with the authority and responsibility imposed on it by Education Code sections 35010[8], 35020[9] and 35161.[10]

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[8] Education Code section 35010 provides that:

> Every school district shall be under the control of a board of school trustees or a board of education.

[9] Education Code section 35020 provides that:

> The governing board of each school district shall fix and prescribe the duties to be performed by all persons in public school service in the school district.

[10] Education Code section 35161 provides that:

That the District has the power and responsibility conferred on it by these statutory provisions cannot be denied. I submit, however, that these provisions do not expressly confer power on the District to unilaterally establish a calendar. Instead, they are to be read and construed in conjunction with the provisions of the EERA which require bilateral discussion between the parties on all matters within the scope of representation.

This proposal is negotiable to the extent indicated by the Chairperson because of its relationship to hours of employment, an expressly enumerated item within scope.

Article XV—Summer School

Article XV pertains to summer school sessions. The District's exceptions address those portions of this article which relate to selection procedures, specifically paragraphs 6 through 10, which are designed to insure regular term teachers priority in obtaining summer school positions. The District maintains that it is not required to negotiate on the selection procedure used for any staffing, including the staffing of

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> The governing board of any school district may execute any powers delegated by law to it or to the district of which it is the governing board, and shall discharge any duty imposed by law upon it or upon the district of which it is the governing board.

summer school positions. It cites Education Code sections 44913, 44923 and 51730 in asserting that it should not be required to negotiate this proposal. Those code sections are neither directly applicable nor in conflict with the Association's proposal.

In considering the negotiability of this proposal, I note that the employer has a valid and legitimate interest in selecting those persons who are to staff the summer school positions available. In addition, however, the employees have a legitimate interest in establishing a procedure by which persons will be selected to fill these positions and in obtaining such positions. Summer school appointment necessarily results in an increase in hours of work and compensation as to those teachers who also work in the regular term. In balancing these interests, I believe that this proposal, which seeks to establish predictable methods of employee selection, including a seniority factor as set forth in paragraph 10, is negotiable.

I view this proposal as distinguishable from initial hiring decisions and more similar to decisions regarding re-employment and re-call. The pertinent distinction is that the employer's interest in initial selection raises concerns as to the qualifications of those persons selected. Such hiring decisions involve areas of managerial prerogative and also impact on educational policy factors. However, when the

employer's selection is restricted to a pool of candidates which have already met with the employer's approval, as evidenced by their previous employment relationship, then I find no impermissible intrusion into the realm of managerial rights but rather find that the meeting and negotiating process is the forum for addressing the countervailing interests of the teachers and the District.

In so holding, I note that I do not find paragraph 6 as establishing that special programs for summer school will be offered. Clearly, the establishment of such programs would be a managerial prerogative with evident educational policy concerns. My conclusion that this proposal is negotiable rests on the assumption that paragraph 6 defines special programs for purposes of setting forth in the agreement which positions will be governed by the selection procedure contained in paragraphs 6-10. I therefore agree that, in most respects, paragraphs 6-10 of this article are negotiable.

The last sentence of paragraph 6 attempts to direct the District to have the Summer School Director and the Head Teacher interview applicants. This intrudes on the employer's right to direct and assign work tasks, and it is not negotiable.

I also wish to comment on the last clause of paragraph 10 which refers to the development of specific programs. In part, this proposal raises issues relevant to educational policy concerns. On balance, however, because it requires that such

programs are a factor to be considered in summer school selection, I find that managerial interests are not violated, and the proposal is not rendered nonnegotiable because of this portion.

I am in agreement with the Chairperson that all of the above are negotiable if summer school positions are in the unit. I also agree that unit modification is the appropriate way to resolve this question.

Article XVIII—Leaves

The District has submitted exceptions to the hearing officer's conclusions regarding paragraph 1 and paragraph 6.G. of article XVIII. Paragraph 1 of this article seeks to incorporate various Education Code provisions which pertain to leaves and paragraph 6.G. prohibits the employer from using pregnancy as the basis for several employment related decisions. As to paragraph 1 of this article, I am in agreement with the Chairperson that this proposal, which incorporates the specified Education Code provisions regarding leave, is negotiable. I note that paragraph 1 refers to other paragraphs of this Article as supplementing the Education Code sections specified in paragraph 1. Since none of those paragraphs were excepted to by the District, I am addressing only the incorporation of the specified code sections.

As the hearing officer concluded, the supersession language of section 3540 of the EERA prohibits the negotiability of proposals which would result in the supersession of provisions set forth by the Education Code. In this instance, however, by incorporating the Education Code sections into the parties' negotiated agreement, the employer is merely obligated to act in _conformity_ with those statutory specifications. Thus, because leave is a specifically enumerated term and condition of employment and because the employer's interest in managing employee leave is not jeopardized by this proposal, I agree with the Chairperson's conclusion that it is negotiable.

The District argues that paragraph 6.G. of this proposal is nonnegotiable because various state and federal laws exist which provide adequate remedies for such discriminatory treatment. In my view, paragraph 6.G. is negotiable to the extent that it relates to enumerated subjects set forth in the Act or matters relating to enumerated subjects. In other words, as I said in _Healdsburg_, _supra_, with regard to a nondiscrimination proposal, the District must negotiate this proposal to the extent that it pertains to such matters as setting wages, establishing hours of work, implementing leave and transfer policies, promotions, or evaluation procedures. With regard to the District's argument that this proposal is unnecessary and thus nonnegotiable, as I stated in _Healdsburg_, _supra_, the availability of alternative remedies does not render

an otherwise negotiable proposal nonnegotiable. While Education Code section 44965 pertains to leaves of absence for pregnancy and childbirth, that provision of the statute does not conflict with the Association's proposal.

Thus, I conclude that paragraph 6.G.(2) is negotiable to the extent that training selections affect promotions which in turn relate to wages. (See my discussion with regard to Article XIX in Healdsburg, supra, in which I conclude that promotion is a negotiable subject.) Similarly, paragraph 6.G.(4) is negotiable because of its relationship to reassignment as well as to promotions. Paragraph 6.G.(5) specifically prohibits discrimination as to wages and is thus clearly negotiable. The "terms and conditions" language of subpart (5) is read to incorporate those items which are enumerated terms in the EERA or related to such enumerated terms and, thus, with this limitation, is negotiable. As to paragraph 6.G.(1) and (3), however, these proposals are outside of scope because the employer's decision to hire or fire employees should not be subjected to the negotiation process. While such is not the case in the private sector, under the language of EERA I conclude that on balance the employer's prerogative prevails over the unquestionably strong interest that employees have in these areas. While these actions may be challenged based on other legal obligations imposed on the school districts, the

parties are not permitted, in my view, to intrude on these managerial prerogatives as is contemplated by these subparts.

Article XXI—Certificated Employee Evaluations

The hearing officer concluded that this proposal relates to "procedures to be used for the evaluation of employees" and is negotiable. The District excepts from this conclusion on the grounds that the proposal imposes a limitation on the material that may be kept in an employee's personnel file and does not relate to the actual procedures for the evaluation of a certificated employee.

Employees' evaluations have a direct effect on their future wages, hours of employment, and other enumerated terms and conditions of employment. Therefore, employees have a vital interest in insuring that only evaluations conducted in accordance with a negotiated procedure be included in their personnel files.

While articles VI and XXXII also seek to impose limitations on the contents of personnel files, this proposal, viewed independently, would only prevent the District from including evaluations that are not conducted in accordance with the negotiated procedure in an employee's personnel file; it does not by itself foreclose the District from including other materials in such files.

I conclude therefore that the District's interest in regulating the contents of its files does not outweigh the employees' interest in guaranteeing that their personnel files contain only those evaluations which are properly conducted in accordance with the negotiated evaluation procedure.

This proposal is negotiable.

Article XXII - Resignation and Dismissals

Article XXII of these proposals refers to resignation and dismissal of employees. Since parts 1-3 of this item were not excepted to by the District, they are not included in my review. Part 4 of this article, however, was excepted to by the District. The District argues that the hearing officer was unwarranted in finding that this proposal provides for severance pay, is an economic benefit and is thus negotiable because of its relationship to wages. The District disputes the characterization as severance pay and asserts that this proposal would impose a penalty for withdrawing dismissal notices. The District argues this proposal is nonnegotiable because of article XVI, section 6, of the California Constitution which prohibits gifts of public funds. It also urges that this proposal is in conflict with those provisions of the Education Code which provide procedures for employee discharge.

In its present form, the proposal would require payment of $300 and payment of expenses incurred in connection with an employee's search for other employment. The latter portion of this item is unlike a penalty and is intended as compensation for such efforts incurred as a result of the rescinded dismissal. In conformity with the following discussion, I find it negotiable.

The portion of the proposal which requires the fixed payment of $300, however, is less easily categorized. To the extent that it is intended as a penalty, I am in agreement with the Chairperson that it is nonnegotiable. However, it is also possible to view this demand as a financial award akin to severance pay as the Association asserts.

In general, severance pay is afforded to discharged employees in order to ease the burden that results from loss of employment. It is generally characterized as a form of compensation granted to alleviate the need for economic adjustment brought about as a consequence of unemployment. (Straus-Duparquet, Inc. v. Local Union No. 3, IBEW (2nd Cir. 1967) 387 F2d 649.) It is provided in order to insure a worker whose employment has been terminated funds to depend on until other employment is found. (In re Brooklyn Citizen (1949) 90 N.Y.S.2d 99 [23 LRRM 2429]; In re Public Ledger, Inc. (3rd Cir. 1947) 161 F.2d 762 [20 LRRM 2012].) Since the Association's proposal would require the District to alleviate the financial

hardship occasioned by the period of unemployment which would persist until the dismissal was rescinded, the proposal may be viewed as severance pay because it seeks a similar benefit.

However, it is also possible to view the proposal as imposing a penalty on the employer. The fixed sum of $300 suggests that the primary purpose of this proposal is not to recompense the employee for losses attributable to the dismissal. (Owens v. Press Publishing Co. (1965) 120 A.2d 442 [37 LRRM 2444].) Thus, while this proposal is susceptible to varying interpretations, I conclude, consistent with the following discussion, that the proposal is negotiable to the extent that it seeks severance pay.

I am in agreement that this proposal relates to wages because it contemplates a financial benefit granted to employees whose dismissal notices were rescinded. While I concur with the District's assertion that private sector case law cannot be wholly adopted or viewed as controlling in the public sector labor relations sphere, I nonetheless find the instant proposal bears the required logical and reasonable relationship to wages as is demanded by EERA. The employer's interest in preserving funds, while a legitimate concern, does not rise to the level of rendering this proposal outside of scope. In balance, the employees' interests prevail.

I agree with the hearing officer's conclusion that part 4 does not affect the operation of the Education Code provisions

cited by the District. Part 4, by its terms, does not interfere or intrude on the District's authority to effectuate employee dismissals but imposes a financial burden with regard to rescinded notices of such. The numerous Education Code provisions cited by the District concern the dismissal procedures and are not superseded by this proposal. Only section 44943 of the Education Code pertains to rescinded notices, and it merely affords the employer the option of rescinding dismissal notices. It is thus not in conflict with the proposal.

Finally, the District argues that this proposal is rendered nonnegotiable because it is a gift of public funds in violation of the California Constitution. PERB is charged with the responsibility of enforcing EERA, not the Constitution, and in determining the negotiability of this proposal and the impact of the constitutional prohibition as to gifts of public funds, I am mindful of California Constitution Article III, section 3.5 which limits an administrative agency's power to refuse to enforce statutes on constitutional grounds. This limitation, however, does not preclude the agency's competence to examine evidence offered to the agency in light of constitutional standards or the responsibility to be cognizant of applicable constitutional safeguards. (Goldin v. Public Utilities Commission (1979) 23 Cal.3d 638 [153 Cal.Rptr. 802, 592 P.2d 289].)

I therefore note that in interpreting the California Constitution and the prohibition on gifts set forth in Article 6, section 16, the California courts have established that certain financial gains are deemed permissible to the extent that they effectuate a public purpose. In establishing this test, the court in County of Alameda v. Janssen (1940) 16 Cal.2d 276 [106 P.2d 11, 130 A.L.R. 1141] stated:

> The benefit to the state from an expenditure for a 'public purpose' is in the nature of consideration and the funds expended are therefore not a gift even though private persons are benefited therefrom.

(See also City of Montclair v. Donaldson (1962) 205 Cal.App.2d 201 [22 Cal.Rptr. 842]; California Emp. Etc. Com, v. Payne (1947) 31 Cal.2d 210 [187 P.2d 702]; People v. City of Long Beach (1959) 51 Cal.2d 875 [338 P.2d 177].) In view of this rule, I find no reason to determine that this otherwise negotiable proposal is rendered nonnegotiable because I conclude that a public purpose is served by affording some measure of financial support to those employees who are confronted with dismissal notices which are thereafter rescinded. Negotiability is therefore consistent with the apparent constitutional standard. Thus, while the District is in no way compelled to agree to this proposal, it may not refuse to engage in meaningful negotiations with the employee organization because, to the extent that it is viewed as

severance pay, the provision is within the scope of representation as contemplated by the EERA.

Article XXIII---Early Retirement

The District asserts that if the subject of this proposal is viewed as an early retirement provision, i.e., allowing an employee to retire at age 50, it conflicts with the State Teachers[1] Retirement System which provides that a member of the system may not receive benefits until he or she reaches age 55. A similar conflict is asserted by the District if Article XXIII is viewed as a work reduction proposal because Education Code section 44922H specifies the conditions under which the

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H-Education Code section 44922 provides as follows:

> Notwithstanding any other provision, the governing board of a school district may establish regulations which allow their certificated employees to reduce their workload from full-time to part-time duties.
>
> Such regulations shall include but shall not be limited to the following if such employees wish to reduce their workload and maintain retirement benefits pursuant to Section 22724 of this code or Section 20815 of the Government Code:
>
> (a) The employee must have reached the age of 55 prior to reduction of workload.
>
> (b) The employee must have been employed full time in a position requiring certification for at least 10

District may allow their employees to reduce their workload from full-time to part-time duties.

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years of which the immediately preceding five years were full-time employment.

(c) During the period immediately preceding a request for a reduction in workload, the employee must have been employed full time in a position requiring certification for a total of at least five years without a break in service. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. Time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(d) The option of part-time employment must be exercised at the request of the employee and can be revoked only with the mutual consent of the employer and the employee.

(e) The employee shall be paid a salary which is the pro rata share of the salary he would be earning had he not elected to exercise the option of part-time employment but shall retain all other rights and benefits for which he makes the payments that would be required if he remained in full-time employment.

The employee shall receive health benefits as provided in Section 53201 of the Government Code in the same manner as a full-time employee.

(f) The minimum part-time employment shall be the equivalent of one-half of the number of days of service required by the employee's contract of employment during his

I do not view this proposal as an attempt to alter the provisions of the State Teachers[1] Retirement law. In fact, conflict between the proposal and the State Teachers' Retirement System appears to have been consciously averted. For example, contrary to the District's assertion, the proposal is silent with respect to when employees participating in the program would be eligible to begin receiving retirement benefits. Nor does it specify the retirement service credit such employees would receive while employed part-time.

> final year of service in a full-time position.
>
> (g) This option is limited in prekindergarten through grade 12 to certificated employees who do not hold positions with salaries above that of a school principal.
>
> (h) The period of such part-time employment shall not exceed five years.
>
> (i) The period of such part-time employment shall not extend beyond the end of the school year during which the employee reaches his 65th birthday.
>
> This section shall remain in effect only until June 30, 1983, and as of such date is repealed, unless a later enacted statute, which becomes operative before that date, deletes or extends such date. However, any member who commences part-time employment pursuant to this section prior to June 30, 1983, may continue such part-time employment and receive such retirement benefits and health benefits until the member has completed five years of such part-time employment. (Emphasis added.)

Thus, while this article is labeled as an early retirement proposal, it has more of the characteristics of a reduced workload program which the District is permitted to adopt, by regulation, pursuant to Education Code section 44922. Such regulations must contain, inter alia, provisions regulating the age of such employees, salary, fringe benefits and the minimum number of required working days <u>only if</u> such employees wish to reduce their workload <u>and maintain retirement benefits</u> under the State Teachers[1] Retirement System. This section does not prohibit the District from adopting another program if the employees do not wish to maintain their retirement benefits. Because the employees do not seek through this proposal to maintain their retirement benefits, it does not conflict with Education Code section 44922.

I concur in the Chairperson's statement that the usage of the term "independent contractor" in this proposal creates confusion. For example, in paragraph 3 the proposal refers to the certificated employees participating in the program as "consultants" and "independent contractors." In legal parlance an independent contractor is, by definition, not an employee and different rights and responsibilities are imposed on each class of persons depending on that status. While this proposal is thus, admittedly, somewhat confusing, I view the overall thrust of this article as an attempt to negotiate a reduced workload program for employees in the unit. As such, it is

negotiable because it relates to the hours and wages of the members of the unit.

Article XXIV—Partnership Teaching

This proposal relates to job sharing. The hearing officer and the Chairperson conclude that it is within the scope of representation because it directly relates to wages and hours. I agree. I also concur in the Chairperson's assessment that the proposal relates to transfer and reassignment policies and generally agree with his discussion on this Article.

The District objects to the hearing officer's findings and maintains that this proposal impermissibly invades its managerial responsibilities "to design and maintain the program for its pupils." It cites Education Code sections 51102 and 51041 which relate generally to school districts' obligations regarding establishment of programs. The Association's proposal, however, does not seek to dictate the establishment of partnership teaching positions, nor to set guidelines for establishing such positions, functions which fall squarely within management's domain. The record reflects some history of job-sharing in the District (H.O. Proposed Decision, p. 91). This article merely proposes that, if such partnership positions are created, the exclusive representative has the right to negotiate how the establishment of such positions will

be implemented and that certain procedures will be followed to protect the employment interests of employees who accept those positions.

Paragraph 3 is reasonably related to transfer and reassignment in that it insures, among other things, that only teachers who desire to be transferred to partnership positions will be transferred.

Paragraphs 6, 7 and 9 are all reasonably related to wages and hours of employment, regulating the relative assignments each partner will have, thus affecting hours, (paragraph 6), permissible absences of each partner (paragraph 7), and appropriate salary increments for each partner (paragraph 9).

Partnership teaching will obviously have educational ramifications in a classroom. Only management, with its educational policy mandate, can determine whether such a teaching arrangement is advisable. However, once the decision is made to institute it, employees have a clear interest that fair assignments of such partnership positions are made and that partnership employees receive appropriate benefits and protections similar to regular employees. Thus, the subject of this article is negotiable.

Article XXV—Certificated Employee Safety

Article XXV concerns certificated employees' safety. I agree with the hearing officer's and Chairperson's conclusions

that this provision relates to safety conditions of employment. The hearing officer noted, and I agree, that physical facilities alone don't dictate safety considerations but that human dangers as well can have an affect on teacher's safety.

Section 3543.2 specifies "safety conditions of employment" as a term and condition of employment. The Legislature has thus determined that, as a public policy matter, teachers' interest in safety exceeds competing educational policy considerations such that the subject should be negotiated rather than left completely to the District. I see no educational policy interest or other managerial prerogative that would be served by foreclosing negotiating on certificated employees' safety. While the subject of student discipline has implications for the District's ability to carry out its educational mission, this proposal specifically addresses discipline as it relates to teacher safety. Clearly teachers have a vital interest in being able to defend themselves against assaults by students. As the hearing officer found, such assaults are less likely to take place when the District fully supports its certificated employees in actions resulting from such assaults.

The District maintains that Education Code sections 44014, 44807 and 44808 already afford certificated employees some of the protections that they seek to negotiate here. It also

argues that the subject is covered by the Torts Claims Act, specifically sections 825 and "825(a)" (sic). Consequently, it claims "the entire content of Article XXV is preempted by existing law". For the reasons set forth below, I disagree. Although several of the code sections mirror the paragraphs in this proposal, the paragraphs do not conflict with the enumerated statutes and thus are negotiable.

I agree with the Chairperson's assessment that Education Code section 44807, which recognizes a teacher's right to use reasonable force to maintain order and protect the health and safety of pupils, does not preempt the proposal for the reasons articulated in his discussion.

Education Code section 44808 indemnifies the school district for the conduct of its students when not on school property with specified exceptions. This section is completely irrelevant to the concerns expressed in the Association's proposal.

Education Code section 44014 is almost identical to paragraph 4 of the proposal and does not in any way conflict with that proposal.

Finally, I would note that section 825 requires a public entity, upon request, to defend an employee against claims rising out of her/his employment and to indemnify that employee against any judgment based thereon or any settlement or compromise of the claim or action. Section "825(a)," cited by

the District, does not exist. Conceivably, the District is referring to section 825.2 (a) which requires a public entity to reimburse an employee for any judgment encompassed by section 825 which the employee has already paid. There is no conflict between this proposal and sections 825 or 825.2(a). The Association's proposal that the District give maximum support to an assaulted teacher does not conflict with but rather supplements the legislative mandate set forth in sections 825 and 825.2 (a).

In summary, the Association's proposal is strongly related to safety conditions of employment. The Association's great interest in the safety of its members is not contravened by any overriding management interest, nor do the proposals conflict with existing code sections. They are therefore negotiable.

Article XXVI—Association and Certificated Employee Rights

Article XXVI of the proposals refers to Association and Certificated Employee Rights. The Hearing Officer's conclusions with regard to paragraphs 4, 5, 5.A., 10, 13, 14.A., and 14.B. were excepted to by the District.

The District argues in its exceptions that paragraph 4, which seeks to insure access to all school buildings, is rendered nonnegotiable because section 3543.1(b) of the EERA expressly provides for rights of access. My conclusion that

this proposal is negotiable is in accord with my decision in Healdsburg in reference to article V, subarticle 5.1.1. In that case, I held that EERA's provision granting access rights does not remove from the scope of representation a proposal which seeks to attain contractual guarantees concerning access rights.

Moreover, as the Chairperson notes, (Ante, p. 57), this proposal relates to the administration of the agreement. Items which relate to the exclusive representative's role in administering the agreement are negotiable because such proposals relate to all items that are within the scope of representation and are incorporated in the agreement. As set forth in section 3540.1(h) of the EERA, the meeting and negotiating process is viewed as an effort to reach agreement on matters within the scope of representation. However, the purpose of the meeting and negotiating requirements do not culminate with the parties' agreement. The administration of the agreement, as the Chairperson notes, facilitates the ongoing purpose of the Act. I find, therefore, that paragraph 4 of this article is negotiable.

Paragraphs 5 and 5.A. of this Article refer to access to information and the right to receive the minutes of the Board of Trustees' meetings, respectively. I agree with the Chairperson's holding that these proposals are negotiable to the extent that they seek to review information and materials

necessary to the fulfillment of the Association's role as the exclusive representative. I find it irrelevant to the determination of negotiability that the employer is required to provide the sought-after information because of other statutory provisions.

The cases relied on by the District in its exceptions concern allegations of unfair practices based on the employer's refusal to provide the information or assistance in distribution of materials sought by the employee organizations. In Anaheim Union High School District (5/5/78) HO-U-24 [2 PERC 2103], the hearingofficer held that the public public school employer had not committed an unfair practice by refusing to provide the non-exclusive representative the names and addresses of employees. In so holding, the hearing officer noted that access to names, while not governed by the EERA, might be required by the Public Records Act which, he concluded, PERB is not authorized to enforce. Unlike the issue in Anaheim, the question in this case is not whether the EERA requires that the District provide the information requested in paragraphs 5 and 5.A. of these proposals.12 The issue is

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12The employer's duty to provide such information may arise in the future in the context of an unfair practice charge. It is not at issue in this case, and I therefore make no judgment as to the existence of that duty or the propriety of the hearing officer's decision with regard to the unfair practice charge in Anaheim.

whether the District is required to negotiate as to the proposals and thus the existence of other avenues of access to materials is irrelevant. The employer, of course, may argue at the negotiating table that the information is otherwise available to the employees; however, the analysis of negotiability is not affected by the availability of other remedies or overlapping obligations.

With regard to portions of paragraph 5, the Chairperson indicates, (*Ante*, p. 58), that the EERA does not require the District to negotiate access to information that is not related to employment concerns, such as the requirement to provide data to assist the Association in developing programs on behalf of students. This aspect of the proposal does not relate to enumerated items and intrudes on the employer's educational policy concerns. I agree, therefore, that the employer was not required to negotiate as to this request.

However, the Chairperson also states that in response to this broadly worded proposal, the District is obligated to articulate its rationale in support of its refusal to negotiate. I agree with his conclusion that this information would have facilitated the negotiating process, particularly as to unrefined proposals such as paragraphs 5 and 5.A. The Chairperson's specific discussion of this obligation with regard to these proposals, however, is reminiscent of the hearing officer's decision in *Healdsburg*, *supra*, in which he

found an unfair practice where the Districts failed to respond to the employee organization's proposals with more than a terse refusal to negotiate. As I stated in Healdsburg, supra, the duty to negotiate rests on a finding that the submitted proposal is within the scope of representation, while I agree that the articulation of a rationale aids and furthers the process, it is nonetheless true that no obligation to negotiate and hence no unfair practice exists where the submitted proposal is not related to the enumerated subjects and, on balance, is ill-suited to the negotiating process.

In this case, the District's unfair practice rests on the fact that, while clearly capable of extensive further refinement, certain portions of the proposals set forth in paragraphs 5 and 5.A. are negotiable. To the extent that the District's response to paragraph 5.A. can be segmented, however, it committed no unfair practice by refusing to negotiate a right of access to information related to student programs.

I am in essential agreement with the Chairperson's conclusion that paragraph 4 is negotiable because, by its terms, it logically and reasonably relates to the grievance procedures and contract administration. In so concluding, I am mindful of the employer's concern for uninterrupted educational programs and for other managerial interests, such as school security precautions, which may be affected by this proposal. In sum, however, I believe that these issues can be adequately

addressed during the negotiating process where it would be possible to discuss some regulation of access in a manner that would continue to be responsive to the legitimate needs of the employees. Thus, since access is a basic need that necessarily relates to the administration of the entire negotiated agreement and is an inherent component of an effective agreement, this proposal is, in my view, appropriately relegated to the negotiating process.

I agree with the Chairperson that paragraph 14.A. is negotiable because of its relationship to evaluation procedures. The District has an obvious interest in determining whether its employees are performing adequately in the classroom, but that interest must be balanced against the employees' interest in not being evaluated by virtue of secret tape recordings or listening devices. If this proposal is not related to evaluation procedures, the District has not given evidence as to any other arguably legitimate purpose.

While there is an arguable relationship between the subject matter of paragraph 14.B. and either evaluation procedures or grievances, or both, I agree with the Chairperson that the subject matter of this proposal, as written, is nonnegotiable for essentially the reasons he expressed. I would point out that the proposal is addressed to access to the employees' file cabinets not the District's files. Nonetheless, the proposal does not distinguish between material of the employees in those

files and school materials which the District has a legitimate right and need to have access to.

Article XXVII—Negotiation Procedures

Article XXVII concerns negotiation procedures. The District takes exception to the hearing officer's conclusion with regard to paragraph 4 of this article. That item contemplates that up to nine Association representatives shall be provided a sufficient number of hours per week of released time without loss of compensation in order to prepare for and attend negotiation and impasse proceedings. The hearing officer rejected the District's argument that reference to released time in section 3543.1 of EERA evidences the Legislature's intent to remove the subject of released time from the negotiating process.

I agree with the hearing officer's conclusion that the statute's specific grant of released time does not remove this subject from the scope of representation provided it is otherwise related to wages, hours or enumerated terms and conditions of employment.

Released time, whether granted for preparation or actual meeting and negotiating, relates to hours. It concerns a request that an employee be released from her/his normal working duties and be permitted to engage in tasks connected

with the negotiating process. Also, because this proposal would specifically require that an employee be compensated for these released time hours, it relates to wages. Accord Axelson, Inc. (1978) 234 NLRB No. 49 [97 LRRM 1234], affirmed (5th Cir. 1979) 599 F.2d 91 [101 LRRM 3007].

I find no basis for concluding that the employer's interest and concerns would overshadow a determination that this item is negotiable. What I concluded in Healdsburg, supra, with regard to released time for grievance processing is equally true here: the fact that section 3543.1 of the Act specifically grants released time supports the finding that the relationship to enumerated subjects is not offset by any managerial interest in precluding or regulating the provision of released time. I similarly find that the portion of this proposal which would permit released time for preparation purposes bears a direct relationship to wages and hours which is not offset by any prerogative held by the public school employer. Therefore, I find that this proposal is within scope and should be resolved by resort to the negotiating process.

Article XXXII—Confidential Files

This proposal, like Article XXI and certain aspects of Article VI, generally seeks to impose limitations on the contents of an employee's personnel file. In addition, this

proposal would restrict access to personnel files and would require that documentation be kept indicating what persons have examined particular files.

Employers, employees and the public each have a vital interest in the establishment of proper evaluation procedures. The establishment and maintenance of a high level of instruction by qualified teachers is the goal of each interested group. Conflict arises, as evidenced by this proposal, over the method and means which are to be used to accomplish that goal.

Paragraph 1 of this proposal would prohibit the District from basing any adverse action again an employee on materials which are not contained in the employee's personnel file. Education Code section 44031[13] prohibits the employer from

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[13]Education Code section 44031 reads:

> Materials in personnel files of employees which may serve as a basis for affecting the status of their employment are to be made available for the inspection of the person involved.
>
> Such material is not to include ratings, reports, or records which (1) were obtained prior to the employment of the person involved, (2) were prepared by identifiable examination committee members, or (3) were obtained in connection with a promotional examination.
>
> Every employee shall have the right to inspect such materials upon request, provided that the request is made at a time

including information of a derogatory nature in an employee's personnel file "unless and until the employee is given notice and an opportunity to review and comment thereon." While this section does not expressly provide an employee the right to directly confront his or her accusers, it does inject minimum elements of due process into the procedure. However, neither this statutory provision, nor any other provision of law, prevents the District from taking adverse action against an employee based on other materials not contained in such files (see Cole v. Los Angeles Community College District (1977) 68 CA.3d 785 for an example of a situation where an employee's personnel file contained no derogatory information but where other information which had a detrimental effect was introduced into evidence by the District). Employees are therefore justifiably concerned that any adverse action against them be

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> when such person is not actually required to render services to the employing district.
>
> Information of a derogatory nature, except material mentioned in the second paragraph of this section, shall not be entered or filed unless and until the employee is given notice and an opportunity to review and comment thereon. An employee shall have the right to enter, and have attached to any such derogatory statement, his own comments thereon. Such review shall take place during normal business hours, and the employees shall be released from duty for this purpose without salary reduction. (Emphasis added.)

based only on materials contained in their personnel files which they have access to and this concern prevails over any interest the District may have in initiating actions against an employee based on other materials. For these reasons I concur with the Chairperson's determination that this paragraph is negotiable.

Paragraph 2 of this proposal would prevent the District from including certain ratings, reports or records in an employee's personnel file unless the employee agreed to their inclusion. However, Education Code section 44031 specifically provides that such items in the personnel file are not to be made available for inspection and implicitly provides for their inclusion in the files. Because this paragraph directly conflicts with the statute, I find, contrary to the Chairperson, that this item is nonnegotiable.

The District objects to the negotiability of paragraph 3 on the general ground that the subject is preempted by Education Code section 44031 and on the specific ground that it would grant an employee released time to "prepare a written response to such material." The District argues that Education Code section 44031 only grants an employee released time to "review" derogatory information in a personnel file and that it does not expressly authorize released time to prepare written comments.

The District asserts an overly restrictive interpretation of Education Code section 44031. This aspect of paragraph 3 is negotiable because it does not conflict with Education Code section 44031; it merely constitutes an expansion of the rights provided by that section.

Paragraph 6 would require the District to keep records indicating what persons have perused an employee's personnel file. That information could be relevant to an employee or the Association when processing a grievance. Further, those parties may be interested in determining whether an employee's superior reviewed the personnel file before preparing an evaluation of the employee.

Contrary to the District's claim, paragraph 7 does not violate the Public Records Act (Code sec. 6250, et seq.) but instead, is consistent with section 6254 (c) [14] of that act. I note, however, that pursuant to section 6254.815 of the

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[14]Section 6254 (c) provides as follows:

> Except as provided in Section 6254.7, nothing in this chapter shall be construed to require disclosure of records that are:
>
> . . . .
>
> (c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy;

[15]Section 6254.8 reads:

Public Records Act, personal employment contracts between the District and its employees are open to public inspection. The District could comply with the mandate of section 6254.8 and this contractual provision by not keeping personal employment contracts in personnel files. This is an example of a disputed matter which can be appropriately resolved at the bargaining table.

Paragraph 8 would require the District to destroy negative or derogatory material in an employee's personnel file after a two-year period of retention. The District claims that it is illegal to destroy any public record 16 except as otherwise provided by law and that this proposal conflicts with regulations adopted by the Superintendent of Public Instruction

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> Every employment contract between a state or local agency and any public official or public employee is a public record which is not subject to the provisions of section 6254 and 6255.

^Section 6200 reads as follows:

> Every officer having the custody of any record, map, or book, or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his hands for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering or falsifying, removing or secreting the whole or any part of such record, map, book, paper, or proceeding, or who permits any other person to do so, is punishable by imprisonment in the state prison for two, three, or four years.

relating to the destruction of records. Those regulations are contained in California Administrative Code, title 5, section 16020, et seq., and were adopted pursuant to Education Code section 35253.[17]

The Chairperson finds that Education Code section 35253 gives the District discretion to destroy records where destruction is not otherwise authorized or provided for by law and finds that this proposal is negotiable evidently on the basis that destruction of records is not otherwise provided for by law. But destruction of such records is otherwise provided for by law, specifically, section 6200. Thus the subject matter of section 6200 is specifically incorporated by reference in Education Code section 35253. It is therefore appropriate for this Board to consider the impact of section 6200 on the negotiability of this proposal.

The District may only destroy the records referred to in the proposal pursuant to the regulations promulgated by the Superintendent of Public Instruction pursuant to Education Code section 35253 (see 58 A.G. 422 (6/6/75) for a discussion

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17 Education Code section 35253 reads as follows:

> Whenever the destruction of records of a district is not otherwise authorized or provided for by law, the governing board of the district may destroy such records of the district in accordance with regulations of the Superintendent of Public Instruction which he is herewith authorized to adopt.

involving the interrelationship of these statutory provisions). Those regulations define a "record" as all "records, . . . papers, and documents of a school district required by law to be prepared or retained or which are prepared or retained as necessary or convenient to the discharge of official duty" (Cal. Admin. Code, title 5, sec. 16020(a)) and provide that they shall only be destroyed as provided by regulation (Cal. Admin. Code, title 5, sec. 16021). The Superintendent of each school district is required to classify records as permanent, optional, or disposable (Cal. Admin. Code, title 5, sec. 16022). The earliest any such record may be destroyed by the District is three years after the school year in which they originated (Cal. Admin. Code, title 5, sec. 16027).

I find it unnecessary to determine the classification to be accorded to negative or derogatory material in a personnel file for at the very least such material cannot be destroyed until three years after its origination and, therefore, the requirement of paragraph 8 of this proposal that it be destroyed after remaining in the file for only two years conflicts with these regulations. This proposal is therefore nonnegotiable to the extent it would require the District to destroy such records within two years.

I concur with the Chairperson that paragraph 9 is negotiable. The requirement that the District keep employees'

personnel files in a central location facilitates access to such files for the processing of grievances and determining that the evaluation procedures have been properly adhered to. While the District, for example, certainly has an interest in keeping original documents in a safe place, this proposal would not prevent the District from keeping duplicate sets of these documents in other locations. On balance, the District's interests in logistics and maintenance of records is offset by the employees' interest in having meaningful access to important records, and this provision is negotiable.

By: Barbara D. Moore, Member

Member Gonzales concurrence and dissent begins on page 130.

The order in this case begins on page 144.

Raymond J. Gonzales, Member, dissenting in part and concurring in part:

It would be difficult to overestimate the significance of these long awaited, precedential, "scope of representation" decisions. While all Board members articulated their theoretical approach to the scope issue in San Mateo School District, (5/20/80) PERB Decision No. 129, except for the matters of preparation time and rest time, it remained to be seen just how these approaches would translate into rulings on the negotiability of a multitude of typical negotiating proposals. This decision, and its companion Healdsburg Union High School District and Healdsburg Union School District (6/19/80) PERB Decision No. 132, covering both certificated and classified employees, give the bottom line. Examination of the Board holdings on the proposals at issue in these cases clearly shows that the scope of representation under the EERA is, through PERB interpretation, rendered the equivalent of the scope of bargaining in the private sector. Today's decision in Fremont Unified School District (6/19/80 PERB Decision No. 136) similarly creates for employment disputes under PERB jurisdiction the acceptability of the strike as a political and economic weapon which may be brought to bear by employee organizations, even during impasse proceedings, while involved in labor disputes. The significance of these decisions should escape no one.

The reasoning which underlies my interpretation of EERA section 3543.2, the scope of representation, is fully set out in my dissents in San Mateo, supra, and today's companion decision in Healdsburg, supra. There is no need to repeat them here. Obviously, given my interpretation of the scope of representation as a creation of the Legislature unique to the California public school system, I do not believe it is appropriate to look to private sector precedent for guidance in interpreting EERA section 3543.2. For this reason, my decisions on the proposals are not grounded on, nor rely for authority on, decisions rendered under the NLRA. My determinations are based on a reading of the statute and application of my test.

Before specifically indicating which of the proposals I find to be in scope or out of scope, I would like to express my position regarding proposals which are by and large unrelated to any matter within scope but which may contain elements of a matter within scope. Examples are proposals on the provision of an appropriate classroom, the regulation of public charges against teachers, and a proposal to control what may enter a personnel file. Although not generally in scope, such a proposal may in a minor way include an evaluation procedure, a grievance procedure or a safety concern. As a result, it has been determined that many such proposals are in scope "to the extent they relate to" a matter within scope.

It is my position that any such limited delegation to the negotiation process be narrow and circumscribed. A liberal inclusion of a generally unrelated matter as negotiable will offer great potential for improperly placing out of scope matters on the negotiating table.

One can easily understand how a teacher's grievance or evaluation procedure concern can be related, or tied into, almost any matter concerning the operation of public schools. Abstractly, the source of confusion would be eliminated if all proposals on grievance and evaluation procedures were included in comprehensive proposals on these matters. As a practical matter, of course, the parties are free to make proposals, and write their contract in any form they choose. I would urge that parties resist the pressure to negotiate proposals on matters not substantively within the scope of representation but which are brought into the negotiating room through the back door by a relatively minor component involving a matter within scope.

Finally, in my opinion, the excessive and zealous pursuit of a wide open and effectively uncontrolled scope of bargaining by employee organizations may ultimately lead to the creation of severe restraints on public employees, either by the Legislature or, regrettably, through the initiative process.

ARTICLE III - PROFESSIONAL DUES OR FEES AND PAYROLL DEDUCTIONS

I consider this to be within the scope of representation. Disbursement of wages is directly related to, and is an extention of, wages. Payroll deductions would be included in this concept, as it concerns the manner in which payment is made.

ARTICLE IV - NONDISCRIMINATION

I do not consider this to be within the scope of representation. The general subject of nondiscrimination lacks a direct relationship to any enumerated matter within scope.

ARTICLE VI - PUBLIC CHARGES

I consider the proposals regarding public charges or complaints against employees to generally be outside the scope of representation, except to the extent that such charges or complaints form the basis for evaluation procedures. For example, if a proposed evaluation procedure included public charges, then the use of such charges would be negotiable. The proposal should not be presumed to involve evaluation procedures.

ARTICLE VII - EMPLOYMENT CLASSIFICATIONS AND ASSIGNMENT

I consider the establishment of classifications and the matter of hiring employees into the established classifications, as embodied in the proposals in issue, to be outside of the scope of representation. Transfer policies

regarding interclassification movement, however, are an enumerated term and condition of employment and therefore within scope. I believe that the establishment of classifications and the hiring of teachers are fundamental prerogatives of a public school employer. Classification involves the creation and description of positions and the description of assignments which employees hired into those positions will perform. JCTA's proposals go beyond merely describing employees and classifications. They specify limitations on who a District may hire as a teacher. (e.g., paragraph D.2., a District must consider temporary employees first in hiring new teachers; paragraphs D.3., D.4., D.5. and D.6. specify the criteria to be applied - basically seniority in hiring new teachers). Significantly, classifications are established and described by the Legislature in the Education Code. They are not properly subject to creation through bilateral negotiations. Elements of this article proposing salary or a method of salary determination are, of course, negotiable.

ARTICLE VIII - COMPENSATION

I consider the proposals in dispute regarding compensation to be within the scope of representation. Teaching credit which may form the basis for placement on the salary schedule is very directly related to wages. Matters such as the timing of payment of wages and the notification of employees of their

wages are naturally a part of the concept of wages and also should be negotiable.

ARTICLE X - WORKING CONDITIONS

I find these proposals to be out of scope, generally, except when a safety condition of employment is involved. Other than safety, the proposals do not directly relate to wages, hours, or any enumerated term and condition of employment.

Paragraph 1. The appropriateness of classroom facilities should not be within the scope of representation. However, if a safety condition is specifically involved, this of course would be subject to negotiation. I do not find the thrust of this proposal to be either class size or an evaluation procedure.

Paragraph 4. I believe that all matters specified in paragraph 4 are clearly far beyond the scope of representation. The proposal itself identifies these as educational matters. Of course, the timing of faculty meetings could be a subject of negotiation to the extent it affects the number of hours and the beginning and end in the work day.

Paragraph 8. I do not believe the furnishing of supplies to teachers should be subject to negotiation.

Paragraph 10. I do not consider nonclassroom, adjunct duties which teachers are required to perform should be a subject of negotiation. A public school employer should have

the right to decide upon what work is to be performed. I do not believe assignment of work should be determined on the negotiating table.

Paragraph 12. I do not believe that the provision of a teacher office area is directly, or even indirectly, related to a matter within scope. This is similar to provision of classroom space. It appears that the proposal invites one to interpret "hours of employment" to include what kind of work employees should perform during the "hours" they are employed.

ARTICLE XI - HOURS OF WORK

Paragraph 1. I believe that the hours teachers must work, that is, teacher calendar and teacher workday, are within the scope of representation. However, the instructional calendar, that is, when instruction shall occur and when students shall attend is not subject to determination through bilateral negotiations. See Palos Verdes Peninsula Unified School District/Pleasant Valley School District (7/16/79) PERB Decision No. 96.

Paragraph 5. I do not consider the subject of the scheduling of faculty meetings is within the scope of representation. Again, the proposal is tantamount to negotiating the assignments teachers will perform during the hours when they are employed. Of course, to the extent they are part of the length of a teacher's workday, they are subject to negotiation as hours of employment.

Paragraph 6. CTA proposes that yard duty schedules are to be mutually agreed upon by the principal and faculty. I do not consider the matter of whether a teacher will have yard duty assignments to be negotiable. If it affects the hours of employment, however, it is negotiable, if it is directly related to any matter within the scope of representation.

Paragraph 7 Preparation time. I do not believe preparation time is within the scope of representation. See my dissent in San Mateo City School District (5/20/80) PERB Decision No. 129.

Paragraph 9. I do not consider proposals on allocation of teaching days and staff development days to be within the scope of representation. This is not included in "hours of employment;" it relates only to what type of work teachers do while they are employed.

ARTICLE XIV - SCHOOL CALENDAR

I find the school calendar for teachers to be within the scope of representation as directly constituting hours of employment. However, the instructional calendar, or when pupils are to receive instruction and school is to be opened is unrelated to matters within the scope of representation. See Palos Verdes/Pleasant Valley, supra.

ARTICLE XV - SUMMER SCHOOL

Paragraph 6. I consider the definition of a summer school program to be a school district prerogative and not subject to negotiation. However, I consider that the selection process

for summer school teaching is within the scope of representation and may be negotiated over for employees in the unit. I believe this is similar to overtime employment and, therefore, a matter which is a direct extension of and directly related to wages. (It is my position that full-time, regular teachers in the District constitute the appropriate negotiating unit.) Teachers in this unit may negotiate regarding their opportunity for extra service teaching during the summer session. See my opinion in Redwood City Elementary School District (10/23/79) PERB Decision No. 107.

This reasoning applies as well to paragraphs 7, 9 and 10.

ARTICLE XVIII - LEAVES

The matter of leaves, including maternity leave, is specifically enumerated as a term and condition of employment within the scope of representation. I therefore consider it to be negotiable.

ARTICLE XXI - CERTIFICATED EMPLOYEE EVALUATIONS

I consider the CTA's proposals to be within scope only to the extent that it involves a procedure to be used for the evaluation of employees, but not on evaluations themselves. Matters such as whether certificated employees will be evaluated or whether teachers will be promoted or suffer adverse action depending on the ultimate result of the evaluation are not "procedural". I do not believe that a contractual evaluation procedure should operate to supersede or

preclude application of the Education Code provisions providing for evaluation of certificated employees in detail. Regarding materials which may be kept in District personnel files, these are the subject of negotiations only to the extent that they may form the basis for evaluation, or are involved in a grievance.

ARTICLE XXII - RESIGNATION AND DISMISSAL

Paragraph 4. This proposal concerns severance pay. Such an economic benefit is a natural extension and directly related to wages. It is within scope.

ARTICLE XXIII - EARLY RETIREMENT

I consider the subject of early retirement to be within the scope of negotiations. It is directly related to, and an extension of, the concept of wages and of health and welfare benefits.

ARTICLE XXIV - PARTNERSHIP TEACHING

I consider the partnership teaching proposal to be within the scope of negotiations only to the extent which it proposes to set the hours of employment for negotiating unit members. The decision as to teaching format or type of class should remain a prerogative of the school board.

ARTICLE XXV - CERTIFICATED EMPLOYEES' SAFETY

Paragraph 1. Paragraph 1 proposes to define the standard of physical control certificated employee may use over a student under certain conditions. While this obviously relates

to safety, the scope of representation requires that the matter be a "safety condition of employment." It is questionable whether a standard of physical force is a safety condition of employment. Statutes codified in the California Penal Code and elsewhere provide for standards of permissible physical force generally, and in school settings in particular. In addition, corporeal punishment of students is a matter of great public concern and is the subject of considerable legislation. While the need for the exercise of physical force to protect "self, property, and the health and safety of pupils is self evident," the necessity for physical force by a teacher to "maintain order" is more questionable. On balance, it is within scope to the extent it concerns the teacher's safety, not "property" or maintenance of "order."

Paragraphs 2 and 4 I consider to be within the scope of representation. Support for employees who have been assaulted and reports made in connection therewith are very closely related to and natural extensions of the safety conditions of employment.

ARTICLE XXIV - ASSOCIATION AND CERTIFICATED EMPLOYEE RIGHTS

In general, I do not find these proposals to be directly related to any matter within the scope of representation.

I do not consider the proposals in sections 4, 5 and 5.A. to be within the scope of representation, except to the extent that these proposals specifically are necessarily tied to the

processing of grievances. The concept that certain information in the possession of the employer will be necessary in order to process a grievance is merely a subpart of grievance processing generally.

Paragraph 10 is in essence no more than the Association seeking to bargain about a subsidy in materials for its Association. The agenda for school board meetings is a matter of public record and available to anyone for the asking, as provided for by the Legislature in the Education Code. There is hardly a direct relationship to wages, hours or any enumerated matter.

Paragraph 13 I consider to be outside the scope of negotiations. The proposal that CTA officials will be paid by the District for all the time they need to conduct union business is essentially a proposal for financial subsidy of the conduct of union business by the employer. As it may relate to release time for processing of grievances or negotiations, such release time has been provided for in the EERA by the Legislature in a separate section, EERA section 3543.1(c). Furthermore, the subject of release time should not be subject to negotiations, as the employer has the right to assign responsibilities to teachers during the time for which they are receiving compensation, subject to the requirements of section 3543.1(c).

Paragraph 14(a) and (b) are not subject to negotiations in my opinion. The subject of classroom privacy is not directly, or even remotely, related to wages, hours or any enumerated term and condition of employment. Secret recordings or surveillance could, however, be within scope when directly related to an evaluation procedure.

ARTICLE XXVII - NEGOTIATION PROCEDURE

I consider the general subject of negotiations procedures for matters which are within the scope of representation to also be an appropriate matter for negotiation. This is not so much because negotiation groundrules or procedures are directly related to any particular subject but rather because they are inherent in the concept of negotiating on a particular matter. For example, if employees are to negotiate wages, hours, benefits, class size, and safety conditions, it will be necessary for the parties to discuss when they will meet, how often they will meet, and the order in which the matters will be negotiated.

ARTICLE XXXII - CONFIDENTIAL FILES

I consider the subject of the District's personnel files, and the confidentiality thereof, to generally be not within the scope of representation. To the extent that the confidential files may be involved or used in an evaluation procedure, the processing of a grievance, a transfer or reassignment, or loss of wages and benefits, then and only then would they come

within the scope of representation. Beyond this limited area of overlap, however, the subject matter of personnel files, confidential or otherwise, is not an enumerated matter within section 3543.2, nor is it directly related to, or a natural extension of, any such matter.

./Raymond J. Gonsales, Member

The order in this case begins on page 144.

ORDER

Upon the foregoing facts, conclusions of law, and the entire record in this case, and pursuant to Government Code section 3541.5(c), it is hereby ORDERED that the Jefferson School District and its representatives shall CEASE AND DESIST from failing or refusing to meet and negotiate in good faith to the extent indicated in this decision in the discussion of each Article and the portions thereof, upon request to do so by the exclusive representative of the District's certificated employees, on the following matters:

1. ARTICLE III - Professional Dues or Fees and Payroll Deductions.
2. ARTICLE IV - Nondiscrimination.
3. ARTICLE VI - Public Charges, paragraphs 1, 2, 3 and 5.
4. ARTICLE VII - Employment Classifications and Assignments, paragraphs 2.A.-C; 2.D.; 2.E.; and 2.F.
5. ARTICLE VII - Compensation.
6. ARTICLE X - Working Conditions, paragraphs 4 and 10.
7. ARTICLE XI - Hours of Work, paragraphs 1, 5, 6, and 7.
8. ARTICLE XIV - School Calendar.
9. ARTICLE XV - Summer School.
10. ARTICLE XVIII - Leaves.
11. ARTICLE XXI - Evaluations.
12. ARTICLE XXII - Resignations and Dismissals.

13. ARTICLE XXIII - Early Retirement.

14. ARTICLE XXIV - Partnership Teaching.

15. ARTICLE XXV - Employee Safety.

16. ARTICLE XXVI - Association and Certificated Employee Rights, paragraphs 4, 5, 5a, 10, 13, and 14a.

17. ARTICLE XXVII - Negotiations Procedures.

18. ARTICLE XXXII - Confidential Files, paragraphs 1, 3, 6, 7, and 9.

It is further ORDERED that the Jefferson School District shall not be required to meet and negotiate in good faith with the exclusive representative of the District's certificated employees on the following matters:

19. ARTICLE VI - Public Charges, paragraph 4.

20. ARTICLE VII - Classification, paragraph 1.

21. ARTICLE X - Working Conditions, paragraphs 1, 8, and 12.

22. ARTICLE XI - Hours, paragraphs 9 and 11.

23. ARTICLE XXVI - Association Rights, paragraph 14b.

24. ARTICLE XXXII - Confidential Files, paragraphs 2 and 8.

It is further ORDERED that Jefferson School District shall post copies of this order in conspicuous places where notices to certificated employees are customarily placed at its headquarters office and at each of its school sites for twenty (20) consecutive workdays. Copies of this order shall be posted immediately upon receipt thereof. Reasonable steps

shall be taken to ensure that copies of this order are not altered, defaced, or covered by any other material.

It is further ORDERED that the unfair practice charges filed by the Jefferson Classroom Teachers Association, CTA/NEA are SUSTAINED with respect to those matters covered by subparagraphs 1 through 18 above of this order and that the unfair practice charges filed by the Jefferson Classroom Teachers Association, CTA/NEA are DISMISSED with respect to those matters covered by subparagraphs 19 through 24 of this order.

It is further ORDERED that the unfair practice filed by the Jefferson School District against the Jefferson Classroom Teachers Association is DISMISSED.

This order shall become effective immediately upon service of a true copy thereof on the Jefferson School District.

PER CURIAM

APPENDIX: NOTICE

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 Nos. SF-CE-33 and SF-CO-6, in which all parties had the right to participate, it has been found that the Jefferson School District violated the Educational Employment Relations Act by failing and refusing to negotiate with respect to certain matters within the scope of representation and which are set forth in the attached order of the Public Employment Relations Board.

It has also been found that the Jefferson School District did not violate the Educational Employment Relations Act by failing and refusing to meet and negotiate with respect to certain other matters which are not within the scope of representation and which are set forth on the attached order of the Public Employment Relations Board.

We have been ordered to post this notice and:

WE WILL NOT fail or refuse to negotiate in good faith with the exclusive representative of the certificated employees of the Jefferson School District on those matters within scope if requested to do so.

By: ______________________
Superintendent
Jefferson School District