STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATEWIDE UNIVERSITY POLICE ASSOCIATION, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Case No. S-CE-6-H PERB Decision No. 356-H November 14, 1983
STATEWIDE UNIVERSITY POLICE ASSOCIATION, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Case No. LA-CE-47-H

Appearances: Edward M. Opton, Jr., Attorney for the Regents of the University of California.

Before Jaeger, Morgenstern and Burt, Members.

DECISION

BURT, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Regents of the University of California (UC) to a proposed decision of an administrative law judge (ALJ). The

ALJ, assessing charges filed by the Statewide University Police Association (SUPA), found that UC violated subsections 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (HEERA) by refusing to negotiate and by unilaterally raising the fees paid by its police officer employees for parking in lots operated by UC.[1] SUPA filed no exceptions.

We have considered the exceptions filed by UC in light of the record as a whole, and hereby affirm the result reached by the ALJ, attached hereto and incorporated by reference herein, only insofar as it is consistent with the following discussion.

FACTS

We have reviewed the ALJ's findings of fact in light of UC's exceptions and the record as a whole. We find them free

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[1]HEERA is codified at section 3560 et seq. of the Government Code. Subsections 3571(a), (b) and (c) provide as follows:

> It shall be unlawful for the higher education employer to:
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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

of prejudicial error.[2]

To briefly summarize, since August 19, 1980, and at all times relevant herein, SUPA has been the exclusive representative of a unit consisting of all police officers employed by UC. During the period relevant to this case, SUPA was the only exclusive representative of UC employees.

The UC parking system is supported entirely by user fees. It is owned and operated by UC and utilized by staff, students, and the public. Police officers employed by UC are not required to drive to work. There is insufficient non-UC parking at or near the work location to accommodate those employees who choose to drive to work.

On January 30, 1981, all UCLA employees received a memo indicating that an increase in parking fees would be necessary for the 1981-82 fiscal year. On March 13, 1981, SUPA gave written notification to UC's director of collective bargaining services of its belief that parking fees were within scope and that any unilateral change would violate HEERA.

On April 13, 1981, UC responded that the proposed increase would not apply to the unit employees represented by SUPA. On

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[2]We note that the ALJ's findings of fact, gleaned from stipulations of the parties, were served upon SUPA and UC for comment prior to issuance of the decision. At that time, UC's comment was limited to seven nonsubstantive suggestions, none of which were repeated by UC in its statement of exceptions to the proposed decision.

May 29, 1981, however, it indicated that any such increase would apply to the police officers in the unit. It also advised SUPA that, in UC's view, the parking fee issue was not within scope.

On June 12, 1981, SUPA informed UC that it would file unfair practice charges regarding UC's refusal to negotiate parking fees unless UC promptly indicated its willingness to do so. On June 16, 1981, the UC Davis police chief sent Davis police a memo indicating that campus police would be charged the increased parking rate, as would other campus employees, and that the director of collective bargaining for UC did not consider the issue to be within scope.

On June 18, 1981, SUPA presented its initial written proposal on parking fees to UC, asking that UC provide adequate free parking for all unit employees. UC subsequently proposed that it would continue to provide parking to unit employees on the same basis as it provided parking to other (non-unit) employees.

The parties stipulated that they have been engaged in the collective negotiating process since June of 1981. However, no agreement has been reached on parking.

On July 1, 1981, UC implemented a series of parking fee increases systemwide, and required the represented police officers to pay them.

On October 1, 1981, UC, by letter from Thomas Mannix, Director of Collective Bargaining Services, informed SUPA that:

> As I now understand your proposal, it is that peace officers should be exempted from all parking charges. If my understanding is correct, I would like to make it clear that the University does not consider the proposal to be outside the scope of representation, and is prepared to include it in the bargaining process.

Thus, UC acknowledged the negotiability of parking fees explicitly for the first time on October 1, 1981.

Subsequently, in the spring of 1982, UC notified SUPA of its intent to impose a variety of different parking rate increases at its various parking facilities on July 1, 1982.

DISCUSSION

The ALJ found that the amount of parking fees charged employees in UC-operated lots is a subject within scope under HEERA. She found that UC violated its negotiating obligation by, inter alia, unilaterally raising the parking fees paid by SUPA's constituents on July 1, 1981, and additionally by placing unreasonable limitations on the breadth of the ongoing negotiations regarding fees. To remedy such violations, she ordered UC to cease and desist from refusing to negotiate in good faith, to roll back the parking rates to their pre-July 1981 level for SUPA-represented employees, to refund the fees collected in excess of that amount, and to post an appropriate notice.

SUPA filed no exceptions. UC excepts to the finding that parking fees are generally within the scope of representation as set forth at subsection 3562(q)[3] due to the proviso contained at subsection 3562(q)(2) removing certain fees from

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[3]Subsection 3562(q) provides as follows:

> For purposes of the University of California only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:
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> > (1) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby.
> >
> > (2) The amount of any fees which are not a term or condition of employment.
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> > (3) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and supervision of courses, curricula, and research programs, as those terms are intended by the standing orders of the regents or the directors.
> >
> > (4) Procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, the procedures to be used for the evaluation of the members of the academic senate, and the procedures for processing grievances of members of the

scope. UC further argues that even if parking fees are within scope as a threshold matter, it did not change the dynamic status quo regarding parking fees, but rather simply continued its preexisting practice of imposing annual across-the-board fee increases, and thus that no unilateral change occurred. Additionally, UC excepts to the finding that it has failed to negotiate in good faith regarding parking fees since July of 1981 by impermissibly limiting the breadth of negotiations. Finally, UC excepts to the ALJ's make-whole remedy requiring it to roll back parking fees to the pre-July 1981 level and refund the excess amount paid by the members of the peace officer unit.

> academic senate. The exclusive representative of members of the academic senate shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this paragraph. If the academic senate determines that any matter in this paragraph should be within the scope of representation, or if any matter in this paragraph is withdrawn from the responsibility of the academic senate, the matter shall be within the scope of representation.
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> All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

Although it initially contended that parking fees are not in scope under HEERA's inclusory scope language, ". . . wages, hours of employment, and other terms and conditions of employment," UC does not, by its exceptions, reassert that contention. The ALJ found that parking fees are generally within the ambit of "terms and conditions of employment," based upon an analogy to private sector cases holding that employer-provided food service prices are mandatorily negotiable. See Ford Motor Co. v. NLRB (1979) 441 U.S. 488 [101 LRRM 2222] and other cases cited by the ALJ at pp. 15-17, slip opinion. In Ford Motor Co., id., the Supreme Court noted that food pricing could lead to substantial disputes, and that the mediatory influence of collective bargaining would foster peaceful resolution of such disputes. It noted the "trend of industrial practice" to provide in-plant culinary services in response to "increasing employee concern over the issue," without reference to the existence of reasonable alternatives to such in-plant food services.

The court found that food prices were within scope because such prices "vitally affect" terms and conditions of employment, stating, at 101 LRRM 2227, that

> as for the argument that in-plant food prices and service are too trivial to qualify as mandatory subjects, the Board (NLRB) has a contrary view, and we have no basis for rejecting it . . . we accept the Board's view that in-plant food prices and service are conditions of employment and are subject to the duty to bargain.

See also Social Services Union v. Board of Supervisors (1978) 82 Cal.App.3d 498 [147 Cal.Rptr. 126], wherein the Court of Appeals found employer-provided food services to be equivalent to employer-provided parking for purposes of determining whether parking services were within scope under the similar language of the Meyers-Milias-Brown Act governing labor relations in California local government.

For the reasons set forth in the ALJ's decision, we affirm the finding that the amount of fees charged to employees for employer-provided parking is a matter within the scope of representation under HEERA.

UC contends that the proviso language of subsection 3562(q)(2) of HEERA, excluding from scope ". . . the amount of any fees which are not a term or condition of employment" excludes the parking fees at issue herein from scope. UC argues that parking fees for police officers are not a term or condition of employment because there is no requirement that employees utilize their personal vehicles for commuting, and thus they are not required to use UC's parking facilities. UC acknowledges that the phrase "term or condition of employment" is a labor relations term of art, which encompasses many matters of central concern to employees regarding their working life, whether or not such matters are required aspects of the employment relationship. However, it argues that the phrase "term or condition of employment" as used in subsection

3562(q)(2) must have a different meaning than the general labor relations meaning employed in the inclusory language of subsection 3562(q). According to UC, the Legislature must have intended that, when used in the exclusionary proviso language of subsection 3562(q)(2), the phrase referred to fees which are paid by all employees as a requirement of their job. If not, subsection 3562(q)(2) would be a nullity, because it would duplicate the meaning of the inclusory language which precedes it.

We reject the construction of the proviso language of 3562(q)(2) urged by UC, as it ascribes an unduly narrow definition to the phrase "terms or conditions of employment." Such a construction requires the incongruous inference that the Legislature intended that the same phrase have two entirely different meanings, even though it is used in the same context, within the same section of the same statute. Contrary to UC's contention, we find that the proviso language of subsection 3562(q)(2) was intended to accomplish precisely what it states, to wit, to remove from scope fees which are not terms and conditions of employment within the labor relations meaning of that term. The proviso serves to dispel the contention that any fee paid by employees to the higher education employer, even those for matters not even remotely related to the employment relationship, are per se within scope.

In a related argument, UC contends that the parking fees at issue herein are not a term or condition of employment since alternative modes of transportation exist for employees. According to UC, this differentiates parking fees from the food service costs at issue before the U.S. Supreme Court in Ford Motor Co., supra, and cases relied upon therein and cited by the ALJ.

The Board rejects UC's contention that the cited National Labor Relations Board (NLRB) food service cases turn on whether alternatives existed to the vending services available in-house. In Ford Motor Co. v. NLRB, supra, the Supreme Court did point out that, in the plant in question, there appeared to be no reasonable alternative to the company cafeteria. However, it did not indicate that the NLRB's consistent holding that ". . . in-plant food prices are among those terms and conditions of employment . . . about which the employer and union must bargain . . ." would only be affirmed in those cases in which it was shown that there existed no reasonable alternative to in-house culinary services, and in which employees were thus "captive consumers" of such services. Rather, it cited with approval a series of NLRB cases in which the "captive consumer -- no reasonable alternative" situation did not exist. Thus, at fn. 6, the Court cited with approval, inter alia, McCall Corporation (1968) 172 NLRB 540, 546 [69 LRRM 1187], enforcement denied (4th Cir. 1970) 432 F.2d 187 [75

LRRM 7273], wherein the NLRB affirmed its trial examiner's finding that the fact that alternative eating facilities are available is not determinative or in itself sufficient to remove the issue of cafeteria pricing from scope. Similarly, in another cited case, Package Machinery Co. (1971) 191 NLRB 268 [77 LRRM 1456], enforcement denied (1st Cir. 1972) 457 F.2d 936 [79 LRRM 2948], food prices were held within scope although several off-plant restaurants were available and were used by employees as alternatives to in-plant facilities. In Ladish Co. (1975) 219 NLRB 355, the NLRB found that "brown-bagging it" was a viable alternative, but nonetheless held that vending machine prices were a mandatorily-negotiable item.

We find, in keeping with the above, that the amount of fees charged to employees for employer-provided parking is a subject within the scope of representation under HEERA, whether or not alternative methods of commuting are available to employees.

UC argues for the first time by its exceptions that, as a matter of fact, it is in the business of providing parking, and thus that it should be free to exercise unfettered discretion as to the price of its product.

If UC had demonstrated that it was primarily in the business of providing parking, we might be persuaded that it enjoys the managerial prerogative to price its "product." Contrary to UC's assertion, common sense dictates that UC exists primarily for the purpose of education and research for

the benefit of the people of the State of California and not as a purveyor of parking. No evidence was presented which would indicate that it depends upon revenues from parking for its continued existence, nor was there any showing that it derives any profit from the parking enterprise.[4]

Because we cannot conclude, based upon any evidence properly before us, that the operation of parking facilities is more than an ancillary function of UC, we reject the contention that pricing of such services is a managerial prerogative of UC.[5]

UC next contends that even if the amount of fees is within scope, it was merely conforming to established past practice

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[4]Although UC does set forth certain facts regarding the scope and extent of its parking operations, these facts were not presented by stipulation or testimony during the trial of this matter, nor were they pled in UC's trial brief. They were presented for the first time by exceptions. Hence, we have not considered them in ruling on this argument. Knapp v. Newport Beach (1960) 186 Cal.App.2d 669, Witkin, California Procedure, 2d Edition (1971), Vol. 6, section 219, p. 4209.

[5]If UC demonstrated that its practice was to operate one uniform parking system which employees were privileged to utilize on the same basis as the public at large, we might find the argument that UC is, at least partially, in the parking business and should be free to unilaterally price its product more persuasive. However, UC failed to demonstrate that employees are merely fungible consumers of its parking "product." Rather, it may be fairly inferred from the record that UC's practice has been to offer employees parking which is separate and distinct from that provided to students and the general public, by virtue of both the fee structure and type of permit involved. The fact that employees consume UC's parking product on a different basis than do other consumers constitutes an additional basis for rejecting UC's "parking is, in part, our business" contention.

when it increased the fees. The increase, UC contends, was simple maintenance of the dynamic status quo, and thus was not a change at all. UC points out that its long-standing practice regarding parking fees is to annually review the cost of its parking operation, and to uniformly increase employee parking fees on July 1 of each year, as necessary.

In support of its theory, UC relies upon Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51, wherein PERB held that an employer was privileged to pass along increases in the cost of health insurance to its employees unilaterally, pending completion of negotiations. In Pajaro Valley, the employer's past practice, established pursuant to contractual agreement with the representative of its employees, was to pay only a set dollar amount toward the total health insurance premium. When the carrier increased its premium, the employer's practice was to pass along the entire amount of such increase to employees. PERB held, in accordance with private sector precedent, that because the employer had historically passed along increases in premiums to employees pending negotiations, it was privileged to act in accordance with that practice, and that such conduct did not amount to a "change" in terms of employment. See also Stratford Industries, Inc. (1974) 215 NLRB 682.

UC contends that its formula is established just like that in Pajaro Valley, supra. It contributes a set amount from its

operating budget ($0.0) and charges consumers of parking services for the amount of any increased costs.

We agree with the general rule set forth by UC, which is that an employer may unilaterally act in accordance with its established practice regarding matters within scope, pending the outcome of good faith negotiations. However, the instant case varies in several crucial particulars from cases establishing that principle and relied upon by UC. In the instant case, the amount of increase in parking system costs was not set by a clear formula. It was not keyed to some standard method of computation such as a cost-of-living increase or a regular percentage step increase. Nor was the amount of the increased cost established by a third party (such as the health care insurer in Pajaro Valley, supra). Further, the increase was not passed along on a uniform percentage basis or by a set amount. Different sorts of parking fees exist in the system (metered, quarterly, hourly, daily, etc.), and different sorts of consumers utilize them (staff, students, the public). Moreover, the record does not demonstrate how UC computes the total cost of parking services. From the meager stipulated facts, we can deduce that UC does the computation itself, and that it involves such complex factors as the amount of bonded indebtedness and the extent and method of depreciation of facilities. It is clear that UC exercises a vast amount of discretion in computing an annual operating

budget for its parking system. Further, UC clearly exercises virtually unfettered discretion in determining how it will extract increased costs. It determines the extent to which each type of parking facility and each group of consumers will bear the increased burden. Thus, it could pass along any increase in cost to students or the public, as opposed to staff, or conclude that occasional users would be charged more than long-term, regular consumers.

It is apparent that UC's increases in parking fees are extremely different from the increase in medical insurance premiums in Pajaro Valley, supra, due to the discretion possessed by UC to determine by its own method the amount of the increase and the manner and extent by which it will be extracted from parking consumers.

In NLRB v. Katz (1962) 369 U.S. 736, 50 LRRM 2177, at 50 LRRM 2182, the U.S. Supreme Court established a rule governing the legality of unilateral action undertaken during the pendency of, but prior to, conclusion of negotiations. The Court found that such a unilateral act is tantamount to an outright refusal to negotiate on a subject, unless it is an automatic increase, not "informed by a large measure of discretion." Where the employer has traditionally exercised a large measure of discretion in making such changes, it is impossible for the exclusive representative to know whether or not there has been a substantial departure from past practice,

and therefore the exclusive representative may properly insist that the employer negotiate regarding such changes.[6]

In Oneita Knitting Mills, Inc. (1976) 205 NLRB 500, the employer attempted to unilaterally determine the amounts of merit increases, as it regularly had prior to certification of an exclusive representative. The NLRB held, at fn. 1, p. 500, that an employer with a past history of a merit increase program may neither discontinue that program nor continue to unilaterally exercise discretion with respect to such increases. What is required is a maintenance of the preexisting practice, i.e., the general outline of the program. However, to the extent that discretion has existed in determining the amount or timing of the increase, the union must have an opportunity to negotiate over the terms of the program prior to its implementation. In accord, see Long Mile Rubber Company (1979) 245 NLRB 1337.

To summarize, in the instant case the record is devoid of evidence as to the amount, frequency or regularity of such increases in the past. It is similarly silent as to UC's method of computing whether increased parking system costs were incurred by it in any given year and, if so, what the amount of any such costs were. Further, the record does not indicate whether UC used a uniform method of computation from year to

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[6]In accord with the general rule that an employer must maintain the status quo regarding matters within scope is Davis Unified School District, et al. (2/22/80) PERB Decision No. 116.

year, or whether its accounting practices varied. We must conclude that UC's past practice involved the exercise of virtually unfettered discretion in determining the cost of parking services, the manner of apportioning any increase, and the identity of the parking consumers who would bear the burden of paying the increased fees. The assertion that past practice justified a unilateral change regarding a matter within scope is an affirmative defense, upon which UC had the burden of proof. We cannot conclude, based upon the factual record in this case, that UC's increase in parking fees was such a routine computation, so free of exercise of discretion, that UC was privileged to undertake it unilaterally, particularly as to the newly-represented police officers.

UC next excepts to the ALJ's finding that it particularly failed to negotiate in good faith regarding parking fees by taking the position that it would negotiate over its proposal or SUPA's proposal, and nothing in between, thus impermissibly limiting the parameters of the negotiations.

Based upon the limited record in this case, we cannot agree that SUPA has established a failure on UC's part to negotiate in good faith regarding parking fees by its response to proposals since June of 1981. The parties stipulated that they have been negotiating regarding fees since an unspecified date in June of 1981. UC's letter to SUPA of October 1, 1981, indicates that it believes that SUPA's proposal provides a "basis for meeting and conferring," and that UC "does not

consider the proposal to be outside the scope of representation." In April of 1982, UC wrote to SUPA that it was prepared to continue negotiating regarding its proposal to uniformly apply parking fee increases to all employees and SUPA's proposal to provide free parking for its police officer constituents. There is no express or implied indication in these letters or in the record evidence that UC has adopted an "all or nothing" posture in the negotiations. A statement that SUPA's proposal is viewed as being within scope by UC, and that UC stands ready to negotiate regarding that proposal, is not an indication that UC is unwilling to consider any outcome other than that included in its or SUPA's proposals.

It is clear from the stipulated record that UC failed and refused to negotiate regarding parking fees until June of 1981. We cannot conclude, from the limited record in this case regarding the particular negotiating conduct described above, that UC's position regarding SUPA's proposals constituted a separate basis for finding a 3571(c) violation. We thus reject the ALJ's finding in that regard, and will modify our Order accordingly.

To summarize, we find that UC violated subsections 3571(a), (b) and (c) of HEERA by unilaterally increasing the parking fees charged to employees in the peace officer unit represented by SUPA. As a remedy for said violation, it is appropriate that UC be required to cease and desist from such unilateral action, to restore the status quo ante, to make employees whole

by refunding the increased portion of parking fees paid by them since July 1, 1981, and to post an appropriate notice.

UC takes exception to the remedial portion of the ALJ's proposed decision. First, UC argues that the parking fees at issue herein fall within a limited exception to the general principles governing remedies in unilateral change cases, carved out in the food service price change cases cited above. UC concedes that the general rule is that employers must refrain from unilaterally changing matters within scope until completion of good faith negotiations. However, it points out that in several food service cases,[7] the NLRB and courts have held that the appropriate order requires the employer only to bargain regarding changes in food prices which have been made or are about to be made.

The rationale for allowing post-change bargaining in these cases was that it would be impractical to require completion of good faith negotiations before every change in the price of cafeteria or vending machine items. Such a requirement would lead to endless rounds of negotiations regarding minor matters such as the price of individual items on the menu. That

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[7]Ford Motor Company v. NLRB, supra, Westinghouse Electric Corp. (1966) 156 NLRB 1080, Ford Motor Company (Chicago Stamping Plant) (1977) 230 NLRB 716; McCall Corp. (1968) 172 NLRB 540; Package Machinery Co. (1971) 191 NLRB 268; and Ladish Co. (1975) 219 NLRB 354.

rationale is not applicable to the unilateral change at issue here. The changes in parking fees have historically occurred only once annually, on July 1. They are more aptly analogous to once-a-year changes in wages or benefits than to frequent irregular alterations in the price of individual cafeteria items. We decline to hold that the infrequent, regularly occurring parking rate increases fall within the narrow exception to the general remedial principles in unilateral change cases carved out in the food service area.

UC further argues that no rollback of fees should be ordered in this case because such an order would involve speculation on the part of PERB as to the proper point in time and the amount of any such rollback. UC contends that the proper remedy is to establish prices at the level at which they would be set through good faith negotiations. It argues that such negotiations would not have resulted in any different parking fee structure than that which it has implemented unilaterally. Its assertion is that the principle of uniform parking fees for all employees is so crucial to UC that it would steadfastly have adhered to it and would never have agreed to any other proposal. This assertion comes perilously close to an admission that UC has not approached negotiations over parking fees ". . . with the view of reaching an agreement if possible . . ." as contemplated within the

requirement of good faith expressed in NLRB v. Highland Park Mfg. (4th Cir. 1940) 110 F.2d 632 [6 LRRM 786] and numerous subsequent cases. There is no allegation in this case that UC has generally failed to approach negotiations over fees with the requisite good faith. However, its representation is nonetheless startling. The declared resolve never to waiver in negotiations is not a compelling argument for mitigation of the normal remedy in unilateral change cases, requiring a return to the status quo. In this case, it requires no speculation to fix the time of the unilateral change as July 1, 1981, and to fix the amount of the rollback and refund by reference to the rates prevailing at that time.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 3563.3, it is hereby ORDERED that the Regents of the University of California (UC) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and confer in good faith with the Statewide University Police Association (SUPA) by taking unilateral action on matters within the scope of representation, as defined by subsection 3562(q), and specifically with respect to the increase in fees charged for parking;

2. Interfering with employees in their exercise of their right to select an exclusive representative to meet and negotiate with UC on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative; and

3. Interfering with the right of SUPA to represent its members regarding matters within the scope of representation.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE HEERA:

1. Rescind the increase in parking fees effective July 1, 1981 as applied to employees in the unit represented by SUPA and return to the fee schedule in effect prior to the unlawful unilateral change and retain the status quo ante unless and until the parties exhaust the statutory duty to meet and confer or agree otherwise by their adoption of a negotiating agreement.

2. Pay to employees in the unit represented by the SUPA the difference between the parking fees collected since July 1, 1981, and the amount they would have paid but for the increase effective that date, together with interest at the lawful rate.

3. Within thirty-five (35) days following the date of service of this Decision, post at all work locations where Notices to employees customarily are placed, copies of the

Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

4. Provide written notification of the actions taken to comply with this Order to the regional director of the Public Employment Relations Board, in accordance with her instructions.

Members Jaeger and Morgenstern joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case Nos. S-CE-6-H and LA-CE-47-H in which all parties had the right to participate, it has been found that the Regents of the University of California (UC) have violated subsection 3571(c) of the Higher Education Employer-Employee Relations Act (HEERA) by unilaterally increasing the parking fees charged to police officers in the unit represented by the Statewide University Police Association.

It has also been found that this same conduct violated subsection 3571(b) of the HEERA since it interfered with the right of the Statewide University Police Association to meet and confer on behalf of its members.

It has also been found that this same conduct interfered with negotiating unit members' right to be represented by their exclusive representative, thus constituting a violation of subsection 3571(a) of the HEERA.

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

A. CEASE AND DESIST FROM

1. Failing and refusing to meet and confer in good faith with the Statewide University Police Association by taking unilateral action on matters within the scope of representation, as defined by subsection 3562(q), and specifically with respect to the increase in fees charged for parking.

2. Interfering with employees in their exercise of their right to select an exclusive representative to meet and negotiate with UC on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE HEERA:

1. Rescind the increase in parking fees effective July 1, 1981, as applied to employees in the unit represented by the Statewide University Police Association, and return to

the fee schedule in effect prior to the unlawful unilateral change and retain the status quo ante unless and until the parties exhaust the statutory duty to meet and confer or reach agreement.

2. Pay to employees in the unit represented by the Statewide University Police Association the difference between the parking fees collected since July 1, 1981 and the amount they would have paid but for the increase effective that date, together with interest at the lawful rate.

REGENTS OF THE UNIVERSITY
OF CALIFORNIA

Dated: _____ By _____
Authorized Agent

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

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATEWIDE UNIVERSITY POLICE ASSOCIATION, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Consolidated Unfair Practice Case No. S-CE-6-H and
STATEWIDE UNIVERSITY POLICE ASSOCIATION, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA, Respondent.	)	Case No. LA-CE-47-H PROPOSED DECISION (5/17/82)

Appearances: Robert A. Jones for the Statewide University Police Association; Edward M. Opton, Jr., Attorney for the Regents of the University of California.

Before Sharrel J. Wyatt, Administrative Law Judge.

PROCEDURAL BACKGROUND

Allegations that the Regents of the University of California (herein University) unilaterally changed the parking fee rates for employees in the unit represented by the Statewide University Police Association (herein SUPA) at the Davis and Los Angeles campuses in violation of Government

Code section 3571(a) and (c)[1] were the basis for unfair practice charges filed by the SUPA. These charges, filed with the Public Employment Relations Board (herein PERB) on June 26 and 29, 1981, were amended to include allegations that the University had unilaterally increased parking fees on other campuses as well. The charges were consolidated for informal and an informal conference on July 30, 1981 failed to resolve the dispute. The University filed its Answers and Amended Answers on July 23, and 27 and August 10, 1981 respectively. These cases were consolidated and a Complaints and Notice of Hearing issued on January 15, 1982. A formal hearing was conducted on March 17, 1982 at which the parties entered stipulations on the record with leave to file and serve additional information at the request of the administrative law judge. Final briefs were filed on April 19, 1982. Thereafter, additional stipulated facts were submitted by the parties. The findings of fact were served with opportunity to object on or before May 14, 1982 and this matter stood submitted.

FINDINGS OF FACT

The Regents of the University of California are an employer and the Statewide University Police Association an employee organization within the meaning of HEERA.[2] The SUPA has been

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[1]All references are to the Government Code unless otherwise indicated.

[2]The Higher Education Employer-Employee Relations Act is codified at Government Code section 3560 et seq.

the exclusive representative for a unit consisting of peace officers[3] since August 19, 1980. Employees in the peace officer unit work on rotating shifts, 24 hours per day, and are on call. They are required to carry tools of the trade to and from work such as their gun and badge.

The past practice of the University has been to charge the same parking fee rates to employees in the unit represented by the SUPA as it charged to other staff employees purchasing the same services. The same has been true for other services such as cafeteria, vending machines, or tickets to athletic events. These latter items have been increased, sometimes with prior notice to staff employees and/or employee organizations. For example, the price of the staff Recreation Privilege Card[4] was increased from $22.00 to $35.00 at the Los Angeles campus on July 1, 1980, without prior notice to employees or employee organizations.

The University provides approximately 70,000 parking spaces, and this number is probably sufficient to accommodate all staff employees at some facilities. Parking permits are

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[3]As of January 20, 1982 the unit contained 42 at UCLA, 27 at Davis, 49 at Berkeley, 14 at San Francisco, 9 at Riverside, 15 at San Diego, 10 at Santa Cruz, 21 at Santa Barbara, 20 at Irvine and 6 at Lawrence/Berkeley Laboratory, for a total of 213.

[4]The Staff Recreation Privilege Card is for use of athletic and recreational facilities.

required at all campuses, laboratories and hospitals not only to ration scarce spaces, but also, and primarily, to support the parking system financially. The Legislature has never appropriated funds for parking at the University; the parking system is entirely self-supporting; and the permit fees are therefore essential to the existence of the parking system. At all campuses permits are available to police officers on a basis no less favorable than to other staff employees.

On January 30, 1981 all Los Angeles campus academic and staff employees were sent a memorandum outlining the need for changes in parking fees for the 1981-82 fiscal year. The memo stated that an explanation of the need to increase parking fees had been given in February, 1980, that that explanation had been based on certain assumptions, that those assumptions had been inaccurate, and that meetings would be conducted before February 10, 1981 with the Faculty Welfare Committee of the Academic Senate, the Personnel Policies Committee of the UCLA Staff Association and representative student groups to review the proposed parking fee structure for 1981-82. It was anticipated that the parking fee proposal would be forwarded to the chancellor on February 10 and the Regents on February 13.

On March 13, 1981, the SUPA wrote to the director of collective bargaining services indicating that it had recently become aware of the proposed parking fee increase and considered this a term and condition of employment. A

unilateral change would be a violation of section 3571(b) and (c), according to the SUPA. It therefore made formal demand to have the fees remain at the same figure and that the University refund any increase that had been deducted.

On April 13, 1981, the University's director of collective bargaining services responded that the increase for 1981-82 would apply to all employees except members of the unit of police certified by PERB.

On May 29, 1981, the University's director of collective bargaining services again addressed the issue, stating that the rate increase should apply to peace officers in the same way it applied to other employees. While willing to discuss the issue and to provide information to the SUPA, the University stated that it could not agree that the subject was within the scope of representation. It was prepared to consult.

On June 9, 1981, the University's coordinator, auxiliary enterprises and services programs, advised eight vice-chancellors and an assistant vice-chancellor that the SUPA had contended that the increase in parking fees was a condition of employment, but the position of the University was stated as follows:

> It has now been determined that parking <u>may</u> not be a condition of employment and, therefore, the University <u>may</u> not have a statutory duty to meet and confer with exclusive representatives on fee increases for University-operated parking.

On June 12, 1981, the SUPA wrote to the University giving formal notice that if it did not receive written assurance that the University would bargain the issue of proposed increases in parking fees prior to June 22, 1981, it was prepared to file unfair practice charges with PERB.

On June 16, 1981, E. M. McEwen, Chief of Police, sent the following memo:

> TO: All Sworn Personnel
>
> RE: Parking Permits - Rate Increase
>
> There was a rumor that the University would not require sworn personnel to pay the increased rates for campus/UMC parking permits on the basis that the rate could be considered as part of the "terms and conditions of employment"; that the parking permit fee was an item subject to collective bargaining.
>
> Vice President Kleingartner has indicated the University does not consider the foregoing to be an appropriate posistion (sic) to take. Therefore, all UC employees, including police officers, will be required to pay the required fee, including any increase, should they wish to obtain a UC parking permit for the coming year.

While this memo was sent to Davis personnel, it was indicative of the University's position at that time.

No convenient alternative parking is available. At the Davis and Los Angeles campuses, there are no convenient parking facilities available as alternatives to the campus facilities.[5]

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[5]This repetition reflects two separate stipulations.

With no prior meeting and conferring, on July 1, 1981, the following increases went into effect:

Davis

Type of Service	Monthly Fee	
	Before 7/1/81	After 7/1/81
"A" Permit	$4.00	$5.00
"C" Permit	3.00	4.00
"M" Permit	1.50	2.25
"N" Permit	2.00	2.33

Los Angeles

Type of Service	Monthly Fee	
	Before 7/1/81	After 7/7/81
Annual Permit	$9.00/mo	$12.00/mo
Daily Permit (per entry)	2.00	2.00
Night Permit	2.0625	2.0625
Meters (per hour)	1.00	1.00
Misc. and Admin. Charge	5.00	5.00
Attendant Services (for 1-1/2 hour minimum)	20.00	20.00

Attachment A contains the fiscal 1980-1981 systemwide parking fee schedule. Attachment B contains the fiscal 1981-1982 schedule.

From at least 1973 until July 1, 1981, employees in the peace officer unit had received the same percentage increase in pay as other University employees except for 1973 when there was an across-the-board increase of $70.00. Peace officers received the $70.00 increase plus 2 1/2 percent. Due to collective bargaining, employees in the peace officer unit did not receive the annual increase on July 1, 1981. However, with the agreement of the SUPA they did receive the increase in per diem allowance for travel effective Janaury 1, 1981 and since July 1, 1981, they have received the increases in dental and health coverage.

Meanwhile, on June 18, 1981, the SUPA presented initial bargaining proposals to the Regents of the University of California. It included the following proposal regarding parking fees:

XIV. PARKING

> Employer shall at each work location, provide adequate secured parking for all employees' private vehicles. There shall be no charge to employees for such parking.

The parties have been engaged in the collective bargaining process since June 1981. As of the date of hearing, no agreement has been reached concerning parking fees. Proposals have been exchanged on the issue of parking fees.

One of the University's proposals was:

> The University shall provide parking at each campus or laboratory to the same extent and

> under the same conditions as other University nonmanagement staff employees.

The SUPA has made the following proposal:

> The University shall at each work location, provide adequate secured parking for all employees' private vehicles. In the alternative to provision of secured parking, the University may, on a campus by campus basis, agree in writing to reimburse any employee for the actual cost of any damages or losses sustained through theft, vandalism or other damages to his or her vehicle while parked in assigned parking areas while the employee is on duty.
>
> Parking shall be provided at no cost to the employees.

On July 20, 1981, the SUPA wrote to the University requesting information regarding whether the University was meeting and conferring with another employee organization on the issue of parking fees. On July 27, 1981, the University responded that the inquiry had been referred to the General Counsel's office because it was handling the unfair practice charge.

In an apparent shift in position, the University's director of collective bargaining services sent the following letter to the SUPA on October 1, 1981:

> SUPA and the University of California have exchanged initial bargaining proposals and each party has had an opportunity to review the proposals and to ask any questions which the proposals triggered.
>
> Your first letter to me on the subject of parking, dated March 23, 1981, conveyed your view that imminent parking rate increases at

> UCLA would not apply to members of the unit represented by SUPA, because it would be necessary for the University to meet and confer with SUPA before implementing these increases. I wrote to you on May 29, 1981, taking issue with this assumption. At the time, I did not have SUPA's MOU proposal. Having now reviewed the proposal, I believe a basis for meeting and conferring may exist. As you know, the University has for many years implemented changes in parking fees from time to time in response to changing costs of construction, finance and operation of the parking system, and these changes have applied to peace officers as well as to other employees. As I now understand your proposal, it is that peace officers should be exempted from all parking charges. If my understanding is correct, I would like to make it clear that the University does not consider the proposal to be outside the scope of representation, and is prepared to include it in the bargaining process. (Emphasis added.)

On February 22, 1982, the SUPA was informed that the San Francisco campus was considering an increase in the monthly parking fee. The proposed increase for staff permits was from $22.00 to $25.00 per month. The SUPA was invited to discuss the increase, make comments, ask questions, or express concerns no later than Friday, March 5, 1982.

On February 26, 1982, the SUPA responded that this proposed unilateral increase would be a violation of HEERA and that the issue of parking fees was both a subject for bargaining and an issue in this unfair practice charge. It ended by stating that it anticipated that no increase would be applied to its members.

On March 10, 1982, the University informed the SUPA that its letter of February 22 had been sent to the SUPA by mistake.

On March 12, 1982, all Los Angeles campus staff were given a memo[6] indicating proposed increases in parking fees for 1982-83 as follows:

	Current Fees 1981 - 1982	Proposed Fees 1982 - 1983
Faculty, Staff and Commuter Student Permits	$ 12.00/month	$ 16.00/month
On-Campus Resident Permits	$ 12.00/month	$ 21.00/month
Courtesy Permits	$ 36.00/annual	$ 48.00/annual
Emeriti Permits	$ 12.00/annual	$ 16.00/annual
Night Permits	$100.00/annual	$150.00/annual
Daily Sales	$ 2.00/entry	$ 3.00/entry
Meters	$ 1.00/hour	$ 1.00/hour
Administrative Charges (lost card keys or permits, etc.)	$ 5.00/item	$ 5.00/item

They were invited to ask questions or comment in writing no later than Friday, April 2, 1982.

Currently, proposals for parking fee increases are in progress at the Los Angeles and San Francisco campuses. At Los Angeles the proposal calls for an increase in staff parking

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[6]No direct notification was made to the SUPA by the University about the proposal to increase parking fees at the Los Angeles campus until it was enclosed as part of a post-hearing exchange in correspondence on April 20, 1982 (discussed ante).

fees from $12 per month to $16 per month to be effective July 1, 1982. At San Francisco the proposal would increase staff parking fees from $21 per month to $24 per month effective July 1, 1982.

As an attachment to a letter to PERB regarding this case, the University sent notification to SUPA on April 20, 1982[7] regarding the following:

1. A proposed increase in parking fees at the San Francisco campus of $3.00/month for Type A and Type G parking permits effective July 1, 1982.
2. Possible increases at the Irvine campus as described in the Leon Schwartz letter to faculty and staff dated March 18, 1982 (copy of letter omitted).
3. Proposed parking fee increases at the Los Angeles campus as described in the letter to all UCLA academic and staff employees in the March 12, 1982 memo (supra, p. 11).
4. Possible increases in parking fees at the Riverside and San Diego campuses. No details are yet available.

This communication from the director of collective bargaining services concludes:

> The University's position on parking fees charged to employees in the SUPA bargaining unit is as follows: In the past, fees for members of the peace officer bargaining unit

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[7]This document was filed after briefs were received in this matter.

> have been the same as for other staff personnel, and changes in fees have applied to all staff personnel. The University proposed to continue this policy, which is embodied in the parking fee proposal that we made to you on September 9, 1981. We are prepared to continue negotiating with you on this proposal and on your alternate proposal. Until and unless we reach agreement on a change in policy, we intend to continue the present policy, i.e., occasional parking fee changes will apply to all staff personnel, including members of the peace officer bargaining unit.

ISSUES

1. Whether parking fee increases are within the scope of bargaining.
2. If so, whether the Regents of the University of California failed and refused to meet and confer in good faith on the issue of increases in parking fees.
3. Whether or not the issue is moot because the parties are meeting and negotiating on the issue of parking fees.

Conclusions of Law

Amount of Parking Fee Within Scope

SUPA has charged the University with violation of section 3571(a) and (c). Section 3571(a) and (c) provide:

> It shall be unlawful for the higher education employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise

> to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed to them by this chapter.
>
> . . . . . .
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.

Section 3570 imposes the duty on the higher education employer to engage in meeting and conferring with the employee organization selected as exclusive representative of an appropriate unit on all matters within the scope of representation. Scope of representation is defined by section 3562(q) as follows:

> (q) For purposes of the University of California only, "scope of representation" means, and is limited to, wages, hours of employment, and other terms and conditions of employment. The scope of representation shall not include:
>
> > (1) Consideration of the merits, necessity, or organization of any service, activity, or program established by law or resolution of the regents or the directors, except for the terms and conditions of employment of employees who may be affected thereby.
> >
> > (2) The amount of any fees which are not a term or condition of employment.
> >
> > (3) Admission requirements for students, conditions for the award of certificates and degrees to students, and the content and supervision of courses, curricula, and research programs, as those terms are intended by the standing orders of the regents or the directors.

> (4) Procedures and policies to be used for the appointment, promotion, and tenure of members of the academic senate, the procedures to be used for the evaluation of the members of the academic senate, and the procedures for processing grievances of members of the academic senate. The exclusive representative of members of the academic senate shall have the right to consult and be consulted on matters excluded from the scope of representation pursuant to this paragraph. If the academic senate determines that any matter in this paragraph should be within the scope of representation, or if any matter in this paragraph is withdrawn from the responsibility of the academic senate, the matter shall be within the scope of representation.
>
> All matters not within the scope of representation are reserved to the employer and may not be subject to meeting and conferring, provided that nothing herein may be construed to limit the right of the employer to consult with any employees or employee organization on any matter outside the scope of representation.

In Social Services Union v. Board of Supervisors (1978) 82 Cal.App.3d 498; 147 Cal.Rptr. 126, the California Court of Appeals was faced with the issue of whether a county board of supervisors violated the duty to meet and confer under Meyers-Milias-Brown[8] when it unilaterally adopted a resolution increasing monthly parking fees. The Court of

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[8]Meyers-Milias-Brown is codified at Government Code section 3505 et seq.

Appeals looked to federal precedent[9] to determine whether an increase in parking fees was within the scope of bargaining. Cases dealing with increases in the fees charged for in-plant food services by employers were relied upon as analogous to the issue of increases by the employer in parking fees. At the precise moment in history when Social Workers was decided, the National Labor Relations Board (herein NLRB) had steadfastly adhered to the position that increased in in-plant food prices were negotiable, construing wages and conditions of employment (Ford Motor Co. (1977) 230 NLRB 101 [95 LRRM 1397]; Seattle First National Bank (1969) 176 NLRB 691 [73 LRRM 1549]; Ladish Co. (1975) 219 NLRB No. 60 [89 LRRM 1653]; Westinghouse Electric Corp. (1966) 156 NLRB 1080 [61 LRRM 1165]; McCall Corp. (1968) 172 NLRB No. 55 [69 LRRM 1187]; Package Machine Co. (1971) 191 NLRB 268 [77 LRRM 1456].)

Four federal circuit courts of appeal had provided a narrower interpretation, frequently refusing enforcement of NLRB Board orders and applying a standard requiring that a matter must "materially" or "significantly" affect terms and

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[9]The Court of Appeals followed Fire Fighters Union Local 1186 v. City of Vallejo, (1974), 12 Cal.3d 608, [526 P.2d 971, 116 Cal.Rptr. 507] in which it was held that in interpreting state labor legislation, it is appropriate to look to applicable federal precedent. Cited with approval by the Board, in Sweetwater Union High School District, EERB Decision No. 4, 11/23/76, [1 PERC 10]; Anaheim Union High School District (10/28/81) PERB Decision No. 177.

conditions of employment to be a mandatory subject for collective bargaining. Matters held to be de minimus were outside of the scope of bargaining (Seattle First National Bank v. NLRB (CA9 1971) 444 F.2d 30 [77 LRRM 2634] enf. denied.; Westinghouse Electric Corp. v. NLRB (CA4 1966) 369 F.2d 891 [64 LRRM 2001] enf. denied.; McCall Corp. v. NLRB (CA1 1972) 457 F.2d 936 [79 LRRM 2948] enf. denied.; NLRB v. Ladish Co. (CA7 1976) 538 F.2d 1267 [92 LRRM 3577] enf. denied (the 7th Circuit expressly agreeing with the 4th Circuit and the 1st Circuit). Subsequent to Social Workers, supra, the United States Supreme Court dealt with the issue in Ford Motor Co. v. NLRB (1979) 441 U.S. 488 [101 LRRM 2222]. Noting that the NLRB had consistently adhered to the view that in-plant food prices were among terms and conditions of employment, and that Congress had assigned to the NLRB the primary task of construing those terms, the U.S. Supreme Court held that the judgment of the NLRB was entitled to considerable deference, that its views were not an unreasonable and unprincipled construction and, therefore, should be accepted and enforced.

The federal Courts of Appeal cases upon which Social Workers, supra, relied have been superseded by the U.S. Supreme Court's decision in Ford Motor Co. which upheld the NLRB's position that increases in in-plant food prices is a mandatory subject of bargaining within the term "terms and conditions of

employment." Likewise, with all due respect, Social Workers, supra, is not binding precedent. The analogy between increases in in-plant food prices and increases in parking fees, however, remains valid.

The availability of parking and its cost are matters of concern to employees. Terms and conditions under which parking is available is plainly germane to working conditions. Further, the University is not in the business of selling parking spaces. Thus the cost of parking is not among the "managerial decisions" at the "care of entreprenerial control." (Ford Motor Co., supra.) Meeting and conferring on this subject matter does not usurp managerial decision making, it merely insures that the University and SUPA work together to establish mutually satisfactory terms and conditions of employment.[10] Based on Ford Motor Co., supra, it is found that the increase in parking fees is a matter within the scope of representation as defined in section 3562(q).

Failure to Meet and Negotiate

Factually, the past practice has been for the University to apply parking fee increases to all employees consistently on a

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[10]This reasoning comports with the Board's reasoning in Anaheim Union High School District, supra, p. 16, in which the Board sets forth the test for interpretation of scope issues under the Educational Employment Relations Act (Government Code section 3540 et seq.), a narrower scope of representation, as follows:

> ...a subject is negotiable even though not specifically enumerated if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of

campus by campus basis. SUPA became the exclusive representative for peace officers in August 1980. SUPA learned of proposed increases for 1981-82 in January 1981 and made a formal demand to meet and negotiate on that issue on March 13, 1981. On April 13, 1981, the University informed SUPA that the proposed increases would not apply to the peace officer unit. On May 29, 1981, the University revised its position and informed SUPA that the increase would apply to the peace officer unit, that the issue was not within scope, and indicated a willingness to consult. SUPA's June 12 response requested assurances that the University would meet and confer on the issue before June 22, 1981 or it would file an unfair practice charge. The charges were filed on June 26 and 29, 1981.

SUPA argues that this factual pattern constitutes a unilateral change on a matter within the scope of representation.

> employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge his freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District's mission. (Citation omitted.)

The University argues that the fee increases were a continuation of a long established practice and, thus, not a unilateral change. In support of its position, the University cites Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51, and by analogy, Davis Unified School District (2/22/80) PERB Decision No. 116; San Francisco Community College District (6/8/79) PERB Decision No. 94. The University is correct that changes which are consistent with regular and consistent past patterns of changes in conditions of employment do not constitute a unilateral change. However, those cases on which it relies are distinguishable from the instant case. Davis, supra, involved the freezing of step and column increases on the existing salary schedule; in San Francisco, supra, the District froze salaries and yearly and career increments on the existing salary schedule; in San Mateo, supra, the District reduced the existing salary schedule by 6.25 percent, in Pajaro Valley, supra, the District continued a practice that it pay an agreed upon sum while employees paid the amount of any increases in premium for health and welfare benefits until negotiations were completed, whereupon, the District compensated employees retroactively based on the agreement reached.

The distinguishing feature of the instant case is that the District did not impose a fee from a schedule already in existence. Rather, it unilaterally determined the amount of an

increase, rejected a request to bargain and implemented it.

Regardless of its consistent and regular past practice in applying the same increases to all employees, the University was not at liberty to unilaterally determine the amount of the increase and reject a request to bargain once an exclusive representative had been selected. It is noted that the consistent and regular past practice of the University has been to pay the same salary and fringe benefit increases to peace officers as it paid to other employees (supra, p. 8). Once an exclusive representative was selected, the University paid increases in fringes only by mutual agreement. It has not yet paid the increase in wages paid to all other employers to the employees in the peace officer unit. This is tacit recognition by the University that it cannot unilaterally determine the amount of increase in wages once an exclusive representative is selected. Likewise, it cannot unilaterally determine the amount by which it will increase parking fees once an exclusive representative has been selected.

This unilateral change by the University constitutes a per se violation of section 3571(c). (Davis, supra; San Francisco, supra; San Mateo, supra; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].)

Even without this unilateral change, the University would have breached its duty to meet and confer. Section 3570 imposes the duty to meet and confer in good faith on matters

within the scope of representation. Increases in parking fees have been found to be within the scope of representation: SUPA made a timely demand to meet and confer on proposed increases. The University responded that proposed increases would not be applied to employees in the unit represented by SUPA. One month later, the University reversed its position, stating increases would apply to those employees and that increases in parking fees were not matters within the scope of representation. SUPA renewed its demand to meet and confer. Without responding to that demand, the University implemented the proposed increases. In this factual pattern, it cannot be said that the University met its obligation to meet at reasonable times and confer in good faith with respect to matters within the scope of representation (section 3562(d)). The University rejected SUPA's demand to meet and confer. It neither met nor conferred. Rather, it took the position that the subject matter was outside the scope of representation and offered to discuss it. In Katz v. NLRB, supra, the United States Supreme Court stated:

> The duty "to bargain collectively" enjoined by Section 8(a)(5) is defined by Section 8(d) as the duty to "meet * * * and confer in good faith with respect to wages, hours, and other terms and conditions of employment." Clearly, the duty this defined may be violated without a general failure of subjective good faith; for there is no occasion to consider the issue of good faith if a party has refused even to negotiate in fact--"to meet * * * and confer"--about any

> of the mandatory subjects.11 A refusal to negotiate in fact as to any subject which is within Section 8(d), and about which the union seeks to negotiate, violates Section 8(a)(5) though the employer has every desire to reach agreement with the union upon an over-all collective agreement and earnestly and in all good faith bargains to that end.

Based on the foregoing, it is found that the University violated section 3571(c) by failing and refusing to meet and negotiate on the subject of increases in parking fees. In addition, this same conduct concurrently violated section 3571(b) by denying SUPA its statutory right as an exclusive representative to represent unit members in their employment relations with the University. (Section 3570.) Further, the University's failure to meet and negotiate with SUPA interfered with employees because of their exercise of representational rights in violation of section 3571(a). Collective negotiations is the cornerstone of the HEERA. To this end, employees have the right to select an exclusive representative to meet and negotiate with the employer on their behalf (section 3565). (San Francisco Community College District, supra.)

Mootness

The University argues that the issue is moot because it has decided to negotiate the issue of parking fees and has in fact been doing so since June 1981.

Factually, the University took the position that increases

in parking fees were not within the scope of representation on May 29, 1981. Increases were implemented effective July 1, 1981. Meanwhile, on June 18, 1981, SUPA presented its initial proposal which contained a provision for no parking fees on June 18, 1981. On October 1, 1981, the University's director of collective bargaining services wrote to SUPA and indicated that as he understood SUPA's proposal, it would exempt peace officers from all parking charges. The University did not consider this proposal to be outside the scope of representation. After briefs were filed in this matter, the University communicated with SUPA via an attachment to a document filed herein that there were proposals for increases for 1982-83 and that the University was prepared to negotiate with SUPA on its proposal (no change from current practice) or SUPA's proposal (no charge for parking).

The record reflects constantly shifting positions by the University over a lengthy period which includes one implemented annual increase and one proposed annual increase. At no time does the University recognize a duty to meet and confer on proposed increases. Its latest communication on April 20, 1982 gives notice of proposed increases and offers to meet and confer on the two extremes, all or nothing.

Based on this factual record, it is clear that the issue is not moot. The duty is to meet and negotiate on proposed

increases as well as proposal for no fee or full fee and cannot be limited by the proposals made in a setting in which the University's position was that increases in parking fees were outside the scope of representation.

REMEDY

The PERB has broad authority to remedy unfair practices. Section 3563.3 provides:

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

It is appropriate to order that the University cease and desist from failing and refusing to meet and confer in good faith with SUPA on the subject of increases in parking fees and that it cease and desist from the derivative violations of interfering with and restraining employees because of the exercise of rights guaranteed by HEERA (the right to be represented by an exclusive representative), and denying to employee organizations rights guaranteed to them by HEERA (the right to meet and confer on matters within the scope of representation).

The more difficult issue in framing a remedy is whether it is appropriate to require that the University "make whole" for the increase it implemented without first meeting and conferring. SUPA argued for the "make whole" remedy based on

the premise that this was a unilateral change for which "make whole" is the ordinary remedy. The University argues that "make whole" is not appropriate because it simply implemented the increases for all employees as had been its consistent and regular past practice. It cites Ford Motor Co., supra, in which the U.S. Supreme Court, addressed the employer's argument that a bargaining order would result in unnecessary disruption because any small change in price or service would trigger the obligation to bargain, a particularly acute situation where several unions are involved, possibly requiring endless rounds of negotiations. The Court noted that the order it was affirming did not require bargaining prior to implementation of the increases in food prices.

> [i]t is sufficient compliance with the statutory mandate if management honors a specific union request for bargaining about changes that have been made or are to be made. (Citations omitted, emphasis added.)

Indeed, this has been the approach of the NLRB where a matter held to be within the scope of representation involved numerous small increases and numerous exclusive representatives. In Westinghouse Electric Corp., supra, the NLRB reasoned:

> Although we agree with the Trial Examiner that in the circumstances of this case the subject of cafeteria food prices was a mandatory subject of bargaining, it does not follow that Respondent was required to bargain about every proposed change in food prices before putting such change in effect. Because of the nature of the

> retaurant business--the constant and frequently sharp fluctuation in the cost of food ingredients, the large number of individual items sold, and changes in menus--it is impracticable to require consultation with a union before each change in the price of any of the products sold. It is sufficient compliance with the statutory mandate, we believe, if management honors a specific union request for bargaining about changes made or to be made.

The NLRB has continued to adhere to that view (Ladich Co., supra; Ford Motor Co., supra).

In the instant case, official notice is taken that the University is required to meet and confer with only one other exclusive representative at one campus only. SUPA is the only system wide exclusive representative. In addition, parking fee increases are not the subject of constant and shifting sharp fluctuations in costs, large numbers of items sold, or changes in menu. Indeed, the pattern that emerges from the facts is that one annual increase is proposed mid-year and implemented at the start of the new fiscal year, with annual increases at some but not all of the 12 sites where the University provides parking for a fee. Thus, the reason underlying the NLRB's exceptional approach to the obligation to bargain in food services cases simply does not exist in the matter of University parking fees.

Additionally, the University has failed to meet its obligation to meet and negotiate and has thereby reaped the

profits from one year's increase and is verging on implementing increases for a second year. If no "make whole" remedy is available, the wrong-doer may profit while the recipient of the wrongdoing is left to its efforts to bargain back what has already been taken. Thus a bargaining order is inadequate to right the wrong. The University will therefore be ordered to return to the status quo ante as it existed prior to imposition of the parking fee increase effective July 1, 1981, to pay to employees in the unit represented by SUPA the amount of any increases collected from them together with interest at the lawful rate,[11] and to cease and desist from implementing a further increase to employees in the unit represented by SUPA until it has exhausted its obligation to meet and confer.

It is also appropriate to order the University to post a notice incorporating the terms of the order. Posting of such a notice will provide employees with notice that the University has acted in an unlawful manner and is being required to cease and desist from this activity and to restore the status quo. It effectuates the purposes of the HEERA that employees be

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[11]SUPA seeks interest at the Internal Revenue Service's "adjusted prime rate" based on NLRB precedent. However, the California Constitution and California law determine the applicable rate for administrative orders under California Law. (See the Board's discussion under remedy in San Francisco, supra, at p.20.)

informed of the resolution of the controversy and will announce the University's readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69. In Pandol and Sons v. ALRB AND UFW (1979) 98 Cal.App.3d 580, 587, the California District Court of Appeal approved a posting requirement. The U.S. Supreme Court approved a similar posting requirement in NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 514].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 3563.3, it is hereby ordered that the Regents of the University of California and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and confer in good faith with the Statewide University Police Association by taking unilateral action on matters within the scope of representation, as defined by section 3562(q), and specifically with respect to the increase in fees charged for parking,

2. Denying the Statewide University Police Association its right to meet and confer on behalf of unit members by failing and refusing to meet and negotiate about matters within the scope of representation,

3. Interfering with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the Regents of the University of California on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

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

1. Rescind the increase in parking fees effective July 1, 1981 as applied to employees in the unit represented by the Statewide University Police Association and return to the status quo ante in effect prior to the unlawful unilateral change and retain the status quo ante unless and until the parties exhaust the statutory duty to meet and confer or agree otherwise by their adoption of a negotiating agreement.

2. Pay to employees in the unit represented by the Statewide University Police Association the difference between the parking fees collected since July 1, 1981 and the amount they would have paid but for the increase effective that date, together with interest at the lawful rate.

3. Within five (5) workdays after the date of service of a final decision in this matter, post at all work locations where notices to employees in the unit represented by the Statewide University Policy Association customarily are

profits from one year's increase and is verging on implementing increases for a second year. If no "make whole" remedy is available, the wrong-doer may profit while the recipient of the wrongdoing is left to its efforts to bargain back what has already been taken. Thus a bargaining order is inadequate to right the wrong. The University will therefore be ordered to return to the status quo ante as it existed prior to imposition of the parking fee increase effective July 1, 1981, to pay to employees in the unit represented by SUPA the amount of any increases collected from them together with interest at the lawful rate,[11] and to cease and desist from implementing a further increase to employees in the unit represented by SUPA until it has exhausted its obligation to meet and confer.

It is also appropriate to order the University to post a notice incorporating the terms of the order. Posting of such a notice will provide employees with notice that the University has acted in an unlawful manner and is being required to cease and desist from this activity and to restore the status quo. It effectuates the purposes of the HEERA that employees be

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[11]SUPA seeks interest at the Internal Revenue Service's "adjusted prime rate" based on NLRB precedent. However, the California Constitution and California law determine the applicable rate for administrative orders under California Law. (See the Board's discussion under remedy in San Francisco, supra, at p.20.)

title 8, part III, section 32135. Any statment of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.

Dated: May 17, 1982

Sharrel J. Wyatt
Administrative Law Judge

UNIVERSITY OF CALIFORNIA - PARKING OPERATIONS
Summary of Parking Fee Schedules
Fiscal Year 1980-81

Campus	Annual Permit Rate(1) Faculty	Staff	Students	Daily Fee	Meter Per Hour
Berkeley	$180.00	$180.00	$140.00(2) or 180.00	$ .75	$.25
Davis	48.00 18.00(6)	48.00 18.00(6)	36.00 24.00(2) 18.00(6)	.50 .25(6)	.25
Sacramento Medical Center	72.00	72.00	54.00	2.00(3)	.25
Irvine	60.00	60.00	60.00 42.00(2)	--	.25
Irvine Medical Center	180.00 60.00(4)	180.00 60.00(4)	--	1.50(5)	.25
Los Angeles	108.00	108.00	108.00	2.00	1.00
Riverside	42.00	42.00	42.00	.50	--
San Diego	84.00	72.00	60.00	1.00	.10/ .25
San Diego Medical Center	180.00	144.00	--	1.00	--
San Francisco	216.00	216.00	12.00(6)	1.50	.50
Santa Barbara	48.00	48.00	48.00	.50	--
Santa Cruz	72.00	72.00	66.00 69.00(7)	.75	.25

Notes:
(1) Lower rates are charged for remote lots, carpools, evening hours, short-time periods, etc.
(2) Residence Halls parking only (10 month).
(3) $.25 per hour with $2.00 maximum for 24 hours.
(4) $180/year fee for parking structure which is preferentially restricted to physicians, house staff, department chairs, and management; $60/year fee for surface lots.
(5) $.25 per hour with $1.50 maximum for 24 hours.
(6) Night parking only.

UNIVERSITY OF CALIFORNIA - PARKING OPERATIONS
Summary of Parking Fee Schedules
Fiscal Year 1981-82

Campus	Annual Permit Rate(1) Faculty	Staff	Students	Daily Fee	Meter Per Hour
Berkeley	$180.00	$180.00	$140.00[2] or 180.00	$ .75	$.25
Davis	60.00 21.00[6]	60.00 21.00[6]	48.00 36.00[2] 21.00[5]	.50 .25[6]	.25
Sacramento Medical Center	72.00	72.00	54.00	2.00[3]	.25
Irvine	72.00	72.00	72.00 54.00[2]	1.00	.25
Irvine Medical Center	240.00 144.00[4]	240.00 144.00[4]	-- 144.00	1.50[5] --	.25 --
Los Angeles	144.00	144.00	144.00	2.00	1.00
Riverside	42.00	42.00	42.00	.50	--
San Diego	108.00	84.00	72.00	1.00	.10/ .25
San Diego Medical Center	216.00	180.00	--	1.00	--
San Francisco	252.00	252.00	12.00[6]	1.50	.50
Santa Barbara	60.00	60.00	60.00	.75	--
Santa Cruz	72.00	72.00	66.00 69.00[7]	.75	.25

Notes:
1 Lower rates are charged for remote lots, carpools, evening hours, short-time periods, etc.
2 Residence Halls parking only (10 month).
3 $.25 per hour with $2.00 maximum for 24 hours.
4 $240/year fee for parking structure which is preferentially restricted to physicians, house staff, department chairs, and management; $144/year fee for surface lots.
5 $.25 per hour with $1.50 maximum for 24 hours.
6 Night parking only.