STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

GONZALES UNION HIGH SCHOOL DISTRICT, Charging Party, v. GONZALES UNION HIGH SCHOOL DISTRICT TEACHERS ASSOCIATION, CTA/NEA, Respondent.	)	Case No. SF-CO-195 PERB Decision No. 480 January 10, 1985

Appearances: Littler, Mendelson, Fastiff & Tichy by Larry P. Shapiro and Jennifer J. Walt, Attorneys for the Gonzales Union High School District; Ramon E. Romero, Attorney for the Gonzales Union High School Teachers Association, CTA/NEA.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

JAEGER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both the Gonzales Union High School District (District) and the Gonzales Union High School District Teachers Association, CTA/NEA (Association), to an Administrative Law Judge's (ALJ) proposed decision, attached hereto, finding that the Association violated section 3543.6(b) of the Educational Employment Relations Act (Act), Government Code section 3540 et seq.

We have reviewed the proposed decision in light of the parties' appeals and, finding it free from prejudicial error, adopt it as the Decision of the Board itself.

There is one issue, however, which we feel is necessary to address in this Decision. At the outset of the hearing in this matter, pursuant to PERB Regulation 32155(a)(4),[1] the District filed a motion to disqualify the ALJ on the ground of bias. Essentially, the District asserted that the ALJ had shown bias by ruling against it in a previous case.[2] The ALJ denied the motion. Thereafter, the District, pursuant to PERB Regulation 32115(d),[3] filed a request with the Board itself to appeal the ALJ's refusal to disqualify himself.

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[1]PERB Regulation 32155(a)(4) provides:

> . . . no Board agent performing an adjudicatory function, shall decide or otherwise participate in any case or proceeding:
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> . . . . . .
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> When it is made to appear probable that, by reason of prejudice of such . . . Board agent, a fair and impartial consideration of the case cannot be had before him or her.

[2]Ultimately, the ALJ's determination in that earlier case was affirmed in part and reversed in part by the Board in Gonzales Union High School District (9/28/84) PERB Decision No. 410.

[3]PERB Regulation 32155(d) provides:

> If the Board agent does not disqualify himself or herself and withdraw from the proceeding, he or she shall so rule on the record, state the grounds for the ruling, and proceed with the hearing and the issuance of the decision. The party requesting the disqualification may, within ten days, file with the Board

In Gonzales Union High School District (2/27/84) PERB Decision No. 379, the Board denied the District's request to appeal the ALJ's refusal to disqualify himself. In so doing, the Board did not consider the merits of the request and stated that the District could reassert its disqualification argument on appeal of the proposed decision, should it so desire. The District has excercised this option and urges the Board to disqualify the ALJ.

The District urges as grounds for disqualification that the ALJ "demonstrated . . . a propensity to distort the evidence" in this case and in an earlier case. It asserts that it is irrelevant that, in this case, the ALJ found for the District or that in the earlier case, Gonzales Union High School District, supra, the Board upheld, in part, the ALJ's finding that the District violated the Act. In the District's view, the evidence was so overwhelming in these cases in favor of its position, that any findings made by the ALJ to the contrary necessarily evidence bias.

For the reasons set forth below, we find that the District's ground for urging disqualification is inadequate as a matter of law.

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itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the party requesting disqualification may file exceptions, after hearing and issuance of the decision, setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits.

PERB Regulation 32155(a)(4) is modeled after section 170 of the Code of Civil Procedure. That section provides, in relevant part:

> (a) No justice or judge shall sit or act as such in any action or proceeding:
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> . . . . . .
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> (5) When it is made to appear probable that, by reason of bias or prejudice of such justice or judge a fair or impartial trial cannot be had before him.

There is a large body of case law construing this section, all of which goes against the District's contention in this case. First of all, it has long been held that a judge's opinion concerning a question of law or any error of law, no matter how gross, does not constitute bias or prejudice. Andrews v. ALRB (1981) 28 Cal.3d 781; Dietrich v. Litton Industries (1979) 12 Cal.App.3d 704; Ryan v. Welte (1948) 87 Cal.App.2d 888; People v. Rojas (1963) 216 Cal.App.2d 819; In re Bruchman's Estate (1955) 132 Cal.App.2d 81; Mackie v. Dyer 154 Cal.App.2d 395; Calhoun v. Superior Court (1947) 30 Cal.App.2d 312; U.S. v. Morgan (1941) 313 U.S. 409. Similarly, erroneous factual rulings against a litigant, even when numerous and continuous, form no grounds for a charge of bias or prejudice, especially when they are subject, as here, to appellate review. McEwen v. Occidental Life Insurance Co. (1916) 172 Cal. 6; Kreling v. Superior Court (1944) 63

Cal.App. 2d 353, overruled on other grounds, (1944) 25 Cal. 305; Sacramento Suburban Fruit Co. v. Tatham (1930) 40 F. 2d 893.

Rather, for bias or prejudice to be found, there must be evidence of a "fixed anticipatory prejudgment" against a party by the judge. In re Marriage of Fenton (1982) 134 Cal.App.3d 451; Ensher, Alexander & Barsoom, Inc. v. Ensher (1964) 225 Cal.App. 2d 318. Thus, for example, when a judge hearing one of several actions involving the same defendant stated that the defendant had committed perjury, he was disqualified. Evans v. Superior Court (1930) 107 Cal.App. 372; Chastain v. Superior Court (1936) 14 Cal.App. 2d 97. Similarly, a judge was disqualified on the basis of prejudice in a child adoption proceeding where, earlier in the year, he had written to the director of the county bureau of adoptions that "this adoption should be nipped in the bud." Adoption of Richardson (1967) 251 Cal.App. 2d 222. In other words, unless the judge makes statements indicating a clear predisposition against a party, no bias or prejudice is established. See also Andrews v. ALRB, supra; Ensher, Alexander & Barsoom, Inc. v. Ensher, supra.

Similarly, under the National Labor Relations Act (19 U.S.C. 151 et seq.), the National Labor Relations Board and the federal courts have held on numerous occasions that factual or legal determinations adverse to a party do not establish prejudice or bias. NLRB v. Pittsburg Steamship Co. (1949) 337 U.S. 656; NLRB v. Air Flow Sheet Metal, Inc. (7th Cir. 1968) 396 F. 2d 506 [68 LRRM 2329]; NLRB v. Central Press (9th Cir.

1975) 527 F.2d 1156 [91 LRRM 2236]. As the U.S. Supreme Court stated in NLRB v. Pittsburg Steamship Co., supra, 24 LRRM at 2178, "total rejection of an opposed view cannot itself impugn the integrity or competence of a trier of fact."

In this case, the District has alleged no evidence of bias other than the fact that the ALJ has resolved factual questions contrary to its position.[5] We find, consistent with established precedent in this area, that making factual findings with which a party to a proceeding disagrees is insufficient, as a matter of law, to establish bias or prejudice.[6] Accordingly, the District's motion to disqualify the ALJ on the grounds of bias is denied.

ORDER

Upon the foreging findings of fact and conclusions of law, and the entire record in this matter, and pursuant to Government Code section 3541.5(c), it is hereby ORDERED that

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[5]In its exceptions, the District asserts that the ALJ, at footnote 8 of the proposed decision, referred to the substance of a previous charge, Case No. SF-CE-633, in violation of a stipulation of the parties. This reference, inasmuch as it did not affect the outcome of this case, was, at most, nonprejudicial error.

[6]Indeed, inasmuch as the Board has affirmed the ALJ's decision both in this case and, in part, in the earlier Gonzales case, the District's contention that the ALJ has "distorted" evidence is groundless. However, even if the ALJ were to have reached a decision replete with factual or legal errors, such conduct would be insufficient, as a matter of law, to justify disqualification.

the Gonzales Union High School District Teachers Association, CTA/NEA and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and negotiate with the Gonzales Union High School District during the summer recess; and

2. Refusing to negotiate with the Gonzales Union High School District about employee discipline and employee layoffs.

B. TAKE THE FOLLOWING ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Within 35 days following the date the Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed and at its headquarters office, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the Gonzales Union High School District Teachers Association, CTA/NEA. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to insure that the Notice is not reduced in size, defaced, altered, or covered by any material.

2. Written notification of the actions taken to comply with this Order shall be made to the regional director of the Public Employment Relations Board in accordance with his/her instructions.

Chairperson Hesse and Member Burt joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. SF-C0-195, Gonzales Union High School District v. Gonzales Union High School District Teachers Association, CTA/NEA, in which all parties had the right to participate, it is found that the Gonzales Union School District Teachers Association, CTA/NEA violated the Educational Employment Relations Act, Government Code section 3543.6(b) by refusing to negotiate in good faith with the Gonzales Union High School District.

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

CEASE AND DESIST FROM:

1. Refusing to meet and negotiate with the Gonzales Union High School District during the summer recess; and

2. Refusing to negotiate with the Gonzales Union High School District about employee discipline and employee layoffs.

Dated:

GONZALES UNION HIGH SCHOOL
DISTRICT TEACHERS ASSOCIATION,
CTA/NEA

By: _____
Authorized Representative

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

GONZALES UNION HIGH SCHOOL DISTRICT,	)	
Charging Party,	)	Unfair Practice Case No. SF-CO-195
v.	)	
GONZALES UNION HIGH SCHOOL TEACHERS ASSOCIATION,	)	PROPOSED DECISION (6/1/84)
Respondent.	)	

Appearances: Larry P. Schapiro (Littler, Mendelson, Fastiff & Tichy) for the charging party Gonzales Union High School District; Ramon E. Romero, attorney (California Teachers Association), for the respondent Gonzales Union High School Teachers Association.

Before: Martin Fassler, Administrative Law Judge.

PROCEDURAL HISTORY

In a charge filed on July 11, 1983, the Gonzales Union High School District (hereafter District) accused the Gonzales Union High School Teachers Association (hereafter Association) of refusing to meet and confer in good faith with the District during contract negotiations. The District accused the Association of violating section 3543.6(c) of the Educational Employment Relations Act (EERA or Act)[1] by: refusing to

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[1]The EERA is codified at Government Code section 3540 et seq. EERA section 3543.6(c) provides:

> It shall be unlawful for an employee organization to:

schedule negotiating meetings during the summer of 1983; refusing to negotiate about certain mandatory subjects of bargaining; refusing to meet with the District's representatives outside the normal hours of the teachers' workday; insisting on discussions of ground rules for the negotiations, and thus preventing discussion of the substantive issues concerning wages, hours, and terms and conditions of employment; and several related acts of misconduct.[2]

On September 30, 1983, a complaint was issued incorporating the District's allegations of misconduct. In its answer to the complaint, the respondent denied all wrongdoing and asserted, by way of an affirmative defense, that the charge was frivolous and included intentional misrepresentations of fact. An informal settlement conference was held October 24, 1983, but the dispute was not resolved.

On November 16, the charging party filed an amendment to its original charge, alleging that at negotiating meetings held in September and October the respondent failed to negotiate

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

All future references are to the Government Code unless otherwise specified.

[2]The charging party's allegations and the respondent's defenses are considered in more detail in the Discussion and Analysis section.

in good faith, as evidenced by its refusal to make counterproposals to the District's proposals on various subjects.

A hearing on the matter was held on November 28 and 29, and December 7, 1983, and January 30 and 31, 1984. At the outset of the hearing, the undersigned administrative law judge ordered that the complaint be amended to incorporate the allegations of the amendment.

Each party submitted a post-hearing brief on April 20, 1984, and the matter was submitted for decision at that time.

FINDINGS OF FACT

A. Background and an Overview of Negotiations.

The District and the Association were signatories to a collective bargaining agreement in effect from September 8, 1981 until June 30, 1982. Because neither party sought renegotiation of the contract in early 1982, the contract, by operation of its own terms, was extended until (at least) June 30, 1983.

In mid-January 1983, the Association gave notice to the District that it wished to terminate the old agreement, and to begin negotiations for a new agreement. On February 28, 1983, the Association presented to the District, at the District's regular board meeting, its initial proposals for a new collective bargaining agreement. Details of this proposal are set out below.

The first negotiation meeting took place on April 21.[3] Other meetings took place May 13, June 2, September 20 and October 18. There were further negotiations beyond that date, but no details were disclosed during the hearing; the charging party and the respondent stipulated that neither would introduce evidence of any events beyond October 18.

The District was represented throughout negotiations by Richard Currier, an attorney with the firm of Littler, Mendelson, Fastiff & Tichy. District Superintendent Randall Olson was also present for almost all of the negotiations, and provided specific information about District practices on a few occasions. The Association was represented throughout negotiations by three District teachers: Jack Steadman, Eric Holcomb, and Dave Swenson. Steadman was the chair of the committee and the spokesperson for the negotiating team close to 100 percent of the time.

C. Commencement of Negotiations

The Association's opening proposals sought changes in 12 of the 13 articles in the existing contract. The only article which the teachers wanted to leave unchanged was article XI, Grievance Procedures. The proposals included extensive changes in the articles concerning wages, health insurance benefits,

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[3]All references hereafter are to events in 1983, unless stated otherwise.

elimination of the no-strike provision, and in article XIII, Effect of Agreement, which included various waiver clauses. The teachers sought relatively minor changes in article I, Definition of Terms, II, Recognition and Negotiation Procedures, VII, Leave and Transfer Policies, and VIII, Safety Conditions of Employment. The changes sought by the Association in other areas (Organizational Security, Hours of Employment, and Evaluation Procedures), fell in-between "extensive" and "minor."

In its written proposal to the District board, the Association asked to have the first negotiation session at "a mutually convenient date during the first or second week of April."

On March 28, the District board adopted a resolution designating Currier as its chief negotiator for the negotiations with the Association. Apart from that, there is no evidence of any action taken by either party with respect to the negotiations during March.

The contract in existence called for the commencement of negotiations for a new contract to begin no later than April 21. On April 5, Superintendent Olson sent a note to Association President John Mahoney, asking to delay the beginning of negotiations until after April 25,

> . . . as the District will not present its first proposals until the Board meeting of April 25.

Olson was apparently referring to the first step of the public presentation or "sunshining process" required by EERA section 3547.[4]

On April 12, Steadman responded to Olson's note, rejecting a delay of the first meeting until after April 25. Steadman's note referred to the contractual provision requiring the first meeting for a new contract no later than April 21, and renewed the request for a meeting, noting "any day from now through April 21 will be convenient for our negotiating team."

The same day, Currier sent a note to Steadman, noting the April 21 date in the contract for beginning of negotiations, and asking Steadman to "contact" Currier so that a negotiating session could be scheduled.

On April 14, Steadman sent a letter to Currier, stating the Association's willingness to meet with the District any day between April 14 and April 21. Steadman suggested a meeting from 1:00 p.m. to 3:00 p.m. On April 19, Currier sent a letter to Steadman which did not suggest or set a date for a meeting. The letter said that all communications concerning negotiations should be sent to Currier.

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[4]That section requires a public school district, before it begins negotiations with an employee organization, to present an initial proposal at a public meeting; to allow the public an opportunity to "express itself" regarding the proposal at a public meeting; and to then adopt its initial proposals for presentation to the employee organization.

The same day, April 19, Olson sent Steadman a note saying:

> The District wishes to schedule a negotiating meeting with the CTA representatives on 4/21/83. . . . Please let me know if this is acceptable.

Steadman agreed to this date.

As negotiations began on April 21, the Association had not yet received the District's initial proposals.[5]

The record includes four sources of information about each of the five negotiating sessions. Currier and Steadman each testified at length. In addition, the record includes typed minutes of each meeting, prepared by Currier shortly after each meeting; and typed minutes of each meeting prepared by Steadman shortly after each meeting. Steadman's minutes incorporate handwritten notes taken by all three teachers on the Association negotiating committee, Steadman, Holcomb and Swenson.[6]

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[5]Currier testified he had instructed Olson to provide the Association with the District's opening proposals, but he did not know when Olson had delivered them (TR:130, 178). Olson testified that the Association probably received the District's opening proposals a few days before the April 25 board meeting, but he was not certain of the date (TR:541). Steadman testified that the Association president received a copy of the District's initial proposals at the board meeting on the night of April 25, and Steadman himself received the proposals the next day (TR:274-275). Steadman's testimony is credited; Currier and Olson were both uncertain of the date, and neither, apparently, had first-hand knowledge.

[6]The record also includes "Negotiation Updates," brief written reports prepared by Steadman for the other teachers in

The findings set out here are based on consideration of all the evidence introduced. On most points, the four sources of evidence provide similar versions of events at the meetings. Significant conflicts among them will be noted and, where one version is credited over another, the reason will be stated.

D. The Meeting of April 21.

There was no discussion at the April 21 meeting of any contract proposals. Currier testified that he suggested on April 21 that the parties "review" the Association's initial proposals at that meeting, but that the Association "refused to do so" (TR:35). Neither Currier's minutes nor Steadman's minutes refer to Currier's request or the Association's refusal. However, Steadman did not deny that the exchange took place. Currier's testimony is credited.

Almost all of the meeting was taken up with discussion of ground rules for the ensuing negotiations. The parties exchanged their written ground rule proposals. There were four rules on which the parties were in agreement on a general concept, although they were not in word-for-word agreement on any rule. Otherwise, the two sets of proposals touched on different points or, if they touched on the same point, adopted different positions.

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the bargaining unit. However, these are quite sketchy, and much less reliable than the other sources described here.

The Association's ground rules would have required the following: the beginning and ending time of each meeting would be agreed upon in advance; Olson would forward and receive messages between Steadman and Currier (whose office was in San Diego), to arrange or rearrange meetings; Olson would arrange substitutes for the teachers on the negotiating committee for those times when negotiations took place, and would do so 48 hours in advance, with written notice to each teacher of the arrangement; each party would provide enough written copies of each proposal for each member of the other party's negotiating team.

The Association also proposed that the parties keep joint minutes as each meeting progressed, and that these be signed by each party at the close of each meeting. This proposal proved to be a major sticking point.

The District proposed that either party could terminate a meeting at any time; that there would be no disclosure to news media of the substance of proposals until they were "tentatively approved;" and described a procedure for seeking final ratification, by the District and the Association, after the negotiators had reached tentative agreement. The District's proposed rules also touched on the location of the meetings, and the need for brevity in statements made by negotiators during the meetings. Finally, the District presented a pre-typed form which the parties might use to set

out the final, agreed-upon language of each article, as agreement was reached.

The ground rules proposed by the District were almost identical with the ground rules which had been agreed to by the Association and the District in their negotiations in 1980-81.[7]

Steadman testified about the Association's reason for proposing ground rules that were different than the rules used in the previous round of negotiations. Steadman, who had not participated in those negotiations, had been told by the 1980-81 Association negotiators that at times the District had not provided substitutes for teachers on the negotiating team. Those teachers then faced a conflict between continuing to teach classes or taking part in negotiations. The Association therefore proposed a rule to prevent recurrence of that event (TR:290).

As for joint written minutes, Steadman said in the last negotiations in which he participated (in which the District had been represented by a different attorney), the District and the Association kept joint minutes (TR:291). The 1980

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[7]The only difference was that the 1980 ground rules allowed the Association to bring to the meeting, without prior notice to the District, the CTA "Service Center Council Representative," or the Association president. The 1983 proposal referred only to the Association president in this context.

Association negotiating team had told Steadman that they regretted the absence of "mutual notes" because lack of clarity in the contractual language, and conflicting understandings about the meaning of that language, had led to litigation between the Association and the District (TR:306, 317).

William Wollman, the head of the Association negotiating team during the previous round of negotiations, testified that he had urged Steadman to seek a ground rule providing for mutual minutes. Wollman testified there had been misunderstandings between the District and the Association about the meaning of certain provisions on the contract, leading to unfair practice charges. He believed the Association negotiators had been "misled in many respects" (TR:581-582).[8]

At the April 21 meeting, Steadman and Currier explained their reasons for preferring various ground rules, and objecting to others. The Association proposal of joint minutes was a particular subject of discussion. At one point, Currier suggested that since there was some disagreement about the

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[8]In PERB Case No. SF-CE-633, the Gonzales Association accused the District of unilaterally changing provisions of the collective bargaining agreement which had to do with the school calendar and with the hours of work for District teachers. There was extensive testimony during that hearing about the negotiations which preceded agreement on certain provisions of the contract.

ground rules, the parties set these aside at the next meeting, and begin discussing their initial proposals. Steadman objected to this procedure, preferring to complete the discussion of ground rules before discussing any matters of substance.

Eventually, the parties agreed to the following. After the end of the meeting, Currier would prepare a counter-proposal on ground rules, and place it that day in Steadman's mailbox at the high school. Steadman would then prepare a written response, which he would mail to Currier. If it appeared the parties were then close to agreement on the ground rules, they would meet on May 13, from 10:00 a.m. until 3:30 p.m. If it appeared that the parties would not be able to agree on ground rules at the next session, the session would be held on May 11, from 1:00 p.m. to 3:00 p.m.

Currier testified that it was at this meeting that he first suggested having negotiating meetings during the summer months when school was not in session. The testimony is not credited. Steadman denied that Currier raised the question at the April meeting, and neither Currier's minutes nor Steadman's minutes indicate Currier made a suggestion or request of that kind. In this regard, since the parties did no specific scheduling beyond May 11/13, it is unlikely that Currier would, in April, begin discussions of whether or when to meet beyond the end of the school year, approximately June 10. Further,

Steadman's notes of the next meeting, on May 13, indicate that Currier at that time proposed meeting during the summer recess.

Shortly after the meeting ended, Currier placed in Steadman's mailbox a revised set of ground rule proposals. These included several modifications of the District's initial proposals, moving the District closer to the Association on several items.

On April 25, at its regular board meeting, the District made its required public disclosure of its initial negotiating proposals. There is no evidence to indicate whether the District later modified these, in light of comments by members of the public. Currier presented the District's post-"sunshining" initial proposals to the Association negotiating team on May 13. A description of the District's proposals is provided on page 15 below.

On May 3, Currier wrote to Steadman, inquiring about the status of ground rules negotiations. He had not received from Steadman a response to the District's second set of proposed ground rules, nor had he heard from Steadman about the Association's preference for a meeting date. On May 5, Steadman mailed to Currier a second set of proposed ground rules with a cover letter in which he wrote that the Association,

> . . . still feels very strongly that some form of mutual notes must be kept.

Steadman's letter left the choice of May 11 or May 13 to Currier.

The Association's second proposed set of ground rules kept four of its proposed rules essentially unchanged, including the rule requiring joint written minutes, and the rule having to do with Olson's obligation to provide substitutes for teachers on the negotiating team. As a result of changes in the Association position, the Association and the District were in word-for-word agreement on two rules. They were also in agreement on substance, with only minor wording differences, on seven other ground rules, leaving only two subjects on which there were any real differences: the Association's desire to have joint minutes of each session, and the Association's proposal regarding Olson's obligations with respect to the provision of substitute teachers.

On May 9, Currier wrote to Steadman. He noted that the parties remained "substantially apart" on the two points noted--the joint minutes and the role of Olson in assigning substitutes--and suggested that the parties,

> . . . temporarily set aside our discussions on ground rules and meet to review generally the initial proposals of both parties.

He suggested meeting on May 13 from 10:00 a.m. to 3:30 p.m.

E. The Meeting of May 13.

At the beginning of the meeting, Currier gave Steadman copies of the District's first contract proposal. The District

proposed retaining, without change from the prior contract, five articles: Articles VII (leave and transfer policies), VIII (safety conditions of employment), XI (grievance procedures), XII (the no-strike provision), and XIII (the Association's waiver of further negotiating rights). The District proposed minor changes in three articles, and changes of more significance in five articles (management rights, agency fee provisions, wages, hours of employment, and health insurance contributions). The District proposed to eliminate the school year calendar, and the teacher evaluation forms, each of which was included as an appendix.

The District also proposed two articles on subjects not covered in the predecessor contract: discipline of employees, and layoff for lack of funds.

Currier noted that neither party was proposing to change the grievance procedure article. He suggested that he and Steadman sign off on that article, using the form he had proposed the previous meeting. Steadman agreed that neither party was seeking a change in that article, but he declined to sign off on the grievance article, or to discuss the substance of any proposal at all. He wanted to complete the discussion on ground rules before discussing any contract proposals. Steadman did, however, comment that he believed both discipline and layoff were outside the scope of representation. Currier

said he believed they were within scope, and asked Steadman to "check" on this, which Steadman said he would do.

For the remainder of the morning, the parties discussed proposed ground rules. Currier explained his reasons for opposing various aspects of the joint minutes proposal of the Association. These would actually discourage attempts to find agreement, and would represent a waste of time, he said.

After the lunch break, the Association gave the District revised ground rules proposals. Included were changes in seven of the eleven rules on the table, including the rule concerning joint minutes, and the rule giving Olson specific responsibilities for assignment of substitutes on negotiating days. Despite the changes, however, there remained only two rules on which the parties were in word-for-word agreement.

The District then presented a new proposal on ground rules, modifying its position on virtually every rule on which there was not yet agreement. As a result, there were five rules on which the District and the Association were in precise agreement, and a sixth rule in which the only difference was the Association's use of the word "teachers," while the District's version used the abbreviation "GUHSTA."

Steadman also told Currier that the Association negotiators were uncertain about the possible legal implications of the "tentative conclusion" sign-off form which Currier had proposed using (TR:318, 324). Currier had given this to Steadman at the

end of the April 21 meeting, but there had been no discussion of it at the time (TR:300).

The parties then discussed the schedule for additional meetings. There is a conflict between the testimony of Steadman and Currier about statements made during that discussion. Currier testified that the District wanted to schedule meetings during the summer, and he said as much during the meeting. He said when the District learned (sometime in July) how much money it would receive from the state, the parties would be able to meet in August, and complete contract negotiations before the start of the school year in September. Currier acknowledged he did not suggest any specific dates during the summer on which to meet. Currier also testified that Steadman said the Association did not want to meet during the summer. Rather, they wished to meet in September.

Steadman, on the other hand, testified that Currier suggested August meetings, but did not suggest meeting at any other time in the summer. Steadman rejected August meetings, he said, because he, his wife, his daughter, and a niece had made plans to travel in Spain from July 23 until August 31.

Currier's testimony is credited, Steadman's is not.[9]

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[9]Steadman's testimony that his family had previously planned a trip to Spain during August is not disputed, and is credited.

Steadman's minutes of the meeting support the inference that Steadman understood that the District's proposal to meet over the summer was not limited to August, and that Steadman rejected it. Steadman's minutes include the following:

> He [Currier] wants to meet during the summer. He thinks we could meet in August and wrap things up before the start of school. The teachers did not agree to meet during the summer.

Other evidence supporting the inference that Steadman rejected Currier's proposal to meet over the summer was Steadman's testimony that he did not want to meet at any time during the summer, aside from the time he was to spend traveling (TR:505-506), and Steadman's actions at the next meeting (described on p. 25 below).

There was also a conflict between the testimony of Steadman and Currier about whether Steadman told Currier <u>why</u> the Association did not want to meet during August. Steadman testified that he told Currier of his planned trip to Spain with his family members. Currier testified that Steadman did not offer this explanation; that the only explanation offered was that the Association negotiators wanted to meet only when school was in session, and when they could receive released time.[10] In view of the legal analysis of the Association's

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[10]EERA section 3543.1(c) provides that:

refusal to meet over the summer (see pp. 38-40), it is not necessary to resolve this conflict.

While discussing scheduling, Steadman and Currier also talked about the appropriate times for negotiating sessions. This subject came up at other meetings as well. Steadman, speaking for the teachers, consistently sought to begin meetings at the start of the school day (approximately 8:00 a.m.), and end them near the end of the school day (between 3:00 and 3:30). Currier preferred to begin at 10:00 a.m., and continue until somewhat later (he suggested 5:30 at one point). Each party had its reasons.

Currier explained his preference for a 10:00 a.m. start by noting that whether he was flying to the Gonzales area from his home in San Diego, or driving to Gonzales from other business appointments in Northern California, he was not able to arrive until 9:30 or 9:45 a.m. He needed time, before the commencement of negotiations, to consult with Superintendent Olson. Olson also needed some time at the beginning of the school day to see to District business.

Steadman testified that the teachers on the negotiating

> A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

team preferred an 8:00 a.m. start because they wanted to be free of all teaching responsibilities on negotiating days. They did not want the distractions that came with teaching for a short period of time, getting a substitute started, and similar activities. In a letter sent to Currier on September 2, 1983, Steadman wrote:

> We prefer to begin the sessions as early as possible so that we aren't already tired out from having to teach our classes.

As for the Association's preference for ending negotiating sessions by 3:30, Currier testified that the only reason ever stated by Steadman was the teachers' desire to negotiate only during time for which they were getting released time.[11] Steadman acknowledged that the teachers' negotiating team did not want to negotiate beyond the end of the normal working day, and that he, speaking for the team, said as much during negotiations. He also acknowledged that on several occasions the Association negotiator refused to negotiate beyond 3:30 p.m. (TR:467-68).

Steadman never denied Currier's testimony, that the stated reason for the Association's 3:30 cut-off had to do with the unavailability of released time after 3:30. Steadman testified, when questioned by his own counsel, that he never

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[11]See footnote 10 above, for the language of the statutory provision regarding released time.

"refused" to schedule any additional negotiating sessions unless released time were granted (TR: 421-422). But that general assertion is meaningless in the face of his specific acknowledgments, and is not credited.

It is found that the Association's negotiating team was unwilling to meet beyond 3:30 p.m. As a result of this preference, and because of Currier's unwillingness to begin meeting before 10:00 a.m., the parties' negotiating sessions were limited to the period between 10:00 a.m. and 3:30 p.m.

At the end of the May 13 meeting, Steadman and Currier scheduled the next meeting for June 2, to begin at 10:00 a.m.

Sometime between May 13 and June 2, Steadman spoke to Ramon Romero, staff counsel for the California Teachers Association, with which the Gonzales Association is affiliated, about the negotiability of the District's proposals on discipline of employees and layoff for lack of funds. Romero told him teacher discipline was a mandatory subject of bargaining. Steadman's testimony about the advice he received about layoff proposals was unclear:

> The teacher layoff because of lack of funds, you [Romero] thought that it said that there was a "may" used in the terminology, but you also told me not to refuse to negotiate . . . and I asked for your help in drafting some kind of model proposals. (TR: 354.)[12]

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[12]EERA section 3543.2(c) provides:

On June 1, Steadman sent to Romero the District's proposals on layoffs and teacher discipline, and asked for help in preparing counter-proposals.

F. The Meeting of June 2.

At the beginning of the meeting, the Association offered a new set of ground rules. This proposal eliminated the Association's previous demands that there be joint written minutes, and eliminated the specific reference to Olson with respect to the arranging of substitutes to cover classes of teachers on the negotiating team.

There is a conflict between the testimony of Currier and that of Steadman about events during the remainder of the morning. Steadman's testimony is credited because it is far more specific, and because Currier acknowledged on cross-examination uncertainty about the course of events. In addition, Steadman's minutes of the meeting, which are consistent with his testimony, are far more detailed and precise than are Currier's.

> Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply.

Steadman's testimony was the following. Currier read the Association's new proposals, and said he would agree to them, providing a phrase was added to one rule. Steadman agreed to the phrase suggested by Currier, and then offered to retype the rules, including the additional phrase, during the lunch break, and bring it to the meeting for initialing. Currier agreed to this. Steadman at first testified this sequence took 20 to 30 minutes, and later testified it took 10-15 minutes (TR:251, 364-365). The difference is inconsequential.

Currier at first testified that discussion of the ground rules continued from the beginning of the meeting (around 10:30 a.m. until "into the afternoon") (TR:77). At another point, he testified that the ground rules discussion continued until 12:05 p.m. When asked about the subject again on cross-examination, he was evasive and uncertain. He denied that agreement on the ground rules was reached immediately after the session began, but said he did not remember specifically when the agreement came about, or the length of the discussion (TR:191).

Steadman's testimony is credited despite his minor inconsistency, for the reasons stated above.

During the remainder of the morning session, Steadman made a presentation about the Association's initial proposals. Steadman touched on many, or all, of the contract changes which the Association was proposing.

After lunch, Steadman presented to Currier a retyped version of the ground rules, incorporating the change Currier had suggested that morning. Currier and Steadman signed off on the ground rules at 1:30 p.m. Following that, Currier discussed the District's contract proposals, article by article.

Steadman commented specifically about the two articles sought by the District covering subjects which were not in the predecessor agreement: discipline short of dismissal; and layoff of employees for lack of funds.

Steadman and Currier offered different versions of Steadman's comments about the two subjects. According to Currier, Steadman said both subjects were outside the scope of representation (TR:78, 202-203). Steadman testified that he acknowledged that discipline proposals were within the scope of representation, but layoff proposals were not, and that the Association had no obligation to negotiate about the latter (TR:347, 354, 370). Currier's minutes are consistent with Currier's testimony, Steadman's minutes are consistent with Steadman's testimony.

Neither party questioned any other person about statements made at the meeting that day, although three other persons were present: Swenson and Holcomb on the Association's negotiating team, Olson as part of the District team.[13] In view of the

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[13]Association counsel Romero called Olson as a witness,

legal analysis set out on pages 43-44, it is not necessary to resolve this conflict.

During the course of his discussion of the District's position on salary levels, Currier said the District was "open to restructuring" the salary schedule. He referred to the possibility of the Legislature adopting new school finance laws providing for an $18,000 starting salary for teachers.

At the close of the meeting, Currier and Steadman discussed a date for the next meeting. Steadman suggested a meeting in September, although he mentioned no date. Currier said the District wanted to meet during the summer (although he mentioned no date), and asked Steadman to "rethink" his opposition to meeting during the summer. There was no agreement on another meeting date. Currier and Steadman agreed they would set a date through correspondence. Currier testified he left with the impression that Steadman would write to him about a meeting date. However, there is no evidence of a clear statement by Steadman that he would do so, or that he would communicate with Currier by any definite date.

Currier and Steadman agreed on the agenda for the next

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after Steadman and Currier had both testified, and after both sets of minutes had been admitted as evidence. Romero was denied the opportunity to question Olson about each meeting, start to finish, but was given the opportunity to question Olson about specific events about which there might be credibility conflicts. Romero declined the opportunity.

meeting. They included Steadman's agreement to provide at the next meeting a form, satisfactory to the Association, on which the parties could sign off on contract articles on which they had reached agreement. Currier asked Steadman to provide such a form on June 2, but Steadman declined.

F. Communications between the District and the Association in the Summer of 1983.

During the week of June 17, Currier and Romero spoke about another matter. During the course of the conversation, Currier told Romero he was having trouble scheduling negotiating dates with the Association negotiating team. Romero told Currier to deal with the Association negotiating team directly, and to call Romero again if he continueed to encounter scheduling difficulties. Romero told Currier that he would then look into the matter, and advise the Association about its obligation with respect to agreeing to meetings.

At some point during the summer, Steadman testified, he learned that both employee discipline and layoff for lack of funds were mandatory subjects of bargaining.

On July 19 Steadman wrote to Currier suggesting a meeting during the week of September 19, and "perhaps" another meeting the following week. Steadman also suggested meeting from 8:00 a.m. to 3:30 p.m., with a 30-minute lunch break, providing a seven-hour meeting. Steadman told Currier in the same letter that he would be leaving on vacation four days later, and would return to school September 1. On August 22, Currier wrote to

Steadman, suggesting a meeting on September 19, and another on September 26, each meeting to begin at 10:30 a.m. and to continue until 5:30 p.m. He suggested six non-monetary subjects for discussion: hours of work, evaluation procedures, grievance procedures, no-strike provision, discipline of employees, and layoff for lack of funds.

Steadman replied in a letter dated September 2. He suggested a meeting on September 20, 21, or 22, and suggested meeting at 8:00 a.m. rather than at 10:30,

> . . . so that we aren't already tired out from having to teach our classes.

The Association would be willing to begin the meeting later, but wanted to end the session by 3:00 p.m.

Steadman said the Association could not meet the week of September 26 because he had been called for jury duty that week; as an alternative, Steadman suggested a second meeting the week of September 19, or a meeting the first week of October. As for Currier's suggestion of topics, Steadman wrote:

> Rather than agree to the specific topics for discussion that you suggest, why don't we split the available negotiating time. You can present the "non-monetary" topics that are of particular interest to the District, and we will do the same for those which are of particular interest to the teachers.

Currier replied on September 7, suggesting a meeting on September 20, from 10:30 a.m. to 4:00 p.m. As to the agenda, he wrote:

> I agree reluctantly to discuss "non-monetary" topics rather than a list of specific subjects.

He also suggested that the parties discuss the scheduling of future meetings at the September 20 session.

G. The Meeting of September 20.

The meeting began at 10:30 a.m. Steadman gave Currier the form which the Association proposed as the method of recording tentative agreements. Currier agreed to it, and the parties then used the form to record their agreement on maintaining intact the grievance procedure which was included in the predecessor agreement.

Currier then discussed some of the non-monetary issues which the District wanted to place on the table, including organizational security, employee discipline, and layoff. Steadman acknowledged that both employee discipline and layoff are within the scope of representation, but took no position with respect to either. Currier said the District would make additional proposals on subjects covered in the recently passed Senate Bill 813 (a major school curriculum and finance law) which had provisions about the number of instructional days and hours per year, and provision for higher pay for "mentor teachers."

Currier and Steadman renewed their dispute about the hours of future negotiating sessions, but nothing changed--Currier

wanted to meet from 10:00 a.m. until late afternoon, Steadman wanted to meet from 8:00 a.m. to no later than 3:30 p.m.

After meeting for an hour, the parties took a lunch break. When they returned, Steadman reviewed briefly the Association's non-monetary proposals. There was no extensive discussion of any issue, as the meeting ended at 1:35 p.m.

Currier testified:

> I suggested preparing some counterproposals, but they didn't want to do it. They just wanted to briefly review the initial proposals.

The testimony was not denied, and is credited.

At some point during the meeting, Steadman told Currier that the Association had no objection to negotiating about either discipline of employees or layoff of employees, and recognized that both subjects were within the scope of representation (TR:401-404). Neither Steadman's notes nor Currier's notes refer specifically to this acknowledgement, but there is no testimony contrary to Steadman's testimony on this point, and it is credited.[14]

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[14]Steadman's minutes of the meeting, and another aspect of Steadman's testimony provide inferential support for the accuracy of this testimony. The minutes and Steadman's testimony both indicate there was some explanation, on September 20, of the District's discipline and layoff proposals, with Steadman asking some questions about the substance and implications of the District's proposals. Currier was not asked about this aspect of the September 20 meeting, and his notes on the point are minimal, indicating

The parties agreed the next meeting would take place October 18, and that they would discuss monetary aspects of the contract.

H. The Meeting of October 18.

At the beginning of the meeting, Currier gave the Association new District proposals in three areas: employee discipline, teacher evaluation, and hours of employment. The District had given the Association proposals in each of these areas in May; the October proposals on evaluation and hours of work included new provisions and related to requirements incorporated in SB 813, which had been enacted since May. The discipline proposal differed from the District's earlier proposal in its elimination of a long list of specific acts which could be the basis for imposition of discipline on an employee.

Steadman asked for a District proposal on salaries. Much of the morning session was taken up with discussion of monetary items: the District salary proposal (which was presented that morning), the cost of District-paid health insurance of various kinds, extra duty assignments, and the meaning of the resolution passed by the District board in May 1983 which

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only that a number of the District's non-economic proposals were discussed during the meeting, and that the organizational security issue received the most attention.

mentioned the goal of,

> . . . fair wages and benefits for the District employees and comparability with surrounding school districts.15

The District's salary proposal consisted of three elements:

1. "Step and Class Increases on Salary Schedule," which the District estimated would amount to a 3 percent increase in its salary costs;

2. A 4 percent increase on the salary schedule, to be effective as of the date of ratification of the agreement;

3. An increase in the District contribution for health and welfare benefits, which the District estimated would cost something more than 1 percent of its current budget costs.

The District also gave to the Association during the morning a revised "Organizational Security" proposal, different from its May proposal by the addition of a reference to payments to the District scholarship fund as an alternative to payment of Association dues.

After a one-hour lunch break, there was some additional

15Most of the three-paragraph resolution had to do with the quality of the education provided for the students of the District. The paragraph which included the reference to "comparability" began with the sentence:

> The negotiated contract with the CTA, while it may be viewed only as a business item, contains many elements which impact directly on the quality of instruction and learning in the Gonzales Union High School District.

discussion of the District's salary proposal, with reference to the possible financial implications for the District of SB 813. The Association then asked for a caucus, and after 45 minutes returned with a four-part proposal:

1. The percentage increase on the salary scale would be determined in view of the board resolution of May 23, referred to above. The Association proposed a joint District-Association study to determine what salary level would result in "comparability" to the pay scales in surrounding school districts.[16]

2. Vision care, orthodontic care and life insurance would be added to the District-paid benefits (no details were provided). This had been proposed by the Association, similarly bereft of details, on February 28.

3. District-paid health and other insurance benefits for teachers would be improved, if the comparable benefits for any other District employees were improved.

4. Extra-duty pay and non-salary stipends would be set

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[16]The Association had begun gathering "comparability" salary data in February 1983. By March, the chairman of the salary committee had given to Steadman salary schedules from approximately 12 districts in Monterey County. Steadman did not give this information to the District, nor did he inform the District specifically of the information which the Association had gathered. Sometime after March, the Association made some effort to gather current salary data from nearby school districts (TR:498-499).

forth in the contract as percentages of the base salary schedule, rather than as specific dollar amounts. This had also been proposed in February.

After making the proposal, the Association asked for information on placement of employees on the salary schedule during the current year and the preceding year; and the cost of extra compensation for the same two years. Shortly after that request the meeting ended and the parties agreed to schedule the next meeting for November 2.

During the discussion of the Association's desire to attain "comparability" of salaries, Currier suggested that the "comparability concept should include considerations of District-provided health insurance, and the placement of teachers on the salary scale, which provided higher rates of pay for teachers of longer tenure. He suggested comparing the distribution of Gonzales teachers across the pay scale with the distribution of teachers across the pay scale in other districts.

There was no discussion on October 18 of employee layoffs. The Association did not take a position on either employee discipline or layoffs..

I. <u>The Meeting Agendas.</u>

The nature of the agenda for each negotiating session was itself the subject of negotiations between the parties in April, May and June.

The District proposed, as part of its initial ground rule proposal,

> An agenda for each negotiating session shall be planned in advance. Each agenda should be specific.

Later that day, Currier modified his proposal to propose that at each meeting he and Steadman agree on an agenda for the next meeting, and initial this agreement. Currier also proposed that,

> Promises to make counter-proposals and produce documents should be noted and stated in writing.

Steadman, in his May 5 proposal, incorporated that requirement, and took it one step farther, proposing that "promises to take other action" also be included on the agenda. However, during the May 13 meeting, Steadman dropped this provision, and the parties eventually agreed on what Currier had suggested in his second April 21 proposal: the written agenda for the following meeting, to be initialed at each meeting by the two negotiators, would refer to promises to provide proposals or documents.

At the meetings of June 2, September 20 and October 18, the parties adopted agendas for the following meeting. Currier and Steadman apparently had very little, if any, difficulty in reaching agreement on each meeting agenda (TR:116, 376, 407-408, 419-420). The agendas ultimately proved to be quite skimpy and uninformative. The agenda agreed to on June 2, for

the next meeting (the date for which had not been determined) was the following, in its entirety:

Agenda Items

1. Discuss non-monetary items in entire contract.

2. Teachers agree to present a proposed form for signing off on tentative agreements.

3. Teachers will report back on District's proposed tentative agreement on Grievance Procedure.

In August, as noted above, Currier wrote to Steadman suggesting six specific topics for discussion at the September meeting. Steadman wrote back, suggesting instead, that each party choose three non-economic issues to discuss. Steadman did not indicate which three he would like to discuss. Currier wrote again to Steadman, saying he "reluctantly" agreed to this procedure. He, too, declined to identify the three issues which he intended to discuss at the September meeting. In fact, it appears that the September meeting did not follow even the minimal plan that the negotiators had apparently agreed on. Currier reviewed each of the District's non-economic proposals in the morning, while Steadman reviewed a number of the Association's non-monetary items in the afternoon. There is no evidence that either party identified three of its proposals for special attention, and there was no detailed discussion of any article.

At the end of the September meeting, Currier and Steadman

agreed to an October agenda. It consisted of the following:

Agenda Items

1. Discuss monetary items.

2. Make counter proposals over what has been discussed, if either side wants to.

The agenda initialed on October 18 for the November 2 meeting was even more wide-open, and in that way less informative than the agenda for the October meeting. It reads in its entirety:

Agenda Items

1. Discuss any contract items.

2. Make counter proposals over what has been discussed, if either side wants to.

DISCUSSION AND ANALYSIS

In Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51, PERB recognized that certain acts by either a school district or an employee organization represent per se violations of that party's obligation to negotiate in good faith with the other party to negotiations:

> Certain acts . . . have such a potential to frustrate negotiations that they are held unlawful without any determination of subjective bad faith on the part of the actor.

This analysis, which follows the analysis of the National Labor Relations Board, and which was approved by the Supreme Court in NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177], is most often applied to outright refusals to negotiate, and to an employer's

unilateral changes of conditions of employment.

In Muroc Unified School District (12/15/78) PERB Decision No. 80, PERB adopted the NLRB's analysis of "surface bargaining by a party to negotiations, and described it in these words:

> It is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. Specific conduct of the charged party, which when viewed in isolation may be wholly proper, may, when placed in the narrative history of the negotiations, support a conclusion that the charged party was not negotiating with the requisite subjective intent to reach agreement. Such behavior is the antithesis of negotiating in good faith.

The District argues that three aspects of the Association's conduct represent per se violations of the Association's duty to bargain: the Association's refusal to bargain about certain mandatory subjects of bargaining (employee discipline, layoff of employees, and hours of work); the Association's refusal to meet with the District at all during the summer of 1983; and the Association's refusal to meet with the District at any time other than the teachers' regular working day, when they could receive release time from the District. At the same time, the District argues that these aspects of the Association's conduct, plus other aspects, lead to the conclusion that the Association was participating in surface bargaining: that the Association lacked the subjective intent to negotiate with the

District toward the end of reaching agreement on a full contract.

A. The Association's Refusal to Meet During the Summer.

At the May 13 meeting, Currier informed Steadman that the District wanted to conduct negotiating meetings during the summer recess between school sessions (approximately June 10 through Labor Day). Steadman, speaking for the Association, said the Association was unwilling to meet during the summer. Currier again asked for the scheduling of summer meetings at the June 2 meeting, and Steadman again conveyed the Association's unwillingness to meet until school resumed in September.

Currier never suggested specific summer meeting dates, but this lack of specificity is of no significance. Currier made his desire for summer meetings clear enough, and Steadman rejected the idea entirely. Given this all-encompassing refusal, it would have been futile for Currier to suggest specific dates.

Steadman's long-planned vacation trip to Spain is of no legal significance as a defense. The Association had an obligation to make available, at all reasonable times, a person, or persons with authority to negotiate. If Steadman was to be unavailable for six weeks during the summer, it was incumbent upon the Association to designate a different individual or individuals to act for the Association during

that period.[17] There was no evidence that Steadman was indispensable for the negotiations process, or that his absence would disadvantage the Association in some way.

Similarly, the unavailability of one of the other two members of the negotiating team for a period in July is insufficient to excuse the Association from its duty of being ready, willing and able to negotiate at all reasonable times.

The NLRB has rejected the asserted defense to a refusal to bargain charge based on the busy schedule of the designated negotiator:

> The obligation to bargain in good faith . . is not met by appointing negotiators who are too busy or are otherwise prevented from meeting promptly and at timely intervals. Coronet Casuals (1973) 207 NLRB 304, 316 [184 LRRM 1441].

In accord, Franklin Equipment, Inc. (1971) 194 NLRB 643 [79 LRRM 1112].

A party's insistence on delaying meetings, or scheduling meetings with long periods in-between, is usually taken as evidence of underlying bad faith, rather than as a per se violation.[18] However, in a number of cases the NLRB has

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[17]The dispute about whether Steadman told Currier of his travel plans is irrelevant, for the same reasons.

[18]See, for example, Southwestern Porcelain Steel Corp. (10th Cir. 1963) 317 F.2d 527 [53 LRRM 2307]; Solo Cup Co. (1963) 142 NLRB 1290 [53 LRRM 1253], enforced (4th Cir. 1964) 332 F.2d 447 [56 LRRM 2383].

found that a refusal to meet for an extended period of time is itself an unlawful act. Southwest Chevrolet (1972) 194 NLRB No. 157 [79 LRRM 1156]; Valley Imported Cars (1973) 203 NLRB 873 [83 LRRM 1477].

It is concluded here that the Association's refusal to meet with the District for the purpose of contract negotiations from June 2 until September 20 constituted a violation of the Association's duty to meet and negotiate with the District, within the meaning of section 3543.6(b). There were numerous subjects on the table by June 2. Each party had reviewed its initial proposal for the other; there had been a minimal exchange of ideas and positions (and on only a few subjects at that), and no exchanges on at least a dozen proposed changes in the predecessor contract. Even in light of the financial uncertainty surrounding the passage of the annual state budget, and the uncertain financial consequences for the Gonzales District, there were many non-economic subjects which could have been subject to negotiations. By its refusal to meet at all during the summer, the Association prevented the parties from making progress on any of the outstanding non-economic proposals.

B. Association's Failure to Make Written Proposals About Discipline, Hours of Work, and Layoff.

The District argues that the Association refused to make written proposals concerning hours of work, employee discipline, and layoff for lack of funds, and by these

refusals, the Association committed per se violations of its duty to negotiate with the District.

First, as to hours of employment: in its initial proposal to the District on February 28, the Association proposed three modifications in Article V, which covered hours of employment. The Association proposed changes in sections E, F and G. The District's proposal, delivered to the Association in May 1983, proposed changes in sections F, G, and H-7.

In October, the District made two proposals regarding hours of employment, both of which were linked to the Legislature's passage, a few months earlier, of the major educational reform bill, SB 813. The Association did not respond to that proposal at the October meeting.

As for the discipline and layoff proposals, the District presented its proposals on these subjects on May 13. The Association at that meeting denied that either was within the scope of representation.[19] At the June meeting, the Association remained without a position on either issue, although (according to Steadman's testimony) he acknowledged to

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[19]EERA section 3543.2(b) places "causes and procedures for discipline, disciplinary action, short of dismissal" within the scope of representation. Section 3543.2(c) places "procedures and criteria for the layoff of certificated employees for lack of funds" within the scope of representation. Neither section uses the word "may," or suggests these are permissive, rather than mandatory subjects of bargaining.

Currier that discipline was within the scope of representation. By mid-summer, at the latest, Steadman had learned that both subjects were mandatory subjects of bargaining. At the September meeting, at which the parties reviewed their initial positions on non-economic subjects, the Association was still unable to articulate a position on either subject, although Steadman acknowledged both were within scope. The Association had not, through October 18, presented any position on either issue.

The District argues that the Association's failure to present positions on these three issues--employee discipline, layoff for lack of funds, and hours of work--are per se violations of the Association's duty to negotiate in good faith. The matter is more complicated.

In Oakland Unified School District (11/2/81) PERB Decision No. 178, PERB adopted NLRB precedent which holds that a failure to make a counter-proposal is not, by itself, a violation of a party's negotiating obligation. Rather, the school district's reason for its refusal to make a counter-proposal was examined, to determine whether the District was acting in good or bad faith. In the Oakland case, the Board concluded that the district's reason for refusing to make a counter-offer was "legitimate, and in the main, reasonable." (Oakland Unified School District, ibid., at pp. 7-9.)

The Association's refusal to make counter-proposals here will be viewed in the same light.

It cannot be concluded that the Association's failure to submit a written counter-proposal to the District's October 18 proposal on hours of employment was in bad faith.

In February the Association had made written proposals concerning hours of employment, including proposals about two of the same sections which the District sought to modify. On October 18 the District made a new proposal, touching on new aspects of the general issue. Although the Association made no proposals in October in response to these new proposals, the Association can hardly be faulted for this failure. The Association cannot be expected, or required, to submit a counter-proposal on a subject on the same day on which it receives an initial proposal from the District.

However, the Association has not presented a reasonable explanation for its failure to present any position on the layoff and discipline subjects from the months of June through October. The Association knew by May 13 that the District was seeking to negotiate about those two subjects. Even if Steadman's testimony is accepted, he was advised by CTA counsel in mid-May that he had an obligation to negotiate about discipline issues, and possibly about layoff issues. By mid-July he learned the Association also had an obligation to negotiate about layoff issues. Nevertheless, the Assocation negotiating team did next to nothing to prepare itself to negotiate about these issues which were, for the first time,

mandatory subjects of bargaining. The Association's only effort in this regard from late May through mid-October, was Steadman's telephone call to Romero in mid- or late May.[20] Because the Association negotiating team was, apparently, unwilling to take any position in either issue until receiving advice from the statewide organization with which it was affiliated, and because it received no assistance for a five-month period, the Association refused to take any position on any apsect of either the discipline issue or the layoff issue. It is concluded that these reasons do not justify the Association's failure to take positions on these issues, and that the Association's conduct therefore violated its obligation to negotiate in good faith.[21]

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[20]Steadman testified that approximately one week before the hearing began on November 29, he got some written material from another CTA staff member on the issue of employee discipline. There was no testimony about the timing of the Association's request for assistance from this second CTA staff person.

[21]EERA section 3543.2(b) provides that if a school district and an employee organization fail to reach agreement on "causes and procedures for disciplinary action," the provisions of Education Code section 44944 continue to apply. Section 3543.2(c) provides that if there is a failure of agreement on procedures and criteria for layoff for lack of funds, the provisions of Education Code section 44955 apply. The Association might have taken the position in negotiations that it preferred to exclude both subjects from the contract, and to rely instead on the two specified sections of the Education Code. This might well have satisfied its negotiating obligation, providing the positions were taken in good faith. But the Association did not articulate even those simple positions.

The District also argues that the Association's refusal to meet with the District outside of normal working hours for the District's teachers, under released time, was a per se violation of the Association's obligation. That conclusion is rejected for a number of reasons.

The District cites no precedent in support of its position, and there appears to be no such precedent, although PERB has made a number of decisions in disputes between school districts and employee organizations concerning release time. PERB has held, in decisions cited in footnote 22, that the extent of release time to be allowed to employee negotiators, the hours of release time, and the number of negotiators for whom release time is to be arranged, are all mandatory subjects of negotiations, and it has found school districts which adopt inflexible positions to have violated their duty to negotiate in good faith.[22]

However, the dispute here is not about the extent of release time to be arranged, but about the times at which negotiating sessions are to take place. Viewed in this light, the evidence cannot support a conclusion that the Association was negotiating in bad faith. The Association offered to meet

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[22]Among those decisions are Magnolia School District (7/27/77) PERB Decision No. 19; Anaheim Union High School District (10/28/81) PERB Decision No. 177; Sierra Joint Community College District (11/5/81) PERB Decision No. 179; and Nevada City School District (12/4/81) PERB Decision No. 185.

with the District for approximately seven hours a day (including some time for a lunch break). The District, similarly, offered to meet with the Association for six to seven and one-half hours per day: from 10:00 a.m. to 4:00 p.m. or, in one instance, to 5:30 p.m. Neither proposal was inherently unreasonable for these early stages of negotiations. The Assocation's inflexibility on its position on the hours of meeting might be one indication of underlying bad faith, but by itself, cannot be taken to be a per se violation of the obligation to meet and confer.[23]

C. The Allegation of the Association's Underlying Bad faith During Negotiations.

The District argues that the Association,

> . . . was not interested in reaching agreement and was bargaining in bad faith.

In support of its contention, the District points to a long list of specific acts by the Association which can be organized under six general headings:

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[23]Neither party suggested any compromise. The parties could have met from 10:00 a.m. until 5:00 p.m. (say), with the teachers receiving release time, to be applied to the first two hours of their school day, or to another designated day. PERB has found that the release time provision of EERA (sec. 3543.1) includes,

> . . . no requirement that the time employees are excused from duty without loss of compensation must precisely coincide with time actually spent negotiating. (Sierra Joint Community College District, supra, note 22.)

1. The Association's attitude about meeting dates, and the times of meetings.

2. The Association's actions with respect to ground rules.

3. The Association's failure to present counter-proposals to District proposals.

4. The Association's conduct relating to its salary proposal.

5. The Association's refusal or failure to seek clarifying information about District proposals.

6. The Association's failure to agree to specific meeting agendas.

(1) The Association Conduct with Respect to Ground Rules.

The Association and the District each proposed a set of ground rules. As noted, there were a few significant differences between them, and a larger number of minor differences. The District's proposed rules were almost identical to those used by the parties in the previous negotiations in 1980-81. While the Association's proposed ground rules were significantly different than those used previously on two points, no conclusions adverse to the Association can be drawn from this difference. The PERB has held that negotiating "ground rules" are equivalent to a mandatory subject of bargaining. Stockton Unified School District (11/3/80) PERB Decision No. 143. Thus, an employee organization (or an employer) is free to propose any ground

rules for negotiations which it believes to be appropriate or helpful, and is not required to agree to the other party's position on any specific issue, or to agree to any specific compromise.

In this case, the Association believed that the ground rules which were used in the previous round of negotiations did not serve the Association well. The Association negotiators in 1983, therefore, sought to conduct negotiations under ground rules which were more suited to their needs. Currier, the District's negotiator, did not agree with the need perceived by the Association for the rules they proposed on these points, and saw specific disadvantages to them, for the District and for the negotiating process. Eventually, compromises were worked out on both rules (mutual minutes and arrangement of substitute teachers), which both parties found acceptable.

Contrary to the argument of the District, it cannot be concluded that the Association forced the parties to spend an excessive amount of time on the ground rules. The parties spent approximately two hours discussing them on April 21, and less than four hours on May 13. On June 2 the ground rules were the first order of business. The parties reached agreement promptly, based on a compromise prepared by the Association following the May 13 meeting. Certainly, negotiations on specific contract proposals could have begun earlier, if the ground rules negotiations had been completed

more quickly. But that is not to say that the negotiations over ground rules required an excessive amount of time. The two rules which were the center of the dispute were both of some importance to each party, and neither party was willing to compromise its position after a brief discussion.

The Association refused to discuss issues of substance until after completion of the ground rules discussion. Again, it cannot be concluded this conduct was unreasonable, since the rule which was the subject of the most disagreement--regarding the keeping of mutual minutes--had to do with an important aspect of the way in which the remainder of the meetings would be conducted.

In Stockton Unified School District, supra, PERB found that one indication of the respondent's failure to negotiate in good faith was its insistence that the parties negotiate, or renegotiate, the ground rules before any substantive negotiations could take place. However, the facts in that case were significantly different than those presented here. There, the employee organizaion and the district's first negotiator had agreed on ground rules at their first meeting. The district then hired a new negotiator, who insisted on renegotiating ground rules before there could be any discussion of contract provisions. The negotiator persisted in that position for eight meetings. The difference between that case and this is obvious.

(2) The Association's Conduct with Respect to Meeting Times.

The five negotiating meetings about which evidence was introduced all took place between the hours of 10:00 a.m. and 3:30 p.m. The first meeting began at 1:00 p.m. and took only two hours and ten minutes. The others were between two hours, 15 minutes, and four hours.

The relative brevity of the meetings was a result of two factors: the Association's inflexible insistence on ending the meetings no later than 3:30 p.m., and the District's inflexible insistence on beginning the meetings no earlier than 10:00 a.m. The Association was willing to begin considerably earlier than 10:00--Steadman suggested meetings beginning at 8:00 a.m. on a number of occasions. The District was willing to meet later--Currier suggested at least once continuing until 5:30 p.m.. However, neither party was willing to inconvenience itself by agreeing to meet during the hours preferred by the other.

A number of possible compromises on this point are obvious. As one example: the parties could have begun their meeting early one day, thus inconveniencing Currier, and could have continued later for the next meeting, thus inconveniencing the Association negotiators. But neither party suggested this compromise, or any other. The relatively limited time thus set aside for meetings was a negotiated result, albeit the result

of rather clumsy negotiations.24

Significant in this respect, too, is the District's initial proposal for ground rules, including the proposal that:

> Either side may caucus or terminate the negotiating session at any time. (Emphasis added.)

This provision was included in the ground rules eventually agreed upon. In view of this provision, the District is hardly in a position to complain about the Association's wish to terminate meetings at 3:30 p.m.

D. The Association's Overall Conduct.

The strongest impression that emerges from the evidence presented in this case is that neither the District nor the Association took as seriously as it could, at least during the February-October period, its obligation to negotiate in good faith with the other. Both the District and the Association approached the negotiations in a lackadaisical fashion. Neither party treated the negotiations as they would have treated negotiations on other important, multi-faceted business dealings. In some ways, the District and the Association collaborated in conduct which was certain to lead to a lack of progress. In other ways, they went their separate ways, with the same predictable results. In retrospect, foolish, personal

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24Another possible compromise is suggested in footnote 23.

bickering was allowed to stand in the way of each party's overall desire to reach agreement.

The casual, even lethargic, attitude of the parties was apparent from the beginning.

The Association first advised the District of its desire to negotiate a new contract in mid-January, and delivered its intial proposal at the end of February. It was not until the last week of April, that the District made its public disclosure of its initial negotiating positions, and it was not until mid-May that the District delivered to the Association its specific proposals. No testimony was offered by the District to explain the long preparation period.[25] Nothing in EERA section 3547 (regarding "sunshining" of negotiations proposals) or in the PERB regulations on the same subject requires a "gestation" period of that length.[26] Indeed, EERA section 3543.7 requires the parties to begin negotiations early enough to allow for agreement to be reached, or for impasse to be resolved, prior to adoption of the final budget for the

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[25]Currier testified the District had followed a similar schedule with respect to the timing of the "sunshining" of proposals in 1980.

[26]PERB regulation 32900 requires every district board to adopt a local policy implementing the statutory "sunshining" requirement. It is possible the District policy required the slow process used here, but that policy was not placed in evidence, nor did the District offer any evidence about its contents.

school year in August.[27] By delaying until late-April the public presentation of its proposal, and thus automatically delaying until mid-May its delivery to the Association of official initial proposals, the District made certain that no significant negotiations could take place during the spring school term.

After the District's action adversely affected the likelihood of negotiations taking place during the spring semester, the Association prevented any negotiations at all from taking place during the summer. The Association's refusal to meet during the summer was analyzed on pages 38-39 above, and need not be reconsidered here.

There are two good examples of the way in which the parties collaborated to guarantee a lack of serious negotiations during this period at issue in this case. First, they tied themselves into a short meeting schedule by refusing to compromise on the starting and ending times of meetings. They agreed to begin late and end early.

Second, after agreeing that there would be an agreed-upon

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[27]EERA section 3543.7 reads, in its entirety:

> The duty to meet and negotiate in good faith requires the parties to begin negotiations prior to the adoption of the final budget for the ensuing year sufficiently in advance of such adoption date so that there is adequate time for agreement to be reached, or for the resolution of an impasse.

agenda for each meeting, the parties signed off on a series of skeletal, uninformative agendas, which left both parties in the dark about which specific subjects were likely to be the subject of negotiations. Inevitably this caused a lack of preparation for the negotiators, and a predictable lack of progress.

The agreed-upon agendas (see pages 35-36), were so general in their descriptions of issues to be discussed as to be meaningless. There is no evidence that either Currier or Steadman offered the other any clarifying information about his plans for the next meeting.

Currier made one half-hearted try to be more specific, but abandoned it without hesitation. In August, Currier wrote to Steadman, suggesting six specific subjects for the next meeting. Steadman rejected this suggestion, and proposed instead that each party choose three non-economic subjects to discuss. Currier agreed to the suggestion. But Currier and Steadman then joined in sabotaging the plan by failing to disclose to each other which three subjects each had in mind. Thus, Steadman knew Currier would choose three non-economic subjects, and Currier knew Steadman would choose three non-economic subjects, but neither knew which subjects the other negotiator would choose. Thus, neither negotiator was able to prepare specific questions, explanations, or written proposals for the upcoming meeting.

Then, when the meeting took place, neither Currier nor Steadman carried out the plan by focusing on three specific subjects, or by asking the other to do so.

In the August-September correspondence, Currier brushed aside an opportunity to get negotiations moving again in a timely fashion after a recess of more than three months. Currier had first suggested a meeting in the third week of September and another the next week. Steadman suggested, in his September 7 letter, that the parties schedule two meetings for the week of September 19, or one that week, and one the first week of October. Currier agreed to one meeting on September 20 but, contrary to his earlier stated preference for scheduling several meetings at once, declined to schedule a second meeting in either late September or early October. The parties eventually agreed to the October 18 date.

One other aspect of the Association's conduct has no exact parallel in District conduct. The Association's conduct is not a per se violation of the Association's obligation to negotiate with the District in good faith, but it is an indication of the Association's lack of seriousness in approaching the negotiations.

In February, the Association's initial proposal to the District included a request for employer-paid vision plan, orthodontic plan, and life insurance. The proposal included no details of the extent of coverage to be provided, the name of

the carrier, or the approximate cost of the coverage proposed.

On October 18, the Association made these same proposals to the District, and again provided no information about the extent of coverage sought, the names of carriers who might provide it, or the level of contribution which the Association was seeking.

Steadman testified several times that he believed the economic apsect of the contract was crucial, and once agreement on economics was reached, the remaining aspects of the contract would fall into place fairly rapidly. That plausible analysis places a great emphasis on the need to take seriously the elements of the economic package. By failing to come forward with any details about a potentially expensive element of the economic package, the Association was doing nothing but sow confusion about its economic proposals.

The District points to a number of other aspects of the Association's conduct in support of its argument that the Association participation in negotiations was not in good faith. However, it is concluded here that the Association's conduct does not carry the significance which the District attributes to it.

The District argues that the Associaton's conduct with respect to the sign-off form for agreed-upon articles evidences its bad faith. I do not agree. The Association declined to agree to the format offered by Currier because of uncertainty

about its legal significance. At the September meeting, the Association offered its own sign-off form, not very different from that offered by Currier earlier, and the parties initialed their agreement on the grievance procedure article.

I cannot conclude the Association's conduct was unreasonable. The Association readily agreed with Currier in May that since neither party had sought modification of the grievance procedure, the parties were in agreement on retaining that article intact to the next contract. The Association never backed away from that agreement. The delay until September, of the formal initialing, had no impact on negotiations. The Association's uncertainty about the legal consequences of signing off on a form proposed by Currier was reasonable, in view of the circumstances: they were three non-lawyers negotiating with a lawyer who had, the teachers believed, in the most recent round of negotiations, taken advantage of the lack of legal sophistication of the Association bargaining team.

The District points to the Association's failure to present counter-proposals to the District initial proposals. The Association's conduct with respect to the discipline, layoff, and hours of work proposals has been considered above. As for the absence of specific counter-proposals by the Association to other proposals by the District, very little significance can be attached to that. The Association's initial proposals

(given to the board in February) covered virtually all the areas covered by the District's proposals, other than layoff and discipline. In that sense, the District knew what the Association's positions were on the articles which the District hoped to modify in the successor contract. In addition, in this respect the Association's conduct and the District's conduct were parallel: neither had modified its initial proposals to move toward compromise with the other. The negotiations were, presumably, to enter that stage after the October 18 meeting.

Next, the District argues that the Association's failure to provide "comparability data" that it had in connection with its salary proposal, when Currier asked for it in October, is evidence of bad faith. The argument is rejected. It is unclear what data Currier asked for. From Currier's testimony it appears that Currier defined "comparability" in much broader terms than did the Association. Currier, with good reason, suggested that comparability should include the cost of other districts' fringe benefits, and analysis of the distribution of teachers across the seniority range (i.e., analysis of what percentage of the Gonzales teachers were 10-year teachers, and earning appropriate salaries, and percentage of the teachers who had 12 years of seniority, and what percentage had 2 years seniority). A comparability study, Currier said, would include analogous information about the teachers employed by other districts.

It is not at all clear that the Association had this information. Testimony by Steadman suggested the teachers had gathered salary scale data only. Thus, there is no evidence that the Association had the information which Currier apparently asked for.

The District also argued that the Association's bad faith was illustrated by its proposal, in October, that the parties conduct a joint study of compensation levels in other (nearby) school districts. That is not the conclusion drawn here. The October meeting, by agreement of the parties, was the first at which there was any detailed discussion of economic proposals by the parties. Currier suggested, both in testimony and during the negotiations, that significant economic negotiations could not begin until August, after the Legislature had passed a school finance bill, and after the District had learned, from state administrators, how much state money would be transferred to the District. Thus, neither party was in a position to discuss or analyze economics until August at the earliest; and since the parties had agreed to discuss non-economic issues at their September meeting, the District cannnot complain of the October timing of the Association's proposal.

In addition, in view of the definition of comparability that Currier had suggested, a joint study was not a foolish idea. It might well be that the District, rather than the Association, would have the best access to information from

other districts about the costs, to the employer, of various forms of health insurance and other fringe benefits provided by other districts.

CONCLUSIONS

It is concluded that the Association violated EERA section 3543.6(b) by its refusal to meet with the District from June 2 until September 20, and by its failure to adopt any position with respect to two mandatory subjects of bargaining (employee discipline and layoff for lack of funds) through and until October 18, 1983. The allegation that the Association violated its legal obligation by its position regarding hours of meeting will be dismissed.

The broader charge that the Association negotiated throughout the period without the requisite good faith will not be sustained. It is clear from the evidence presented that neither the District nor the Association approached the initial stages of negotiations with a great deal of seriousness. But that is not sufficient to conclude that either party, or both, lacked the subjective intent to reach agreement with the other on the terms of a memorandum of agreement.

The evidence presented concerned only five meetings, and only three of those had to do with issues of substance. By stipulation, the parties agreed to present no evidence of events taking place after that point. That is unfortunate, because it was only at the end of the fifth meeting that the

stage was set for serious negotiations: the extent of financial aid to the District from the state was known, the parties had both economic proposals and non-economic proposals on the table and explained by their respective proponents, and the parties had begun talking about money.

If there had been evidence that either party had continued to treat negotiations in a lethargic or casual manner for one or two meetings beyond October 18, it would not be difficult to conclude that party lacked a subjective intent to reach agreement with the other. However, we do not have evidence of that kind. In the absence of that evidence, in these circumstances, it is not possible to conclude that the Association's conduct violated EERA section 3543.6(b).

In a number of NLRB decisions, it has been held that it is not possible to draw a conclusion about the good faith in which a respondent has negotiated with the charging party in certain circumstances. In Times Publishing Company (1947) 72 NLRB 676, 682-893 [19 LRRM 1199] (in which the charging party was a union), the Board held:

> A union's refusal to bargain in good faith may remove the possibility of negotiation and thus preclude the existence of a situation in which the employer's own good faith can be tested. If it cannot be tested, its absence can hardly be found.

See also Patient Trader, Inc. (1967) 167 NLRB 842, 854.

It is not concluded here that the charging party was bargaining in bad faith: there is not enough evidence to reach

that conclusion. However, it is concluded that the charging party's conduct, from February to October, contributed, to a large extent, to the slow pace of negotiations, and to the circumstances in which the parties found themselves seven and one-half months after the Association's submission to the District of its first proposals: no further than the threshold of the exchange of modified proposals, positions, and compromises which is the reality of serious contract negotiations.

Thus, to paraphrase the Times Publishing decision, the District's actions during the period preceding October 18 precludes the existence of a situation in which the Association's good faith could be tested. Therefore, the allegation that the Association's conduct in negotiations from February to October was undertaken without the required good faith will be dismissed.

REMEDY

It is appropriate in this case to order the Association to cease and desist from refusing to negotiate in good faith. It is necessary that all unit employees be fully informed of this Decision. Gonzales Union High School District Teachers Association will be required to post the attached Notice at all places throughout the District where notices are customarily placed and, additionally, to distribute copies of the Notice to all employees in the unit through the District's internal

distribution system if that is the customary method of distributing Association literature.

It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and will announce the parties' readiness to comply with the ordered remedy. See Placerville Union School District (9/18/78) PERB Decision No. 69; Pandol and Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587; NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to section 3541.5(c), it is hereby ordered that the Gonzales Union High School District Teachers Association and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Refusing to meet and negotiate with the District during the summer recess;

(b) Refusing to negotiate about employee discipline and employee layoffs.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

(a) Within five (5) workdays after this decision becomes final, prepare and post copies of the NOTICE TO

EMPLOYEES attached as an appendix hereto, for at least thirty (30) consecutive workdays at its headquarters offices and in conspicuous places at the location where notices to certificated employees are customarily posted. It must not be reduced in size and reasonable steps should be taken to see that it is not defaced, altered or covered by any material. Additionally, copies of the notice must be distributed to all employees in the unit through the District's internal distribution system if that is the customary method of distributing Association literature.

(b) Unless otherwise directed by the San Francisco Regional Director, written notification of the actions taken to comply with this order shall be made to the regional director within twenty (20) workdays from the date of service of the final decision herein. All reports to the regional director shall be concurrently served on the charging party herein.

IT IS FURTHER ORDERED all other allegations of the charge and complaint are DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on June 21, 1984, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code title 8,

part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board at its headquarters office in Sacramento before the close of business (5:00 p.m.) on June 21, 1984, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. Any statement 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.

Dated: June 1, 1984

Martin Fassler

MARTIN FASSLER
Administrative Law Judge