STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

MODESTO TEACHERS ASSOCIATION, Charging Party, v. MODESTO CITY AND HIGH SCHOOL DISTRICTS, Respondent.	)	Case No. S-CE-286 S-CE-287 PERB Decision No. 566 April 10, 1986

Appearances; Ken Burt for Modesto Teachers Association; Breon, Galgani, Godino & O'Donnell by Keith V. Breon for Modesto City and High School Districts.

Before Hesse, Chairperson; Morgenstern, Burt and Craib, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by both the Modesto Teachers Association (Association or MTA) and the Modesto City and High School Districts (District) to the proposed decision of an administrative law judge (ALJ). The ALJ found that the District violated section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA or Act),[1] when it (1) unilaterally extended the teachers'

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

Section 3543.5 provides, in pertinent part, as follows:

It shall be unlawful for a public school

workday by ten minutes; (2) shortened their lunch period; and (3) established a minimum day in September 1979.

Having reviewed the proposed decision in light of the exceptions and the entire record in this case, the Board affirms in part and reverses in part the proposed decision, consistent with the following discussion.

FACTS

MTA and the District were parties to a collective bargaining agreement that would expire on August 31, 1979. On May 7, 1979, MTA submitted initial proposals for a successor contract to the District. The proposals included, inter alia, limitations on faculty meetings, a reduction in the number of workdays (from 182 to 178), changes in hours of work, and a change in the number and purpose of minimum days.

When the parties first met on May 23, 1979, the District sought clarification of the MTA proposal. On June 11, 1979, the school board adopted the District's initial proposal. That proposal, in part, sought to establish minimum hours of work, a

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employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

30-minute lunch period, and an extended student attendance day. The District's proposal did not contain any reference to a calendar for any of the schools.

The parties participated in the first formal negotiating session on June 16, 1979, where ground rules were discussed. The parties agreed to review the entire MTA proposal and further agreed that, should the District declare some item in MTA's proposal to be out of scope, MTA would have the right to raise a new subject.

On June 18, 1979, the parties proceeded to discuss the MTA proposal. At the end of that session, they had progressed in discussions only through Articles I, II and a portion of Article III.

Later that day, at a public school board meeting, the board adopted a staff proposal on a calendar for the year-round school, Robertson Road Elementary School (Robertson Road). The agenda item included an acknowledgement that calendars are negotiable issues and a statement of belief that PERB would allow the District to adopt calendars one month in advance and for one month at a time. The calendar established July 16 and 17 as teacher pre-school workdays and July 18 to August 10 as student attendance days. At no time prior to this board meeting did either party raise in negotiations the matter of the Robertson Road calendar. Although copies of the agenda were sent to several MTA officers and negotiating team members, no MTA representative addressed the board on the subject of calendars.

The parties had further negotiating sessions on June 21, 22, and 23, 1979. At these meetings, the parties reviewed the Association's proposals in sequential order. They discussed hours of employment, minimum days, quarterly review days, and preparation periods. The Association wanted to maintain the status quo regarding hours of employment, but the District wished to lengthen the student attendance day, which would necessitate an increase in the teachers' workday.

On June 23, the parties engaged in a debate over the process of bargaining. The District insisted that MTA present any new proposals that it had right then and not continue to raise new proposals throughout the process. MTA insisted the parties had agreed that, if the District refused to bargain on any item in MTA's initial proposal, then it (MTA) had the right to substitute a new subject when an "old" one was declared out of scope by the District. The District refused to continue bargaining until MTA revealed all of its proposals.[2]

Jon Walthers, chairman of the MTA negotiating team, sent a mailgram on that day (the 23rd) to John Wilson, the District's negotiator, requesting negotiating sessions for the 25th, 26th and 27th of June. This mailgram was received on the 26th. Wilson felt he could not get his team together for that day or the 27th so, on the same day, he sent a return mailgram to

[2]The District filed an unfair practice charge against MTA on June 25, 1979. This unfair practice charge, S-CO-42, was later withdrawn at the commencement of the formal hearing in this case.

Walthers:

> I received your mailgram on 6/26/79 requesting that bargaining on a successor contract occur on 6/25, 6/26 and 6/27, 1979. Has the MTA position changed from what the MTA stated it to be on 6/24/79? If so please state in writing that revised position.

On June 27, Walthers sent a letter to Wilson requesting meetings on August 13, 14, 15, 16, 17, 21, 22, 23, and 24. The Association did not request to meet in July.

On July 6, Wilson sent a letter to Walthers acknowledging both Walthers[1] mailgram of the 23rd and the letter of the 27th. Wilson had not yet received a response to his June 28 mailgram and so reiterated the District's position:

> . . . [W]e are prepared to resume negotiations at any mutually agreed to time if your position has changed to one of presenting all known proposals at this time and not withholding proposals to submit based upon the District's reaction to those previously presented.

The District reiterated this position in a July 27, 1979 letter to Ken Burt, executive director of MTA.

On August 3, 1979, the director of personnel, Alberta Martone, sent a memorandum to the District employees regarding reemployment. The memo requested the return of a form indicating the employees' election for reemployment. The memo also designated September 4, 1979 as the "tentative date for the first workday."

Also on August 3, 1979, Burt sent a letter to Wilson. The letter stated:

> This is the follow up to our phone conversation of today where I indicated that the MTA has and continues to demand to bargain with the Modesto City Schools and High School District on the subject of calendar including opening day.
>
> It appears you are about to request the Board of Education to unilaterally adopt part of the school calender [sic] without even attempting to bargain the same. (I received a Board agenda to that effect today.) You are requested to cease and desist for [sic] this, and it is specifically requested that this item be removed from action of the Board of Education until the employer has exhausted his [sic] duty to bargain.

A board meeting was scheduled for August, 6, 1979. The school calendar was on the agenda. This agenda item contained the same prefatory language regarding recognition that the calendar was negotiable, previously stated on the June 18 agenda item regarding the Robertson Road School. The item was a proposal to establish calendars for the second and third school months (through September 21) for Robertson Road and to schedule the first month (September 4-28) calendar for the regular schools.

At the August 6, 1979 school board meeting, Burt urged the board not to adopt the calendar. The board adopted the proposed calendar for the Robertson Road School for the balance of August, but deferred action on the proposed third month calendar for Robertson Road and on the proposed regular school calendar.

At the negotiating session on August 11, 1979, Walthers presented MTA's total package. The total package included a

1979-80 school year calendar grid for the regular schools. Wilson requested negotiations on the subject of opening day of school, but Walthers responded that MTA was not ready to discuss calendar. Later, Wilson stated that he felt the subject of calendars was critical and requested discussion on the opening date and first month of school. Again MTA refused. MTA wanted to discuss other issues, such as salaries, prior to any discussions on calendars.

Wilson asked if MTA was resistant to discussing the opening day and first month of school. Walthers acknowledged that MTA was resistant. He stated that MTA's position was that the calendar would be discussed after the parties had covered such things as economic items, class size, staffing ratios and grievance procedures. The Association refused to place the matter of the calendar first on the agenda for the next meeting.

On August 20, 1979, the school board took action on both the Robertson Road calendar, and the first month of the 1979-80 regular school year. The agenda item carried the following language:

> 3. Calendar: District and Robertson Road
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> Although portions of the calendar are bargainable issues, the time line is such that the Board of Education must take unilateral action on this issue. Collective Bargaining Counsel advises us that adopting the calendar approximately a month in advance and for approximately one month at a time, is still an appropriate action for the Board to take. With this in mind, the following calendars for the District and for Robertson Road are proposed. . . .

The action of the board set the first month (through September 28, 1979) of the regular schools and reiterated the earlier action of the board on the Robertson Road School calendar for July 16 through August 24, 1979, and added the next month, August 27 through September 21, 1979, for that school.

The District and MTA negotiated on August 21, 22, 25, and 26, 1979. There was no discussion of calendar at these meetings. On August 22 and 25, 1979, the discussion centered on hours of employment. On August 25, 1979, the District presented an oral proposal regarding hours of employment and minimum days and presented a written proposal on those subjects the following day.

On August 27, 1979, the District presented a "grid" for the 1979-80 calendars for the regular schools. The District proposed that teachers report for work on September 4, 1979, and that students start school on September 6, 1979.

On September 5, 1979, the school board adopted a 60-minute class cycle for students at the four comprehensive high schools. As a result of this action, there were changes in the school starting time and teacher lunch periods.

School started at 7:40 a.m. rather than 7:50 a.m. as it had for several years past. There was no change in the time that the school day ended. The new starting time affected teachers, nurses, and counselors.

The board action changed the student attendance schedule at three high schools[3] from a 50-minute class time with a 5-minute passing time to a 53-minute class time with a 7-minute passing time. Also, as a result of the new 60-minute cycle, teacher lunch periods were changed by differing amounts at the various high schools.

Walthers testified that, prior to the change, teachers performed noontime supervision duties approximately three weeks of the year; otherwise teachers were free, even to leave campus. Although this supervision duty was eliminated, another chaperone-type duty was added. That duty, however, did not exceed the 25-hour limit of the contract.[4]

The District sought the 60-minute cycle as a solution to scheduling problems for approximately 1850 students enrolled in the Regional Occupational Programs (ROP), driver training, and college classes. The scheduling problems associated with the ROP program and drivers training program had a direct impact on the District's ability to increase enrollment and increase

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[3]A fourth comprehensive high school, Beyer, operated on a modular schedule which did not conform to the conventional class schedule.

[4]Article IV in the 1977-79 contract provided for these additional duties. It stated, in relevant part:

> B. In addition to "A" above, employees in grades 7-12 may be required to devote a reasonable amount of time to other duties assigned by the building administrator.

revenue.

According to a 1977 program audit by the State Department of Education, ROP students were receiving less than the required two full hours of instruction. The reduced instructional time brought about a corresponding reduction in the District's average daily attendance (ADA) aid for the ROP students.[5]

In order for the District to receive full ADA aid, ROP students had to attend a minimum day (240 minutes) in the regular session before or after their ROP classes.[6] With the 50-minute class period, ROP students had to take five regular classes (275 minutes) to meet the minimum-day requirement. The District anticipated that, if the students were required to continue to take five classes for the full ADA, enrollment in ROP would decrease. The 60-minute cycle allowed students to maintain the minimum-day requirement in four periods rather than five. For the same reason, this was also of benefit to

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> As a guideline, the time spent by the employee on such additional duties should not exceed approximately 25 hours during a school year. . . .

[5]ADA is based on actual instruction time plus passing time. The District determined that without the 60-minute cycle, there would be a $110,250 loss in ROP revenue due to the reduced instructional time.

[6]Legislation effective January 1, 1979, allows school districts to receive, on a prorated basis, state aid for students in ROP who have regular classes for less than the minimum day. The District supervisor for vocational education testified, however, that the District would, on the prorated formula, still lose money.

high school students enrolled in and attending community college classes.

Under a 50-minute cycle, fewer students would enroll in the ROP program. With less than a 60-minute cycle, it was projected that the Modesto ROP would fall short of the requirement that 20 percent of the students move from their home campuses to another ROP site.

Also, by adopting the 60-minute cycle, the District's driver training program could process more students, thereby reducing the backlog and increasing its income, thus reducing the expense of this program to the District. The District projected an increase of 207 driver training students over 1978-79 for a net savings of District funds of $5,400.

The District planned and obtained approval for eight new ROP programs to begin in September 1979. The application process began about March 1979 and included comprehensive participation by various advisory committees as well as the Employment Development Department, a site administrator, assistant principals, the school board, County Office of Education, ROP Board of Management, and County Board of Education in the planning and curriculum development. Since the programs were based upon a full school year of activity, the District had to start the new programs in September, or delay implementation until the following year.

The teachers returned to work on the 4th of September and the students returned on the 6th, in conformance with the "grid" adopted by the school board in August. As a result of the 60-minute cycle, changes in starting time and lunch period were also implemented.

On September 10, 1979, kindergarten through sixth grade (K-6) teachers were notified by Joe DeWees, director of educational services, that an in-service training session on language arts was scheduled for September 20, 1979. The District declared a minimum day for the in-service training, and attendance was mandatory.

In previous years, the District held a minimum day every other Thursday in the elementary schools. The school principal, after consultation with the staff, determined how days were to be used.

The Association had proposed in negotiations that one minimum day per week, Thursdays, be used for facilitating "instructional level planning and coordination" for grades K-6. Staff was to determine how the days were to be used. Other minimum days designated by the District for other purposes were to be in addition to the one-per-week meeting. MTA's proposed calendar contained no reference to in-service days.

DISCUSSION

School Calendars

The Association excepts to the ALJ's findings that it waived the right to bargain over the calendars adopted by the

school board trustees on June 18, 1979 and August 20, 1979. The District excepts to the finding that the Association did not waive its right to bargain the Robertson Road calendar adopted by the trustees on August 6, 1979.

In order to prove that an employee organization has waived its right to negotiate over matters within scope, the evidence must clearly and unmistakably demonstrate that the union stood silent in the face of a reasonable opportunity to bargain over a decision not already firmly made by the employer. (San Mateo County Community College District (1979) PERB Decision No. 94; Los Angeles Community College District (1982) PERB Decision No. 252.)

In the instant case, the record reveals that MTA was well aware of the school board agenda when it met with the District on June 16 and 18, 1979. In neither instance did it demand to negotiate the school calendar. The District provided MTA with notice of the Robertson Road calendar issue and acknowledged its obligation to negotiate that subject, yet the Association met such announcement with no request to negotiate and seemed to show complete disinterest in the matter. Indeed, although the parties met in negotiating sessions on June 21, 22 and 23, 1979, MTA voiced no desire to bargain over the Robertson Road School calendar. From these facts, we find that the Association waived its right to bargain with the District as to the Robertson Road School summer calendar adopted on June 18, 1979.

Similarly, we agree with the ALJ's conclusion that MTA waived its right to negotiate the school calendar adopted by the board on August 20. We specifically note that, at the negotiating sessions conducted on August 11 and 12, 1979, the District requested discussions on the opening day of school. In the face of this request, the Association refused. We can perceive no clearer or more unmistakable manner to abdicate the right to negotiate than MTA's outright refusal to do so in the face of the District's direct request.

The District excepts to the ALJ's finding that MTA did not waive its right to bargain on the Robertson Road School's calendar at the August 6 school board meeting. The ALJ's conclusion was based on Ken Burt's remarks made at the August 6. In reliance upon the testimony of Wilson that Burt "urged the Board not to adopt the calendars since they were bargainable issues," the ALJ found that Burt protested adoption of both the regular school calendar and the Robertson Road School calendar.

We find Burt's statement to be ambiguous at best and not a clear protest of the action with regard to the Robertson Road calendar. Other evidence supports our conclusion that Burt's objection was only to the calendar for the regular schools. On August 3, 1979, Burt received the agenda for the August 6 school board meeting and immediately telephoned Wilson. Wilson testified that Burt's concern "was with the impending board action on the regular school calendar." Burt followed this

conversation with a letter, dated the same day, asking to bargain "on the subject of calendar including opening day." Burt's letter could not have concerned the Robertson Road opening day since that school was already open and sessions were underway. Moreover, when MTA submitted its proposal on the calendar, that proposal contained no reference to the Robertson Road School.

In light of the fact that, prior to August 3, MTA demonstrated no interest in negotiating the Robertson Road calendar, we cannot devine from the ambiguous language of the August 3 letter that MTA sought to initiate such negotiations. Therefore, we reverse the ALJ's finding that the Association did not waive its rights to bargain on the subject of calendar at the August 6 meeting.

In-Service Day

Relying on the fact that the parties had not reached impasse on the subject of in-service and minimum days and that the District deviated from the past practice of consulting with the school staff on the in-service use, the ALJ held that the District's implementation of the September 20, 1979 in-service day was a unilateral act in violation of section 3543.5 of EERA.

In its appeal, the District asserts that in-service training is a management prerogative, synonymous with staff development, In part, the District relies on Jefferson School District (1980) PERB Decision No. 133, where the Board held that the number of minimum days for staff development is a

nonnegotiable subject and to require the employer to negotiate " . . . would be to 'interfere with management's authority to direct its workforce.'"

In this case, the District felt that the in-service training session would disseminate information beneficial to teachers in the accomplishment of their mission of educating students. Whether the information was merely "useful," as the hearing officer suggests, or "essential," is not for PERB to determine. The critical question is whether the in-service training session increased the teachers' workday.

Here, the in-service session was held on a minimum day and did not extend beyond the teachers' workday. In addition, since the District was free to exercise its managerial prerogative to designate September 20 as an in-service day in order to improve language arts, we find the District's past willingness to consult on the use of minimum days of little consequence. The District was not required to negotiate the implementation of the September 20, 1979 in-service session. Thus, we hold that the District's implementation of this in-service was not a violation of the EERA but was an exercise of management's right to assign work, including attendance at an in-service training.

60-Minute Cycle

The ALJ found that the 60-minute cycle as implemented by the District extended the teachers' workday and shortened the teachers' lunch period. The ALJ also found that the workday

extension issue was on the negotiating table when the 60-minute cycle was adopted and that, by changing the class period cycle without bargaining to impasse, the District failed to meet and negotiate as required by section 3543.5(c). The ALJ also found the District's waiver and business necessity defenses unavailing.

To implement the 60-minute cycle, the District unilaterally required the teachers to begin instruction ten minutes earlier and work a longer school day. This increase in work time is found to be a violation. The District failed to prove that its action was required by business necessity, or that the Association waived its right to negotiate the subject. Thus, we affirm this portion of the proposed decision as modified above.

Attorney Fees

The Association excepts to the hearing officer's conclusion that an award of litigation expenses and attorney fees is not appropriate in either S-CE-286 or S-CE-287. It argues that an award of both litigation expenses and attorney fees is appropriate in these cases and necessary to deter future violations by this employer.

We hold, however, that the ALJ's determination is correct. In King City High School District Association, et al (Cumero) (1982) PERB Decision No. 197, hg. pen. (SF 24905), the Board adopted the National Labor Relations Board standard for determining when fees should be awarded in unfair practice cases:

> Attorney's fees will not be awarded to a charging party unless there is a showing that the respondent's unlawful conduct has been repetitive and that its defenses are without arguable merit.

See also Heck's, Inc. (1974) 215 NLRB 765 [88 LRRM 1049], holding that fees are not appropriate where defenses are at least "debatable."

We find that the Association failed to show that the District's conduct has been repetitive or that its defenses were without merit. Thus, we affirm the ALJ's determination in this regard, and decline to award litigation expenses and attorney fees to the Association.

REMEDY

Section 3541.5(c) of the EERA grants PERB broad powers to remedy unfair practices. Pursuant to this authority, we may fashion appropriate remedies to effectuate the purposes of the EERA. In the present case, we have found that the District unilaterally extended the work hours of several of its certificated employees. In so doing, the District violated its duty to refrain from making changes in subjects that are within the scope of bargaining until it affords the exclusive representative notice and an opportunity to negotiate. It is generally appropriate under these circumstances to order a return to the status quo and order the District to meet and negotiate, upon request, over the decision and effect of the increase in work hours, to cease and desist from taking any further unilateral actions regarding matters within scope, and

to make employees whole for any compensation not received when the workday was unilaterally extended.

We are, however, reluctant to order a restoration of the status quo ante in this case. Here, the 60-minute instructional cycle has long been in place. With the current year in progress, we hesitate to disrupt the education process underway. (Alum Rock Union Elementary School District (1983) PERB Decision No. 322; Los Angeles Community College District (1982) PERB Decision No. 252; Solano County Community College District (1982) PERB Decision No. 219; and Rialto Unified School District (1982) PERB Decision No. 209.)[7]

Further, we are aware that the Legislature, in enacting Senate Bill 813 (stats. 1983, ch. 498, sec. 80, p. 2031), has strongly urged that the instructional day be lengthened, not decreased. It has not only provided incentives for increasing the school year and instructional day, but it has mandated that revenues be reduced in those districts whose instructional hours fall below the level fixed in the 1982-83 fiscal year.[8] Such a loss of revenue would adversely affect not

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[7]In accordance with the discussion infra, Chairperson Hesse views the parties' three subsequent agreements as clear evidence that an agreement has been reached regarding hours of work and, for that reason alone, would deny restoration of the status quo. (Los Angeles Community College District, supra.)

[8]Education Code section 46202 provides, in relevant part:

> [I]n any fiscal year, if the governing board of a school district offers less instructional time than the amount of

only the District, but ultimately the employees and students as well. These consequences militate against the restoration of the status quo.

Nevertheless, we do find it appropriate to require the District to reimburse any of the high school employees who suffered loss of compensation as a result of the District's unilateral action and failure to negotiate. (Rialto, supra.) The District admitted that it added 10 minutes to the beginning of the teacher workday, whether and how much the decrease in the student lunch period actually increased the teacher workday was not made clear at the hearing. Thus, should the parties be unable to agree as to the total impact this had on the workday, a compliance hearing may be in order.

Moreover, subsequent to the District's unlawful conduct, the parties reached agreement on the length of the teachers' workday. indeed, the parties have negotiated and reached agreement on specific hours of work in three consecutive collective bargaining agreements, on May 4, 1981, the parties concluded negotiations on a collective bargaining agreement which included, in Article IV, a provision covering working hours. on September 20, 1982, the parties reached agreement on

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> instructional time fixed for the 1982-83 fiscal year, the superintendent of Public instruction shall in that fiscal year reduce that district's apportionment by the average percentage increase in the base revenue limit for districts of similar type and size, multiplied by the district's units of average daily attendance.

the 1982-84 collective bargaining agreement. The 1984-86 collective bargaining agreement was signed on September 17, 1984. All of these contracts established the teacher workday as 330 minutes.[9]

Section 3541.5(c) of the Act empowers the Board "to issue an order directing an offending party to . . . take such affirmative action . . . as will effectuate the policies of [the Act]." PERB has previously held that a remedy failing to take into account the existence of the negotiated agreement does not effectuate the purposes of the EERA. (Rio Hondo Community college District (1983) PERB Decision NO. 279a; Delano union Elementary school District (1982) PERB Decision No. 213a.) Accordingly, if a successor agreement resolved the parties' dispute on length of the workday, the District's liability for back pay would terminate as of that time. If the parties do not agree on whether or at what point, a successor agreement resolved the parties' dispute, their agreement can be resolved in a compliance hearing.[10]

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[9]The Board takes administrative notice of the collective bargaining agreements filed with its regional offices pursuant to PERB Regulation 32130, codified at California Administrative Code, title 8, section 31001, et seq.

[10]Chairperson Hesse, however, would resolve the remedy without resorting to compliance and would limit the order of back pay, determined by the number of required extra hours actually worked by each affected employee, from the date of the change in workday (September 6, 1979) until agreement was reached on the new contract (May 4, 1981). (LOS Angeles Community college District, supra.)

It is also appropriate that the District be required to post a notice incorporating the terms of the Order.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to section 3541.5(c), it is hereby ORDERED that the Modesto City and High School Districts and their representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate through and until the completion of the statutory impasse procedures set forth in the EERA by taking unilateral action on matters within the scope of representation, as defined in section 3543.2.

2. Denying the Association its right to represent its members by failing and refusing to meet and negotiate about matters within the scope of representation.

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

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

1. upon request of the Association, meet and negotiate with the Association over the decision and the effects thereof of any change in hours of the teachers.

2. Pay to the employees whose hours were affected compensation for the increased work time based on their wages at the time their work hours changed, with interest at the rate of ten (10) percent per annum, from the date of the unilateral change (September 6, 1979) until the occurrence of the earliest of the following conditions:

(a) the date the District and the Association reach or have previously reached agreement or negotiated through the statutory impasse proceedings concerning the unilateral change in hours;

(b) the failure of the Association to request bargaining within ten (10) days following the date this Decision is no longer subject to reconsideration, or failure of the Association to commence negotiations within five (5) days of the District's notice of its desire to bargain with the Association; or

(c) the subsequent failure of the Association to bargain in good faith.

3. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by

any material.

4. 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.

Members Morgenstern, Burt and Craib join in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case Nos. S-CE-286 and S-CE-287, Modesto Teachers Association v. Modesto City and High School Districts, in which all parties had the right to participate, it has been found that the Modesto City and High School Districts violated Government Code section 3543.5(a), (b) and (c). The District violated these provisions of the law by unilaterally extending the teachers' workday and shortening the teachers' lunch period, matters within the scope of representation.

As a result of this conduct, we have been ordered to post this Notice and will abide by the following. We will:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate through and until the completion of the statutory impasse procedures set forth in the EERA by taking unilateral action on matters within the scope of representation, as defined in section 3543.2.

2. Denying the Association its right to represent its members by failing and refusing to meet and negotiate about matters within the scope of representation.

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

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

1. Upon request of the Association, meet and negotiate with the Association over the decision and the effects thereof of any change in hours of the teachers.

2. Pay to the employees whose hours were affected compensation for the increased work time based on their wages at the time their work hours changed, with interest at the rate

of ten (10) percent per annum, from the date of the unilateral change (September 5, 1979) until the occurrence of the earliest of the following conditions:

(a) the date the District and the Association reach or have previously reached agreement or negotiated through the statutory impasse proceedings concerning the unilateral change in hours;

(b) the failure of the Association to request bargaining within ten (10) days following the date this Decision is no longer subject to reconsideration, or failure of the Association to commence negotiations within five (5) days of the District's notice of its desire to bargain with the Association; or

(c) the subsequent failure of the Association to bargain in good faith.

Dated: MODESTO CITY AND HIGH SCHOOL DISTRICT

By: _____
Authorized Signature

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