STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ELSINORE VALLEY EDUCATION ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. LA-CE-1964
v.	)	PERB Decision No. 666
LAKE ELSINORE SCHOOL DISTRICT,	)	May 23, 1983
Respondent.	)	

Appearance; Parham & Associates, Inc. by James C. Whitlock for Lake Elsinore School District.

Before Porter, Craib and Shank, Members

DECISION

PORTER, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the respondent, Lake Elsinore School District (District), to the attached proposed decision of a PERB administrative law judge (ALJ). The ALJ held that the District violated section 3543.5(c) of the Educational Employment Relations Act (EERA or Act) and, derivatively, section 3543.5(a) and (b),[1] when it

[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 employer to:

failed to negotiate with the charging party, Elsinore Valley Education Association, CTA/NEA (EVEA or Association), before making a change in a procedure for the implementation of EVEA's statutory right to consult on educational matters. We affirm in part and reverse in part the decision of the ALJ for the reasons set forth herein.

FACTUAL SUMMARY

For many years in the District, there has existed a District-created committee known as the Instructional Council (Council). It is undisputed that the purpose of the Council is, essentially, to make recommendations to the superintendent regarding instructional materials, curriculum change proposals, in-service training needs, and the like. The parties' collective bargaining agreement makes no reference to the Council. Likewise, there is no written document addressing the issue of whether the Council serves as the means by which EVEA exercises its consultation rights pursuant to section

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> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

3543.2(a),[2]

During the 1979-80 school year, Halle Reising, then president of EVEA, and Norm Chaffin, district administrator, reached an oral agreement regarding implementation of a procedure for selecting teacher members to the Council. Reising had initiated the discussions leading to the agreement with Chaffin because she felt there was a need to establish a

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[2]Section 3543.2(a) reads:

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

consistent districtwide policy on this matter. Although they never reduced their agreement to writing, Reising and Chaffin agreed that they would notify the bargaining unit members and the district administrators, respectively, of this procedure which took effect in the spring of 1980.

The oral agreement was that there would be a designated EVEA representative added to the Council who would be elected at-large on an annual basis. As to the two existing teacher member positions from each site, one teacher from each site was to be elected through an election run by the EVEA site representative, and the other teacher was to be appointed by the site principal. There are four school sites in the District.

The above described procedure, as to the EVEA representative member and the teacher members, was uniformly followed at all school sites at least through the 1981-82 school year when Reising's tenure ended.

The Council meetings were normally held once a month during the school year on release time for teacher members of the Council. The meetings would begin at approximately 8:30 a.m. and continued until the session was completed or until the end of the teachers' seven and one-half hour workday, whichever came earlier. In the fall of 1982, the members of the Council unanimously voted to hold the next meeting in the afternoon to reduce the amount of class time missed by the teacher members. The next several meetings started at noon and lasted through

the afternoon. The Council then switched back to the all-day schedule for the remainder of the 1982-83 school year.

At the start of the 1983-84 school year, the District was experiencing budgetary problems as well as having a difficult time finding substitutes for the teacher members of the Council. The District scheduled the first Council meeting of the school year to begin at 2:30 p.m., which was after the instructional day for most of the teacher members. At that meeting, it was decided that future meetings would begin at 1 p.m. and end at 3 p.m., and release time would be granted to teacher members. However, because the District could not easily arrange for partial-day substitutes, the Council meetings thereafter were scheduled as all-day sessions and the teachers attended on release time as in the past.

On May 5, 1983, the District's board of trustees adopted Policy No. 2310E-R, which addresses the procedures for the selection and adoption of textbooks and other instructional materials for the District. Additionally, this policy sets forth the composition of the Council and the method of election/appointment of each member. The relevant portion of Policy No. 2310E-R provides:

> II. Committees
>
> A. District Instructional Council
>
> 1. The Superintendent shall recommend one administrator as a member of the District's Instructional Council, referred to hereafter as the Instructional Council.

2. Elementary principals shall recommend one teacher from each elementary school as a member of the District's Instructional Council, referred to hereafter as the Instructional Council.

a. Site staff shall recommend one teacher from each site.

b. EVEA elects one person at large.

3. The Superintendent shall review the recommendations for membership to the Instructional Council and make the necessary appointments, ensuring that all grade levels, kindergarten through grade six, are reasonably represented.

4. The Superintendent shall appoint two citizens to serve on the District Instructional Council.

5. The Director of Education Services shall serve as an ex-officio member of the Instructional Council.

6. Provisions for augmenting the Instructional Council when specific tasks, i.e., selection of instructional materials are necessary, shall be the responsibility of the Superintendent or designee. Each building principal and Instructional Council member shall make recommendations to the Superintendent of Schools the expertise necessary to fulfill the responsibilities of the Council. (Sic.)

a. Upon consensus of the Instructional Council certain issues may warrant review by the total faculty and representatives' votes will be according to the site recommendations. (Sic.)

7. The Director of Education Services shall serve as the representative in contact with publisher's agents and shall serve as liaison between the chairperson of the Instructional Council. (Sic.)

> 8. The Instructional Council shall be a standing committee that will make recommendations to the Superintendent regarding (1) the selection and adoption of instructional materials including textbooks, (2) screening and recommended adoption or denial of curriculum change proposals, (3) inservice training for certificated staff, (4) priority needs of the instructional programs, (5) proposed curriculum changes that would have district wide implication or would require action by the Board of Trustees for implementation, and (6) review complaints of instructional materials used in the Elsinore Union School District.
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> 9. The Instructional Council chairperson shall be chosen by the Superintendent.

This policy was adopted without notice to EVEA.[3]

As of the first Council meeting of the 1983-84 school year, four "learning specialists" were added to the Council. The learning specialists are members of the bargaining unit. At Council meetings, they were allowed to make comments but were

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3since we are dealing here with the Instructional Council during three different "phases" (i.e., (1) prior to the oral agreement between Reising and Chaffin; (2) subsequent to Reising's and Chaffin's oral agreement; and (3) subsequent to the implementation by the District of Policy No. 2310E-R), a breakdown of the Council's participants during each phase is helpful to an understanding of this situation. Prior to the oral agreement, the Council included the superintendent, a curriculum specialist, two teacher members from each site, and at least two parent members, each from different sites. Subsequent to the verbal agreement, the Council included one EVEA representative member, the superintendent, the curriculum director, parent members—possibly one from each school site, and two teacher members from each site (one elected via an EVEA conducted election and one appointed by the site principal). Subsequent to the adoption of Policy No. 2310E-R, the Council has included one EVEA representative member, the chairperson, the superintendent, at least one parent member, four learning specialists, and two teacher members from each site.

forbidden from voting or making motions.[4] The District's expressed purpose in augmenting the Council with these people was to allow them to lend their expertise in curriculum and instructional matters to the Council.

From at least 1979 through the 1983-84 school year, the District and EVEA also held "meet and confer" meetings on a monthly basis. These meetings were held by the parties, primarily, to attempt to informally resolve teacher complaints or job-related problems not subject to the grievance procedure under the collective bargaining agreement. Curriculum and instructional matters were not, in the relevant time period, a topic of discussion at these meetings.

On April 16, 1984, EVEA filed a charge, which was amended on July 20, 1984, alleging that the District violated section 3543.5(c) and, derivatively, (a) and (b) of EERA by unilaterally changing the practice of holding Council meetings on release time for teacher members and adding the learning specialists to the Council without first meeting and negotiating with EVEA

[4]"Members" of the Council may vote on what recommendations are to be made. The ALJ's proposed decision refers to proposed revisions to Policy No. 2310E-R discussed at the October 19, 1983 Council meeting. One such revision, suggested by the superintendent, was to include the learning specialists as "ex-officio members" of the Council. It is not clear from the record whether this would have provided these learning specialists with the right to vote. It is also unclear what the ultimate outcome was with respect to this proposal. Nevertheless, during the relevant time period, the learning specialists remained on the Council, but have never had voting rights in connection with their participation in Council meetings.

regarding these changes, the Council being the vehicle through which EVEA exercised its consultation rights pursuant to section 3543.2(a).

The District argued that the Council was not a negotiated vehicle for agreed-upon use by EVEA and the District to fulfill statutory consultation obligations. The District claimed that the "meet and confer" meetings have always been the vehicle by which EVEA could exercise its statutory right to consult.

The District also argued that the superintendent has always had the authority to make all Council appointments; thus, the addition of the learning specialists was within his authority.

Lastly, the District claimed that the Council is merely an advisory committee to the superintendent, and, therefore, the District's actions did not in any way interfere with EVEA's or its members' rights under EERA.

ALJ'S PROPOSED DECISION

The ALJ found that the Council is the vehicle through which EVEA exercises its statutory right to consult, and that the District made an unlawful unilateral change to an established policy when it added the four learning specialists to the Council. The ALJ also held that the portion of the charge regarding the change in meeting time must be dismissed because the change was merely a one-time occurrence having no generalized effect or continuing impact on the hours of the affected unit members.

With respect to her conclusion as to the Council's role as the statutory consultation vehicle, the ALJ reasoned that the Council is the standing advisory committee which provides the District with recommendations from its teachers regarding curriculum and instructional matters. The District has allowed EVEA to participate in the Council via a designated EVEA representative, and consequently, EVEA has viewed the Council as the sole means by which it exercises its statutory right to consult. The ALJ rejected the District's argument that the "meet and confer" sessions were the means by which the District fulfilled its obligation to consult with EVEA on educational matters. The ALJ found that these sessions were never, in practice or in theory, the forum for consultation on instructional matters.

In analyzing the merits of the portion of the charge regarding the change in composition of the Council, the ALJ applied the test established by the Board in Grant Joint Union High School District (1982) PERB Decision No. 196. Pursuant to Grant, a 3543.5(c) violation is established upon proof that: (1) the District breached or altered the parties' written agreement or established past practice; (2) the breach or alteration amounted to a change of policy (i.e., having a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members); and (3) the change of policy concerned matters within the scope of representation.

The ALJ found that the District altered the parties' established past practice when it added the learning specialists to the Council. In accordance with the oral agreement between Chaffin and Reising, the parties had, since 1979, followed a specific election/appointment procedure with respect to the membership of the Council. The District's addition of the learning specialists clearly interfered with this practice, according to the ALJ. Thus, the ALJ held that the Association met its burden with respect to the first prong of the Grant test.

As to the second prong of the Grant test, the ALJ reasoned that the addition of the four learning specialists to the Council would, in all likelihood, adversely affect EVEA's ability to consult with the District on educational matters. She assumed that "the actual 'speaking time' of each Council member would no doubt be limited because of the numbers of persons participating in the meetings." Additionally, if the District were free to unilaterally alter established procedure as it saw fit, there would be a potential for the District to completely ignore the Association's right to consult. As a result, the ALJ concluded, the District's action in this instance constituted a change of policy, having a generalized effect on the terms and conditions of employment of the unit members.

Regarding the third prong of the Grant test, the ALJ relied upon Jefferson School District (1980) PERB Decision No. 133

in holding that the procedure for implementing the exclusive representative's statutory right to consult is a matter within the scope of representation.[5]

Hence, finding that all three elements of Grant were met by the Association, the ALJ concluded that the District made an unlawful unilateral change in adding the specialists.

DISCUSSION

Role of Instructional Council

The District excepts to the ALJ's finding that the Council was the means by which EVEA fulfilled its statutory right to consult with the District. The grounds upon which the District relies in raising this exception are: (1) the "meet and confer" sessions have always been the means for exercise of consultation rights, and (2) the parties did not treat the Council as a consultation vehicle.

It is clear from the record that the "meet and confer" sessions have not served as the channel through which the

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[5]It should be noted that the validity of the Board's holding in Jefferson, with respect to this particular issue, is questionable. There the Board held that, while educational policy matters are not within scope and not negotiable, the procedures for consulting on such nonnegotiable matters must, indeed, be negotiated. Section 3543.2(a) addresses the exclusive representative's right to consult on educational objectives as a matter that is separate and apart from those matters falling within the scope of representation. Moreover, there is no basis for drawing a distinction between the procedures for consultation and the substance of the right itself. (See San Mateo City School District v. PERB (1983) 33 Cal.3d 850, 861-862.) Nonetheless, because this is not a jurisdictional issue, nor was it raised or addressed by the parties, this issue is not presently before us.

Association exercised its consultation rights. The subject matter of these meetings — teacher complaints or job-related problems — has never been even remotely related to educational objectives or curriculum issues.

Despite the lack of an express agreement between the parties regarding the function of the Council, it is evident that the Council meetings served as consultation sessions in light of the stated purposes of the Council (i.e., to make recommendations on educational objectives, curriculum changes and the like). It should be noted, however, that during the relevant time period the scope of the Council was clearly broader than merely serving as the forum for the exercise of the Association's consultation rights. In addition to consulting with EVEA, the District obtained input from the community via the parent representatives on the Council, as well as from curriculum specialists and curriculum directors.[6] The Council also addressed issues such as in-service training for certificated staff. Further, the Council was originally established by the District to comply with Education Code provisions,[7] and it was established prior to EVEA's certification as exclusive representative. Thus, the Council was simply a preexisting District committee which EVEA was able

[6]See footnote 3.

[7]See Education Code section 60262 (formerly Ed. Code, sec. 9462).

to utilize for its own purposes. The Council was not thereby converted into an exclusive committee for EVEA consultation, but it was used for this purpose among others.

Accordingly, we reject the District's exception on this ground and affirm the ALJ's conclusion that the Council was the forum for the exercise of the EVEA's consultation rights.

Addition of Learning Specialists

A second exception asserted by the District goes to the ALJ's conclusion that the addition of the learning specialists constituted a change in policy having a deleterious effect on EVEA's interests. The District observes that the learning specialists cannot vote or make motions at the Council meetings, and that they are members of the bargaining unit who participate in Council meetings solely to provide another viewpoint and lend their expertise, primarily with respect to curriculum issues. Moreover, the District points out that there was no allegation in EVEA's amended charge, or at the hearing, that EVEA was prevented from effectively providing input at Council sessions as a result of the addition of the specialists. Thus, the District contends that there was no discernible change relative to EVEA's consultation rights.

We find the District's exception a valid one inasmuch as the District's action did not constitute a change in the established practice as to the EVEA representative member and the teacher members of the Council. Secondarily, even assuming that the District's action did amount to a change in policy,

we find that there was no resulting material and significant effect or impact on the terms and conditions of employment of bargaining unit members.

Change in Established Practice

Initially, it is necessary to identify the established practice in order to determine whether or not a change was made. The practice at issue was established pursuant to the oral agreement between Chaffin and Reising. Their agreement deals with nothing more than the process whereby an EVEA representative member and the teacher members are selected for the Council. The composition of the Council, other than the added EVEA representative, was not addressed or affected by the oral agreement.

The addition of the learning specialists to the Council, as nonvoting participants, did not constitute a change in policy under these circumstances. The EVEA did not lose its "voice" in the Council. Although Policy No. 2310E-R, section II, A(2), is somewhat ambiguous as to the selection process for teacher members from each of the school sites, the Association did not allege in its charge that this process was interfered with by the District. While the record is not entirely clear on this matter, it appears that the procedure remained the same (i.e., EVEA-run elections at each site to select one teacher member from each site) pursuant to the "shall recommend" language of section II, A(2)(a). Moreover, pursuant to section II, A(2)(b), the EVEA retained its Council representative. The

EVEA's proportional voting power and recommendations were likewise not affected. There is no evidence that the District intended to, or in fact did, change the established practice as to the EVEA representative member and the teacher members in adding the nonvoting learning specialists to the Council. Consequently, the ALJ's conclusion that the District unilaterally implemented a change in policy is not supported by the record.

Generalized and Material Effect Upon Terms and Conditions

Even assuming that the District's addition of the learning specialists did amount to a change in policy, there is no basis for the ALJ's finding as to the negative effect on the Association's or its members' right to consult caused by the addition of the learning specialists. In fact, the ALJ's speculative reasoning on this point[8] is readily apparent from the following passage contained in the proposed decision:

> It might be argued that, in this instance, the addition of the four learning specialists, who are also bargaining unit members, could not adversely affect EVEA's consultative interests. However, if the District is free to unilaterally modify the established procedure to suit its purposes as desired, it could result in a complete derogation from the right of consultation guaranteed by the Act.

[8]The EVEA filed this charge in April of 1984, which means there had already been at least six Council meetings where the learning specialists were in attendance. Nonetheless, the Association provided no evidence as to what effect, if any, their presence at the meetings had on EVEA's right to consult. We cannot speculate to fill in such a gap.

Board precedent dealing with the issue of unilateral changes in health care benefit providers is instructive here. A comprehensive analysis of relevant precedent in this area can be found in the Board's decision in Trinidad Union Elementary School District/Peninsula Union School District (1987) PERB Decision No. 629. In Trinidad, the district unilaterally switched to a self-funded dental plan. The Board held that such a change, in and of itself, does not constitute a per se violation of EERA. (See also Plumas Unified School District (1986) PERB Decision No. 578.) The determinative issue becomes whether or not the change had a "material and significant effect or impact upon the terms and conditions of employment." (Trinidad, supra, at p. 9 (quoting Oakland Unified School District v. PERB (1981) 120 Cal.App.3d 1007, 1012).) The Board pointed out that, for this standard to be met, "(t)here must be some cogent evidence that changes have happened or will happen, which have significantly changed or will significantly change employee benefits." (Trinidad, supra, at p.15, fn. 5.) Finding no such evidence of material changes in employee benefits as a result of the district's unilateral action, the Board in Trinidad held that there was no violation under section 3543.5(c).

In the instant case, we find that EVEA failed to meet its burden of proof with regard to the required "effect" element in the alleged unilateral change violation. The record does not support a finding that the augmentation of the Council with the

specialists has had any effect on the unit members' statutory right to consult. Further, there is no evidence from which it could be inferred that, in the future, there will be some significant change in the union's statutory consultation right. The union produced no evidence, for instance, which would support a finding that: (1) the EVEA's "speaking time" has been, or will be, diluted by the presence of the specialists at the meetings; or (2) even if there were such a dilution, this has or will have a material effect upon the unit members' terms and conditions of employment.

Change in Meeting Time

Finally, we affirm the ALJ's dismissal of the portion of EVEA's charge regarding the one-time change in meeting time on the ground that the District's action did not constitute a change in policy.

CONCLUSION

In sum, we reverse the ALJ's proposed decision insofar as it holds that the District effected an unlawful unilateral change in violation of section 3543.5(c) and, derivatively, section 3543.5(a) and (b), when it added the four learning specialists to the Instructional Council. Additionally, we affirm the proposed decision with respect to its dismissal of the portion of the charge relating to the change in Council meeting time.

ORDER

Case No. LA-CE-1964 is hereby DISMISSED.

Members Craib and Shank joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

ELSINORE VALLEY EDUCATION ASSOCIATION, CTA/NEA, Charging Party, v. LAKE ELSINORE SCHOOL DISTRICT, Respondent.	Unfair Practice Charge Case NO. LA-CE-1964 PROPOSED DECISION (9/13/85)

Appearances: A. Eugene Huguenin, Jr. (California Teachers Association), Attorney for Elsinore Valley Education Association, CTA/NEA; James C. Whitlock (Parham & Associates, Inc.) for Lake Elsinore School District.

Before: W. Jean Thomas, Administrative Law Judge.

INTRODUCTION

This case addresses the question of whether the Respondent was required to meet and negotiate with the Charging Party before unilaterally changing the meeting time and the composition of the membership of a District advisory committee on instructional matters. This committee has served as the vehicle through which the Association exercises the statutory right to consult on educational matters.

PROCEDURAL HISTORY

On April 16, 1984, the Elsinore Valley Education Association, CTA/NEA (hereafter EVEA or Charging Party) filed an unfair practice charge against the Lake Elsinore School District (hereafter District or Respondent). The charge, as amended July 20, 1984, alleged that the District violated section 3543.5(a), (b) and (c) of the Educational Employment

Relations Act (hereafter EERA or Act)[1] by unilaterally implementing changes in the policy and procedure used by the EVEA for the exercise of consultation rights guaranteed by section 3543.2.[2]

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[1]The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All future references are to the Government Code unless otherwise noted.

Section 3543.5 states as follows:

> It shall be unlawful for a public school 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.
>
> . . . . . .

[2]Section 3543.2(a) defines the scope of representation, in pertinent part, as follows:

> (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. . . In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not

On August 14, 1984, the Office of the General Counsel of the Public Employment Relations Board (hereafter PERB or Board) issued a Complaint in this matter, Concurrently with the issuance of the complaint, this charge was consolidated with another unfair practice charge involving both parties (LA-CE-1968) for informal conference purposes only.

The Respondent filed an Answer on August 29, 1984, admitting certain factual allegations, denying others and raising affirmative defenses. On September 7, 1984, the informal conference originally scheduled for September 21, 1984, was rescheduled for September 24, 1984. The informal conference scheduled for September 24 was not held because the instant charge was consolidated with eight other active PERB cases for a consolidated informal conference conducted October 17-18, 1984. This conference, however, did not resolve the dispute.[3] 3

> specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

[3] At the time of the informal conference there were nine active cases before PERB involving the EVEA and the District. This consolidation was an attempt by PERB to effect a mediated resolution of all disputes between the parties.

On October 22, 1984, Respondent filed a Motion to Dismiss the Complaint and on October 31, 1984, Charging Party filed an Opposition to Respondent's Motion to Dismiss.

On October 30, 1984, a consolidated pre-hearing conference was conducted on all nine charges to determine the order of presentation of cases for formal hearing. At that conference, it was decided that the instant case would be heard separately from the other cases. A formal hearing was conducted on February 5, 1985. During the hearing, Respondent's Motion to Dismiss was taken under submission for a ruling with the proposed decision.

Post-hearing briefs were filed and this case was submitted on April 26, 1985.

FINDINGS OF FACT

A. Background

The Lake Elsinore School District is a public school employer within the meaning of section 3540.1(k). The EVEA is an employee organization within the meaning of section 3540.1(d), and is the exclusive representative of the certificated bargaining unit. This unit consists of approximately 100 employees. The District has 4 school sites and an enrollment of 2600 pupils in grades K-6.

At the time of the events giving rise to this charge, the parties were signatories to a collective bargaining agreement

(hereafter CBA or agreement) in effect for the term July 1, 1982 - June 30, 1985. This agreement was ratified in late April 1983.

B. The District Instructional Council

For many years the District has maintained a standing committee to review and make recommendations regarding the selection of textbooks and other instructional materials. Since at least 1977, this committee has been known as the instructional council. The purpose of the council is to:

> . . . make recommendations to the Superintendent regarding (1) the selection and adoption of instructional materials including textbooks, (2) screening and recommended adoption or denial of curriculum change proposals, (3) inservice training for certificated staff, (4) priority needs of the instructional programs, (5) proposed curriculum changes that would have districtwide implication or would require action by the Board of Trustees for implementation, and (6) review complaints of instructional materials used in the Elsinore Public Schools.

There is no factual dispute concerning the function of the instructional council.

On May 5, 1983, the District board adopted policy #2310E-R which established the procedures for the selection and adoption of textbooks and instructional materials for the District. These procedures, which were amended December 15, 1983, include the purpose of the instructional

council set forth above. Part II of the procedures outlines, among other things, the composition of the council membership and the manner of the election/appointment of each member. It reads as follows:

II. Committees

A. District instructional Council

1. The Superintendent shall recommend one administrator as a member of the District's Instructional Council, referred to hereafter as the Instructional Council.

2. Elementary principals shall recommend one teacher from each elementary school as a member of the District's Instructional Council, referred to hereafter as the Instructional Council.

a. Site staff shall recommend one teacher from each site.

b. EVEA elects one person at large.

3. The Superintendent shall review the recommendations for membership to the Instructional Council and make the necessary appointments, ensuring that all grade levels, kindergarten through grade six, are reasonably represented.

4. The Superintendent shall appoint two citizens to serve on the District Instructional Council.

5. The Director of Education Services shall serve as an ex-officio member of the Instructional Council.

6. Provisions for augmenting the Instructional Council when specific tasks, i.e., selection of instructional materials are necessary, shall be the responsibility of the Superintendent or designee. Each building principal and Instructional Council member shall make recommendations to the

Superintendent of Schools the expertise necessary to fulfill the responsibilities of the Council. (Sic.)

a. Upon consensus of the Instructional Council certain issues may warrant review by the total faculty and representatives' votes will be according to the site recommendations. (Sic.)

7. The Director of Education Services shall serve as the representative in contact with publisher's agents and shall serve as liaison between the chairperson of the Instructional Council. (Sic.)

. . . . . .

9. The instructional Council chairperson shall be chosen by the Superintendent.

There is no reference in the CBA to the instructional council, nor is there any written document which states that the instructional council is recognized by EVEA and the District as the vehicle through which EVEA exercises the consultation rights provided for in section 3543.2(a).

The District disputes EVEA's contentions (1) that there was ever an agreement or understanding reached with EVEA concerning the procedure for the selection of teachers to serve on the instructional council, including the election of a designated EVEA representative to the committee and (2) that such agreement was incorporated into the procedures contained in board policy #2310E-R.

The focus of this dispute centers on testimony given by Halle Reising, formerly a teacher with the District for 10

years and an ex-EVEA president. Reising, who was the president of EVEA from 1979-82, was a member of the instructional council during the 1977-78 and 1978-79 school years. She testified that during her tenure as EVEA president in the 1979-80 school year, she had several discussions with Norman Chaffin, the District administrator in charge of personnel and employer relations with EVEA, regarding the then-existing procedure for selecting/appointing teachers to the instructional council.

Reising described it as a "helter-skelter" method of selection. There was no known District policy or procedure governing the selection process and it varied at each school. At one school both representatives were elected by the site staff, at another both were appointed by the principal, and at the remaining school it was a combination of election and an appointment. Two teachers were elected/appointed in this manner from each of the three elementary schools. There was no designated EVEA representative on the instructional council.

Reising felt that the selection process needed to be more uniform, she also felt that there should be an EVEA representative on the council to provide organizational input. According to Reising's unrebutted testimony, during the 1979-80 school year she and Chaffin reached an oral agreement about initiating a uniform procedure for the selection of teacher members of the instructional council. This procedure included

the election of a designated EVEA representative. This agreement was never reduced to writing. However, it was agreed that Reising would inform the bargaining unit members about the election procedure and Chaffin would notify the District administrators. EVEA sent out written information to all bargaining unit members about the election procedure that would be followed starting the spring of 1980.

According to Reising, it was agreed that there would be two instructional council representatives from each site. One of the two site representatives was to be elected through an election conducted by the EVEA site faculty representative. Only tenured teachers who were EVEA members were permitted to participate in this election. Following the EVEA conducted elections, the principal at each site would then appoint the second site representative. There was no restriction as to tenure or EVEA membership for the representation appointed by the principals. However, it was agreed that the principals would wait until the EVEA election was concluded before making their appointments to determine the grade-levels, (primary or intermediate) represented by the elected representatives to ensure representation at all grade levels between the two site teacher representatives. This election/appointment procedure was implemented at all elementary school sites in the spring of 1980.

The EVEA-designated representative was elected in conjunction with the annual election of the EVEA executive officers. The first EVEA representative to the committee was elected in May 1980. This person began serving as a member of the instructional council in the fall 1980.

The election/selection procedure described above was in effect at least through the 1981-82 school year which was the end of Reising's tenure as EVEA president. Although she never saw anything in writing about the procedure, Reising believed that Chaffin had communicated with the administrators, as agreed, because of the uniform way in which the elections/appointments were done at all school sites.

Reising admitted during her testimony that the language of Board policy #2310E-R does not totally reflect the agreement that she maintains was reached with Chaffin about EVEA's role in conducting elections for one member at each school site for the instructional council. The language in question simply states that "site staff shall recommend one teacher from each site."

Although the District disputes EVEA's contention about an oral agreement, the District failed to rebut Reising's testimony. Reising was found to be a credible witness. Her recall of substantive events occurring during the 1979-80 school year was very good. Her testimony, therefore, is credited. Thus, even though District board policy #2310E-R

does not contain a detailed procedure for the selection/appointment of the teacher members to the instructional council, it is found that the procedure described by Reising is the procedure that was used by the District from the spring of 1980 through the end of the 1981-82 school year. Further, there is no credible evidence which establishes that this procedure was subsequently modified, in practice, during the time period relevant to this charge.

It is undisputed that from the fall of 1980 until October 1983 the instructional council meetings were normally held monthly during the school year and were held on release time for the teacher members. The meetings were scheduled to begin around 8:30 or 9:00 a.m. in the morning during the teachers' regular instructional day and continued until the session was completed or until the end of the teachers' seven and one-half hour workday, whichever occurred first. The teacher members of the committee were excused from their instructional duties to attend the meetings and substitutes were employed by the District to cover their assignments. The instructional council membership was comprised of two teacher representatives from each school site, a designated EVEA representative, a chairperson appointed by the superintendent, the director of educational services and two parent representatives who were the citizen members appointed by the superintendent.

The instructional council had its first 1982-83 school year meeting on September 22, 1982. The meeting time for subsequent meetings during the school year was discussed as an agenda item. During this discussion, Steve Enoch, a principal and the chairperson of the committee, suggested that the meetings be held in the afternoon in order not to take so much class time of the teacher members. The members thereafter unanimously voted to hold the next meeting in the afternoon.

The next meeting started around noon and lasted through the afternoon. During the fall of 1982 the council had two or three of its meetings on the afternoon schedule, and then reverted back to all-day meetings which started in the morning. The all-day schedule was followed for the balance of the 1982-83 school year.

The first meeting of the instructional council for the 1983-84 school year was held October 19, 1983. It is stipulated and found that the District changed the practice of scheduling all-day instructional council meetings on October 19, 1983, by scheduling that meeting to begin at 2:30 p.m. The meeting actually convened at 2:41 p.m. This time was after the instructional day for most of the teacher members of the council.

The District decided to change the meeting time because it was experiencing budgetary problems at the beginning of the

1983-84 school year. There was also some difficulty in finding substitutes for the teachers.

One of the agenda items at the October 19 meeting was the starting time and length of future meetings for the rest of the school year. After some discussion, it was agreed that the meetings would start at 1:00 p.m. and last for 2 hours. Release time would be granted and substitute coverage arranged for the four teacher members affected by this schedule. It was further agreed that any meeting time past the two hours would be on time volunteered by the teachers.

Following the October 19 meeting, the District experienced problems trying to arrange for partial-day substitutes. Hence, after the October 19 meeting, the instructional council meetings were scheduled as all-day sessions for the rest of the 1983-84 school year. The teacher members attended on release time as they had done previously.

Starting with the October 19 meeting, Superintendent Flora added four members to the instructional council. The four persons were teachers who held positions with the District as learning specialists. The learning specialists are members of the certificated bargaining unit. They had full council membership, except for the right to vote on matters before the council. Superintendent Flora testified that he added the learning specialists to the instructional council because of their expertise in curriculum and instructional matters.

At the October 19 meeting, revisions to District board policy #2310E-R were discussed. Such revisions, if adopted, would have included adding the learning specialists as ex-officio members of the instructional council. The record does not reveal whether their status as "ex-officio" members would have included the right to vote.

C. Meet and Confer Meetings

There is some dispute in the record regarding the purpose of the "meet and confer" meetings that EVEA and the District have held over a number of years. The meetings are informal sessions that have been conducted on a regular monthly basis. They occur outside of the contract negotiation sessions and have involved EVEA representatives and the superintendent or his designee.

Superintendent Flora testified that these meetings were established prior to the beginning of his employment with the District in 1980 and have continued during his administration. Although the superintendent was not specific about the subjects discussed by the parties during the meetings, he implied that EVEA could have used the sessions as the mechanism to exercise its statutory consultation rights.

Reising testified that during her tenure as EVEA president from 1979-82, the "meet and confer" meetings were for the express purpose of attempting to informally resolve teacher complaints or job-related problems at the local school site

that usually were not grievable under the CBA. Such meetings were attended by the EVEA president, the site representatives and the grievance chairperson. The sessions were not used to discuss curriculum and instructional matters because EVEA viewed the instructional council as its vehicle for consultation on these subjects.

Although the testimony of Flora and Reising was not in direct contradiction regarding the purpose of the "meet and confer" meetings, Reising's testimony was more specific about the subject matter of these meetings. Since her testimony was not rebutted, it is credited over that of Flora on this particular point. It is therefore found that the monthly informal "meet and confer" meetings held by EVEA and the District during the times relevant to this charge were not for the purpose of consultation between EVEA and the District on educational matters and have never been so used by EVEA.

ISSUE

Whether the District violated section 3543.5(a), (b), and (c) by unilaterally (1) changing the practice of holding the District instructional council meetings on release time for bargaining unit members and (2) altering the membership of the instructional council without first meeting and negotiating with the Association about these changes?

CONCLUSIONS OF LAW

A. Positions of the Parties

The Association contends that since the District instructional council is the vehicle through which it exercises its consultation rights under section 3543.2(a), the Respondent's unilateral change of the composition of the council membership in October 1983 by the addition of the four learning specialists had the effect of "packing" the council with teacher members of the District's choosing and disrupting the numerical balance between the number of council members selected by the teachers and those selected by the District.

Additionally, the District's change in the practice of conducting the council meetings on release time for the teachers had potential adverse impact on the willingness of teachers to participate on this committee because they would face the prospect of participating entirely on their own time, instead of release time.

In its motion to dismiss the complaint and in its brief, the Respondent argues that the instructional council was not a negotiated vehicle for agreed-upon use by the Charging Party and the Respondent to discharge consultation obligations arising under section 3543.2(a). Instead, the council was a creation of District board policy. None of the express language of that policy suggests that one of the purposes of the instructional council was to meet the employer's obligation

to meet and consult with EVEA. Instead, Respondent asserts that the "meet and confer" sessions were appropriately the means for EVEA to exercise its consultation rights.

The Respondent further argues that since the inception of the instructional council, the superintendent has had the authority to appoint all members to the council. Thus the superintendent's decision to add the learning specialists to the council as nonvoting members was within his authority.

As a final argument, the District maintains that the instructional council is nothing more than an advisory committee to the superintendent regarding District instructional matters. Hence, the District's actions that are the subject of this charge in no way operated to deprive EVEA or any unit member of rights guaranteed by EERA.

B. General Principles Concerning an Unlawful Unilateral Change

It is unlawful for a public school employer to "refuse or fail to meet and negotiate in good faith with an exclusive representative" about a matter within the scope of representation.[4] Moreover, a unilateral change in terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate. Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College (1979) PERB Decision No. 94; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].

[4]See Fn. 2, supra.

An unlawful unilateral change will be found where the Charging Party proves, by a preponderance of the evidence, that an employer unilaterally altered an established policy. Grant Joint Union High School District (1982) PERB Decision No. 196. The nature of the existing policy is a question of fact to be determined from an examination of the record as a whole. It may be embodied in the terms of a collective agreement (Grant, supra) or, where a contract is silent or ambiguous as to a policy, it may be ascertained by examining past practice or bargaining history. Marysville Joint Unified School District (1983) PERB Decision No. 314; Rio Hondo Community College District (1982) PERB Decision No. 279.

In Grant, the Board held that for a Charging Party to prove a violation of section 3543.5(c) when a unilateral change is charged, it must show: (1) that the District breached or otherwise altered the parties' written agreement or its own established past practice; (2) that the breach or alteration amounted to a change of policy (i.e., that it had a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members); and (3) that the change of policy concerned matters within the scope of representation. An employer's unlawful failure and refusal to negotiate concurrently violates an exclusive representive's right to represent unit members in their employment relations

(section 3543.5(b)) and interferes with employees because of their exercise of representational rights (section 3543.5(c)). San Francisco Community College District (1979) PERB Decision No. 105.

These general well-established principles concerning unlawful unilateral changes will be applied to the alleged unlawful conduct presented by this charge.

C. Change in Meeting Time

PERB precedent is clear that the subject of release time is related to wages and hours and is therefore within the scope of negotiations. Anaheim Union High School District (1981) PERB Decision No. 177.

There is no evidence that the parties have ever negotiated about release time from instructional duties for bargaining unit members to participate in committee activities of the instructional council activities. The CBA is silent on this subject. However, there is evidence that as a matter of long-standing past practice, the District has permitted teachers who serve on the instructional council to meet during their instructional day on release time. In 1982 the District's desire to change this practice did not work out, and thus, early morning starting times and all-day meetings remained the established practice.

When the meeting time was changed to 2:30 p.m. on October 19, 1983, the meeting was set to begin at a time that

was after the conclusion of the instructional day for the majority of the teacher members on the council. By this change, the District unilaterally altered its own established past practice regarding the grant of release time from instructional duties for teacher members to participate in instructional council meetings.

There is no evidence that EVEA received any kind of notice of this anticipated action prior to the date of the meeting itself. Thus, this action was taken on a matter within the scope of representation without notice to EVEA nor an opportunity for EVEA to negotiate with the District over the subject prior to the change.

The record fails to establish the length of this particular meeting and whether it extended past the regular working hours of the participating bargaining unit members.[5] However, since the charge does not raise an issue concerning a change in the length of working hours, it is not necessary to make a finding and conclusion concerning this point.

Although it has been found that membership on the instructional council is voluntary and that participation past

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[5]Article 7.0 of the CBA refers to working hours and the work year. Section 7.1 states, in part, as follows:

> 7.1 Bargaining unit members shall have a work day of seven and one-half (7.5) hours, including lunch . . . .

the regular working hours is not required, some of the teacher members of the committee were elected or appointed to represent, not only their own views and ideas, but also those of their colleagues. Undoubtedly, they felt a sense of professional obligation to attend the meeting on October 19, even if doing so required them to be there on their own time.

Even though it has been determined that the District unilaterally changed the meeting time on October 19, it cannot be concluded that this alteration amounted to a change of policy. The Grant standard requires a showing that a change in policy had a "generalized effect or continuing impact on terms and conditions of employment of bargaining unit members." In this case the subject of employment is hours.

The Charging Party failed to establish that a change in policy occurred in this case. The evidence shows that, after the October 19, 1983, meeting, which was the first council meeting of the 1983-84 school year, the meeting time was returned to what it had been in previous years, i.e., all-day sessions. The teacher members were again granted release time from their classroom assignments to attend the meetings. This schedule was in effect for the balance of the 1983-84 school year.

Additionally, there is no showing that any bargaining unit member suffered lost time or money as a result of the change on October 19. Thus, it is concluded that, even though the

District failed to negotiate regarding the change in the practice of granting release time to bargaining unit members for participation in a District advisory committee during the instructional day, there was no violation of section 3543.5(c). The change was a one-time occurrence which had no demonstrable adverse effect on the hours of the affected bargaining unit members. If this action did result in any impact, it was de minimis.[6] Therefore, this part of the charge must be dismissed.

D. Change in Membership

At the heart of the dispute in this part of the charge is the question of whether the instructional council is the instrument through which EVEA has exercised the right to consult guaranteed in section 3543.2(a). None of the District's arguments on this point are persuasive.

First, the District's contention that the parties never negotiated over the use of the instructional council as a consultation vehicle must be rejected for the following reasons.

It has been found that there is no express or implied contract provision covering the procedure for consultation between EVEA and the District over educational matters.

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[6]Additionally, there is no specific allegation that the District unlawfully failed to grant release time nor does the evidence warrant such a finding.

However, it has also been found that the instructional council is the advisory committee through which the District obtains, among other things, input from its teaching staff regarding curriculum and instructional matters. Further, starting with the 1979-80 school year, the procedure that has been followed for electing/appointing site teaching staff to this committee was developed through an oral agreement that was reached by the District and EVEA during the same school year. The District also agreed to recognize the right of EVEA to participate in this consultation process through a designated EVEA representative serving on the council. By this manner of participation, EVEA has regarded the District instructional council as the means by which it fulfills a statutory right to consult with the District on educational matters.

Even though the parties never reduced their agreement or understanding to writing, their conduct since the 1979-80 school year has attested to their acknowledgement of the existence of a procedure that governed this aspect of their employment relations.

The fact that District board policy #2310E-R does not contain the entire election/selection procedure that the parties agreed to in 1979-80 does not mean that such an agreement was not made. It is presumed that the District board

and/or the administration were aware of this procedure and chose not to include it in the board's written policy.

By their oral agreement and their subsequent practice in conformity with the agreement, it is concluded that EVEA and the District mutually established the policy regarding the procedure and mechanism for the implementation of EVEA's statutory consultation rights.

Likewise, the argument regarding the use of the "meet and confer" meetings must be rejected.

First it has been found that the "meet and confer" sessions are not used by EVEA and the District for consultation about the educational matters enumerated in section 3543.2(a). Additionally, evidence was presented to prove that the parties have never used the "meet and confer" sessions to consult on instructional matters of the District, or that either the District or EVEA ever regarded the monthly "meet and confer" meetings as the forum for such discussions. Thus, the District's assertion that these meetings are the more appropriate for EVEA to exercise consultation rights is without merit.

In Jefferson School District (1980) PERB Decision No. 133, the PERB held that the procedure for the exercising of consultation rights guaranteed in section 3543.2 is a matter

within the scope of representation. See also Davis Joint Unified School District (1984) PERB Decision No. 474. In Jefferson, the Board stated that:

> The requirement that teachers be consulted on "other educational matters that are decided on an individual school basis" we find to be a mandatory subject of bargaining as well. Although the actual substance of educational matters need not be negotiated, the procedures for consultation must be. The right of consultation is guaranteed in section 3543.2. . . . Since this proposal seeks only to establish the mechanism for implementing that right, the proposal conforms to the mandates of section 3543.2 and the employer may not refuse to bargain over this proposal. *(Id.* p. 31.)

In this case when the superintendent decided to add four members to the instructional council, this action unilaterally modified an established procedure that the parties had followed for the election/appointment of teacher members to this committee.

Even though the superintendent's proffered reason for wanting the learning specialists on the council is laudable, it does not justify the unilateral action. The natural and probable result of the addition of four additional participating members to a group the size of the council would be a dilution of EVEA's opportunity to effectively offer its input through its sole vehicle for consultation with the District. The actual "speaking time" of each council member would no doubt be limited because of the numbers of persons participating in the meetings.

It might be argued that, in this instance, the addition of the four learning specialists, who are also bargaining unit members, could not adversely affect EVEA's consultative interests. However, if the District is free to unilaterally modify the established procedure to suit its purposes as desired, it could result in a complete derogation from the right of consultation guaranteed by the Act.

Under the second part of the Grant test, cited above, it is concluded that the District's action here amounted to a change of policy, having a generalized effect upon terms and conditions of employment of bargaining unit members.

The third prong of the Grant test, supra, requires that the change of policy concerns a matter within the scope of representation. Relying on the precedent of Jefferson and Davis, supra; it is concluded that the addition of four teacher members to the District instructional council constituted a unilateral change in the procedure established for the implementation of EVEA's statutory right to consult on educational matters. Such procedures or the mechanisms used for the implementation of the right are subjects of mandatory bargaining. Jefferson School District and Davis Joint Union School District, supra.

Additionally, this action was contrary to the District board's own written policy which set forth the council's membership. This fact was recognized by Superintendent Flora when he proposed a revision to policy #2310E-R at the

October 19, 1983, meeting. This revision would have added the learning specialists as ex-officio members of the instructional council.

It is undisputed that the decision to change the procedure for appointing teacher members to the instructional council was done without notice to EVEA or an opportunity for EVEA to negotiate over the proposed change. There is no evidence that the District ever notified EVEA of its decision to appoint four additional members to the council. EVEA first became aware of the change when the learning specialists appeared at the council meeting on October 19, 1983. By then the District's action was a fait accompli.

For all the reasons discussed above, it is concluded that the District violated section 3543.5(c) and concurrently section 3543.5(a) and (b), by its failure to negotiate with EVEA concerning the change made in the procedure for the implementation of EVEA's statutory right to consult on educational matters prior to the implementation of such change.

For the same reasons, Respondent's motion to dismiss the complaint is denied.

REMEDY

Section 3541.5 authorizes the PERB to:

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

In a unilateral change case, it has been the practice of PERB to order the employer to cease and desist from its unlawful action and to restore the status quo ante. It is, therefore, appropriate to order the District to cease and desist from failing or refusing to negotiate with EVEA concerning changes in the procedures used by the EVEA and the District for the implementation of the EVEA's right to consult guaranteed by the EERA, including the unilateral addition of teacher members to the District instructional council.

It is also appropriate to order the District to negotiate, upon request, with EVEA concerning changes in any aspect of the procedures that have been established for the exercise of the Association's right to consult under section 3543.2(a), including the number of teacher members to be elected or appointed to the District instructional council.

Finally, it is appropriate that the District be required to post a notice incorporating the terms of this order attached as an appendix hereto. The notice should be subscribed by an authorized agent of the Lake Elsinore School District, indicating that the District will comply with the terms of this order. The notice shall not be reduced in size. Posting of such notice will provide employees with an additional statement that the District has acted in an unlawful manner, and is being

required to cease and desist from such activity. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and the District's readiness to comply with the ordered remedy. See Placerville Union School District (1978) PERB Decision No. 69; Pandol and Sons v. Agricultural Labor Relations Board (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, conclusions of law, the entire record in this case, and pursuant to section 3541.5(c) of the Educational Employment Relations Act, it is hereby ordered that the Lake Elsinore School District, its Board of Trustees, Superintendent and its agents shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate in good faith with the Elsinore Valley Education Association, CTA/NEA concerning changes in the procedures used to implement the Association's statutory right to consult with the District about educational matters.

2. Denying to the Elsinore Valley Education Association, CTA/NEA rights guaranteed by the Educational Employment Relations Act, including the right to represent its members.

3. Interfering with employees in the exercise of rights guaranteed by the Educational Employment Relations Act, including the right to be represented by their chosen representative.

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

1. Upon request, meet and negotiate with the Elsinore Valley Education Association, CTA/NEA concerning the procedures that have been established for the exercise of the Association's statutory right to consult about educational matters, including the numbers of teacher members to be elected or appointed to the District instructional council.

2. Within ten (10) workdays of service of a final decision in this matter, post at all school sites and all other work locations where notices to certificated employees are customarily placed, copies of the notice attached hereto as an appendix. The notice must be signed by an authorized agent of the District indicating that the District will comply with the terms of this order. 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, altered, defaced or covered by any material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with his instructions.

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

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on October 3, 1985, 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 itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on October 3, 1985, 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, section 32300 and 32305.

Dated: September 13, 1985

W. JEAN THOMAS
Administrative Law Judge