STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, AND ITS CHAPTER #179, Charging Party,	)	Case No. LA-CE-2620
v.	)	PERB Decision No. 766
CAJON VALLEY UNION SCHOOL DISTRICT, Respondent.	)	September 15, 1989

Appearances: Robert M. Baker, Senior Field Representative, for California School Employees Association, and its Chapter #179; Worley, Schwartz, Garfield & Rice by Timothy K. Garfield, Attorney, for Cajon Valley Union School District.

Before Hesse, Chairperson; Porter, Craib, and Shank, Members.

DECISION

HESSE, Chairperson: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Cajon Valley Union School District (District) to the attached proposed decision of an administrative law judge (ALJ), finding that the District violated section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA)[1] when it unilaterally

[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:

> 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

implemented the Personnel Commission's (Commission) recommended changes to existing wage scales contained in a collective bargaining agreement then in effect. We have carefully reviewed the entire record, including the proposed decision, the transcripts, the exceptions filed by the District, and the response to the exceptions filed by the California School Employees Association, and its Chapter #179 (CSEA). We find the ALJ's findings of fact and conclusions of law free of prejudicial error and adopt them as the decision of the Board itself. However, we believe that the District's exceptions require a brief response.

The District specifically excepted only to the ALJ's conclusion of law that it was required to negotiate changes in salary ranges assigned to three classified positions by the Commission as a result of a reclassification study. The District's bases for this exception are: (1) as a matter of law, in a merit system school district, a personnel commission has exclusive jurisdiction to assign salary range classifications, and, therefore, the district may not legally negotiate concerning the salaries of individual positions; and (2) the District's past practice of automatically implementing the Commission's

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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.

recommendations without objection from CSEA is a legitimate defense to an allegation of failure to negotiate the changes.

The ALJ found it necessary to address the District's arguments concerning a 1981 amendment to Education Code section 45256 which was subsequent to the Court of Appeal decision in Sonoma County Board of Education v. Public Employment Relations Board (1980) 102 Cal.App.3d 689. The District argues that the 1981 amendment overruled the Sonoma decision, in which it was found that wage ranges are negotiable in districts operating under a merit system, with the exception that relationships between salaries in the same occupational group established by a personnel commission must remain the same. Since the ALJ's proposed decision was issued, this Board, in San Bernardino City Unified School District (1989) PERB Decision No. 723, held that the 1981 amendment to Education Code section 45256 did not overrule the Sonoma decision and does not establish exclusive salary-setting authority with a personnel commission.

Therefore, in the absence of exclusive salary-setting authority vested in a civil service commission, it remains an unfair practice for the employer to alter the clear terms of the collective bargaining agreement without the consent of the exclusive representative. The District, however, also argues that CSEA waived its right to rely on unambiguous language in the collective bargaining agreement, i.e., the established and existing wage scales, when it did not object to the District's

past implementation of changes in salary immediately following the approval by the Commission of such changes.

The mere fact that a party to a collective bargaining agreement has not chosen to enforce its contractual rights in the past, does not mean that, ipso facto, it is forever precluded from doing so. (Marysville Joint Unified School District (1983) PERB Decision No. 314, p. 10.) Furthermore, the record indicates CSEA was not notified as to when reclassifications were to be implemented or otherwise assigned an effective date. In Placentia Unified School District (1986) PERB Decision No. 595, the Board stated:

> . . . not only must a waiver be "clear and unmistakable" but waiver is also an affirmative defense, therefore, the party asserting it bears the burden of proof. . . . doubts must be resolved against the party asserting waiver. . . .
> (At pp. 7-8.)

Given the existing and unambiguous contract provisions governing salary rates for the affected classifications, and the lack of any convincing evidence that CSEA waived its contractual rights, the District's argument regarding a uniform past practice in implementing salary changes is meritless.

ORDER

Based on the entire record in this case, it is hereby ORDERED that the Cajon Valley Union School District (District), its governing board and representatives, shall:

A. CEASE AND DESIST FROM:

1. Interfering with the exercise of rights, guaranteed under the Educational Employment Relations Act (EERA or Act), by the District's employees in the classified bargaining unit, by unilaterally changing those employees' salary ranges during the term of collective bargaining agreements negotiated with California School Employees Association, and its Chapter #179 (CSEA), without CSEA's consent.

2. Denying CSEA rights guaranteed to it by EERA by unilaterally changing the salary ranges of employees in the classified bargaining unit during the term of collective bargaining agreements between the District and CSEA, without CSEA's consent.

3. Failing and refusing to meet and negotiate in good faith with CSEA by unilaterally changing the salary ranges of employees in the classified bargaining unit during the term of collective bargaining agreements between the District and CSEA, without CSEA's consent.

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

1. Within thirty-five days (35) 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 District. 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.

2. Written notification of the actions taken to comply with this Order shall be made to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with her instructions.

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

Members Craib and Shank joined in this Decision.

Member Porter's dissent begins on page 7.

Porter, Member, dissenting: I respectfully adhere to my position that the salaries for individual classifications in a merit system school district are not negotiable. (See San Bernardino City Unified School District (1989) PERB Decision No. 723, dis. opn. pp. 11-53.) Accordingly, I cannot find that this merit system district employer made an unlawful unilateral change in a negotiable subject.

Furthermore, as to the factual situation presented in the instant case, I submit that a Personnel Commission's reclassifications are not within the scope of representation and negotiable, nor a permissible subject of negotiations in a merit system school district. Reclassification is a matter within the purview and authority of the independent Personnel Commission. (Ed. Code, secs. 45256 and 45285; and see Gov. Code, sec. 3543.2.) Moreover, once a merit system Personnel Commission has adopted a reclassification, the incumbents of the position or class, which has been so reclassified to a higher class due to an increase in the duties of the class, would be entitled, as a matter of law, to the salary of the higher class pursuant to "like pay for like service" merit system principles. (See Ed. Code, secs. 45101, subd, (f), 45256, 45285 and 45268; and State Trial Attorneys' Association v. The State of California (1976) 63 Cal.App.3d 298, 304.)

I would dismiss the complaint.

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 No. LA-CE-2620, California School Employees Association, and its Chapter #179 v. Cajon Valley Union School District, in which all parties had the right to participate, it has been found that the Cajon Valley Union School District (District) violated section 3543.5(a), (b), and (c) of the Educational Employment Relations Act (EERA).

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

CEASE AND DESIST FROM:

1. Interfering with the exercise of rights, guaranteed under EERA, by District employees in the classified bargaining unit, by unilaterally changing those employees' salary ranges during the term of collective bargaining agreements negotiated with California School Employees Association, and its Chapter #179 (CSEA), without CSEA's consent.

2. Denying CSEA rights guaranteed to it by EERA by unilaterally changing the salary ranges of employees in the classified bargaining unit during the term of collective bargaining agreements between the District and CSEA, without CSEA's consent.

3. Failing and refusing to meet and negotiate in good faith with CSEA by unilaterally changing the salary ranges of employees in the classified bargaining unit during the term of collective bargaining agreements between the District and CSEA, without CSEA's consent.

Dated: _____ CAJON VALLEY UNION SCHOOL DISTRICT

By _____
Authorized Agent

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.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, AND ITS CHAPTER #179, Charging Party, V. CAJON VALLEY UNION SCHOOL DISTRICT,[1] Respondent.	Unfair Practice Case No. LA-CE-2620 PROPOSED DECISION (12/20/88)

Appearances: Robert M. Baker, Senior Field Representative for California School Employees Association and its Chapter #179; Worley, Schwartz, Garfield & Rice by Timothy K. Garfield for Cajon Valley Union School District.

Before Douglas Gallop, Administrative Law Judge.

PROCEDURAL HISTORY

On August 13, 1987,[2] California School Employees Association and its Chapter #179 (hereinafter Association) filed an unfair practice charge alleging that Cajon Valley Union School District (hereinafter District) violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (hereinafter EERA),[3] by unilaterally implementing changes in job descriptions, by unilaterally changing the wage scales for three existing job classifications and assigning a wage scale to one new job

[1]The District's name appears as amended at the hearing.

[2]All dates hereinafter refer to 1987, unless otherwise indicated.

[3]The EERA is codified at Government Code section 3 540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

classification, and by refusing to furnish the Association with requested information relevant to its representational activities. On March 31, 1988, the then Acting General Counsel of the Public Employment Relations Board (hereinafter PERB) issued a complaint alleging the changes in job descriptions and wage scales, and the refusal to furnish information as violative of section 3543.5(a), (b) and (c). On April 21, 1988, the District filed an answer denying the commission of unfair practices. The parties met in an informal settlement conference on June 20, 1988, but were unable to resolve the matter. A hearing was conducted pursuant to these unfair practice allegations on September 7 and 8, 1988. The parties filed post-hearing briefs, and the matter was submitted for decision on November 28, 1988.

FINDINGS OF FACT

The District is an employer within the meaning of section 3540.1(k). The Association, an employee organization within the meaning of section 3540.1(d), is the exclusive representative of a comprehensive classified unit of the District's employees. Tony Fernandez, a Field Representative, and Iris Schliekelman, a District employee and the Chapter President, are primarily responsible for representing the classified employees. Edmund G. Derning, a labor relations consultant and G. Wayne Oetken, the District's Assistant Superintendent, have been the District's lead negotiators.

The District's classified employees have elected to be governed by a merit system, pursuant to Education Code section 45220 et seq. The merit system is administered by the Cajon Valley Union School District Personnel Commission (hereinafter Commission). The Commission consists of three commissioners, one nominated by the Association, the second nominated by the District and the third selected by the other commissioners. The commissioners, who serve without pay, are not employees of either the Association or the District. The Commission maintains a small, paid staff including Ronald M. Damschen, the Personnel Director, and Kathie Hillix, Assistant Personnel Director. Both Damschen and Hillix are also employed by the District; Damschen as Personnel Director and Hillix as Personnel Analyst.

The District and the Association have been parties to a series of collective bargaining agreements, including an agreement which was effective for the period November 9, 1982 to June 30, 1988, subject to reopeners (hereinafter Agreement).[4] The Agreement contained a salary schedule containing salary ranges and steps within each range. The Agreement also contained a listing of job classifications, grouped within job families, with each classification assigned to a salary range.

The Agreement contained the following provision:

''The parties are currently under contract until June 30, 1990, subject to reopeners.

ARTICLE IV: BOARD RIGHTS

> Except as limited by the provisions of this Agreement, the Management of the District and the direction of the working force, including the right to hire, promote, transfer, discharge, discipline for proper cause, and to maintain efficiency of the employees, is the responsibility of the Board. In addition, the work to be performed, the location of the work, the method and processes, and the decision to make or buy are solely and exclusively the responsibility of the District provided that in the exercise of such functions, the District shall not discriminate against employees because of participation in legitimate activities on behalf of the Association. The foregoing enumeration of Board rights shall not be deemed to exclude other rights of the Board not specifically set forth herein. The Board, therefore, retains all rights not otherwise specifically limited by this Agreement and the non-utilization of any Board right does not mean that the Board shall not maintain said right.

Pursuant to Education Code section 45260 et seq., the Commission has published rules and regulations for classified employees. These rules grant to the Commission the following authority: 1). To conduct classification studies at least every four years (Chapter 20.300.2B); 2). To establish classification plans (Chapter 30.200.2); 3). To determine whether jobs should be reclassified due to changes in job duties (Chapter 30.200.6); and 4). To classify newly created positions (Chapter 30.200.9). The rules grant to the District the authority to assign job duties to classified employees (Chapter 30.200.1), and to create new positions (Chapter 30.200.9). The rules further provide that

classification studies are to be conducted by the Commission's Personnel Director (Chapter 30.200.8), and that the only basis for reclassifying incumbent employees shall be "a gradual accretion of duties." (Chapter 30.300.3). The rules provide that the Commission is responsible for preparing salary schedules and may conduct salary studies, but that the District may approve, amend or reject these recommendations (Chapters 70.200.1, 70.200.2 and 70.200.3). Finally, the rules provide that reclassifications shall be effective on the date prescribed by the Commission (Chapter 30.200.2).

The Commission had historically conducted its own classification studies, under the auspices of its Personnel Director and Assistant Personnel Director.[5] The Commission had always given notice of intended reclassifications to the classified employees and to the Association, and conducted meetings to receive comments and criticism. Pursuant to rules of the Commission, its final classification decisions became effective immediately upon approval. Apparently, the District had also uniformly accepted the recommended wage reassignments without taking independent action. The Association rarely protested these actions, because they usually involved wage increases or new positions. On occasion, such as in a case

[5]Some of the Association's witnesses, perhaps confusing Damschen's dual roles, vaguely referred to these as "in house" studies by the District. The Commission's rules and regulations, and documentary evidence concerning these past studies show, however, that the studies were conducted by the Commission.

involving a downward reclassification accompanied by a wage freeze, the Association's representatives did discuss reclassifications with Damschen. Fernandez and Schliekelman credibly testified that they were unaware of any District policy as to when the District implements changes in salary ranges recommended by the Commission.

Approximately two years ago, Fernandez met with a group of Special Education Classroom Aides (SECAs), who complained that their job duties had "radically" changed over the past five to six years, and felt that they should be reclassified upward. The Association requested a reclassification study for the SECAs, but since many other classified positions were due (or overdue) for review, the Association agreed to select an outside consultant to review many of the classified positions. Dr. Michael Nash, who was selected by a committee consisting, inter alia, of Fernandez, Schliekelman, Damschen and Hillix, conducted the study. At one such committee meeting, in August 1986, Fernandez took the position that the results of the study would be negotiable.

In the course of the reclassification study, Nash sent questionnaires to the classified employees, and met with them to discuss their job duties. Nash issued a preliminary report dated November 14, 1986, and a final report dated December 19, 1986. While the Commission promptly furnished copies of these reports to the District, it failed to provide copies to the Association. The Commission's rules provide that the Association is to receive copies of the data obtained in salary studies (Chapter 70.200.2),

but is silent with respect to data obtained in reclassification studies.

In January 1987, Damschen sent letters to the employees affected by the study, stating Nash's recommendations as to their job titles, salary ranges and job descriptions.[6] The letters further notified the employees of a January 20 Commission meeting at which they could present their views on the recommendations. At the January 20 meeting, several employees spoke in opposition to the Nash study recommendations, including the SECAs, who were opposed to the recommendation for no change in their job title or classification. Angelina Elias, a SECA employee, told the Commission that due to the gradual increase in the job duties for that position, the Commission should consider a "salary increase."

On January 22, after receiving further input from employees, the Commission adopted the final Nash study, with minor modifications. Thus, the Commission adopted job descriptions and salary range placements for 28 job classifications, including a newly-created position. Of these, two positions were classified upward in salary range, one (having no incumbent) was classified downward, and a salary range was assigned to the new position. The Commission also approved five individual employee reclassifications (all of which involved equal or higher wage ranges) and deleted one job classification.

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[6]While the letters are on the District's stationery, Damschen signed the letters as "Director Personnel Commission."

With respect to the job descriptions, the Association placed into evidence the pre and post-Nash study job descriptions which show changes in job descriptions for many job classifications. Fernandez and Schliekelman, however, both testified that they believed that all of these changes in job descriptions reflected changes in job duties that had occurred over the past several years. As noted above, Elias, at the January 20 meeting, stated that the SECA's job duties had also changed over the years, and she initially testified that the new SECA job description only reflected existing changes in job duties. Elias later testified, in an inconclusive manner, concerning specific job duties which she, individually, may not have performed prior to the study. No further evidence was presented on this issue.

Schliekelman and Fernandez gave rather conflicting accounts as to Fernandez's statements before the Commission in January. While both agree that Fernandez requested that the Commission negotiate the Nash study prior to implementation, they disagree as to whether this took place on January 20 or January 22. Also, while both testified that Fernandez requested information at one of these meetings, they conflict as to what was requested. According to Fernandez, he requested a copy of the "preliminary" Nash report, while Schliekelman testified that Fernandez requested the "results" of the Nash study, and that she did not learn that a preliminary report had been issued until March 19. Finally, Fernandez initially testified that in response to his information request, Damschen stated that he favored furnishing

the report. Fernandez later testified that Damschen opposed furnishing the report. Schliekelman testified that Damschen said he was opposed to providing the information. Damschen testified that he recalled no request for information at the Commission meetings. He does recall that Fernandez, at some point, demanded that the Commission negotiate the study, and that he replied that the Commission does not negotiate with the Association, but that rather, the District negotiates. The foregoing evidence is simply too confusing and contradictory to establish what information request, if any, the Association made in January, when the request was made, or the Commission's response thereto. If such a request was made, it is found that Fernandez did not specifically request a copy of the preliminary report, but requested a copy of the results of the Nash study.

Schliekelman did request information in a letter dated February 2; however, the letter was addressed to John Jarboe, the Commission's Chairman (and the Association's nominee). The letter requested ". . .a complete copy of the report/findings/ recommendations made to the Personnel Commission by Dr. Nash. . . ." In a letter dated February 6, Jarboe replied:

> As an individual Commission member I cannot release the information you requested on the classification study. However, the Commission will consider your request at the next meeting on February 26.

The Commission, on February 26, approved the information request, and on that date, provided a copy of the final report to the

Association. Derning provided Fernandez with a copy of the preliminary report at a meeting on March 19.

Schliekelman, also on February 2, sent a letter to the District's governing board demanding to meet and negotiate on the reclassification study. Oetken subsequently requested that the Association agree to upgrade one of the positions pursuant to the Nash study. In a letter dated February 12, Schliekelman denied this request stating that the Association had "rejected" the Nash Report in its "entirety" and that the Association would not accept any portion of the report until it was negotiated in its entirety. The District, in a letter dated February 17, replied that it considered the Nash study to be outside the scope of representation, but offered to meet and negotiate with respect to the four job classifications (including the newly-created position) which had been reclassified to different salary ranges. The District, without formal action, had implemented the reclassifications and changes in salary ranges effective January 23. The District's governing board, over the protest contained in a letter from Schliekelman, dated February 23, formally adopted the job description changes on February 24.

The Association's protests continued, resulting in a meeting on March 19, attended, inter alia, by Fernandez, Schliekelman and Derning.[7] According to Fernandez, he told Derning that the

[7]The parties had originally scheduled a meeting with Oetken more than two weeks earlier, but Oetken's illness and other commitments forced a cancellation.

Association wished to negotiate the Nash study and asked if the District had any proposals to make. Derning replied that he was not there to negotiate but was attempting to find out what the problem was. Fernandez stated that the Association considered the Nash study negotiable, citing legal authority. Fernandez testified that the meeting "didn't go anywhere" and that Derning told him "to file the unfair." Neither side made any proposals at the meeting. Schliekelman testified in a similar manner concerning the meeting. She stated that she had expected the meeting to be an "entry" into the negotiations process, to address the Association's concerns.

Derning testified that he was asked to attend the meeting by Oetken and Damschen, and was asked to find out what the Association's complaints were. He acknowledged that he told the Association's representatives that he was not there to negotiate, but to ascertain their concerns. Derning testified that Fernandez and Schliekelman insisted that the entire Nash study should be negotiated, including the job duties and descriptions. According to Derning, he replied that he felt that any changes in wages were subject to negotiations, but that the subjects of job descriptions and job duties were management prerogatives. Derning contends that he offered to meet with respect to the positions which had been assigned new salary schedules. With respect to the filing of unfair practice charges, Derning testified that Fernandez brought up the subject first, stating that he had filed charges. Derning did not recall telling

Fernandez to file charges, but testified that if he did so, it would have been in response to Fernandez's statement. It is undisputed that the Association made no further requests for negotiations on the study, or any portion thereof.

Derning is credited in his testimony that he offered to negotiate wages for those positions which had been assigned new wage scales. The Association's witnesses did not specifically deny that this offer was made, and it comports with both the District's letter of February 17 and Derning's strongly asserted sentiment that the District should negotiate any wage-related matters arising from actions taken by the Commission. Derning is also credited that Fernandez and Schliekelman, at the meeting, insisted on negotiating the entire Nash study. That position is also consistent with Fernandez's and Schliekelman's prior statements.

THE ISSUES

1. Did the District violate section 3543.5(a), (b) or (c) by unilaterally implementing the changes in job descriptions?

2. Did the District violate section 3543.5(a), (b) or (c) by implementing the changed or new salary schedules?

3. Did the District violate section 3543.5(a), (b) or (c) by refusing to furnish the Association with requested information?

ANALYSIS AND CONCLUSIONS OF LAW

The Changes in Job Descriptions

The subject of job duties, unless waived, is normally considered within the scope of representation. Jefferson School

District (1980) PERB Decision No. 133. Changes in job duties, however, are only negotiable if they are unrelated to the existing job duties. Rio Hondo Community College District (1982) PERB Decision No. 279 at pages 16-19; cf. Mt. San Antonio Community College District (1983) PERB Decision No. 297. Similarly, while job descriptions and job titles, absent a waiver, are generally negotiable, changes in job descriptions or titles which do not represent material changes in the actual job duties performed by employees in those job classifications do not constitute unfair practices. Alum Rock Union Elementary School District (1983) PERB Decision No. 322, at pages 21-22; State of California (Department of Developmental Services) (1985) PERB Decision No. 484-S;

cf. Mt. San Antonio Community College District (1983) PERB Decision No. 334.

The evidence in this case shows that the changes in job descriptions reflected changes in job duties which had accrued over a period of several years, and which had not previously been objected to by the Association. The evidence concerning the purported charges in SECA job duties was inconclusive, and further failed to establish that said changes affected anyone other than the one SECA who testified. In addition, the purported changes appear to have arisen out of the SECAs' pre-existing duties, as was the case in Rio Hondo Community College District, supra. Therefore, it is concluded that the District's adoption of the job description changes did not materially change

any term or condition of employment, and that the District did not thereby violate the EERA.[8]

The Refusal to Negotiate the Nash Study

The credited evidence establishes that while Derning, perhaps inappropriately, began the March 19 meeting by stating that he was not in attendance to negotiate, the District, through its letter of February 17 and by virtue of Derning's subsequent statements on March 19, clearly evinced a willingness to negotiate the wages of those job classifications which were reclassified and the new classification. The Association, while choosing not to pursue this offer, never consented to the implementation of the changes in salary ranges, or any other portion of the Commission's recommendations. Schliekelman's February 12 letter to Oetken and the verbal statements by both Schliekelman and Fernandez made it clear that no such consent was given, at least pending negotiations.

Several sections of the Education Code are relevant herein. These include:

> Section 45256. Establishment of classified service; Exemptions
>
> (a) The commission shall classify all employees and positions within the jurisdiction of the governing board or of the commission, except those which are exempt from the classified service, as specified in

[8]Based on the foregoing, it is unnecessary to consider whether the management rights clause, contained in the Agreement, constituted a waiver of bargaining rights on this subject by the Association, as Derning apparently contends. It is noted that the District did not raise the issue of waiver as a defense to this allegation.

subdivision (b). The employees and positions shall be known as the classified service. "To classify" shall include, but not be limited to, allocating positions to appropriate classes, arranging classes into occupational hierarchies, determining reasonable relationships within occupational hierarchies, and preparing written class specifications.

Section 45261. Subjects of rules

(a) The rules shall provide for the procedures to be followed by the governing board as they pertain to the classified service regarding applications, examinations, eligibility, appointments, promotions, demotions, transfers, dismissals, resignations, layoffs, reemployment, vacations, leaves of absence, compensation within classification, job analyses and specifications, performance evaluations, public advertisement of examinations, rejection of unfit applicants without competition, and any other matters necessary to carry out the provisions and purposes of this article.

(b) With respect to those matters set forth in subdivision (a) which are a subject of negotiation under the provisions of Section 3543.2 of the Government Code, such rules as apply to each bargaining unit shall be in accordance with the negotiated agreement, if any, between the exclusive representative for that unit and the public school employer.

Section 45268. Salary schedule for the classified service

The commission shall recommend to the governing board salary schedules for the classified service. The governing board may approve, amend, or reject these recommendations. No amendment shall be adopted until the commission is first given a reasonable opportunity to make a written statement of the effect the amendments will have upon the principle of like pay for like service. No changes shall operate to disturb the relationship which compensation schedules bear to one another, as the relationship has

been established in the classification made by the commission.

In Sonoma County Board of Education v. PERB (1980) 102 Cal.App.3d 689, the Court of Appeal found that pursuant to Education Code section 45268, the implementation of personnel commission recommendations concerning wage ranges are not mandated by virtue of the commission's classification authority under Education Code section 45256, with the exception that relationships between salaries in the same occupational group established by the personnel commission must remain the same. Having reached this conclusion, the Court further concluded that salaries in a merit system district, within those parameters, are negotiable.

The District argues that by amending Education Code section 45256 in 1981, after the Sonoma decision issued, to include a definition of the term, "to classify," the legislature intended to overrule the court's finding that wage ranges, subject to the stated limitation, are negotiable in districts operating under merit systems. The PERB, in 1982, issued its decision in San Lorenzo Unified School District (1982) PERB Decision No. 274, specifically continuing to uphold the rationale of Sonoma. Since the PERB did not specifically address the District's arguments concerning the 1981 amendment to Education Code section 45256 in San Lorenzo, a brief response is appropriate. Education Code section 45256, as amended, nowhere refers to wages or wage ranges, and in itself, does not in any manner remove wage-related

issues from collective bargaining. Education Code section 45268, on the other hand, specifically addresses the authority of personnel commissions with respect to salary schedules. This authority is, by the explicit terms of that provision, strictly advisory and the governing board is not obligated to accept such recommendations. Education Code section 45268 also does not limit the authority of governing boards to approve, amend or reject personnel commission salary schedules to initial or unit-wide schedules. Rather, by its terms, this section permits the governing boards to act in this area at any time, so long as the relationships within occupational groups established by the commission are not disturbed. Accordingly, since the subject of salary schedules is governed by Education Code section 45268, and not by section 45256, the District's argument of non-negotiability is rejected.[9]

The San Lorenzo decision is factually parallel to a portion of this case, and is controlling. In that case, a merit system district created a new position, which was then classified and assigned to an existing wage range by the personnel commission. The union in that case contended that the district had refused to bargain concerning the salary range for that position, while the district, as one of its defenses, denied that it had the authority to negotiate wage ranges established by the personnel commission. The PERB, citing Sonoma, rejected the negotiability

[9]It is noted that the Commission's rules and regulations recognize this distinction.

defense, but found, on the facts presented, that the union had been afforded the opportunity to negotiate the salary for the new position, and dismissed the complaint on that basis.

It has been found herein that the District did, in fact, offer to negotiate the wages of the three reclassified positions and for the new position, and that the Association declined to engage in bargaining after March 19. Therefore, with respect to the newly-created position, it is concluded that the District complied with its obligations under section 3543.2 and did not violate the EERA.

The changes in the other salary ranges, however, present a different issue, because those positions were already assigned wage ranges under the parties' collective bargaining agreement. Neither Sonoma, which dealt with an initial collective bargaining agreement,[10] nor San Lorenzo, which involved the negotiability of wage ranges for newly-created positions, decided the negotiability of personnel commission recommendations which would affect wage rates contained in a collective bargaining agreement.

It is an unfair practice for an employer to alter the clear terms of a collective bargaining agreement without the consent of the exclusive collective bargaining representative. Grant Joint Union High School District (1982) PERB Decision No. 196; South San Francisco Unified School District (1983) PERB Decision No.

[10]See Sonoma County Office of Education (1977) EERB Decision No. 40, at ALJ Decision, slip. op. 1-2. (The PERB was formerly called the Educational Employment Relations Board, EERB).

343; Palo Verde Unified School District (1983) PERB Decision No. 354. It is clear that the Association did not consent to the changes in wage classifications. The fact that the Association may have offered to consider the wage classification changes in negotiations does not mean that it relinquished its right to ultimately stand on the contract, absent its consent to the changes. See Inland Cities, Inc. (1979) 241 NLRB 374 [101 LRRM 1031]; Connecticut Light and Power Company, et al. (1984) 271 NLRB 766 [116 LRRM 1475]. Furthermore, even if the District is correct when it asserts that the Association did not really oppose the changes in salary schedules, but was seeking to obtain other contractual changes, the Association's motives for refusing to relinquish its contractual rights are irrelevant to the issues presented. It is also concluded that the Association did not waive its contractual rights by delaying its protest to the District, since it had no way of reasonably knowing when the changes in salary ranges would be implemented, and cannot be required to have issued a protest only one day after the Commission issued its recommendations.

EERA section 3540 provides, in pertinent part:

> Nothing contained herein shall be deemed to supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.

The PERB has construed this portion of section 3540 to limit the negotiability of subjects only where there is no direct conflict with the Education Code. Jefferson School District (1980) PERB Decision No 133; Healdsburg Union High School District (1980) PERB Decision No. 132.

It is concluded that the Education Code does not conflict with the negotiability of wage ranges and the enforcement of negotiated salary schedules under the EERA, but may, in fact, reinforce those obligations. Education Code section 45261 states that personnel commission rules concerning, inter alia, "compensation within classification" shall be applied in accordance with the negotiated agreement between the parties. This provision, arguably, could prohibit the application of personnel commission reclassification decisions which change negotiated wage rates, absent the consent of the exclusive representative, during the life of the agreement. Such an interpretation is bolstered by EERA section 3540, which appears to prohibit merit or civil service systems from enacting rules or regulations conflicting with lawful collective bargaining agreements. Nevertheless, even if the term "compensation within classification" is distinguishable from a reclassification, there remains no provision in the Education Code that directly conflicts with the District's obligation to negotiate wages.

Based on the foregoing, it is concluded that, absent the Association's consent, the District was prohibited from implementing changes in salary ranges covered by the Agreement,

during its term. By doing so, the District violated section 3543.5(a),[11] (b) and (c) of the EERA.

The Request for the Nash Study Results

The Association's written information request of February 2 was directed to the Commission, and not to the District. Even if a verbal information request was made by the Association on January 20 or 22, it was also addressed to the Commission. The fact that Damschen was present at the Commission meetings, in his capacity as the Commission's Director, does not alter the clear understanding by both the Association and the Commission that the request was being directed to the Commission, and not to the District.

Although Damschen and Hillix perform functions for both the Commission and the District, it is concluded that there is insufficient evidence to establish that the Commission is a joint employer with, or an agent of, the District. Even if the Personnel Commission violated its own rules by its delay in furnishing the Association with a copy of the preliminary or

[11]It is clear that the Nash study, as slightly modified, was widely disseminated to the bargaining unit employees at meetings conducted by both the Commission and the Association, including the changes in wage ranges for existing job classifications. It is reasonable to assume that such conduct, repudiating important portions of the parties' collective bargaining agreement, would have the tendency to cause employees to lose confidence in their representative's ability to protect their wages, hours and other enumerated conditions of employment, and as such, the District's conduct interfered with exercise of the protected employee rights. San Francisco Community College District (1988) PERB Decision No. 703; San Francisco Community College District (1979) PERB Decision No. 105; cf. Tahoe-Truckee Unified School District (1988) PERB Decision No. 668.

final Nash study, it did not thereby violate the EERA, because it is not the employer of the classified employees, and is not obligated under the EERA to furnish information to the Association.[12] Accordingly, this allegation is dismissed.

THE REMEDY

Where an employer unilaterally changes terms and conditions of employment, the PERB typically orders the employer to cease and desist from its unlawful action, to restore the status quo ante, to comply with its bargaining obligations with the exclusive representative and to make employees whole for any damage they suffered as a result of the unlawful unilateral change. Rio Hondo Community College District (1983) PERB Decision No. 292. A cease and desist order is appropriate herein. With respect to the employees who received wage increases, it is inappropriate to require them to refund the additional wages they received as the result of the District's unfair practices. Clovis Unified School District (1984) PERB Decision No. 389. While the record establishes that the position which was downgraded by the District was vacant at the time it

[12]Assuming the Commission did have a duty to furnish information under the EERA, or that the Association's request constituted a demand for information from the District, it would be concluded that under the circumstances, the delay was not unreasonable. The Association's request clearly asked for a response from the Commission. It was not unreasonable for the Chairman, upon receipt of the February 2 letter, to consult with the other members of the Commission at its next regularly scheduled meeting on February 26 before releasing the study. It was also not unreasonable for the Commission to assume that the Association sought a copy of the final report, rather than the preliminary report.

was downgraded, it is unclear whether the position continued to be vacant until the current agreement became effective. The current agreement, however, assigns the same wage classification to that position as was implemented by the District. Accordingly, no back pay order shall issue.

The PERB has consistently declined to order a return to the status quo where the parties have negotiated a new agreement covering the subjects of the unilateral change. Delano Union Elementary School District (1982) PERB Decision No. 213a; Rio Hondo Community College District (1983) PERB Decision No. 279a; Fountain Valley Elementary School District (1987) PERB Decision No. 625. Since the parties, subsequent to the unilateral change, renegotiated the wage classifications, no restoration of the status quo ante will be ordered.

It is appropriate that the District be required to post a notice incorporating the terms of this order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and, the posting will announce the District's readiness to comply with the ordered remedy. See Placerville Union School District (1978) PERB Decision No. 69. In Pandol and Sons v. Agricultural Labor

Relations Board (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584], the California District Court of Appeal approved a similar posting requirement. See also NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to EERA section 3541.5(c), it is hereby ORDERED that the Cajon Valley Union School District, its governing board and its representatives:

A. CEASE AND DESIST FROM:

1. Interfering with the exercise of rights guaranteed under the Educational Employment Relations Act by the District's employees in the classified bargaining unit, by unilaterally changing those employees' salary ranges during the term of collective bargaining agreements negotiated with California School Employees Association, and its Chapter #179 (hereinafter Association), without the Association's consent.

2. Denying the Association rights guaranteed to it by the Educational Employment Relations Act by unilaterally changing the salary ranges of employees in the classified bargaining unit during the term of collective bargaining agreements between the District and the Association, without the Association's consent.

3. Failing and refusing to meet and negotiate in good faith with the Association by unilaterally changing the salary ranges of employees in the classified bargaining unit during the

term of collective bargaining agreements between the District and the Association, without the Association's consent.

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

1. Within ten (10) workdays from service of the final decision in this matter, post at all school sites and all other 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 District. 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.

2. Upon issuance of this Decision, written notification of the actions taken to comply with this Order shall be made to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with his instructions.

IT IS FURTHER ORDERED that all other allegations in 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 unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative

Code, title 8, part III, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, ". . .or when sent by telegraph or certified or Express United States Mail, postmarked not later than the last day set for filing . . ." See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, sections 32300, 32305 and 32140.

Dated: December 20, 1988

Douglas Gallop
Administrative Law Judge