STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHERS - LOS ANGELES, Charging Party,	)	Case No. LA-CE-2751
v.	)	PERB Decision No. 860
LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	December 19, 1990

Appearances: Taylor, Roth, Bush & Geffner by Jesus E. Quinonez, Attorney, for United Teachers - Los Angeles; O'Melveny & Myers by Richard N. Fisher and Craig A. Horowitz, Attorneys, for Los Angeles Unified School District.

Before Hesse, Chairperson; Shank and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Los Angeles Unified School District (District) to the attached proposed decision by an administrative law judge (ALJ), wherein it was found that the District violated the Educational Employment Relations Act (EERA), section 3543.5(b) and (c)[1] when

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Prior to January 1, 1990, section 3543.5 stated, in pertinent part:

> It shall be unlawful for a public school employer to:
>
> (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.

it unilaterally established the wage rate payable to certificated employees participating in the District's after-school Early Education Program (EEP) without first bargaining with United Teachers-Los Angeles (UTLA). UTLA also alleged that the District violated section 3543.5(b) and (c) by failing and refusing to provide UTLA with requested information in a timely manner during negotiations; however, the ALJ found that UTLA failed to establish that the District committed such a violation and therefore dismissed this portion of the complaint.

On appeal, the District argues that the ALJ erred in finding: (1) this matter is not subject to mandatory deferral to arbitration; (2) the District did not act in a manner consistent with its contractual obligation; (3) the District did not establish its past practice defense; and (4) the parties did not reach impasse on the salary issue. UTLA excepts to the ALJ's ruling that its post-hearing brief was untimely filed.

We have reviewed the entire record in this matter, including the proposed decision, the District's exceptions and UTLA's responses thereto, and, finding the ALJ's statement of facts to be free from prejudicial error, adopt it as our own. Insofar as they are consistent with the discussion below, we also adopt the ALJ's conclusions of law.

DISCUSSION

The District argues at some length in its exceptions that the ALJ incorrectly ruled that this was not a mandatory deferral matter within the scope of Lake Elsinore School District (1987)

PERB Decision No. 646, and that, therefore, PERB has jurisdiction over this case. The District's argument regarding deferral is summarized by the District as follows:

> If the District correctly applied Section 6.0 to the Early Education Program, such compliance is a complete defense to UTLA's claim. If the District misapplied Section 6.0, it violated the Agreement. In either circumstance, UTLA's claim raises a contract issue which an arbitrator can fully resolve, and the PERB must defer this matter to the grievance machinery.
> (District's Exceptions at p. 27.)

The above-referenced argument by the District constitutes an incorrect statement of the Board's deferral doctrine.[2] In Lake Elsinore School District, supra, PERB Decision No. 646, the Board held that it has no jurisdiction over matters involving conduct arguably prohibited by a provision of the collective bargaining agreement until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted either by settlement or by binding arbitration. The key portion of the Board's Lake Elsinore holding, as it pertains

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[2]The District contends that its accurate application of the language in the collective bargaining agreement constitutes a complete defense to UTLA's claim in this instance. This does not, in and of itself, resolve the deferral issue. If the record indeed demonstrates that the District complied with the contract, then there could be no finding on the merits that the District unlawfully instituted a change in policy, as the District argues. Nevertheless, this matter would be properly within the Board's jurisdiction and not subject to mandatory deferral. On the other hand, a misapplication of contract language may constitute a violation of the agreement and, thus, may raise an issue of deferral, but only in instances where the Board's Lake Elsinore School District standard is met.

to the present case, is that the conduct at issue must be arguably prohibited by the language of the agreement.

Quite apart from the merits of the unfair practice charge before us, the contract provision at issue, section 6.0, does not "arguably prohibit" the District's conduct in this instance. The language contained in section 6.0 indeed requires the District to pay a certain set rate for the performance of specific duties by certificated staff. (See ALJ's proposed decision at p. 5.) In this case, the District has utilized one category of duties and its corresponding pay rate in computing the appropriate rate of pay for EEP participants. Consequently, the ALJ's conclusion as to the deferral issue is correct and the District's exceptions in this regard are without merit.

As to the District's exceptions regarding the substantive issues of whether the contract expressly permits the conduct at issue herein, or, if not, whether the District has a valid past practice defense, we find that no points have been raised which were not already presented to and considered by the ALJ. We affirm the ALJ's conclusions with respect to these matters and find the District's exceptions to be without foundation. Additionally, we note that there is another factor which bolsters the ALJ's finding that the EEP is a unique program vis-a-vis the other after-school programs claimed by the District to establish a past practice governing this instance. That factor is the

EEP's statutory basis,[3] which the other programs, essentially

[3]The EEP, codified at Education Code section 56440, is a unique and different program involving preschoolers who are not otherwise enrolled in the school district. Under the statutory scheme, the early education and services shall include the following elements, as set forth in section 56441.3 of the Education Code:

> (1) Observing and monitoring the child's behavior and development in his or her environment.
>
> (2) Presenting activities that are developmentally appropriate for the preschool child and are specially designed, based on the child's exceptional needs, to enhance the child's development. Those activities shall be developed to conform with the child's individualized education program and shall be developed so that they do not conflict with his or her medical needs.
>
> (3) Interacting and consulting with the family members, regular preschool teachers, and other service providers, as needed, to demonstrate developmentally appropriate activities necessary to implement the child's individualized education program in the appropriate setting pursuant to Section 56441.4 and necessary to reinforce the expansion of his or her skills in order to promote the child's educational development. These interactions and consultations may include family involvement activities.
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> (4) Assisting parents to seek and coordinate other services in their community that may be provided to their child by various agencies.
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> (5) Providing opportunities for young children to participate in play and exploration activities, to develop self-esteem, and to develop preacademic skills.
>
> (6) Providing access to various developmentally appropriate equipment and specialized materials.
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> (7) Providing related services as defined in Section 300.13 of Title 34 of the Code

tutorial in nature, do not share.

As to the District's final exception, we find that the ALJ correctly concluded that the District's "impasse" defense is not valid under these circumstances. The parties did not complete the impasse process.[4] Alternatively, even if they had completed

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> of Federal Regulations, that include parent counseling and training to help parents understand the special needs of their children and their children's development, as that section read on May 1, 1987.

[4]The impasse procedures referenced herein are contained at EERA sections 3548 and 3548.1(a) and provide, in pertinent part:

> 3548. MEDIATOR; MUTUAL AGREEMENTS
>
> Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement.
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> 3548.1. FACT FINDING PANEL; REQUEST; SELECTION OF PANEL; CHAIRPERSON
>
> (a) If the mediator is unable to effect settlement of the controversy within 15 days after his appointment and the mediator declares that factfinding is appropriate to the resolution of the impasse, either party

the process, the specific dispute over the EEP wage rate was not submitted as an unresolved item for PERB's statutory impasse procedures. The fact that the general issue of wage rates pertaining to all after-school programs was submitted to the impasse procedures does not change this finding.

Lastly, UTLA has excepted to the ALJ's ruling that its post-hearing brief was untimely filed. UTLA argues that PERB Regulation 32130(c)[5] applies in this instance, but that the ALJ failed to apply this section and simply counted the 30-day-brief-filing period from the date the transcript was served. However, as UTLA claims, the transcript was served by mail, and thus the filing period should have been extended by five days pursuant to the California Code of Civil Procedure section 1013. Accordingly, UTLA's brief was filed with PERB within 35 days, and was therefore timely filed.

> may, by written notification to the other, request that their differences be submitted to a factfinding panel.

The statutory impasse procedures are exhausted only when the factfinder's report has been considered in good faith, and then only if it fails to change the circumstances and provides no basis for movement that could lead to settlement. At that point, either party may decline further requests to bargain, and the employer may implement policies reasonably comprehended within previous offers made and negotiated between the parties. (Modesto City Schools (1983) PERB Decision No. 291, pp. 32-33.)

[5]Regulation 32130(c) provides, in pertinent part:

> . . . the extension of time provided by California Code of Civil Procedure section 1013, subdivision (a), shall apply to any filing made in response to documents served by mail.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, it has been found that the Los Angeles Unified School District violated section 3543.5(b) and (c) of the Educational Employment Relations Act (Act). It is hereby ORDERED that the Los Angeles Unified School District and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to meet and negotiate in good faith with United Teachers - Los Angeles by unilaterally determining the rate of compensation for certificated bargaining unit employees participating in the Early Education Program.

2. Denying to United Teachers - Los Angeles rights guaranteed to it by the Act, including the right to represent its bargaining unit members.

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

1. Upon request, negotiate in good faith with United Teachers - Los Angeles concerning the rate of compensation for certificated unit employees participating in the Early Education Program.

2. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting

shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

3. 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 in Case No. LA-CE-2751, as amended, are hereby DISMISSED.

Chairperson Hesse and Member Shank joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-2751, United Teachers - Los Angeles v. Los Angeles Unified School District, in which all parties had the right to participate, it has been found that the Los Angeles Unified School District violated section 3543.5(b) and (c) of the Educational Employment Relations Act (Act).

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

A. CEASE AND DESIST FROM:

1. Failing to meet and negotiate in good faith with United Teachers - Los Angeles by unilaterally determining the rate of compensation for certificated bargaining unit employees participating in the Early Education Program.

2. Denying to United Teachers - Los Angeles rights guaranteed to it by the Act, including the right to represent its bargaining unit members.

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

1. Upon request, negotiate in good faith with United Teachers - Los Angeles concerning the rate of compensation for certificated unit employees participating in the Early Education Program.

Dated: _____ LOS ANGELES UNIFIED 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

UNITED TEACHERS - LOS ANGELES, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	)	Unfair Practice Case No. LA-CE-2751 PROPOSED DECISION (2/21/90)

Appearances: Taylor, Roth, Bush & Geffner by Jesus E. Quinonez, Attorney, for United Teachers - Los Angeles; O'Melveny & Myers by Virginia L. Hoyt, Attorney, for Los Angeles Unified School District.

Before W. Jean Thomas, Administrative Law Judge.

PROCEDURAL HISTORY

On May 12, 1988, the United Teachers - Los Angeles (hereafter UTLA or Charging Party) filed an unfair practice charge with the Public Employment Relations Board (hereafter PERB) against the Los Angeles Unified School District (hereafter District or Respondent). The charge alleged violations of Government Code sections 3543.5(b) and (c) of the Educational Employment Relations Act (hereafter EERA or Act).[1]

[1]The EERA is codified at Government Code section 3540 et seq. All section references, unless otherwise noted, are to the Government Code. Section 3543.5 states, in pertinent part:

> UNLAWFUL PRACTICES: EMPLOYER
>
> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

On October 3, 1988, the General Counsel of PERB, after an investigation of the charge, issued a complaint alleging violations of sections 3543.5(b) and (c). On October 28, 1988, the Respondent filed its answer to the complaint.

On November 18, 1988, an informal conference was held to explore voluntary settlement possibilities. No settlement was reached.

The formal hearing was held on May 5, 1989. During the hearing UTLA, pursuant to California Administrative Code, title 8, section 32648 (hereafter PERB Regulations), moved to amend the complaint to add an allegation that the District unlawfully refused to provide information to UTLA regarding an early education program. The motion was granted. The District was thereafter provided with a full opportunity to defend against this allegation. This included the record being left open to: (1) permit the Respondent to submit a declaration and supporting documentation to support its position that all requested information was supplied to UTLA; and (2) permit the Charging Party to present rebuttal testimony to the additional evidence.

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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.

On May 22, 1989, the District filed a declaration of Shirley C. Woo, and supporting documentation, concerning Woo's actions in mid-December 1987, in response to UTLA's request for information about the early education program. UTLA did not present any rebuttal to this declaration. The hearing record was formally closed on June 1, 1989.

The parties thereafter briefed their respective positions.[2] The case was submitted for decision on July 26, 1989.

INTRODUCTION

Charging Party alleges that the District implemented a new special education program for pre-school age children and unilaterally set the salary for the certificated staff of the new program. It further alleges that the District failed to provide requested information about the new program that was relevant and necessary for the Charging Party to fulfill its collective bargaining responsibilities.

The District insists that no unfair practice has been committed because the subject salary was set pursuant to the collective bargaining agreement (hereafter CBA). The District also insists that it did not fail to provide any information requested by the Charging Party.

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[2]Charging Party's brief was untimely filed. Since the Charging Party presented no justification for the late filing, its brief was not considered in the preparation of this proposed decision.

FINDINGS OF FACT

The parties stipulated, and, it is therefore found, that the Charging Party is an employee organization and an exclusive representative and the Respondent is a public school employer within the meaning of the EERA. UTLA is the exclusive representative of the District's certificated bargaining unit.

UTLA and the District were signatories to a CBA effective from January 27, 1986, to June 30, 1988. At the time of the hearing, they were in the process of negotiating a successor agreement.

As a part of its educational program, the District has created a number of "after-school" programs that provide different types of services to children in the District. Some examples of these programs are: (1) the Ten-Schools Program, a program in which teachers provide assistance and tutoring to students on Saturdays; (2) Project Furlough, an after-school tutoring program; (3) Beyond Survival Program, another program that provides assistance and tutoring to students; (4) Milken Academic Excellence Program, a tutoring program to assist "kids at risk"; (5) a Driver's Education Program for special education students; (6) Junior High Assistance Program, a program that provides supplemental counseling and guidance to students beyond the regular school day; and (7) Home/Hospital Program, a program that provides direct instruction to students who are disabled at home or are hospitalized.

Appendix E, section 6.0 of the CBA,[3] "Salary Tables and Rates" states:

> 6.0 Flat Hourly Rates. Employees serving in the following classifications shall be paid flat rates per hour as indicated:
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> | | |
> |---|---|
> | Adult Teacher, Flat Rate Day-to-Day Substitute | $25.82 |
> | Adult Teacher, Staff Development | $25.82 |
> | Adult Teacher, Temporary Classes | $25.82 |
> | Differential, JTPA Work Experience | $11.73 |
> | Extended Counseling/Advisement Assignment, Hourly | $23.89 |
> | Extended Teaching Assignment, Hourly | $18.46 |
> | Supplemental Driver Training Assignment | $12.92 |

Thomas Killeen, director of personnel research and analysis for the District, testified that the District unilaterally selects either the "Extended Counseling/Advisement Assignment, Hourly" rate or the "Extended Teaching Assignment, Hourly," rate when a new program requires certificated personnel. This decision is based on the District's evaluation of the employees' level of duties and responsibility. According to Killeen, the District has done this in the past with no negotiations request(s) from UTLA. With the exception of the Home/Hospital Program, this occurred in all of the after-school programs referenced on page four.

Killeen admitted that the District did engage in negotiations with UTLA over the rate to be paid to teachers in the Home/Hospital Program. As a result of those negotiations,

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[3]The dollar amounts shown were applicable to the 1985-86 school year. Higher rates for subsequent years have been negotiated.

teachers who work in that program are paid their "regular hourly rate" as opposed to any of the rates set forth in Appendix E, section 6.0. The District agreed to the "regular hourly rate" for the Home/Hospital Program because it involved greater instructional services than the after-school programs which were directed towards "counseling and advisement." In addition the Home/Hospital Program is an average daily attendance (ADA) - funded program. The District gave this factor greater weight in the concluding that it is an instructional program instead of a counseling program.

Whenever the District initiated a new after-school program, UTLA would invariably assert that the teachers should be paid their regular hourly rate for their participation in that program. The District would listen to UTLA and, at times, discuss the salary issue with it. Then the District would select whichever of the rates set forth in section 6.0 of Appendix E it felt was most appropriate. It never negotiated the salary rate to be paid in any of these after-school programs. UTLA never filed either an unfair labor practice or a grievance over these District actions. Nor has any teacher ever filed a grievance with respect to the rate of pay received for participating in an after-school program.

In August of 1987, new legislation was enacted requiring school districts to identify those children -- ages three to five -- who have special needs and to develop a program to address those needs. The goal of the program is to provide early

intervention services that prepare children for future school success, and to reduce their needs for special education in both elementary and secondary schools.

The District named Shizuko Akasaki to be the administrative coordinator for the newly-created early education program. This program was placed within the District's division of special education. In order to receive funding from the State for the program, the District had to identify, by December 1, 1987, and, again, by April 1, 1988, the number of children it expected would participate in the program. Eventually 2,200 children were identified as being eligible for the program.

On November 2, 1987, the District first disseminated information regarding the program to the elementary schools. The program was not originally conceived as an after-school program. However, it became necessary to structure it in that manner due to the shortage of special education teachers during the regular school day.

Preliminary descriptions of the program showed a heavy academic, as opposed to a counseling, emphasis.

Descriptions included such terms as:

> . . . interactive instruction, curriculum structure which . . . provides the content in the areas of the self, the family, the home, and the environment, and . . . uses language development as a basis for all activities.

However, the early education program is not ADA-funded.

The District's January 4, 1988 memorandum describing the program to its teachers states; "Service options will include,

but not be limited to, both classroom assistance to the child and teacher as well as a parent education program." Emphasis on the child's total educational development is the goal of the service delivery models.

A team-teaching approach is used. The typical team, comprised of one special education teacher, one regular program teacher, and one special education assistant, meets with the child and the parents for one and one-half hour sessions per week. Some sessions are held on Saturdays. The teachers receive one-half hour of paid preparation time for each session taught. Part of the program is aimed at teaching the parents how to take what is taught in the classroom and use it in their home so they can better help their child prepare for kindergarten. Hopefully this will prevent the need for special education services later on.

On December 1, 1987, at a previously scheduled negotiations meeting for the new CBA, the District informed UTLA that the new program was going to be implemented. John Britz, UTLA's chief negotiator, stated that the matter had to be negotiated. He immediately raised the issue of the salary to be paid to the teachers involved in the program. He also asked the District's representatives for any available information about the program.

At the next negotiating session, held the next day, the District gave UTLA a summary of the statute creating the program. Britz said that he was more interested in a copy of the District's implementation program rather than a one-page summary

of the law. The District, in response to Britz' query regarding salary, stated that it believed that the section 6.0, Appendix E, salary rate for "Extended Counseling/Advisement, Hourly" was the proper salary rate for the teachers. The CBA rate at the time was $23.89 per hour. However, the District did not take a final position on the issue as there was no District board direction on the subject.

On December 14, 1987, in a telephone conversation between Britz, Richard N. Fisher, the District's chief negotiator, and Shirley Woo, a District assistant superintendent, Britz was told that the District's board of education had approved the "Extended Counseling/Advisement, Hourly" rate for teachers participating in the early education program. Britz suggested the District reconsider its action since there had been no negotiations on the program and UTLA believed the appropriate rate was the teachers' hourly rate. He also told the District representatives that its action was forcing UTLA to file an unfair practice charge. Additionally, he asked for any additional available information on the program. Woo agreed to forward another summary of the program which had just been prepared by Akasaki. Akasaki had prepared this material in anticipation of submitting such information to the State department of education, as a part of the yearly funding process.

On December 15, 1987, Woo sent this three-page summary to Britz. The parties at that time were scheduled to meet again on

January 7, 1988, concerning the program. The meeting was later reset for January 14, 1988.

Sometime later in December 1987, Woo asked Akasaki to compile information about the program for presentation to UTLA. Akasaki put together a "booklet" of documents that included a copy of the law, materials used in the screening of children, copies of the individual educational program (IEP) plan sheets, and descriptions of the service delivery aspects of the program.

In the January 4, 1988 memorandum to the certificated employees referenced earlier, the District explained the features, responsibilities, hours and pay rates for the program. Interested employees were asked to submit applications prior to January 28, 1988. For the first time, the program was described as one that would "provide counseling and advisement services to eligible children." Akasaki explained, at the hearing, that the employee/teachers would be counseling students and their parents on coordinating skills taught at school and life at home, rather than teaching students. In addition, District employees other than teachers, such as psychologists, nurses, mental health workers and psychiatric social workers, were expected to, and have participated in, the program at the same section 6.0, Appendix E wage rate as the teachers.

The parties met to discuss the early education program on January 14, 1988. At that meeting, Britz complained about the lack of information that had been provided by the District concerning the program. It was at this meeting that UTLA

received the "booklet" of information prepared by Akasaki in December 1987. UTLA was not satisfied with the materials provided. According to UTLA, it only received flyers that had been sent out to the teachers and a summary of the enacting statute, but did not receive a completed document regarding the "essence" of the program. Nor did it receive any of the financial or budgeting information pertinent to the program.

During the January 14 meeting, the parties did discuss the manner in which the salary rate was arrived at, the cost of the program, possibility of mileage being provided and the number of students expected to participate. The District stated that the program-mandated time lines were very strict, therefore, it was necessary to move forward quickly. The parties concluded that they did not have any areas of dispute about the program other than the appropriate salary rate for the participating teachers.

During further discussion of the salary issue, UTLA reiterated its demand for each individual teacher's hourly rate, plus additional pay for any Saturday work performed. The District reiterated its position that the rate of pay had been established, explaining that the "board has made its decision." During this latter discussion, Britz said that he felt the parties were "at impasse" on this issue.

Britz testified that he used the term "impasse" to denote an irreconcilable conflict rather than in the technical labor relations sense. District representative and negotiating team member Roger Johnson testified that he regarded Britz's statement

to be a formal declaration of impasse on the salary issue. To Johnson this meant setting the issue aside for discussion at a later time; if and when the parties went to impasse on other negotiations issues.

UTLA and the District did not negotiate over the salary rates for the early education program after the January 14, 1988 meeting. The District commenced the early education program in February 1988. Eventually, about 750 various certificated personnel participated in the program.

Following the January 14 meeting, UTLA and the District had one other brief discussion during their successor agreement negotiations about the hourly pay rate for the early education program. The parties were discussing the hourly rate in reference to another topic when the early education program pay rate issue was mentioned. No agreement was reached on this issue however.

When the parties submitted their negotiations to the statutory impasse procedures in November 1988,[4] the issue of the hourly rate of pay was included, but not as it pertained to the early education program.

On May 10, 1988, the Charging Party filed the instant charge. After May 1988, UTLA consistently proposed in successor

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[4]The statutory impasse procedures are contained in section 3548, et seq.

Official notice is taken of impasse file Case No. LA-M-1950 (LA-F-375), maintained in the Los Angeles PERB office. This file shows that PERB determined the existence of impasse between the parties on November 16, 1988.

agreement negotiations that teachers participating in any after-schobl program be paid their individual hourly rates, rather than a section 6.0, Appendix E rate.

UTLA's early education program salary proposal was still on the table when the parties went through the statutory impasse procedures. However, this issue was not submitted to the fact-finding panel as an unresolved issue.

The District never agreed to UTLA's proposal. The 1988-91 CBA contains the same language in section 6.0 of Appendix E that was in the previous CBA.

Article V of 1986-88 CBA contained the grievance procedure. Section 1.0 defines a "grievance" and parties who may file grievances as defined in the CBA. This section permits UTLA to file grievances on its own behalf, "limited to rights expressly granted to 'UTLA' throughout this Agreement."

Section 19.0, et seq, of Article V provides for final and binding arbitration awards upon parties invoking the contractual grievance machinery.

ISSUES

1. Whether the charge should be deferred to the contractual grievance procedure and the complaint dismissed?

2. If not, did the Respondent violate section 3543.5(c), and derivatively section 3543.5(b), by unilaterally setting the hourly salary rate for teachers participating in the early education program?

3. Did the Respondent also violate section 3543.5(c) by failing to provide the Charging Party with requested information?

DISCUSSION

1. Deferral to Arbitration

Respondent raised the defense of deferral to arbitration for the first time in its post-hearing brief. It asserts that under the standards for deferral established by the Board in Lake Elinsore School District (1987) PERB Decision No. 646, the matters alleged in the complaint should be deferred to the contractual grievance machinery.[5] In support of this defense, the District asserts that (1) UTLA has the right under Article V, section 1.0 of the CBA to grieve the District's violation of express terms of the agreement, (2) the CBA covers the matter at issue, and (3) the CBA culminates in final and binding arbitration.

The District contends that deferral to arbitration is appropriate in this case because the only issue here is whether the language of section 6.0 of Appendix E is applicable to the early education program. UTLA claims that the language is inapplicable. The District claims that it is wholly applicable.

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[5] Board Regulation 32646 provides that if the Respondent believes that the dispute is subject to binding arbitration, it shall assert such a defense in its answer to the complaint and move to dismiss the complaint. Cal. Admin. Code, tit. 8, sec. 32646.

Respondent did not assert this defense in its answer or during the hearing. However, since deferral to arbitration is a jurisdictional question, the issue must be considered notwithstanding the timing of this argument. See Lake Elsinore School District, supra.

Thus, the District argues, UTLA, in essence, is alleging that the District violated the CBA by wrongfully applying the section 6.0 salary rate to the early education program participants.

The original unfair practice charge filed by UTLA alleged that certain conduct by the District violated the statutory duty to meet and negotiate in good faith proscribed by section 3543.5(c). The PERB complaint alleges that the District failed and refused to bargain in good faith when it implemented the early education program and hired teachers at a flat hourly rate contained in section 6.0 while the parties were negotiating over the subject. Nothing in the charge or the complaint alleges that the District violated the CBA by its application of section 6.0 of Appendix E.

After a review of the Respondent's argument and the CBA itself, it is concluded that the CBA does not cover the matter at issue. While it is true that the CBA contains a binding arbitration provision, it does not contain a provision proscribing the District's failure to meet and negotiate in good faith with UTLA with regard to matters within the scope of

negotiations.[6] Wages is clearly a matter within the scope of representation.

Even if section 6.0 of Appendix E were held to apply to the matter in dispute, there is no language in this provision specifically referring to the early education program. In short, the conduct alleged in the complaint is not prohibited by an express provision of the CBA. Hence, a grievance alleging bad faith conduct in meeting and negotiating over a negotiable subject would not be cognizable before an arbitrator.

In addition, even if there existed a provision in the CBA prohibiting the conduct alleged in the complaint, the grievance procedure does not cover the matter at issue. This is so because the Charging Party does not have the right to file a grievance in its own name to vindicate its statutory right to expect good faith negotiations from the Respondent. Under the grievance procedure, UTLA has the right to file a grievance to address only contractual rights expressly granted to the Charging Party in the CBA. The CBA does not expressly grant UTLA the right to good

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[6]Section 3543.2 provides, 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. "Terms and conditions of employment" mean health and welfare benefits . . . , leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security . . . , procedures for processing grievances . . . , and the layoff of probationary certificated school district employees . . . .

faith negotiations with the District on matters within the scope of representation. Thus, UTLA does not have the right to grieve the allegations in the complaint.

For these reasons, Respondent's deferral to arbitration defense must therefore be rejected.

2. Unilateral Change Allegation

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 (Sec. 3543.3). 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 District (1979) PERB Decision No. 94; NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177].

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 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 Joint Union High School District, supra) or, where a contract is silent or ambiguous to a policy, it maybe 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.

An employer's unlawful failure and refusal to negotiate concurrently violates an exclusive representative's right to represent unit members in their employment relations. San Francisco Community College District (1979) PERB Decision No. 105.

There is little doubt that the unilateral implementation of a salary rate is a prima facie showing of a violation of section 3543.5(c). It is axiomatic that the subject of salaries is within the mandatory scope of representation. The crucial issue here lies with the validity of the Respondent's defenses to its admitted unilateral action.

UTLA contends that the District had no intention to, and did not, engage in meaningful negotiations with UTLA about the early education program when the parties discussed the matter in **December** 1987 and January 1988. UTLA further maintains that inasmuch as the District board decided the rate of pay after the parties had met only two times in December 1987, and before their meeting in January 1988, clearly the parties' meeting of January 14, 1988, was nothing more than a "sham."

The District presents three main defenses to the charge of unilateral action. The first defense is that the decision about **the** flat hourly rate of pay was in compliance with express contract terms. Section 6.0 of Appendix E, it is claimed, is applicable to all after-school programs and since the program at

issue was an after-school program, the CBA required the District to apply, the section 6.0 hourly, rate to the program's certificated participants.

In order for the Respondent's action to be excused by compliance with a contractual term, the contract language must be "clear and unambiguous." Marysville Joint Unified School District, supra. The record shows that the language in section 6.0 of Appendix E existed in prior CBAs between the parties long before they discussed the early education program. As concluded earlier, there is nothing in the express language of section 6.0 that specifically refers to the rate of pay for participants in the early education program. Nor is there language anywhere else in the CBA addressing the subject, or that allows the District to unilaterally set the rate of pay.

Two District witnesses, Roger Johnson and Thomas Killeen, admitted in testimony that the CBA does not cover the selection of pay rates for any after-school programs (including the early.... education program), other than coaching. Johnson has been on the District negotiating team since 1984. He is quite familiar with past and present contractual provisions. Killeen, the director of personnel research and analysis, has also been a member of the District negotiating team for several years. He is familiar with the District's after-school programs and the its practice regarding establishing the rates of pay for such programs. Both witnesses contradicted their own testimony by stating that section 6.0 did authorize the District's disputed action.

However, the District's position was undercut by Johnson's further testimony that the rates adopted by the District were subject to change during the negotiations because wages are always a negotiable item.

A review of the language in section 6.0 of Appendix E shows that it does not "clearly and unambiguously" apply to the early education program. Thus it cannot be concluded, on the basis on the plain meaning of the contract language itself, that the District acted in a manner consistent with its contractual obligation. This defense is thus rejected.

The District alternatively argues that if it is deemed that its action was not in compliance with explicit contractual terms, it was in accordance with a long-established past practice of unilaterally setting hourly pay rates for after-school programs similar to the early education program.

Prior agreements between the parties contain provisions very similar to section 6.0. Of the numerous after-school programs listed in the hearing, all hourly rates, except one, were based on section 6.0 rates. The District maintains that in each after-school program previously established, UTLA had requested that the teachers receive payment based on their individual hourly rate. However, in each case the District had decided to proceed with the flat hourly rates provided for in section 6.0. Prior to the instant case, it is asserted that UTLA had filed no prior grievances or unfair practice charges challenging the District's

method of determining salary rates for the participants in the various after-school programs.

If the District's action was not in accordance with an established past practice of unilaterally setting hourly pay rates for after-school programs like the early education program, then the District must be held to have violated section 3543.5(c). The critical question, thus, is whether there was an established past practice and whether the District's action, in this instance, was consistent with the past practice.

In support of this defense the District presented evidence regarding several after-school programs for which the District had unilaterally selected the flat hourly rates of pay for teachers provided for in section 6.0 of Appendix E. All the programs presented provided tutorial assistance or supplemental counseling and advisement, but not direct instructions. For all these programs, teachers were paid at either the extended teaching assignment or counseling/advisement assignment flat hourly rates in section 6.0 of Appendix E. The determination about which of these rates would apply was based on the District's evaluation of the teachers' level of duties and responsibilities in each of these programs. In the case of the one after-school program over which UTLA and the District negotiated the regularly hourly rate for the participating teachers, it involved direct instructions to the students. This exception, the home/hospital program, includes a regular

assignment for some teachers and an after-school assignment for others.

The District describes the early education program as one providing "counseling and advisement services to eligible children." However, unlike the other after-school programs presented for comparison, the early education program also describes academic content, taught in a classroom setting. It also refers to the use of IEPs as student assessment tools. It also uses both special education and regular teachers who are given paid preparation time to prepare for each session. Additionally, the " multi-disciplinary team" approach, using certificated personnel other than teachers, is an integral feature of this program. None of these features were noted with respect to the after-school programs presented for comparison. In sum, the early education program is not either identical or similar to the after-school programs referenced by the District.

In Pajaro Valley Unified School District, supra, where the Board was considering the establishment of a past practice, the Board concluded that the District had proven a "historic and accepted past practice consistent with the challenged action." Here the District has not proven a "historic and accepted" past practice of unilaterally setting the salary rate for teachers participating in an after-school program such as the early education program. While this program appears to have some of the counseling and advisement components of the other after-school tutorial-type programs, it also resembles the home/

hospital program in that it provides direct instruction to the students, (in this case, in a classroom setting. In actuality it appears to be somewhat of a "hybrid" between the traditional after-school programs and the regular programs provided by the special education division. In fact, the coordinator of the program, Shizuko Akasaki, testified that the program was originally conceived as a regular special education program. However, the District decided to make it an after-school program only because of the shortage of special education teachers.

For these reasons, it is concluded that the District has failed to prove the existence of a, long-standing past practice of unilaterally determining the salary rate for after-school programs like the early education program.

Additionally, it is clear that UTLA never "clearly and unmistakenly waived its right to negotiate over the salary rates for after-school programs or the early education program. Amador Valley Joint Union High School District (1987) PERB Decision No. 74. Both parties acknowledge that UTLA never agreed with the District about the hourly rates paid for most after-school programs. The fact that UTLA never filed grievances or unfair practice charges about the District's prior unilateral salary decisions does not indicate that it waived the right to negotiate the subject in this instance. For this reason, it is concluded that the District's conduct is not excused by a showing of a "historic and accepted past practice consistent with the

challenged action." Pajaro Valley Unified School District, supra.

As a final defense, the District maintains that even though not obligated to negotiate with UTLA over this matter, it did so and bargained the issue to impasse. The District acknowledges that this specific dispute was never taken through the statutory-impasse procedures. However, it asserts that its salary decision, which was implemented after UTLA declared impasse, was a reasonable accommodation between the District's obligation to negotiate and its right to exercise its managerial prerogative essential to the achievement of the District's mission. No competent case authority is cited for this proposition.

The District does not dispute that salary rates are a mandatory subject of negotiations. It also concedes that UTLA sought negotiations on this subject in connection with the District's intended implementation of the early education program. However, in this defense, it urges PERB to excuse or justify its conduct on grounds that (1) UTLA declared impasse on the salary item during the course of negotiations, and (2) that the even if the statutory impasse procedure was not exhausted prior to its implementation of the unilateral salary decision, the District's action was, in part, a response to the urgency of a State-mandated time line for starting the program.

The District maintains in this argument that it fully complied with its bargaining obligation because it acted on its salary decision after UTLA's chief negotiator, John Britz,

declared the parties to be "at impasse" on January 14, 1988. UTLA argues that Britz' statement about "impasse" on January 14, 1988, did not have the legal significance defined by the EERA.[7] In any event, this matter was never submitted to PERB by either party for a determination about the existence of an actual impasse.

The evidence shows that while the parties were pursuing negotiations about the early education program, the District unilaterally determined the hourly rate of pay before either reaching agreement with UTLA, or declaring that the parties were at impasse exhausting the statutory impasse procedures. It is clear that the District made a firm decision in mid-December 1987, about the salary issue or that the District showed any flexibility in its position at the January 14 meeting. There is

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[7]Section 3540.1 defines "impasse" as meaning:

> . . . [T]he parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

PERB Regulation 32793(c) provides guidelines for determining whether an impasse exists. It states:

> In determining whether an impasse exists, the Board shall investigate and may consider the number and length of negotiating sessions between the parties, the time period over which the negotiations have occurred, the extend to which the parties have made and discussed counterproposals to each other, the extent to which the parties have reached tentative agreement on issues during the negotiations, the extent to which unresolved issues remain, and other relevant data.

no indication that the board's December action was made subject to the final outcome of negotiations with UTLA over this issue. In fact, the District refused to further discuss the salary issue when the parties met on January 14, 1988. The finality of the District's decision is underscored by the fact that the District announced the opening for teaching positions on January 4, 1988, and advertised the rate of pay adopted by the board in mid-December 1987.

Given the substance of the discussions between the parties at their meetings on December 1 and 2, 1987, it is seriously doubtful that the parties had reached impasse on the salary issue at the January 14, 1988 meeting.

The District's argument that, notwithstanding its unilateral action, it continued to negotiate this matter with UTLA to impasse, is at odds with well-settled labor relations law of both PERB and the National Labor Relations Board (NLRB). See Antioch Unified School District (1985) PERB Decision No. 515. If the parties did reach impasse at the January 14 meeting, it was only because the District had taken unilateral action on a subject of their negotiations before negotiations were completed. In such case, the required element of good faith on the part of the employer was destroyed. See, e.g., Amador Valley Joint Union High School District, supra.

As a practical matter, it is clear that such a unilateral action alters the balance of bargaining power held by the parties. Where, as here, the District desired to change the

status quo, it cannot, under the EERA, achieve that end until such later time as it has completed its negotiating obligation.[8]

The District's reliance on the State-mandated time lines for implementation of the early education program appears to also raise a business or legal necessity defense to its unilateral action. Even if this is so, the facts of this case do not support the necessity for the unilateral adoption of the salary rate while the parties were negotiating the matter.

The parties preliminarily discussed the program at their December 2, 1987 meeting. The District mentioned the deadlines set by the State/but did not tell UTLA that "time was of the essence" in reaching agreement on the rate of pay for program participants. Even though the District determined the need to implement this program in early 1988, it has failed to show that the program mandates required a final decision in December 1987 about the wage rate to be paid to the certificated staff participating in the program. See San Francisco Community College District, supra.

It is concluded, therefore, that the District's action in unilaterally determining the salary rate for certificated employees in the early education program, without completing its negotiating obligation with UTLA, was a refusal to negotiate

[8]The parties did subsequently take a UTLA proposal through the statutory impasse procedures in their successor agreement negotiations that would require the District to pay the teachers' individual hourly rates for all after-school programs. Presumably, this proposal would have included the early education program, but the parties did not specifically agree to include this item in the impasse process.

about a matter within the scope of representation. This conduct amounted to a "circumvention of the duty to negotiate which frustrates the objectives of the [Act] as much as does a flat refusal." See Pajaro Valley Unified School District, supra, at p. 5, citing NLRB v. Katz (1962) 369 U.S. 736 [50 LRRM 2177]. It therefore violated section 3543.5(c).

This same conduct also violated section 3543.5(b) by denying to UTLA rights guaranteed by the Act, including the right to represent its members.[9]

C. Failure to Provide Requested Information

In this charge, UTLA asserts that the District failed to provide requested information about the early education program in a timely and complete manner. It is contended that the information provided was given in a "piece meal" and incomplete fashion, thereby impeding the Charging Party's ability to effectively negotiate with the District on this subject.

The District responds to this allegation by contending that it provided UTLA with all the information it possessed on the early education program at the time of UTLA's requests. Further, prior to this allegation being raised during the course of the hearing, UTLA had never complained to the District about the

[9]Neither the charge nor the complaint alleged a derivative violation of section 3543.5(a). However, had such an allegation been charged, it would be further determined that this conduct also derivatively violated section 3543.5(a) because it abridged the rights of the affected employees to be represented by their exclusive representative. See Tahoe - Truckee Unified School District (1988) PERB Decision No. 668, and South Bay Union School District (1990) PERB Decision No. 791, for PERB precedent about finding derivative violations.

content or timeliness of the information provided before the January 14, 1998 meeting between the parties. Even then, the only complaint was that the information had been provided on a "piece meal" basis.

Settled PERB and NLRB case law recognizes that an exclusive representative is entitled to information sufficient to enable it to understand and intelligently discharge its duty to represent bargaining unit members. Requested information must be furnished for purposes of representing employees in negotiations for a future contract and also for policing the administration of an existing agreement. See Morris, The Developing Labor Law, 2d ed. (1983) p. 610.

An employer's refusal to provide such information evidences bad faith bargaining unless the employer can demonstrate adequate reasons why it cannot supply the information. Stockton Unified School District (1980) PERB Decision No. 143; Azusa Unified School District (1983) PERB Decision No. 374; Modesto City Schools and High School District (1985) PERB Decision No. 518.

Once a good faith demand is made for relevant information, it must be made available promptly and in a useful form. Unreasonable delay in providing requested information is tantamount to a failure to provide the information at all. A delay of six months in providing information has been held a failure to negotiate in good faith. Azusa Unified School District, supra; see also John S. Swift Co., Inc. (1959) 124 NLRB 394 [44 LRRM 1388]. Even a delay as short as two months, without

employer explanation, has been held to be a violation. Colonial Press, Inc. (1973) 204 NLRB 852 [83 LRRM 1648]. The fact that an employer ultimately furnishes the information does not excuse an unreasonable delay. K & K Transportation Corp., Inc. (1981) 254 NLRB 722 [106 LRRM 1138].

Once a demand for relevant information is made, the information must be made available in a manner not so burdensome or time-consuming as to impede the process of bargaining, although not necessarily in the form requested by the union. However, the employer may not simply present the information in any form which it considers adequate but which is, nonetheless, unsuitable for informed consideration by the union. See Morris, The Developing Labor Law, supra, at pp. 615-616; General Electric Co. (1970) 186 NLRB 14 [75 LRRM 1265]; Colonial Press, Inc., supra. Nonetheless, absent a showing that the employer failed to provide information necessary and relevant to the exclusive representative, no violation will be found.

The information was sought to enable UTLA to assess its negotiating position concerning the District's plan to implement the early education program. There is no dispute about whether the information requested was relevant or necessary to UTLA. The thrust of this allegation is that the District delayed for about six weeks from the date of the Union's initial verbal request for information on December 1, 1987, until January 14, 1988, providing UTLA with sufficient and useful information about the early education program.

On December 2, 1987, UTLA was given a one-page summary of the program and protested that it needed more detailed information on the program, including a copy of the law, budgetary material, and information about the service delivery aspects of the program.

Despite UTLA's contention that this information was not received until the parties met on January 14, 1988, the evidence shows that the District sent a more complete summary of the program, on or about December 15, 1987. This material was prepared by the division of special education staff on about December 10, 1987. It was mailed to UTLA with a cover letter which also invited the UTLA to contact the District if additional information was desired or needed. Although the summary did not contain a specific budget for the program, it did contain a summary of funding information which indicated the total amount of funds that the District anticipated receiving during the 1987-88 fiscal year. No specific program budget was available at that time. It appears that somehow within UTLA's internal system of information distribution, this material was not given to Britz, its chief negotiator. Thus, when the parties met again on January 14, 1988, Britz complained that the District had not provided the information requested on December 2, 1987.

While UTLA contends that it never received the requested information until January 14, 1988, it did not refute Woo's declaration that the requested information was sent to UTLA on December 15, 1987, the day after Britz requested it. Additional

material in the form of a "booklet" was given to UTLA at the January 14, 1988 meeting. Inasmuch as UTLA never informed the District that it considered the December 15 or January 14 information to be so deficit as to be unhelpful for informed consideration, it cannot be concluded that the District unreasonably delayed or failed to provide UTLA with information about the early education program.

For these reasons, it is found that the Charging Party has failed to establish that the District refused or failed to comply with its request for information about the early education program. This part of the charge and complaint must therefore be DISMISSED.

REMEDY

Charging Party seeks an order requiring the District to cease and desist from its unlawful conduct and such other affirmative relief as is appropriate to remedy the violation.

In section 3541.5(c) the PERB is given:

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

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, to post a notice to employees, to comply with its bargaining obligations with the exclusive representative, and to make

employees whole for any losses they suffered as a result of the unlawful unilateral change. Rio Hondo Community College District (1983) PERB Decision No. 292.

It has been found that the District violated the Act by failing and refusing to bargain in good faith when it unilaterally implemented a salary rate for teachers participating in the early education program while negotiating this matter with UTLA. A cease and desist order and the posting of a notice to employees are appropriate remedies in this instance. A bargaining order is also appropriate inasmuch as the District took unilateral action before the parties had completed negotiations on the subject.

Posting of a notice, signed by an authorized agent of the District) will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity and will comply with the order. 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 order remedy. Davis Unified School District, et al. (1980) PERB Decision No. 116; see also Placerville Union School District (1978) PERB Decision No. 69.

PROPOSED ORDER

Based upon the foregoing findings of fact, conclusion of law and the entire record in this case, it is found that the Los Angeles Unified School District violated section 3543.5(c) and, derivatively, (b) of the Educational Employment Relations Act.

Pursuant to Government Code section 3541.5(0), it is hereby ordered that the Los Angeles Unified School District, its governing board and its representative:

A. CEASE AND DESIST FROM:

1. Failing to meet and negotiate in good faith with United Teachers - Los Angeles by unilaterally determining the rate of compensation for certificated bargaining unit employees participating in the early education program.

2. Denying to United Teachers - Los Angeles rights guaranteed to it by the Act, including the right to represent its bargaining unit members.

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

1. Upon request, negotiate in good faith with United Teachers - Los Angeles concerning the rate of compensation for certificated unit employees participating in the early education program.

2. Within ten (10) work days 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 notices 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 work days. Reasonable steps shall be taken to ensure that this notice is not reduced in size, defaced, altered or covered by any material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with this order 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 in Case No. LA-CE-2751, as amended, are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, 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, 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, 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, sections ,3.2300, 32305 and 32140.

Dated: February 21, 1990

W. JEAN THOMAS
Administrative Law Judge