STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS HACIENDA LA PUENTE CHAPTER #115,	)	
Charging Party,	)	Case No. LA-CE-3576
v.	)	PERB Decision No. 1184
HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT,	)	February 21, 1997
Respondent.	)	

Appearances: California School Employees Association by Alan S. Hersh, Staff Attorney, for California School Employees Association and its Hacienda La Puente Chapter #115; Wagner & Wagner by John J. Wagner, Attorney, for Hacienda La Puente Unified School District.

Before Caffrey, Chairman; Garcia, Johnson and Dyer, Members.

DECISION

DYER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Hacienda La Puente Unified School District (District) to a Board administrative law judge's (ALJ) proposed decision (attached). In her decision, the ALJ concluded that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when it refused to provide the California

[1]EERA is codified at Government Code section 3540 et seq. EERA section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise

School Employees Association and its Hacienda La Puente Chapter #115 (Association) with information which was necessary and relevant to the Association's discharge of its duty to represent unit employees.

The Board has reviewed the entire record in this case, including the proposed decision, the hearing transcript, the District's exceptions, and the Association's response thereto. The Board finds the ALJ's findings of fact to be free from prejudicial error and adopts them as the decision of the Board itself. The Board finds the ALJ's conclusions of law regarding the Association's right to information relevant to the grievance process to be free from prejudicial error and adopts them as the decision of the Board itself consistent with the following discussion.

DISTRICT'S EXCEPTIONS

The District filed two exceptions to the proposed decision. First, the District contends that the ALJ incorrectly found that the District does not have the right to the benefits of the collective bargaining agreement (CBA) between the parties. Second, the District argues that the ALJ incorrectly found that

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> to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (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.

the District's refusal to process a facially defective grievance was a failure of its bargaining obligation.

ASSOCIATION'S RESPONSE

The Association contends that the ALJ properly rejected the District's waiver argument and properly found that the District violated the EERA when it failed to provide information necessary and relevant to the Association's duty to represent its members in the grievance process.

DISCUSSION

As noted above, the District's exceptions purport to challenge two findings of the ALJ. The ALJ, however, did not make either of the challenged findings. Nonetheless, the Board will address the apparent intent of the District's exceptions.

In its first exception, the District apparently contends that, because the CBA does not require the District to provide the Association with information regarding grievance processing, the Association has waived its right to such information. It is well established, however, that the Board will not infer a waiver of the right to bargain from silence. (San Mateo County Community College District (1985) PERB Decision No. 486, proposed decision at p. 11; see also, Chula Vista City School District (1990) PERB Decision No. 834 at pp. 50-52 (finding right to necessary and relevant information implicit in duty to bargain).) Therefore, the CBA's silence regarding the Association's right to information is not a waiver of that right.

The District's second exception appears to argue that because of the "adversarial" nature of collective bargaining, the District has no obligation to provide the Association with its reasons for rejecting a unit member's grievance. As the ALJ found, all of the information requested in this case related to grievance processing. The Board has long held that an exclusive representative is entitled to information relating to grievance processing. (Chula Vista City School District, supra, PERB Decision No. 834 at p. 51.) The District provides no justification for abandoning this precedent, and the Board sees no reason to do so.

ORDER

Upon the findings of fact and conclusions of law and the entire record in this case, it is found that the Hacienda La Puente Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated EERA when it refused to provide the California School Employees Association and its Hacienda La Puente Chapter #115 (Association) with information necessary and relevant to its duty to represent bargaining unit members.

Pursuant to section 3541.5, it is hereby ORDERED that the District and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to bargain in good faith by failing to provide information which is relevant and necessary to

the Association for the proper performance of its representation of bargaining unit members in their employment relationship with the District, including grievance processing.

2. Denying the Association rights guaranteed to it by the EERA, including the right to represent unit members in grievance and other employment matters.

3. Interfering with the rights of classified unit employees to be represented by their exclusive representative by denying that representative information that is necessary and relevant to its representational functions, including grievance processing.

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

1. Upon request, provide the Association with a copy of the Julie Milan letter/incident report requested by the Association on November 22 and December 5, 1994, and January 10, 1995. Additionally, within thirty (30) calendar days after the document is furnished to the Association, upon request of the Association or Sam Ortiz (Ortiz), allow Ortiz to file a supplemental rebuttal to the written reprimand issued to him on November 7, 1994.

2. Further, upon request, provide the Association with timely information that explains or clarifies the District's reasons for not accepting or processing a unit member's grievance that the District initially perceives as procedurally defective.

3. Within thirty-five (35) days following the date that this Decision is no longer subject to reconsideration, post

at all work locations where notices to classified employees are customarily placed, copies of the Notice attached as an Appendix hereto. The Notice must be signed by an authorized representative of the District, indicating that the District will comply with the terms of the Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.

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

Chairman Caffrey and Members Garcia and Johnson joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-3576, California School Employees Association and its Hacienda La Puente Chapter #115 v. Hacienda La Puente Unified School District, in which all parties had the right to participate, it has been found that the Hacienda La Puente Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated EERA when it refused to provide the California School Employees Association and its Hacienda La Puente Chapter #115 (Association) with information necessary and relevant to its duty to represent bargaining unit members.

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

A. CEASE AND DESIST FROM:

1. Failing and refusing to bargain in good faith by failing to provide information which is relevant and necessary to the Association for the proper performance of its representation of bargaining unit members in their employment relationship with the District, including grievance processing.

2. Denying the Association rights guaranteed to it by the EERA, including the right to represent unit members in grievance and other employment matters.

3. Interfering with the rights of classified unit employees to be represented by their exclusive representative by denying that representative information that is necessary and relevant to its representational functions, including grievance processing.

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

1. Upon request, provide the Association with a copy of the Julie Milan letter/incident report requested by the Association on November 22 and December 5, 1994, and January 10, 1995. Additionally, within thirty (30) calendar days after the document is furnished to the Association, upon request of the Association or Sam Ortiz (Ortiz), allow Ortiz to file a supplemental rebuttal to the written reprimand issued to him on November 7, 1994.

2. Further, upon request, provide the Association with timely information that explains or clarifies the District's reasons for not accepting or processing a unit member's grievance that the District initially perceives as procedurally defective.

Dated: _____ HACIENDA LA PUENTE 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

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS HACIENDA LA PUENTE CHAPTER #115, Charging Party, v. HACIENDA LA PUENTE UNIFIED SCHOOL DISTRICT, Respondent.	)	Unfair Practice Case No. LA-CE-3576 PROPOSED DECISION (9/30/96)

Appearances: Chuck Shepard, Senior Labor Relations Representative, for California School Employees Association and its Hacienda La Puente Chapter #115; Wagner & Wagner by John J. Wagner, Attorney, for Hacienda La Puente Unified School District.

Before W. Jean Thomas, Administrative Law Judge.

PROCEDURAL HISTORY

The California School Employees Association and its Hacienda La Puente Chapter #115 (CSEA) filed an unfair practice charge with the Public Employment Relations Board (PERB or Board) against the Hacienda La Puente Unified School District (District) on June 5, 1995, alleging that the District engaged in conduct that violated the Educational Employment Relations Act (EERA or Act).[1]

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

After an investigation of the charge, the Office of the General Counsel of PERB issued a complaint on July 3, 1995.[2] The complaint alleged that the District failed and refused to provide information that CSEA requested (1) on December 4, 1994, in connection with a special evaluation of unit member Sam Ortiz (Ortiz), and (2) on January 18, 1995, when CSEA requested specific reasons for the District's refusal to process a grievance filed by Ortiz on January 10, 1995. This conduct allegedly violated section 3543.5(c) in that it amounted to a refusal and failure to bargain in good faith with CSEA, and interfered with the representational rights of unit employees and CSEA's right to represent unit members in violation of section 3543.5(a) and (b).[3]

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[2]On the same day, the PERB board agent denied the District's request for deferral to arbitration on the grounds that the collective bargaining agreement (CBA) between the parties did not cover the matter at issue in the unfair practice charge.

[3]In pertinent part, section 3543.5 states that it shall be unlawful for the public school employer to do any of the following:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (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.

The District answered the complaint on July 11, 1995, wherein it denied all material allegations of unfair conduct.

This dispute was not resolved at an informal conference conducted by PERB on July 31, 1995.

A formal hearing was conducted by the undersigned on November 22 and December 7, 1995. After both parties filed post-hearing briefs, the case was submitted for proposed decision on April 9, 1996.

FINDINGS OF FACT

The District is a public school employer and CSEA is an employee organization as those terms are defined in EERA. CSEA is also the exclusive representative of a comprehensive unit of the District's classified employees.

The District and CSEA were parties to a CBA with an effective term from September 1, 1993 through August 31, 1996, which covered the time period at issue. This CBA contains a four-step grievance procedure that culminates in final and binding arbitration.

The terms of the grievance procedure are set forth in Article V of the CBA. The stated purpose of the grievance procedure is ". . .to provide, at the lowest administrative level, a means by which a grievance may be resolved in an equitable, efficient manner in an atmosphere of courtesy and cooperation." Section 5.6.1 of this article defines a "grievance" as:

> [A] claim by the Association, a member or members of the bargaining unit that there has been a violation, misinterpretation, or misapplication of an expressed provision of this agreement.

The steps for grievance resolution are contained in section 5.7. The process for initiating a grievance at Step 1 reads:

> Any grievant who knew or reasonably should have known of the circumstances which formed the basis for the grievance shall present the grievance in writing to the immediate administrator within fifteen (15) days. Failure to do so will render the grievance null and void. The written information shall include:
>
> 5.7.1.1 Description of the specific grounds of the grievance, including name, dates, and places necessary for complete understanding of the grievance.
>
> 5.7.1.2 A listing of the provisions of this agreement which are alleged to have been violated, misapplied, or misinterpreted.
>
> 5.7.1.3 A listing of the specific action requested of the district which will remedy the grievance.
>
> The immediate administrator or his designee shall meet with the grievant within five (5) days. The disposition of the grievance shall be indicated in writing within five (5) days of the meeting with copies to the grievant and the association.[4]

[4]The time limits specified in the grievance procedure are governed by the terms of section 5.2. Sections 5.2 and 5.7.1 of this article were modified during the parties' reopener negotiations in the fall of 1995 to standardize and shorten the time lines for initiating a grievance. As a result of these changes, all references to "days" are working days. These changes, however, are not relevant to this case.

The parties use a standard form for grievance processing.

The November 7, 1994 Letter to Ortiz

Ortiz has been employed by the District for six years and works as a grounds worker II. He is supervised by Rudy Chavarria (Chavarria), the operations supervisor.

On November 7, 1994, Chavarria summoned Ortiz to a meeting at which time he presented Ortiz with a letter concerning his work performance. The letter stated that Ortiz engaged in unacceptable behavior on the morning of May 18, 1994, when he confronted District employee Julie Milan (Milan) at La Puente High School (following a meeting earlier that same morning with Chavarria about being at his home during working hours), accused her of calling Chavarria's office about him, and allegedly threatened to "come back" and "take care of business" if he proved that she made the call. Milan is a security patrol officer at La Puente High School. The letter concluded with the following statement:

> Pursuant to board policy GA-K, Personnel Files, a copy of this letter will be placed in your personnel file. If you wish to respond to this letter, please do so within the next 10 working days either to my office or to Barbara Koehler, assistant superintendent personnel.[5]

Thereafter, Ortiz, Marcelo Pantoja (Pantoja), the local CSEA

[5]On June 13, 1994, Chavarria met with Ortiz and warned him to stay away from Milan and to not repeat his actions of May 18. The next day, Chavarria and George Cota (Cota), director of maintenance and operations, met with Ortiz regarding this same matter. Ortiz testified that thereafter he complied with his supervisors' directive.

chapter vice president and job steward, and Genie Lee (Lee), the CSEA labor relations representative, met informally with Gary Matsumoto (Matsumoto), acting assistant superintendent, business services, on November 22, 1994, to discuss removal of the November 7 letter from Ortiz's personnel file. In answer to Lee's question about what the letter was, Matsumoto referred to it as a "notice of unsatisfactory service". CSEA also requested a copy of the letter that Milan had submitted to the District concerning Ortiz because CSEA and Ortiz believed that Milan's letter was the impetus for what they then referred to as the "notice of unsatisfactory service".[6]

Matsumoto agreed to discuss both matters with Barbara Koehler (Koehler), assistant superintendent of personnel, and respond to CSEA and Ortiz as soon as he could.[7]

The record is unclear about whether Matsumoto discussed the matter with Koehler. In any event, Lee, Ortiz and Pantoja,

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[6]In May 1994, Cota showed Pantoja a typewritten document which Cota said Milan had written. Pantoja, who witnessed the May 18 incident between Milan and Ortiz, could not recall whether the document bore a signature, but he did recall that it contained several derogatory statements about Ortiz's character and conduct.

Lee testified that during this meeting, Matsumoto remarked that during the current school year he had received a telephone call from Milan who asked what was going to be done about Ortiz in relation to the letter she had submitted to the District.

[7]Lee testified that Matsumoto also agreed to waive the CBA timelines for initiating a grievance should CSEA and Ortiz decided to pursue a grievance concerning the November 7 document. Matsumoto denies any recall of discussion about a possible grievance being filed or such an agreement. A resolution of this conflicting testimony is not necessary in order to decide the ultimate legal issues of this case.

subsequently met with Koehler on December 5, 1994, regarding the Ortiz matter. Lee renewed the request that the November 7 "unsat" letter be removed from Ortiz's personnel file and that CSEA and Ortiz be given a copy of the Milan letter. Koehler denied knowing anything about a Milan letter. However, she did promise to give a prompt response to the other request.

Koehler notified Ortiz verbally on December 15, 1994, that the disciplinary letter of November 7 would not be removed from his file. However, she made no further mention to Ortiz or CSEA, verbally or in writing, about the Milan letter.

Koehler testified that Milan prepared an "incident report" about her verbal exchange with Ortiz on May 18, however, that report, according to her, did not form the basis for the November 7 letter.

Koehler further testified that the November 7, 1994, document issued to Ortiz was a letter of reprimand and not a "notice of unsatisfactory service". The reprimand was issued because of Ortiz's insubordination in ignoring the La Puente High School assistant principal's directive to him on May 18, 1994, that he not speak to Milan during working hours. Since the reprimand involved derogatory comments about Ortiz and was to be placed in his personnel file, in accord with board policy GA-K,[8]

[8]District policy GA-K (personnel files) states, in part, as follows:

> Information of a derogatory nature shall not be entered or filed unless and until the employee is given notice and an opportunity to review and comment thereon. An employee

Ortiz was entitled to a copy beforehand and an opportunity to file a written rebuttal. Ortiz did file a written response which was attached to the reprimand. Both documents remain in his personnel file.

In contrast to a written reprimand, Koehler described a "notice of unsatisfactory service" as a type of special evaluation that is issued pursuant to the evaluations provisions of the CBA. Article XX, section 20.5, requires that a notice of unsatisfactory service be made on a prescribed form.[9] No such form is required for a written reprimand.

Lee testified that she knew there was a form for special evaluations, but she had never seen such a document until it was introduced as an exhibit during the hearing.

> shall have the right to enter and have attached to any such derogatory statement, his own comments thereon. Such review shall take place during normal business hours, and the employee shall be released from duty for this purpose without salary reduction.

[9]The specific document used is a triplicate form entitled "Notice of Unsatisfactory Service for Classified Employees," dated January 1994.

Article XX, section 20.5 (Special Evaluations), reads:

> A supervisor may issue to an employee a Notice of Outstanding Service or a Notice of Unsatisfactory Service at any time. Such notices shall be made on prescribed forms and shall set forth specific reasons for recognition of outstanding or unsatisfactory service by the employee. The immediate supervisor or the next higher supervisor shall present the special evaluation to the employee and discuss it with him/her. A copy of such notice shall be placed in the employee's personnel file.

The January 10, 1995, Ortiz Grievance

Ortiz filed a Step 1 grievance on January 10, 1995, alleging that the District had violated Article III (Management Rights), section 3.1, and Article XX (Performance Evaluations), section 20.5, of the CBA by issuing the November 7, 1994, "notice of unsatisfactory service" without affording due process and refusing to provide the Milan letter requested by CSEA to assist it in challenging the "unsat" notice. The remedy sought was (1) removal of the notice of unsatisfactory service from Ortiz's personnel file, and (2) provide CSEA with a copy of the Milan letter regarding Ortiz. Lee assisted Ortiz with the preparation of the grievance which was submitted on the parties' standard grievance form.

Chavarria responded on January 12, 1995. His letter to Ortiz stated:

> I am in receipt of a document which you gave me on January 11, 1995. This document is not being processed as a grievance in that it does not follow procedures outlined in Article V in the agreement between the Board of Education and the California School Employees Association.

A copy of Chavarria's letter was sent to Lee.

Lee received her copy of the letter on January 17, 1995. She immediately called Chavarria to find out what specific section(s) of Article V had not been followed. He stated that he would have to check and call her back. The next day, Lee again called Chavarria and he told her that she would have to speak with Koehler.

Lee called Koehler the same day, made the same query, but Koehler would not tell her what was wrong with the grievance. Instead she suggested that Lee go through it "line by line" until she figured out the problem. Lee informed Koehler that she had already done a review before she called, and was calling her for clarification. Koehler, however, offered no further explanation.

Lee then told Koehler that she could only assume that perhaps Koehler considered the grievance untimely filed. Lee informed Koehler that if this was the case, Matsumoto had agreed to waive timelines for a grievance to be filed during the November 22, 1994, meeting. Koehler responded that Matsumoto did not have the authority to waive timelines on grievance filing, but offered no further information in this regard. Koehler also would not confirm or deny whether Untimeliness was the problem with the Ortiz grievance.

Thereafter, Ortiz and CSEA attempted to elevate the grievance to Step 2 of the procedure by submitting it to Chavarria on January 19, 1995. Chavarria's January 24, 1995, response was basically the same as his response to Ortiz at Step 1.

On February 24, 1995, Lee requested by letter that Superintendent John Kramar (Kramar) move the Ortiz grievance to Step 3. Step 3 provides for mediation by the state Mediation/ Conciliation Services. Kramar responded to Lee on March 1, 1995. His letter acknowledged receipt of Lee's February 24 letter and directed her attention to attached copies of Chavarria's

January 12 and January 24 written responses to Ortiz. No additional comments or explanations were made to indicate a specific reason for rejecting CSEA's request for mediation.

At the hearing Koehler testified that the Ortiz grievance was not processed because it was deemed untimely filed. Koehler admitted that, prior to the hearing, she never informed CSEA nor Ortiz why the grievance was rejected. She explained that her conduct in this respect was consistent with the District's longstanding practice of not informing person(s) filing a grievance about how to use and follow the CBA. The District assumes that the grievant and/or CSEA knows the procedures to be followed in grievance processing; and therefore they cannot expect the District to inform them or explain why an attempted grievance is not processed if it has not been filed in accord with the requirements of the CBA grievance procedure.

Koehler further testified that the District also has had a longstanding policy of only authorizing extension of timelines for grievance processing through her office. Although other administrators have the authority to respond to and adjust grievances, none of them, including Matsumoto, have the authority to grant extensions of time for grievances filed pursuant to the CBA. Since CSEA did not request an extension of time from her office to file the Ortiz grievance, according to Koehler's calculations, the January 10, 1995, grievance was untimely. It was not filed within 15 working days from the date the November 7, 1994, written reprimand was issued.

ISSUES

Whether the District violated section 3543.5(a), (b) or (c) by failing and refusing to provide information requested by CSEA in connection with its representation of a bargaining unit member?

DISCUSSION AND CONCLUSIONS OF LAW

A. Legal Standard for the Duty to Furnish Requested Information

It is well settled that an employer's duty to bargain in good faith with the exclusive representative of its employees includes the obligation to provide necessary and relevant information needed by the union for the proper performance of its representational obligations. (Stockton Unified School District (1980) PERB decision No. 143 (Stockton); Chula Vista City School District (1990) PERB Decision No. 834 (Chula Vista); NLRB v. Truitt Mfg. Co. (1956) 351 U.S. 149 [38 LRRM 2042].)

The employer's duty to furnish information, like its duty to bargain, "extends beyond the period of contract negotiations and applies to labor-management relations during the term of an agreement." (NLRB v. Acme Industrial Company (1967) 385 U.S. 432 [64 LRRM 2069] (Acme Industrial).) This includes information needed to police and administer an existing CBA, including grievance processing. (Chula Vista; Modesto City Schools and High School District (1985) PERB Decision No. 479 (Modesto); Acme Industrial.)

In determining what information must be produced, a liberal, discovery-type standard is used in determining whether

information is relevant or potentially relevant. (NLRB v. Truitt, supra, 351 U.S. 149 [38 LRRM 2042] and Chula Vista.) Information requested by an exclusive representative for use in an non-contractual disciplinary action or proceeding can be relevant to its EERA-based responsibilities and therefore must be disclosed unless the employer can establish that the information is plainly irrelevant and/or can provide a valid excuse why it cannot furnish the information. (Los Angeles Unified School District (1990) PERB Decision No. 835 (Los Angeles) and (1994) PERB Decision No. 1061.)

Generally information about employees actually represented by a union is presumptively relevant and is required to be produced, except in narrow instances where the information is considered confidential; in such circumstances, the information need not be produced unless safeguards are provided. (See Mt. San Antonio Community College District (1982) PERB Decision No. 224 and Modesto at p. 8, citing Detroit Edison Co. v. NLRB (1979) 440 U.S. 301 [100 LRRM 2728].)

The principles set forth above will be applied in analyzing the credited evidence of record in this case.

B. CSEA's Pre-grievance Requests for the Milan Letter

CSEA made two oral requests for a copy of the Milan letter/ incident report during its representation of Ortiz in the informal effort to effect removal of the November 7, 1994, written reprimand from his personnel file. The first request was during the November 22, 1994, meeting with Matsumoto, and the

second request was tendered during the December 5, 1994, meeting with Koehler.

CSEA knew that Milan had submitted some sort of written document to the District concerning her encounter with Ortiz on May 18, 1994, because Pantoja had seen it in May 1994. Both CSEA and Ortiz believed that this document, which it referred to as a "letter," formed the basis for the District's later decision to formally discipline Ortiz in November 1994. Therefore, this document, whether it was a "letter" or an "incident report," was presumptively relevant and needed by CSEA for its representation of Ortiz in challenging the November 1994 disciplinary action. And under the liberal, discovery-type standard adopted in Chula Vista, it should have been produced. (Los Angeles.) CSEA needed to review the contents of the Milan letter/incident report to judge for itself what, if any, relationship existed between this document and Ortiz's written reprimand. This information could have helped CSEA assess the merits of its objections to the discipline.

The uncontroverted evidence shows that the District never provided the requested document nor offered any explanation for its total lack of response to CSEA's requests. Even if the District questioned the relevancy of the material sought, it had the burden to assert its challenge in a timely manner, which it did not do. If it could not provide the requested document in any form, it was obligated to set forth adequate reasons for its inability to do so. (Stockton.)

Instead, the District totally ignored the requests. No explanation or justification has been offered for the nonresponse except to claim that the Milan letter/incident report was not the reason that Ortiz received the written reprimand.

The fact that the District never formally refused to supply the requested document does not excuse its conduct. Absent a valid excuse, the District's lack of response amounted to a flat refusal to furnish the information. (Chula Vista.)

C. CSEA's Requests for the Information During the Attempts to Process the Ortiz Grievance

Within the context of grievance processing initiated pursuant to the provisions of a CBA, requested information must be provided

> . . . and if it likely would be relevant and useful to the union's determination of the merits of the grievance and to their fulfillment of the union's statutory representation duties. [Acme Industrial at pp. 437-38.]

When Ortiz and CSEA filed his grievance with the District on January 10, 1995, there were two objectives: (1) to contest the validity of the November 1994 reprimand which CSEA regarded as a special evaluation, i.e., a notice of unsatisfactory service; and (2) to obtain a copy of the Milan document to aid in its prosecution of the grievance.

However, CSEA was thwarted in its representation efforts in both respects. The District refused to accept or process the grievance without explaining why, and again it totally ignored the request for the Milan letter/incident report.

When Lee spoke first with Chavarria and then with Koehler on or about January 18, 1995, to elicit the reason(s) for the rejection of the grievance at Step 1, neither person would tell her what was wrong with the grievance. Instead, Koehler told Lee to go through the grievance, "line by line" until she figured out what the problem was. No other explanation was provided. Even when Lee queried Koehler about whether she considered the grievance untimely, Koehler refused to confirm or deny the perceived timeliness problem. Koehler's refusal to disclose this information denied CSEA and its unit member an early opportunity to assess the District's position and respond accordingly.

Even as CSEA attempted to elevate the grievance to Step 2 and Step 3 of the procedure, the District steadfastly refused to explain why the grievance was not being processed, other than to respond that it did not "follow the procedures outlined in Article V" of the CBA. CSEA did not learn the reason for District's refusal to process the Ortiz grievance until Koehler testified at the hearing.

The District raises several arguments in its defense. First, it asserts the contractual right to insist upon strict compliance with all the technical requirements of section 5.7.1 (Step 1) of the grievance procedure. Next, it contends that since the document filed on January 10, 1995, which purported to be a grievance, was not filed timely, it was "null and void" and thus the District had no legal or contractual obligation to respond in any way to a "null and void situation." The District

also maintains that since the CBA does not require it to disclose why it will not process a grievance, it has no contractual or legal obligation to provide CSEA with such information. Finally, it claims that CSEA has long known of the District's manner and method of administering Article V, yet it has not attempted to negotiate any contractual language which would obligate the District to disclose its reasons for not processing alleged grievances.

There is no question but that the District has the right to strictly enforce all the provisions of Article V. It is also true that no provision of the CBA requires disclosure to CSEA of the District's reasons for not processing a unit member's grievance.

However, the contractual rights do not supersede the District's statutory obligation under EERA to provide the exclusive representative of its employees with information relevant to a pending grievance in order for the union to intelligently evaluate the merits of its claim. This obligation included the union's request for the Milan document.

A determination that information is producible is not a decision on the merits of the grievance underlying a request and it has been held that a union is not required to demonstrate that the information sought is accurate, non-hearsay, or ultimately reliable. (Acme Industrial and T. U. Electric and International Brotherhood of Electrical Workers Local 2337 (1992) 306 NLRB 654 [140 LRRM 1116].)

The District's refusal to inform CSEA of its reason for rejecting the Ortiz grievance or to even acknowledge its request for the Milan material in connection with this grievance demonstrates the District's hyper-technical, "obstructionist" approach to the grievance process and how it interferes with the Union's ability to properly perform its representational duties.

It is well-settled that the obligation to bargain in good faith is not confined to the negotiation of an agreement but is a day-to-day process in which the grievance procedure has a very important role as a continuation of the collective bargaining process. (Stockton; Jefferson School District (1980) PERB Decision No. 133.)[10] The District's practice of refusing to inform a unit member or CSEA about why it will not accept or process a grievance that it considers facially deficient falls short of this bargaining obligation as it pertains to the administration of a CBA through its grievance machinery.

The District's restrictive view of its disclosure obligation also appears to be at odds with the stated purpose of the parties' grievance procedure which contemplates grievance resolution in ". . .an equitable manner . . . in an atmosphere of courtesy and cooperation."

Finally, it is concluded that the District has not presented any persuasive evidence that supports its "waiver" argument. An

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[10]In fact, some authorities have declared the grievance procedure to be the core of the collective bargaining agreement. (See Elkouri and Elkouri, How Arbitration Works, 4th Ed. (1985), p. 153, fn 3.)

employer asserting that an employee organization has waived its statutory right to meet and negotiate has the burden of proof with respect to this position. (Amador Valley Joint Union High School District (1978) PERB Decision No. 74.) In this case, the evidence about the parties' most recent negotiations did not establish that CSEA clearly and unmistakenly waived the right to obtain information relative to grievance processing, and there is no such express waiver provision in the CBA. Thus, the "waiver" defense is rejected.

SUMMARY

For the all reasons discussed above, it is concluded that the District violated section 3543.5(c) by refusing to provide relevant information needed by CSEA (1) for use in connection with its representation of a unit member who attempted to challenge a disciplinary action and (2) to understand why the District refused to process a contractual grievance for that same employee.

It is further concluded that by this same conduct, the District violated section 3543.5(b) by interfering with CSEA's ability to effectively discharge its duty to represent bargaining unit members.

Finally, it is concluded that this conduct also violated section 3543.5(a) by interfering with a classified unit employee's right to have representation by his exclusive representative in his employment relations with the District, including grievance processing.

REMEDY

Section 3541.5 (c) grants the Board 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, . . . as will effectuate the policies of this chapter.

Accordingly, it is appropriate to order the District to cease and desist from failing and refusing to provide necessary and relevant information to CSEA, as the exclusive representative of classified employees, for the performance of its representational duties to unit employees, including grievance processing. (Stockton.)

In the instant case, the document sought by CSEA was never provided to CSEA, nor was the document produced during the hearing.[11] It is thus appropriate to order that, upon request, the District provide CSEA with a copy of the Milan letter/incident report which was requested on November 22 and December 5, 1994, and January 10, 1995. (See Modesto City Schools and High School District (1985) PERB Decision No. 518.) Additionally, it is ordered that within 30 calendar days after the document is furnished to CSEA, upon request by CSEA or Sam Ortiz, allow Ortiz to file a supplemental written rebuttal to the written reprimand issued to him on November 7, 1994.

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[11]In its brief, the District argues that CSEA could have requested, through a subpoena duces tecum, that the District produce the document at the hearing in order for the union to review it and make a determination regarding its relevance to this matter, but it chose not to do so. " This fact is irrelevant to the issue of whether the District was mandated by EERA to provide CSEA with the requested information.

It is also appropriate that the District be required to post a notice incorporating the terms of the order at all sites where notices are customarily placed for classified employees. 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 and will comply with the order. It effectuates the purposes of EERA that employees be informed of the resolution of the controversy and will announce the readiness of the District 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 Appeals approved a similar posting requirement. (See also National Labor Relations Board v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415] .)

PROPOSED ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record in this case, it is found that the Hacienda La Puente Unified School District (District) violated the Educational Employment Relations Act (Act), Government Code section 3543.5(a), (b) and (c) . It is hereby ordered that the District and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to bargain in good faith by failing to provide information which is relevant and necessary to the California School Employees Association and its Hacienda La Puente Chapter #115 (CSEA) for the proper performance of its representation of bargaining unit members in their employment relationship with the District, including information which explains and clarifies the District's reasons for not accepting or processing a unit member's grievance that the District perceives as procedurally defective.

2. Denying to CSEA rights guaranteed to it by the Act, including the right to represent unit members in grievances and other employment matters.

3. Interfering with the rights of classified unit employees to be represented by their exclusive representative by denying that representative information that is necessary and relevant to its representational functions, including grievance processing.

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

1. Upon request, provide CSEA with a copy of the Julie Milan letter/incident report requested by CSEA on November 22 and December 5, 1994, and January 10, 1995. Additionally, within 30 calendar days after the document is furnished to CSEA, upon the request of CSEA or Sam Ortiz, allow Ortiz to file a supplemental rebuttal to the written reprimand issued to him on November 7, 1994.

2. Further, upon request, provide CSEA with timely information that explains or clarifies the District's reasons for not accepting or processing a unit member grievance that the District initially perceives as procedurally defective.

3. Within ten (10) working days of the service of a final decision in this matter, post at all work locations where notices to classified employees are customarily posted, copies of the notice attached hereto as Appendix. The notice should be subscribed by an authorized agent of the District, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive work days. Reasonable steps shall be taken to ensure that the notice shall not be reduced in size, altered, or covered with any other material.

4. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the San Francisco Regional Director of the Public Employment Relations Board in accordance with the Regional Director's instructions. Continue to report, in writing, to the Regional Director thereafter as directed. All reports shall be concurrently served on the charging party herein.

Pursuant to California Code of Regulations, 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 Cal. Code Regs., tit. 8, sec. 323 00.) A document is considered "filed" when actually received before the close of business (5 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 Cal. Code Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code Regs., tit. 8, secs. 32300, 32305 and 32140.) !

W. JEAN THOMAS
Administrative Law Judge