STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SAN YSIDRO CHAPTER #154,	)	
Charging Party,	)	Case No. LA-CE-3597
v.	)	PERB Decision No. 1198
SAN YSIDRO SCHOOL DISTRICT,	)	May 7, 1997
Respondent.	)	

Appearances: California School Employees Association by Ann M. Smith, Labor Relations Representative, for California School Employees Association and its San Ysidro Chapter #154; Wagner & Wagner by John J. Wagner, Attorney, for San Ysidro School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the San Ysidro School District (District) to a proposed decision (attached) in which the administrative law judge (ALJ) found that the District violated section 3543.5(b) and (c) of the Educational Employment Relations Act (EERA)[1] when it reduced the

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

> It shall be unlawful for a public school employer to do any of the following:
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

hours for two health clerk positions without affording the California School Employees Association and its San Ysidro Chapter #154 (Association) notice or opportunity to negotiate the decision.

The Board has reviewed the entire record, including the proposed decision, the District's exceptions and the Association's response. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself consistent with the following discussion.

DISTRICT'S EXCEPTIONS

The District raised two main exceptions to the proposed decision. First, the District excepts to the ALJ's finding that the health clerk classification is included in the unit represented by the Association. That classification is not listed in the recognition article of the parties' contract, and the District asserts that the ALJ cannot consider outside evidence to interpret the contract. Second, the District argues that the Education Code permits it to reduce hours without bargaining and preempts any EERA bargaining obligation.

ASSOCIATION'S RESPONSE

The Association concedes that the health clerk classification does not appear in the recognition clause of the parties' contract, but asserts that all classified employees in

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

the District are exclusively represented by the Association, including health clerks.

DISCUSSION

Inclusion of Health Clerk Positions in Bargaining Unit

The District asserts that the ALJ may not look beyond the record for evidence that the health clerk positions are included in the bargaining unit. It is well-settled that the Board may take official notice of its own records. (See, e.g., El Monte Union High School District (1980) PERB Decision No. 142 at p. 2.) Our review of the representation file shows that the April 1976 request for recognition contains the following language:

> The unit for which CSEA requests exclusive representation is composed of . . . classified employees as reflected by the public records of the district. We request that all of the district's classified employees be designated as an appropriate unit, which shall INCLUDE but not be limited to the following major groupings of jobs: [list follows]. [Emphasis added.]

The District voluntarily recognized that unit in May 1976. Although the health clerk classification was not created until 1992, the emphasized language indicates the parties' intent to include all classified employees in a single unit, with listed exceptions.[2] The ALJ correctly concluded that health clerks are included in the unit in question.

Unilateral Change Issue

The District argues that its decision to reduce hours is

[2]Certain managerial, confidential and supervisory positions were expressly excluded from the unit.

a nonnegotiable layoff decision under Education Code section 45101(g),[3] which preempts its EERA bargaining obligation. We disagree. Education Code section 45101(g) expressly states that a reduction in hours constitutes a layoff only if the affected employees voluntarily consent to the reduction in lieu of layoff. There is no evidence that the employees in this case consented to the reduction in hours in lieu of layoff. Therefore, the Education Code does not apply or permit the District's conduct.

The Board has already ruled on this issue, as the ALJ noted. In North Sacramento School District (1981) PERB Decision No. 193 (North Sacramento), the Board held that a reduction in hours is different from a layoff, that the Education Code layoff provision prohibiting bargaining did not apply, and that a reduction in hours falls within the scope of representation. In Healdsburg Union High School District (1984) PERB Decision No. 375, at page 58, the Board expressly applied North Sacramento to nonmerit districts such as San Ysidro. Therefore, we find that the ALJ in the case at bar correctly concluded that the District's unilateral reduction in hours affects a negotiable subject and that a violation of EERA occurred.

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[3]Education Code section 45101(g) provides that:

> 'Layoff for lack of funds or layoff for lack of work' includes any reduction in hours of employment . . . voluntarily consented to by the employee, in order to avoid interruption of employment by layoff. [Emphasis added.]

Remedy

It is necessary to discuss one remaining issue. The ALJ ordered that back pay and the out-of-pocket expenses incurred by the six-hour health clerk, as a result of the loss of health coverage, be augmented by interest at the rate of 7 percent per annum (Article XV, sec. 1 of the California Constitution and San Francisco Unified School Dist, v. San Francisco Classroom Teachers Assn. (1990) 222 Cal.App.3d 146 [272 Cal.Rptr. 38]).

We note that in The Regents of the University of California (1997) PERB Decision No. 1188-H, this Board recognized the fact that administrative agencies such as PERB are not bound by the 7 percent interest rate specified in Article XV, section 1 of the California Constitution. In this case, however, we conclude that it is appropriate to award interest at the rate of 7 percent per annum pursuant to the Board's discretion.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to the Educational Employment Relations Act (EERA), Government Code section 3541.5(c), it is hereby ordered that the San Ysidro School District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate with the California School Employees Association and its San Ysidro Chapter #154 (Association) about the reduction of hours of bargaining unit employees.

2. Denying the Association its right to represent bargaining unit members in their employment relations with the District.

3. Denying bargaining unit members their right to be represented by their chosen representative.

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

1. Restore the health clerks to the hours accorded them prior to June 22, 1995, with accompanying benefits.

2. Pay to the affected employees lost earnings as a result of the reduction in hours. Any out-of-pocket expenses incurred by the six-hour health clerk as a result of the termination of health insurance coverage shall also be reimbursed to that employee. The back pay and out-of-pocket expenses shall be augmented with 7 percent per annum interest.

3. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees are customarily 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, altered, defaced or covered by any other material.

4. 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 the director's instructions.

Chairman Caffrey and Member Dyer 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-3597, California School Employees Association and its San Ysidro Chapter #154 v. San Ysidro School District, in which all parties had the right to participate, it has been found that the San Ysidro School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(b) and (c).

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 meet and negotiate with the California School Employees Association and its San Ysidro Chapter #154 (Association) about the reduction of hours of bargaining unit employees.

2. Denying the Association its right to represent bargaining unit members in their employment relations with the District.

3. Denying bargaining unit members their right to be represented by their chosen representative.

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

1. Restore the health clerks to the hours accorded them prior to June 22, 1995, with accompanying benefits.

2. Pay to the affected employees lost earnings as a result of the reduction in hours. Any out-of-pocket expenses incurred by the six-hour health clerk as a result of the termination of health insurance coverage shall also be reimbursed to that employee. The back pay and out-of-pocket expenses shall be augmented with 7 percent per annum interest.

Dated: _____ SAN YSIDRO 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 WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION AND ITS SAN YSIDRO CHAPTER #154, Charging Party, v. SAN YSIDRO SCHOOL DISTRICT, Respondent.	)	Unfair Practice Case No. LA-CE-3597 PROPOSED DECISION (10/1/96)

Appearances: Ann M. Smith, Labor Relations Representative, for California School Employees Association and its San Ysidro Chapter #154; Wagner, Sisneros & Wagner, by John J. Wagner, Attorney, for San Ysidro School District.

Before Gary M. Gallery, Administrative Law Judge.

PROCEDURAL HISTORY

This proposed decision results from an unfair practice charge filed by the California School Employees Association and its San Ysidro Chapter #154 (CSEA) against the San Ysidro School District (District) on August 11, 1995. After investigation, and on January 3, 1996, the deputy general counsel of the Public Employment Relations Board (Board or PERB) issued a complaint against the District. The complaint alleged that prior to June 22, 1995, the District's policy concerning hours worked per day for two health clerks was that one worked 3.75 hours and the other worked 6 hours per day. The District changed this policy on June 22, 1995, the complaint alleged, by reducing the first position from 3.75 to 3 hours and the 6-hour position to 3 hours per day. This action was taken without notice to CSEA or affording CSEA the opportunity to negotiate the decision to

implement the change in policy and/or the effects of the change in policy. The District's conduct was alleged to be a violation of Educational Employment Relations Act (EERA or Act) section 3543.5(a), (b) and (c).[1]

The District's answer, filed on January 22, 1996, denied any violation of the Act. A PERB conducted settlement conference did not resolve the dispute. A formal hearing was held on March 20, 1996, in San Ysidro, California. With the filing of post-hearing briefs on May 15, 1996, the matter was deemed submitted for decision.

FINDINGS OF FACT

The District is an employer and CSEA is the exclusive representative of classified employees within the District, both within the meaning of the Act.

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[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. In relevant part, section 3543.5 states:

> 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 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 parties have a collective bargaining agreement (CBA) covering the period July 1, 1994 through June 30, 1997. Within Article I (Recognition), are listed several categories of employees represented by CSEA. Included is a position called classified registered nurse. There is no reference to health clerk positions.[2] Proviso B of Article I provides:

> The unit excludes management, supervisory, and confidential employees as defined by EERA; and all substitute, temporary and short-term employees.

Article I also includes the following language:

> C. Whenever the District establishes a new position in the classified service of the District and plans to designate such new position as management, supervisory or confidential, the District will notify the CSEA and give the CSEA an opportunity for input. Disputed cases may be submitted to the Public Employment Relations Board pursuant to applicable law and regulations.
>
> D. The six groups of employees in provision A are listed therein for informational purposes only, and these groups shall not be interpreted as classes for purposes of layoff or any other change in employment status.

The classified salary schedule includes reference to health clerks.

Arthur La Cues (La Cues) is the director of personnel services. Lorraine Ramirez (Ramirez), a classified employee of the District, is president of CSEA. Martha Pacheco (Pacheco) and Maria Hernandez (Hernandez) are employed at the District as

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[2]A review of PERB's representation file does not reflect that the parties intended to include or exclude health clerk positions. As noted later, the positions were created in 1992.

health clerks. Both have CSEA membership dues deducted from their paychecks by the District. Both clerks obtain vacation accrual in accordance with the CBA, and both received salary increases along with other classified employees as a result of CSEA bargaining.

Two personnel employees with the District testified they believed the health clerk positions are in the bargaining unit. Witnesses under cross-examination admitted the health clerks were not listed in the recognition article.

On June 21, 1995, La Cues spoke with Ramirez and informed her that the school board was going to eliminate the library clerks and reduce the hours of health clerks. This was the first she was aware of the reduction in hours of the health clerks.

The next day, June 22, 1995, Ramirez obtained the agenda for a special meeting of the board on that day. The agenda included proposed personnel actions eliminating several classified positions and reducing the hours of the health clerks.

Ramirez spoke at the board meeting. She complained to the board that she had not had the opportunity to negotiate the reduction in hours. She had written out a statement the night before, she testified, to ask that CSEA be given an opportunity to negotiate on the elimination of positions and reduction of hours. Notwithstanding, the board voted to reduce the hours of the health clerks.

Prior to the board action, Ms. Hernandez worked 3.75 hours per day. As a result of the change, she worked 3 hours per day. Ms. Pacheco formerly worked 6 hours per day and her hours were reduced to 3 hours per day as a result of the board's action. She spoke to the board on June 22. Prior to the reduction in hours, Pacheco received health insurance. As a result of the reduction in hours, she no longer is provided health insurance.

The health clerk positions were created by the board in 1992. CSEA never requested the board to modify the unit to include the health clerk positions. Nor did. the District notify CSEA that the positions were to be exempt under the provision of Article I.B. set forth above.

On June 23, 1995, Ann Smith (Smith), labor relations representative for CSEA, wrote to La Cues. Ms. Smith stated:

> It has come to the attention of California School Employees Association and its San Ysidro Chapter 154 that the District intends to unilaterally reduce the hours of Health Clerks. In North Sacramento School District (12/31/81) PERB Decision No. 193, the PERB held that the decision to reduce hours is within the scope on representation, and the employer's unilateral action on such matters is a violation of the Educational Employment Relations Act subsection 3543.5(c).
>
> CSEA respectfully demands that the San Ysidro School District cease and desist from unilaterally reducing the hours of classified bargaining unit positions. If the District continues to persist in its unlawful action, CSEA will have no recourse but to file an unfair labor practice with the Public Employment Relations Board.

The District did not respond to Smith's letter.

On June 29, 1995, the District notified Pacheco, in writing of the reduction in hours effective July 31, 1995. The letter stated, "During this time you will have preference as provided by the Education Code and the District/Bargaining Unit Agreement."

Article VIII of the contract covers "District Rights" and provides that the board "retains the right to hire, classify, layoff, evaluate, promote, terminate, and discipline employees."[3] This article further provides:

> . . . In addition, the Board retains the right to take action under this Article. Such right is subject to any demand by CSEA to negotiate any impacts and effects within the scope of representation. Should CSEA desire to exercise its right to negotiate, the CSEA must give its initial proposal to the District within ten (10) calendar days after the CSEA knew or reasonably should have known of the District's action. . . . The District may take final action sixty (60) calendar days following the commencement of negotiations, but the parties still shall attempt to resolve the subjects in negotiations.

The CBA contains no provisions on the District's authority to unilaterally reduce employee hours. However, Article XVI covers layoff for lack of work or lack of funds. It provides that a 30-day notice shall be provided and that CSEA and the District shall meet within five working days after notice "to review the proposed layoffs under the provisions of this agreement." A separate provision in this article provides

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[3]The CBA provides for binding arbitration of grievances. However, the exercise of Article VIII rights are not subject to the grievance procedures.

reinstatement to full-time to employees who take a voluntary reduction in time in lieu of layoff.

La Cues testified that the District had never negotiated a reduction in hours with CSEA prior to June 22, 1995. He also testified, however, that the District had not reduced hours of classified employees prior to the June 1995 action.

ISSUE

The issue in this case is whether the District violated EERA when it unilaterally reduced the hours of the two health clerks?

CONCLUSIONS OF LAW

At hearing, the District raised the defense that the health clerk positions were not part of the bargaining unit,[4] in that the article on recognition does not refer to the health clerks and that CSEA never requested the unit be modified to include the clerks. It further argued in its post-hearing brief that CSEA witnesses admitted that the recognition article did not refer to the health clerk positions.

Here, the District did not establish that the employees were of any other kind, other than classified employees.[5] The recognition article specifically excludes management, supervisory, and confidential employees as defined by EERA; and

[4]The District answer does not refer to this defense. Failure to raise the issue might constitute waiver of the contention. Nonetheless, I address the arguments on their merits.

[5]Education Code sections 45103 and 45104 mandate non-certificated employees of the District be classified as classified employees.

all substitute, temporary and short-term employees. The health clerk positions fit none of those exemptions. It can be assumed that if the District intended to exclude the health clerk positions, it would have listed the positions as excluded. (See El Monte Union High School District (1980) PERB Decision No. 142.)

The health clerk positions were listed on the classified salary schedule, the employees received raise increases along with other classified employees as a result of CSEA bargaining, and accrued vacation benefits pursuant to the CBA. The District deducted dues for CSEA at the employees' request. Finally, the District referred to the bargaining unit agreement in the notice to the employees that their hours were to be reduced.[6]

I conclude that the health clerk positions are within the bargaining unit represented by CSEA.

A public school employer's flat refusal to negotiate a matter within the scope of representation is a per se violation of its obligation to meet and negotiate in good faith. (Sacramento City Unified School District (1979) PERB Decision No. 100; Sierra Joint Community College District (1981) PERB Decision No. 179; Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

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[6]Also noteworthy is Ramirez's uncontradicted testimony that La Cues approached her the day before the scheduled board action and informed her that the health clerk hours were to be reduced. If the positions were not in the bargaining unit, why would he relate that scheduled action to the chapter president?

While the decision to lay off employees is outside of the scope of representation,[7] the decision and the effects of the decision to reduce employees hours are within the scope of representation. (North Sacramento School District (1981) PERB Decision No. 193.)

The District argues that Article VIII of the CBA:

> affirms the parties . . . understanding that the District retained all of its power and authority to the full extent of the law to direct, manager [sic] and control its operations limited only by express provisions of the contract. These retained rights are those set forth in the Education Code which permit layoffs for lack of work or lack of funds. [Emphasis in original.]

Under the Education Code, urges the District, layoff for lack of work or lack of funds includes a reduction in hours.

PERB has distinguished between layoffs and reduction in hours. As noted, decisions to layoff are outside of the scope of representation, but the decision to reduce hours is within scope.

Here, contends the District, CSEA never demanded to negotiate the effects of the reduction in hours as required by Article VIII. The June letter from CSEA is not a demand to negotiate the effects of the reduction in hours, but rather a threat to file an unfair practice charge.

The argument overlooks the fact that Ramirez asked the board that CSEA be given the opportunity to negotiate the reduction in hours before the board took action on June 22, 1995. Moreover,

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[7]Newman-Crows Landing Unified School District (1982) PERB Decision No. 223 (Newman-Crows Landing).

Article VIII clearly contemplates that the District would delay action to allow CSEA to make its request known. That is not what happened in this case. The District took action, adopting the resolution to reduce the health clerk hours, in the face of CSEA's request to negotiate that reduction.

The District argues that Article XVI covers layoff and reemployment with written notice of layoff. Here the District gave notice on June 29, 1995. Under the provisions of Article XVI, CSEA had five days to review the proposed layoff under the provisions of the agreement. The meeting did not take place. The CSEA then, under the provisions of the CBA, had 20 days to file a grievance on the alleged violation of Article XVI. No such grievance was ever filed.

The argument is not persuasive. The District is not charged with not meeting with CSEA to review the layoff. Rather, the District is charged with unilaterally reducing the hours of the health clerks. This it did on June 22, 1995, when the board of trustees adopted the resolution calling for the reduction in hours in the face of CSEA's request to negotiate the issue.

Finally, the District argues that it had a past practice of never negotiating with CSEA over reduction in hours.

This argument is rejected. The testimony of La Cues is clear that the District had never reduced hours prior to the June 1995 incident. Accordingly, no practice of reducing hours without negotiating with CSEA could have been established.

Here, CSEA conveyed its desire to be involved in the action the board was considering. Ramirez addressed the board and stated that CSEA had not had an opportunity to discuss the matter with the District. In Newman-Crows Landing, PERB held:

> . . . While it is not essential that a request to negotiate be specific or made in a particular form, [citations] it is important for the charging party to have signified its desire to negotiate to the employer by some means . . . .

The Board further stated:

> In other words, a valid request will be found, regardless of its form or the words used, if it adequately signifies a desire to negotiate on a subject within the scope of bargaining. . . .

Ramirez spoke to the board prior to the adoption of the resolution reducing the hours of the health clerks. She asked to have an opportunity to negotiate the issue. The board refused.

It is concluded that the District violated its obligation to negotiate in good faith with CSEA, as required by section 3543.5(c) of EERA, when it unilaterally reduced the hours of the two health clerks without providing CSEA an opportunity to negotiate the decision and the effects of the decision to reduce the hours. This same conduct interfered with CSEA's right to represent employees in the bargaining unit for which it was the exclusive representative and therefore a violation of section 3543.5(b). This same conduct interfered with bargaining unit members' right to have CSEA represent them in their relations with the District, and hence constitutes a violation of section 3543.5(c).

REMEDY

Under section 354.1.5 (c) PERB is empowered 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.

Here it has been found that the District violated EERA when it unilaterally reduced the hours of the health clerk positions. This same conduct was found to interfere with CSEA's rights to represent bargaining unit members, and constituted interference with bargaining unit members' right to be represented by CSEA. It is appropriate to order the District to cease and desist from such activity in the future. It is further appropriate to order the District to restore the status quo ante, that is, return the conditions of employment for the health clerk positions to that existing prior to the unlawful act. (See Compton Unified School District (1989) PERB Decision No. 784.) The District will be ordered to return the two positions to the hours worked prior to the unlawful change. It is further appropriate to pay to the employees all wages lost by the unlawful act. Health coverage will be provided to the 6-hour position as well, and any out of pocket expenses incurred by the employee holding the 6-hour position as a result of loss of health coverage will be reimbursed by the District. (See Temple City Unified School

District (1990) PERB Decision No. 841.) Interest on such back pay shall be awarded at the rate of 7 percent per annum.[8]

It is also appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District, indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity 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. (Davis Unified School District, et al., (1980) PERB Decision No. 116; Placerville Union School District (1978) PERB Decision No. 69.)

[8]PERB last considered the appropriate amount of interest to award with back pay in the case of Mt. San Antonio Community College District (1988) PERB Decision No. 691 (Mt. San Antonio). There, the Board adopted California Code of Civil Procedure (CCP) section 685.010 for determining the rate of interest. Currently, that section sets the rate at 10 percent. However, subsequent to the Board's decision in Mt. San Antonio, an appellate court concluded that local government entities, including public school districts, are exempted from CCP section 685.010. Therefore, the rate for a public school employer is 7 percent, as specified in California Constitution Article XV, section 1. (See San Francisco Unified School District v. San Francisco Classroom Teachers Association (1990) 222 Cal.App.3d 146 [272 Cal.Rptr. 38].)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, and pursuant to the Educational Employment Relations Act (Act), Government Code section 3541.5(c), it is hereby ordered that the San Ysidro School District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and negotiate with the California School Employees Association and its San Ysidro Chapter #154 (CSEA) about the reduction of hours of bargaining unit employees.

2. Denying CSEA its right to represent bargaining unit members in their employment relations with the District.

3. Denying bargaining unit members their right to be represented by their chosen representative.

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

1. Restore the health clerks to the hours accorded them prior to June 22, 1995, with accompanying benefits.

2. Pay to the affected employees lost earnings as a result of the reduction in hours. Any out-of-pocket expenses incurred by the 6-hour health clerk as a result of the termination of health insurance coverage will be reimbursed to that employee. The back payment and out-of-pocket expenses shall be augmented with 7 percent per annum interest.

3. Within 10 days of service of this proposed decision, post at all work locations where notices to employees

customarily are placed, copies of the notice attached as an appendix hereto. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that said notices are not reduced in size, altered, defaced or covered by any other material.

4. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the San Francisco Regional Director of the Public Employment Relations Board in accord with the director's instructions.

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. 32300.) 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.)

Gary M. Gallery
Administrative Law Judge