STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BRUCE P. TOWNSEND, Charging Party, v. VISALIA UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SA-CE-2128-E PERB Decision No. 1687 September 9, 2004

Appearances: Bruce P. Townsend, on his own behalf; Lozano Smith by Richard B. Galtman, Attorney, for Visalia Unified School District.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

NEIMA, Member: This case is before the Public Employment Relations Board (Board) on exceptions filed by Bruce P. Townsend (Townsend) to a proposed decision (attached) of the administrative law judge (ALJ). The underlying unfair practice charge alleged that the Visalia Unified School District (District) violated the Educational Employment Relations Act (EERA)[1] by constructively discharging Townsend for his protected activities. The ALJ's proposed decision found that Townsend failed to demonstrate that his working conditions was sufficiently onerous to justify his resignation from the District.

The Board has reviewed the entire record in this matter, including the ALJ's proposed decision, Townsend's exceptions and the District'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.

[1]EERA is codified at Government Code section 3540, et seq.

ORDER

The unfair practice charge and complaint in Case No. SA-CE-2128-E is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Whitehead joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

BRUCE P. TOWNSEND, Charging Party, v. VISALIA UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-2128-E PROPOSED DECISION (10/1/03)

Appearances: Bruce P. Townsend, pro per; Lozano Smith, by Richard B. Galtman, Attorney, for Visalia Unified School District.

Before Donn Ginoza, Administrative Law Judge.

PROCEDURAL HISTORY

On September 27, 2002, Bruce P. Townsend initiated this action by filing an unfair practice charge against the Visalia Unified School District (District). On October 24, 2002, the general counsel of the Public Employment Relations Board (PERB or Board) issued a complaint. The complaint alleges that the District constructively discharged Townsend from employment in retaliation for his exercise of rights guaranteed by the Educational Employment Relations Act (EERA or Act). This conduct is alleged to violate section 3543.5(a) of the Act.[1]

[1] Unless otherwise indicated, all statutory references are to the Government Code. The EERA is codified at section 3540 et seq. Section 3543.5(a) provides:

> 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.

On November 4, 2002, the District answered the complaint, denying all material allegations and asserting a number of affirmative defenses.

Settlement discussions were conducted telephonically by a Board agent on December 3 and 4, 2002, but the dispute was not resolved.

On May 28, and 29, 2003, a formal hearing was held before the undersigned administrative law judge in Sacramento. On August 18, 2003, the matter was submitted for decision, following submission of the parties' post-hearing briefs.

FINDINGS OF FACT

The District is a public school employer within the meaning of EERA section 3540.1(k). Townsend is a public school employee within the meaning of section 3540.1(j).

Townsend graduated from college in the early 1970's and obtained a standard lifetime teaching credential. He began his teaching career at Veva Blunt Elementary School in the 1972-1973 school year. He continued with the District until 1978. During this time, Veva Blunt's principal found no deficiencies in Townsend's work.

In 1978, Townsend accepted employment as a sales representative for New York Life Insurance Company. During his first year, the company chose him regional "Agent of the Year." Nine years later, Townsend became an independent broker and worked in that capacity for the next 11 years.

In the fall of 1997, Townsend chose to resume his teaching career and returned to the District as a sixth-grade teacher for Fairview Elementary School.

Protected Activities

The Visalia Unified Teachers Association (Association) is the exclusive representative for the certificated bargaining unit. During the 1998-1999 school years, Townsend ran for Association site representative of Fairview Elementary School. Townsend was unsuccessful in

the election, losing out to fellow teacher Maureen Bonds. Nevertheless, Townsend was vocal at the regular business meetings of the Association during that year. At times, Townsend expressed opinions that differed with those of the Association leadership.

During the 1999-2000 school year, Townsend served on the Association's insurance committee, as well as a joint labor-management insurance committee.

During the 1998-1999 and 2000-2001 school years, the Association and the District were involved in contract negotiations. In February 2000, a closed meeting of the Association was held to discuss the leadership's recommendation for ratification of the parties' tentative agreement. Association Executive Director Margaret Moss and President Mike Williford endorsed the tentative agreement and urged the membership to vote yes for ratification. Williford stated that if the membership rejected the tentative agreement that they "might as well strike." This statement upset Townsend, who believed Williford's comment was intimidating and unnecessary because the parties were not yet at impasse, and because Williford knew that the teachers were not interested in striking. Townsend was one of eight to ten teachers who addressed the membership with comments after the floor was opened for discussion.

Townsend objected to Williford "scaring the teachers." Townsend's main objection to the tentative agreement was that it contained a cap on District contributions for health insurance. Townsend believed the District's 2 percent salary offer would be "negligible" compared to the long-term costs of the cap, and a portion of the raise was not on the salary schedule. Of all the speakers, only Townsend received a unanimous standing ovation from the members. Karlene Audino, who would later claim to Townsend that she, too, was subjected to a retaliatory disciplinary suspension because of her Association activities, expressed that she also believed the leadership was scaring the teachers.

Soon thereafter, the membership rejected the tentative agreement with 86 percent of the members voting against the agreement. After the parties returned to the bargaining table, the District agreed to remove the cap.

Although the meeting was closed to District management personnel, Townsend contends it was very likely that Moss reported Townsend's comments to management. He cites the fact that he was once contacted by Moss, who asked to know why Townsend was absent for an insurance committee meeting, even though she did not have any direct roll in the business of the committee. Moss, who has an office in the District's administration building, answered Townsend by stating that she had been asked to make the inquiry by a District management employee.

After the ratification meeting, a rally took place outside the District offices prior to the February 2000 school board meeting at which the negotiations were discussed. Townsend stood on the back of a pickup truck and spoke over a public address system to the gathering of approximately 100 teachers. School board members entering the building passed by the area where Townsend was speaking. About 50 of the teachers at the rally entered the board meeting and stayed throughout the session. Larry Jones, a school board member and friend of Townsend, saw Townsend and his wife, Susan Townsend, in the audience, and acknowledged their presence.

Townsend contends that after this protected activity, he was subjected to working conditions, orchestrated by Fairview Elementary School Principal Frank Ohnesorgen and other high-ranking District officials, which ultimately forced his resignation.

Loss of Teaching Aide Time

Townsend shared a teaching aide with at least three other teachers at Fairview during the 1999-2000 school year. The aide's assignment was to provide up to one hour of aide time

to each teacher. Near the end of January 2000, Townsend's aide left to take a position in special education. Around this time, the Fairview staff agreed not to fill the vacant position because of lack of funding and to reduce the number of aides through attrition.

Townsend wrote a letter in early March to Ohnesorgen to complain about the loss of aide time. The usual practice in such cases was to redistribute the time so that all teachers shared equitably. The lower grades were generally given priority for aide time. Ohnesorgen did not have a precise recollection of how long it took before Townsend's aide time was restored. Townsend's aide time was eventually replaced. Both Townsend and Ohnesorgen appeared to agree that the delay was about three months or possibly four. Townsend believes that he was the only one who suffered a disruption in aide time.

Application for Transfer to Elbow Creek

Sometime prior to the 2001-2002 school year, Townsend submitted an application for a transfer to Elbow Creek Elementary School. Two positions were open at that school. After being interviewed, Townsend was notified that he had not been selected in a September 7, 2001, letter from Assistant Superintendent/Human Resources Department Kay Van Andel.

On September 20, 2001, Townsend wrote to Van Andel requesting the scores from his interview.

On September 28, 2001, Jim Pitkin, director/human resources development, wrote to Townsend indicating that he had spoken with Bob Force, principal of Elbow Creek, who shared with Pitkin certain information regarding observations and opinions of the interviewing committee. Pitkin listed four points, three of which indicated weaknesses in Townsend's answers to particular questions. The fourth point caused great concern for Townsend:

> Finally, while the committee values independent thinking, the impression that was left them was their concern that you did not appear to be a team player.

Townsend subsequently discovered later that the two teachers hired were new teachers without prior teaching experience. Townsend believed his many years of seniority should have been a strong factor in his favor. His application also included strong references and listed numerous after-school activities.

Pitkin later received a request from Townsend for a counseling session. Townsend sought advice from Pitkin, himself a former principal, on how he might be more persuasive in interviews. Pitkin testified that the cordial meeting lasted approximately one hour, but that he spoke for no more than ten minutes. Townsend did most of the talking. Townsend broached the "team player" comment, expressing concern about its effect on his "impeccable" work record. Pitkin described coming away from the meeting feeling like he had spoken to a used-car salesman. Townsend made a comment about having a minor role in the Association. After listening, Pitkin suggested that Townsend's approach would put off some people and make it difficult to secure a new position in the District.

On cross-examination, Townsend testified that Pitkin stated that some of the principals were "not inclined to hire people active in [the Association]." Pitkin denied making any reference to Association activities.

Weekly Reader Bill and the October 3, 2001, Meeting with Ohnesorgen

The Weekly Reader is a publication offering a supplemental reading program for elementary school students. Townsend utilized it in his classroom. Teachers using the Weekly Reader must fill out an order form and submit it to the administrative offices. The District processes the order and makes payment on the account.

In September 2001, Townsend received a "Notice of Collection Action" stating that his Weekly Reader account was in arrears by $378.24. The letter was addressed to Townsend at the Fairview Elementary School address. The notice indicates that due to lack of payment the

account was being forwarded to collection. On several occasions, Townsend had requested that the school bring the account current.

Having not achieved any resolution, Townsend had a meeting on October 2 with Ohnesorgen. Townsend informed Ohnesorgen that he would like the matter resolved. Townsend had intended to give Ohnesorgen one more chance to remedy the situation before taking the matter to Ohnesorgen's superior, Assistant Superintendent Myron Sheklian. Townsend was concerned that his own personal credit would be jeopardized if the bill were not paid. Ohnesorgen responded by picking up the telephone and placing a call during the meeting. Townsend was present, but did not know to whom Ohnesorgen spoke.

During the meeting, Townsend handed Ohnesorgen a copy of the Weekly Reader invoice. On the document, Townsend had written a note to Sheklian stating, "I have asked numerous times for this problem to be taken care of at the school site. Could you please help?" Later that day, Ohnesorgen left a note for Townsend requesting that Townsend meet with him.

On the next day, October 3, Ohnesorgen met with Townsend and began the meeting by stating that he had noticed the message to Sheklian. Ohnesorgen then said "You were going to go over my head, weren't you?" Townsend responded by stating that he never intended his note to be a threat, only a final plea for action because of past failures to act.

Ohnesorgen responded, "Didn't I say I would take care of it?" When Townsend agreed, Ohnesorgen replied, "Well, I don't like the idea of you going over my head."

After further exchanges between the two, regarding how many times Townsend should be expected to request action from Ohnesorgen, Ohnesorgen became angry with Townsend. Townsend asked why Ohnesorgen had not brought the matter up on the previous day. Ohnesorgen responded that he had not seen the note to Sheklian then. Townsend claimed that

at some point during this discussion, Ohnesorgen accused Townsend of not being a "team player." Townsend pressed Ohnesorgen by asking whether the comment was prompted by his failure to participate in certain school-site meetings. Ohnesorgen finally replied, "Just leave it at that." At the hearing, Ohnesorgen denied he said Townsend was not a team player.

On cross-examination, Townsend recalled that Ohnesorgen made reference to his activities on behalf of the Association in response to being asked to explain what he meant by "team player." Townsend quoted Ohnesorgen as saying that Townsend's Association activities "didn't help."

Sometime after the October 3 meeting, the Fairview Elementary School assistant principal left a copy of a District purchase order in Townsend's mailbox indicating documentation that the $378 bill had been paid.

By letter dated November 21, 2001, the collection agency of I. C. Systems, Inc. notified Townsend that the Weekly Reader had referred his account for collection. By letter dated December 6, 2001, Townsend forwarded a copy of the collection letter to Ohnesorgen. There was no evidence Townsend suffered adverse effects from the collection referral.

Reoccurrence of the Aide Problem

During the 2001-2002 year, Townsend again experienced a disruption in aide time. Fairview Elementary School is on a year-round schedule. Teachers teach on a "track" schedule. Teachers work for specified times during the year, and then are "off-track," during non-teaching periods. In the summer of 2001, Ohnesorgen issued a schedule for aide time. Townsend was off-track in August when the schedule was changed. When Townsend returned to work, he realized that the new schedule conflicted with the time he had scheduled his

differentiated math program during which the aide was needed. [2] Townsend's aide had been moved to the second period, when his students were out of the classroom for physical education and health classes for three days of the week, and Townsend was forced to "shut down" his differentiated math program. Townsend and Ohnesorgen had discussed some kind of a schedule change, but because the matter was not resolved, Townsend requested that Ohnesorgen revisit the issue in October 2001.

In a letter dated October 24, 2001, Townsend wrote to Ohnesorgen to request that the matter be addressed. He indicated that they had discussed the solution, but Townsend had forgotten what the solution was. Ohnesorgen believed he proposed switching the physical education schedule.

Shortly after the letter, Ohnesorgen issued a notice changing the aide schedule, showing that the aide would be appearing at some time other than the second period. Townsend expected his aide to arrive at that scheduled time, but was surprised when the aide appeared at her usual time during second period. Townsend claims that the aide told him that the announced schedule was incorrect. By letter dated November 8, 2001, Townsend wrote to Ohnesorgen to alert him to this turn of events and reiterated his request for a resolution. Ohnesorgen investigated and discovered that a kindergarten teacher was not releasing the aide to Townsend's class.

Sometime in December 2001, Ohnesorgen resolved to change the physical education schedule. In a note to Townsend dated January 9, 2001, Ohnesorgen advised Townsend of the physical education schedule change and apologized for the problem with the aide schedule.

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[2] A Fairview special education teacher had obtained Townsend's permission to replace two of her students in Townsend's class, specifically to participate in Townsend's differentiated math program called "STEPS." The aide worked one hour per day in Townsend's class and assisting students with math instruction. The purpose of the aide was to assess the progress of students individually and address any deficiencies that were identified.

Ohnesorgen also indicated he would be investigating a possible change to the music schedule to improve and align that schedule as well.

The Biannual Performance Evaluation

Permanent teachers in the District are evaluated every two years according to the terms of the collective bargaining agreement.

Townsend was evaluated by Ohnesorgen in January 2000 for the 1999-2000 year. The evaluation form indicates that Townsend was a second-year probationary teacher in that year. Townsend received "meets or exceeds expectations" in each of the categories in which he was rated. In both math and language arts, Ohnesorgen praised Townsend for the ability to clearly state the objective of his lessons, keeping the students focused and on task, and "exceptional" presentation of the language arts lesson plan.

On February 9, 2000, Ohnesorgen wrote Townsend a letter of recommendation that was positive in all respects. It praised Townsend's "high quality teaching skills and excellent communication skills." Ohnesorgen added: "I strongly recommend that [Townsend] be given the highest of considerations for any teaching positions for which he applies."

The 2001-2002 school year was an evaluation year for Townsend. Townsend was permanent at the time. In the fall of 2001, Ohnesorgen and Townsend met to discuss the upcoming evaluation. Sometime in November 2001, Ohnesorgen indicated that Townsend's classroom observation would occur in January 2002.

On November 13, 2001, Ohnesorgen conducted a drop-in observation of Townsend's class and was pleased to see Townsend's students on task and relating well to the reading lesson. In a note Ohnesorgen left for Townsend, Ohnesorgen requested that Townsend meet with him to schedule the evaluation.

On November 16, 2001, Ohnesorgen and Townsend met to discuss the evaluation. Prior to this meeting, Townsend had written to ask for a written retraction of the "not a team player" comment but Ohnesorgen never responded. At this meeting, Townsend asserted that Ohnesorgen had, in fact, called him "not a team player." Ohnesorgen denied this. Ohnesorgen reminded Townsend that he had given him a favorable letter of recommendation. Townsend responded that Ohnesorgen's recommendation would mean nothing if Ohnesorgen were not prepared to back it up if called personally by a prospective employer. Townsend testified that he agreed to disagree with Ohnesorgen on the question of whether Ohnesorgen made the team-player comment. Townsend believed that the "not a team player" comment could "destroy his career" if it spread throughout the District.

Townsend prepared a chronology of events in November 2001. Included is a reference to the November 16 meeting in which Ohnesorgen is noted as denying ever making the statement. After this exchange, Ohnesorgen is reputed to have noted Townsend's Association activities and suggesting that might have "something to do" with the rumor. This would contradict Townsend's claim that this Association reference occurred at the earlier October 3 meeting. [3]

At the hearing, Ohnesorgen again denied he made any reference to Association activities. He denied knowing of any of Townsend's activities in connection with the Association. Ohnesorgen denied knowing of Townsend's application to Elbow Creek or

[3] Townsend claimed he did not receive Pitkin's letter in the mail until after October 11; the suggestion being that Ohnesorgen had advance knowledge of the "team player" comment at the October 3 meeting. Based on Townsend's notes, I find that this comment did not occur until the November 16 meeting. I do not believe it likely that the first time the team player comment came up that Townsend would have probed into the area Association activities. On October 11, 2001, Townsend wrote a second letter to Van Andel reminding her of his previous request for interview scores, because he had not received Pitkin's September 28 letter yet.

having any input in the selection process. It was not his experience to be contacted by another principal whenever a teacher was seeking a transfer.[4]

At some time in January 2002, Townsend requested that his evaluation be postponed. Ohnesorgen agreed to this request. At no time had Townsend been criticized for his classroom performance.

The collective bargaining agreement contains an article with provisions for a Peer Assistance Review (PAR) Program. These provisions require that a permanent teacher receiving an unsatisfactory evaluation be referred to the PAR Program. An unsatisfactory evaluation results from three or more "needs improvement" ratings. Under this program, a mentor teacher is assigned to the teacher requiring assistance and directed to work on improvements through multiple classroom observations, conferences and other forms of assistances. Only two mandatory PAR referrals occurred in the 2002-2003 school year. Pitkin testified that it is extremely unlikely that anyone referred to PAR would eventually be terminated, noting the requirements of the Education Code requirements for cause for termination and the significant burden of the administrative hearing process. Pitkin reviewed Townsend's personnel file prior to the hearing and found it to be a "clean" file.

Times Delta Newspaper Article

Fairview Elementary School is designated as a Title I[5] school because of high numbers of students with low socio-economic indicators and language barriers. It is well documented

[4] An Association grievance committee member told Townsend that it was common for principals to discuss candidates they intend to hire. However, Townsend was not selected so he was not an intended hire. I believe it more likely that principals would not discuss applicants because of the potential repercussions to the teacher as a result of exposing a desire to transfer.

[5] Title I is a federal program providing supplemental financial assistance to needy school districts. Thirty percent of the students are English-language-learners and ninety percent of the students qualify for subsidized lunches.

that Title I schools typically face greater challenges in achieving satisfactory test scores in the standards-based curriculum of California's elementary schools. A consulting service for the District, Data Works, studied the test results of Fairview Elementary School and prepared a report of its assessments of student work at the school site. The Data Works assessment revealed that the upper grades (fourth, fifth and sixth) were not performing at grade level expectations under the California content standards. For example, in language arts, the Data Works report revealed that only 43 percent of fourth graders, 40 percent of fifth graders, and 23 percent of sixth graders were performing at grade level. Similarly, in mathematics, 33 percent of fourth graders, 44 percent of fifth graders, and 33 percent of sixth graders were performing at grade level.

A copy of the Data Works report was leaked to a local newspaper reporter. The reporter from the Times Delta newspaper contacted Ohnesorgen for his comment on the report. In an article published on April 30, 2001, Ohnesorgen was quoted as saying, "It was clear that at sixth grades [sic], the majority of work the kids were doing was not at grade-level standard."

Townsend read the report and was upset that the school's four sixth-grade teachers were singled out. He expressed his concern to Ohnesorgen. Townsend asked Ohnesorgen to request that a correction be printed acknowledging the "error" in the article, due to its failure to fairly characterize the Data Works report as revealing that all of the upper grades suffered deficiencies. Ohnesorgen refused to do so, and told the teachers he stood by his comments.

At the hearing, Ohnesorgen credibly testified that all of the data was reviewed when he was interviewed and that he made similar comments about the performance of the fifth and sixth grade. Nowhere in the article was Townsend's name mentioned or his class specifically singled out. The Data Works report revealed that the lower grades were also not performing at grade level standards.

Resource Materials

During the 2001-2002 school year, Maureen Bonds was a Title I resource teacher at Fairview. She had a variety of duties, including assisting in student assessments, providing resource materials to teachers, and serving as literacy coach for the kindergarten through third grades. Tim Budds served in a similar capacity, focusing on the grades three through six. During the 2000-2001 school year, Bonds and Budds were conducting the Developmental Reading Assessment (DRA) for the students at Fairview. They had completed the initial testing using the DRA tool. The scores had been recorded with the DRA testing kit. The DRA kits were turned into Room 31. After completion of the assessments, the kits were to be returned to the teachers.

During the 2001-2002 school year, the teachers were to perform the DRA assessment. In October 2001, Townsend made a request to Bonds for his DRA testing kit because his had not been returned. Townsend believed that the other teachers had received theirs. Townsend did not get a response from Bonds, so he repeated his request to Bonds in November. Budds acknowledged to Bonds in November that he was aware that Townsend had not received his testing kit. Bonds advised Townsend to see Budds about the problem. After returning from being off track in December, Bonds acknowledged to Townsend that she was attempting to retrieve the DRA kit for him.

Townsend wrote to Ohnesorgen on February 4, 2002, that Bonds and Budds had still not succeeded in locating his DRA testing kit. Eventually, sometime later that month, Bonds and Budds decided to resolve the issue by giving Townsend Bonds's own DRA testing kit.

In the February 4, 2002, letter, Townsend also claimed that the student files for the DRA testing had not been returned to him. Bonds testified that all the student files were located in Room 31 and had been there since July 2001. She had advised the teachers to

retrieve the files from Room 31 themselves. According to Bonds, Townsend failed to retrieve his, despite the advice given. Bonds directed Budds to assist Townsend in locating the student files. Bonds acknowledged that Townsend may have been confused about the location of the student files due to the separate issue of the DRA testing kit.

The Fairview teachers took part in a series of in-service sessions in January and February of 2002. Prior to the January 28, 2002, session, Bonds issued a notice of required reading for the sessions. This included a chapter of a book entitled, Guided Readers and Writers Book. In February 2002, Townsend reported to fellow teacher Kim Gonzales that he did not have a copy of the book. Gonzales indicated that she had obtained her copy from Room 31. The two of them went to the shelf where Gonzales had obtained hers, but there were no more books there. Townsend contacted Bonds, who acknowledged that the supply had been exhausted and that she had ordered more. A couple of days before a scheduled February 20 in-service, Ohnesorgen personally delivered a copy of the particular chapter assigned for that session.

The February 25 Staff Development Meeting

On February 25, 2002, another staff development session was held. Jim Sullivan, the session leader, presented a program called Focus on Achievement. The purpose of the program is to assist students in improving their SAT 9 scores. The meeting lasted approximately an hour to an hour and a half. Fifteen to twenty staff members attended.

Townsend was seated at the table next to Gonzales and Ohnesorgen. Ohnesorgen heard Gonzales ask Townsend, "You still don't have a book?" When Townsend admitted he did not, Ohnesorgen turned and asked if that was true. Townsend replied that he had borrowed Gonzales's book to prepare.

While Townsend and Gonzales were having a discussion about language arts teaching materials, Ohnesorgen commented that the District was in the process of aligning all textbooks to the state standards. Ohnesorgen also added that the MacMillan textbook the teachers were using would be phased out because it did not meet state standards. Townsend responded that he had personally reviewed the book and believed that "98 percent" of the book met state standards and that, at the very least, it was good supplemental material. Ohnesorgen replied that supplemental texts would no longer be allowed either.

According to Townsend, Sullivan introduced his Focus on Achievement program with the qualifier that it did not constitute good teaching and that it was not to replace any of the District's math or language arts programs then in use. He explained that the intent of the program was to teach test-taking skills and familiarize students and teachers with the state standards. Toward the middle of the meeting, Townsend raised his hand. He began to ask a question: "If this program is not good teaching, and is not a good program for teaching language and math skills, then . . . ."

Before finishing, Ohnesorgen interrupted him and said in an angry voice, "I don't want to hear that kind of talk. This program has been proven by studies. . . . This is a good program." Dumbfounded at Ohnesorgen's emotional response, Townsend asked "Are you mad?"

Ohnesorgen answered, "Well, yes, I am mad, when you ask such a bizarre question that has no basis." According to Townsend, Ohnesorgen spoke at length for approximately two to five minutes. During this time many of the teachers bowed their heads, recognizing that Townsend was being upbraided by Ohnesorgen. Among other statements Townsend attributed to Ohnesorgen were, "This is bizarre," and "We don't need this kind of dissension."

Townsend attempted to correct Ohnesorgen by denying that he had questioned the validity of the program.

Ohnesorgen testified that he raised his voice because Townsend's question was yet another interruption of the presentation, as well as a mischaracterization of Sullivan's description of the program. Ohnesorgen recalled two or three teachers asking questions that interrupted the flow of the presentation. He recalled Townsend asking more than one question. Ohnesorgen estimated his comment lasted approximately one minute. He asserted that his comments were not directed solely at Townsend, but to the entire staff.

In Ohnesorgen's mind, Townsend's question was rhetorical. He interpreted it as a statement or remark on validity and purpose of the program rather than a true inquiry. Sullivan had suggested that the program not be used as a base math instructional program, but as a supplement to be used in 15-minute, isolated lessons. The intent was to have teachers focus on specific standards in reading and math. Teachers were to employ short, incremental lessons in reading and math as well as practice test-taking strategies.

William Taylor, another Fairview Elementary School teacher present at the meeting, testified that Sullivan's statement immediately preceding Townsend's question was something to the effect that the Focus on Achievement strategies were not "best practices", but were helpful in assisting students achieve higher scores on the SAT 9. Taylor agreed with Townsend's estimate that Ohnesorgen spoke for about five minutes, noting that he happened to look at his watch. In his view, Ohnesorgen's speech was directed at Townsend alone. Taylor was shocked at Ohnesorgen's response. He believed that Townsend's question only repeated one of Sullivan's characterization, and recalled Townsend attempting to explain he didn't mean to criticize the materials. Taylor recalled that there was "deafening silence" during

Ohnesorgen's speech. In Taylor's three years on the staff, he had never witnessed Ohnesorgen address a teacher in the manner he had Townsend.

Bonds was present also at the meeting. She testified that Ohnesrogen's speech lasted between one and two minutes. She believed that the intent of Ohnesorgen's speech was not directed at Townsend personally, but to the entire staff, with the purpose of moving the meeting along. Bonds believed that Ohnesorgen could be brusque in his interpersonal relations. Bonds agreed with Ohnesorgen that Townsend's questions were rhetorical, and she did not believe Townsend's question was really intended at soliciting a response from Sullivan. She believed it was merely a preface to an opinion Townsend intended to offer regarding his own teaching philosophy.

Ohnesorgen's comments at the February 25 meeting mortified Townsend. Townsend explained that some of his fellow teachers consoled him while others seemed to distance themselves from him. Townsend sensed a crisis as a result of the dressing-down he had received and because of the other issues that seemed to be accumulating at the school site.

Counseling from Sheklian

Within a few days of the February 25 meeting, Townsend contacted Myron Sheklian to request a meeting. Sheklian had been a friend of both Townsend and his wife for many years. Sheklian granted the meeting.

Townsend's colleagues, Gonzales and Stewart, accompanied Townsend to the meeting to verify Townsend's account. Townsend described the February 25 outburst. He expressed concern about Ohnesorgen's emotional stability, believing that it would lead to a negative performance evaluation. Townsend asked Sheklian if the evaluation could be postponed while he attempted to obtain a transfer. In the alternative, Townsend requested that he be assigned a different evaluator. He told Sheklian if he didn't get help, he might be forced to resign.

Sheklian stated that he did not believe he could grant any of the requests. Sheklian suggested that Townsend "hang in there."

Sheklian is one of two District area administrators responsible for the elementary schools. Sheklian had been told that only the human resources director had the power to change an evaluator. Sheklian recalled that Townsend wanted to resign if he could not have his evaluator changed. He quoted Townsend as saying, "I have a perfect record and I'm not going to let one guy ruin it."

Sheklian expressed surprise over Townsend's intentions. He told Townsend that quitting would not be a good idea and asked Townsend if he had any concrete evidence that he would receive a negative evaluation. Townsend stated that he did not. As a result, Sheklian suggested that Townsend await the outcome of the evaluation process. Sheklian also believed that if the evaluation turned out negative, Townsend still had the option of resigning then before the evaluation was formally placed in his personnel file. Sheklian had in mind the idea of making the District an offer to resign in exchange for destruction of the written evaluation prior to its entry in the file.[6]

Townsend's Resignation

Townsend was under great stress during this period. His last day of work on campus was March 15, 2002. Thereafter, he was absent for five days due to illness. Townsend performed official duties for the District between March 25 and March 28, when he attended an off-campus science program with students. Townsend then went off-track on March 28, 2002. He did not return to work thereafter.

[6] Pitkin testified that he was not aware of a teacher ever resigning in response to a negative evaluation. There was some dispute about whether Sheklian, or any District official could postpone an evaluation. Taylor conceded on cross-examination that if he were in Townsend's place, he would not have resigned.

On April 30, 2002, Townsend submitted his resignation in writing, effective "immediately" to the personnel department. No one from the District contacted Townsend to inquire further concerning his letter of resignation. However, on May 3, 2002, the District issued a notice of accounting indicating Townsend's final pay status. The notice mailed to Townsend indicated Townsend's last day of work as being March 28, 2002. As a result of the accounting, the District claimed an overpayment of $2,851. The original was issued to the human resources department with a copy to Townsend. By letter addressed to Van Andel dated May 6, 2002, Townsend responded to the notice and objected to the overpayment. He requested offsets for various paid extra duty activities he had completed. Townsend expected some acknowledgement of service rendered before receiving an impersonal overpayment notice.

On May 22, 2002, District Superintendent Dan A. Carrizosa wrote to Townsend indicating that the District's governing board had accepted his request for a resignation and that his resignation was deemed effective on March 28, 2002.

The overpayment was ultimately reconciled and the District settled on an amount much less than the $2,800 figure.

Susan Townsend also resigned in the fall of the 2002-2003 school year, after deciding to relocate with Townsend to another city. In contrast to Townsend's separation, when Ms. Townsend resigned, she was thanked for her service to the District with a going-away party.

Following his resignation, Townsend applied for a position with a financial services firm, A. G. Edwards. He was initially offered a position. However, the offer was withdrawn without explanation. Townsend believed this was suspicious. Townsend also applied with an ocean diving company owned by a sole proprietor. Although the owner could not hire him,

Townsend asked as a favor that the owner inquire with the District for a recommendation. The owner later reported back that the District had failed to respond. Susan Townsend requested but did not receive a recommendation from her principal.

Sometime after Townsend resigned, school board member Nissan Foster resigned from the board and was quoted in a newspaper article as claiming that Van Andel and Carrizosa conspired with other board members to "squash the little people," and that District management had been unfair to certain Association leaders who were labeled "a cancer."

Credibility Determinations

The key credibility disputes involve whether Ohnesorgen told Townsend he was not a team player, whether Ohnesorgen and Pitkin referred to Townsend's Association activities in their conversations with him about the "team player" comment, and whether Ohnesorgen and others had knowledge of those activities.

I credit Townsend's claim that Ohnesorgen said he was not a team player. Townsend has contemporaneous documentation in the form of letters to Ohnesorgen and notes to himself about the comment. I do not believe Townsend would have spent as much time on the issue if Ohnesorgen had not made the comment. Ohnesorgen offered his bare denial. I also found Ohnesorgen's demeanor to be questionable at times during the hearing. His answers were for the most part clipped and he appeared to somewhat resent having to participate in the proceedings.

If Ohnesorgen suggested that Townsend's Association activities "didn't help" the perception that Townsend was not a team player, he must have known of those activities. Ohnesorgen would likely have known that Townsend ran for site representative as that was a local site matter. I do not believe a teacher's speech at a closed-to-members ratification

meeting would normally come to the attention of a school principal.[7] I do believe Townsend's participation in the Association's insurance committee and the joint labor-management insurance committee is something that would typically become known within the school community eventually. In addition, there is some contextual evidence of anti-union animus within the District, and I do credit Townsend's account of his speech having a significant impact in the voting down of the tentative agreement in 2000. I therefore find that Ohnesorgen did have knowledge of at least some of Townsend's protected activities. I do not believe however that Ohnesorgen would have known of Townsend's speaking at the board meeting rally as such an inference is not adequately supported in the record.

I also credit Townsend's claim that Ohnesorgen made the comment that his Association activities possibly contributed to the perception that he was not a team player. I do so mainly because of the notes Townsend took of his encounters with Ohnesorgen citing the November 16 meeting. Although not dated, I find these notes sufficiently authenticated and to have been made at or near the time of the events in question, before Townsend would have likely formed any intention to seek redress for retaliation.

I do not believe Pitkin ever mentioned Association activities in his conversation with Townsend. There was no reference to this matter in any of the substantial documentation Townsend filed with his charge and moved into evidence. Townsend also waited until cross-examination to bring the matter up. I found Pitkin to be a forthright witness and very professional in his approach to labor-management relations. He had little or no interest in mentioning the matter to Townsend, either for the purpose of subtly intimidating him or offering him professional counseling. It was Townsend, not Pitkin, who requested the

[7] There was no evidence that Ohnesorgen attended the February 2000 board meeting or witnessed Townsend speak on that occasion.

meeting, and, as Pitkin credibly testified, he offered very little advice to Townsend during their meeting.

Any other credibility disputes suggested by the evidence are not critical for purposes of deciding this case, and I therefore decline to address these matters.

ISSUE

1. Was the unfair practice charge timely filed?

2. Did the District constructively discharge Townsend in retaliation for his protected activities?

CONCLUSIONS OF LAW

Timeliness of the Charge

The District contends that the unfair practice charge was not timely filed. In order to be timely, a charge must be filed within six months of the occurrence of the alleged unfair practice. (Sec. 3541.5(a).)[8] The limitations period begins to run once the charging party knows, or should have known, of the conduct underlying the charge. (Gavilan Joint Community College District (1996) PERB Decision No. 1177.) The charging party bears the burden of demonstrating that the charge is timely filed. (Tehachapi Unified School District (1993) PERB Decision No. 1024; State of California (Department of Insurance) (1997) PERB Decision No. 1197-S.)

Townsend is claiming he was constructively discharged. Constructive discharge is a legal term of art denoting an essentially involuntary resignation from employment occasioned by working conditions made intolerable by the employer. Townsend's resignation from employment occurred as a result of his letter of resignation dated April 30, 2002. Townsend

[8] Section 3541.5(a)(1) prohibits PERB from issuing a complaint with respect to "any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge."

requested that his resignation be accepted "immediately." The District did not formally respond to the letter until the District's governing board took action at its May 21, 2002 meeting. At that meeting, the school board "received the report" of Townsend's resignation, "effective March 28, 2002," and so notified Townsend by letter dated May 22, 2002.

The District asserts that, to the extent Townsend believes he was coerced into resigning, all acts on the District's part amounting to coercion occurred no later than his meeting with Sheklian sometime in the first week of March. The District cites testimony of Townsend that he had decided to quit as early as the first week of March. Moreover, the District argues, Townsend ceased to work for the District or have contact with any District employees by March 15, 2002.

The District attempts to frame the issue as a determination of either the last act on the District's part that resulted in Townsend's decision to resign, or the date he actually formed the decision to resign. The District cites no authority supporting its contention, other than to argue that the limitations period begins to run from the date the charging party discovers the "complained-of" conduct. I reject this argument.

A constructive discharge involves a separation from employment. That is the conduct of which Townsend complains; that is the conduct for which he seeks a remedy. Townsend's letter of resignation, intended to be effective immediately, was dated April 30, 2002. Until he gave notice of his resignation, the District had no legal grounds to consider him no longer employed, and therefore his formal status remained that of a District employee.

In Hacienda-La Puente Unified School District (1988) PERB Decision No. 685, PERB held that the date of constructive discharge was the date the employee tendered a second "conditional" letter of resignation, rather than the subsequent date when the school board officially accepted the employee's tendered resignation. The employee attempted to retain his

right to employment by requesting a leave while he transferred to a position outside the school district, and did so by submitting his first "conditional" letter of resignation. The school district rejected the employee's attempt to tender a resignation with that condition, and so notified him. Since a reasonable employee would have known or should have known after such notification that the second attempt to tender a conditional resignation would be rejected, PERB relied on the date of the second letter of resignation. While Hacienda-La Puente does not directly address the District's contention here, I deem the case to be controlling authority in this case. Its reliance on the date that the employee effectively communicates the decision to resign is the most logical and practical rule to follow. The District's rule, requiring ascertainment of the date the employee subjectively decides to resign, would be impractical and lead to inconsistent results.

The charge in the instant case was filed on September 27, 2002. Townsend's letter of resignation was submitted on April 30, 2002, well within the six months limitation period. Therefore, I find that the charge is timely filed.

The Constructive Discharge

The complaint alleges that the District retaliated against Townsend by constructively discharging him. This action is alleged to have occurred "because of" Townsend's exercise of activities protected under the EERA, i.e., that he suffered discrimination in employment on the basis of protected activities.[9]

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[9] Section 3543 provides, in pertinent part:

> (a) Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. . . .
>
> (b) Any employee may at any time present grievances to his or her employer, and have such grievances adjusted, without the

To prove a violation of discrimination, the charging party bears the initial burden of showing evidence that (1) the employee each engaged in protected activity, (2) that the employer knew of the activity, and (3) that the protected activity was a "motivating factor" in the employer's decision to take adverse action against him. (California State University, Hayward (1991) PERB Decision No. 869-H; Novato Unified School District (1982) PERB Decision No. 210 (Novato).) Motivation may be proven by either direct or circumstantial evidence, or a combination of both. (Carlsbad Unified School District (1979) PERB Decision No. 89.)

Once protected activity is established to be a motivating factor, the burden shifts to the employer to demonstrate that it would have taken the same action even in the absence of the protected conduct. (Novato; Martori Brothers Distributors v. Agricultural Labor Relations Bd. (1981) 29 Cal.3d 721, 730 [175 Cal.Rptr. 626].)

PERB has adopted a specific test for cases of discrimination involving constructive discharge. Under this test, the "adverse action" element is treated as having certain specific requirements. (See Palo Verde Unified School District (1988) PERB Decision No. 689.) The charging party must show that (1) the burden imposed upon him caused, and was intended to cause, a change in working conditions so difficult or unpleasant as to force him to resign; and (2) the burden was imposed because of the employee's protected activities. (Hacienda-La Puente Unified School District (1988) PERB Decision No. 685; State of California (Secretary

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intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

of State) (1990) PERB Decision No. 812-S; Crystal Princeton Refining Co. (1976) 222 NLRB 1068, 1069 [91 LRRM 1302].)

In terms of protected activities, the complaint alleges that Townsend engaged in what amounts to a number of acts of self-representation, including challenging Ohnesorgen's description of him as "not a team player," seeking correction of the Weekly Reader payment problem, requesting replacement of the teacher's aide, and requesting someone other than Ohnesorgen be his evaluator. However, the unfair practice charge filed in the case shows that Townsend has from the outset relied instead on his activities undertaken in connection with the Association.[10] For purposes of deciding this case, I will focus on the activities in connection with the Association.[11]

The working conditions that figured most prominently in Townsend's decision to resign were those related to the requests Sheklian declined to grant. Townsend sought Sheklian's help because he believed he was going to receive a negative evaluation. Normally, this alone does not meet the test of a retaliatory constructive discharge because such a change in working conditions is not deemed to be sufficiently onerous. (State of California (Secretary of State), supra, PERB Decision No. 821-S.) Nevertheless, each case must be decided on its own merits. In this case, Townsend believed he was going to get a negative evaluation from Ohnesorgen.

[10] These activities included running for site representative, serving on the two insurance committees, and speaking out against the Association leadership regarding the tentative agreement proposed for ratification. There was no mention of Townsend's self-representation activities in his opening statement or his post-hearing brief.

[11] Senate Bill 1960, effective on January 1, 2001 amended section 3543. (Stats. 2000, chap. 893.) One of the language changes was deletion of the portion of subdivision (a) guaranteeing employees "the right to represent themselves individually in their employment relations with the public school employer. . ." This poses a significant question as to whether activities undertaken by the employee solely on their own behalf is still protected. (Compare Pleasant Valley School District (1988) PERB Decision No. 708 and Meyers Industries (1984) 268 NLRB 493 [115 LRRM 1025].)

The immediate problem for Townsend's theory of the case is that, as far as Sheklian was able to determine, Townsend could not articulate any grounds for believing Ohnesorgen would actually give him a negative evaluation. As the record reflects, there was never any indication that Townsend was deficient in the classroom or that Ohnesorgen had been critical of him in this area. Ohnesorgen had praised Townsend in the 1999-2000 evaluation cycle, around the time that Townsend spoke out against the tentative agreement. He called Townsend an exceptional teacher and gave him the "highest recommendation." In November 2001, he insisted he still stood by that evaluation. Ohnesorgen praised Townsend for a good classroom observation in the same month. There was nothing to indicate that Ohnesorgen was so unprincipled as to fabricate grounds for a bad evaluation. If he had intended to do so, it is unlikely he would have agreed to postpone Townsend's observations.

Regardless of where Townsend rated on classroom ability, even if Townsend were criticized for showing poor judgment or being lacking in interpersonal skills – the only performance criteria contemplated by the notion of not being a team player – it is highly unlikely that Townsend would even have been referred to PAR. It is even less conceivable that Townsend would have been unable to rectify these issues if he had been referred to PAR.

Townsend never expressed a fear of imminent termination and he admitted that his motivation for seeking Sheklian's assistance was that he was determined not to allow Ohnesorgen to blemish his otherwise impeccable work record. As Pitkin suggested, Townsend held a high opinion of himself and his career record. Much of this appears to have developed while Townsend worked in the insurance field. The record also demonstrates that Townsend tended to over-react to the perceived attacks on him. For example, he expressed that the circulation of the view that he was not a team player would ruin his career in the District. He could not fathom being rejected by Elbow Creek in favor of new teachers, who might have

been preferred, not because they were necessarily better teachers, but because they might be more receptive or malleable in terms of being directed toward a common goal. As reflected in Townsend's discussions about the MacMillan text being phased out and his comments at the February 25 meeting that provoked Ohnesorgen's outburst, Townsend tended to have strongly held views about curriculum and teaching methods.

As noted above, State of California (Secretary of State), supra, PERB Decision No. 812-S held that fear of a negative evaluation by itself is insufficient to compel a finding of intolerable working conditions. Thus, unless Townsend can demonstrate additional onerous working conditions, his claim of constructive discharge must fail.

Townsend claims that he was denied resource materials and aide time. At most, the delay in Townsend obtaining the return of his DRA testing kits and files amounted to an inconvenience that did not materially impede his ability to complete his educational duties. Similarly, his inability to secure the reading materials for staff development activities only delayed, but did not prevent, his preparation. These incidents were proven only to be inconveniences and there no evidence to suggest that Ohnesorgen actually directed these to occur. There is also evidence that Ohnesorgen dealt with Townsend in a cordial and respectful manner with respect to these issues, even if they did not always get resolved promptly.

The matter concerning the Weekly Reader is another example of Townsend's overreaction to what he subjectively perceived as a campaign by Ohnesorgen to frustrate him. Townsend's theory of the case would suggest that in the fall of 2001 Ohnesorgen had developed a motive to retaliate for Townsend's protected activities, more than one year earlier. I do not find this credible.

Also difficult to credit is the notion that there existed a wider conspiracy emanating from Van Andel or others that would have included the Elbow Creek principal and members of

the interviewing panel, resulting in Townsend's failure to obtain one of the vacant positions at Elbow Creek. There was nothing to suggest that the interviewing panel, likely composed of fellow teachers, would have agreed to participate in such retaliatory conduct, or that Ohnesorgen attempted to undermine his candidacy.

The remaining adverse acts alleged to have been imposed by Ohnesorgen involve the ridicule he was subjected to as a result of the Times Delta article and the verbal reprimand at the February 25 meeting. Because the Times Delta article never referred to Townsend by name, and was not factually inaccurate, there is little if any injury to the professional reputation of Townsend. This again is a claim that is premised on a highly subjective interpretation of events of Ohnesorgen embarking on a campaign to harass and demoralize Townsend that I find unsupported in the record. I credit Ohnesorgen's testimony that he did not intend to single out the sixth-grade teachers, but only responded to questions asked of him.

The February 25 verbal reprimand was more of a personal attack directed at Townsend alone. However, I find that Townsend's question was rhetorical and therefore disruptive to the presenter. The record as a whole supports an inference that Townsend had strong views on curriculum matters and projected a feeling of rectitude about them. Ohnesorgen was trying to move the presentation along and avoid embarrassment to his invited speaker. While Townsend came to believe that Ohnesorgen was irrational and unstable at the time of his outburst, he ignores the mounting incidents in which he provoked Ohnesorgen: his voicing disagreement about whether the Macmillan text conformed to state standards, his insistence that Ohnesorgen retract his statement to the Times Delta reporter, his insistence that Ohnesorgen explain why he was not a team player, his questioning whether Ohnesorgen would stand by his letter of recommendation, and his threat to contact Sheklian regarding the Weekly Reader bill.

Considered in its totality, the alleged acts of harassment on the District's part fail to demonstrate that Townsend's conditions of employment were made intolerable.

Because I find that Townsend has failed to demonstrate that his working conditions were made so intolerable as to demonstrate the element required for a constructive discharge, it is not necessary to determine that the adverse working conditions were imposed because of Townsend's protected activities. Nevertheless, I find Townsend has failed to meet his burden of showing that Ohnesorgen was motivated to retaliate because of Townsend's protected activity. The adverse actions do not reveal a pattern of pretextual responses on Ohnesorgen's part. Furthermore, there is scant evidence that Ohnesorgen personally had any motive to retaliate for protected activities or that he would have been directed to do so by other management employees.

Accordingly, I find that Townsend has failed to demonstrate that the District engaged in acts that would amount to a retaliatory constructive discharge. Therefore, I find that the District did not violate section 3543.5(a) of the EERA. The complaint is hereby dismissed.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the unfair practice charge in Case No. SA-CE-2128, Bruce P. Townsend v. Visalia Unified School District and companion Public Employment Relations Board (PERB or Board) complaint are hereby DISMISSED.

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 within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (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 mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, secs. 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, sec. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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, 32140, and 32135(c).

Donn Ginoza
Administrative Law Judge