STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA FACULTY ASSOCIATION, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	Case No. LA-CE-784-H PERB Decision No. 1823-H February 23, 2006

Appearances: Rothner, Segall & Greenstone by Bernhard Rohrbacher, Attorney, for California Faculty Association; Donald A. Newman, University Counsel, for Trustees of the California State University.

Before Duncan, Chairman; Whitehead and Shek, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Trustees of the California State University (CSU) to an administrative law judge's (ALJ) proposed decision (attached). The unfair practice charge alleged that CSU violated the Higher Education Employer-Employee Relations Act (HEERA)[1] by conditioning agreement on the parties' memorandum of understanding (MOU) on the waiver of a statutory right. The California Faculty Association (CFA) alleged that this conduct constituted a violation of section 3571 of HEERA.

We have reviewed the entire record in this case, including, but not limited to, the unfair practice charge, answer to the complaint, CFA's opening brief, post-hearing briefs from both parties, and CFA's reply brief to the CSU post-hearing rebuttal brief, exceptions filed by CSU,

[1]HEERA is codified at Government Code section 3560, et seq.

CFA's response, and CSU's request for oral argument. We find the proposed decision of the ALJ to be free of prejudicial error and adopt it as the decision of the Board itself.

DISCUSSION

CSU requested oral argument in this case stating that the issues are "fundamental principles of shared governance and peer review and affect the manner in which the academic community functions and participates in its own Governance." (CSU's Request for Oral Argument.)

PERB Regulation 32315[2] provides:

> A party desiring to argue orally before the Board itself regarding the exceptions to the proposed decision shall file with the statement of exceptions or the response to the statement of exceptions a written request stating the reasons for the request. Upon such request or its own motion the Board itself may direct oral argument.

CSU has met the requirements of this section but the request is denied by the Board because it is determined to be unnecessary in this case because the briefs submitted adequately presented the issues and positions of the parties, and the factual record is sufficient to support the Board's decision. (Anaheim Union High School District (1982) PERB Decision No. 201.)

The issues here surround restrictions on the authority of arbitrators. Education Code section 89542.5 was enacted by the Legislature before the enactment of HEERA and was then later amended by the Legislature. It provides that the decision of the arbitrator is final. Over the years CSU has issued executive orders related to the grievance/disciplinary processes that limited the authority of the arbitrator.

HEERA section 3572.5(a) provided that the Education Code section could be superseded by an MOU. Legislation went into effect January 1, 2002, that deleted Education

[2]PERB regulations are codified at California Code of Regulations, title 8, section 31001, et seq.

Code section 89542.5 from that supersession section. That change stated that the Education Code section could be superseded by an MOU only if the agreement provided more than the minimum level of benefits or rights set forth in that section.

It is clear from the legislative history and plain language of the statutory changes brought about by that legislation that it caused a change and established that a heightened standard of review cannot be imposed on the arbitrator by the parties in their collective bargaining agreement or memorandum of understanding. We, therefore, find that the ALJ correctly determined the new legislation set minimum statutory rights that were not subject to negotiations and correctly decided the case.

ORDER

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571.

Pursuant to HEERA section 3563.3, it is hereby ORDERED that CSU, its administrators and representatives shall:

A. CEASE AND DESIST FROM:

1. Insisting to impasse on a proposal that would limit the remedial authority of an arbitrator in faculty status disputes, and thereby unlawfully condition agreement on waiver of a statutory right.

2. Interfering with the right of employees to be represented by the California Faculty Association (CFA), the exclusive representative of Bargaining Unit 3.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF HEERA:

1. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all work locations in the CSU system where notices to Bargaining Unit 3 employees are customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSU, indicating that CSU will comply with the terms of the Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. CSU shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on CFA.

Members Whitehead and Shek 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-784-H, California Faculty Association v. Trustees of the California State University, in which all parties had the right to participate, it has been found that the Trustees of the California State University violated the Higher Education Employer-Employee Relations Act, Government Code section 3571.

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

CEASE AND DESIST FROM:

1. Insisting to impasse on a proposal that would limit the remedial authority of an arbitrator in faculty status disputes, and thereby unlawfully condition agreement on waiver of a statutory right.

2. Interfering with the right of employees to be represented by the California Faculty Association, the exclusive representative of Bargaining Unit 3.

Dated: _____

TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY

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 FACULTY ASSOCIATION, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent.	UNFAIR PRACTICE CASE NO. LA-CE-784-H PROPOSED DECISION December 20, 2004

Appearances: Rothner, Segall and Greenstone by Glenn Rothner, Attorney, for California Faculty Association; Donald Newman and Janette Redd Williams, University Counsel, for Trustees of the California State University.

Before Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

The California Faculty Association (CFA) initiated this action on October 15, 2003, by filing an unfair practice charge against the Trustees of the California State University (CSU). The Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint on December 4, 2003. The complaint alleges that CSU failed to participate in the impasse procedure in good faith by insisting to impasse on a grievance procedure that did not maintain contractual restrictions on arbitral authority in certain disputes involving faculty. The complaint alleged:

> 3. On or about December 10, 2001, Charging Party and Respondent initiated negotiations concerning Article 10 (grievance procedure) and Article 19 (disciplinary procedure) of the parties' MOU, seeking to harmonize those provisions with the requirements of Education Code section 89542.5. Beginning on or about August 25, 2002, Charging Party and Respondent participated in impasse procedures concerning these subjects pursuant to Government Code sections 3590 through 3593.

> 4. On or about June 17, 2003, Respondent informed Charging Party that it would not enter into an agreement on Article 10 unless the agreement preserved the existing contractual limitations on an arbitrator's remedial authority to grant appointment, reappointment, promotion or tenure.

CFA contends that the position adopted by CSU was unlawful under recently enacted legislation sponsored by the union.

The complaint alleges that CSU, by conditioning agreement on the waiver of a statutory right, failed and refused to participate in the statutory impasse procedure, in violation of the Higher Education Employer-Employee Relations Act (HEERA or Act) section 3571(e).[1] By the same conduct, the complaint also alleges, CSU interfered with the right of employees to be represented by CFA, in violation of section 3571(a).

CSU answered the complaint on December 23, 2003, generally denying all allegations and setting forth a number of affirmative defenses. Denials and defenses will be addressed below, as necessary.

A settlement conference was conducted by a Board agent on January 26, 2004, but the matter was not resolved. Administrative Law Judge Thomas Allen conducted a formal hearing in Los Angeles on June 8, 2004, and a briefing schedule was completed on September 8, 2004.

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[1] HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. In relevant part, section 3571 provides that it shall be unlawful for a higher education employer to:

> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> . . . . . .
>
> (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

The matter was reassigned to the undersigned on October 4, 2004. (PERB Regulation 32168(b).) It was submitted for proposed decision at that time.

FINDINGS OF FACT

Jurisdiction

CFA is an employee organization with the meaning of section 3562(f)(1) and the exclusive representative of an appropriate unit of academic employees (Unit 3) within the meaning of section 3562(i). CSU is a higher education employer within the meaning of section 3562(g).

Background

In the early 1970s, two bills were introduced in the Legislature to require CSU to establish statutory grievance and disciplinary action procedures for academic employees. Under the then-current grievance procedure, the final decision in such disputes was made by the CSU chancellor. Both bills failed.

In 1974, CSU adopted Executive Order 201, which for the first time provided a role for an arbitrator as part of a detailed grievance procedure. In brief, a grievance committee was charged with initially determining if a grievance hearing should be held. If the committee's decision was affirmative, an evidentiary hearing was held before a hearing officer or a faculty grievance committee. The scope of authority given to the hearing officer or the committee was limited to determining if procedural violations that substantially prejudiced the grievant had occurred, evidence favorable to the grievant was ignored or the complained of action was arbitrary. If such conduct was found, the committee or hearing officer would recommended a resolution to the campus president. The president was bound to concur with the recommendation except where it was not supported by the findings of the hearing officer or committee, or the president concluded that compelling reasons existed for a different result.

Under Executive Order 201, the president's decision could be appealed to an arbitrator on limited grounds. These included arbitrary action by the president, departure from established procedures, and failure to consider substantial evidence favorable to the grievant. If the arbitrator found affirmatively on any of these grounds, he or she next decided if the president's decision should be upheld, the matter should be remanded to the campus for review, or the committee's recommendation should be upheld. In reaching a conclusion, the arbitrator did not hold a hearing. The decision to take any of the above actions was based only on a review of the record, and the arbitrator was bound by the findings and conclusions of the hearing officer on factual matters. The arbitrator's decision was final and binding on the campus and the grievant.

Executive Order 201 remained in existence until 1976, when Assembly Bill (AB) 804 was enacted as Education Code section 24315. That section later was renumbered Education Code section 89542.5. Under the grievance procedure in that section, a faculty hearing committee hears grievances and disciplinary actions, and makes recommendations to the campus president. If there is a disagreement between the committee and the president, the grievance is sent to an arbitrator. Two provisions of Education Code section 89542.5 are relevant here. Section 89542.5(a)(4) provides:

> If there is a disagreement between the faculty hearing committee's decision and the state university president's decision, the matter shall go before an arbitrator whose decision shall be final.

Education Code section 89542.5(a)(7)(b) provides:

> For purposes of this section, a "grievance" is an allegation by an employee that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like. A grievance does not

> include matters, such as the salary structure, which require legislative action.

In discussing the differences between the grievance procedure in Executive Order 201 and what would become Education Code section 89542.5, the legislative history of AB 804 does not mention the scope of the arbitrator's authority.

With the passage of Education Code section 89542.5, CSU replaced Executive Order 201 with Executive Order 240, which contained a more detailed grievance procedure and provided for a three-person committee to hear grievances. The grievance procedure in Executive Order 240 is summarized immediately below.

The committee was selected from a panel of elected full-time faculty members. After a hearing, the committee prepared a report including findings of fact, conclusions, recommendations and rationale. The authority of the committee was limited.

> The Committee shall determine whether the grievant has demonstrated by a preponderance of the evidence that he or she was directly wronged by the action which gave rise to the grievance. In order to find for the grievant, the Committee must find that the grievant's rights were abridged by, e.g., a procedural violation substantially harmful to the grievant; a failure to take into account substantial evidence favorable to the grievant (as distinguished from considering evidence and evaluating it adversely to the grievant); action which was arbitrary, unreasonable, prejudiced, capricious, or not supported by the evidence; action which was not consistent with appropriate criteria or reasonable standards; and the like. The Committee shall not conclude that a grievant was wronged by an action which resulted from the exercise of reasonable judgment.

With certain limitations, the committee next recommended a remedy to the campus president. The president, in turn, was required to accept the recommendation unless certain factors were present. If there was a disagreement between the committee and the campus president, either the grievant or the president could refer the matter to an arbitrator, along with a complete

record of the proceeding and written argument. No hearing was held before the arbitrator, whose decision was based on the record.

If the arbitrator determined there was no disagreement, he would issue a report stating the reason for the conclusion. If the arbitrator determined that a disagreement existed, he would determine if the president's disagreement with the recommendation was justified. The arbitrator had the authority to find a disagreement if: (1) the committee's findings of fact or conclusions of law were not supported by a preponderance of the evidence or were contrary to law; (2) the committee's recommendations were not consistent with and supported by the findings; (3) there had been a departure from established procedures or the procedures had been erroneously applied in a way that substantially prejudiced the committee's findings and recommendations; or (4) the committee had recommended a remedy beyond the authority of the president or contrary to law.

If the arbitrator found the president's disagreement with the committee's recommendation unjustified, the arbitrator was required to adopt the recommendation. If the arbitrator found the president's disagreement justified, the arbitrator was required to adopt the president's decision. If the arbitrator found that Executive Order 240 procedures had not been followed or erroneously applied so as to have a substantially prejudicial effect on the committee's findings and recommendation, the arbitrator could either adopt the president's decision or cause the committee to reconsider the grievance. After the reconsideration, the matter would follow the same procedure, using the same arbitrator. The arbitrator's decision was final under Executive Order 240 "insofar as consonant with rules and policies of the Trustees, Office of the Chancellor and of the campus, and insofar as consonant with the laws of California and the United States."

In 1978, CSU issued Executive Order 301. In all material respects, Executive Order 301 was similar to Executive Order 240. Executive Order 301 remained in effect until CSU and CFA negotiated their first memorandum of understanding (MOU) in 1983.

HEERA

HEERA became effective July 1, 1979. A so-called supersession statute, HEERA section 3572.5(a) provided that "[i]n the case where the following provisions of law are in conflict with a memorandum of understanding, the memorandum of understanding shall be controlling." Among the provisions of law that fell under the supersession clause of HEERA as originally enacted was Education Code section 89542.5.

In addition, HEERA section 3561(b), provides in relevant part, for the concept of shared governance.

> The Legislature recognizes that joint decisionmaking and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the educational missions of these institutions, and declares that it is the purpose of this chapter to both preserve and encourage that process. Nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices, including the . . . Academic Senates of the California State University, and other faculty councils, with respect to policies on academic and professional matters affecting the California State University . . . . The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved.

The scope of representation excludes the "criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees, which shall be the joint responsibility of the academic senate and the trustees." (Sec. 3562(r)(1).)

Cordelia Ontiveros, senior director for academic human resources and a member of CSU's negotiating team, testified that CSU does not negotiate about the criteria and standards

for retention, tenure, or promotion of faculty because these matters are determined by faculty committees and the Academic Senate, and they do not fall within the scope of representation. Ontiveros further testified that these standards are used in an elaborate process leading to decisions regarding tenure, retention, or promotion for individual faculty members. Disputes concerning faculty status arise from these decisions and ultimately are resolved through the grievance and arbitration procedures.

The MOUs

The parties reached agreement on their first MOU in the early 1980s. Through the years, successor agreements contained limitations on an arbitrator's authority in cases involving appointment, reappointment, promotion or tenure. Many of these were adopted from a factfinder's recommendation in 1984 and have continued to the present. For example, the procedure in the prior MOU provides:

> The arbitrator shall not find that an error in procedure will overturn an appointment, reappointment, promotion, or tenure decision on the basis that proper procedure has not been followed unless:
>
> 1) there is clear and convincing evidence of a procedural error; and
>
> 2) that such error was prejudicial to the decision with respect to the grievant.
>
> The normal remedy for such a procedural error will be to remand the case to the decision level where the error occurred for reevaluation, with the arbitrator having authority in his/her judgment to retain jurisdiction.
>
> An arbitrator shall not grant appointment, reappointment, promotion or tenure except in extreme cases where it is found that:
>
> 1) the final campus decision was not based on reasoned judgment;

> 2) but for that, it can be stated with certainty that appointment, reappointment, promotion, or tenure would have been granted; and
>
> 3) no other alternative except that remedy has been demonstrated by the evidence as a practicable remedy available to resolve the issue.

Other general limitations on the arbitrator's authority have been place in prior MOUs between CFA and CSU. For example, an arbitrator's decision must be based on the evidence and arguments appropriately presented at the hearing and upon post-hearing briefs. And the arbitrator shall have no authority to add to, subtract from, modify, or amend the provisions of the MOU.

The MOU covering the period July 1, 1998 to June 30, 2001, was agreed to in mid-1999 and made retroactive to July 1, 1998. During the negotiations, the parties reached impasse and rights in Education Code section 89542.5 became effective again because the predecessor MOU had expired. To comply with section 89542.5, the CSU implemented Executive Order 702, which contained an interim grievance procedure and became effective March 16, 1999. It continued in effect until the parties reached agreement on a successor MOU a few months later. The grievance procedure in Executive Order 702 was similar to the procedure in the expired MOU. CFA did not challenge Executive Order 702 as undercutting Education Code section 89542.5 rights, or on any other basis.

Senate Bill 1212

On March 19, 2001, Senator Gloria Romero introduced Senate Bill 1212 (SB 1212). The Legislative Counsel's Digest described the bill as follows:

> Existing law relating to higher education labor relations provides that, in the case where various specified statutes conflict with a memorandum of understanding, the memorandum of understanding shall be controlling.

> This bill would, instead, provide that, with respect to a memorandum of understanding entered into on or after January 1, 2002, a prescribed statutory provision provides a minimum level of benefits or rights and shall be superseded by a memorandum of understanding only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights provided by that statute.

The bill was amended several times and signed by Governor Gray Davis on October 12, 2001.

SB 1212 provides that an MOU may supersede conflicting provisions in Education Code section 89542.5 only if the relevant terms of the MOU provide more than the minimum level of benefits or rights set forth in section 89542.5. Thus, SB 1212 amended section 3572.5 to add the following:

> (b) (1) Notwithstanding the inclusion in Section 89542.5 of the Education Code, except with respect to paragraph (5) of subdivision (a) of that section, of a provision providing that, if the statute is in conflict with a memorandum of understanding reached pursuant to this chapter, the memorandum of understanding shall be controlling without further legislative action, unless the memorandum of understanding requires the expenditure of funds, that section, except for paragraph (5) of subdivision (a) of that section, provides a minimum level of benefits or rights, and is superseded by a memorandum of understanding only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights set forth in that section, except for paragraph (5) of subdivision (a) of that section.
>
> (2) This subdivision only applies to a memorandum of understanding entered into on or after January 1, 2002.

SB 1212 also deleted Education Code section 89542.5 from the statutes that were subject to supersession under section 3572.5(a).

On October 12, 2001, SB 1212 became effective. The legislative history surrounding the enactment of SB 1212 will be addressed in the discussion section below.

The parties' MOU expired on June 30, 2001, and they were negotiating for a successor agreement as SB 1212 became effective. Despite the exchange of proposals, the parties fell

into disagreement on several key issues, including but not limited to the scope of an arbitrator's authority in grievances involving tenure, promotion or appointment. CFA took the position that to limit an arbitrator's authority based on maintenance of existing contractual restrictions would run counter to SB 1212 and newly enacted section 3572.5(b)(1) because the unrestricted remedial authority of the arbitrator to provide a "final" decision under Education Code section 89542.5(a)(4) constitutes a minimum right that cannot be superseded by an MOU.[2] CSU, on the other hand, took the position that neither section 3572.5(b)(1) nor Education Code section 89542.5(a)(4) prohibited the parties from limiting the scope of an arbitrator's authority. CSU argued that any newly negotiated grievance procedure must preserve existing contractual limits on an arbitrator's authority.

In an exchange of letters in January and February 2002, the parties agreed to extend the terms of the grievance procedure until agreement on the implementation of SB 1212 or the statutory impasse procedure is completed. Despite their efforts, the parties could not reach an agreement. On August 8, 2002, CFA filed a request for impasse determination with PERB on the ground that the parties had reached impasse with respect to implementation of SB 1212. The parties agreed to submit the dispute regarding the meaning of SB 1212 to PERB for resolution, and on October 15, 2003, CFA filed the instant unfair practice charge.

ISSUE

Did CSU fail to participate in the impasse procedure in good faith by insisting on a proposal that placed limits on the authority of the arbitrator in faculty status disputes, in violation of section 3571(e) and, derivatively, section 3571(a)?

[2] CFA recognizes that an arbitrator's authority is generally limited by the California Arbitration Act, Code Civ. Proc. section 1280 et seq.

CONCLUSIONS OF LAW

CFA argues that, in view of SB 1212, CSU's insistence on restricting the authority of the arbitrator in faculty status disputes is a per se breach of the duty to participate in the impasse procedure because proposals aimed at diluting immutable rights established by the Legislature are nonnegotiable. Relying on PERB precedent, CFA contends that minimum statutory rights are not subject to negotiation when they derive from preemptive provisions of the Education Code.

Specifically, CFA contends the plain meaning of Education Code section 89542.5(a)(4) and section 3572.5(b)(1) is that the arbitrator has the authority to render a final decision, and an MOU may supercede Education Code section 89542.5(a)(4) only if it provides more than the minimum level of benefits or rights. According to CFA, the arbitrator's authority to render a final decision represents a statutory floor that cannot be lowered by restricting the arbitrator's remedial authority, as was the case in prior MOUs.

CFA would reject the argument that an arbitrator's authority can be final and binding while at the same time limited in scope or remedy. If this were the case, CFA asserts, the enactment of SB 1212 would have accomplished nothing because a statutorily-mandated right to a final decision by an arbitrator would be virtually meaningless if it impeded the arbitrator's ability to remedy the wrong.

In response, CSU argues that SB 1212 did nothing to expand or in any way alter the minimum level of rights and benefits in Education Code section 89542.5, which have remained unchanged since 1976. Rather, SB 1212 merely changed section 89542.5 from a "pure" supersession statute that previously could have been be superseded by an MOU to a "modified" supersession statute that can now be superseded by an MOU only if the MOU provides more than the minimum level of benefits.

Contrary to the position adopted by CFA, CSU argues that the plain meaning of Education Code section 89542.5 does not prohibit limits on an arbitrator's authority. CSU contends that section 89542.5 requires only a "bare bones" grievance procedure, and CSU is required to "put flesh on the bones." If the Legislature intended to require additional features in the arbitration procedure, CSU continues, it would have done so. The Legislature required only that the decision of the arbitrator be final. It did not address the myriad of issues associated with the arbitration process, such as the scope of the arbitrator's remedial authority. Instead, this and other aspects of the process were left to the University, CSU concludes.

CSU argues further that, at the time Education Code section 89542.5 was enacted in 1976, the Legislature presumably was aware of Executive Order 201 and its limitations on the scope of the arbitrator's authority. After the passage of the statute, CSU enacted Executive Orders 241 and 301, which similarly contained limitations on the arbitrator's authority. The latter remained in effect until the first MOU in 1983. If the grievance and arbitration procedures established by executive order (during the period the minimum requirements of Education Code section 89542.5 were in effect) had been inconsistent with legislative intent, CSU contends, surely the Legislature would have revised the statute to clarify its intent. Because the Legislature did not do so, CSU would infer that the limitations on arbitral authority were consistent with the Legislature's intent.

CSU next argues that, as the entity charged with administration of Education Code section 89542.5, its interpretation of the statute should be given great weight. While recognizing that PERB is entitled to deference in evaluating unfair practice charges, CSU continues, this case is about the interpretation of the Education Code, an area where the deference owed CSU trumps that which is owed PERB.

I begin with CSU's last argument regarding deference on issues of statutory interpretation. Unlike PERB, CSU is not a quasi-judicial agency charged with administering the Education Code through issuance of quasi-judicial decisions or quasi-legislative regulations. Rather, CSU has merely adopted a position in administering the relevant statutes.

As the expert agency established by the Legislature to administer HEERA, the Board has exclusive jurisdiction over conduct that arguably violates the Act. (See e.g., San Diego Teachers Association v. Superior Court (1979) 24 Cal.3d 1, 20-21 [154 Cal.Rptr. 893].) While PERB is not charged with enforcing the Education Code, the Board as a quasi-judicial agency may interpret the code to carry out its duty to administer HEERA. Thus, where arguably unlawful conduct implicates both the Education Code and HEERA, the Board may interpret the code in determining whether the action constitutes an unfair practice. (See e.g., Wilmar Union Elementary School District (2000) PERB Decision No. 1371-H, p. 13.) Accordingly, I find that PERB is the agency charged by the Legislature with resolving disputes such at the one presented here, and CSU's interpretation or application of Education Code section 89542.5 is not entitled to greater weight than otherwise accorded litigants in PERB proceedings.

Section 3572.5(a) initially provided that an MOU would supersede Education Code section 89542.5 if the two were in conflict. However, SB 1212 amended section 3572.5(a) to provide that an MOU will supersede section 89542.5 "only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits." (Section 3572.5(b)(1).) The question to be decided here is whether SB 1212 established minimum statutory rights not subject to negotiation because they derive from preemptive provisions of the Education Code.

The test in resolving conflicts between the scope of representation under collective bargaining statutes and the Education Code is found in San Mateo City School District v.

Public Employment Relations Board (1983) 33 Cal.3d 850 [191 Cal.Rptr. 800] (San Mateo). In that case, the California Supreme Court stated the test as follows:

> Unless the statutory language [of the Education Code] clearly evidences an intent to set an inflexible standard or insure immutable provisions, the negotiability of a proposal should not be precluded. (San Mateo, at pp. 864-865; See also Fremont Unified School District (1987) PERB Decision No. 1240 (Fremont).)

Stated another way, the Education Code preempts collective bargaining agreements only if mandatory provisions of the code would be "replaced, set aside or annulled" by the agreement. (San Mateo, at p. 864.)

PERB cases in this area tend to fall into two general categories. When the Legislature has written statutes in mandatory terms, leaving no discretion or room for flexibility, the Board has found the particular statute preempts collective bargaining. Conversely, when the Legislature has crafted statutes in permissive terms, leaving discretion and room for flexibility, the Board has declined to find the area is preempted, provided that the subject is otherwise negotiable. A close reading of PERB preemption cases confirms that the Board, in addressing preemption arguments, has chosen to pay great attention to the precise language used by the Legislature when enacting Education Code sections. (See e.g., Fremont, adopting proposed decision of administrative law judge at pp. 34-35.)

Further, in construing statutory language, the Board has placed great weight on the plain meaning of the words in dispute. It is important to examine the language of the statute and give effect to each word. (Long Beach Community College District (2003) PERB Decision No. 1564, p. 10 (Long Beach).) If the language of a statute is not ambiguous, then the plain meaning of the language shall govern its interpretation. (San Diego Community College District (2001) PERB Decision No. 1467, p. 7.) Further, the words of a statute must

be construed in context, keeping in mind the statutory purpose, and statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible. (Dyna-Med, Inc., v. Fair Employment and Housing Commission (1987) 43 Cal.3d 1379, 1386-1387 [241 Cal.Rptr. 67]; Long Beach at p. 10.)

Applying these principles here, I conclude that section 3572.5(b)(1) and Education Code section 89542.5(a)(4), read together, establish statutory rights that may not be waived or insisted upon to impasse. Education Code section 89542.5(a)(7)(b) defines a "grievance" as "an allegation by an employee that the employee was directly wronged in connection with the rights accruing to his or her job classification, benefits, working conditions, appointment, reappointment, tenure, promotion, reassignment, or the like." Education Code section 89542.5(a)(4) provides in *mandatory* terms that "[i]f there is a disagreement between the faculty hearing committee's decision and the state university president's decision, the matter shall go before an arbitrator whose decision *shall be final.*" (Italics supplied.) And section 3572.5(b)(1) provides that Education Code section 89542.5 establishes a "minimum level of rights or benefits" that may be superseded by an MOU only if it provides "more than the minimum level of benefits or rights set forth in that section." The plain language of these sections is that an employee, at minimum, has the right to a final decision by an arbitrator on the merits of the particular grievance.

Presumably, the Legislature was fully aware of the grievance procedures in the various MOUs and executive orders when it passed SB 1212. If the Legislature intended to incorporate specific aspects of these grievance procedures as part of the statutory floor, it could have done so. Instead, the Legislature in SB 1212 established a statutory minimum right to a final decision by an arbitrator (unless a greater benefit is negotiated) and it must be presumed that the Legislature intended as much. A proposal to limit the arbitrator's authority would

create a lesser, not a greater, benefit or right than the right to a final decision by an arbitrator. To conclude otherwise would reduce the adoption of the minimum rights concept in SB 1212 to an idle act, changing nothing in the area of grievance and arbitration rights.[3]

It is true, as CSU contends, that in prior negotiations, the parties agreed to limit the authority of the arbitrator and CSU issued executive orders with similar restrictions. However, those events took place prior to SB 1212, when an MOU could supersede rights in Education Code section 89542.5. Because section 3572.5(b)(1) mandates that the arbitrator's decision shall be final, it sets a so-called "statutory floor," and the arbitrator's authority may not be restricted, as was the case in prior MOUs.

Under SB 1212, an MOU may supersede Education Code section 89542.5(a)(4) "only if the relevant terms of the memorandum of understanding provide more than the minimum level of benefits or rights set forth in that section." A proposal that includes fewer rights or benefits, (such as limitations on the authority of the arbitrator) would run counter to the express terms of SB 1212. As CFA argues, if the requirement that an arbitrator's "decision shall be final" is not a statutorily protected minimum right, there would be no minimum level of rights, and the CSU would be free to eliminate or erode any statutory due process right by limiting the arbitrator's authority to the extent that the underlying right is rendered illusory. Adoption of the position advanced by CSU would mean the statutory right to an arbitrator's decision which "shall be final" could be "replaced, set aside or annulled" by an agreement, clearly

[3] Contrary to CSU's argument, CFA's failure to challenge the various executive orders does not compel a conclusion that CFA may not now assert the claim to statutory minimum rights under SB 1212. The decision not to challenge the various executive orders or attempt to negotiate better rights in MOUs pre-dated SB 1212 and may have been made for a variety of reasons about which one can only speculate at this time. Failure to act in this regard does not relinquish the right to do so for all time. Moreover, rather than pursue the issue through the bargaining process or other means, CFA pursued it through the legislative process.

impermissible under relevant case law dealing with preemptive Education Code provisions. (See e.g., San Mateo at pp. 864-865; Fremont.)

I recognize that, as a general rule, parties may agree that an arbitrator's decision will be final and binding while at the same time limit the arbitrator's authority. The typical limitation is that an arbitrator may not add to, subtract from or modify the terms of the MOU. This is essentially what happened in prior MOUs. However, limits on arbitral authority typically occur in negotiations where parties are free to bargain without the requirement to adhere to minimum statutory rights. SB 1212 altered the negotiations landscape in this regard. Rights in Education Code section 89542.5 for the first time are recognized as a statutory floor and the parties are free to negotiate about such rights only if the MOU that results provide greater rights than those set forth in the statute.

This conclusion is not in conflict with the principle of shared governance, as CSU contends. Granted, section 3562(r)(1) excludes from the scope of representation the "criteria and standards to be used for the appointment, promotion, evaluation, and tenure of academic employees which shall be the joint responsibility of the academic senate and the trustees." However, section 3572.5(a) has always permitted the parties to negotiate an MOU that contained greater rights than are found in Education Code section 89542.5, and thereby supersede the statute. With the passage of SB 1212, any MOU covering section 89542.5 rights must include greater rights and benefits beyond the statutory floor. If the supersession concept prior to SB 1212 did not conflict with the principle of shared governance, it is difficult to conclude that the principle of supersession after SB 1212 conflicts with the principle of shared governance. Accordingly, I conclude that section 3562(r)(1) provides no defense to the allegations in the complaint.

It is concluded, therefore, that the plain language in SB 1212 and the equally plain mandatory language in Education Code section 89542.5 compel the conclusion that a proposal that adheres to prior contractual restrictions on the authority of an arbitrator is not negotiable under HEERA, and insistence on such a proposal to impasse is unlawful. As CFA argues, if an arbitrator's authority can be final and binding while at the same time limited in scope or remedy, SB 1212 would have been an idle legislative act. The legislative history lends support to the conclusions reached above.

Legislative History

"In the construction of a statute the intention of the Legislature . . . is to be pursued if possible . . . ." (Code Civ. Proc., sec. 1859.) The extrinsic aids which comprise the legislative history "may show the circumstances under which the statute was passed, the mischief at which it was aimed and the object it was supposed to achieve . . . . [K]nowledge of circumstances and events which comprise the relevant background of a statute is a natural basis for making such findings." (2A Sutherland, Statutory Construction (6th Ed. 2000, sec. 48:3.) Moreover, if the meaning of a statute is without ambiguity, doubt, or uncertainty, then the language controls. But if the meaning of the words is not clear, courts must take the second step and refer to the legislative history. (Dyna-Med. Inc. at pp. 1386-1387.) The Board has followed these principles and used legislative history in interpreting HEERA. (See e.g., The Regents of the University of California (1982) PERB Decision No. 253-H, p. 4 (Regents). There are several pieces of legislative history that shed light on the intention of the Legislature.

The Senate Committee on Education Report described the issue presented by SB 1212 as follows: "the proponents of this bill have narrowly selected the statute relative to establishing various procedures and processes for grievance and disciplinary actions to lift out of the supersession proviso, so that any final MOU – whether agreed to or imposed – cannot be

less than that provided by statute." The report describes the "NEED FOR THE BILL" as follows: "This bill would ensure that state law relative to grievance and disciplinary action procedures in the CSU is a *floor*, and that *these legal rights cannot be eliminated or reduced through collective bargaining.*" (Italics added.) Similarly, the Appropriations Committee Fiscal Summary indicates that "the grievance procedure in the Education Code will become the *floor from which all future negotiations must proceed.*" (Italics added.)

In reference to the protection of due process rights for CSU faculty, the Senate's Third Reading Analysis of SB 1212 states: "According to the sponsor, *these rights* [found in Education Code section 89542.5] *should never be a subject of collective bargaining.* Furthermore, the sponsor believes that the legislation provides a base labor protection that benefits the process of negotiations." (Italics added.) The Third Reading Analysis, prepared by the Assembly Committee on Higher Education, contains almost identical language. And in the "Comments" section of the Unfinished Business Analyses of SB 1212, the Senate Rules Committee described the "Need for the Bill" as follows:

> In materials provided by the sponsor, the California Faculty Association, they state: 'Recent collective bargaining disputes with the CSU have included the administration's desire to reduce – and even eliminate – faculty due process rights. Due process and arbitration are essential to the protection of academic standards. *The CSU should not be allowed to propose conditions that diminish statutory due process rights*, or place faculty in a position where equitable compensation and working conditions would have to be compromised at the expense of these academic protections.' " (Italics added.)

In the "Argument in Support," the analyses continues, CFA "narrowly selected the statute relative to establishing the various procedures and processes for grievance and disciplinary actions to lift out of the supersession proviso, so that *any final MOU – whether agreed to or imposed – cannot be less that that provided by statute.*" (Italics added.)

The Third Reading Analysis' summary of the legislation states

> . . . . that *existing law* relative to grievance and disciplinary action procedures in the California State University (CSU) may not be superseded by a Memorandum of Understanding (MOU) unless the MOU provides more that the minimum level of benefits or rights provided by that law. (Italics added.)

For the following reasons, I conclude that the foregoing legislative history supports the interpretation of SB 1212 advanced by CFA. Although prior MOUs and executive orders contained limits on the arbitrator's authority, there is little if any legislative history that the Legislature focused on preserving anything other than the basic rights on the face of Education Code section 89542.5 itself, including the finality of arbitration decisions.

The dominant thread that runs through the legislative history is that SB 1212 was intended to establish that the law relative to grievance and disciplinary actions was a statutory "floor," and that these rights (in particular, Education Code section 89542.5, which mandates that the arbitrator's decision "shall be final") "cannot be eliminated or reduced through collective bargaining." The Senate's Third Reading Analysis indicates that CFA made it clear that the finality of arbitration awards "should never be a subject of collective bargaining." The analysis prepared by the Assembly Committee on Higher Education is in accord. And the same Assembly committee noted that CFA made it clear that CSU should not be permitted to propose conditions that diminish these statutory due process rights.

CSU's contention that SB 1212 made no substantive changes to "existing law" in Education Code section 89542.5, as reflected in prior MOUs and executive orders, is not convincing. The "existing law" is found in the plain language of Education Code section 89542.5, which provides that the arbitrator's decision "shall be final." As noted, the focus of SB 1212 was on establishing section 89542.5 rights as a statutory floor, not on preserving the grievance procedures in prior MOUs or executive orders. Granted, prior MOUs and executive

orders contained limits on the authority of the arbitrator, but those negotiations pre-dated SB 1212 and were conducted under a supersession concept that permitted an MOU to override section 89542.5. With the enactment of SB 1212, the parties no longer may negotiate an MOU which undercuts the finality of the arbitrator's decision and imposes the kind of restrictions found in prior MOUs.

The reference to "recent collective bargaining disputes," cited in the Senate Rules Committee's statement about the "need for the bill," does not call for a different conclusion, as CSU contends. CSU asserts that disputes about arbitral limits date back to 1984, and therefore the reference in the history of SB 1212 to recent disputes could not have been aimed at the topic of arbitral authority. However, even if the reference to recent disputes creates some ambiguity, it does not outweigh the clear history that the Legislature intended the section 89542.5 right to a final decision by an arbitrator to be immutable unless an MOU provided more that the statutory floor.

Statements by the sponsor of SB 1212, Senator Romero, similarly suggest that the intent of the bill was to preclude the kind of limits found in prior MOUs. In statements on the Senate floor, Senator Romero said that CSU's proposal "removes arbitration rights in the areas of academic standards such as tenure and job promotion . . . [and CSU] . . . *should not be allowed to continue its practice of trying to diminish these most basic labor protections.*" (Italics added.) And in a letter to the governor urging that he sign the bill, Senator Romero wrote the following:

> SB 1212 does not expand employee grievance rights, but merely protects a minimum level of due process rights for CSU faculty. SB 1212 is consistent with the protections provided all other education public employee groups who are guaranteed a minimum level of due process rights in state law, and thus are ensured a level of grievance rights that are *non-negotiable.* (Italics added.)

In the same letter, Senator Romero stated:

> Allowing the CSU administration to continue to place due process protections "on the table" complicates the collective bargaining process. Such actions contribute to "impasse" outcomes, resulting in the CSU administration unilaterally imposing working conditions and compromising the good faith intent of negotiations.

CSU would give little weight to Senator Romero's statements. CSU argues that it is the intent of the Legislature as a whole, not the intent of the sponsor of a bill, that governs. In any event, according to CSU, Senator Romero conceded in her comments that SB 1212 does not expand employee grievance rights or change minimum requirements, but merely protects a minimum level of due process rights. And nowhere does Senator Romero expressly state that the purpose of SB 1212 was to prohibit limitations on arbitral authority.

I find the statements in the Senate by Senator Romero are consistent with the legislative history outlined above and, therefore, support the conclusion that the intent of SB 1212 was to preclude the kind of limits found in prior MOUs. She noted that the intent of the bill was to address a CSU proposal that "removes arbitration rights in the areas of academic standards such as tenure and job promotion," and that CSU "should not be permitted to continue its practice of trying to diminish these most basic labor protections." It bears repeating that the most basic protection in Education Code section 89542.5 is the right to a final decision by an arbitrator. The logical inference to be drawn from Romero's statement is that the intent of SB 1212 was to prevent proposals that erode that right by placing limitations on the authority of the arbitrator.

Senator Romero's letter to the governor also is consistent with the weight of the legislative history and, therefore, tends to corroborate the conclusion that the intent of SB 1212 was to prohibit limits on arbitral authority. Romero wrote that SB 1212 would ensure that due

process rights in Education code section 89542.5 are "non-negotiable," and CSU should not be permitted to continue to place due process protections on the table. Romero indicated that SB 1212 "does not expand employee grievance rights" and she did not expressly mention arbitration limits. But these factors do not trump the weight of the legislative history outlined above. And, while SB 1212 created a new supersession concept, it did not change existing rights in Education Code section 89542.5 and therefore the rights therein were not expanded. Rather, SB 1212 created a statutory floor in existing section 89542.5 rights.

In addition, several unions submitted letters to the governor or legislators in support of SB 1212. For example, the California Nurses Association noted that CSU had "attempted to weaken the due process statute through the collective bargaining process . . . [and] . . . proposed that faculty give up their right to an arbitration hearing for grievances addressing tenure decisions." The California School Employees Association wrote that state law "should be a floor, and legal rights should not be eliminated through collective bargaining." The California Professional Firefighters wrote that SB 1212 would prohibit an MOU from superseding due process and grievance protections unless the MOU surpasses "the floor of benefits" under existing law. The California Teamsters Public Affairs Council and the California Federation of Teachers wrote that SB 1212 would prevent CSU from weakening basic due process rights through the bargaining process. The Academic Professionals of California wrote that SB 1212 would establish a "minimum level of due process rights" for employees. And the California Federation of Labor wrote that CSU should not be permitted to "propose conditions that diminish statutory due process rights."

CSU argues that these letters are unreliable under applicable precedent, and, in any event, they were submitted to the governor rather than the Legislature. Even if the letters are viewed as an appropriate source of legislative history, CSU argues, they do not support the

claim that Education Code section 89542.5 prohibits limitations on arbitral authority. According to CSU, some letters refer to an attempt to remedy "recent" actions by CSU and limits on arbitral authority simply are not recent. Other letters merely support the concept of minimum due process requirements, CSU claims.

I find the letters of support from other employee organizations tend to further corroborate the conclusions reached above. The content of the letters need not be reiterated in detail here. Suffice it to say that they uniformly restate key aspects of the legislative history set forth above, including that due process rights in grievance arbitration must be preserved, existing statutory rights should be a floor, and such rights should not be undermined through the bargaining process.

Lastly, CSU argues that the 1975 legislative history of AB 804, as opposed to the more recent history behind SB 1212, is more relevant here. It is CSU's contention that when the Legislature passed AB 804 in 1975 it was aware of Executive Order 201 and CSU's desire for internal implementation of grievance procedures, yet it did not indicate any difference existed between the executive order and AB 804 in the area of arbitral authority. Given the significance of these executive order provisions, CSU argues, it would have been reasonable to expect the Legislature to recognize such differences if the intent behind AB 804 was to provide unfettered arbitral authority. CSU contends the same is true regarding the Legislature's presumed knowledge of subsequent executive orders. Thus, CSU argues that it is reasonable to infer that the legislative intent in passing AB 804 and SB 1212 was consistent with the administrative practice limiting the scope of arbitral authority.

Education Code section 89542.5 was enacted in 1975, prior to the enactment of HEERA. HEERA became effective in 1979 and contained a supersession provision that permitted an MOU to override rights set forth in section 89542.5. Thereafter, the parties

agreed to a series of MOUs that contained restrictions on the arbitration process. However, SB 1212 created a significantly different concept of supersession as far as section 89542.5 is concerned. SB 1212 covers rights and benefits embodied in Education Code section 89542.5, and it expressly provides that these rights may be superseded by an MOU only if the agreement provides more that the minimum of rights or benefits "set forth in that section." (Section 3572.5(b)(1).) The plain meaning of Education Code section 89542.5 does not contain the kind of restrictions found in prior MOUs. Nothing in SB 1212 contemplates preserving the myriad of restrictions found in prior MOUs or executive orders. It may not be presumed that the Legislature, in enacting an entirely new statute with an entirely new concept of supersession, intended to incorporate CSU's administrative interpretation of Education Code section 89542.5. In fact, the weight of the evidence is to the contrary.

If the Legislature in passing SB 1212 intended to place limits on arbitral authority – as in executive orders and prior MOUs – it could have done so. It presumably was aware of the practices and easily could have amended Education Code section 89542.5 or included limits on the arbitrator's authority in SB 1212, but it did not do so. To read these limits into SB 1212 or section 89542.5 at this juncture would be tantamount to re-writing the statutes in question, clearly an impermissible act in this proceeding. If limits on arbitral authority are to be imposed, it is up to the Legislature to do so.

It is well settled that a party may not insist to impasse on waiver of statutory representational rights. (See e.g., Travis Unified School District (1992) PERB Decision No. 917, pp. 3-4; South Bay Union School District v. PERB (1991) 228 Cal.App.3d 502, 508-509 [279 Cal.Rptr. 135].) And an employer may not insist to impasse on waiver of the statutory right to represent employees in grievances in the face of union's unwillingness to bargain, even though the subject may have been included in prior agreements. (See e.g., Chula Vista Unified

School District (1990) PERB Decision No. 834, pp. 20-24.) Accordingly, by insisting to impasse on a proposal that would preserve existing contractual limits on the authority of an arbitrator in faculty status disputes, CSU unlawfully conditioned agreement on waiver of a statutory right.

REMEDY

The Board in section 3563.3 is given

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

It has been found that CSU unlawfully insisted to impasse on a proposal that would preserve existing contractual limits on the authority of an arbitrator in faculty status disputes. In doing so, CSU conditioned agreement on waiver of a statutory right. By this conduct, CSU failed and refused to participate in good faith in the statutory impasse procedure, in violation of section 3571(e). By the same conduct, CSU interfered with the right of employees to be represented by CFA, in violation of section 3571(a). It is appropriate therefore that CSU be ordered to cease and desist from such activity.

It is also appropriate the CSU be required to post a notice incorporating the terms of this order throughout the CSU system where notices to Unit 3 employees are customarily posted. Posting of such a notice, signed by an authorized agent of CSU, will inform employees that CSU has acted in an unlawful manner, is being required to cease and desist from such activity, and will comply with the terms of the order. It effectuates the purposes of HEERA that employees be informed of the resolution of this controversy and CSU's readiness to comply with the ordered remedy. (The Regents of the University of California (1990) PERB

Decision No. 826-H, p. 13; Trustees of the California State University (2003) PERB Decisoon No. 1507-H, p. 10.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, it is found that the Trustees of the California State University (CSU) violated the Higher Education Employer-Employee Relations Act (Act). CSU insisted to impasse on a proposal that would limit the remedial authority of an arbitrator in faculty status disputes, and thereby unlawfully conditioned agreement on waiver of a statutory right. By this conduct, CSU failed and refused to participate in good faith in the impasse procedure, in violation of section 3571(e). By the same conduct, CSU interfered with the right of employees to be represented by the California Faculty Association (CFA), the exclusive representative of Unit 3, in violation of section 3571(a).

Pursuant to Government Code section 3563.3, it is hereby ordered that CSU and its representatives shall:

A. CEASE AND DESIST FROM:

1. Insisting to impasse on a proposal that would limit the remedial authority of an arbitrator in faculty status disputes, and thereby unlawfully condition agreement on waiver of a statutory right.

2. Interfering with the right of employees to be represented by the California Faculty Association, the exclusive representative of Bargaining Unit 3.

B. TAKE THE FOLLOWING AFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

1. Within ten (10) workdays of service of a final decision in this matter, post at all work locations in the CSU system where notices to Bargaining Unit 3 employees are

customarily posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSU, indicating that CSU will comply with the terms of the Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

2. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the General Counsel of the Public Employment Relations Board, or his designee, in accordance with his instructions. Continue to report to the General Counsel thereafter as directed. All reports to the General Counsel shall be concurrently served on the charging party.

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 Public Employment Relations Board (PERB or 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. (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).)

Fred D'Orazio
Administrative Law Judge