

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



In the Matter of:)
)
STOCKTON TEACHERS ASSOCIATION,)
CTA/NEA,)
)
Charging Party,)
)
v.)
)
STOCKTON UNIFIED SCHOOL DISTRICT,)
)
Respondent,)
)
STOCKTON FEDERATION OF TEACHERS,)
AFT/AFL/CIO,)
)
Intervenor.)

Unfair Practice
Case Nos. S-CE-162
S-CE-225
S-CE-235

PERB Decision No. 143

November 3, 1980

STOCKTON UNIFIED SCHOOL DISTRICT,)
)
Charging Party,)
)
v.)
)
STOCKTON TEACHERS ASSOCIATION,)
CTA/NEA,)
)
Respondent.)

Case No. S-CO-39

Appearances: Duane B. Beeson (Beeson, Tayer and Kovach) for Stockton Teachers Association; William F. Kay (Whitmore & Kay) for Stockton Unified School District; Robert J. Bezemek (Van Bourg, Allen, Weinberg and Roger) for Stockton Federation of Teachers.

Before Gluck, Chairperson; Moore, Member.

DECISION

This case comes before the Public Employment Relations Board (hereafter PERB or Board) on exceptions filed by the Stockton Unified School District (hereafter District) to the attached hearing officer's proposed decision.

Three charges were filed by the Stockton Teachers Association (hereafter Association) against the District. Charge number S-CE-162 was withdrawn at the time of the hearing. Charge number S-CE-225 alleged that the District violated section 3543.5(a), (b) and (c)¹ of the Educational Employment Relations Act (hereafter EERA or Act) by refusing to provide health insurance data (Count I); by unilaterally

¹The Educational Employment Relations Act is codified at Government Code section 3540 et seq. Section 3543.5 provides in pertinent part:

It shall be unlawful for a public school 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.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

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

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage

instituting a new teacher evaluation procedure (Count VII(C)); and by unlawfully supporting a rival employee organization, the Stockton Federation of Teachers (hereafter Federation) by scheduling the Federation to speak at a mandatory faculty meeting (Count VII(F)(3)). The Federation intervened in this latter count. Charge number S-CE-235 alleged that the District violated section 3543.5(a), (b) and (c) by reneging on a ground rules agreement and by refusing to negotiate on substantive proposals until new ground rules were adopted.

The District, in turn, in charge number S-CO-39, alleged that the Association violated section 3543.6(a) and (c)² by refusing to meet and negotiate in good faith. All charges were consolidated for hearing.

employees to join any organization in preference to another.

All section references herein are to the Government Code unless otherwise noted.

²Section 3543.6(a) and (c) provides:

It shall be unlawful for an employee organization to:

(a) Cause or attempt to cause a public school employer to violate Section 3543.5.

.....

(c) Refuse or fail to meet and negotiate in good faith with a public school employer of any of the employees of which it is the exclusive representative.

In his proposed decision, the hearing officer found that the District had violated sections 3543.5(a), (b) and (c) by refusing to provide health benefit information to the Association during mid-contract reopener negotiations and by taking unilateral action affecting teacher evaluation procedures by instituting the use of a program management checklist. He found that the District violated section 3543.5(a) and (c) by failing and refusing to meet and negotiate in good faith with the Association.³ The hearing officer further found that the District had violated section 3543.5(d) by supporting the Federation and by encouraging employees to join the Federation in preference to the Association by placing a presentation by the Federation on the agenda of a mandatory teachers' meeting. He dismissed the remaining allegations in the Association charges against the District. He also dismissed the District's charge which had alleged that the Association had failed to meet and negotiate in good faith with the District.

The District filed exceptions to each of the hearing officer's findings that the District had engaged in unfair conduct except the section 3543.5(d) charge involving the Federation. The District also excepted to the dismissal of its

³The hearing officer fails to mention the 3543.5(b) violation in the text of his opinion, although he does list it in his posting order.

charge against the Association. The Association did not file any exceptions nor any response.

Although not directly before the Board in this proceeding, the Board takes official notice that the Federation filed a decertification petition on May 17, 1979. The Sacramento Regional Director on May 22, 1979, notified the parties that he was blocking the election pending the Board's determination of the instant unfair practice charges.

For the reasons expressed below, the Board affirms in part and reverses in part the hearing officer's proposed decision and order including that part of the order to which the District did not take exception.

FACTS

The hearing officer's procedural history and findings of fact are substantially correct and are adopted by the Board itself to the extent modified herein.

I. The District's Refusal to Provide Information

The hearing officer found that the Association had requested information regarding the District's monthly "payout" for health insurance benefits for unit members. This information was requested in preparation for the mid-term negotiations on health benefits and wages permitted by the existing agreement. The District responded that the information was not available in the form requested by the Association and advised the Association to directly contact the

insurance carrier, Blue Cross. Under protest, the Association contacted Blue Cross for the information. When the Association was unable to get the information from Blue Cross, it informed the District of this and reiterated its request to the District. The District repeated that it did not have the information available to it in the form requested and that it would be unduly burdensome to extract the data from that provided to it by Blue Cross.

Clyde Williams, the Association's executive director, testified that he had the Association's health consultant, Frank Welsh, contact Blue Cross for the health cost information. The Association introduced into evidence, over hearsay objections by the District, a letter from Mr. Welsh, which stated that a representative of Blue Cross had informed him that the District had instructed the company not to release the requested information.

Mr. Welsh's letter was not used to corroborate other information but was the basis of a factual finding. The hearing officer did not discuss the hearsay problem in his proposed decision and found ". . . [T]he Association was informed [by Blue Cross] that the District had instructed the carrier not to furnish any information."⁴

⁴Hearing Officer's Proposed Decision, p. 3.

II. The District's Unilateral Change in Evaluation Procedures

The hearing officer found that the District had violated its duty to negotiate in good faith by unilaterally instituting a checklist evaluation procedure. At the time of the change, August 1978, a contract was in existence between the parties which contained provisions for evaluation of teachers. Sections 3.1 and 3.2 of Article 3 of the contract read as follows:

3. EVALUATION

- 3.1. Except as amended below, the evaluation of teachers during the term of this Agreement shall be conducted in accord with District Policy No. 326. During the life of this Agreement the District agrees not to change District Policy No. 326 and Administrative Rules and Regulations Nos. 3260-3269 (Evaluation of Performance) except as amended below.
- 3.2. The grievance procedure shall be utilized for disputes arising over procedural matters only. Where a question of substance versus procedure is involved such question shall not be subject to the grievance procedure or arbitration unless PERB rules the matter to be procedural. The arbitrator shall have the authority to rule on other issues related to evaluation if mutually agreed to or authorized to do so by PERB ruling.

Under the contract, a grievance is defined as a "dispute between the District and an aggrieved person involving a violation, interpretation or application of a provision of this

Agreement."⁵ The contract provides for binding arbitration as the final step in the grievance process.⁶

III. The Negotiating History Between the Parties

While the Board adopts the hearing officer's findings of fact regarding the history of negotiations for a successor agreement, given the complicated allegations these findings require amplification.

The District and the Association met on March 2, 1979 to begin formal negotiations on a successor contract. One week prior, the District's chief negotiator, Kenneth Caves, had announced his resignation from District employment. At the March 2 meeting, the Association representatives expressed concern about Caves' authority to negotiate on behalf of the District. Caves assured the Association that he had full authority to negotiate for the District. The parties reached agreement on ground rules and began to discuss substantive contract issues, each side commenting on the other side's proposals.

The March 9 meeting between the parties was cancelled by the District because it was Caves' last day of work. The Association continued to press for meetings, but the District

⁵Article 5, Section 1.1 of the parties' contract.
Exhibit No. 1.

⁶Article 5, Section 2.4.2 of the parties' contract.
Exhibit No. 1.

declined, explaining that it was having difficulty in obtaining a replacement for Caves.

The Association met with the District's new negotiator, Joe Crossett, on April 4, 1979. He informed the Association that he would not be available to begin negotiating until April 26, 1979. At this introductory meeting he presented a set of proposed ground rules for negotiations. The Association informed him that ground rules had already been agreed upon between the Association and the District and pressed for an early meeting.

The Association set up an interim meeting with the District for April 6, while Crossett was still unavailable, with Charles Thompson, the District's attorney. At that meeting, Thompson informed the Association that he was authorized to discuss only one subject, a substantive item, the next year's school calendar. The Association declined to discuss the topic independent of the rest of the negotiating package. The Association again pressed for additional meetings, but was told that it would have to wait for Crossett to return.

The Association then met with Crossett on April 26. The Association's chief negotiator, Mr. Dean Janssen, detailed for Crossett all of the ground rules that the Association and District had previously agreed to at the March 2 meeting. The Association attempted to discuss contract proposals. Crossett refused to discuss any subject besides ground rules. At the

end of the meeting, however, Crossett suggested that the parties discuss the school calendar. Janssen pointed out that this was a substantive proposal and that he was willing to discuss it. After ascertaining that the Association had not received the District's new calendar proposal, Crossett refused to give them a copy and dropped the calendar discussion.

The parties again met on April 30, 1979. Crossett indicated that he did not care what ground rules had been agreed to previously because he was the District's new spokesperson and needed to develop his own rules. The District refused to discuss substantive proposals, and the Association refused to renegotiate ground rules. The District representatives eventually walked out.

The parties met on May 14, 21, 22, 29 and June 4. The only changes in the District's position were variations on the ground rules proposals the District presented to the Association. The District uniformly refused to discuss substantive proposals until ground rules were agreed upon and written down. The Association was also firm in refusing to renegotiate ground rules and in insisting the parties discuss substantive issues.

On May 14, the Association offered to mail a copy of its understanding of the ground rules to the District if the District would agree to stop using ground rules as a block to negotiations, meet at alternate sites and arrange a

satisfactory meeting schedule between May 14 and the end of the school year. Crossett refused, stating that "the price was too high." There was thus no discussion at that meeting of contract issues.

On May 22, the Association asked the District to discuss items the school board had before it that the Association thought were within scope. The District refused.

The parties called in a mediator at their May 21 and 29 and June 4 meetings. Both sides, however, continued to maintain their respective positions.

At the May 29th meeting, the Association renewed its May 14 offer to agree to reduce the March 2 agreement to writing if the District would agree to alternate meeting sites, to a satisfactory meeting schedule, and to stop using ground rules as a block to negotiations. When the mediator took the proposal to the District, all District personnel except Crossett had left. Crossett took the proposal under advisement and left.

At the June 4th meeting, Crossett asked Janssen if the Association would ever put ground rules in writing. Janssen responded that ground rules were agreed to and by now the District should have adequate notes of the ground rules. Janssen had previously gone over the agreed-upon ground rules with Crossett at the April 26 meeting. Crossett insisted that

ground rules needed to be put in writing so that both parties could know what they were agreeing to. Janssen declined to enumerate the ground rules and suggested that Crossett check with one of his negotiating team members who had been present in earlier discussions about what was needed in the way of ground rules.

The Association attempted to schedule meetings for the rest of the week, but the District stated that it was the last week of school and claimed it would be too busy. No other meetings were scheduled. By letters, the Association continued to press for more meetings and protested the lack of meetings. The parties eventually agreed to postpone further meetings until after the hearing on the instant case which was set for June 26, 1979.

DISCUSSION

I. The District's Refusal to Provide Information

The hearing officer found that the District violated section 3543.5(a), (b) and (c) by refusing to give the Association health insurance benefit cost data during mid-contract negotiations.

Numerous cases arising under the National Labor Relations Act (hereafter NLRA) have considered the employer's obligation to provide employee organizations with requested

information.⁷ In general, the exclusive representative is entitled to all information that is necessary and relevant to discharging its duty to represent unit employees. (See Morris, *Developing Labor Law*, p. 309 et seq.) An employer's refusal to provide such information evidences bad faith bargaining unless the employer can supply adequate reasons why it cannot supply the information. NLRB v. Truitt Mfg. Co. (1956) 351 U.S. 149 [38 LRRM 2042].

In defining the parameters of "necessary and relevant information" to which the representative is entitled, the courts have concluded that information pertaining immediately to mandatory subjects of bargaining is so intrinsic to the core of the employer-employee relationship that it is considered presumptively relevant and must be disclosed unless the employer can establish that the information is plainly irrelevant or can provide adequate reasons why it cannot furnish the information. Western Mass. Electric Co. v. NLRB

⁷This Board has previously noted that federal precedents are relevant for guidance in interpreting EERA language where the statutes are similar. Sweetwater Union High School District (11/23/76) EERB Decision No. 4, and see Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608. Both the federal National Labor Relations Act, 29 U.S.C. 151 et seq and the Educational Employment Relations Act, Government Code section 3540 et seq. establish the duty to negotiate in good faith. Section 8(a)(5) of the NLRA and section 3543.5(c) of the EERA make it an unfair practice for an employer to fail to meet and negotiate in good faith with an exclusive representative.

(1st Cir. 1978) 573 F.2d 101 [98 LRRM 2851]; Teleprompter Corp. v. NLRB (1st Cir. 1977) 570 F.2d 4 [97 LRRM 2455]; Curtiss-Wright Corp. v. NLRB (3rd Cir. 1965) 347 F.2d 61 [59 LRRM 2433].)

In the instant case, the Association requested information concerning the costs of health care benefits for unit employees. The District argues that since it did not assert that it was unable to pay health benefits, health costs were not put in issue, are therefore not relevant and, consequently, the District had no obligation to provide the requested data. Current NLRB case law, however, holds that insurance plans are mandatory subjects of bargaining, that both premiums paid and benefits granted under a noncontributory insurance program constitute "wages" and that this information is presumptively relevant. See Nestle Company, Inc. (1978) 238 NLRB No. 19 [99 LRRM 1241].⁸

⁸The District cites Sylvania Electric Products, Inc. v. NLRB (1st Cir. 1961) 291 F.2d 128 [48 LRRM 2313] cert. denied (1961) 368 U.S. 926 [49 LRRM 2173] which held that although health benefits relate to wages and are thus a mandatory subject of bargaining, health costs do not. However, this case has been distinguished almost to the point of extinction by permitting the union to demand cost information whenever the union has sought to weigh the value of different possible wage-benefit packages. Cf Sylvania Electric Products, Inc. v. NLRB (1st Cir. 1966) 358 F.2d 591 [61 LRRM 2657] cert. denied (1966) 385 U.S. 852 [63 LRRM 2236] and NLRB v. General Electric (2nd Cir. 1969) 418 F.2d 736 [72 LRRM 2530].

In Nestle, the actual relevance of health cost data was established by the Union's position that if the employer's insurance costs were excessive as compared to comparable coverage available by another carrier, the unsubstantiated cost figures provided by the employer would not be accepted and would form the basis of the union's demand for seeking financial gains in other contract provisions. Similarly, in the instant case, the Association testified that it wanted the health cost data to evaluate whether certain fringe benefits such as health benefits could be replaced by an increase in wages. The Board thus concludes that the Association has proven that the benefit cost information is relevant to the mid-contract negotiations as to health care benefits and wages.

The District also argues that it did not violate the Act by failing to provide the data in the form requested because to do so would have been unduly burdensome. The general rule excuses the employer from providing otherwise relevant information if compliance with such requests would be unduly burdensome. The burden of proving this defense lies with the employer. NLRB v. Borden, Inc. (1st Cir. 1979) 600 F.2d 313 [101 LRRM 2727]. Once a request for relevant information is made, "the employer either must supply information or adequately set forth the reasons why it is unable to comply." The Kroger Company (1976) 226 NLRB 512 [93 LRRM 1315].

In this case, the District's assertion of burdensomeness rests on the fact that the data provided to the District by Blue Cross pertains to all employees covered by the health benefit plan and compilation of the requested data would require that claims and costs incurred by unit employees be extracted from the documents provided.

In Borden, supra, the company provided only corporate-wide hourly benefit costs per employee and refused to break the information down per unit employee. Reversing the Administrative Law Judge, the NLRB held that the employer failed to bargain in good faith by refusing to furnish the union with the information broken down per unit employee. The NLRB found that a blanket refusal to provide the information because unit figures were not available constituted a refusal to bargain. The Court upheld the NLRB's conclusion. Further support exists for the employer's obligation to adjust the information it has available in order to suit the specific needs of the representative. Cf Teleprompter Corp., supra.

Based on the District's sole assertion that the information was not available in the form requested by the Association, the Board does not find that the employer's obligation to provide the benefit cost data was unduly burdensome.

The District contends that the letter from the Association's health consultant, Frank Welsh, is inadmissible hearsay. The District argues that, absent reliance on this

inadmissible evidence to demonstrate that it directed Blue Cross not to provide the Association with the information, the record does not refute its contention that the information was otherwise available.

The Board agrees with the District that this letter is inadmissible hearsay.

Under the regulations of the Board:

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Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.⁹

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Since Mr. Welsh's letter was not used to corroborate other information but was the basis for a factual finding, the evidence contained therein of the District's alleged instructions to Blue Cross to withhold the information from the Association is inadmissible hearsay.

Even absent reliance on the letter, the District's argument fails. As stated supra, page 15, it is the District, not the Association that has the burden of proof that providing the information would be burdensome. The District presented no proof, other than its bald assertion, that the Association

⁹PERB rules are codified at California Administrative Code, title 8, section 31000 et seq. The above language is codified at section 32176(a).

could obtain the data from another source, viz. Blue Cross. The Association presented proof that it reiterated its request to the District for the data, informing the District that the data was unavailable through Blue Cross. The record is also clear that the District refused to provide the data after this second request.

While the District's referral of the Association to Blue Cross may not have been an express refusal to furnish the health data, the District itself made no reasonably diligent effort to obtain the information. NLRB v. John S. Swift Co. (7th Cir. 1960) 277 F.2d 641 [46 LRRM 2091]. Further, after the Association informed the District the information was unavailable through Blue Cross and reiterated its request, the District did not question the Association's assertions but flatly refused to furnish the information. Thus, the purported availability of the information from Blue Cross was refuted by the Association and the District was obligated to provide the data.

The District also argues that the hearing officer erred in basing his refusal to negotiate finding solely on the District's refusal to furnish information rather than on the totality of the circumstances. After a good faith demand by the exclusive representative for relevant information, a refusal by an employer to supply that information is a separate violation which, standing alone, is a refusal to negotiate in

good faith unless the employer can provide adequate reasons why it cannot supply the information. See NLRB v. F. W. Woolworth Co. (1956) 352 U.S. 938 [39 LRRM 2151], reversing (9th Cir. 1956) 235 F.2d 319 [38 LRRM 2362], Curtiss-Wright Corp., Wright Aero Div. v. NLRB (3rd Cir. 1965) 347 F.2d 61 [59 LRRM 2433].

Having correctly found a violation of section 3543.5(c), the hearing officer's finding of concurrent violations of section 3543.5(a) and (b) was proper. San Francisco Community College District (10/12/79) PERB Decision No. 105 and South San Francisco Unified School District (1/15/80) PERB Decision No. 112.

II. The District's Unilateral Change in Evaluation Procedures

The District argues that its implementation of the checklist involves interpretation of the collective agreement and should have been deferred to arbitration under the deferral policy enunciated in section 3541.5(a).¹⁰

¹⁰Section 3541.5 reads in relevant part:

The initial determination as to whether the charges of unfair practices are justified, and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. Procedures for investigating, hearing, and deciding these cases shall be devised and promulgated by the board and shall include all of the following:

(a) Any employee, employee organization, or employer shall have the right to file an unfair practice charge, except that the

As set forth in the statement of facts, supra, under the parties' contract, a grievance is defined as a "dispute between the District and an aggrieved person involving a violation, interpretation or application of a provision of this Agreement."¹¹ The contract provides for binding arbitration as the final step in the grievance process.

The District points to Section 3.1 of Article 3 of the contract¹² which prohibits any changes in the District policy regarding evaluations and argues that whether the unilateral adoption of the checklist evaluation procedure constitutes a "change" in the evaluation procedure is a proper matter for the arbitrator to decide. Further, the District contends:

The processing of this dispute through the negotiated grievance arbitration procedures will resolve all issues because it will be made clear whether or not the District either has the right to, or is prohibited from implementing the management checklist in dispute.¹³

board shall not do either of the following:
. . . (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary.

¹¹Article 5, Section 1.1 of the parties' contract.

¹²Set forth supra on page 7.

¹³Respondent's Statement of Exceptions, page 63.

Section 3541.5(a) prohibits the Board from issuing a complaint against conduct also prohibited by the provisions of the parties' agreement until the agreement's grievance machinery has been exhausted either by settlement or binding arbitration. Pursuant to section 3541.5(a), finding that the subject matter is covered by the contract and that the contract requires binding arbitration, the Board dismisses this portion of the charge. See Dry Creek Joint Elementary School District, (7/21/80) PERB Ad-81a, 4 PERC 11141.

III. The District's Failure to Negotiate in Good Faith

The hearing officer found two separate violations of section 3543.5(a), (b) and (c) by the District in (1) refusing to abide by the previously agreed-upon ground rules and (2) conditioning the opening of discussions on substantive proposals upon the reaching of a written and initialled agreement on ground rules.

In its exceptions, the District asserts that the District and the Association never reached an agreement on ground rules. The District also claims that the hearing officer incorrectly utilized a "per se" test rather than the "totality of circumstances" test in the above two findings and in his dismissal of the District's unfair charge against the Association.

PERB utilizes both the "per se" and "totality of the conduct" tests to ascertain whether a party's negotiating

conduct constitutes an unfair practice.¹⁴ The PERB delineated the distinctions between the two tests in Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51, pages 4-5. The Board noted:

The National Labor Relations Board (hereafter NLRB) has long held that [a duty to bargain in good faith] requires that the employer negotiate with a bona fide intent to reach an agreement. In re Atlas Mills, Inc. (1937) 3 NLRB 10 [1 LRRM 60]. The standard generally applied to determine whether good faith bargaining has occurred has been called the 'totality of conduct' test. See NLRB v. Stevenson Brick and Block Co. (4th Cir. 1968) 393 F.2d 234 [68 LRRM 2086] modifying (1966) 160 NLRB 198 [62 LRRM 1605]. This test looks to the entire course of negotiations to determine whether the employer has negotiated with the requisite subjective intention of reaching an agreement.

There are certain acts, however, which have such a potential to frustrate negotiations and to undermine the exclusivity of the bargaining agent that they are held unlawful without any determination of subjective bad faith on the part of the employer.

The latter violations are considered per se violations. NLRB v. Katz, (1962) 369 U.S. 736 [50 LRRM 2177]. An outright refusal to bargain or a unilateral change in the terms and conditions of employment are two examples of per se violations of the duty to negotiate. NLRB v. Katz, supra.

¹⁴Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51.

The Board finds, as did the hearing officer, that the District refused to negotiate any substantive contract issues, although requested to do so by the Association, until a written agreement on ground rules was signed. Any other conclusion is inescapable given Crossett's testimony on the District's intentions on ground rules:

Q. (Mr. Beeson) Does your position remain today, Mr. Crossett, that there can be no discussion on any substantive proposal until there has been a written, executed, initialled or otherwise set of ground rules?

A. (Mr. Crossett) That's the District's position at this time, yes, and we think it's very important that there be some form of ground rules in writing, even the changing faces of the process. (Vol. III, p. 160.)

The NLRB has held that the parties must bargain collectively about the preliminary arrangements for negotiations in the same manner they must bargain about substantive terms or conditions of employment. The NLRB finds "such preliminary matters are just as much a part of the process of collective bargaining as negotiations over wages, hours, etc."¹⁵ A refusal to bargain about a mandatory subject may constitute a per se violation of a party's duty to bargain. NLRB v. American Compress Warehouse (CA 5 1965) 350 F.2d 365 [59 LRRM 2739], Union Mfg. Co. (1948) 76 NLRB 322 [21

¹⁵General Electric Co. (1968) 173 NLRB No. 46 [69 LRRM 1305, 1310].

LRRM 1187]. Since the District's conditioning negotiation of substantive issues on agreement on ground rules was a part of a total course of conduct which taken together establishes a violation of section 3543.5(c), it is not necessary to decide here whether it constituted a per se violation.

The Board affirms the hearing officer's finding that the parties had reached an agreement on March 2 on ground rules and that Crossett, the new District negotiator, reneged on that agreement. The repudiation of an agreement on a single issue has been held, by itself, not to manifest a lack of good faith.¹⁶ Therefore, the Board will look at the "totality of the circumstances" to determine whether the District's conduct indicated good faith negotiating. The record contains evidence of other indicia of bad faith and a paucity of mitigating factors.¹⁷

Although the following are, by themselves, insufficient to prove a refusal to negotiate charge, together they show the District had no intention of entering into an agreement with the Association between March and June and thus violated section 3543.5(c). The District missed or cancelled several meetings, was recalcitrant in scheduling new meetings, and

¹⁶See NLRB v. Advanced Business Forms Corp., (1973) 474 F.2d 457, [82 LRRM 216].

¹⁷A discussion of the Association's negotiating conduct and its effect on the District's conduct is discussed, infra.

unilaterally ended some meetings. These factors, combined with the District's reneging on the ground rules agreement and its refusing to discuss substantive issues until new ground rules were established, constitute a violation of section 3543.5(c). The Board agrees with the hearing officer that this ". . . also constitutes a 3543.5(a) violation in that it interferes with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by obstructing negotiations with the exclusive representative."¹⁸ The Board also finds the conduct constitutes a concurrent 3543.5(b) violation.¹⁹

The District argues that there are many indicia of good faith on its part to support its contention that it engaged in good faith negotiating: for example, it presented several counter-proposals to Crossett's first ground rules proposal. This argument, however, ignores the fact that since the Board finds reneging on the ground rules agreement is an indicia of

¹⁸Hearing officer's proposed decision, p. 38.

¹⁹As noted, supra, on pages 17-18, based on the Board's decisions in San Francisco Community College District (10/12/79) PERB Decision No. 105 and South San Francisco Unified School District (1/15/80) PERB Decision No. 112, the District's argument that disputes the hearing officer's finding of concurrent violations of section 3543.5(a) is without merit. San Francisco, supra, also supports a finding of a concurrent 3543.5(b) violation. The Board makes this finding of the 3543.5(b) violation to correct the apparent oversight of the hearing officer. See footnote 3, supra.

bad faith, the District's willingness to negotiate over new ground rule proposals different from the original ones does not evidence good faith negotiating. The Association repeatedly asked Crossett to contact Caves to verify the fact that an agreement had been reached on ground rules between the parties. Even after Crossett consulted Caves sometime in mid-negotiations, the District's position continued to be: (1) that no agreement had been reached on ground rules; (2) even if there had been an agreement, Crossett had a right to start over and; (3) the District would discuss no substantive proposals until the parties renegotiated ground rules.

The District also contends that the changed circumstance of a new negotiator justified its refutation of the original ground rules agreement. The District distinguishes procedural from substantive agreements arguing that the former can be broken without it being an indicia of bad faith. The District cites Taylor Chevrolet Corp. (1972) 199 NLRB No. 1064 [81 LRRM 1405] to support its position that a withdrawal of a procedural agreement where bargaining circumstances have changed should not be evidence of bad faith. In Taylor, the NLRB held that an employer was not bound to an agreement made at the onset of negotiations that any contract the parties might agree to should take effect the day after the expiration of the old contract. Eight months after the expiration of the old contract, the parties negotiated a new contract with increased

economic benefits. The NLRB found that there was never any conscious meeting of the minds of the parties to make all benefits subsequently agreed upon effective retroactive and therefore there was no binding contract. The NLRB went on to state that the spirit of good faith bargaining meant that parties should not be procedurally bound to agreements when they were not fully aware of the agreements' impact.

The facts in the instant case are readily distinguishable. The new circumstance in the negotiations, the tenure of a new negotiator, was openly and consciously discussed between the District's old negotiator, Caves, and the Association. Caves expressly told the Association on March 2, 1979, that, although he was leaving, he was fully authorized by the District to act as its agent at that meeting. An agreement on ground rules was consciously reached knowing that a new negotiator would work with these rules. Unlike Taylor, the effect of these rules presented no surprise to either party as the rules had been developed between the parties over the preceding two years and were at that point a familiar routine, their efficacy well-polished with use. Thus, the changed circumstance of a new negotiator did not terminate this agreement.

IV. The Association's Negotiating Conduct

The District objects to the hearing officer's finding that the Association's negotiations conduct was in response to the District's conduct and thus did not constitute a violation of

section 3543.6(a) and (c). The District argues that the Association's conduct demonstrated a lack of good faith negotiating and, taken in the "totality of the circumstances", should justify the District's actions.

The District complains that the Association refused to provide counterproposals to its new ground rules proposals. The Association was justified, however, in resisting District efforts to renege on the previously agreed-upon ground rules. The Association provided Crossett with an oral recapitulation of the Caves-Association ground rules agreement at the initial meeting with Crossett on April 26, 1979. Crossett's insistence that as a new negotiator he could "start over" with new ground rules vitiates the District's argument that it was the Association that did not want to reach an agreement on ground rules. A part of the Caves ground rules agreement was that those rules would not be reduced to writing, further explaining the Association's reluctance to reduce the rules to writing.

The record amply demonstrates that the Association continued from March, 1979 until the date of the parties' PERB hearing to press for negotiation sessions. The Association continued to try to discuss substantive proposals which the District steadfastly refused to consider. Under the totality of these circumstances, the Board affirms the hearing officer's dismissal of the section 3543.6(a) and (c) charges on the basis that the Association's conduct was a reasonable attempt to

insist that the District abide by its original ground rules agreement and that the parties proceed to discuss substantive proposals. Thus, the Association's conduct did not constitute bad faith negotiations.

By: Barbara D. Moore, Member

Harry Gluck, Chairperson, concurring:

I. The District's Refusal to Provide Information

I concur in Member Moore's finding that the health plan cost data for unit employees sought by the Association was related to wages, that the purpose of the union's request--namely, to use in framing its economic proposals--was not disputed and that such purpose is, in itself, lawful and one which contributes to the requirement that the employer comply and that the District failed to establish justification for refusing the Association's request.

As stated in J. I. Case Co. v. NLRB (7th Cir. 1958) 253 F.2d 149 [41 LRRM 2679], where the employer asserts that providing information would be unduly burdensome, he is obligated to provide the relevant and essential data in less burdensome form or to make appropriate arrangements to do so. In the case before us, the employer made no effort, in the face of its objections, to arrange for itself a less burdensome means of compliance with the request.

II. The District's Failure to Negotiate in Good Faith

It is virtually axiomatic that an employer is required to vest its negotiator with sufficient authority to conduct meaningful negotiations. NLRB v. Fitzgerald Mills (CA 2d 1963) 313 F.2d 260 [52 LRRM 2174], cert. denied 375 U.S. 834, [54 LRRM 2312]. See also, Valley Oil Co. (1974) 210 NLRB 320 [86 LRRM 1351]. I do not foreclose the possibility that a negotiator, under certain conditions, may lawfully discuss and even offer proposals with the open acknowledgment that his authority is limited and that his "agreements" must be subsequently ratified by his principal. But, the absence of authority otherwise inevitably delays the negotiating process and, in effect, circumvents the employer's duty to meet at reasonable times and intervals for the purpose of reaching agreement. Such bargaining conduct on the part of the employer may be evidence of the employer's intent to avoid agreement. But even where the employer intends to reach agreement ultimately the withholding of authority from its negotiator without disclosure of that fact forces the employee negotiator, in effect, to bargain with himself. The employer, when the organization's "bottom-line" is finally reached, could simply deny that any tentative understandings were authorized and seek to begin its negotiations with the organization's position now fully revealed. Such tactics, in my view, go well beyond the bounds of permissible hard bargaining.

In this case, the facts present even a stronger indictment of the District's conduct. There was no need for the Association to assume that Caves had authority to make a binding agreement for he unequivocally stated that he had the authority to bind the District to ground rules for negotiations even though he would be leaving the bargaining table and would be replaced by another negotiator. Thus, either Caves misrepresented his authority (which the facts do not indicate and which I do not believe) or the District simply decided to reject the agreement he reached, despite his authority.

While clearly interrelated with the matter of Caves' authority, Crossett's renege on the ground rules constitutes independent evidence of bad faith. The repudiation of an agreement reached, abruptly and without justification, destroys that climate of mutuality requisite to the negotiating process and delays the reaching of agreement. San Antonio Machine & Supply Co. v. NLRB (5th Cir. 1966) 363 F.2d 633 [62 LRRM 2674]. At the least, Crossett was obligated to justify his repudiation of the ground rules agreement. But, the "justification"--the retroactive removal of Caves' authority--was, itself, improper. It cannot be the linchpin saving the District's circular defense from collapse.²⁰

²⁰I would note that typical defenses to a charge of renege include agreements conditioned on some subsequent event which did not occur, misunderstanding or actual lack of agreement in the first instance. See Food Service Co. (1973) 202 NLRB 790 [82 LRRM 1746].

If further evidence of the District's plan to engage in a holding action against settlement is required, it is found in Crossett's conditioning discussion of substantive issues on a new ground rules agreement. Where placing such conditions on the discussion of other items is onerous or unreasonable, bad faith may be readily inferred. American Flagpole (1968) [68 LRRM 1384]; Kroger Co. (1967) 164 NLRB 362 [65 LRRM 1089]; Fitzgerald Mills Corp. (1961) 133 NLRB 877 [48 LRRM 1745], enforced (2nd Cir. 1963) 313 F.2d 260 [52 LRRM 2174], cert. denied (1963) 575 U.S. 834 [54 LRRM 2312].

Here, as in the reneger, it was the denial of Caves' authority which was the basis for Crossett's demand, a basis which was onerous and unreasonable and does not rise to the level of acceptable justification.

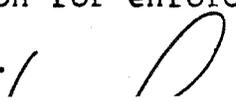
Considering all of these facts, I conclude that the District failed to address its negotiating obligations with the requisite good faith, and violated section 3543.5(c) of the Act.

III. The Concurrent Violations

I concur with Member Moore in finding the concurrent violations of section 3543.5(a) and (b) for the reasons stated in the lead opinion.

IV. The Charge Involving the Federation

This charge was consolidated by the hearing officer with those under discussion by this Board. A single hearing was held and one proposed decision was issued by the hearing

officer. No exceptions were taken from the finding involving the Federation. PERB, therefore, should include in its order provision for enforcing the hearing officer's decision relating thereto. / 

Harry Gluck, Chairperson

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, it is hereby ORDERED that the proposed decision of the hearing officer on the charges filed by the Stockton Teachers Association and the Stockton Unified School District is affirmed, as modified herein.

The alleged violation of section 3543.5(a), (b) and (c) which refers to the District's unilateral changes in teacher evaluation procedures by institution of the use of a "program management checklist" is hereby DISMISSED pursuant to section 3541.5(a).

Upon the foregoing findings of fact, conclusions of law and the entire record of all complaints, it is hereby ordered that the Stockton Unified School District:

(1) CEASE AND DESIST FROM:

(a) Refusing to provide information to the Stockton Teachers Association regarding the District's health benefit

costs for employees in the representation unit upon a request therefor; and

(b) Failing and refusing to meet and negotiate in good faith with the Stockton Teachers Association by withdrawing previously agreed-upon ground rules without lawful cause and by conditioning the negotiation of substantive issues on an unlawful demand to renegotiate such ground rules.

(2) TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

(a) Within ten days of service of this decision, prepare and post copies of the Notice attached hereto as Appendix A for twenty consecutive workdays at its headquarters office and in locations where notices to certificated employees are customarily posted.

(b) Within forty-five days of service of this decision, notify in writing the Sacramento Regional Director of the Public Employment Relations Board of the actions taken to comply with this Order.

It is further ORDERED that the Sacramento Regional Director is directed to process the decertification petition in light of these findings.

PER CURIAM

APPENDIX A

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

After a hearing in cases numbered S-CE-162, S-CE-225, S-CE-235 and S-CO-39, in which all parties participated, it has been found that the Stockton Unified School District Board of Trustees violated the following provisions of the Educational Employment Relations Act (EERA):

1. 3543.5(a), (b) and (c) by refusing during negotiations to provide to the Stockton Teachers Association information regarding the costs of providing health insurance benefits.
2. 3543.5(d) by supporting the Stockton Federation of Teachers and by encouraging employees to join the Stockton Federation of Teachers in preference to the Stockton Teachers Association by placing on the agenda at a mandatory teachers' meeting a presentation by the Stockton Federation of Teachers.
3. 3543.5(a), (b) and (c) by failing and refusing to meet and negotiate in good faith with the Stockton Teachers Association by withdrawing previously agreed-upon ground rules without lawful cause and by conditioning the negotiation of substantive issues on an unlawful demand to negotiate such ground rules.

WE WILL ABIDE BY THE FOLLOWING:

(1) CEASE AND DESIST FROM:

(a) Refusing to provide information to the Stockton Teachers Association regarding the District's health benefit costs for employees in the representation unit upon a request therefore;

(b) Supporting the Federation or encouraging employees to join the Federation in preference to the Association; and

(c) Failing and refusing to meet and negotiate in good faith with the Stockton Teachers Association by withdrawing previously agreed-upon ground rules without lawful cause and by conditioning the negotiation of substantive issues by an unlawful demand to negotiate such ground rules.

STOCKTON UNIFIED SCHOOL
DISTRICT BOARD OF TRUSTEES

Dated: _____

By: _____

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST TWENTY (20) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of:)	
)	
STOCKTON TEACHERS ASSOCIATION,)	
CTA/NEA,)	
)	Unfair Practice
Charging Party,)	Case Nos. S-CE-162
)	S-CE-225
v.)	S-CE-235
)	
STOCKTON UNIFIED SCHOOL DISTRICT,)	
)	
Respondent,)	
)	
)	
STOCKTON FEDERATION OF TEACHERS,)	
AFT/AFL/CIO,)	
)	
Intervenor.)	
_____)	
)	
STOCKTON UNIFIED SCHOOL DISTRICT,)	
)	
Charging Party,)	Case No. S-CO-39
)	
v.)	
)	
STOCKTON TEACHERS ASSOCIATION,)	<u>PROPOSED DECISION</u>
CTA/NEA,)	(1-24-80)
)	
Respondent.)	
_____)	

Appearances: Beeson, Tayer and Kovach by Duane B. Beeson and Patrick J. Szymanski for Stockton Teachers Association; San Joaquin County Counsel by Charles T. Thompson for Stockton Unified School District; and Van Bourg, Allen, Weinberg and Roger by Robert J. Bezemek for Stockton Federation of Teachers.

Before Stuart C. Wilson, Hearing Officer.

PROCEDURAL ASPECTS

These cases involve three unfair practice charges filed by the Stockton Teachers Association (hereafter Association) against the Stockton Unified School District (hereafter District) and one unfair practice charge filed by the District against the Association. The Stockton Federation of Teachers (hereafter Federation) has intervened in one count of one charge. These various charges were filed, partially withdrawn and amended over a period of almost one year, during which time five informal settlement conferences were held.

At the beginning of the formal hearing of these charges, the Association moved to dismiss charge S-CE-162 in its entirety and, at the conclusion of the formal hearing, moved to withdraw Count VII of Case S-CE-225. Both motions were granted.

In the remaining charges, the Association charged that the District refused to provide it with information necessary to perform its role as exclusive representative, took four unilateral actions regarding matters within the scope of representation, supported a rival employee organization in four instances, and failed to meet and negotiate in good faith. The District charged that the Association failed to meet and negotiate in good faith. The various charges will be discussed in order.

FINDINGS OF FACT

Within the meaning of the Educational Employment Relations Act (hereafter EERA), California Government Code sections 3540 et seq.,¹ it was stipulated by the parties and it is found that the District is an employer, that the Association and the Federation are employee organizations, and that the Association is the exclusive representative of the certificated negotiating unit which is the subject of these charges.

(1) THE REFUSAL TO PROVIDE INFORMATION

During negotiations the Association requested the District to disclose its costs of providing noncontributory health insurance benefits for the unit. The District first replied that it did not have the information available in that form since the group covered by insurance included not only the Association's unit but also all District employees, including other units and excluded personnel.

The District suggested that the Association obtain the information from the carrier directly. However, when this was attempted, the Association was informed that the District had instructed the carrier not to furnish any information.

¹All code section references are to the California Government Code.

In the instant case, the Association had not proposed a change in health insurance benefits and, after the District's refusal to disclose its costs, the parties did tentatively agree to maintenance of the status quo.

Regarding the Association's reason for requesting the information, the following uncontradicted testimony was given by the Association's chief negotiator:

The District's line during this reopener was that they provided the benefits and as long as they provided the benefits at no cost to the employee, that it should be no concern of ours what they cost. I was asked why I needed that information. I indicated during that reopener, as has been done since, that, if the District's position is that there are "X" number of dollars available for wages and fringe benefits and if the District is correct in contending that fringe benefits increase from year to year and since we were aware of the fact that the District was considering going to self-insurance, that how many dollars are spent on fringe benefits have an impact on whether we choose to go along with the increase or whether we would choose to take reduced benefits and/or whether we would choose to convert, in a subsequent proposal, convert the dollars to salary rather than to fringe benefits.

Based on all evidence received on this issue, it is found that the Association requested the District's cost of providing health insurance benefits so that it could evaluate the desirability of negotiating over whether the money the District spent on health benefits should be spent on salaries. It is further found that the District could easily have caused this information to be provided to the Association

but refused to do so. In addition, it is found that the Association never withdrew its request for this information. The fact that it signed a tentative agreement regarding health benefits is found to be merely an attempt by the Association to gain the benefits of a contract, even though it was denied information which it felt was necessary and relevant.

(2) UNILATERAL CHANGES

The Association alleges three such changes: institution of a sign-in sign-out procedure, increased yard duties, and a new evaluation procedure. The first two alleged changes will be discussed together.

A. Sign-in sign-out procedures and increased yard duties

The sign-in sign-out procedure had a similar effect to that which would have been produced by the use of a time clock. Elementary school teachers were required each teaching day to go to the principal's office, both when they arrived at and when they left the school site, and there sign a paper noting the time in each case. Although it might seem as if this new procedure were designed to end tardy arrivals and early departures, the evidence was to the contrary. The District's testimony regarding the reasons for institution of the new procedure did not include this reason and the Association's testimony was that teachers did, in fact, comply with the District's requirement that they be on the school site during certain hours (hereafter school site time).

Yard duty requires teachers to supervise students during recess, lunch, and busloading. These yard duty periods last 15 minutes each. The number of yard duty periods per teacher per school year was increased by six, so the total increase per teacher for the entire school year was approximately ninety minutes.

The District admits unilateral institution of these changes. The only testimony regarding the effect of these changes was that of two teachers who said the increased yard duty cut into time they previously used to prepare for class. Therefore, it is found that the District did unilaterally institute these changes and that the changes required the expenditure of a relatively small amount of additional effort during the school year.

B. The evaluation procedure

The Association charges that the District unilaterally changed procedures to be used for evaluation of teachers by the institution of the use of a form entitled "program management checklist" (hereafter checklist). The checklist was to be used in addition to teacher evaluation procedures and the teacher evaluation form (hereafter contract form) which were negotiated in the contract between the parties as the means of teacher evaluation. The District admits that it unilaterally instituted the use of the checklist, but contends that the checklist does not relate to the subject of "procedures to be used for the evaluation of employees."

The contract form contains five subjects of observation which may be marked "satisfactory," "needs improvement," or "unsatisfactory." The checklist contains 47 subjects of observation which may be marked "yes" or "no." All subjects of observation on both forms relate exclusively to the evaluation of teachers in the performance of their duties. Both forms are designed to be checked during the in-class observation of teachers by a principal.

Although the checklist has all the appearances of a form which could easily be used to rate teacher proficiency, the District claims that no such use was intended. Rather, it claims that the checklist was intended and used only as an aid to principals in increasing their evaluating skills. It was contended that the value of the checklist for the District was in providing evaluating training to principals and that, once the form had been used in an actual evaluation, it had no further use.

In addition, the use of the checklist to increase principals' evaluating skills is a subject very closely related to the evaluation process itself. If the use of the checklist had its intended effect, the evaluations of teachers would be affected because principals would then be considering additional criteria and using different techniques and skills which would have been developed by the use of the checklist.

In considering whether the teacher evaluations recorded

on the checklist were in fact intended to be used in the rating of teacher proficiency, the following circumstances provide inferences.

If this effort really were being expended to upgrade principals' skills, an educational motive, it seems only reasonable that professional educators would apply typical educational techniques to evaluate whether the new procedure was having the desired effect. Here, even though the evaluation checklists were retained, there was no follow-up procedure to determine whether the principals were actually increasing their evaluating skills.

A copy of the completed checklist was given to the evaluated teacher, and the checklist form contained a box for comments and requests to the evaluated teacher which the principals used for such things as requests for further discussion of teacher proficiency. The only point of giving a copy of the completed checklist to evaluated teachers and the box on the checklist allowing principals to request teachers to discuss matters further would be to inform teachers of their principals' evaluations of their strong and weak points so that teachers' rather than principals' skills would be upgraded.

The checklist procedure required that each principal evaluate each teacher in his school. If the procedure were intended only to aid principals, there would be no point in

requiring that each teacher be evaluated. It would be the most unlikely of coincidences if the number of checklist procedures which management wished each principal to perform exactly equaled the number of teachers in that principal's school.

Based on all evidence received on this issue, it is found that the new checklist procedure was used to evaluate teachers, even if those evaluations were not used to rate teacher proficiency, and it is further found that the District did intend to use the checklist results to rate teacher proficiency.

(3) SUPPORT OF THE FEDERATION

The Association alleges that the District unlawfully supported the Federation by furnishing to it (a) window information regarding the Association, (b) mailing labels containing the names and addresses of unit members, (c) released time for its supporters to campaign, and (d) agenda time at a mandatory faculty meeting. The individual support charges will be discussed in order.

A. Window information

At a time when the Federation was working toward decertification of the Association, the parties agree and it is found that the District furnished to the Federation, on its request, information relating to the dates of the decertification window period of the Association's contract. The window period may be calculated simply by referring to the

contract which is available as a public document and the EERA. The Association produced no evidence that the furnishing of window information caused the District to exert any influence over the Federation or that it had any effect on employee choice between the two organizations.

B. The mailing labels

The parties agree and it is found that the District furnished to the Federation, upon its request and payment, the names and addresses of the unit members which the Association represented. This list was produced by the District computer and was in the form of mailing labels. It had been the District's practice similarly to furnish such labels to other employee organizations upon their request. In the past, the District had furnished such lists to the Association, the Black Teachers Association, the Spanish American Teachers Association and the Asian American Teachers Association.

Here again, no evidence was presented of District influence over the Federation or that the District's act induced employees to choose an organization which would not likely have been chosen otherwise.

C. Released time

The third charge is that the District provided released time to two teachers who were Federation organizers and who used the released time to attempt to develop Federation support during what would otherwise have been working hours.

On one occasion, the teacher known to be a Federation supporter was observed during working hours at a school other than the one at which he taught passing out cards. On another occasion, another teacher was observed during working hours at a school other than the one at which he taught, passing out cards which the witness testified related to decertification of the Association.

However, no evidence was offered that the District had provided released time to either teacher to work for the Federation. On the contrary, one teacher was about 15 minutes late to work and the other reported that he had been absent for illness on the days they apparently electioneered for the Federation.

When the Association complained of these acts to the principal, it did not even give the name of the teacher who had reported in ill. It did give the principal the name of the teacher who was late and the principal's response was that "... he would clip (that teacher's) wings." Thus, the Association not only offered no evidence of prior notice of the proposed electioneering, but the evidence even indicated that the District, when notified, indicated an intention to stop any such abuses.

Based on the evidence received on this issue, it is found that the cards passed out by the first teacher related to decertification of the Association and that both teachers used

what should have been working time to campaign on behalf of the Federation. However the Association has totally failed to meet its burden of proof of District complicity in these actions by the two teachers, and therefore it must be found that the District had no connection with them.

D. The agenda

Part of the teachers' duties at one of the District's schools was attendance at a faculty meeting held twice a month after the last class of the day. That school's principal prepared the agenda for the May 8, 1979 meeting and included on it as the first item a presentation by the Federation. It was stipulated by all parties and it is found that the principal was a managerial or supervisory employee of the District. At the meeting two representatives of the Federation were introduced by the principal, spoke to the teachers for about 15 minutes, and answered questions. The topic of their presentation was how the Federation "might be able to do a better job representing the teachers" than the Association was doing. At the conclusion of their presentation, they placed decertification cards on the tables at which the teachers were sitting and stated that they would wait until after the meeting to answer any further questions. Neither the Association nor any other group not directly associated with teachers' school duties had ever appeared on the agenda or made a presentation.

The principal testified that, although the Federation presentation was made at a teachers' meeting at which attendance had always been mandatory, nevertheless he told one of the teachers that she did not have to listen to it and that he told the group of teachers assembled that, "Those that were interested could listen." A teacher who attended the meeting testified that no one told her that the Federation presentation was anything other than an agenda item at a mandatory meeting.

Based on all evidence received on this issue, it is found that the principal knew or reasonably should have known that the Federation would use its place on the agenda to campaign on behalf of the Federation, the principal did not say to anyone that the teachers did not have to listen to the Federation presentation, and even if the principal had stated that the teachers did not have to listen, since their attendance was mandatory, they had no real alternative but to listen.

(4) THE DISTRICT'S GOOD FAITH

Formal negotiations on a successor contract began March 2, 1979. Approximately one week before that time, the District's chief negotiator, Kenneth Caves (hereafter Caves), announced that he was resigning from the District's employment. However, at that first meeting, he assured the Association that he had full authority to negotiate on behalf of the District.

One of the first subjects of discussion at the meeting was ground rules for negotiations. Over a series of previous

negotiations, the parties had agreed upon a set of ground rules although they were not reduced to writing. At this first meeting, with some easily-agreed minor changes, the previous ground rules were carried over into the negotiations on the successor contract. Once this procedural matter was settled, the parties began a discussion of substantive proposals.

In an effort to obtain a negotiator to replace Caves, the District contacted five different firms or individuals, one of whom had previous experience with the District. Some of the five were residents of the Stockton area. Only one proposal was received in answer to these contacts. Two of the five even stated that they did not wish to become involved because of the history of employer-employee relations problems between the parties. The one proposal the District received was from John Crossett (hereafter Crossett), who then lived in Southern California but was in the process of moving to within driving distance of the District. Crossett told the District that he wished to take a long-planned vacation with his wife during April and the District acceded to this request when it hired him.

On April 4, 1979, before his vacation, Crossett met the Association negotiating team for the first time. Crossett stated that he would be available to begin negotiations on April 26, 1979 from 9:00 a.m. to 3:00 p.m. He stated that the first order of business would be the establishment of ground

rules. He handed a set of his proposed ground rules to the Association team and suggested that they be ready to discuss them at the April 26, 1979 meeting.

The Association objected to the delay of over three weeks between meetings and also told Crossett that agreement had already been reached on ground rules, so further discussion on this topic was unnecessary. The three-week hiatus was Crossett's vacation time.

One interim meeting during the three-week period was attempted. On April 6, 1979, the attorney for the District met with the Association but was only authorized to negotiate the school calendar. The Association met with the attorney but refused to negotiate this one subject separately from other issues. The Association again requested additional meetings but none were set before the already-scheduled April 26, 1979 meeting.

At the April 26, 1979 meeting, Crossett made it clear that he did not intend even to discuss substantive proposals until written and initialed agreement had been reached on ground rules. Crossett carried out this intention and, in fact, never did discuss any substantive proposals at any time during the remainder of the negotiating sessions.

For the Association's part, it took the position that ground rules had already been established and that further discussion was unnecessary. The Association maintained this

position throughout the remainder of the negotiating sessions.

This situation resulted in discussions which even the parties characterized as absurd. For example, at this meeting the process degenerated to one in which the District asked a question regarding ground rules, the Association refused to answer but countered with a question regarding substance, the District refused to answer but countered with another question regarding ground rules, and so forth.

The next meeting was held April 30, 1979. In discussing this meeting, the Association's chief negotiator testified:

I proceeded in a, which probably would be comical if it were possible to play it back, I would ask a question about Article I, he would ask a question about ground rule one, I would ask a question about Article II. And we got through, I believe, Article XVI in that fashion. Mr. Crossett talking about ground rules interspersed with my talking about contract proposals.

A meeting was scheduled for May 7, 1979. The Association wanted the meeting to be held at the Association's premises in accordance with the previously-agreed ground rules regarding alternate sites. Since the District took the position that ground rules were not yet agreed, it did not feel obliged to have the meeting at the Association's premises. This matter was not resolved between the parties and was left with the Association's chief negotiator stating that he would be at the Association's premises awaiting the arrival of the District team. Crossett responded by saying he hoped the Association

team didn't wait too long. The Association team received released time for the meeting and thus arrived at its premises at around 10:00 a.m. They waited there until past 3:00 p.m. when they were notified that the District's team was meeting at the District premises. Neither side relented and so no meeting was held that date.

Five additional meetings were held up through June 4, 1979. At all these meetings, the Association refused to negotiate over ground rules, but it did at least discuss the subject of ground rules by saying that the subject was already agreed and thus closed and by stating orally what it thought the ground rules were.

At all of these meetings, the District refused even to discuss, much less negotiate, any substantive proposal until new agreement was reached on ground rules, that agreement was reduced to writing and the parties had initialed it.

Based on all evidence received on this issue, it is found that the District acted expeditiously in obtaining a replacement for Caves, that the District's selection of a negotiator from out of the area who had a vacation planned was reasonable considering the District's limited options, and that the delay in negotiations because of Crossett's vacation was not unreasonable under the circumstances. However it is further found that Crossett reneged on Caves' agreement regarding ground rules, that throughout negotiations Crossett

conditioned the opening of discussions on substantive proposals upon the reaching of written and initialed agreement regarding ground rules, and that Crossett refused to abide by the alternate meeting site agreement.

(5) THE ASSOCIATION'S GOOD FAITH

The District's charge against the Association is basically the reverse of the Association's charge against the District. The parties agree and it is found that the Association refused to renegotiate ground rules as insisted by the District.

ISSUES

1. Did the District violate section 3543.5(a), (b) and (c) by refusing to furnish to the Association its cost of providing health insurance benefits?

2. Did the District violate section 3543.5(a), (b) and (c) by unilateral institution of the sign-in sign-out procedure?

3. Did the District violate section 3543.5(a), (b) and (c) by unilateral institution of increased yard duty?

4. Did the District violate section 3543.5(a), (b) and (c) by unilateral institution of the program management checklist?

5. Did the District violate section 3543.5(a), (b), (c) and (d) by furnishing to the Federation information regarding the dates of the decertification window period in the Association's contract?

6. Did the District violate section 3543.5(a), (b), (c) and (d) by furnishing to the Federation mailing labels containing the names and addresses of consenting unit members?

7. Did the District violate section 3543.5(a), (b), (c) and (d) in relation to the electioneering efforts of the two teachers who were Federation supporters?

8. Did the District violate section 3543.5(a), (b), (c) and (d) by furnishing to the Federation agenda time at a mandatory teachers' meeting?

9. Did the District violate section 3543.5(a), (b) and (c) by failing and refusing to negotiate in good faith with the Association?

10. Did the Association violate section 3543.6(a) and (c) by failing and refusing to negotiate in good faith with the District?

DISCUSSION AND CONCLUSIONS OF LAW

(1) THE REFUSAL TO PROVIDE INFORMATION

It is the general rule that an employer must furnish to an employee organization, upon its request, information in its possession which is necessary and relevant to the employee organization in discharging its obligations. (Santa Monica College Part-Time Faculty Association, CTA/NEA v. Santa Monica Community College District; Santa Monica College Faculty Association, Intervenor (9/21/79) Public Employment Relations Board (hereafter PERB) Decision No. 103.)

In determining whether the health benefit cost requested in this case was necessary and relevant, two cases arising under the National Labor Relations Act (hereafter NLRA), as amended, involving a union's request for employer disclosure of the employer's cost of providing fringe benefits are instructive. They are Sylvania Electric Products, Inc. v. NLRB (1st Cir. 1961) 291 F.2d 128 [48 LRRM 2313] cert. den. (1961) 368 U.S. 926 [49 LRRM 2173], and Sylvania Electric Products, Inc. v. NLRB (1st Cir. 1966) 358 F.2d 591 [61 LRRM 2657].

The first Sylvania case, denying disclosure, states:

. . . Although the benefits accruing to employees from such plans constituted "wages that must be precisely disclosed and as to which the employer must bargain, the cost to the employer was not.

Since the parties did tentatively agree to continue the status quo regarding health benefits with the District paying the full cost thereof, the District argues that this brings the instant case within the holding of the first Sylvania case. However, the execution of a tentative agreement did not change the necessity and relevancy of the requested information. In NLRB v. Yawman and Erbe Manufacturing Co. (1951) 187 F.2d 947 [27 LRRM 2524] and NLRB v. Fitzgerald Mills Corporation (1963) 313 F.2d 260 [52 LRRM 2174], it was held that even execution of a binding contract without receipt of the requested information does not render the information irrelevant, since

the union may simply have decided that the advantages of a contract in hand would outweigh those which it might enjoy with all the information available to it.

The second Sylvania case, enforcing a disclosure order states:

However, when the union makes the same demand in order better to evaluate the desirability of an increase in welfare benefits as against an equivalent increase in take-home pay, matters as to which the employer must bargain, the Board might properly conclude that the information, though collateral, was so necessary to effective negotiation that withholding it without good reason was inconsistent with the duty to "exert every reasonable effort to make and maintain agreements."
(Citation omitted.)

The order of the Board will be enforced.
(27 LRRM at p. 2659)

Here, since it was found that the Association requested the information in order to be able to evaluate whether to make a proposal to convert health benefit monies to salary, it is concluded that the information regarding the District's cost of providing health insurance benefits was relevant and necessary for the Association properly to fulfill its role as a party to the negotiations. It is thus concluded that the District's obligation to negotiate in good faith required it to furnish this information to the Association and its refusal to do so constituted a breach of its obligation under 3543.5(c) to negotiate in good faith.

This act also constitutes a 3543.5(b) violation in that refusing to furnish the Association information necessary and relevant to negotiations denies the Association its right properly to represent the employees.

It also constitutes a 3543.5(a) violation in that refusing to furnish the Association information necessary and relevant to negotiations interferes with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by denying to the exclusive representative information necessary and relevant to its performance of its duty to represent members of the negotiating unit.

(2) UNILATERAL CHANGES

The scope of representation under EERA is stated in section 3543.2 and includes the subjects of "hours" and, within the limited definition of the terms and conditions of employment, the subject of "procedures to be used for the evaluation of employees."

In Pajaro Valley Education Association, CTA/NEA v. Pajaro Valley Unified School District (5/22/78) PERB Decision No. 51, PERB has held that a unilateral change in a subject within the scope of representation constitutes a per se violation of the duty to negotiate. So each of the acts of the District must be analyzed to determine whether or not they constitute a change and whether the subject is within the scope of representation.

A. Sign-in sign-out procedures and increased yard duty

Two PERB cases have addressed the subject of unilateral change in duties. They are Palos Verdes Faculty Association

v. Palos Verdes Peninsula Unified School District, consolidated with Pleasant Valley School District Education Association v. Pleasant Valley School District (7/16/79) PERB Decision No. 96; and Fullerton Union High School District Personnel and Guidance Association v. Fullerton Union High School District (5/30/78) PERB Decision No. 53. Palos Verdes holds that activities such as back-to-school night and open house are within the scope of representation on the subject of hours because they require teachers to perform duties after school site time. Fullerton holds that an increase in counselor case load to a level which cannot adequately be performed is similarly within the scope of representation on the subject of hours because counselors have a professional obligation to provide at least a certain minimum level of services to students, which obligation would not allow them merely to reduce indefinitely the time spent per student.

Thus, the key question in determining whether the assignment of a new duty is within the scope of representation on the subject of hours is whether it adds to the work, if any, a teacher must perform before or after school site time. If it does, the change is within the scope of representation but, if it does not, the change falls into the area of assignment of duties within the school day and is outside the scope of representation.

Thus, a district may unilaterally add duties up to the point of totally consuming the school site time. If the school site time is already totally consumed, a district may add duties only by way of the negotiating process, or if it also subtracts equal duties in another area. However, when

the balancing reduction in duties is in the area of a teacher's professional responsibility to students, as opposed to clerical or housekeeping-type duties that do not involve such professional responsibilities, Fullerton holds that a district may not reduce duties below that which a teacher is required by his professional responsibility to provide.

Since no proof was offered and no finding was made that either the sign-in sign-out procedure or the increased yard duty added to the work, if any, that teachers were required to perform in non-school site time, or that these new duties caused teachers to breach their professional obligations to students, it is concluded that the District did not commit an unfair practice by instituting these unilateral changes.

B. The evaluation procedure

Even accepting the District's contention that the checklist procedure was intended solely as an aid to principals in upgrading their evaluation skills and not as a rating of teacher proficiency, nevertheless teachers are still being evaluated under the new procedure. To be within the scope of representation, the language of the EERA does not require that the results of the "procedure" eventually be used in the formal rating of teacher proficiency. It is sufficient if a procedure provides for evaluation regardless of whether the results of the evaluation are to be used further.

In addition, even if it were somehow concluded that the evaluation of teachers by use of the checklist was insufficient to bring the checklist procedure within the scope of representation, still the checklist procedure bears a close relationship to the evaluation process. Under these circumstances, it is appropriate to apply the tests for determination of scope set down in Palos Verdes to the checklist procedure to determine whether or not the closeness of the relationship brings the checklist procedure within scope.

These tests are as follows:

. . . such a determination may also require a balancing of competing interests, not merely an assessment of whether or not a logical connection exists between the enumerated topic and the proposed topic. Under the latter situation, the negotiability of a particular proposal would depend on whether it relates primarily to the specifically enumerated items found in section 3543.2 or to matters of broader educational policy in which the public's interest is more substantial than that of the public school employees.

and

- 1) Is the subject of such vital concern to both management and employees that controversy and conflict is likely to occur?
- 2) Is collective bargaining the appropriate way of resolving that conflict? A factor in answering the latter question is whether the employer's obligation to negotiate would "significantly abridge his freedom to manage his business."

In applying the first of these tests, it seems obvious that there is a logical connection between the checklist

procedure which is purportedly designed to aid principals in their teacher evaluation skills and the enumerated subject of "procedures to be used for the evaluation of employees." When principals are told by management to upgrade their evaluation skills by use of a checklist containing 47 items instead of the 5 on the contract form, this is a very clear message that management wants principals to evaluate teachers in terms of these 47 items. This will have the inevitable effect of causing principals to evaluate teachers in terms of the new items and thus will shift the focus of the evaluation.

It must next be considered whether the checklist procedure relates primarily to "procedures to be used for the evaluation of employees" or to "matters of broader educational policy in which the public's interest is more substantial than that of the public school employees." As discussed above, the checklist procedure has a strong influence on how the contract form is used and thus is strongly related to that enumerated item. On the other hand, the checklist procedure bears some relationship to the broader educational policy of assuring teacher competence. However, every subject about which the District and the Association are jointly concerned bears some such relationship, and it does not appear that the relationship here is sufficient to overcome the strong relationship to an enumerated item.

In applying the second of these tests, it seems clear that the checklist procedure is of such vital concern to both the

District and the Association that controversy and conflict are likely to occur. As discussed, use of the checklist will strongly influence how the contract form is filled out and thus how teachers are evaluated. The rating of individual teacher proficiency is of vital concern to the individual teachers since it constitutes a judgment of their professional abilities. Also, this rating is of vital concern to the District because it is a tool which may be used to identify weak performers so that their skills may be improved to the benefit of the entire school system.

The give and take of collective bargaining seems the appropriate way of resolving a conflict regarding a procedure designed to improve the evaluating skills of principals. Even though neither side is required to agree to any specific proposal, bargaining over the issue will allow each side to understand the other's motives and objectives, and will facilitate the reaching of an accommodation which will satisfy both sides. Bargaining over the institution of a checklist evaluation procedure and its content certainly will not significantly abridge the District's freedom to manage the schools.

Applying these rules to the findings of fact on this issue, it is first concluded that regardless of whether the checklist results are used to rate teacher proficiency, since teachers are evaluated, the checklist procedure is within the scope of representation.

It is next concluded that the use of the checklist relates primarily to evaluation procedures rather than to matters of broader educational policy in which the public's interest is more substantial than that of the public school employee. It is further concluded that the checklist is a subject of such vital concern to both management and employees that controversy and conflict are likely to occur and collective bargaining is the appropriate means of resolving the conflict considering that the District's obligation to negotiate would not significantly abridge its freedom to manage the schools. These conclusions bring the checklist procedure within the scope of representation also.

Finally, since it was found that the checklist was intended to be used to rate teacher proficiency, it is within the scope of representation on this theory also.

Therefore, it is concluded that the District's unilateral institution of the checklist procedure breached the District's obligation to negotiate in good faith on matters within the scope of representation in violation of 3543.5(c)

This act also constitutes a 3543.5(b) violation in that it denies the Association its right to negotiate on behalf of unit members regarding any proposed changes in the status quo on subjects within the scope of representation.

It also constitutes a 3543.5(a) violation in that it interferes with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by unilaterally changing matters within the scope of representation without meeting and negotiating with the exclusive representative.

(3) SUPPORT OF THE FEDERATION

The PERB has held that since the language of the EERA regarding the furnishing of support to an employee organization is virtually identical to that of the NLRA, reference to National Labor Relations Board (hereafter NLRB) precedent is appropriate. (Azusa Federation of Teachers, AFT Local 3298 v. Azusa Unified School District (11/23/77) PERB Decision No. 38)

NLRB cases make a distinction between impermissible support and permissible cooperation. In making this distinction, the totality of the employer's conduct is evaluated in terms of its tendency to coerce employees in the exercise of their rights. If the "natural tendency of such support would be to inhibit employees in their choice of a bargaining representative" and to restrict the employee group in arm's length dealing with the employer, it is impermissible support. (Kaiser Foundation Hospitals, Inc. (1976) 223 NLRB No. 51 [91 LRRM 1523].) However, if the assistance is minimal and does not endanger the independence of the labor organization, it is mere permissible cooperation. (Coamo Knitting Mills (1964) 150 NLRB 579 [58 LRRM 1116].)

The various charged instances of support will be discussed in order.

A. Window information

Here, since no evidence was offered that the furnishing of the window information had a natural tendency to inhibit

employees in their choice of an employee organization or that it would restrict the employee organization in arm's-length dealings with the employer, there is no basis for concluding that it constituted impermissible support.

Conduct much more supportive than the furnishing of publicly-available information has been held by the NLRB to be merely permissible cooperation. For example, in U.S. Postal Service (1973) 205 NLRB 607 [84 LRRM 1001], the NLRB found no violation where, with a rival representation petition on file, the employer voted to grant the incumbent union's request for money with which to sponsor an employee picnic to be run by the incumbent union. Certainly, furnishing publicly-available information is a lower level of cooperation than voting for an employee picnic which employees would naturally credit to the incumbent union. Therefore, it is concluded that the furnishing of window information did not rise to the level of furnishing support but rather was mere permissible cooperation.

B. The mailing labels

Here again, since no evidence was offered that the furnishing of mailing labels at cost had a natural tendency to inhibit employees in their choice of an employee organization or that it would restrict the employee organization in arm's length dealings with the employer, there is no basis for concluding that it constituted impermissible support.

In Duquesne University (1972) 198 NLRB 891 [81 LRRM 1091], the NLRB found that the printing of union literature and internal election ballots at the employer's expense did not constitute unlawful support in a situation where the school employer had historically made its facilities freely available to any desirous organization, including labor organizations. Here, the District historically had furnished mailing labels at cost, not only to the Association but also to the Black Teachers' Association, the Spanish American Teachers' Association and the Asian American Teachers' Association. So this circumstance tends to support the conclusion that the furnishing of mailing labels did not constitute unlawful support.

Even when a rival union was involved, the NLRB found that allowing the union to use the company's Xerox facilities was de minimis and thus not unlawful. (Monon Trailer, Inc. (1975) 217 NLRB No. 44 [89 LRRM 1280].)

Finally, in District 65, Distributive Workers of America v. NLRB (D.C. Cir. 1978) 593 F.2d 1155 [99 LRRM 2640], enforcing (1977) 228 NLRB 49 [96 LRRM 1589], the Court in finding unlawful support looked to the employer's differing treatment to rival unions. If in the case at hand the District had refused the Federation's request for what it had historically been granting to the Association and other

organizations, it might easily have been found to have provided support to the Association by treating the Federation differently.

Thus, by all the criteria mentioned, it is concluded that the District's furnishing of mailing labels to the Federation was not impermissible support.

C. Released time

If the Association had proved that the District had given Federation supporters released time to campaign for the Federation, that would likely have been found to have constituted impermissible support. In Lifetime Doors (1977) 233 NLRB No. 120 [97 LRRM 1134], the NLRB held that in the face of a rival union petition, offering an employee time off from work if she persuaded other employees to join the union, coupled with recognition of that union without evidence of an uncoerced majority, constituted impermissible support.

But here, since the Association has failed to carry its burden of proof on the threshold question of whether the District was involved with the use of school time by two teachers for campaigning, it must be concluded that in this area also the District did not furnish support to the Federation.

D. The Agenda

The delivery of a pro-Federation speech to a captive audience of teachers would have a natural tendency to cause certain effects.

First, it would give employees the impression that since the District chose to put the Federation on the agenda, it must favor the Federation over the Association. This impression by teachers would tend to cause teachers seeking to curry favor with the District to vote as the District apparently wished.

Second, it would tend to show the Federation to be a forceful and powerful organization, capable of having itself placed on a school business agenda. This impression of strength would tend to cause teachers seeking a strong organization to vote for the Federation.

Third, it presents the Federation campaign rhetoric to unit members at a time when both the Federation and the Association are attempting to sway the undecided vote. This would naturally tend to have the effect of causing undecided voters to favor the Federation.

Fourth, if the Federation had won the election, it would have tended to feel an obligation to the District for having aided its campaign. Also, it would realize that if the District became dissatisfied with the Federation as the exclusive representative, it might similarly aid a rival organization at the next opportunity. This would tend to restrict the Federation in arm's-length dealings with the employer.

In addition, 3543.5(d) declares it to be unlawful for a public school employer to ". . . in any way encourage employees to join any organization in preference to another." Here, there is no dispute between the parties that the subject of the presentation was how the Federation ". . . might be able to do a better job representing the teachers . . ." than the Association was doing. It is concluded that the principal's act of placing the Federation on the agenda definitely encouraged employees to join the Federation in preference to the Association.

Thus, it is concluded that the principal's act of placing pro-Federation speakers on the agenda of a mandatory teachers' meeting and countenancing the distribution of decertification cards had the natural tendency to inhibit employees in their choice of bargaining representatives, would tend to restrict the employee group in arm's-length dealings with the employer, and encouraged employees to join the Federation in preference to the Association.

It must next be decided whether the District is liable for the acts of the principal in this case. A school district can only act through agents, and it was stipulated that the principal was a managerial or supervisory employee of the District. In Antelope Valley Community College District v. California School Employees Association and its Chapter 374, consolidated with California School Employees Association and

its Chapter 374 v. Antelope Valley Community College District (7/18/79) PERB Decision No. 97, the PERB held an employer liable for the acts of certain classified employees who had been designated as managerial and supervisory. These classified employees in Antelope Valley certainly were clothed with less apparent authority to act for the District than that possessed by a principal in the instant case. Therefore, it is concluded that the District is responsible for the acts of the principal here and thus committed a violation of 3543.5(d) by reason of the acts of the principal.

THE DISTRICT'S GOOD FAITH

The general rule regarding withdrawal from tentative agreements is stated in American Seating Company of Mississippi v. NLRB (1971) 424 F.2d 106 [73 LRRM 2996, 2998] and NLRB v. Thompson, Inc. (1971) 449 F.2d 1333 [78 LRRM 2593] as follows:

It is well established that the withdrawal by the employer of contract proposals, tentatively agreed to by both the employer and the union in earlier bargaining sessions, without good cause, is evidence of a lack of good faith bargaining by the employer

In a case with many similarities to the case at hand, San Antonio Machinery and Supply Corporation v. NLRB (1966) 363 F.2d 633 [62 LRRM 2674], management brought a new negotiator in to on-going negotiations. The new negotiator withdrew from tentative agreements already reached

in previous negotiations. The union objected but did discuss the employer's new proposals item by item. When no agreement was reached, a strike was called. In finding that the strike was precipitated by the employer's unfair practice, the NLRB quoted with approval the trial examiner's finding that ". . . (the employer) by withdrawing from and repudiating agreements already arrived at and maintaining its changed position without deviation . . . failed to bargain in good faith with the union, thus engaging in unfair labor practice"

In the instant case, the withdrawal of agreement was in the threshold area of ground rules rather than substance, and thus it had an even more stultifying effect on negotiations than a withdrawal on substantive agreements would have had.

The District's stated reasons for withdrawal were the history of problems between the parties and Crossett's desire to start with a clean slate in his dealings with the Association. It is concluded that these reasons are insufficient justification for withdrawal.

Even if the District had been correct in withdrawing from its agreement regarding ground rules, this would not have justified its taking and holding of the position that it would not discuss substantive proposals until ground rules were first agreed. Although the parties may agree regarding the order in which they will negotiate various subjects, in the absence of such an agreement, the attempt by one party to

dictate the order in which subjects will be negotiated becomes the imposition of a condition to the negotiating of later subjects. The District may not relieve itself of its statutorily imposed obligation to bargain in good faith on subjects within the scope of representation, even temporarily, by imposing conditions which must be met before it will fulfill its statutory obligations to negotiate. In this connection, see NLRB v. Patent Trader, Inc. (1969) 415 F.2d 190 [71 LRRM 3086], mod. (1970) 426 F.2d 791 [74 LRRM 2284]; Federal Mogul Corp. (1974) 212 NLRB 950 [87 LRRM 1105], enfd 524 F.2d 37 [91 LRRM 2207]; and the Adrian Daily Telegram (1974) 214 NLRB 1103 [88 LRRM 1310].

Based upon the findings of fact and all evidence received on this issue, it is concluded that both Caves and Crossett were fully authorized to negotiate on behalf of the District, that their acts are attributable to the District, and that the parties entered into an agreement regarding ground rules for negotiations. It is next concluded that the District's act of hiring a new negotiator with problems regarding his place of residence and planned vacation as one item in a totality of circumstances, did not constitute a violation of its duty to meet and negotiate in good faith. However, it is concluded that the District did violate its obligation pursuant to 3543.5(c) to negotiate in good faith by refusing to abide by previously-agreed ground rules and by conditioning the opening

of discussions on substantive proposals upon the reaching of written and initialed agreement on ground rules. It also constitutes a 3543.5(a) violation in that it interferes with employees because of their exercise of their right to select an exclusive representative to meet and negotiate with the employer on their behalf by obstructing negotiations with the exclusive representative.

(5) THE ASSOCIATION'S GOOD FAITH

Since it has been concluded that the District breached its obligation to negotiate in good faith by refusing to honor its previous agreement regarding ground rules and by insisting on renegotiating ground rules before even discussing substantive proposals, it must be concluded that the Association was within its rights in resisting these actions and therefore committed no unfair practice by doing so.

(6) OTHER CHARGES

As to all other charges, since the Charging Parties failed to sustain their burdens of proof, they should be dismissed.

REMEDY

PLRB is authorized by 3541.5(c) to order an offending party to cease and desist from the unfair practice and to take such affirmative action as will effectuate the policies of the EERA.

An order that the District cease and desist the unlawful practices set forth herein and, as requested by the Association, an affirmative order that they provide the health benefit cost information requested necessary to make informed decisions in negotiations serves to effectuate the policies of the EERA.

Posting of the order is appropriate as it serves to advise the employees in the negotiating unit of the disposition of the unfair charge and, further, announces the readiness of the District to comply with the order. See CSEA Chapter 658 v. Placerville Union High School District (9/11/78) PERB Decision No. 69 [2 PERC 2185].

PROPOSED ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record, the following violations are

HEREBY DISMISSED:

- (a) The alleged violation by the District of section 3543.5(a), (b) and (c) regarding the sign-in sign-out procedure.
- (b) The alleged violations by the District of section 3543.5(a), (b) and (c) regarding the increased yard duty.
- (c) The alleged violations by the District of section 3543.5(a), (b), (c) and (d) regarding the furnishing of window information.
- (d) The alleged violations by the District of section 3543.5(a), (b), (c) and (d) regarding the furnishing of mailing labels.
- (e) The alleged violations by the District of section 3543.5(c) and (d) regarding the furnishing of released time.
- (f) The alleged violation by the District of section 3543.5(a), (b), (c) and (d) regarding electioneering by employees.
- (g) The alleged violations by the District of section 3543.5(a), (b) and (c) regarding the furnishing of agenda time to the Federation.
- (h) The alleged violation by the Association of section 3543.6(a) and (c) regarding its refusal to renegotiate ground rules.

Upon the foregoing findings of fact, conclusions of law, and the entire record of all cases, it is hereby ordered that the Stockton Unified School District:

(1) CEASE AND DESIST FROM:

(a) Refusing to provide to the Association information regarding its health benefit costs;

(b) Unilateral institution of personnel evaluation procedures without first negotiating in good faith with the Association thereon;

(c) Using the program management checklist in marking performance of personnel within the unit;

(d) Supporting the federation or encouraging employees to join the federation in preference to the Association; and

(e) Failing and refusing to meet and negotiate in good faith with the Association upon its request therefor upon subjects within the scope of representation.

(2) TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

(a) Within twenty (20) days of the date this decision becomes final furnish the Association complete and detailed information regarding its cost of providing health care benefits to the unit of employees represented by the Association.

(b) Within five days of the date this proposed decision becomes final, prepare and post copies of the Notice attached hereto as Appendix A for forty-five (45) consecutive working days at its headquarters office and in locations where notices to certificated employees are customarily posted.

(c) At the end of the posting period, notify in writing the Sacramento Regional Director of the Public Employment Relations Board of the actions taken to comply with this Order.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final on February 21, 1980 unless a party files a timely statement of exceptions within twenty (20) calendar days following the date of service of the Decision. Such statement of exceptions and supporting brief must be actually received by the Executive Assistant to the Board at the headquarters office in Sacramento before the close of business (5:00 p.m.) on February 21, 1980, in order to be timely filed. (See California Administrative Code, title 8, part III, section 32305.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. (See California Administrative Code, title 8, part III, sections 32300 and 32305, as amended.)

Dated: January 24, 1980

Stuart Wilson
Hearing Officer



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

After a hearing in cases numbered S-CE-162, S-CE-225, S-CE-235 and S-CO-39, in which all parties participated, it has been found that the Stockton Unified School District Board of Trustees violated the following provisions of the Educational Employment Relations Act (EERA):

1. 3543.5(a), (b) and (c) by refusing during negotiations to provide to the Stockton Teachers Association information regarding its costs of providing health insurance benefits.
2. 3543.5(a), (b) and (c) by taking unilateral action in the area of teacher evaluation procedure by institution of the use of the program management checklist.
3. 3543.5(d) by supporting the Stockton Federation of Teachers and by encouraging employees to join the Stockton Federation of Teachers in preference to the Stockton Teachers Association by placing on the agenda of a mandatory teachers' meeting a presentation by the Stockton Federation of Teachers.
4. 3543.5(a), (b) and (c) by failing and refusing to meet and negotiate in good faith with the Stockton Teachers Association.

WE WILL ABIDE BY THE FOLLOWING:

(1) CEASE AND DESIST FROM:

(a) Refusing to provide to the Association information regarding its health benefit costs;

(b) Unilateral institution of personnel evaluation procedures without first negotiating in good faith with the Association thereon;

(c) Using the program management checklist in marking performance of personnel within the unit;

(d) Supporting the federation or encouraging employees to join the federation in preference to the Association; and

(e) Failing and refusing to meet and negotiate in good faith with the Association upon its request therefore upon subjects within the scope of representation.

(2) TAKE THE FOLLOWING AFFIRMATIVE ACTION: Within twenty (20) days of the date this decision becomes final furnish the Association complete and detailed information regarding its cost of providing health care benefits to the unit of employees represented by the Association.

STOCKTON UNIFIED SCHOOL
DISTRICT BOARD OF TRUSTEES

Dated: _____

By _____
Superintendent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST FORTY-FIVE (45) CONSECUTIVE WORK DAYS FROM THE DATE OF POSTING AND MUST NOT BE DEFACED, ALTERED OR COVERED BY ANY MATERIAL.