

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR VALLEY TEACHERS)
ASSOCIATION, CTA/NEA,)
)
Charging Party,) Case No. LA-CE-1652
)
v.) PERB Decision No. 487
)
VICTOR VALLEY UNION HIGH)
SCHOOL DISTRICT,) February 15, 1985
)
Respondent.)
)
_____)

Appearances: Charles R. Gustafson, Attorney for the Victor Valley Teachers Association, CTA/NEA; Atkinson, Andelson, Loya, Ruud & Romo by Karen E. Gilyard, Attorney, for the Victor Valley Union High School District.

Before Hesse, Chairperson; Jaeger and Burt, Members.

DECISION

HESSE, Chairperson: The Victor Valley Teachers Association, CTA/NEA (Association) excepts to the dismissal of its unfair practice charge filed against the Victor Valley Union High School District (District). The Association contends that the charge included an allegation that the District violated section 3543.5(a) of the Educational Employment Relations Act¹ by discriminating against Jean Echols in her salary status because of her Association leadership role. It also contends that the administrative law judge (ALJ) erroneously concluded that the District did not

¹Codified at Government Code section 3540 et seq.

violate section 3543.5(c).²

The ALJ found that the District neither breached the parties' collective bargaining agreement nor changed its past practice.³ The ALJ also determined that the alleged 3543.5(a) violation had neither been included in the charge nor fully litigated at the subsequent hearing. We agree.

ORDER

The Public Employment Relations Board has reviewed the entire record, including the exceptions filed by the charging party, and, finding no prejudicial error of fact or law, adopts the attached proposed decision as its own and ORDERS that the charge is DISMISSED without leave to amend.

Member Burt joined in this Decision.

Member Jaeger's concurrence begins on page 3.

²No exceptions were filed to the dismissal of the other allegations contained in the charge.

³Member Jaeger finds that the master's equivalency (MEQ) committee is neither the agent of the District nor the Association. As this issue was not presented by the parties, we find no need to address it.

JAEGER, Member, concurring: Although I agree with the ALJ's conclusion that the District neither breached the parties' agreement nor changed its established practice, I find that for still other reasons the charge fails to state facts constituting a prima facie violation by the District.

The factual allegations contained in the charge are directed against the actions of the master's equivalency implementation committee. It is the committee's application of the contractual standards and policies which the charge challenges. But, the committee is a bilateral committee which is authorized by the agreement to act on applications for master's equivalency status. Although the District ultimately approves salary adjustments, it is solely within the jurisdiction of the committee to decide whether teachers qualify for such adjustments.

The committee is not the employer. It is neither the agent of the employer nor agent of the exclusive representative for the purpose of attributing liability to one or the other. It appears that the Association recognizes this, for in its post-hearing and appeals briefs it claims that the District exercised control or influence over the committee's actions. However, the ALJ found, and I believe correctly, that there was no evidence to support this naked claim.

In sum, although the charge is against the District, the Association's facts address the committee's alleged misinterpretations of equivalency standards and departure from past practice. The charge was properly dismissed.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



VICTOR VALLEY TEACHERS)
ASSOCIATION/CTA/NEA,)
)
Charging Party,) Unfair Practice
) Case No. LA-CE-1652
)
v.) PROPOSED DECISION
) (9/5/84)
VICTOR VALLEY UNION HIGH SCHOOL)
DISTRICT,)
)
Respondent.)
_____)

Appearances: Charles R. Gustafson, Attorney (California Teachers Association) for the Charging Party; and Steven Andelson, Attorney (Atkinson, Andelson, Loya, Ruud and Romo) for the Respondent.

Before: W. Jean Thomas, Administrative Law Judge.

PROCEDURAL HISTORY

This matter comes before the Public Employment Relations Board (hereafter PERB or Board) pursuant to a charge filed on October 14, 1982, by the Victor Valley Teachers Association/CTA/NEA (hereafter Association, VVTA or Charging Party) against Victor Valley Union High School District (hereafter District or Respondent), alleging a violation of section 3543.5(a) of the Educational Employment Relations Act (hereafter EERA or Act).¹ The substance of the original charge was that the District allegedly acted in an arbitrary

¹The EERA is codified at Government Code section 3540 et seq. All references hereafter are to the Government Code unless otherwise noted.

and capricious manner against two bargaining unit members by denying them advancement on the 1981-82 salary schedule in accord with a specific provision of the collective bargaining agreement (hereafter CBA or Agreement).²

On December 20, 1982, Charging Party filed a first amendment to the charge which changed two dates mentioned in the statement of the charge. On December 23, 1982, the General Counsel of the PERB issued a complaint in this matter.

The District filed an answer to the amended charge on January 12, 1983, denying the charge and any violation of the Act, and asserting several affirmative defenses.

An informal settlement conference was held on February 18, 1983, but the parties were unable to resolve their dispute.

Following the informal settlement conference, the Respondent filed motions to particularize the charge and to amend the answer to add a fourth affirmative defense on March 7, 1983,. Respondent also requested on that date that the motion for particularization be held in abeyance pending the outcome of further settlement discussions.

²In its post-hearing brief, Charging Party contends that the District's conduct with respect to one of these employees, Jean Echols, was in reprisal for her Association activities. However, this issue was not specifically alleged in the charge nor was it raised or litigated as a separate issue during the hearing, therefore, it will not be addressed in this decision. See San Ramon Valley Unified School District (8/9/82) PERB Decision No. 230.

On May 6, 1983, the Charging Party filed a motion to amend complaint accompanied by a second amendment to the charge. This amendment alleged that, in addition to a section 3543.5(a) violation, the District's denial of advancement on the 1981-82 salary schedule also constituted a unilateral change in past practice in violation of section 3543.5(b) and (c). This amendment stated that the District's policy of requiring that the MEQ implementation committee approve all course work taken before granting advancement on the salary schedule created a requirement that did not exist prior to the negotiation of the master equivalency provision in the 1981-84 CBA.

On May 20, 1983, a PERB administrative law judge issued an order denying both the Charging Party's motion to amend complaint and Respondent's request for leave to amend the answer. This same order granted, in part, the Respondent's motion to particularize the charge, and ordered the Respondent to answer the particularized/amended charge when filed.

On May 31, 1983, in response to this order, the Charging Party filed a third amendment to the charge which superseded both earlier amendments. On June 10, 1983, the District filed an answer to the third amended charge. This answer was identical to the original answer filed January 12, 1983.

A formal hearing was conducted before the undersigned administrative law judge on July 14 and September 15, 1983.

Post-hearing briefs were filed and the case was submitted for proposed decision.

FINDINGS OF FACT

A. Background

The District is a public school employer and VVTA is an employee organization as defined in the Act. VVTA is the exclusive representative of the District's certificated employee bargaining unit. The parties entered into a CBA which had an effective period from October 1, 1981, through September 30, 1984.

The District consists of seven school sites which provide educational services for pupils in grades 7 through 12. The student enrollment is approximately 7600 and there are 325 employees in the certificated bargaining unit.

B. 1980-81 CBA Negotiations

During the 1980-81 contract negotiations between the District and the Association, the Association proposed that the requirement of a master's degree for advancement from column III to column IV under the certificated salary schedule be eliminated. The District rejected this proposal. After both sides expressed a willingness to consider possible compromises on this issue, it was removed from the negotiations arena for further action by a separate committee.

On May 29, 1980, District Superintendent William Tarr, sent a letter to the Association proposing that a committee composed

of three Association and three District representatives be formed to develop language for a master's equivalency contract provision for salary advancement purposes. Subsequently, a master's equivalency (MEQ) committee was formed. The members of this group, which will be referred to as the MEQ formulation committee, consisted of Annie Munn, Joan Russell and Dick Sauers, representatives for VVTA, and William Tarr, Tony Balsamo and John Kramar, representatives for the District. Both Munn and Sauers possessed master's degrees.

C. The MEQ Formulation Committee

The MEQ formulation committee met from the fall of 1980 to March 1981. In March 1981 the committee presented the following language, which was signed by all six members, to the 1981-82 VVTA/District negotiating team.

ARTICLE XVI - MASTER'S EQUIVALENCY

DEFINITION:

The Master's Equivalency Program provides for recognition of appropriate course work that has led to excellence in performance and accomplishment without a degree mandate.

REQUIREMENTS:

1. Tenure status in the District.
2. Course work meeting the following requirements:

Forty-five (45) upper division or graduate semester units beyond the date the Bachelor Degree was conferred in the following specific categories:

- (a) Not less than thirty (30) semester graduate units in an approved area of concentration (e.g., Math, English, Physical Education, Counseling, etc.)
 - (b) No less than twenty (20) of the semester units earned after employment by the District and must have the prior approval of the Master's Equivalency Committee.
 - (c) A 3.0 ("B") average must be maintained in all forty-five (45) units of course work for the Master's Equivalency.
- 3. At least three (3) consecutive years of overall satisfactory ("Meets Requirement") or better evaluation reports immediately prior to application (upon request a permanent employee will be evaluated each of three (3) years).
 - 4. Recommendation of Principal.
 - 5. Completion of required procedures.
 - (a) Filing of application for Master's Equivalency, prior to earning units in 2(b).
 - (b) Filing of request for granting Master's Equivalency status by June 1 of the preceding school year in which the change is to be effective.

COMMITTEE:

The Master's Equivalency Committee shall have two (2) members appointed by the Association, two (2) members appointed by the Cabinet, and one (1) appointed by the Superintendent. The Master's Equivalency Committee shall approve all course work under item 2.

The Committee shall review and certify to the Board of Trustees that all requirements have been met by the applicant.

GRANDFATHER, CLAUSE:

For current employees who wish to apply for Master's Equivalency column, they must meet all requirements of the Master's Equivalency except the following:

1. Prior approval of item 2(b) will be waived for courses started prior to October 1, 1981.
2. The District will not require three (3) consecutive years of evaluation but will use all evaluations that were done within the last three (3) years.
3. Item 5(a) will be waived for all course work started prior to October 1, 1981.
4. Grandfather clause will expire on June 30, 1984.

Kramar, the District Assistant Superintendent for Instructional Services, was present at all meetings of the MEQ formulation committee. He testified that the MEQ program was intended to financially recognize those teachers who had done extensive graduate work without obtaining a master's degree. There were approximately 100 teachers in the unit in this situation. In order to insure that there was a real equivalency to a master's degree, the MEQ requirements were patterned after an institutional master's degree program. In this regard Kramar stated that the "area of concentration" concept was "probably as important as anything else" in the

proposal. The committee's concern was that:

. . . our people be able to earn their master's equivalency in the areas in which they performed service for the District, so we tried to make adjustments to what we developed to fit those unique requirements of our District, and yet still maintain a credibility similar to a master's degree.

This concept had never been used in previous salary movement provisions and, according to Kramar, "would apply specifically to courses that [teachers] taught or are teaching in the District, but you combine them together, and we call them an area of concentration."

Munn, who has been a teacher with the District for eight years, also attended all meetings of the MEQ formulation committee. She testified that the formulation committee struggled over defining what was meant by the "area of concentration." Although the committee never arrived at a specific definition of this term, it did reach a general consensus about the kinds of teaching areas and courses that were to be credited as falling within an individual teacher's committee-designated area of concentration. Munn testified that the committee's understanding, though imprecise, was as follows:

. . . [i]f the course fits what you were responsible for, it would be allowed. . . . And we were specific only to the extent that we mentioned certain courses under certain areas of that nature. . . . [T]he [implementation] committee was going to have to make decisions based on logic. . . . But that's the kind of decision, the area of

concentration. . . "can you use this in your field and lead to excellence in your performance" was always our [guideline], and that definition [we] didn't come by very easily. We struggled over that, coming up with wording that "can you recognize this course as a part of what you're teaching. Is it a part of anything that you're doing. . . ."

Kramar agreed in his testimony that the committee discussed "area of concentration" in terms of examples. Munn and Kramar both testified that it was understood that the implementation committee would have the responsibility for deciding what an individual teacher's area of concentration was to be.

The testimony of both of these witnesses regarding this issue is credited. This observer found both witnesses to be straightforward and believable. Their recall of the deliberations and intent of the MEQ formulation committee with respect to the meaning of specific provisions of Article XVIII was fairly consistent.

Kramar also testified that the MEQ formulation committee never discussed whether it should include waiver language other than that specified in the "grandfather clause" of Article XVIII. Consideration of waiving the item 2(a) requirement (30 semester units in an approved area of concentration) "was never brought up." Munn testified that the committee never discussed the idea of checking a teacher's previously earned units for deciding on an approved area of concentration under

the "grandfather clause". She stated that since a teacher needed 30 units to get to Column III,³

[m]aybe we were assuming that 30 semester graduate units had already been granted that person or he would not be on that level."

However, on cross-examination she admitted that as the MEQ language is written, the "grandfather clause" does not waive the item 2(a) requirement, so that a teacher still has to have 30 semester units of previously earned graduate course work credited to an area of concentration approved by the MEQ committee.

D. The 1981-82 CBA Negotiations

After the MEQ formulation committee presented its MEQ language to the parties, the Association included the very same language in its initial proposal for the 1981-82 contract negotiations. The District also included this language in its counter-proposal. However, as negotiations progressed, the Association dropped the MEQ program from its last set of proposals, and the District agreed to this deletion.

The tentative agreement between the parties was rejected by the Association members in June 1981. Subsequently, impasse

³Prior to the MEQ program, a teacher needed a B.A. plus 30 graduate semester units to move to Column III. To advance to column IV, an M.A. or a B.A. plus 45 graduate level units (which had to include an M.A. degree) was required. There was no area of concentration requirement.

was declared by PERB. During mediation, the Association asked that the MEQ program be put back into the negotiation package, and the District agreed. The second tentative agreement, which became the 1981-84 CBA, was ratified by the teachers and the District in September 1981. The MEQ program became Article XVIII (Master's Equivalency) of the Agreement. The language of this article is unchanged from that originally agreed to by the MEQ formulation committee.

The Association disputed that part of the bargaining history described above which purports that the parties agreed to adopt verbatim into the CBA the MEQ language drafted by the MEQ formulation committee.

Jean Echols, a home economics teacher and the chief negotiator for VVTA during the 1981-82 negotiations, testified that "we were told [by the District] that this was the District's proposal and it was not to be changed in any way if it was going to be part of the contract." Veronica (Roni) Mason, a teacher with the District for 23 years and also a member of 1981-82 VVTA negotiating team, testified that the VVTA negotiating team was told by Kramar and Michael Kilgore, chief negotiator for the District, "that we must accept it (MEQ program proposal) as is, it is not to be discussed."

Kramar testified that the District was "very willing" to discuss the MEQ provision with the VVTA "as far as what it meant, but we felt that work had been done in committee, and that this should go into the contract." He denied that the

District forced the Association to accept the MEQ program language that was drafted and approved by the formulation committee. He stated that both sides agreed initially that if the formulation committee drafted a provision, it would go into the contract as the committee presented it.

Mason refuted Kramar's testimony by stating that she was unaware of any agreement reached between the District and the Association on MEQ provisions previous to the 1981-82 negotiations. Mason further testified that the District's representatives told the VVTA negotiating team that if they wanted to change any terms of the MEQ language, they would have to wait until the next set of negotiations.

Echols testified that the Association "wished to speak" with the District about possible changes in the MEQ provision, but never did. She said VVTA did discuss its concerns with the MEQ formulation committee when the committee presented its ideas to the Association negotiating committee. However, she admitted that the Association never discussed potential problems specific to the area of concentration item or the grandfather clause with either the MEQ formulation committee or the District.

Kramar testified that during negotiations:

. . . [t]he question was asked one time, I think by Jean Echols, "does this mean that everyone with 45 units goes into this [MEQ status]?" and I was the one that responded "no." You have to meet these other qualifications that are listed here.

Even if all this testimony is credited as true, it does not support a finding that the Association was coerced by the District into accepting the provisions of the MEQ article contained in the CBA.

E. The MEQ Implementation Committee

The MEQ implementation committee began meeting on October 12, 1981. The original members were Roni Mason and Edna Young, who were teachers appointed by the VVTA; Tony Balsamo and Robert Egbert -- who were principals appointed by the District Cabinet;⁴ and John Kramar--who was appointed by the Superintendent. Roni Mason was the first chairperson of the committee. When Mason resigned in May 1982, she was replaced by Barbara Schulthess, another teacher. Mason had achieved MEQ status in 1975 and Young had a master's degree.

From the beginning of its activities, the implementation committee applied the item 2(a) requirement of article XVIII to all applicants for MEQ status. This included those teachers who applied under the grandfather clause of that article. The record reveals that there was no dispute among committee members about this practice.

⁴The Cabinet includes all the principals, the assistant superintendents, the superintendent and the director of employer-employee relations.

However, there is evidence of disagreement among committee members about how the concept "area of concentration" should be applied. Mason felt "that if the teacher used the course in the class where they were actually teaching this and had the materials that were created in the class that they took, that this should be included in their area of concentration. . . ." Kramar interpreted the phrase to include only courses taken in a subject area which the teacher teaches or has taught in the District, but not courses which are general in nature, even though work actually done by the teacher in the course was related to the subject he or she taught. In the record of votes taken by the committee approving areas of concentration for the applicants, the latter interpretation was consistently followed by a majority of the members.

The MEQ implementation committee's minutes of October 26, 1981, state that the language of Article XVIII was to be discussed at a meeting between VVTA and the committee. On November 23, 1981, the committee decided to hold all decisions on MEQ status until that meeting. The proposed meeting was to focus on the committee's interpretation of items 2(a) and 2(c) of the "requirement" section of Article XVIII. Sometime between November 23 and November 30, the meeting was held.

Mason attended the meeting and recalls that no agreement was reached as to how those two provisions were to be interpreted. Her recollection was that "everything was very super-general, and that most of the interpretation came from the District. . . ." She further recalls that the "biggest issue" was the grandfather clause, specifically the fact that the committee was not crediting courses to a teacher's area of concentration "that people had taken and were using in their classroom. . . ."

Kramar's recall of the meeting differs from Mason's. It was his impression that Chuck Gherke, the then-President of VVTA, did most of the talking on behalf of the Association.

Although the parties apparently attach some significance to the occurrence of the November 1981 meeting, it is concluded that the outcome of this meeting, irrespective of which witness' version is credited had no effect on future committee interpretations or applications of article XVIII.

At the time of the hearing 17 teachers had applied for MEQ status, 10 applications had been approved and 2 had not yet been considered.

This charge alleges improper interpretation and application of relevant provisions of Article XVIII of the CBA, specifically in connection with the MEQ applications filed by six members of the bargaining unit. All six filed under the

provisions of the grandfather clause. The factual record concerning these individuals is set forth below.

1. Jean Echols

Jean Echols applied for MEQ status on May 29, 1981.

Sometime after November 16, 1981, she was notified that there was a problem with her application. She met with the committee on November 23 to present supportive documents for the course work credit that she was seeking. During the 1981-82 school year, she met with the committee several more times, presenting additional evidence. Sometime in March 1982 Echols asked the WVTA grievance committee "to handle the problem." The function of the grievance committee is to handle grievances for teachers who feel that they are being treated unfairly by the District. The 1981-84 CBA contained no grievance procedure. There is no evidence about whether the District had a non-negotiated grievance policy or procedure.

The grievance committee met with the MEQ implementation committee on April 21, 1982. At this meeting no one specifically stated that a grievance would be filed concerning the actions of the MEQ committee. The meeting ended without anything definite being decided or agreed to. The only further contact between the grievance committee and the MEQ committee on this matter was an exchange of letters between Arlene Roberts, chairperson of the grievance committee, and Mason, who was the MEQ implementation committee chairperson at the time.

Roberts' letter of April 29, 1982, asked for written guidelines from the MEQ committee to determine what qualifies a person for MEQ designation. The letter concludes: "We will feel compelled to take further action if we have not received these guidelines by May 14, 1982."

Mason's reply, dated May 13, 1982, stated that the MEQ committee did not have the time to put out special guidelines. However, she included a copy of all the committee's minutes, with items marked which denoted guidelines. Mason added:

You will notice that I do not agree with the majorities [sic] interpretation of what courses should or should not be counted in the area of concentration.

Following this exchange of correspondence, the grievance committee took no additional action concerning Echols' problem.

The dispute between Echols and the MEQ implementation committee has centered on two courses that she took at UCLA in the early 1970's--consumer education and home economics. The committee has not credited these to her area of concentration. However, the courses are credited toward the general requirement of having 45 units upper division or graduate semester units beyond the bachelor degree. This was done because the majority of the committee has felt that the courses were general vocational education courses and not specific to Echols' approved area of concentration. The committee has

determined her area of concentration to be home economics. Echols believes that since she developed materials for the two disputed courses which she now uses in the subject that she teaches for the District, the UCLA courses should be credited to her area of concentration. The two courses total 12 graduate semester units. Without them she was 6 units short of the 30 units required under item 2(a). At the time of the hearing this matter remained unresolved.

2. Barbara Schulthess

Schulthess applied for MEQ status for the 1981-82 school year. The committee would not credit a communications course to her approved area of concentration, which left her short of the 30 unit requirement. She subsequently took more courses, and received her MEQ designation during the 1982-83 school year.

3. Joan Russell

Russell also applied for MEQ status for the 1981-82 school year. The committee did not credit several general education courses that she had taken to her approved area of concentration, leaving her short of the 30 unit minimum. At the time of the hearing, she had not been granted MEQ status.

4. Nancy Wygant

Wygant was initially denied MEQ status for missing the June 1 application date set forth in item 5(b) of the requirement section. Subsequently, it was determined by the

committee that she had met the deadline, and she was granted retroactive MEQ status for the 1981-82 school year.

5. John Powell

Powell sent a letter to the committee in the fall of 1981 requesting MEQ status. The committee sent him an application, which he never returned. Echols testified that she later talked to Powell about it and he told her that "when he had gone to see about it, it appeared to be more difficult than he was prepared to engage in and since he was close to retirement, he didn't see any reason in fighting." At the time of the hearing, no further MEQ action had been taken concerning Powell.

6. Janet Bradley

Bradley applied for MEQ status for the 1982-83 school year. She did not meet the 30 unit minimum requirement of item 2(a) after the committee refused to credit some of her general education course work to her approved area of concentration. At the time of the hearing, she did not have MEQ designation.

F. District's Previous Policy/Practice re Salary Column Advancement

In 1956 the District adopted a policy for certificated personnel salary step advancement. Over the years that policy was revised several times. At the time of the hearing, the most recent revision was October 13, 1981. This policy is known as District board policy 4912 -- "Certificated Personnel Professional Growth and Classification Requirements."

This policy has two basic sections. Section one, which is entitled "Professional Growth," covers vertical movement within a column. Such movement is based on completion of a specific number of units each four years. There are specific areas of activity of professional growth from which these units may be earned and submitted. This section also provides for a professional growth committee which is appointed by the Superintendent to review applications for step advancement, determine whether the professional growth requirements have been met, and make recommendations for salary advancement to the Superintendent.

Section two which is entitled "Classification Requirements," deals with horizontal salary movement from column to column. Prior to the 1981 revisions, this section stated as follows:

Classification Requirements

1. Only units from accredited colleges are accepted for classification advances. (Accredited Colleges are those accepted by the State Department of Education for credential purposes).
2. Not more than 6 units in lower division units will be accepted. Lower division units are subject to approval by the office of the Superintendent. Only courses taken after July 1, 1962 will be considered. New teachers will not be given credit for lower division work taken before acceptance of contract.
3. All other courses must be upper division or graduate units.

4. All courses must have been completed subsequent to the actual receipt of the degree involved.
5. No paid leave of absence for classification change shall be used to obtain units for classification change except Sabbatical Leave as provided by District Policy.

This part of the policy did not apply to salary movement from column III to column IV unless a teacher first earned a master's degree from an accredited college (see fn. 3, supra).

Prior to 1975 there were six salary movement classes. To get to Class IV, a teacher needed 45 graduate units. In 1975 the salary schedule was collapsed to five classes, and a master's degree requirement was added for movement to Class IV. By posted bulletin in June 1975, the District granted teachers a one-time opportunity to move to Class IV without a master's if they had completed 45 units by September 1975. Mason advanced to Class IV by satisfying this requirement. There was no examination of her units for area of concentration by the District at the time of her column advancement because that particular criteria did not exist.

Other than this one-time opportunity that was offered to the teachers in 1975, a master's degree was an absolute requirement for movement from column III to IV. Under board policy 4912 there was no area of concentration nor grade average requirement.

After the 1981-84 CBA went into effect October 1, 1981,

board policy 4912 was revised on October 13, 1981. The revision omitted item 1 of "Professional Growth," which read as follows:

One full year of actual full-time employment is required (no units of credit) before the individual is eligible for step advancement.
Note: One full year is 75% or more of the days required to be taught.

Item 1 of "Classification Requirements" (supra, at p. 20) was also omitted. The 1981 revisions were made when both of the above-cited items were incorporated in concept into the MEQ program requirements. No other changes were made in the policy. As of the date of the hearing, this policy, as amended in 1981, remained in full force and effect.

ISSUE

Whether the Respondent has unilaterally adopted and implemented a policy concerning criteria for determining MEQ status and salary schedule placement which is based on an interpretation of relevant contract provisions that is contrary to that agreed to by the parties and thereby has violated sections 3543.5(a), (b), and (c) of the EERA?

POSITIONS OF THE PARTIES

A. Charging Party

The Charging Party argues that through the District's improper domination of the MEQ formulation committee, which was established pursuant to article XVIII of the CBA, the District

has implemented a policy based on its interpretation of the contract that is contrary to the agreement that the parties had about the way that the program was to operate. The result of this policy is that several bargaining unit members have been denied their proper placement on the salary schedule. Charging Party further asserts that the implementation of this policy, which is based on arbitrary standards set by the District, constituted an unlawful unilateral change which did not become apparent to the VVTA until sometime in late April 1982. In its brief, the Charging Party also argues that the implementation of this policy represents a change from the District's past practice for granting salary increments.

This case basically centers around those teachers who applied for MEQ status under the "grandfather clause" of Article XVIII of the CBA. The Charging Party maintains that the District, through the actions of the MEQ implementation committee, has misinterpreted and misapplied the waiver language of this clause as it applies to the terms "area of concentration" and "prior approval" contained in items 2(a) and 2(b) of the "requirements" section of this provision.

The Association contends that the parties always intended that those unit members already employed by the District at the time that Article XVIII went into effect, who had sufficient course units on file with the District, were to be

"grandfathered" in by granting them MEQ status and proper salary schedule placement without their having to be subjected to all the MEQ program requirements.

B. Respondent

The Respondent asserts that this controversy is one of strict contract interpretation. It contends that the MEQ provisions have been implemented consistent with the clear and express terms of the CBA. Under the "grandfather clause" the parties intended that only three specific MEQ requirements were to be waived and that those areas are clearly spelled out in the language of this clause. The absence of any other waivers is a clear indication of the parties' intent not to waive any of the other MEQ requirements.

The District further argues that, even assuming that the language of the "grandfather clause" is ambiguous, the committee has implemented the provisions consistent with the intent of the MEQ formulation committee. Furthermore, as provided for by the contract, the MEQ committee, not the District, has been responsible for implementing and administering the MEQ program. Thus, the committee, not the District, determines who is eligible for MEQ status.

Finally, the District asserts that the Charging Party has failed to show that since the start of the MEQ program a change in policy regarding salary schedule placement has occurred or that the application of the MEQ criteria has been inconsistent.

CONCLUSIONS OF LAW

Section 3541.5(b) states:

The Board shall not have authority to enforce any agreements between the parties, and shall not issue a complaint on any charge based on alleged violation of such an agreement that would not also constitute an unfair practice under this chapter.

In Grant Joint Union High School District (2/26/82) PERB Decision No. 196, the Board concluded that the above statutory provision does not divest PERB of jurisdiction to resolve an unfair practice charge simply because the employer's conduct also constitutes the breach of an existing collective agreement. Rather, the PERB concluded that section 3541.5(b) grants PERB the authority to resolve an unfair practice charge, even if it must interpret the terms of a collective agreement to do so. Grant Joint Union High School District, supra at pp. 7-8.

In Grant, the Board went on to state:

The Act is designed to foster the negotiation process. Such a policy is undermined when one party to an agreement changes or modifies its terms without the consent of the other party. PERB is concerned, therefore, with a unilateral change in established policy which represents a conscious or apparent reversal of a previous understanding whether the latter is embodied in a contract or evident from the parties' past practice. Grant Joint Union High School District, supra at p. 8, citing Anaconda Aluminum Co. (1966) 160 NLRB 35 [62 LRRM 1370], Perry Rubber Co. (1961) 133 NLRB 275 [48 LRRM 1630].

The Board, however, cautioned in Grant that not every breach of contract also violates the Act.

Such a breach must amount to a change of policy, not merely a default in a contractual obligation, before it constitutes a violation of the duty to bargain. This distinction is crucial. A change of policy has, by definition, a generalized effect or continuing impact upon the terms and conditions of employment of bargaining unit members. On the other hand when an employer unilaterally breaches an agreement without instituting a new policy of general application or continuing effect, its conduct, though remedial through the courts or arbitration, does not violate the Act. The evil of the employer's conduct, therefore, is not the breaching of the contract per se, but the altering of an established policy mutually agreed upon by the parties during the negotiation process. Grant Joint Union High School, supra at p. 9, citing Walnut Valley Unified School District (3/30/81) PERB Decision No. 160; C & S Industries (1966) 158 NLRB 454 [62 LRRM 1043].

Thus, for a charging party to prove a violation of section 3543.5(c)⁵ when an alleged breach of contract is also claimed

⁵Section 3543.5 provides:

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

to be an unlawful unilateral change, it must establish the following: (1) that the Respondent breached or otherwise altered the parties' written agreement or its own established past practice with regard to the matter complained of; (2) that the breach or alteration amounted to a change of policy, that is, it had a generalized effect of continuing impact upon the terms and conditions of employment of bargaining unit members; and (3) that the change concerned a matter within the scope of representation.

Thus, under the first prong of the Grant test, VVTA must prove that the District has either violated or altered the MEQ provision of the CBA or its own established past practice regarding MEQ designation for salary placement purposes.

For the reasons discussed below, it is found that the Association has failed to show that the District, through either its own conduct or the actions of the MEQ implementation committee, has breached or otherwise altered any of the MEQ contract provisions. Additionally, it is found that VVTA has failed to establish the existence, prior to October 1981 of a District policy or practice concerning MEQ designation and salary placement.

guaranteed to them by this chapter.

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

First, the language of Article XVIII sets forth very specific requirements for MEQ status. The "committee" section of that article states that "the Master's Equivalency Committee shall approve all course work under item 2." Item 2 of the "requirements" section sets forth the course work requirements of the MEQ program. The language of this item lists the total number of course units required and the bases upon which the units will be credited for the MEQ program.

It is clear in Article XVIII that the VVTA and the District have granted a fair amount of discretion to the MEQ implementation committee in the processing of MEQ applications. For example, the committee has the authority for deciding what an applicant's area of concentration will be and determining what course work, past as well as future, will be credited to meet the requirements of the MEQ program. That same section further states that "the committee shall review and certify to the Board of Trustees that all requirements have been met by the applicant." Even though the District board has the final responsibility and authority for approving an employee's placement on the salary schedule once the MEQ applicant is certified, the initial determination about an applicant's eligibility for MEQ status rests solely with the MEQ implementation committee.

Although the Association alleges that the committee has been improperly dominated or controlled by the District in its

application of the MEQ criteria, the evidence about the committee deliberations do not support this claim.

Of the 17 teachers who have applied for MEQ status since the program started, 10 have been granted and there is no issue about them in this case. At the time of the hearing, processing of two applications had not yet commenced. The remaining five applications are those of the persons who applied under the grandfather clause and form the basis for this challenge.

One person, John Powell, requested an application, and would have been eligible to apply under the grandfather section, but he never filed the application with the committee. Therefore, his case is moot with respect to this charge.

Nancy Wygant also applied under the grandfather section. Her application was initially rejected because it was considered untimely filed. However, once this misunderstanding was clarified, Wygant's application was processed and she was designated as having retroactive MEQ for the entire school year for which she originally applied.

The record of the MEQ implementation committee's actions concerning the other four applications reveals that they were reviewed and evaluated in the same manner as those where MEQ status was granted.

The greatest amount of controversy about the committee's

decisions was generated by the Echols' application. The committee's decision not to credit two courses to her area of concentration (leaving her short of the minimum number of required units), was not unanimous. However, there is nothing in the evidence to suggest that the District exerted improper influence over the committee members to adversely influence this decision.

VVTA contends that the unilateral change in policy and practice stems from the way in which the District has interpreted and applied the waiver provisions of the grandfather section. This section of Article XVIII states that employees who apply under this part of the article "must meet all requirements of the Master's Equivalency except . . . [1] prior approval of item 2(b), . . . [2] three consecutive years of evaluation, . . . [3] filing of application for Master's Equivalency, prior to earning units in 2(b)."

The Association alleges that it was understood by the parties that, in addition to the above cited waivers, the waiver also applied to item 2(a) of the general requirements. Thus, the "approved area of concentration" requirement was not to apply to those seeking MEQ status under the grandfather section.

This argument, however, is not supported by the testimony of either of the two witnesses who served on the MEQ

formulation committee and participated in drafting the language of Article XVIII. Nor does the express language of this section itself (grandfather clause) support this contention.

The language of the "grandfather clause" is clear and unambiguous. Those requirements of the MEQ program that are waived by this section are explicitly stated. The language of this clause does not expressly or impliedly waive the requirement of an "approved area of concentration" in item 2(a), nor is there evidence that the drafters of the language intended that this requirement was to be waived for anyone applying for MEQ status. Additionally, there is no evidence that anyone who was granted MEQ status was allowed the designation without an approved area of concentration. It is, therefore, concluded that the committee's interpretation and application of the provisions of Article XVIII to MEQ applicants have not resulted in a breach or alteration of any terms of this article of the Agreement.

Although it has been found that the conduct in question has not constituted a breach or alteration of the contract, it is still necessary to determine whether such conduct represents a change in the District's established past practice regarding salary schedule advancement.

There is no evidence that prior to October 1, 1981, the District had any policy or practice which allowed teachers, who did not possess a master's degree, to advance to Column IV on

the salary schedule. Although District board policy 4912 (which has been in effect since 1956) covers both vertical and horizontal salary schedule movement, it has very different criteria from the MEQ program. Though policy 4912 and the MEQ provisions of Article XVIII both provide for salary advancement, they are not interchangeable nor mutually exclusive. The District's policy applies to all salary schedule advancement except where a teacher seeks to advance from Column III to Column IV without possessing a master's degree. Except for movement from column III to column IV without a master's degree, policy 4912, where applicable, is still in effect. The MEQ program is a new policy which came into existence as a result of collective bargaining. Although two requirements from policy 4912 were conceptually incorporated into the MEQ program, the applicability of these criteria is governed by the CBA terms, not by the past practice under District policy 4912.

While the record shows that in 1975 the District did permit some teachers to advance to Column IV without the master's degree on a one-time basis, there is no evidence that this has become an established practice or has ever occurred again since that time. A one-time occurrence is not enough to show an established practice. Additionally, that practice was too remote in time from the present program to have any relevance to more recent practice under policy 4912.

Considering these factors, it is concluded that the implementation of the MEQ program does not represent a change in the District's past practice with respect to the criteria used for salary schedule placement of members of the certificated bargaining unit. It is further found that no past practice for MEQ designation has existed within the District.

Since there has been no showing that a breach of the CBA or an alteration or change of the District's past practice concerning salary schedule placement has occurred, it is unnecessary to make a determination regarding the remaining steps of the Grant test.

Based on the foregoing, it is determined that Charging Party failed to demonstrate that Respondent, either independently or through improper domination of the MEQ implementation committee, violated the Act by breach or alteration of the CBA which also constituted an unlawful unilateral change. Thus, the allegation of a section 3543.5(c) violation must be dismissed. For the same reasons the allegations of derivative violations of section 3543.5(a) and (b) must also be dismissed.

PROPOSED ORDER

Upon the foregoing findings of fact, conclusions of law and the entire record in this case, the charge and the complaint are DISMISSED in their entirety.

Pursuant to California Administrative Code, title 8,

part III, section 32305, this Proposed Decision and Order shall become final on September 25, 1984, unless a party files a timely statement of exceptions. In accordance with the rules, the statement of exceptions should identify by page citation or exhibit number the portions of the record relied upon for such exceptions. See California Administrative Code, title 8, part III, section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on September 25, 1984, or sent by telegraph or certified United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8, part III, section 32135. 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, section 32300 and 32305.

Dated: September 5, 1984

W. Jean Thomas
Administrative Law Judge