

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



MCFARLAND TEACHERS ASSOCIATION,)
CTA/NEA,)
)
Charging Party,) Case No. LA-CE-2189
)
v.) PERB Decision No. 786
)
MCFARLAND UNIFIED SCHOOL DISTRICT,) January 3, 1990
)
Respondent.)
_____)

Appearances: California Teachers Association by A. Eugene Huguenin, Jr., Attorney, for McFarland Teachers Association, CTA/NEA; Fekete, Carton, Velman, Hartsell, Chambers & Grass by Stephen L. Hartsell, Attorney, for McFarland Unified School District.

Before Hesse, Chairperson; Craib and Shank, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the McFarland Unified School District (District) to a proposed decision; attached hereto, issued by a PERB administrative law judge (ALJ) who found that the District violated the Educational Employment Relations Act (EERA or Act) section 3543.5, subdivisions (a) and, derivatively, (b)¹ by not reelecting Vicki

¹EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

Section 3543.5, subdivisions (a) and (b) provide:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

Stephens-Weaver to teach at McFarland High School. Stephens-Weaver was a probationary teacher and a member of the McFarland Teachers Association, CTA/NEA (Association) during the 1983-84 and 1984-85 school years.

FACTUAL BACKGROUND

We have reviewed the factual summary prepared by the ALJ and, finding no errors, adopt it as our own. The following is a brief summary of the facts. Stephens-Weaver was hired by the District in 1983 to teach four periods of English and to supervise the production of the school newspaper. She had no previous experience teaching journalism; a fact known by the District at the time of her employment. During her first year, Stephens-Weaver followed the format for the paper set by her predecessor. At the close of the 1983-84 school year, Stephens-Weaver was evaluated by the principal of McFarland High School, Larry Yeghoian. In the only area noted for improvement, Yeghoian told Stephens-Weaver that he wanted the newspaper to develop into a more in-depth publication. Stephens-Weaver changed the focus of the paper and she encouraged students to write more substantive articles and to write editorials.

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.

The incidents giving rise to this case began in October 1984 over an editorial written by a female student that alleged sex discrimination by the athletic director. Research for the editorial included an interview with Yeghoian. Following publication of the editorial a number of meetings took place between Stephens-Weaver and the high school administration. Yeghoian told Stephens-Weaver that, in the future, he wanted the students to notify interviewees that the information was being obtained for an editorial.

Another student editorial also created significant controversy in November 1984. That editorial discussed the on-going contract negotiations between the Association and the District. It was written by a student based on information obtained from Association fliers posted in Stephens-Weaver's classroom, an interview with another teacher and member of the Association, and a brief interview with the District superintendent. Extensive discussions between Stephens-Weaver and District administrators took place before the article was published in the school newspaper.

Stephens-Weaver also engaged in protected activity during the 1984-85 school year. In October 1984, she filed a grievance over the District's refusal to pay her a stipend for her work as the newspaper advisor; a stipend she alleged was provided for in the parties' collective bargaining agreement. The District rejected her grievance because it alleged that the contract only required a stipend for an extra-duty assignment. Since Stephens-

Weaver taught journalism as a regular course, the District contended no extra-duty assignment stipend was warranted.

Stephens-Weaver and Sandra McKnight, another McFarland High School teacher, protested the assignment of work during contractually provided-for preparation periods. The problem arose because Stephens-Weaver was the only teacher with preparation time which coincided with an Association negotiator's class that had to be covered when there were negotiation sessions. Stephens-Weaver and Sandra McKnight, on the advice of the Association, protested a substitution assignment in November 1984.

In December, the District issued class assignments for the spring semester. Stephens-Weaver was removed from her journalism assignment. She filed a grievance on December 21, 1984, over her reassignment. The grievance was rejected, as were subsequent amendments to the grievance.

In early 1985, Yeghoian evaluated Stephens-Weaver. The District's evaluation forms cover both a formal classroom observation and a summary evaluation. In teaching performance, Yeghoian gave Stephens-Weaver an above-average evaluation. However, he severely criticized her classroom management because she posted Association fliers on her classroom bulletin board. He also criticized her leadership in the journalism class and her handling of noninstructional duties and responsibilities. He indicated that she was nonresponsive to suggestions and criticism, defensive, disruptive in staff meetings, and failed to

interact cooperatively with coworkers. As a result of this evaluation, Yeghoian recommended that Stephens-Weaver not be reelected to teach in the 1985-86 school year.

THE PROPOSED DECISION

The ALJ found that the District violated section 3543.5, subdivision (a) and, derivatively, subdivision (b) by (1) issuing a letter of reprimand in response to Stephens-Weaver's protected activity; and (2) not reelecting her because of her protected activity. He concluded that the District, through Yeghoian, issued the memo chastising Stephens-Weaver and her colleague for exercising their right to protest assignments in violation of their contract. He found that the memo amounted to a letter of reprimand, issued in response to protected activity. He also found that Yeghoian's evaluation of Stephens-Weaver which resulted in the District's determination not to reelect Stephens-Weaver for the 1985-86 school year, was pretextual, written merely to support the termination. The ALJ made a number of factual findings which support his determination that the District, through Yeghoian and the superintendent, displayed anti-union animus toward the Association during the time period involved.

The ALJ declined to find that the District violated the Act by removing Stephens-Weaver from the journalism assignment. He reasoned that the District and the Stephens-Weaver had a philosophic disagreement over the inclusion of student editorials in the school paper.

THE EXCEPTIONS

The District's exceptions focus on the ALJ's conclusion that the District unlawfully discriminated against Stephens-Weaver by choosing not to reelect her to a third, tenured term. The District contends that it was entitled, pursuant to Education Code section 44882, subdivision (b), to decide not to grant Stephens-Weaver permanent status without having to justify that decision. While the District recognizes that its decision is not beyond the reach of EERA, it contends that it satisfied its burden under Novato Unified School District (1982) PERB Decision No. 210. The District also excepts to numerous findings of fact which it contends are not supported or contradicted by the evidence. It also contends that the proposed decision ignores "essential facts" favorable to the District.² Finally, the District argues that the proposed decision is based on alleged protected activity that was not alleged in the complaint.

DISCUSSION

We essentially agree with the analysis proposed by the ALJ and write separately only to clarify several points. We, therefore, adopt the proposed decision as the decision of the Board itself, subject to the following discussion.

Probationary teachers do not have the same protections or rights as permanent or tenured teachers under the Education Code.

²Our reading of the record comports with the ALJ's findings of fact; therefore, we will not address the factual exceptions filed by the District. Furthermore, since those facts were not critical, resolution of these factual disputes in the District's favor would not change the outcome of the case.

Education Code section 44882, subdivision (b),³ as amended in 1983, no longer required that the District show cause before choosing not to reelect probationary teachers for the succeeding school year. Specifically, this section permitted the District, before March 15 of the probationary year, to choose not to reelect a probationary teacher for the succeeding school year. The statute does not require the District to provide a reason for its decision.

³Former Education Code section 44882, subdivision (b) provided:

Every employee of a school district of any type or class having an average daily attendance of 250 or more who, after having been employed by the district for two complete consecutive school years in a position or positions requiring certification qualifications, is reelected for the next succeeding school year to a position requiring certification qualifications shall, at the commencement of the succeeding school year, be classified as and become a permanent employee of the district.

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to such a position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

(Repealed by Stats.1987, c. 1452, secs. 367, 368 to 370.) The provisions of section 44882, subdivision (b) are now codified at Education Code section 44929.21, subdivision (b).

Subsequent to the issuance of the ALJ's proposed decision, the Third District Court of Appeal addressed the impact of Education Code section 44882, subdivision (b). (Grimsley v. Board of Trustees (1987) 189 Cal.App.-3d 1440.) The court held that section 44882, subdivision (b) evidences the legislative intent to provide a separate procedure for the nonreelection of probationary teachers for a subsequent year that is different than the procedures governing the midyear dismissals under Education Code section 44948.3.⁴ In reaching this conclusion, the court

recognize[d] the argument that unfairness may result to a probationary teacher who is notified of his or her nonreelection for a second year or third year (prior to March 15 of the second year) without a statement of reasons and without any redress by way of administrative hearing or appeal to the board. . . . However, this problem is a policy matter properly addressed to the legislature.

(Id., at p. 1448.) The court found that, unlike a tenured or a midterm probationary teacher who has an implied promise of continued employment, a probationary teacher, under section 44882, subdivision (b), does not have a promise of continued employment and is not entitled to due process protection upon nonreelection.

However, even though the Education Code does not require an employer to show cause for its decision not to reelect a

⁴Education Code section 44948.3 prohibits midyear dismissals of probationary teachers except for "unsatisfactory performance . . . or for cause."

probationary teacher, a governing board may not choose nonreelection for unlawful reasons. The District appears to recognize this principle in its Statement of Exceptions.

This assertion [that Stephens-Weaver's failure as a journalism teacher was used as a pretextual ground for dismissing her] ignores Ms. Stephens-Weaver's status as a probationary teacher and the right of the Governing Board of the McFarland Unified School District under section 44882(b) to not reelect for any not otherwise unlawful reason.

(Respondent's Statement of Exceptions, p. 20; emphasis in original.) Therefore, in its own argument, the District recognizes that while it can choose not to reelect a probationary teacher without cause, it can not do so for an unlawful reason.

Once a probationary teacher files an unfair practice charge alleging that the governing board's decision to not reelect was based on EERA protected activity, PERB must apply the principles set forth in Novato Unified School District, supra. PERB Decision No. 210. Under Novato. for the Association to prove that adverse action was taken by the District for discriminatory reasons, it must show that the District's action against Stephens-Weaver was motivated by her protected activity. The charging party must show that the employer knew of the employee's participation in protected activity. (Moreland Elementary School District (1982) PERB Decision No. 227.) Finally, the charging party must show that the employer's action was motivated by the protected activity.

Knowledge along with other factors may support the inference of unlawful motive.

The timing of the employer's conduct in relation to the employee's performance of protected activity, the employer's disparate treatment of employees engaged in such activity, its departure from established procedures and standards when dealing with such employees, and the employer's inconsistent or contradictory justifications for its actions are facts which may support the inference of unlawful motive.

(Novato Unified School District, supra. PERB Decision No. 210, at pp. 6-7.) The Board recognizes that direct proof of a discriminatory motive is rarely found and, therefore, allows circumstantial evidence to satisfy the burden. In addition to the timing of the adverse actions (North Sacramento School District (1982) PERB Decision No. 264), circumstances giving rise to an inference of unlawful motivation include: an employer's general anti-union animus (San Joaquin Delta Community College District (1982) PERB Decision No. 261); disparate treatment toward the complainant (State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S); unusually harsh discipline against employees with previously unblemished work records (Baldwin Park Unified School District (1982) PERB Decision No. 221); and shifting justifications (State of California (Department of Parks and Recreation), supra. PERB Decision No. 238-S).

Once the charging party makes a prima facie showing sufficient to give rise to an inference of unlawful discrimination, the burden shifts to the employer to prove that the same action would have been taken in the absence of the

protected activity. (Novato Unified School District, *supra*, PERB Decision No. 210, at p. 14.)

Stephens-Weaver participated in a number of protected activities. She filed a grievance over the newspaper adviser stipend; she and another teacher protested what they believed to be an impermissible substitution during their contractually guaranteed preparation period; and she filed a grievance over her reassignment out of journalism. Furthermore, she was a member of the Association throughout the period in question.

The ALJ found that the Association met its burden giving rise to an inference of unlawful motivation. The evidence he found persuasive included the memorandum written in response to Stephens-Weaver's protest over substitution assignments which criticizes her for the "manner" of her protest, which Yeghoian contends evidenced a lack of "professional cooperation," and Yeghoian's evaluation of Stephens-Weaver, which criticizes her for her "unprofessionalism within the staff, within [his] office, and within her classroom." The ALJ found further evidence of unlawful motivation in what he characterized as more generalized anti-union animus of the District. Evidence of this anti-union animus included: (1) the District's calling of the police to disperse a group of Association members from a negotiating session; (2) Yeghoian's comment to Stephens-Weaver that he felt "less union" than he had previously and that the union was "getting in the way" of his duties as administrator; and (3) Superintendent Gilbert's comments about the Association during

the hiring of two other teachers. (Proposed decision at pp. 36-41.)

While we are not persuaded by the ALJ's reliance on the District's general anti-union animus, we believe that the Association made a sufficient showing that the District's treatment of Stephens-Weaver was disparate and unusually harsh. Specifically, another teacher had allegedly engaged in similar disruptive conduct at a staff meeting and, after a comment to that effect was placed in her personnel file, the comment was later removed upon her objection. The District contends that the differences in discipline arose because Stephens-Weaver was a probationary teacher and the other teacher was tenured. The distinction between tenured and probationary teachers does not justify the marked differences in discipline. Furthermore, the District's shifting justifications for its actions were not only vague but alternated between complaints of her journalism teaching, her disruptive conduct, and her lack of "professional cooperation." As the ALJ recognized, the problem with her approach to teaching journalism was corrected when she was removed from that assignment. Therefore, we agree with the ALJ that the Association sufficiently proved its prima facie case.

The burden then shifted to the District to prove that it would have taken the same action absent the protected conduct. (Novato Unified School District, *supra*, PERB Decision No. 210.) Even though the District recognizes that it may only choose nonreelection for lawful reasons, it attempts to argue that it

had an unfettered right to not reelect Stephens-Weaver despite her exercise of protected rights. In addition to its contention that her performance as a journalism teacher was lacking, the District argues that Yeghoian's memorandum criticizing Stephens-Weaver's protest over the substitution assignment was "expressly directed at what he considered to be not only inappropriate, but also unprotected aspects" of her protest. The District also contends that Yeghoian was legitimately concerned with her criticism at a staff meeting.

While the District's disagreement with Stephens-Weaver over her approach to journalism may have justified discipline, the District failed to take any disciplinary action at the time the disagreement arose, i.e., midyear dismissal or reassignment. Specifically, the District's belief that Stephens-Weaver exercised poor judgment in handling the sex discrimination editorial could be sufficient, by itself, to justify disciplinary action, including a transfer, midyear dismissal or nonreelection. Instead, after subsequent incidents, including protected activity, the District chose to transfer Stephens-Weaver out of the journalism assignment. Finally, at the end of her second probationary school year, the District notified Stephens-Weaver of her nonreelection.

The District's justifications for its nonreelection of Stephens-Weaver and its delay in its decision to reassign and dismiss (through nonreelection) Stephens-Weaver do not rebut the Association's prima facie case. Specifically, Stephens-Weaver's

performance as a journalism teacher, the memorandum written in response to Stephens-Weaver's protest over the substitution assignment,⁵ and the memorandum regarding Stephens-Weaver's disruptive conduct at the staff meeting do not constitute sufficient evidence to prove that the District would have made the decision not to reelect Stephens-Weaver in the absence of her protected conduct. These justifications, combined with the District's delay in disciplining Stephens-Weaver, convince us that the District violated EERA section 3543.5, subdivisions (a) and (b) by its decision not to reelect her.⁶

We, therefore, adopt the remedy proposed by the ALJ and issue the following order.⁷

⁵The District argues that its memorandum in response to Stephens-Weaver's protest over the substitution assignments was directed solely to the unprotected aspects of the protest. We reject this argument. Nothing in the record suggests that the manner in which Stephens-Weaver expressed her protest over the substitution assignments was rude or insubordinate, such as to remove her protest from protected status.

⁶The District also argues that pursuant to the Board's decision in Konocti Unified School District (1982) PERB Decision No. 217, it is not responsible for any unlawful motivation by Yeghoian because its governing board made an independent decision not to reelect Stephens-Weaver. We reject the District's arguments for the reasons set forth by the ALJ. (Proposed decision, at fn. 8.)

⁷We recognize that our decision will have the effect of granting Stephens-Weaver tenure. As set forth above, the District failed to establish that it would have taken the same action absent Stephens-Weaver's protected conduct. We note that this is not a case in which, after an unfavorable review, a probationary teacher engaged in protected conduct in order to insulate him or herself from the consequences. In this case, the District gave Stephens-Weaver a favorable teaching evaluation at the same time it chose not to reelect her.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the Board finds that the McFarland Unified School District violated the Educational Employment Relation Act, section 3543.5, subdivisions (a) and (b). Pursuant to section 3541.5, subdivision (c), it is hereby ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Retaliating against Vicki Stephens-Weaver because of her exercise of the protected right to file grievances and challenge potential contract violations by issuing to her a letter of reprimand and a negative performance evaluation, and by terminating her employment with the District.

2. Interfering with the right of the McFarland Teachers Association, CTA/NEA, to represent its members by discriminating against an employee who filed grievances under a negotiated contract.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Within thirty-five (35) workdays following the date the Decision is no longer subject to reconsideration, reinstate Vicki Stephens-Weaver as a teacher at McFarland High School.

2. Within thirty (30) workdays of the reinstatement of Stephens-Weaver as a teacher in the District, reimburse her

for lost wages and benefits retroactive to the first day of service for teachers during the 1985-86 school year. The amount of compensation shall be reduced by any unemployment compensation or wages which Stephens-Weaver may have earned during the period since the commencement of the 1985-86 school year. The amount due to her shall be augmented by interest at the rate of 10 percent per annum.

3. Within thirty-five (35) workdays following the date the Decision is no longer subject to reconsideration, remove from the personnel file of Stephens-Weaver and destroy all copies of the November 30, 1984 memorandum to her from Mr. Yeghoian and the February 4, 1985 evaluation of her prepared by Mr. Yeghoian.

4. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

5. Written notification of the actions taken to comply with this Order shall be made to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with her instructions.

Chairperson Hesse and Member Shank joined in this Decision.

APPENDIX

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



After a hearing in Unfair Practice Case No. LA-CE-2189, McFarland Teachers Association, CTA/NEA v. McFarland Unified School District, in which all parties had the right to participate, it has been found that the McFarland Unified School District violated the Educational Employment Relations Act (Act), section 3543.5, subdivision (a) and (b). The District violated the Act by (1) issuing to Vicki Stephens-Weaver a reprimand on November 30, 1984, (2) by issuing to her a negative evaluation on February 4, 1985, and (3) by refusing, on March 11, 1985, to rehire her as a teacher for the 1985-86 school year. It has been found that these actions were motivated by an intent to retaliate against Vicki Stephens-Weaver for her participation in protected activity.

A. CEASE AND DESIST FROM:

1. Retaliating against Vicki Stephens-Weaver because of her exercise of the protected right to file grievances and challenge potential contract violations by issuing to her a letter of reprimand and a negative performance evaluation, and by terminating her employment with the District.
2. Interfering with the right of the McFarland Teachers Association, CTA/NEA, to represent its members by discriminating against an employee who filed grievances under a negotiated contract.

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

1. Within thirty-five (35) workdays following the date the Decision is no longer subject to reconsideration, reinstate Vicki Stephens-Weaver as a teacher at McFarland High School.
2. Within thirty (30) workdays of the reinstatement of Stephens-Weaver as a teacher in the District, reimburse her for lost wages and benefits retroactive to the first day of service for teachers during the 1985-86 school year. The amount of compensation shall be reduced by any unemployment compensation or wages which Stephens-Weaver may have earned during the period since the commencement of the 1985-86 school year. The amount due to her shall be augmented by interest at the rate of 10 percent per annum.

3. Within thirty-five (35) workdays following the date the Decision is no longer subject to reconsideration, remove from the personnel file of Stephens-Weaver and destroy all copies of the November 30, 1984 memorandum to her from Mr. Yeghoian and the February 4, 1985 evaluation of her prepared by Mr. Yeghoian.

Dated: _____ McFarland Unified School District

By _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED BY ANY MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



MCFARLAND TEACHERS ASSOCIATION.)
CTA/NEA.)
Charging Party.) Unfair Practice
Case No. LA-CE-2189
v.)
MCFARLAND UNIFIED SCHOOL DISTRICT.) PROPOSED DECISION
(12/31/85)
Respondent.)
_____)

Appearances: A. Eugene Huguenin, Jr., Attorney for the McFarland Teachers Association, CTA/NEA; Stephen Lee Hartsell, Attorney for the McFarland Unified School District.

Before Ronald E. Blubaugh. Administrative Law Judge.

PROCEDURAL HISTORY

A high school teacher here challenges her dismissal as an unlawful retaliation for various protected acts including the filing of grievances. The school district responds that the decision not to rehire the probationary teacher was due to her unsatisfactory performance in a journalism class and her disruptive out-of-class behavior.

The charge which commenced this action was filed on June 3, 1985. by the McFarland Teachers Association. CTA/NEA (Association). A complaint against the McFarland Unified School District (District) was issued on July 17. 1985. by the office of the General Counsel of the Public Employment Relations Board (PERB).

This Board agent decision has been appealed to the Board itself and is not final. Only to the extent the Board itself adopts this decision and rationale may it be cited as precedent.

The complaint, as amended at the hearing, alleges that the District violated Educational Employment Relations Act subsection 3543.5(a) and derivatively (b)¹ by issuing written reprimands to Vicki Stephens-Weaver on November 30 and December 5, 1984, by reassigning her on December 10, 1984, out of a journalism class she had taught for a year and a half by issuing to her a negative evaluation on February 4, 1985, and by refusing on March 11, 1985, to rehire her for the 1985-86 school year. Each of these actions is alleged to have been in response to Ms. Stephens-Weaver's prior participation in protected conduct.

The employer has denied that any of its actions were in violation of the EERA. In its answer, the employer also rejected the characterization of certain of the documents as reprimands.

¹Unless otherwise indicated, all references are to the Government Code. The Educational Employment Relations Act (hereafter EERA) is found at section 3540 et seq. In relevant part, section 3543.5 provides as follows:

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.

A hearing was conducted in Bakersfield from October 1 through 4, 1985. Following the filing of briefs by the parties this matter was submitted for decision on December 27, 1985.

FINDINGS OF FACT

The McFarland Unified School District is a public school employer under the EERA and the McFarland Teachers Association, CTA/NEA, is the exclusive representative of the District's certificated employee unit. At all times relevant, a collective bargaining agreement has been in effect between the District and the Association.

Vicki Stephens-Weaver was one of two English teachers hired by the District to teach at McFarland High School during the 1983-84 school year. Although new to the District, she had six years of prior experience. At the time Ms. Stephens-Weaver and the other teacher were hired, the school needed one teacher to assume responsibility for publication of the student yearbook and the other to assume responsibility for the newspaper. The other teacher had experience with photography which was needed for the yearbook but not the newspaper. He, therefore, was named as the advisor to the yearbook and Ms. Stephens-Weaver was named as the advisor to the newspaper.

Ms. Stephens-Weaver's first teaching assignment with the District was for three regular sophomore English classes, one college prep sophomore English class and the newspaper. She

had no prior journalism experience or education, a factor which was known at the time she was hired. However, Ms. Stephens-Weaver did have experience as a writing instructor and she was given responsibility for the newspaper on the basis of that qualification. Ms. Stephens-Weaver joined the Association after she was hired and remained a member throughout her tenure with the District.

During her first year as journalism teacher and newspaper advisor, Ms. Stephens-Weaver followed the pattern set by her predecessor. The newspaper, in Ms. Stephens-Weaver's own description, contained "childish, simply written articles." There were few news articles and the format of the newspaper was primarily question and answer columns dealing with such matters as complexion problems and dating. The journalism class which produced the newspaper contained many students of low proficiency. There was no textbook for the class and although there was a District course of study for journalism, Ms. Stephens-Weaver was given no specific guidance about how the class was to be conducted.

At the conclusion of the 1983-84 school year, Ms. Stephens-Weaver received an evaluation which McFarland Principal Larry Yeghoian described as "high" and "in the upper third" of the teachers he evaluated that year. In every category, Ms. Stephens-Weaver was rated as either meeting or exceeding requirements. The principal wrote that the teacher

demonstrated "a genuine caring attitude toward her students" and that she maintained "a positive learning environment." Her lessons were described as "well organized, challenging, and presented in an interesting manner."

The only recommendation for improvement was that she should "encourage journalism students to broaden the scope of their writing to include informative topics for student growth." Mr. Yeghoian testified that he sought "in-depth" articles that would be broader than those in the paper as then written. Ms. Stephens-Weaver testified that she understood the evaluation comment to mean that she should encourage "more in-depth writing, such as editorials, more news stories, breaking away from what we had done in the past."

In accord with the instruction she was given during her evaluation. Ms. Stephens-Weaver instituted a series of changes in the journalism class for 1984-85. She helped revise the course of study for journalism and secured textbooks for the class. Ms. Stephens-Weaver recruited some of the brighter students from her college prep courses to register for journalism and she permitted no students to register for the class without her permission. She examined the English and writing proficiency of each prospective student.

As in her first year at the District, Ms. Stephens-Weaver chose the editor for the newspaper. The editor in 1984-85 suggested a number of changes and Ms. Stephens-Weaver placed

her in charge of content selection for the paper. Assignments were made through what Ms. Stephens-Weaver described as a "brainstorming" session wherein students would suggest and volunteer to write specific articles.

It was not long before the new, more aggressive student newspaper produced controversy. A hamburger feed was held for the football team at the home of Jim Perry, the vice principal of McFarland High School. Karen Shadduck, a volleyball player and member of the newspaper staff, was disturbed that no similar social function had been conducted for the school's female athletes. She viewed the situation as a case of discrimination and after interviewing several administrators and athletes, Ms. Shadduck wrote an editorial expressing her opinion about sex discrimination on the campus.

Following publication of the editorial, Ms. Shadduck received a critical letter from Vice Principal Perry and she was called into a conference with Dave Bailey, the school athletic director and student activities advisor. Ms. Shadduck became upset by the negative reaction and burst into tears during the conference with Mr. Bailey. Such treatment of a student disturbed Ms. Stephens-Weaver and on October 15, 1984, she went to see McFarland Principal Yeghoian. During that meeting, Mr. Yeghoian suggested that students who interview an administrator in preparation for an editorial advise the interviewee of their purpose. Mr. Yeghoian testified that he

believed such advance warning would "soften the blow" when the editorial ultimately was published. Mr. Yeghoian also questioned Ms. Stephens-Weaver about the purpose of editorials. She explained her view that editorials were to express a point of view. Mr. Yeghoian stated that the editorial was "negative" and that it should be balanced "with positive writing." Ms. Stephens-Weaver disagreed with that suggestion and the two parted without reaching a consensus about the nature of student editorial writing. Following her meeting with the principal, Ms. Stephens-Weaver discussed with her journalism students the repercussions that flow from writing about controversial subjects. She also told them that editorial writers should inform interviewees of their purpose.

The next newspaper-inspired controversy, which occurred approximately one month later, had its roots in a leaflet. On a morning sometime between November 8 and November 14, 1984, Ms. Stephens-Weaver carried an Association leaflet into her first period journalism class along with her other mail. She placed the mail on her desk where the leaflet was seen by a student, Dominic Sheeter. The student picked up the leaflet and began to read it. Ms. Stephens-Weaver did not take it away from him because she did not consider it private.

The leaflet carried a headline asking, "Are the Teachers of McFarland Criminals?" Its text concerned an incident which occurred during a November 8 mediation session at the District

office. The Association had invited its members to visit the District office after school for a report on the progress of negotiations. At about 3:00 p.m. when the teachers began to arrive, the mediation session was in a brief hiatus. The superintendent had excused himself from the process to attend a grievance session with Association President Ruthie Waldrum and a teacher. From the Association's point of view the mediation was in a "holding pattern" until the superintendent's return.

Because it was a cold, windy day. Association Field Representative Bob Cherry invited the teachers into the District board room where he and other negotiators were waiting. Mr. Cherry testified that he invited the teachers into the room because the weather conditions were uncomfortable and it would have been difficult for the teachers to hear his report over the sound of the wind. At Mr. Cherry's invitation, approximately 40 teachers entered the room.

The entry of the teachers into the District board room was witnessed by Anthony Leonis, the District's chief negotiator, who believed they would disrupt the mediation. He went to where the grievance meeting was underway and reported the event to the superintendent, Mitchell Gilbert. The superintendent visited the board room to observe the situation and then returned to the grievance room where he asked Association President Waldrum to have the teachers leave. Ms. Waldrum declined and Superintendent Gilbert, in the presence of the

Association representatives, called the police department and stated that he wanted an unlawful assembly dispersed. The Association report to the teachers was completed in about 15 minutes following which the teachers departed. The mediation session was subsequently resumed.

After Dominic Sheeter finished reading the Association's account of the November 8 incident, he expressed interest in the subject and asked if there were other leaflets.

Ms. Stephens-Weaver directed the student to her classroom bulletin board. Ms. Stephens-Weaver had a large bulletin board on her classroom wall where she regularly posted newspaper and magazine articles along with notices from both the District and the Association.

An edition of the student newspaper was due for publication on December 7. After he had read the Association leaflets, Dominic Sheeter volunteered to write an editorial about negotiations. The student editor accepted the idea and the editorial was scheduled for the December 7 issue.

In preparing his editorial. Dominic used the Association bulletins and he interviewed Mike Elliott, a member of the Association's negotiating team. The editorial was prepared two days before the newspaper's deadline and Ms. Stephens-Weaver circulated it among teachers in the faculty lounge on the morning of December 4. One of the teachers, Ed Levinson, stated that the editorial would be better if it contained a

statement from the superintendent. Ms. Stephens-Weaver told Dominic Sheeter about Mr. Levinson's suggestion and Dominic agreed.

During journalism class that morning Dominic called Superintendent Gilbert. The conversation was brief, not longer than 30 seconds by the estimate of Ms. Stephens-Weaver. Dominic told the superintendent he was doing an editorial on negotiations and asked if the superintendent had any comments he would like to add. The superintendent made a brief statement which Ms. Stephens-Weaver helped the student insert into the editorial. By the end of the class, the editorial was in final form.

Shortly after his conversation with the student. Superintendent Gilbert called McFarland Principal Yeghoian and asked him to secure a copy of the editorial. Mr. Yeghoian intercepted Ms. Stephens-Weaver at her mailbox and asked for a copy. They agreed she would bring the editorial to his office during her preparation period which was one hour later.

When she returned to the principal's office with a copy of the editorial, Ms. Stephens-Weaver expressed concerns about censorship. She showed Mr. Yeghoian and Vice Principal Perry, also present, an article from the November 1984 issue of free reader II. an anti-censorship newspaper published in San Francisco by the Media Alliance. The article, "Principals Silence Press," was marked by Ms. Stephens-Weaver to illustrate

significant points. Ms. Stephens-Weaver estimated that as much as 30 minutes was spent discussing the article. Mr. Yeghoian testified that Ms. Stephens-Weaver warned that she would go to the American Civil Liberties Union if the editorial were censored by the administration. She protested that nothing in the editorial was obscene or libelous and since it broke no law. it should not be censored.

Mr. Yeghoian responded that he had not said anything about censorship. However, when Ms. Stephens-Weaver pressed him to state whether the article would be censored Mr. Yeghoian responded that the superintendent wanted to see the editorial and Mr. Yeghoian would get back to her later.

Ms. Stephens-Weaver expressed worries about whether the newspaper would meet its publication deadline but Mr. Yeghoian said it could not go to the printer until after the superintendent saw the editorial. Mr. Yeghoian thereafter called the superintendent and read the editorial to him.

At the conclusion of the fifth teaching period that day. Vice Principal Perry went to Ms. Stephens-Weaver's classroom and gave her a copy of Education Code section 48907.⁴ That

²Education Code section 48907 reads as follows:

Students of the public schools shall have the right to exercise freedom of speech and of the press including, but not limited to, the use of bulletin boards, the distribution of printed materials or petitions, the

provision assures public school students of the right of free speech except for the publication of obscene, libelous or slanderous articles or articles which incite riot. The section prohibits the censorship of student publications and sets out the responsibility of the journalism advisor to maintain good

wearing of buttons, badges, and other insignia, and the right of expression in official publications, whether or not such publications or other means of expression are supported financially by the school or by use of school facilities, except that expression shall be prohibited which is obscene, libelous, or slanderous. Also prohibited shall be material which so incites students as to create a clear and present danger of the commission of unlawful acts on school premises or the violation of lawful school regulations, or the substantial disruption of the orderly operation of the school.

Each governing board of a school district and each county board of education shall adopt rules and regulations in the form of a written publications code, which shall include reasonable provisions for the time, place, and manner of conducting such activities within its respective jurisdiction.

Student editors of official school publications shall be responsible for assigning and editing the news, editorial, and feature content of their publications subject to the limitations of this section. However, it shall be the responsibility of a journalism adviser or advisers of student publications within each school to supervise the production of the student staff, to maintain professional standards of English and journalism, and to maintain the provisions of this section.

standards and ensure adherence to the requirements of the law. When he gave Ms. Stephens-Weaver a copy of the Education Code provision. Mr. Perry made no comment except to invite her to visit him after school if she had questions. She did visit him but when she asked if she had done anything wrong he responded only, "you have the code; you have the code."

On December 5 the superintendent told Mr. Yeghoian he was "going to let it go." Mr. Yeghoian sent Ms. Stephens-Weaver a memorandum advising her that the superintendent had decided to permit printing of the editorial as submitted. He further advised her that pursuant to Education Code 48907 she had "the personal and professional responsibility for any repercussion resulting from the distribution of this editorial." Finally. Mr. Yeghoian stated that he viewed her "judgment to provide.

There shall be no prior restraint of material prepared for official school publications except insofar as it violates this section. School officials shall have the burden of showing justification without undue delay prior to any limitation of student expression under this section.

"Official school publications" refers to material produced by students in the journalism, newspaper, yearbook, or writing classes and distributed to the student body either free or for a fee.

Nothing in this section shall prohibit or prevent any governing board of a school district from adopting otherwise valid rules and regulations relating to oral communication by students upon the premises of each school.

exclusively union flyers to a student writer for the expressed purpose of writing an editorial on negotiations as a poor professional decision." A copy of the memo was placed in Ms. Stephens-Weaver's personnel file. This memorandum is one of the documents which the Association characterizes as a reprimand and attacks in this case.

On the same day. Ms. Stephens-Weaver also received a memo from Vice Principal Perry reminding her of her responsibility to ensure that student writings meet the requirements of the Education Code 48907. "It is imperative that you ensure that all issues of the McFarland High School newspaper comply," the memo concludes.

After she received the first of these memos. Ms. Stephens-Weaver went directly to see Mr. Yeghoian. She asked why he had sent a memo rather than simply speak to her about his criticism. She quoted him as responding that he was only following instructions he had been given by the superintendent and Schools Legal Service an organization which represents the District in negotiations and litigation. Ms. Stephens-Weaver subsequently wrote a memo to the superintendent asking that Mr. Yeghoian's December 5 memo be removed from her personnel file. The District denied the request.

On December 7. 1984, Ms. Stephens-Weaver was requested to report to the principal's office. She took with her

Mike Elliott. At the meeting. Mr. Yeghoian inquired about Ms. Stephens-Weaver's attitude toward a reassignment from journalism to another sophomore English class. He cited a "difference in philosophies" about the student paper as the reason for the change. Ms. Stephens-Weaver requested the opportunity to first consult with an Association attorney and promised to get back to Mr. Yeghoian later.

Ms. Stephens-Weaver was absent the next two school days. On December 10, a day of absence for Ms. Stephens-Weaver, the class schedules were distributed for the spring semester of 1985. Her schedule showed that she would teach five sophomore English classes and would no longer teach journalism. Every District teacher with a second semester schedule change was notified in writing on December 10. Although he had no specific recollection, Mr. Yeghoian testified that it is "completely possible" that he consulted with the superintendent before making the reassignment of Ms. Stephens-Weaver.

On December 14, Ms. Stephens-Weaver wrote to Mr. Yeghoian requesting "a list of the specific reasons as to why the journalism class advisorship was given to another staff member." She asked whether she had broken the Education Code or whether the change was due to philosophical differences. If due to philosophy, she continued, when did he give her guidelines to follow, or make an observation of her class or give her other directions. Mr. Yeghoian replied on December 19

stating that he chose to exercise that right in order to "better serve the educational needs of the District."

On December 21, Ms. Stephens-Weaver filed a formal grievance under the District contract to challenge her reassignment from journalism. The grievance was rejected by Mr. Yeghoian on December 26. On January 8, 1985.

Ms. Stephens-Weaver amended the grievance but the amended version was rejected on January 9. On January 10, 1985, Ms. Stephens-Weaver appealed the decision to the next level under the contract, conciliation.

On January 30, 1985, Mr. Yeghoian visited Ms. Stephens-Weaver's second period English class and observed her teaching techniques for the entire period. On February 4, 1985, Ms. Stephens-Weaver was called in for a post-observation conference. When she arrived at the meeting, she was surprised to see the superintendent, Mitchell Gilbert, present along with Mr. Yeghoian. It was highly unusual that the superintendent would attend such a conference and she asked if the meeting were to be disciplinary in nature. She was assured that it was not.

Mr. Yeghoian commenced the conference by giving Ms. Stephens-Weaver a written report on his observation of her class. She was graded favorably in each area of observation and he appended the following summary comment:

Ms. Vicki Stephens-Weaver provided the students a well planned lesson on creative

writing. Her activities moved the students along in a productive, yet non-threatening manner, which kept 100% of her students involved and interested. She used various strategies to raise level of concern within her students and continually reinforced them with positive and supportive comments. Her continual checks for understanding, with group and individual, kept her in touch with class and their needs.

Mr. Yeghoian testified that he was pleased with her performance as an English teacher and "evaluate(d) her very positively in her English 10 class." At the time of the observation, English 10 was the only subject Ms. Stephens-Weaver was teaching.

After discussing his classroom observation, Mr. Yeghoian told Ms. Stephens-Weaver that she would not "be as happy with the second one." He then handed her a summary evaluation which concluded with Mr. Yeghoian's recommendation that Ms. Stephens-Weaver not be rehired for the 1985-86 school year. The evaluation faults her in a number of areas.

Ms. Stephens-Weaver was criticized for failure to provide "appropriate leadership in advising students on many subjective and qualitative factors when editing and publishing a student newspaper." Mr. Yeghoian stated that she:

. . . failed to demonstrate an ability or willingness to encourage students to research an issue, verify factual assertions, clearly distinguish fact from opinion, nor [sic] to identify clearly which facts came from a particular source rather than the editorial writer.

Mr. Yeghoian also wrote that Ms. Stephens-Weaver "persistently resists suggestions and directives that she improve in the area of accepting constructive criticism." He stated that she presents "a defensive posture whenever approached on this subject." When asked at the hearing which staff members had been rejected in attempts to suggest improvements, Mr. Yeghoian listed Vice Principal Perry and Athletic Director Bailey. The only evidence of criticism offered to Ms. Stephens-Weaver by those individuals was the objection by them to the student editorial on sex discrimination in athletics.

Mr. Yeghoian faulted Ms. Stephens-Weaver for "negative and disruptive outbursts in staff meetings." When asked at the hearing for documentation of that accusation, Mr. Yeghoian could think of only one instance. In that situation, Ms. Stephens-Weaver complained that a remedial reading class had been developed and assigned to another teacher before she had any knowledge that such a class was being planned. Mr. Yeghoian took the remark as a criticism of the other teacher. Ms. Stephens-Weaver testified that she intended it to be a complaint about lack of communication among members of the English Department. Mr. Yeghoian did not speak to Ms. Stephens-Weaver about this behavior at any time between its occurrence on December 12 and her evaluation.

The Association presented evidence that another teacher, Joel Stewart, also had been faulted in an evaluation for making negative comments at staff meetings. Ms. Stewart testified that in her 1985 evaluation Mr. Yeghoian had suggested that she discuss with a colleague her "negative attitude." She challenged the assertion that she had a negative attitude and Mr. Yeghoian said he had received complaints about her "negative attitude at faculty meetings." Ms. Stewart stated that she would not sign the evaluation if that criticism remained in it. Mr. Yeghoian thereupon had his secretary retype a portion of the evaluation to remove the comment. Asked why he made the change for Ms. Stewart, Mr. Yeghoian said that he had achieved his purpose by calling Ms. Stewart's attention to the complaint and it was unnecessary to keep the comment in the evaluation. He said this reasoning was not applicable to Ms. Stephens-Weaver because he was recommending her termination and was not concerned about her future growth. "The whole reason for Ms. Stewart's comment was for growth." he said. Ms. Stewart was not a member of the Association.

The assertion that Ms. Stephens-Weaver was disruptive in staff meetings was challenged by Ms. Stewart. Ms. Stewart said Ms. Stephens-Weaver would ask questions at "three to five percent" of the staff meetings which was about the same as Ms. Stewart. Ms. Stewart testified that Ms. Stephens-Weaver

seldom asked more than two questions and at meetings where she did speak up it was in a soft voice.

In the evaluation. Mr. Yeghoian stated that Ms. Stephens-Weaver "actively resists suggestions about a variety of ways she can improve her approach to teaching." He stated that every time he "attempted to confront her about campus reaction and problems resulting from the product of her journalism class, Ms. Stephens-Weaver has reacted either defensively or with hostility." Asked during the hearing to identify situations where Ms. Stephens-Weaver reacted negatively to criticism. Mr. Yeghoian cited his discussions with her about the two controversial student editorials. He could not recall any other examples.

On cross examination. Mr. Yeghoian was asked whether he was afraid that problems he was having with Ms. Stephens-Weaver might rub off onto other faculty members and impair his relations with them. He responded that the idea "didn't enter into my mind." Mr. Yeghoian also was asked if he had discussed with the superintendent his decision not to rehire Vicki Stephens-Weaver prior to preparing her final evaluation. He responded: "I don't believe so. That's not my style."

Following these statements, counsel for the Association demanded, for impeachment purposes, the production of a tape recording which Mr. Yeghoian had made prior to the February 4 evaluation meeting with Ms. Stephens-Weaver. The tape was

produced and the portions of it dealing with

Ms. Stephens-Weaver were admitted into the record.³

In his first reference on the tape to Ms. Stephens-Weaver. Mr. Yeghoian states that the preliminary evaluation form for her must be taken to School Legal Services in Bakersfield by "Friday, the 25th." The reference apparently is to January 25, 1985. Mr. Yeghoian's next reference to Ms. Stephens-Weaver reads as follows:

Document my perceptions of what has happened
from the beginning with Legal Services and
the Stephens situation, what I have been

³Although the tape was not in Mr. Yeghoian's possession for five months. Mr. Yeghoian identified the voice on the tape as his own (Reporter's Transcript, p. 431) and did not deny having said any of the things on the tape. The contents are a relevant record of attitudes held by Mr. Yeghoian at the time of his decision to terminate Ms. Stephens-Weaver.

The District argues, however, that the tape should be excluded because there is no evidence to show that the Association gained its knowledge of the tape "with Yeghoian's consent by other legally authorized means." The District cites Penal Code sections 631 and 632 as grounds for denying admission. These Penal Code sections prohibit wiretapping and eavesdropping and make inadmissible any evidence containing confidential communications intercepted by such illegal means. The sections are inapposite here because no confidential communications were intercepted. Mr. Yeghoian made the recording himself. The recording is no more exempt from discovery than would be a personal journal. The mere fact that Mr. Yeghoian recorded his thoughts by tape rather than by handwriting does not thereby insulate them from admissibility. Moreover, although there is no evidence to show the Association gained knowledge of the tape by "legally authorized means," neither is there evidence to show the contrary. The mere suspicion, expressed by the District, is insufficient to exclude otherwise probative evidence.

advised to do not only by Legal Services but also by the superintendent, what latitude I have been provided by the superintendent. The situation and what I perceive as happening at this point.

Mr. Yeghoian's next reference to Ms. Stephens-Weaver reads:

Part of the theme of the evaluation of Vicki Stephens should deal with unprofessionalism within the staff, within my office, within her classroom, and that should be the overall theme of the noninstructional duties, the way she deals with her professional responsibilities.

Mr. Yeghoian's final reference to Ms. Stephens-Weaver reads:

I feel that since the problems with Vicki Stephens has started we've started experiencing problems with other staff members. I believe she is attempting to turn staff members against the administration. Can't verify that but there's been a lot of ill feeling from people that we work with, that we've had a good relationship with, people coming in and siding with her with only half the facts, some negative comments at staff meetings, some comments in the staff work room or mail room that I feel were inappropriate and, again, walking out of my office, asking me a question, giving her an answer, and then going out and telling anybody that was out there. I feel there is some, it's a real shame and a very unprofessional attitude that Vicki Stephens is displaying at this time.

In the seven years Mr. Yeghoian has been a principal.

Ms. Stephens-Weaver is the only teacher he has not recommended for rehiring. During this period of time, some 50 to 60 different teachers have worked under him. Asked about the significance of Ms. Stephens-Weaver's performance as a

journalism teacher in his decision not to rehire her, Mr. Yeghoian responded that it was "significant." In light of Mr. Yeghoian's conclusion that Ms. Stephens-Weaver was a good English teacher, he was asked why removal of her from the journalism assignment was not sufficient to correct the problem. He responded that he was disturbed by what he considered "unprofessional activity" going outside the journalism class and "within the staff." He said he was disturbed by "her relationship with students, and her involvement in making little problems bigger . . . had a lot to do with my decision." He said that the nature of her involvement with him and the staff "as a result of the reassignment" left him very few alternatives.

In addition to the grievance over her transfer out of the journalism assignment, Ms. Stephens-Weaver participated in two other organizational activities during the first part of her final year with the District. She filed a grievance over the District's refusal to give her a stipend for being journalism advisor and she joined another teacher in protesting the assignment of work during her preparation period.

The grievance over the journalism stipend was filed on October 23, 1984. The contract between the parties provides that extra duty stipends shall be paid to teachers who perform certain designated tasks including advisor to the newspaper. The contract sets a specific rate for the task.

Ms. Stephens-Weaver became aware of the stipend during her first year as newspaper advisor and she requested Mr. Yeghoian to secure the stipend for her. Mr. Yeghoian consulted with Superintendent Gilbert and reported back to Ms. Stephens-Weaver that she was not entitled to the stipend because she was advising the newspaper during class time as part of her journalism teaching assignment. The stipend is paid only when teachers are required to perform extra work. Mr. Yeghoian said. Ms. Stephens-Weaver disagreed with this interpretation of the contract but dropped the issue.

Following the dispute over the sex discrimination editorial, Ms. Stephens-Weaver renewed her demand for the extra duty stipend. During her October 15 conference with Mr. Yeghoian about the editorial, Ms. Stephens-Weaver asked for the stipend but the request was promptly declined. On October 23, she filed a formal grievance requesting the stipend and cited the extra duty pay provision of the contract as justification.

On December 19, a conciliation session was conducted with a state mediator about Ms. Stephens-Weaver's extra pay grievance. Among those present were Association Representative Cherry and District negotiator Leonis. Following the meeting, Mr. Leonis made a brief remark which indicated to Mr. Cherry that the District at that time was contemplating discipline against Ms. Stephens-Weaver.

Ms. Stephens-Weaver's protest over the assignment of work during her preparation period commenced as a two-teacher complaint that ultimately was joined by a large segment of the McFarland High School faculty. The contract between the parties provides that high school teachers shall have preparation time in "the equivalent of one (1) class period per day." It also provides that a teacher who substitutes during a preparation period shall be paid \$15 per 55 minute period-

It was the practice in the District that teachers would be requested to substitute during their preparation periods for other teachers who became ill during the day. However, when a teacher called in sick prior to the commencement of a school day an outside substitute would be employed. During the 1984-85 school year Mr. Yeghoian asked teachers to give up their preparation periods to substitute for others who were excused for negotiations. This practice impacted adversely on Ms. Stephens-Weaver because she was the only teacher available during the fourth period to cover for one of the negotiators.

Another teacher, who also was upset about the requirement that she substitute for negotiators, was Sandra McKnight. She and Ms. Stephens-Weaver shared a car pool and they discussed their complaint while riding to work. Following the meeting with negotiators at the District office on November 8, the two teachers consulted Mr. Cherry. He told them that they were entitled to a preparation period under the contract and that

they should stand up for their rights when an assignment was made.

Ms. Stephens-Weaver and Ms. McKnight received their next assignment to substitute on November 28. Early that morning, both teachers were given assignment slips by Mr. Yeghoian's secretary requesting that they substitute for negotiators during their preparation periods. Ms. Stephens-Weaver checked "no" under a question on the form asking whether she would substitute on that day. She added the following observation on the form:

I will do it under protest only. I want it in writing that I am being told that I have no choice, that I have to substitute even though our contract states otherwise.

The two teachers went to see Mr. Yeghoian immediately after a faculty meeting which had been held before school that morning. Mr. Yeghoian described the two teachers as "agitated" and said the discussion, while not a normal conversation, "wasn't yelling." "It was in the middle there someplace," he said.

Mr. Yeghoian asked the two teachers why they believed they could not substitute that day. Ms. Stephens-Weaver responded that she had arranged for students to go to her classroom for tutoring during her preparation period that day. Mr. Yeghoian excused Ms. Stephens-Weaver from the assignment and performed the substitution himself. Ms. McKnight was not excused and she substituted during her preparation period.

On November 30, Mr. Yeghoian sent a memorandum⁴ to both teachers criticizing "the manner" in which they objected to the substitution assignment. He wrote that he felt it "important at this time to express my personal and professional disappointment" in the manner of the protest. He quoted Ms. Stephens-Weaver's statement that she would substitute only under protest because the contract states otherwise. He described that remark as "difficult to accept with any feelings of professional cooperation." He said a "colleague" could express dissatisfaction but there is "an appropriate time and manner in which to do so."

Mr. Yeghoian said he did not consider the memorandum to be a letter of reprimand. He said it "could have happened" that he consulted with Superintendent Gilbert before he wrote the November 30 memo.

Ms. Stephens-Weaver was offended when she received the memo and both she and Ms. McKnight promptly went to see Mr. Yeghoian. Ms. Stephens-Weaver said she had believed the issue resolved on the morning of November 28 and she did not understand why Mr. Yeghoian would write a letter. She and Ms. McKnight told Mr. Yeghoian that they were standing up for their contractual rights and that they were doing what the

⁴This memorandum is one of the documents, characterized as a "reprimand" by the Association, which is under attack here.

union advisor had instructed them to do. Ms. Stephens-Weaver quoted Mr. Yeghoian as responding that the union was "getting in the way" of his being an administrator.

That evening, the two teachers told other teachers during a parking lot conversation about Mr. Yeghoian's memo to them. Up to that time, Ms. Stephens-Weaver and Ms. McKnight were the only protestors about assignments during preparation periods. A petition to Mr. Yeghoian subsequently was drawn up and signed by 18 teachers stating that they did not wish to substitute during their preparation periods whenever the District had advance notice that a teacher would be absent for a half of a day or more. The teachers said they would substitute for a teacher who went home ill or who would be absent for a single period due to a doctor's appointment, in-service training or sporting or academic events. In all other situations, the petition declared, a grievance would be filed if the District requested a substitute. The petition also requested that such assignments be made on a rotational basis.

The petition was given to Mr. Yeghoian on December 5. Mr. Yeghoian discussed the issue at a faculty meeting that day and on December 14 announced a new procedure designed to address some of the complaints raised by the petition.

There was evidence that Mr. Yeghoian had expressed a negative attitude about the union on at least one occasion in addition to the November 30 meeting about teaching during

preparation periods. The other occasion occurred in late November when Ms. Stephens-Weaver invited Mr. Yeghoian to her classroom in an attempt to reopen communication. During the meeting they reviewed the sex discrimination editorial and Ms. Stephens-Weaver told Mr. Yeghoian that she felt he was becoming more authoritative with her. At the conclusion of the meeting, she testified, she told him that she was glad she was a union member because of all the things going on at the school that year. She quoted him as saying he felt "less union" that year. Mr. Yeghoian testified that he could not recall such a conversation.

There also was evidence that Superintendent Gilbert made comments about the Association at the initial employment interviews of Joel Stewart and Sidney Tribble. Ms. Stewart testified that Mr. Gilbert had remarked to her that "you know, the union is pretty strong out here in McFarland." This, he continued, "makes it hard where we have to put everything in writing." Ms. Stewart said she volunteered that she was not a member of the California Teachers Association to which Mr. Gilbert responded that, "there's no problems if you did."

Mr. Tribble testified that just after he was hired, Mr. Gilbert brought up the existence of the Association. Mr. Tribble testified that the superintendent told him that the Association from time to time "had difficulties getting along with the District" and that he hoped Tribble "would be

professional enough to rise above these things" and concentrate primarily on his job in the classroom and not let outside activities influence his actions or disturb his teaching.

On March 11, 1985, the District Board of Trustees accepted the recommendation of Mr. Yeghoian that Vicki Stephens-Weaver not be rehired for the 1985-86 school year. She received written notice of this decision the next day. Her final day of employment with the District was on June 14, 1985. Had she been rehired, she would have become a tenured teacher at the commencement of the 1985-86 school year.

LEGAL ISSUES

Did the District discriminate against Vicki Stephens-Weaver in retaliation for her participation in protected activities and thereby violate EERA subsection 3543.5 (a) and derivatively, (b), by:

1. Issuing to her a memorandum on November 30, 1984, regarding her objection to substituting during her preparation period.
2. Issuing to her a memorandum on December 5, 1984, regarding a student-written editorial for the school newspaper.
3. Removing her on December 10, 1984, from journalism teaching duties and reassigning her to teach another section of English.
4. Issuing to her a negative evaluation on February 4, 1985.
5. Refusing to rehire her on March 11, 1985, as a teacher

for the 1985-86 school year and thereby terminating her employment with the District.

CONCLUSIONS OF LAW

Public school employees have the protected right,

. . . to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.⁵

It is an unfair practice under subsection 3543.5 (a) for a public school employer to "impose . . . reprisals on employees, [or] to discriminate . . . against employees . . . because of their exercise of [protected] rights." In an unfair practice case involving reprisals or discrimination, the charging party must make a prima facie showing that the employer's action against the employee was motivated by the employee's protected conduct. Novato Unified School District (1982) PERB Decision No. 210. This can be done by either direct or circumstantial evidence.

In a case involving proof by circumstantial evidence, the charging party must show initially that the employer had actual or imputed knowledge of the employee's participation in protected activity. Moreland Elementary School District (1982) PERB Decision No. 227. The charging party then must produce evidence of unlawful motivation to link the employer's

⁵Section 3543.

knowledge to the harm which befell the employee. Indications of unlawful motivation have been found in an employer's general animus toward unions, San Joaquin Delta Community College District (1982) PERB Decision No. 261. in disparate treatment toward the complainant. State of California (Department of Parks and Recreation) (1983) PERB Decision No. 328-S, in the use of unusually harsh discipline against employees with previously unblemished work records. Baldwin Park Unified School District (1982) PERB Decision No. 221. in shifting justifications for the action against the employee. State of California, supra. PERB Decision No. 238-S, and in the timing of the disciplinary action. North Sacramento School District (1982) PERB Decision No. 264.

After the charging party has made a prima facie showing sufficient to support an inference of unlawful motive, the burden shifts to the employer to prove that its action would have been the same in the absence of protected activity. Novato Unified School District, supra. PERB Decision No. 210.

It is clear that Ms. Stephens-Weaver participated in protected activities. She was at all times a member of the Association. She filed a grievance on October 23, 1984, to protest the District's refusal to pay her what she believed to be a contractually guaranteed stipend for serving as advisor to the student newspaper. She joined another teacher on November 28 in protesting what she believed to be a

contractually prohibited assignment to serve as a substitute teacher during her preparation period. Her protests over this assignment ultimately developed into a staff-wide refusal to work as substitute teachers where the District had advance notice a teacher would be absent. She filed a December 21 grievance over her reassignment from teaching journalism to teaching another sophomore English class.

Public school employees have a protected right to file grievances pursuant to negotiated grievance procedures. North Sacramento School District, supra. PERB Decision No. 264. They also have a right to assert, even if incorrectly, their beliefs about contractual protections. Baldwin Park, supra. PERB Decision No. 221. Both of Ms. Stephens-Weaver's grievances and her protest over substitute teaching duties were therefore protected acts.⁶ It is undisputed that the District knew of these actions. Mr. Yeghoian responded to each of them.

⁶The District argues that Ms. Stephens-Weaver's protest over teaching during her preparation periods was not intended to communicate more than her own particular and personal concern. Thus, the District continues, it was not "concerted" activity protected by the EERA. The evidence belies the District's interpretation. The protest over the substitute teaching assignments was a two-teacher complaint from the very beginning. Ms. Stephens-Weaver was joined by Sandra McKnight at every step of the way. Together, they sought advice from the Association field representative. Together, they filed objections to the assignment with Mr. Yeghoian. Together, they met with Mr. Yeghoian on two separate occasions to protest the assignment and his reaction to it. Together, they met with other teachers in the parking lot and sparked the protest that ultimately was joined by a sizeable segment of the faculty.

In addition, the Association argues that Ms. Stephens-Weaver also engaged in protected conduct by providing Association material to a student for his editorial on negotiations. The Association finds this conduct protected as an "activity reasonably appurtenant" to Ms. Stephens-Weaver's right to receive and possess Association literature. The Association argues that delivery of the flyers to a student in the classroom "constitutes a reasonable exercise of the right to inform members of the public about a labor dispute." The Association compares delivery of the leaflet to the student to the circulation of a leaflet to a passerby on the sidewalk in front of school.

The Association must fail in its contention that Ms. Stephens Weaver engaged in protected conduct by providing Association literature to the student, Dominic Sheeter. If she provided Association literature to a high school student during a class period for the purpose of informing him about a labor dispute, her act was not protected. It was an inappropriate, captive audience advocacy of the union's cause to a student. The improper method would have robbed the advocacy of its protection. See Konocti Unified School District (1982) PERB

From the very start. Ms. Stephens-Weaver rested upon the contract as her justification for objecting to the assignment. These events closely parallel conduct found protected in Baldwin Park, supra. PERB Decision No. 221.

Decision No. 217. On the other hand, if in giving the leaflet to the student Ms. Stephens-Weaver had no representational purpose, her action likewise was unprotected. "It is participation in organizational activities for the purpose of representation that is protected." Carlsbad Unified School District (1985) PERB Decision No. 529. (Emphasis in the original.)

Here, as the District points out, it seems clear that Ms. Stephens-Weaver acted without a representational purpose. Initially, it was the student himself who was the moving party. He took the leaflet from Ms. Stephens-Weaver's desk. Later, when she directed the student to the leaflets on her bulletin board, she was acting as a teacher providing a student with materials for an assignment. It was not the act of a union adherent promoting a cause. Thus, from even the most innocent reading of Ms. Stephens-Weaver's conduct, the circulation of the literature was not protected.

If the act of providing Association literature to the student was not protected, it follows that the District's responses to that act were not unlawful discrimination. Mr. Yeghoian's December 5, 1984, memorandum criticizes as a poor decision Ms. Stephens-Weaver's action of providing "exclusively union flyers" to the student. The memorandum responds directly to the unprotected act. On its face it is more in the nature of an instruction than a retaliation.

Although placement of the memo in Ms. Stephens-Weaver's personnel file might well be considered a form of discipline, the evidence links that discipline to the unprotected conduct. There is no showing that the December 5 memorandum had unlawful motivation.

Similarly, it is concluded that the transfer of Ms. Stephens-Weaver from journalism to another English class was a response to a difference in views on how to teach journalism. Mr. Yeghoian did not agree with Ms. Stephens-Weaver's perception of editorial writing in student newspapers. Their differences appeared irreconcilable and as principal he exercised his authority to reassign Ms. Stephens-Weaver to a different class. The evidence simply will not support the conclusion that the transfer was motivated by a desire to retaliate for any of Ms. Stephens-Weaver's protected activities.

For these reasons, those portions of the charge and complaint which allege unlawful retaliation for the December 5 memorandum and the December 10 reassignment must be dismissed.

Much less benign, however, were the District's motivations in Mr. Yeghoian's November 30 memorandum to Ms. Stephens-Weaver and his subsequent evaluation of her and decision not to reemploy her for the 1985-86 school year. A clear indication of anti-union motivation is present in each decision.

The November 30 memorandum to Ms. Stephens Weaver was

written in direct response to her protected protest over the assignment of substitute teaching duties during her preparation periods. It was clear that Ms. Stephens-Weaver's objection to the assignment was based upon her interpretation of the contract. Her written objection to the assignment states a belief that the Association contract with the District does not permit such assignments. Mr. Yeghoian's critical response objects to the "manner" of the protest and contends that it shows a lack of "professional cooperation." But there is no evidence Ms. Stephens-Weaver and her colleague were rude or insubordinate in the manner of their protest. They filed their objections at the most logical time, immediately after the assignment was made. Ms. Stephens-Weaver agreed to work the assignment "under protest" if required. There is no evidence of improper conduct. The District's response to this protected protest of an assignment was a letter which can fairly be characterized as a reprimand. Letters of reprimand in response to protected conduct are a prohibited form of retaliation.

North Sacramento, supra. PERB Decision No. 264; Department of Parks and Recreation, supra. PERB Decision No. 328-S.

Mr. Yeghoian's February 4, 1985, evaluation of Ms. Stephens-Weaver was pretextual from its inception. The tape recording shows that the evaluation was designed to support a termination and that it was to be written with that goal in mind from the beginning. Because Mr. Yeghoian judged

her to be a good English teacher he decided that the justification for her termination would have to be "unprofessionalism within the staff, within [his] office, within her classroom." He criticized her for "negative and disruptive outbursts in staff meetings." But on cross-examination he was able to recite only one instance of such behavior and he had never spoken to her about that instance at any time between when it occurred and when he wrote the evaluation. In Ms. Stephens-Weaver's case, that conduct was judged to be sufficiently serious that it was cited as one of the reasons for her non-renewal as a teacher. When another teacher, Joel Stewart, complained about a similar comment in her evaluation, Mr. Yeghoian simply had that portion of the evaluation retyped with the critical comment removed.

The evaluation relies heavily upon criticisms of Ms. Stephens-Weaver's actions as a journalism teacher as justification for her termination. Yet by the time the evaluation was written, Ms. Stephens-Weaver was no longer assigned to teach journalism. She taught only English classes which Mr. Yeghoian conceded she did very well. So why, he was asked, was it necessary to terminate her when she no longer taught journalism. The reason, he responded, was "unprofessional activity" going on "within the staff," "her involvement in making little problems bigger" and her involvement with him and the staff as a result of the

reassignment from journalism. Similar ideas are reflected in Mr. Yeghoian's tape recorded thoughts from the period immediately preceding the dismissal. He described how he had "started experiencing problems with other staff members" after the difficulties began with Ms. Stephens-Weaver. He complained that she had spoken with other employees about her problems with him and that as a result he had picked up "ill feeling(s)" from others on the staff.

Mr. Yeghoian does not define the "unprofessional activity" in which Ms. Stephens-Weaver supposedly engaged. But the comment is similar to his earlier criticism of her lack of "professional cooperation" for protesting the assignment to substitute teach during her preparation periods. Mr. Yeghoian does not describe how he "started experiencing problems with other staff members" after the commencement of troubles with Ms. Stephens-Weaver. But it is clear that it was not until she protested the assignment of duties during her preparation period that other teachers joined in a written statement that they, too, would refuse similar assignments during their preparation periods. Mr. Yeghoian, likewise, does not describe how Ms. Stephens-Weaver had "involvement in making little problems bigger." But that description would fit her protests over the District's failure to pay her a stipend for serving as journalism advisor. Any of these actions may well have been

the "unprofessional activity" going on "within the staff" which Ms. Yeghoian found intolerable.

Linking Mr. Yeghoian's justifications for the negative evaluation and subsequent termination to Ms. Stephens-Weaver's protected conduct requires no stretch of the imagination. Both Mr. Yeghoian and the District superintendent, Mitchell Gilbert, had displayed evidence of animus toward the Association. At a pre-Thanksgiving meeting with Ms. Stephens Weaver, Mr. Yeghoian stated that as a result of the events of the 1984-85 school year, he felt "less union" than he had previously. On November 30. Mr. Yeghoian told Ms. Stephens-Weaver that the Association was "getting in the way" of his being an administrator at the school.⁷ Superintendent Gilbert, upon whom Mr. Yeghoian relied for advice on personnel matters, made comments about the Association at the time two teachers were hired. Both Ms. Stewart and Mr. Tribble testified credibly that Mr. Gilbert had made comments about the Association during

⁷These statements are drawn from the testimony of Ms. Stephens-Weaver whose account is credited. Mr. Yeghoian did not recall making such comments. While I found Mr. Yeghoian to have been generally credible, he had memory lapses about several critical incidents. The unreliability of his memory was illustrated by his denial of concerns about whether his problems with Ms. Stephens-Weaver might rub off onto other faculty members. His testimony was contradicted by his statements on the tape recording. He similarly failed to recall his consultations with the superintendent prior to deciding not to rehire Ms. Stephens-Weaver for the 1985-86 school year. The tape shows that he did discuss the matter with the superintendent.

their employment interviews. Although the remarks to Ms. Stewart were somewhat quizzical, his comment to Mr. Tribble clearly implied that he hoped the new employee would refrain from active participation in Association activities.

Even more overt evidence of the District's anti-union attitude was the decision to seek police assistance in the removal from District facilities of a gathering of teachers on the grounds that they constituted an unlawful assembly. The gathering occurred after school hours in the District board room where the teachers met with their own negotiating team. At the time the superintendent called the police department, he had no reason to believe the gathering would be anything other than peaceful. Request for police assistance was a drastic response under the circumstances and was indicative of pervasive ill will toward the Association.

The February 4 evaluation and subsequent decision not to rehire Ms. Stephens-Weaver thus contain a number of indicia of unlawful motivation. There is evidence of animus toward the Association on the part of both the superintendent and the principal. There is evidence of disparate treatment between Vicki Stephens-Weaver and Joel Stewart, both of whom supposedly engaged in disruptive conduct at staff meetings. For Ms. Stephens-Weaver, the allegedly disruptive conduct became one of the grounds for nonrenewal. For Ms. Stewart, the comment about disruptive conduct was removed from the

evaluation upon her objection. There is evidence of unduly harsh discipline against an employee with a previously unblemished work record. The termination of Ms. Stephens-Weaver followed a highly favorable evaluation in her first year of teaching, a year in which she participated in no protected conduct. In her second year, however, she filed grievances and helped incite a protest over the assignment of work during preparation periods. These actions were swiftly followed by a November 30 reprimand and a subsequent negative evaluation and decision not to rehire. The supposed justification of her failure as a journalism teacher seems transparently pretextual. She took the job as a journalism teacher with admittedly and well-known weak credentials and by the time of the decision not to rehire her, she was no longer teaching journalism. She was teaching English, a subject in which she was acknowledged to be a superior teacher. At that point, her failure as a journalism teacher should no longer have been relevant. Its only use was as a pretextual ground for dismissing her.

Based upon this evidence of unlawful motivation, it is concluded that by its negative evaluation and subsequent decision not to rehire Ms. Stephens-Weaver, the District engaged in acts of discriminatory retaliation for her

participation in protected conduct.⁸ These actions were in violation of EERA subsection 3543.5 (a) and, derivatively, (b). Retaliation against an employee for filing grievances under a negotiated agreement is a derivative violation of subsection 3543.5 (b). North Sacramento, supra. PERB Decision No. 264.⁹

⁸The District argues that even if unlawful motivations be shown on the part of Mr. Yeghoian, the decision not to rehire Ms. Stephens-Weaver was made by the school board. Because there is no evidence of unlawful motive on the part of the school board, the District contends, the charge must be dismissed under the dictates of Konocti Unified School District, supra. PERB Decision No. 217.

In Konocti, the governing board conducted an extensive review of the allegations made against the employee and reached an independent decision. That separate action had the effect of insulating the final decision-making process from unlawful motives which were held by administrators. Here, there was no evidence of the type of independent review conducted in Konocti. In the absence of evidence of insulation between the ultimate decision and the unlawful motivation, the unlawful motives of the administrators will be attributed to the District under the principles of agency. Antelope Valley Community College District (1979) PERB Decision No. 97.

⁹In seeking to demonstrate animus against the union, the Association relies on evidence about purported unilateral changes and other events which marked negotiations between the parties during the 1984-85 school year. The District argues that these events are not relevant because they comprised unfair practice charge LA-CE 2058 which the Association withdrew with prejudice on March 20, 1985. See Nevada City Unified School District (1981) PERB Decision No. 185. I find it unnecessary to rely on the evidence pertaining to events covered by case LA-CE-2058. There is sufficient evidence of motivation involving the events in question that it is not necessary to consider the possible relevance of matters so far removed.

REMEDY

The Association seeks reinstatement of Ms. Stephens-Weaver effective with the first day of the 1985-86 school year, together with back pay for lost wages. The Association also asks for a cease and desist order and a requirement that the District post a notice of its willingness to cooperate.

The PERB in subsection 3541.5 (c) is given:

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

The ordinary remedy in cases involving discrimination because of protected conduct is restoration of the lost benefits or wages plus interest at the rate of 10 percent and reinstatement. San Joaquin Delta Community College District, supra. PERB Decision No. 261.

In this case, the District argues, reinstatement is not appropriate because it would have the effect of granting tenure to Ms. Stephens-Weaver. Because she had completed two years of probation, Ms. Stephens-Weaver ordinarily would have become a tenured teacher at the start of the 1985-86 school year. The District argues that the proper remedy would be to order the governing board to reconsider its decision not to reelect her in light of any discriminatory motivation which might be found against Mr. Yeghoian. Such a remedy, the District argues.

would have the effect of eliminating any discriminatory motivations from the recommendation upon which the governing board acted.

In making this argument the District relies upon San Diego Community College District (1983) PERB Decision No. 368. Its reliance is misplaced. In San Diego, the PERB concluded that because of the time which elapsed between the misconduct and the PERB's decision, a retroactive order would have the effect of granting tenure to two employees who had not yet served their probationary period. The entire two years of probation would have been subsumed in the retroactive order. Here, however, Ms. Stephens-Weaver has served a two-year probationary period during which she was found to be a highly competent English teacher. Thus, the harm the PERB sought to avoid by making its order prospective in San Diego does not exist. Accordingly, there is no justification for denying Ms. Stephens-Weaver the ordinary remedy of reinstatement retroactive to the commencement of the 1985-86 school year together with compensation for lost wages and benefits plus interest.

In addition, the District must remove from Ms. Stephens-Weaver's personnel file and destroy the reprimand of November 30, 1984, and discriminatory evaluation of February 4, 1985. Because these documents are the product of the District's unlawful motivations, it is necessary that they be removed from the possibility of future use.

It is further appropriate that the District be directed to cease and desist from its unfair practices and to post a notice incorporating the terms of the order. Posting of such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of the EERA that employees be informed of the resolution of the controversy and the District's readiness to comply with the ordered remedy. Davis Unified School District et al. (1980) PERB Decision No. 116; see also Placerville Union School District (1978) PERB Decision No. 69.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the McFarland Unified School District violated subsections 3543.5 (a) and (b) of the Educational Employment Relations Act. Pursuant to subsection 3541.5 (c) of the Government Code, it is hereby ORDERED that the District, its governing board and its representatives shall:

1. CEASE AND DESIST FROM:

A. Retaliating against Vicki Stephens-Weaver because of her exercise of the protected right to file grievances and challenge potential contract violations by issuing to her a letter of reprimand and a negative performance evaluation and by terminating her employment with the District.

B. Interfering with the right of the McFarland Teachers Association. CTA/NEA, to represent its members by discriminating against an employee who filed grievances under a negotiated contract.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

A. Within ten (10) workdays of service of a final decision in this matter, reinstate Vicki Stephens-Weaver as a teacher at McFarland High School.

B. Within thirty (30) workdays of the reinstatement of Ms. Stephens-Weaver as a teacher in the District, reimburse her for lost wages and benefits retroactive to the first day of service for teachers during the 1985-86 school year. The amount of compensation shall be reduced by any unemployment compensation or wages which Ms. Stephens-Weaver may have earned during the period since the commencement of the 1985-86 school year. The amount due her shall be augmented by interest at the rate of 10 percent.

C. Within ten (10) workdays of service of a final decision in this matter, remove from the personnel file of Vicki Stephens-Weaver and destroy all copies of the November 30, 1984, memorandum to her from Mr. Yeghoian and the February 4, 1985, evaluation of her prepared by Mr. Yeghoian.

D. Within ten (10) workdays of service of a final decision in this matter, post at all school sites and all other

work locations where notices to employees are customarily placed, copies of the notice attached hereto as an appendix. The notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

E. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with the director's instructions.

IT IS FURTHER ORDERED that those portions of the complaint and charge which allege that the District committed an unfair practice by issuing to Ms. Stephens-Weaver the December 5, 1984. memorandum regarding a student-written editorial and by removing her on December 10. 1984. from duties as a journalism teacher, are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305. this Proposed Decision and Order shall become final on January 21. 1986. 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 January 21, 1986. 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: December 31, 1985

Ronald E. Blubaugh
Administrative Law Judge