

## 14 PERC ¶ 21079

### COMPTON COMMUNITY COLLEGE DISTRICT

California Public Employment Relations Board

#### **Compton Community College Federation of Employees, AFL-CIO, Charging Party, v. Compton Community College District, Respondent.**

Docket Nos. LA-CE-2272, LA-CE-2273

Order No. 798

March 22, 1990

Before Shank, Camilli and Cunningham, Members

**Unilateral Change -- Student-Grievance Procedure -- Teachers' Evaluation Procedures -- 43.36, 43.46, 43.99, 43.451, 43.6242**ALJ properly concluded that community college district violated its bargaining obligation by unilaterally implementing student-grievance policy and procedure that provided for evaluation of teachers based on students' complaints regarding teachers' grading or misconduct during class [see 11 PERC 18064 (1987)]. Student-grievance policy fell within scope of representation because it provided that complaints or resulting administrative determinations be placed in teachers' personnel files.

**Unilateral Change -- Intersession School Calendars -- 43.622, 72.612**College district's failure to bargain with faculty union concerning starting and ending dates of short-term, intersession calendars, was unlawful.

#### APPEARANCES:

Lawrence Rosenzweig, Attorney, for Compton Community College Federation of Employees, AFL-CIO; Jones & Matson by Stephen K. Matson, Attorney, for Compton Community College District.

### Decision

CUNNINGHAM, Member:

This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Compton Community College District (District) to the attached proposed decision of a PERB administrative law judge (ALJ). The ALJ held that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)<sup>1</sup> when it unilaterally adopted a student grievance policy and calendars for short-term and/or Saturday classes for the fall and spring of the 1985-86 school year. The District's exceptions pertain only to Case No. LA-CE-2272 in which the ALJ found that the District's adoption and implementation of the student grievance policy constituted an unlawful unilateral change.

We have reviewed the record in this case in its entirety, including the proposed decision, the District's exceptions, and the response by the Compton Community College Federation of Employees, AFL-CIO (Federation). We find the ALJ's findings of fact to be free of prejudicial error and adopt them as our own. Likewise, with one exception and one clarification as noted below, we adopt the ALJ's conclusions of law and we affirm her proposed finding that the District made unlawful unilateral changes as charged by the Federation.

### Discussion

The District has raised several exceptions to the proposed decision. In large part, the arguments

raised by the District on appeal are the same ones which were made below, and are fully addressed in the ALJ's proposed decision. We find these arguments to be without merit for the reasons contained in the proposed decision, and, thus, find it unnecessary to comment further on these items. We do, however, find it necessary to briefly clarify a portion of the ALJ's analysis, and we also disagree with a legal conclusion drawn by the ALJ, as discussed below.

As pointed out in the proposed decision, the Federation contends in this case that the student grievance policy is negotiable under any one of three theories. One of these theories is that the policy is a procedure for the evaluation of certificated employees and, therefore, an enumerated subject of bargaining pursuant to section 3543.2(a)2 of EERA. The ALJ concluded that the student grievance policy, while not a conventional evaluation procedure, does indeed satisfy that purpose in that it sets up a procedure whereby an employee's performance in a particular situation is evaluated. We agree with this conclusion, although it should be noted that we base this finding on the policy's requirement that student complaints and/or administrative determinations resulting from student complaints are placed in the personnel file of the employee charged. Since it may be safely assumed that teacher evaluation procedures include a review of those complaints, along with other material in the file pertinent to performance, we hold that the particular student grievance policy at issue is a subject that falls within the scope of representation. (*Jefferson School District* (1980) PERB Decision No. 133.) Moreover, we do not adopt the ALJ's statement that this is a "secondary" evaluation procedure. Section 3543.2(a) only provides that procedures for evaluation are negotiable and makes no mention of a lesser category of evaluations. On the record before us, this policy appears to be an evaluation procedure within the meaning of section 3543.2(a), because it requires placement of various materials into District personnel records. The record does not provide sufficient information to allow us to speculate as to the importance that will ultimately be accorded to this material in the overall District evaluation scheme. Therefore, we do not find the ALJ's categorization to be warranted in this instance.

Another of the Federation's theories for the negotiability of the student grievance policy is that said policy encompasses discipline and is, therefore, subject to bargaining. The ALJ finds that the student grievance policy does encompass discipline, but only informal discipline or adverse personnel actions as opposed to formal discipline. The District takes exception to this portion of the proposed decision on the ground that the language of the student grievance policy, on its face, clearly states that the policy is not a disciplinary procedure and, additionally, there is no basis for the ALJ's conclusion that the policy allows for "informal" discipline. We find that the District's exception regarding the disciplinary issue is meritorious in that it is unclear from the evidence submitted by the parties that the policy would result in any form of disciplinary action being taken against an employee. On its face, the policy does not appear to authorize any remedies which we would find disciplinary in nature. Accordingly, we do not adopt this portion of the ALJ's analysis. Our disagreement with the ALJ on this issue, however, does not affect the result reached in this case, since this was only one of three theories offered in support of the negotiability of the student grievance policy.

In summary, we affirm the ALJ's proposed decision finding that the District violated EERA section 3543.5(c) and (b) in Case Nos. LA-CE-2272 and LA-CE-2273. We do not find that independent violations of section 3543.5(a) have been established in either case; thus, we reverse the proposed decision with respect to this matter, and we find it appropriate to dismiss the portions of the complaints alleging (a) violations consistent with the Board's decision in *Tahoe-Truckee Unified School District* (1988) PERB Decision No. 668.

### **Order**

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to the Educational Employment Relations Act (Act) section 3541.5(c), it is hereby ORDERED that the Compton Community College District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and negotiate in good faith with the Compton Community College Federation of Employees, AFL-CIO (Federation) on a student grievance policy, a matter within the scope of representation, by unilaterally adopting such a policy;
2. Refusing to meet and negotiate in good faith with the Federation on the calendar for intersession and Saturday classes, a matter within the scope of representation, by unilaterally adopting calendars for short-term and Saturday classes for the fall and spring of the 1985-86 school year; and
3. Denying the Federation its right to represent unit members in negotiations conducted in good faith.

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

1. Immediately upon service of a final decision in this matter, rescind the student grievance policy unilaterally adopted by the District on October 22, 1985.
2. Within thirty-five (35) days following the date the 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.
3. 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.

Members Shank and Camilli joined in this Decision.

**1** EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Government Code section 3543.5 pertains to unfair practice charges against an employer and provides, in relevant part:

It shall be unlawful for a public school employer to:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
- (b) Deny to employee organizations rights guaranteed to them by this chapter.
- (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

**2** EERA section 3543.2 provides, in pertinent part:

- (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean . . . transfer and reassignment policies, . . . procedures to be used for the evaluation of employees. . . . All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating. . . .
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