

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION AND ITS YOLO COUNTY)
CHAPTER 639,)
)
Charging Party,) Case No. S-CE-1207
)
v.) PERB Decision No. 838
)
YOLO COUNTY SUPERINTENDENT OF)
SCHOOLS,)
)
Respondent.)
_____)

Appearances: Robert J. Radman, Field Representative, for California School Employees Association and its Yolo County Chapter 639; Parham & Associates, Inc. by Jackson E. Parham, Attorney, for Yolo County Superintendent of Schools.

Before Craib, Camilli and Cunningham, Members.

DECISION

CAMILLI, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a motion by the Yolo County Superintendent of Schools (Yolo County or County) requesting that the record be reopened in this case, and upon exceptions taken by Yolo County to the administrative law judge's (ALJ) proposed decision (attached hereto), which finds that Yolo County violated subdivisions (a) and (c), and derivatively, subdivision (b), of section 3543.5 of the Educational Employment Relations Act (EERA or Act)¹ by engaging in the following

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 states in pertinent part:

It shall be unlawful for a public school employer to do any of the following:

conduct: (1) On November 3, 1987, demanding the removal of California School Employees Association (CSEA) negotiating team member Eva Prior (Prior) from a negotiating session; (2) on February 23, 1988, suspending Prior for one day with pay; (3) on August 10, 1988, issuing a letter of reprimand to Prior; (4) on March 16, 1989, transferring duties of bargaining unit member Prior to a position outside of the unit without giving notice to the Association nor affording it an opportunity to negotiate the decision to implement the change or the effects thereof; and (5) on May 3, 1989, issuing a below-standard evaluation to Prior.

After reviewing the entire record in this case, including Yolo County's exceptions to the proposed decision and motion requesting the record be reopened, and CSEA's brief in response thereto, the Board denies the motion requesting the record be reopened, and adopts the proposed decision as the decision of the Board itself in accordance with the discussion that follows.

(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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(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.

DISCUSSION

I. MOTION TO REOPEN THE RECORD

Yolo County requests that the record be reopened to introduce into evidence an expert opinion that the signature and substance of a handwritten statement, purportedly written and signed by Savina Murrieta-Guardado (Guardado), which was entered into evidence, is authentic. In addition, the County wishes to enter into evidence testimony regarding certain admissions made by Guardado which tend to indicate that she was disgruntled because of perceived unfair treatment by Yolo County. The motion is based upon the County's claim that this evidence constitutes newly-discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence. (San Mateo Community College District (1985) PERB Decision No. 543.) The declaration filed in support of this motion states, in pertinent part:

Because I had no idea that Ms. Murrieta-Guardado was going to either be available to testify or that she would disavow the authenticity of Respondent's Exhibit A, I could not have prepared to impeach her in advance with a handwriting expert or witnesses to testify with respect to her truthfulness.

In California State University (CFA) (1990) PERB Decision Nos. 799-H and 799a-H, the Board explained that PERB Regulation 32320, subdivision (a)(2) provides that the Board may reopen the record for the taking of further evidence, but does not provide the standard for the determination as to when such action is

appropriate. The Board cited San Mateo Community College District; supra. PERB Decision No. 543, where it adopted the standard set out in Regulation 32410, which governs requests for reconsideration. (In accord, Regents of the University of California (Yeary) (1987) PERB Decision No. 615-H.) Subdivision (a) of that regulation provides that reconsideration may be granted on the basis of:

[n]ewly discovered evidence . . . which was not previously available and could not have been discovered with the exercise of reasonable diligence.

The evidence sought to be proffered herein does not fit the standard enunciated by the Board in the above cases; it is not new evidence which could not have been discovered with the exercise of reasonable diligence. The representative for the County at the hearing simply did not learn of the substance of the witness' testimony before he questioned her at the hearing. It was Respondent's representative who saw Guardado one day at lunch during the hearing and asked her to come to the hearing to testify; she was his witness. At the hearing, both parties had

²PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq. Regulation 32320, subdivision (a)(2) reads as follows:

- (a) The Board itself may:
 -
 - (2) Affirm, modify or reverse the proposed decision, order the record reopened for the taking of further evidence, or take such other action as it considers proper.

the opportunity to question Guardado and, following her testimony, respondent entered into evidence several documents from Guardado's personnel file to show that the signature was identical to that on the statement in question. The ALJ determined that he would admit the documents into evidence as somewhat probative, but stated that he had been involved in hearings where a handwriting expert had testified and that he understood how technical and involved the issue was. He announced he would not attempt to make a conclusion as to whether the signature was, in fact, authentic.

As stated above, the issue of the use of a handwriting expert to authenticate a document was raised at the hearing by the ALJ on October 13, 1989. The last day of hearing occurred on October 26, 1989 and, therefore, the respondent had the opportunity to call an expert witness or to request a continuance to do so. After the witness testified on the last day of hearing, the ALJ stated on the record that the witness appeared to have presence of mind, to be clear and communicative, and not to be overmedicated nor disoriented in any way. When he asked for any argument regarding her apparent credibility, neither party made any argument. At that time, or at any time prior to the close of the hearing or the submission of post-hearing briefs, representative for respondent could have requested a continuance, but did not do so.

Based upon the above, the proffered evidence is not of the nature which constitutes newly-discovered evidence previously

unavailable and undiscoverable with the exercise of reasonable diligence.

II. CREDIBILITY DETERMINATION

The ALJ made a credibility determination concerning Elizabeth Zemmels (Zemmels), based upon testimony given with regard to the authenticity of the document purportedly written by Guardado. Many of the determinations in this case are based, at least in part, upon this credibility determination. With regard to cases of this nature, the Board has stated:

[W]e must emphasize that credibility determinations play a vital role in the consideration of this allegation. While we are free to consider the entire record and draw our own conclusions from the evidence presented, we will afford deference to an ALJ's findings of fact which incorporate credibility determinations. (Santa Clara Unified School District (1979) PERB Decision No. 104.) This appears to us to be a classic instance where deference is appropriate. (Los Angeles Unified School District (1988) PERB Decision No. 659, p. 8.)

The Board, in Los Angeles Unified School District, goes on to point out that the testimony in that case presented two dramatically different versions of an incident. Because the ALJ credited one version, and there was no basis in the transcript for overturning that determination, the ALJ's credibility determination, based in large part upon witness observation, was adopted by the Board.

In the case before us, there is no basis in the record for overturning the ALJ's credibility determination. We therefore defer to the ALJ's findings which incorporate such determination.

III. FEBRUARY 23, 1988, ONE-DAY SUSPENSION WITH PAY

We affirm the ALJ's finding of discrimination based upon this conduct, in accordance with the discussion below.³

The proposed decision found that it was unnecessary to rely upon circumstantial evidence to find anti-union animus on the part of Yolo County as there was direct evidence of anti-union animus in this case. The ALJ further found evidence of disparate treatment of Prior under Novato Unified School District (1982) PERB Decision No. 210 (Novato).

The management personnel who requested the suspension of Prior were Joan Kingery (Kingery) (her immediate supervisor) and Zemmels (supervisor to Kingery). It is clear from the record that the superintendent, who actually imposed the suspension, merely accepted the recommendation of Zemmels without performing an independent examination. Zemmels' recommendation, and the County's justification for the suspension, were based upon the statement alleged to have been written and signed by Guardado.⁴ The ALJ discredits the testimony of Zemmels and, specifically, her testimony regarding the statement in question. As there is no basis in the record for overturning the ALJ's credibility

³We note that the proposed decision incorrectly states this conduct occurred on February 23, 1989; it occurred on that date in 1988.

⁴A written statement bearing employee Dick Slaugh's name was also received by Zemmels. Slaugh was not called as a witness to substantiate his statement and, accordingly, the ALJ gave it very little weight.

determination, we defer to that determination, and the finding of discrimination based thereon. (See discussion, supra, at pp. 6-7.)

The Board does not adopt that portion of the proposed decision which finds that the one-day suspension of Prior constituted disparate treatment under Novato. The Board finds that there is insufficient evidence on the record as to the treatment of other employees to substantiate such a finding.

IV. MAY 3, 1989, EVALUATION.

The proposed decision holds that an analysis of the specific factors enumerated in Novato does not support a finding of unlawful motive. However, an inference of unlawful motive may be shown by circumstantial evidence involving factors other than those specifically enumerated in Novato. In addition, motive can be shown by direct evidence. In this case, there is both circumstantial and direct evidence of Kingery's anti-union animus by virtue of her comments to Brenda Hiatt, and superior evaluations given to Prior by a former supervisor.

In the proposed decision it is stated:

[a]n employee evaluation is, by its very nature, so subjective it does not lend itself to an objective inquiry into the true motivation behind each ranking and narrative, (p. 42.)

As the Board finds that an employee evaluation, as a whole, can be analyzed objectively, the Board does not adopt this statement. However, this statement is nonprejudicial to Yolo County.

V. ALLEGED VIOLATION OF EERA SECTION 3543.5, SUBDIVISION
(a) BY UNILATERAL TRANSFER OF DUTIES

The ALJ found that the County unilaterally transferred duties out of the unit in violation of section 3543.5(c), and that the County discriminated against Prior in violation of section 3543.5, subdivision (a) by this action. However, the first amended complaint, in paragraph 18, alleges:

[t]his conduct [the unilateral transfer of duties] also interfered with the rights of bargaining unit employees to be represented by Charging Party in violation of Government code section 3543.5(a).

Thus, the complaint does not allege that the transfer of duties constituted discrimination.

The Board, adopting standards used by the National Labor Relations Board, has held that where an unalleged violation is intimately related to the subject matter of the complaint, the conduct in question is part of the same course of conduct, the unalleged violation has been fully litigated, and the parties have had an opportunity to examine and be cross-examined, the Board will entertain the violation. (Los Angeles Community College District (1989) PERB Decision No. 748, p. 18; Santa Clara Unified School District, supra. PERB Decision No. 104.) In addition, the Respondent must be provided adequate notice and opportunity to defend the unalleged violation. (Tahoe-Truckee Unified School District (1988) PERB Decision No. 668, pp. 6-10.)

In this case, the parties were on notice, by virtue of the complaint, to be prepared to litigate and argue the issue of whether the unilateral transfer of work violated the County's

duty to bargain and also constituted interference with the rights of unit employees. But, they were not on notice to be prepared to argue or defend an allegation that such conduct discriminated against Prior. Because, in this case, Yolo County was not put on notice that it should defend the unalleged violation, the Board finds the allegation was improperly considered in the proposed decision, and constitutes a denial of due process. The Board, therefore, does not adopt that portion of the proposed decision, and further declines to address the unalleged violation.

The subdivision (a) allegation appearing in the complaint states that the unilateral transfer of work interfered with the rights of unit members. Because the Board finds there is insufficient evidence to support an interference violation, this claim is dismissed. (Tahoe-Truckee Unified School District, supra, PERB Decision No. 668, p. 13.)

VI. TIMING OF PROTECTED ACTIVITY

In its exceptions, the County repeatedly asserts that the evidence fails to establish a link (nexus) between the adverse actions taken against Prior and her protected activity. We do not agree. In addition to the direct and circumstantial evidence of anti-union animus discussed above or in the proposed decision, the timing of the adverse actions is further evidence supporting a finding of nexus. Of the factors enunciated in Novato, timing is a crucial element to a determination of nexus between protected activity and adverse action, although timing alone is

insufficient. (Charter Oak Unified School District (1984) PERB Decision No. 404.)

In this case, there are three allegations of subdivision (a) violations which are properly addressed (the exception concerns the transfer of duties, as discussed above). The dates of these three adverse actions are: February 23, 1988, August 10, 1988, and May 3, 1989.

The negotiation session which occurred on November 3, 1987, wherein Yolo County objected to Prior's participation on behalf of CSEA, is protected activity, of which Yolo County was clearly aware. The February 1988 conduct occurred three and one-half months after the November 3, 1987, meeting. Kingery testified she was aware that Prior was on the CSEA negotiating team and involved in negotiations in the summer of 1988. On August 10, 1988, Prior was issued a letter of reprimand by Kingery. The negotiations concerning job classifications and job descriptions, in which Prior was involved, were completed in early 1989, and the agreement was ratified in February of 1989. On March 16, 1989, Yolo County transferred the duties which were in Prior's job description to Jon Dimiter, a management employee. On May 3, 1989, four months after negotiations were completed, Prior was issued a below standard evaluation.

It is clear from the chronology outlined above that the three adverse acts alleged to be discriminatory each followed within four months of protected activity engaged in by Prior, of

which Yolo County was aware. In sum, as the protected activity continued, so did the adverse consequences.

ORDER

Respondent Yolo County Superintendent of Schools' motion to reopen the record is DENIED.

Based upon the foregoing findings of facts, conclusions of law and the entire record in this case, it is found that the Yolo County Superintendent of Schools violated subdivisions (a) and (c), and derivatively, subdivision (b), of section 3543.5 of the Educational Employment Relations Act (Act). Pursuant to Government Code section 3541.5, subdivision (c), it is hereby ORDERED that the Yolo County Superintendent of Schools, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Imposing or threatening to impose reprisals, discriminating or threatening to discriminate against, or otherwise restraining or coercing employees because of their exercise of rights guaranteed by the Act.

2. Demanding or insisting that Eva Prior be removed from the negotiating team of the California School Employees Association and its Yolo County Chapter 639.

3. Failing and refusing to meet and negotiate in good faith with California School Employees Association and its Yolo County Chapter 639 by unilaterally transferring work out of the unit.

4. Denying to the California School Employees Association and its Yolo County Chapter 639, rights guaranteed to it by the Educational Employment Relations Act.

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

1. Rescind the one-day suspension with pay dated February 23, 1989, and if it has been served, make Eva Prior whole for any losses she may have incurred as a result. Such rescission shall include the removal and destruction of all copies of such letter from all of Yolo County's files, including but not limited to Ms. Prior's personnel file(s).

2. Rescind the letter of reprimand dated August 10, 1988. Such rescission shall include the removal and destruction of all copies of such letter from all of Yolo County's files, including but not limited to Ms. Prior's personnel file(s).

3. Rescind the evaluation dated May 3, 1989. Such rescission shall include the removal and destruction of all copies of such evaluation from all of Yolo County's files, including but not limited to Ms. Prior's personnel file(s).

4. Assign forthwith to the bargaining unit the full range of duties set forth in the job description for Business Services Technicians III-B.

5. 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 are customarily 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, altered, defaced or covered by any other material.

6. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions.

It is further ORDERED that all other aspects of the Charge and Complaint are hereby DISMISSED.

Members Craib and Cunningham 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. S-CE-1207, California School Employees Association and its Yolo County Chapter 639 v. Yolo County Superintendent of Schools, in which all parties had the right to participate, it has been found that the Yolo County Superintendent of Schools (Yolo County) violated the Educational Employment Relations Act (Act), Government Code section 3543.5, subdivisions (a) and (c), and derivatively, subdivision (b).

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

A. CEASE AND DESIST FROM:

1. Imposing or threatening to impose reprisals, discriminating or threatening to discriminate against, or otherwise restraining or coercing employees because of their exercise of rights guaranteed by the Act.

2. Demanding or insisting that Eva Prior be removed from the negotiating team of the California School Employees Association and its Yolo County Chapter 639.

3. Failing and refusing to meet and negotiate in good faith with California School Employees Association and its Yolo County Chapter 639 by unilaterally transferring work out of the unit.

4. Denying to the California School Employees Association and its Yolo County Chapter 639, rights guaranteed to it by the Educational Employment Relations Act.

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

1. Rescind the one-day suspension with pay dated February 23, 1989, and if it has been served, make Eva Prior whole for any losses she may have incurred as a result. Such rescission shall include the removal and destruction of all copies of such letter from all of Yolo County's files, including but not limited to Ms. Prior's personnel file(s).

2. Rescind the letter of reprimand dated August 10, 1988. Such rescission shall include the removal and destruction

of all copies of such letter from all of Yolo County's files, including but not limited to Ms. Prior's personnel file(s).

3. Rescind the evaluation dated May 3, 1989. Such rescission shall include the removal and destruction of all copies of such evaluation from all of Yolo County's files, including but not limited to Ms. Prior's personnel file(s).

4. Assign forthwith to the bargaining unit the full range of duties set forth in the job description for Business Services Technicians III-B.

Dated: _____ YOLO COUNTY SUPERINTENDENT
OF SCHOOLS

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



CALIFORNIA SCHOOL EMPLOYEES)
ASSOCIATION and its YOLO COUNTY)
CHAPTER 639,)
)
Charging Party,) Unfair Practice
) Case No. S-CE-1207
v.)
)
YOLO COUNTY SUPERINTENDENT OF)
SCHOOLS,) PROPOSED DECISION
) (4/23/90)
)
Respondent.)
_____)

Appearances: California School Employees Association and its Yolo County Chapter 639 by Robert J. Radman, Field Representative; Parham & Associates, Inc. by James C. Whitlock, Consultant, for the Yolo County Superintendent of Schools.

Before Allen R. Link, Administrative Law Judge.

PROCEDURAL HISTORY

On March 8, 1988, the California School Employees Association and its Yolo County Chapter 639 (Charging Party, CSEA or Association) filed an unfair practice charge with the Public Employment Relations Board (PERB) against the Yolo County Superintendent of Schools, also known as the Yolo County Office of Education, (Superintendent, YCOE or Respondent) alleging violations of subdivisions (a), (b), (c) and (d) of section 3543.5 of the Educational Employment Relations Act (EERA or Act).¹

¹ The EERA is codified at Government Code section 3540 et seq. All section references, unless otherwise noted, are to the Government Code. Subdivisions (a), (b), (c) and (d) of Section 3543.5 state:

This proposed decision has been appealed to the Board itself and may not be cited as precedent unless the decision and its rationale have been adopted by the Board.

On May 27, 1988, the CSEA filed a First Amended Charge. On August 23, 1988, it filed a Second Amended Charge. On March 21, 1989, a Notice of Partial Withdrawal was issued by PERB's General Counsel. On that same date the General Counsel also issued a Complaint alleging violations of subdivisions (a), (b) and (c) of section 3543.5. On April 3, 1989, the Respondent filed its Answer to the Complaint.

On May 5, 1989, an informal conference was held to explore voluntary settlement possibilities. No settlement was reached. On May 17, 1989, the Charging Party filed a Third Amended Charge and on September 13, 1989, a First Amended Complaint was issued. On September 18, 1989, the Respondent filed its Answer to that amended Complaint.

3543.5. UNLAWFUL PRACTICES: EMPLOYER

It shall be unlawful for a public school employer to:

- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
- (b) Deny to employee organizations rights guaranteed to them by this chapter.
- (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.
- (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

The formal hearing was held on September 20, 21, October 13 and 26, 1989. The parties briefed their respective positions. The case was submitted for decision on January 26, 1990.

INTRODUCTION

Charging Party alleges that Respondent demanded the removal of CSEA team member Eva Prior from a negotiating session on November 3, 1987. It is also charged that Prior received a one-day suspension with pay (February 23, 1988) and a letter of reprimand (August 10, 1988) because of her protected activities. In addition, the Respondent was alleged to have issued a below standard evaluation on May 3, 1989, to Prior because of her protected activities. Lastly, the Charging Party insists that the Respondent unilaterally transferred a portion of Prior's duties to a position outside of the bargaining unit, thereby discriminating against Prior and improperly depriving the unit of some of its duties.

The Respondent admits its representative was upset with Prior's actions and attendance at the subject negotiating session but asserts that the incident had no impact on future negotiations. Respondent states that all of its other actions were based on Prior's conduct and job performance and are the result of appropriate investigation and documentation. It denies any of its actions violated section 3543.5.

JURISDICTION

The parties stipulated, and it is therefore found, that the Charging Party is an employee organization and an exclusive

representative and the Respondent is a public school employer within the meaning of section 3540.1.

FINDINGS OF FACT

1. Eva Prior - Background

Eva Prior has a position in the classification of a Business Services Technician III-B for the YCOE. She has worked there since 1984. Prior to that time she was employed by the Winters School District as an assistant bookkeeper for six months. Her supervisor at Winters recommended her to the YCOE's Business Office. While working at the YCOE, she completed an eighteen-month college course in general accounting on August 15, 1986. As a part of her duties, she balances the cash flow accounts of the various school districts in the county. She has been, for at least the past two years, an alternate member of CSEA's negotiating team. She attends all negotiating sessions that concern the Business Office employees. In January 1988, she became the vice-president of the local CSEA chapter.

As vice-president she was only involved in grievances whenever it was necessary to act as the president's substitute. However, she did represent a bus aide in July of 1988.

2. Negotiating Session Confrontation

On November 3, 1987, Respondent's Personnel Director and negotiator, Gerald Burns, objected to Prior's participation in a negotiating session. He interrupted Prior's presentation, pounded on the table and pointed at Nadine Krug, CSEA's chapter president, telling her that she had to immediately go outside to

talk to him. Once they were outside, he demanded that Prior be removed from CSEA's team. He said that her participation was self-serving and that it was making resolution of the issues more difficult. His shouted demands could be clearly heard inside the negotiation room by the remaining members of CSEA's team.

The issue under discussion that day concerned a reclassification of the YCOE's business service technician classifications. Much of the controversy between the parties concerned the reclassification of Prior's personal position. Shortly before Burns started shouting, Prior was asking him what criteria he was using to justify his reclassification argument. Her manner was neither loud nor argumentative.

After a short caucus, the CSEA negotiating team returned and rejected Burns' demand that Prior be removed from the table. That day's session resumed but only for a brief time. However, when future sessions on this subject were held, Prior continued to serve on the CSEA team. Burns did not repeat his protests. Resolution of the reclassification issue was achieved in February of 1989.

3. Assistant Superintendent Elizabeth Zemmels' Background

Elizabeth C. Zemmels, was appointed YCOE's Assistant Superintendent of Business and Instructional Services in July 1988. She had been the Director of Curriculum and Instruction starting in August of 1984. On October 22, 1987, she assumed the additional duties of Interim Director of Business Services. Once she assumed both duties on a permanent basis, the combined

position was upgraded to that of an Assistant Superintendent. Her background in accounting and business, until she was placed in charge of the business department, was very limited, although she has been working on her doctorate in management. In her new position she had the assistance of Carlene Naylor, who was retained as a consultant in the Spring of 1988. Naylor has a Masters degree in Business Administration, is a Certified Public Accountant (CPA) and has spent thirteen years total as either a school district business manager or a director of business for a county office of education. She is presently a principal in a CPA firm. Naylor was available both by phone and in person to help with various aspects of the new position. She personally came to the office four times a month until approximately December 1988. Since that time she has only visited the business office twice.

4. Director of Business Services Joan Kingery's Background

Joan E. Kingery, recently promoted to the position of Director of Business Services, was for the two previous years, the Supervisor of Business Services for the YCOE. Her professional background consists of 12 years of governmental accounting experience with the counties of Yolo and Marin. While employed by Yolo County, she was the supervisor of four employees for the Food Stamp Issuance program. She left that position in 1975, twelve years before she began her duties with the YCOE Business Office. For the immediate two plus years prior to her business office appointment she was a secretary in the YCOE

personnel department with no accounting responsibilities. While assigned to the business office she enrolled in, and successfully completed, a nine-month, 165 class hours course in school business management through the California State University, Sacramento. Carlene Naylor testified favorably regarding Kingery's general accounting abilities.

Mary Washburn, presently Director of Business Services for the El Dorado County Superintendent of Schools, was previously the Business Services Supervisor for the YCOE. Her title was different but her duties were comparable to the position presently held by Kingery.

When Washburn left, she did not recommend Kingery as her replacement because she did not believe she had an adequate background for the position.

5. YCOE's Business Office Background

There is no doubt that there were serious problems in the business office when Zemmels and Kingery began their supervisory duties. The county's school districts were extremely angry with the quality of services coming from the office. General information was not being provided in a timely manner and the State Department of Education deadlines were not being met.

Once Zemmels and Kingery assumed control of the business office, the situation did not appreciably improve. Despite assistance from several sources, the two women did not have sufficient technical knowledge to provide any appreciable assistance to the business service technicians.

For an extended period of time, Kingery was unable to answer routine questions without checking with either Isabella Lunsford² or Eva Prior, Business Services Technicians III. Kingery and Prior had competed for the position of supervisor of the business office. Zemmels chose Kingery. Kingery believed that Prior resented her authority. Kingery resented Prior's greater knowledge and was very sensitive to Prior's assistance to the other business office employees. When the other employees went directly to Prior for answers, Kingery was incensed. She believed her authority was being undermined. She was also upset with Prior because she would not come to her for aid in her job or with job-related problems. If the two of them had a disagreement, Prior would go to Zemmels or to the Personnel Office in an attempt to get help, rather than discussing the matter with Kingery.

6. Document Discrepancy Incident Involving Dick Slauch

In the morning of January 25, 1988, while performing her routine duties, Prior found a discrepancy in a financial document. When attempting to resolve the discrepancy, she learned that three warrants had been altered by figures having been whited-out and replaced. This was an improper procedure. She went to the employee who had altered the document, Dick Slauch, and discussed the matter with him. She told him this was

² Lunsford has an Associates in Arts degree in accounting from Solano College, has taken the school business manager's course at Sacramento State University, and was the Business Manager for the Winters School District for six years prior to working for the YCOE.

an unacceptable procedure and he admitted his error. The evidence characterizing the confrontational level of this discussion is in conflict and will be examined more fully below.

After lunch, Prior brought the matter up to her supervisor. Kingery told her that Slaugh had already complained about her hollering and screaming at him with regard to the matter. Prior denied hollering or screaming at Slaugh. Prior was told that she was not Slaugh's supervisor and that she was not to engage in this type of behavior again.

Prior was upset about what she felt were lies told by Slaugh about their morning discussion. She went to him that afternoon and this time she did berate him in no uncertain terms. She told him if he ever lied about her again, she would "kick his skinny ass." She had no further contact with him that day.

Two days later, on the 27th of January 1988, Zemmels was investigating the matter and did not want Prior there while she was doing it. She told Prior to go home, with pay, for the day. Prior told her that she could not leave as there was a negotiating session scheduled for that day and she (Prior) was to be on the CSEA team. Zemmels told her that if she did not "go home and go home right now, I will write you up for insubordination. I want you out of here now."³ Zemmels insists she had no prior knowledge that Prior was on CSEA's negotiating

³ In a meeting with Superintendent Graf shortly before the formal hearing in this case began, CSEA representatives told Graf that CSEA would actively campaign against Elizabeth Zemmels if she chose to run for Yolo County Superintendent of Schools.

team. Nor did she know, she insists, that Prior was vice-president of the CSEA chapter. This statement is not credited, as more fully explained below.

Prior, knowing that there was no point in arguing with Zemmels, left the area and went to the board room where the CSEA team was assembling. She stayed in negotiations the rest of the day.

On that same day, January 27, 1988, Zemmels sent identical notes to Joan Kingery, Savina Murrieta, Judy Shockey and Dick Slaugh, all business office employees, asking each of them to "put into writing a description of any unusual incidents, of which you may have firsthand knowledge, taking place during work hours last Monday."

Zemmels received written statements from Kingery and Slaugh.⁴ Shockey told her that she was not present when the subject events occurred. Zemmels testified as follows regarding a handwritten statement she insisted she received from Savina Murrieta:

Q. Elizabeth, can you identify that document?

A. Yes, this is the handwritten statement that was given to me by Savina.

Q. And how did that document come to you?

A. In an envelope. It was just sitting on my desk.

⁴ Slaugh was not called as a witness to substantiate his written statement.

Q. Okay, and did you subsequently talk to Savina about it?

A. The only statement I had was that I went to her and said Savina you didn't sign this, and she said, okay, and she took a pen off her desk and signed it and then I put it in the file.

Savina Murrieta, at the time of the formal hearing in this case, was on medical leave. She lives in Woodland but was not expected to testify due to a very serious illness that, according to Zemmels, her doctors have not been able to diagnose. The Respondent asked that the statement be admitted into evidence.

The document that Zemmels said was given to her and signed in her presence by Savina Murrieta was written in pencil in cursive, and is, in its entirety, as follows:

Monday 1-25-88

About 9 a.m. overheard Joan and Eva discussing an error that had been made in keying in a date. My name was mentioned, so figured that the error that had been made was on my part, but yet nothing was ever mentioned to me. About an hour later I heard Eva telling Joan that Dick had changed a date on a report after I had keyed it into the computer - she was very angry and was calling Dick names. Throughout most of the day she (Eva) remained angry and continued harassing Dick about what he had done (changing a date).

/s/ Savina Mureta

The document was not admitted into evidence at that time pending further verification.

On February 23, 1988, Prior was given a Notice of Disciplinary Action which was based on "offensive and abusive Language against another staff member when you disagreed about an

office procedure." As a result of this Notice, she was to serve a one-day suspension with pay, which was to occur on March 2, 1988. The suspension was put in abeyance pending the outcome of this case.

On the last day of the formal hearing in this case the Charging Party offered the following rebuttal document into evidence:

The letter dated 1/25/88 was not written by me. I had never seen this statement before, it was showed [sic] to me on 10/25/89. The signature is not mine, the [sic] is misspelled.

/s/ Savina Guardado
/s/ Savina Murrieta

Under this statement appeared the following:

I requested this statement from Savina following a telephone conversation on 10/25/89 and a personal follow-up visit to her home that same evening. I did show her what has been marked as exhibit A, and this is the statement that she gave. Savina is ill and on extended leave and unable to appear.

/s/ Eva Prior 10/25/89

The Charging Party asked that this document be admitted into evidence. Before this evidentiary conflict could be resolved, Savina Murrieta Guardado, despite her illness, came to the hearing room and testified. I conducted the questioning and after showing her both documents and telling her to take her time, I asked her which one bore her signature. She said she did not need time. She knew that she had signed the document the previous evening for Eva Prior but she was puzzled about the

other document, the one Zemmels said she saw her sign. The questioning with regard to the Zemmels' offered document continued:

Q. (By the ALJ) Okay. Have you seen that piece of paper before? Is that your signature?

A. Well, that's what's puzzling to me is that I saw this last night, in all honesty it's hard for me to say yes or it's not. It is, but it is and it isn't. But this isn't the letter I produced.

Q. It isn't the letter you produced?

A. Huh-uh. I didn't make this letter.

Q. Okay. Let's divide the question.

A. I was Murrieta then and Murrieta is misspelled.

Q. Okay.

A. Or there's not enough letters.

Q. Okay. And the signature you -- you're not sure but you don't think it is because it doesn't have enough letters?

A. Right.

Q. Does that look like your handwriting?

A. It does.

Q. Okay.

A. But, I mean---

Q. Those--

A. I would have known if I'd signed something like this.

Q. Okay. So it's your testimony, and your, remembering - it's your--you had no recollection of ever signing it?

A. I did not do this letter.

Q. Okay. Do you have any recollection of ever having read that letter or those words, or are those your words? Could you have dictated it to someone?

A. The first time I saw this letter was last night.

The Respondent's representative asked Mrs. Guardado if she remembered Zemmels asking her what had gone on between Prior and Slaugh on the 25th of January. Guardado said that she told Zemmels

. . . that Dick had altered some figures on a document after I had keyed them into the system. And it was brought to his attention by Eva because by that time it hit Eva's desk. She balances cash. And it was brought to his -- attention, so big deal what was done was done.

So then she'd asked me if I put that in writing, everything I heard. And I told her no, I wouldn't. And at the end of that day -- what I don't recall is I don't remember if I set up an appointment with Jack (YCOE Superintendent Jack Graf) or Jack called me or if he was calling everyone by the end of the day.

But anyhow I remember having a meeting with Jack. He called me in and asking me sort of the same thing that Elizabeth had asked me. And I told him that it was kind of blown out of proportion because nothing really happened or went on and I had nothing -- I didn't want to get involved.

(Emphasis added.)

After Mrs. Guardado left the hearing room I made a statement characterizing her demeanor on the stand as being clean, well-groomed, alert, quiet and passive. I stated that she responded well to questions, and did not seem befuddled and appeared to

testify in a credible manner. Both counsel were given an opportunity to disagree with my characterizations. They responded as follows:

RADMAN: I have none.

WHITLOCK: Respondent has none either. She was obviously cogent.

7. Credibility Determination

Elizabeth Zemmels is a well-educated, intelligent, sincere-appearing, seemingly forthright young woman. She has a responsible and respected position in the educational community. If the document in question had appeared mysteriously on her desk with a signature and she had passively relied on it, the impact of Savina Murrieta Guardado's testimony could be mitigated. However, when a direct and total evidentiary conflict is presented in the manner that this one was, there is no alternative but to determine that the evidence supports a conclusion that Ms. Zemmels' testimony is not to be credited. The impact of the admission or rejection of the subject document is not important. Nor is the degree of negativism in the document of primary importance. What is important is the fact that an unauthentic document was used to support the Respondent's position. It is the use of this document to suspend Prior that is most demonstrative of the Respondent's improper motivation.⁵

⁵ Savina Murrieta Guardado's testimony was given on the last day of the formal hearing. Zemmels was reportedly out of the country and did not retake the stand to testify regarding Murrieta's testimony. The Respondent's representative did not request a continuance.

Due to Mrs. Guardado's illness, I very closely observed her demeanor and manifested attitude toward the parties and the issues, I have no doubt about the truthfulness of her statements. Savina Murrieta (Guardado) had only been working for the Respondent for a little over one month at the time of the incident. There was absolutely no evidence that she had any bias, for or against, either side. She had no reason to do anything but tell the truth. She told both Zemmels and Superintendent Graf that there had been no major confrontation. She also determined, after having had only a short employment period in the business office, that she did not want to get involved in the Business Office's attempt to escalate the incident. Therefore, she declined to put her comments in writing. Shortly thereafter, Zemmels had a "signed handwritten" document in her possession.

8. Examples of Union Animus

a. **Dimiter's Comments re: the CSEA.**

At one point, Business Office Secretary Brenda Hiatt observed Budget Manager Jon Dimiter come out of his office and discuss a work-related issue with Savina Murrieta.⁶ Savina mentioned that she had previously discussed the proper procedure with Eva, and Jon responded,

I do not want you to talk to Eva any more about your work. I want you to go to your supervisor and I do not want Eva helping

⁶ Although there was no date given for this incident, Hiatt was only an employee of the YCOE from August of 1988, to June of 1989.

everybody; that is not her responsibility. I want you to just do your own work with your supervisor and don't involve her.

He continued:

I'm, you know, sick of this union business. I'm sick of this problem she is causing. . . .

Joan Kingery came out of her office and interrupted him by saying:

. . . it was a loaded issue, Jon. Just don't say anything more. I will handle what I want Savina to do in regards to Eva. That is the end of it.

b. July 1988 YCOE Business Office Users Meeting.

Carolyn Souza, Accounts Payable Clerk from the Winters School District office, attended a monthly "users" meeting with the managers of the YCOE business office in July 1988. At that meeting, she heard Joan Kingery and Elizabeth Zemmels ask the various county school district personnel to let them know if they were having any problems with Eva Prior. They told the assembled group that Prior was on vacation and that was why some of the things that the districts had expected to be done had not been completed. Souza thought it strange that they would single out one employee in the office in this manner.

c. Zemmels' December 15, 1988, draft memo.

On December 15, 1988, a draft memo was sent by Zemmels to Superintendent Graf that concerned the Business Services Technician III position. It discussed the difficulty the Business Office was having retaining employees and discussed the potential fiscal impact of Eva Prior's workers' compensation

stress claim. The three-page memo concluded with a request that a new permanent staff member be hired regardless of the outcome of Prior's claim. In support of that request, the following sentence appears:

We do not have any control over the outcome of the claims filed by Eva at this point, but we do control what happens in this office and the attitudes of staff towards her.

(Emphasis added.)

As the evidence dictates a conclusion that Zemmels' and Kingery's attitudes were consistently negative towards Prior, it is unlikely that this statement was suggesting they would foster a positive attitude of the staff towards her.

On December 19, 1988, when the final form of the memo was sent, the words "and the attitudes of staff towards her" were deleted.

d. Phone call inquiring re: union business.

On March 9, 1988, at approximately 8:30 a.m., Prior received a business phone call. After completing the call she was jotting down some information about the call when Kingery came to her desk and asked her if she was doing union business. Prior thought this was odd as the rest of the staff was in the other end of the office celebrating a birthday and no one else in the business office was working at the time.

e. Dimiter's comment regarding management rights vis-a-vis the CSEA.

At one point, the Business Office was reassigning responsibilities among the clerical employees. Some of Business Office Secretary Hiatt's responsibilities regarding document

filing were going to be assigned to someone else. She had a conversation with Jon Dimiter in which she told him that she had a job description that contained very specific duties and that those responsibilities were protected by the union. Her recollection of his response was as follows:

He was most vocal and most adamant about the whole business of the union being involved. He was not at all discreet in his comments, at which time he said, for example, Eva is like a dog with a bone with this whole issue that she's working with and I don't understand why we have to have the union. I don't understand why they have any rights here. We are management. It is our right to do what we want to do with these employees. We can do whatever we want to with the workload.

9. Employee Stress Caused by Management/CSEA Confrontation

In July of 1989, the YCOE business office was in difficult straits. It had two employees on extended sick leave, one employee who had recently left and one newly hired untrained employee. It was approaching the end of the fiscal year. The employees needed help. Kingery and Zemmels responded to the situation by obtaining authority to hire an additional employee, but only on a temporary basis.

Nadine Krug, the local CSEA chapter president, was upset over the decision to only seek a temporary position. She felt it was one more stop gap band-aid approach to a major staffing problem. She believed a new permanent employee should be added to the business office staff. She communicated this position to Zemmels.

Each side was trying to convince the business office employees that its approach to obtaining additional help was the correct one. Lunsford, Shockey and Dawn Wunder, all business office technicians of the business office, talked about the matter among themselves. They knew they needed the extra help but did not want to get in the middle of a battle between CSEA and management. They prepared, signed and submitted a memo to Krug, with a copy to Zemmels, which stated, among other things:

1. There is a need in our department for extra help.
2. This is a management decision and we should have no further involvement in this matter.
3. We do not want to be the voice for others who are involved in this matter.

10. Extended Lunch Period Incident

On February 5, 1988, Kingery saw Prior and Shockey in the hallway a few minutes after 1:00 p.m. She asked them if they had taken a late lunch period. The answers were mumbled and non-committal. When Kingery returned to the business office, she overheard Prior talking to Slaugh. Prior insists that she was just warning both Slaugh and another employee, after seeing them return more than ten minutes late from lunch, that they had better watch out because Kingery "was on the warpath" and that she had just made a comment to Prior and Shockey about being two or three minutes late. Both Prior and Shockey, who was present when the statements to Slaugh were made, characterized Prior's statements as being in a joking manner between two co-workers and

not made as if she was trying to assume a supervisory role over him.

Three days later, Kingery gave Prior a memorandum which stated that this event caused her to "formally advise you of unacceptable conduct, on your part, with respect to a co-worker." Kingery accused her of encroaching upon her position as a supervisor and told Prior that she did not "have the authority to enforce office policy or to question office staff with regard to their conduct." She concluded with the statement that "further action on your part with regard to usurpation of supervisory duties will be considered insubordination."

11. Disciplinary Warning Regarding Prior's Failure to Work on Cash Balances on August 10, 1988

In early August 1988, Prior attended the annual CSEA convention in Las Vegas. She requested and obtained the necessary prior approvals. The day before her return on August 10, 1988, Kingery left a note directing Prior to start reconciling cash balances immediately upon starting work the next morning at 7:00 a.m. When Kingery came to work the next morning at 8:00 a.m., she saw Prior was working on something else.

Earlier that morning, sometime before 8:00 a.m., Prior had received a phone call from the Davis Joint Unified School District. It was an inquiry as to whether certain monetary apportionments (income) had been posted. As Prior had been out of the office for a week, she had to research the matter in order to determine what had occurred in her absence. It is commonplace for districts to call with questions that require business office

technicians to drop whatever they are doing and obtain immediate answers. She was doing this when Kingery came in.

Kingery went to Prior and asked why she was not doing what she had been told to do. Prior tried to explain that she had received a call from a school district requesting information but Kingery was not interested. She went to her office to prepare and issue, a few hours later, a "Disciplinary Warning". This warning stated that Prior had serious deficiencies in her performance in that she (1) did not notify anyone that she did not have the June 30, 1988, cash balances prepared and (2) had failed to reconcile taxes received for fiscal 87/88 so that the auditor could finalize his year-end reports. Kingery had originally wanted a higher quantum of discipline for what she perceived as direct and willful insubordination on Prior's part. Zemmels told her a warning would be sufficient.

Prior insisted that as the auditors had been asked by Kingery to hold their books open until July 15 for the business office to process transfers, the general ledgers would not have been available until July 28, the day before Prior left for her seven workday vacation. This would not have given her sufficient time to complete the task referenced in Kingery's "warning." In addition, Prior cites the fact that neither Kingery nor Zemmels asked about the status of the year-end "close out" when her request for time off was approved. Therefore, it could not have been that important to them. She cited these same reasons in a

contemporaneously written rebuttal to the "Disciplinary Warning" letter.

A few minutes after she received the Disciplinary Warning from Kingery, she called her doctor and eventually left that day on a stress-induced leave of absence. She did not return until January 17, 1989.

12. Transferring of Bargaining Unit Work

In early 1989, the parties completed negotiations regarding job descriptions for all of the Business Services Technician classifications. The changes were ratified by the parties and went into effect on February 9, 1989.

Eva Prior's classification job description lists twenty-one separate and distinct responsibilities. In September of 1989 five of these duties were taken away from her and were assigned to Jon Dimiter, the Budget Manager, a non-bargaining unit employee. These duties are:

1. Establishes and maintains accounting records for a variety of programs for the County office and/or school districts.
2. Under direction, prepares required budget estimates for income and expenditures.
3. Adjusts program budget for income and expenditures as necessary.
6. Communicates with program directors regarding changes in budget, problems, etc., as appropriate.
20. Prepares journal entries and budget transfers as necessary.

The person that had the position before Prior had a lengthy service tenure with the YCOE Business office. Prior was in the

process of learning her job. The lack of supervisory personnel hampered this training. The Respondent insisted that her lengthy leave of absence delayed her ability to understand and fulfill all of the duties contractually assigned to her position.

Kingery insists that there is no plan to permanently transfer any of the responsibilities listed on the Business Services Technician III-B job description to anyone out of the bargaining unit. Despite her short tenure in the position, and despite Kingery's assurances, Prior was very interested in the return of the full range of her duties. She brought up the subject up with Zemmels on several occasions.

On one such occasion, Zemmels told her that if she would just "shut your damn mouth and just do what you're told, you might get your job back within a year's time; just shut your damn mouth." Zemmels admits telling Prior that she "was damn tired of talking about this issue" and that "it was a closed topic in the future." She admits being angry and using hand gestures to emphasize the points she was making when she spoke to Prior. She also admits Prior accused her of swearing and pounding on the table. Zemmels insists she apologized for the word "damn." Superintendent Graf spoke to both parties and issued a general exoneration of Zemmels' behavior in the matter.

13. Below Standard Evaluations

In July of 1986, the then-Business Office Supervisor, Mary Washburn, completed Prior's annual evaluation. There were three "exceeds standards" ratings, eleven "meets standards" ratings and

no "below standards" ratings. The narrative portions of the evaluation were consistent with these rankings. The only less than positive statement was: "Eva needs to be more considerate of others in the office, in that she tends to "barge" in, often interrupting others' work, leaving the impression that she considers whatever she's doing as more important."

At about the same time, Washburn, prior to leaving YCOE's employment, wrote a glowing recommendation of Eva Prior. She concluded the letter with the statement "I would not hesitate to recommend Eva for any position in a business office."

There was no evaluation prepared in 1987. In March of 1988, Prior received an annual evaluation from Kingery that included seven "meets standards" rankings, three "below standard" rankings and three on the line between the two standards.⁷

Although the accompanying narratives were not universally negative, they did include the following:

During the past year Eva has resisted taking direction or change in office procedures. It is important that Eva realize that she does not have authority to assign work to her co-workers but must work as a team member.

Eva needs to be more sensitive to the needs of her co-workers, frequently she interrupts the work of others and/or tries to control various situations that crop up in the business office.

⁷ Carlene Naylor testified that she believed that Kingery would have the skills to adequately evaluate an employee in the Business Services Technician III classification.

Prior prepared an itemized rebuttal to the negative comments. It was attached to the evaluation form in her personnel folder.

In May of 1989, Prior received an annual evaluation from Kingery that included eight "meets standards" rankings, two "below standard" rankings and three on the line between the two standards. The accompanying narrative, in its entirety, reads as follows:

During the past 3 weeks there has been a noted attempt from Eva to meet standards in the areas of 8, 11 and 12. If these areas continue to show improvement I will agree to re-evaluate these areas in 6 months.

Eva is improving in terms of accuracy and thoroughness, but is still not as accurate and thorough as the Tech III position requires.

Prior had been on a medical stress leave from August 10, 1988, to January 17, 1989. In order not to create more stress she just accepted the evaluation and neither prepared nor submitted any written rebuttal of this evaluation. She had a pending workers' compensation case for employment-related stress.

14. Business Office Secretary Brenda Hiatt's Relationship with Zemmels and Kingery vis-a-vis the CSEA

Brenda Hiatt was employed by the YCOE Business Office from August 8, 1988, to June 16, 1989, as a secretary. Her first employment interview was with Zemmels, Kingery and Phyllis Bailey from the personnel department. Among other things, they asked her how she felt about being in a job where the union was actively involved.

A second interview was with Kingery alone. At that meeting Kingery told her that she wanted her to clearly understand that she would be walking into an environment that was rather hostile. Kingery told her that there was a fellow employee who had been causing some dissension among the other employees and the office in general. Kingery asked her if she would be loyal to both her and Zemmels and their authority structure under these circumstances. Hiatt agreed. Kingery does not recall making any of these statements.

Once Hiatt started working there, she did encounter a lot of hostility from the rest of the clerical staff. She was very loyal to Kingery and Zemmels. Although she did not generally socialize with the other clerical staff from the Business Office, she would occasionally go on breaks with Isabella Lunsford. When she returned from these breaks, she noticed a distinct negative and critical attitude from Kingery even though she had been told by both Kingery and Zemmels that they encouraged intra-office cooperation and collaboration. Even Lunsford noticed it and suggested that they no longer go on breaks together. Hiatt asked Kingery why she was getting this hostility. Kingery denied that her attitude changed due to the breaks. Hiatt asked her if Lunsford was the person that Kingery had told her was creating dissention. Kingery said, "no", that it was someone who was on leave, her name was Eva Prior. Kingery does not recall making these statements either.

When Prior came back to work in January, it was very obvious to Hiatt that the Business Office technician staff was delighted to see her and that they had a very close relationship with her. Hiatt did notice that Kingery felt threatened by what she (Hiatt) felt were commonplace actions of Prior, such as talking to the other employees about their work and helping them with work-related problems.

In late January, Hiatt began to realize that she was working out of class as she was the sole clerical support for three supervisors/managers - Zemmels, Kingery and Dimiter. She originally was hired as support for Kingery alone. Nadine Krug, the CSEA chapter president, approached her and asked her if she wanted to request a reclassification of her position. Such reclassification would result in a salary increase. She told Krug that if her supervisors, Kingery and Zemmels, believed she deserved a salary increase they would take the initiative and promote her. Krug told her that the reclassification system did not work that way.

Hiatt discussed the matter with Kingery and was told that if she wanted to be considered for a reclassification she would have to submit a request. Hiatt did so. For two weeks Zemmels told Hiatt that she and the Superintendent were trying to decide what to do with her position. Later Zemmels told Hiatt she would make her final decision in conjunction with the submission of the annual budget in June, four or five months later. Even later Zemmels told her that they were thinking about splitting her

position. One position would act as a Secretary I and provide clerical support for Zemmels and the other would act as the secretary for the Business Office. After discussing it with her husband, Hiatt told Kingery that she would prefer the lower-paying position in the Business Office.

When the reclassification process began to be mired down in logistical details, Hiatt met with Kingery and Zemmels and asked if there would be any problem if she asked the CSEA for assistance. Hiatt was very fearful that her position would be used exclusively as clerical support for Zemmels. If that happened she would have to leave as she did not want to work exclusively for Zemmels. She described this meeting as follows:

A. And I said, if I -- if I -- if I took it to the union and we worked this out with the union and you guys as to whatever this position is supposed to be, am I going to be classified as being anti-management? Am I going to fall out of your graces? Am I going to be the enemy? Am I going to be -- are you going to view this as disloyalty to them [sic]?

And Elizabeth (Zemmels) didn't look at me, but she just said you just do whatever you want to do. And I was crying. I was totally confused between --

Q. Did you feel caught in the middle?

A. My whole job was on the line.

About a week later, she submitted a memo to Superintendent Graf explaining that she had no confrontational or hostile intent but that she wanted the CSEA to be involved in her reclassification because she felt the negotiations on the subject had gone past her level of understanding. Another reason she took this

action was that she did not believe Kingery and Zemmels were being honest with her anymore.⁸

Once she turned the matter over to the CSEA, the rest of the clerical staff in the office immediately began to accept her. Conversely, once the other employees began to accept her, Kingery and Zemmels no longer trusted her. Their negative attitudes became even more obvious. She asked Kingery why there was such a change in their attitudes as she had always been, and continued to be, loyal to them. Kingery told her that loyalty was just doing her job and that she had been doing that but trust was a completely different matter and that they (Kingery and Zemmels) could not trust her anymore.

She asked CSEA president Krug to set up a meeting with Superintendent Graf to discuss the negative attitudes she was getting from Zemmels and Kingery. Before that scheduled meeting, however, Hiatt lost her resolve and did not attend. However, Krug did meet with Graf, but the problem was neither solved nor

⁸ Hiatt eventually received her reclassification/salary increase.

alleviated. Hiatt resigned her position effective June 16, 1989. She was under the care of three doctors for stress at the time.⁹

ISSUES

1. Did the Respondent, when it demanded the removal of an individual member of the CSEA's negotiating team, violate subdivision (c) of section 3543.5?

2. Did Eva Prior receive a one-day suspension with pay on February 23, 1989, because of her protected activities and therefore in violation of subdivision (a) of section 3543.5?

3. Did Eva Prior receive a letter of reprimand on August 10, 1988, because of her protected activities and therefore in violation of subdivision (a) of section 3543.5?

4. Did Eva Prior receive a below standard evaluation on May 3, 1989, because of her protected activities and therefore in violation of subdivision (a) of section 3543.5?

5. Did the Respondent unilaterally transfer a portion of the bargaining unit work assigned to Eva Prior to a non-

⁹ Originally Hiatt refused to accept service of the Charging Party's subpoena. Her chiropractor sent the following note to the CSEA representative:

In regard to allowing Mrs. Hiatt to participate in any stressful situation, i.e., testifying or witnessing, it would, in my opinion, create the same circumstance that she is trying to avoid by not working in an environment of stressful demands. It has already been established that this type of exposure for Mrs. Hiatt is considered to be detrimental to her recovery from stress-induced back problems.

bargaining unit employee thereby violating subdivisions (b) or (c) of section 3543.5?

6. Did the Respondent reassign part of Eva Prior's duties to Budget Manager Dimiter due to discriminatory reasons and therefore violate subdivisions (a) or (b)?

CONCLUSIONS OF LAW

ISSUE NO. 1; Did the Respondent, when it demanded the removal of an individual member of the CSEA's negotiating team, violate subdivision (c) of section 3543.5?

A unilateral change in terms and conditions of employment within the scope of employment is a per se refusal to negotiate. NLRB v. Katz (1962) 369 U.S/ 736 [50 LRRM 2177]. PERB has long recognized this principle. Pajaro Valley Unified School District (1978) PERB Decision No. 51; San Mateo County Community College District (1979) PERB Decision No. 94.

Under section 3543.5(c), an employer is obligated to meet and negotiate in good faith with an exclusive representative about matters within the scope of representation. Both parties agree that they were in actual negotiations at the time and that the subject under discussion was within the scope of representation.

Unlike most "failure to negotiate" charges, this case does not concern prospective contractual provisions but rather the negotiations process itself. Personnel Director Burns shouted at CSEA chapter president Krug and demanded that Eva Prior be removed from the CSEA negotiating team as she, according to Burns, was self-serving and making resolution of the matter at

issue more difficult. The collective negotiations process established by the EERA gives the parties the right to appoint their own negotiators and forbids either side from dictating who their opposing representatives may be. San Ramon Valley Unified School District (1982) PERB Decision No. 230; Booth Broadcasting Co. (1976) 223 NLRB 867 [92 LRRM 1335]; Retail Clerks, Local 770 (Fine Foods Co.) (1977) 228 NLRB 1166 [95 LRRM 1062].

Neither the fact that CSEA did not agree to remove Prior from their team nor the fact that subsequent negotiating sessions were held with Prior in attendance and without objection from Burns obviates the existence of an unfair practice charge.

It is determined from all of the above that when Burns demanded the removal of Prior from CSEA's negotiating team that subdivision (c) of section 3543.5 was violated. As this action concurrently denied to the CSEA rights guaranteed to it by the Act, it is also found that the YCOE violated subdivision (b) of section 3543.5.

ISSUE NO. 2: Did Eva Prior receive a one-day suspension with pay on February 23, 1989, because of her protected activities and therefore in violation of subdivision (a) of section 3543.5?

In Novato Unified School District (1982) PERB Decision No. 210, the Board set forth the test for retaliation or discrimination in light of the NLRB decision in Wright Line, Inc. (1980) 251 NLRB 1083 [105 LRRM 1169] enf. in part (1st Cir. 1981) 662 F.2d 899 [108 LRRM 2513], Under Novato, unlawful motivation must be proven in order to find a violation.

In both cases, a nexus or connection must be demonstrated between the employer's conduct and the exercise of a protected right resulting in harm or potential harm to that right.

In order to establish a prima facie case, charging party must first prove that the subject employee engaged in protected activity.¹⁰ Then it must prove that the person(s) who made the decision that resulted in the harm were aware of such activity. Lastly, it must prove that the subject adverse action was taken, in whole or in part, as a result of such protected activity.

Proving the existence of unlawful motivation can be difficult. The PERB acknowledged that when it stated the following in Carlsbad Unified School District (1979) PERB Decision No. 89, at p.11:

Proof of Unlawful Intent Where Offered or Required

Unlawful motivation, purpose or intent is essentially a state of mind, a subjective condition generally known only to the charged party. Direct and affirmative proof is not always available or possible. However, following generally accepted legal principals the presence of such unlawful motivation, purpose or intent may be established by inference from the entire record.

In addition, the Board, in Novato, supra, set forth examples of the types of circumstances to be examined in a determination

¹⁰ Section 3543 states, in pertinent part, that public school employees:

. . . have the 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. . . .

of whether union animus is present and a motivating factor in the employer's action(s). These circumstances are (1) disparate treatment of charging party, (2) proximity of time between the participation in protected activity and the adverse action, (3) inconsistent explanations of the employer's action(s), (4) departure from established procedures or standards, and (5) an inadequate investigation. See also Baldwin Park Unified School District (1982) PERB Decision No. 221.

There is little doubt that Eva Prior engaged in protected activity when she assumed the duties of CSEA chapter vice president and when she served on the CSEA negotiating team.

The second element, awareness of such protected activity by the decision-maker, was met as Personnel Director Burns, Supervisor Kingery and Assistant Superintendent Zemmels were all aware of some or all of Prior's protected activities.

The Charging Party must, in order to prevail, next provide evidence proving that the one-day suspension was motivated, at least in part, by such protected activity.

Prior to an examination of the alleged existence of unlawful motivation, it must be stressed that PERB does not have the authority to determine whether or not the District's reasons for its actions with regard to Prior were justified. It is only concerned with such reasons to the extent that they create or support an inference that the true motivation for such actions was the employee's protected activities.

In this case it is not necessary to rely on circumstantial evidence to prove unlawful motivation as we have direct evidence of such animus. The District insists it was justified in issuing the one-day suspension. It bases its action on, among other things, Zemmels' testimony that Savina Murrieta submitted and signed a statement regarding the incident. As stated above, this testimony was not credited and this defense is therefore rejected. The manufacturing of evidence with regard to this particular incident manifests an unlawful motivation with regard to this issue. It is also illuminative in our examination of YCOE's actions with regard to the other issues as well. It must also be noted that this is not an isolated incident of union animus. The evidence shows that the YCOE, in general, and the Business Office, in particular, has manifested a strong negative attitude toward unions and any sort of vocal dissent. This attitude was apparent in (1) Burns' comments in the negotiations session in November 1987; (2) Dimiter's various intemperate comments regarding CSEA; (3) Kingery's and Zemmels' comments at the July 1988 users' meeting; (4) Kingery's hypersensitivity towards what she thought was Prior conducting union business during an office birthday celebration; and, (6) Zemmels' and Kingery's attitudes toward Hiatt when she asked the CSEA for assistance in her reclassification.

Even if there were no direct evidence of unlawful motivation, an examination of the five circumstances set forth by

the Board in Novato and Baldwin Park, supra, reveal the following:

With regard to disparate treatment, Eva Prior had been working in the YCOE's Business Office since 1984. She had been promoted into a position in the Business Services Technician III-B classification. She was very familiar with not only her own duties but those of the other employees in the Business Office. Kingery had been a secretary in the personnel department during the time that Prior was gaining experience in the financial intricacies of the YCOE Business Office. When Kingery was given supervision of the Business Office by Zemmels, she and Prior clashed. Kingery was well aware of Prior's wide range of experience regarding Business Office procedures and the fact that the other employees naturally turned to Prior for knowledgeable advice on their task-related problems. She resented Prior's greater knowledge and characterized her assistance to fellow employees as a usurpation of her (Kingery's) supervisory authority. If two other employees spoke of a business office matter, it was intra-office cooperation and collaboration and was encouraged. If Prior was involved, it was supervisory usurpation and had to be discouraged and suppressed. This is disparate treatment in its purest form.

Another potential instance of disparate treatment was Zemmels' insistence that Prior leave the Business Office while she "investigated" the Slaugh incident. Her investigation was comprised of nothing more than asking four people to submit their

written version of what had occurred. Two of these people, *Kingery and Shockey, had not been present when the incident occurred. One, Slauch, was a participant and the fourth refused to put anything in writing and insisted that nothing untoward had occurred.

There is no evidence setting forth Zemmels' usual pattern regarding an investigation of a personnel incident, so it is difficult to label her insistence that Prior leave the building as disparate treatment. But it certainly does not seem to be justified by the evidence presented. This is especially true given the vehemence with which she ordered Prior out of the Business Office. There were no allegations that Prior was potentially out of control to the extent that an investigation could not be conducted with her on the premises.

With regard to timing of the suspension vis-a-vis the protected activities, there was no doubt that Kingery was very sensitive about Prior advising or supervising any of the other business technicians. Although her anger with Prior's activities were not chronologically correlative to specific instances of Prior's protected activities, they did occur over the same span of time.

Ordinarily, inconsistent explanations of employer's actions have to do with the presence or absence of the employer overtly setting forth inconsistent explanations for its actions. In the case of the suspension, however, the employer relied on, among other things, the written statement of Savina Murrieta Guardado.

This reliance was misplaced and was inconsistent with what Zemmels knew to be the truth. The statement was not written or signed by Savina Murrieta Guardado.

Zemmels' letter to the employees asking for any first-hand knowledge they may have regarding the Prior-Slaugh incident was, on its face, a reasonable start for an investigation. However, after Savina Murrieta declined to provide a written statement, Zemmels' manufacturing of such a statement manifested not only an inadequate investigation, but an extremely improper one.

Granted, Prior did confront and berate Slaugh in the afternoon after having been told by Kingery that he had complained about her harassing him. As Slaugh did not testify, there is no direct independent evidence as to the truthfulness of Kingery's comments regarding Prior's comments to Slaugh in the morning. His written statement, given the above credibility findings with regard to Zemmels' actions vis-a-vis Savina Murrieta's "written statement", was given very little weight.

These actions on the part of an agent of the Respondent support an inference of unlawful motivation.

Respondent's Defense

Once an inference of unlawful motivation has been established, the burden shifts to the respondent to show that its actions were justified and that the negative personnel action would have been taken regardless of the presence of unlawful motivation.

As more fully set forth above, the YCOE's defense to this charge hinged on the statements of Murrieta and Slaugh. Murrieta's statement was found not to be authentic and Slaugh's was unsubstantiated. Given the evidence regarding Murrieta's statement, such substantiation was necessary. It is therefore concluded that the Respondent was unable to show that it would have taken this action but for Prior's protected activities. Therefore, the Respondent's defense is deemed to be pretextual and is therefore rejected.

After an examination of all of the evidence, it is determined that the YCOE, when it gave Prior a one-day suspension with pay in February of 1989, violated subdivision (a) of section 3543.5. As this action concurrently denied to the CSEA rights guaranteed to it by the Act, it is also found that the YCOE violated subdivision (b) of section 3543.5.

ISSUE NO. 3: Did Eva Prior receive a letter of reprimand on August 10, 1988, because of her protected activities and therefore in violation of subdivision (a) of section 3543.5?

The legal analysis set forth in Issue No. 2 with regard to the first two elements of a discrimination charge (section 3543.5(a), protected activity and knowledge, are applicable to this issue as well. The evaluation of the evidence with regard to this issue must then move towards an examination of the five indicia of unlawful motivation as set forth in Novato and Baldwin Park, supra. The timing of the negative personnel action was co-terminus with Prior's protected activities, as was the case in the previous issue. However, the concepts of disparate

treatment, inconsistent explanations of employer's actions and departure from established procedures do not seem applicable to this issue.

It is in the examination of the existence of an inadequate investigation that the YCOE's unlawful motivation becomes apparent. Prior asked for and obtained approval to leave on a week's vacation in order to attend the CSEA annual convention. There was no evidence that either Kingery or Zemmels inquired as to the status of the work on her desk prior to her leaving for these vacation days.¹¹ While she was gone, both Kingery and Zemmels were soliciting complaints about her from the school district employees that used the Business Office's services. When Prior first returned, she saw Kingery's note and started to comply. In the meantime, she got an inquiry from the Davis Joint Unified School District. She then started to do what all Business Office employees were required to do - respond to a school district's inquiries. When Kingery came to work she saw Prior, and after only a cursory inquiry as to why she was not conforming to the written instructions, she immediately wrote and issued a letter of reprimand. These actions are not consistent with a supervisor attempting to conduct a fair and impartial investigation. They are, however, consistent with an employer

¹¹ It is noted that she was going to be absent the last few days of July and the first few days of August, a most crucial time of the year for a business office on a fiscal year of July 1 to June 30.

that manufactures evidence and engages in the other anti-union behavior discussed above.

For the reasons noted above, the YCOE's defense to this charge is also considered pretextual and is therefore rejected. It is therefore determined that this behavior violated subdivision (a) of section 3543.5. As this action concurrently denied to the CSEA rights guaranteed to it by the Act, it is also found that the YCOE violated subdivision (b) of section 3543.5.

ISSUE NO. 4: Did Eva Prior receive a below standard evaluation on May 3, 1989, because of her protected activities and therefore in violation of subdivision (a) of section 3543.5?

The legal analysis set forth in Issue No. 2 with regard to the first two elements of a discrimination charge, protected activity and knowledge, are applicable to this issue as well.

The evidence with regard to the five circumstances cited in Novato and Baldwin Park, supra, do not support an inference of unlawful motivation. However, an employee evaluation is, by its very nature, so subjective it does not lend itself to an objective inquiry into the true motivation behind each ranking and narrative. In addition, a pattern of antagonism toward the union can be persuasive evidence of an unlawful intent. SEIU v. Cupertino Union Elementary School District (1986) PERB Decision No. 572.

In this case, given both the YCOE's manifested union animus and Prior's earlier positive evaluations by a supervisor who had a much greater range of experience than Kingery, the conclusion is inescapable that the evaluation in question was, at least in

part, tainted by such unlawful motivation. It is not plausible to expect that Kingery> after having warned a new employee of the disruptive nature of Prior and while harboring the union animus described above, can impartially and objectively evaluate that same activist.

For the reasons noted above, YCOE's defense to this charge, i.e., that Eva Prior was, at best a marginal employee, is rejected. Therefore, it is determined that with regard to Prior's evaluations the YCOE violated subdivision (a) of section 3543.5 when it prepared and issued Eva Prior's evaluation on May 3, 1989. As this action concurrently denied to the CSEA rights guaranteed to it by the Act, it is also found that the YCOE violated subdivision (b) of section 3543.5.

ISSUE NO. 5: Did the YCOE unilaterally transfer a portion of the bargaining unit work assigned to Eva Prior to a non-bargaining unit employee thereby violating subdivision (b) or (c) of section 3543.5?

With regard to the alleged unilateral transfer of bargaining unit work (subdivision (c) of section 3543.5) see the legal analysis in the discussion under Issue No. 1.

In Eureka City School District (1985) PERB Decision No. 481, the Board held that in order to prevail on a unilateral transfer of work charge, the charging party must show that duties were transferred out of the unit by showing that either the unit employees ceased to perform work which they previously performed, or that non-unit employees began to perform duties previously performed exclusively by unit employees. In this case there was no doubt that Dimiter was performing duties assigned to Prior by

her job description. This job description had recently (February 1989) been bilaterally agreed upon.

It is well established that the decision to transfer work out of the bargaining unit is negotiable if it impacts upon a subject within the scope of representation. Solano County Community College District (1982) PERB Decision No. 219. The Board has long held that the classification of a position is related to the wages and hours of the employee(s) occupying that position and therefore, within the scope of negotiations. Healdsburg Union High School District, et al. (1984) PERB Decision No. 375) Alum Rock Union Elementary School District (1983) PERB Decision No. 322.

Before an employer can make a lawful unilateral change affecting a matter within scope, it must give notice of an opportunity to negotiate to the exclusive representative. Delano Union Elementary School District (1982) PERB Decision No. 213. In this case there was no prior notice and no offer to negotiate. When Prior complained, the District's representative, Zemmels, told her to "keep her damn mouth shut and do what you're told."¹² The fact that the transfer of the duties was designed to be only temporary is not a valid defense to the charge.

As this unilateral transfer concurrently denied to the CSEA rights guaranteed to it by the Act, it is also found that the YCOE derivatively violated subdivision (b) of section 3543.5.

¹² The words chosen by Zemmels were illuminative of her subjective motivation. She did not admonish Prior for not knowing how to do her job but for opening her mouth.

ISSUE NO. 6: Did the Respondent reassign part of Prior's duties to Budget Manager Dimiter due to discriminatory reasons and therefore violate subdivisions (a) or (b)?

With regard to the alleged violation of subdivision (a) of section 3543.5 the legal analysis set forth in Issue No. 2 with regard to the first two elements of a discrimination charge, protected activity and knowledge, are applicable to this issue as well.

The evidence with regard to the five circumstances cited in Novato and Baldwin Park, supra, do not support an inference of unlawful motivation. However, the assignment of duties, like an employee evaluation, is very subjective and does not lend itself to an objective inquiry into the true motivation behind each decision. Prior believed that she had the skills to perform all of her assigned duties. Kingery insisted that she did not have such skills. Once again, absent any other determinative criteria we must return to the manifested biases of the three Business Office supervisors - Zemmels, Kingery and Dimiter. As they have individually and collectively shown themselves to harbor union animus all close questions regarding internal motivations must be decided against them.

In addition, we have two other incidents that assist in making this determination. First, we have Zemmels' reliance on Prior's "mouth" and not a lack of skills as a reason for the reassignment.

Secondly, there is an absence of any evidence that the Business Office had any plans to give Prior the training it

insisted she lacked in order to return the subject duties to her. There was a passing reference to Prior receiving some training but it was insufficient to support a business necessity defense.

For the reasons set forth above, the YCOE's defense to this charge is also considered pretextual and is rejected. Therefore, it is determined that when the YCOE reassigned some of Eva Prior's duties to Budget Manager Dimiter, it violated section 3543.5(a). As this discriminatory act concurrently denied to the CSEA representational rights guaranteed by the Act, it is also found that the YCOE violated subdivision (b) of section 3543.5.

SUMMARY

Based on the foregoing Findings of Fact and Conclusions of Law, and the entire record in this case, it is determined that when the Respondent served two negative personnel actions on Eva Prior, issued a below standard evaluation to her, transferred a portion of her work to a non-bargaining unit employee and demanded she be removed from her position as a member of CSEA's negotiating team, it violated subdivisions (a), (b) and (c) of section 3543.5.

REMEDY

PERB, in section 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.

In order to remedy the unfair practice of the Respondent and to prevent it from benefitting from its unfair labor practice, and to effectuate the purposes of the EERA, it is appropriate to order the District to cease and desist from discriminating against Eva Prior because of her exercise of rights guaranteed by the Educational Employment Relations Act. It is also appropriate to order the Respondent to cease and desist from failing to negotiate in good faith with the Charging Party, the California School Employees Association and its Yolo County Chapter 639, in the matter of the membership of Charging Party's negotiating team and the assignment of Ms. Prior's duties.

It is also appropriate that the Respondent be required to post a notice incorporating the terms of this order. The notice should be subscribed by an authorized agent of the Yolo County Superintendent of Schools, indicating that it will comply with the terms thereof. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that the Respondent has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the Act that employees be informed of the resolution of the controversy and will announce the Respondent's readiness to comply with the ordered remedy. See Placerville Union School District (1978) PERB Decision No. 69. In Pandol and Sons v. Agricultural Labor Relations Board (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584], the California District Court of Appeals

approved a similar posting requirement. See also NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

PROPOSED ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law and the entire record of this case it is found that the Yolo County Superintendent of Schools violated subdivisions (a) and (c), and derivatively, subdivision (b), of section 3543.5 of the Educational Employment Relations Act. Pursuant to Government Code section 3541.5(c) it is hereby ORDERED that the Yolo County Superintendent of Schools, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Imposing or threatening to impose reprisals, discriminating or threatening to discriminate against, or otherwise restraining or coercing employees because of their exercise of rights guaranteed by the Act.
2. Demanding or insisting that Eva Prior be removed from the negotiating team of the California School Employees Association and its Yolo County Chapter 639.
3. Refusing to assign the entire range of duties assigned to the position Eva Prior holds within the classification of Business Services Technician III-B.
4. Denying to the California School Employees Association and its Yolo County Chapter 639, rights guaranteed to it by the Educational Employment Relations Act.

B, TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE PURPOSES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

1. Rescind the one-day suspension with pay dated February 23, 1989, and if it has been served, make Eva Prior whole for any losses she may have incurred as a result. Such rescission shall include the removal and destruction of all copies of such letter from all of Respondent's files, including but not limited to Ms. Prior's personnel file(s).

2. Rescind the letter of reprimand dated August 10, 1988. Such rescission shall include the removal and destruction of all copies of such letter from all of Respondent's files, including but not limited to Ms. Prior's personnel file(s).

3. Rescind the evaluation dated May 3, 1989. Such rescission shall include the removal and destruction of all copies of such evaluation from all of Respondent's files, including but not limited to Ms. Prior's personnel file(s).

4. Assign forthwith to the bargaining unit the full range of duties set forth in the job description for Business Services Technicians III-B.

5. Within ten (10) workdays of service of a final decision in this matter, post at all Yolo County Superintendent of Schools' sites and all other work locations where notices are customarily placed, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the Superintendent, indicating that the Superintendent shall 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.

6. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions. Continue to report in writing to the Regional Director thereafter as directed. All reports to the Regional Director shall be concurrently served on the Charging Party herein.

It is further ORDERED that all other aspects of the Charge and Complaint are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, section 32300. A document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing ". . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing" See California

Administrative Code, title 8, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, sections 32300, 32305 and 32140.

Dated: April 23, 1990

ALLEN ALLEN R. LINK
Administrative Law Judge