

changed the salary schedule on a memorandum of understanding (MOU) for 1991-92 without affording the Sierra High School District Teachers Association, CTA/NEA (Association) notice and an opportunity to negotiate the decision to implement the change in policy and/or the effects of the change in policy.

Furthermore, the ALJ found that this conduct denied the Association its right to represent unit members and interfered with the rights of bargaining unit employees to be represented.

The Board has reviewed the entire record in this case, including the proposed decision, transcript, exhibits, the District's statement of exceptions and the Association's response thereto. Based upon this review, the Board reverses the ALJ's proposed decision and dismisses the complaint and unfair practice charge in accordance with the following discussion.

FACTUAL SUMMARY

The parties began reopener negotiations for the 1991-92 school year in the spring of 1991. On September 23, 1991, the District presented a proposal concerning compensation. The proposal was drafted by Robert Hansen (Hansen), District superintendent, and was presented in anticipation of the upcoming unification vote in November 1991. The language read:

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.

Non-Contingency:

Benefits:

The District will fund the increased cost of the current benefits for the term of the 1991-92 contract.

.....

Contingency:

With the success of the unification election on November 5, 1991, the Sierra Joint Union High School District will:

(a) Adopt the Golden Hills Elementary District's Certificated Salary Schedule to be effective with the payroll paid on May 31, 1992. [2]

.....

Should any combination of events or circumstances cause the General Fund's projected ending balance to fall below the minimum 4% required by the State's 'Criteria and Standards', then the contingency provision for salary will be renegotiated. [3]

At a subsequent negotiating session, the parties added the following language to the District's September 23, 1991, proposal: "Should unification not pass, negotiations will reopen on the Base Salary Schedule and Schedule C." The language was proposed verbally by the Association and reduced to written form by Hansen, who testified that this language was the product of the Association's desire to negotiate compensation items if the unification effort failed. With the addition of this language to

²Hereafter, the unification contingency will be referred to as the "contingency."

³Hereafter, the 4% reserve condition will be referred to as the "condition subsequent."

the District's September 23, 1991, proposal, the parties on October 8, 1991, reached agreement on a salary increase.⁴ Under a voter-approved unification plan, school districts were merged to become the Sierra Unified School District, which became the employer of the Sierra High School certificated staff as of July 1, 1992. As a result of the agreement, teachers expected a salary increase in their pay warrants for May through August, 1992, "unless the occurrence of either contingency forced the parties to negotiate a different arrangement."

The record does not indicate that the parties ever explicitly discussed whether adoption of the Golden Hills salary schedule would occur immediately upon a favorable unification vote. As it later became clear, the Association negotiators left the negotiations under the belief that the Golden Hills salary schedule would be adopted immediately if unification occurred, while Hansen left the bargaining table under the impression that the Golden Hills salary schedule would be adopted if unification occurred and the general fund projected ending balance did not fall below 4 percent. Obviously that information would not be available for some time after the unification vote in November, a fact known to all at the table.

In fact, the District did not adopt the Golden Hills salary schedule for the pay periods May through August 1992. After

⁴The District governing board ratified the agreement on October 17, 1991. The minutes of that meeting describe the contingency agreement as follows: "With the success of the unification election the Golden Hills salary schedule would be effective [in the] May 31, 1992 payroll."

attending school board meetings from December 1991 onward, Christine O'Kelley (O'Kelley), the Association's chief negotiator, formed the impression that the District had not budgeted money for the raise that the Association expected as a result of the successful unification vote. In March 1992, O'Kelley mentioned this concern to Hansen and asked him to give the Association as much notice as possible if negotiations had to be reopened. Hansen responded that he would do so, but he indicated that at that time he did not foresee a drop in the general fund balance below 4 percent. There is no evidence in the record that the parties focused on or intended to establish a "status quo" as a starting point in future negotiations.

On March 25, 1992, Hansen presented a negotiations update memo to the governing board. Regarding the condition subsequent, Hansen wrote:

I have to anticipate that the contingency language of the Memorandum of Understanding will be implemented. . . . it is clear to me that we will have to return to the bargaining table as provided in the Memorandum of Understanding.

Hansen provided the Association with a copy of the memo he presented to the board. At a governing board meeting on April 23, 1992, at which Association President Cindy Duwe (Duwe) was present, Hansen reported that the contingency language in the agreement "has been invoked" because the general fund's projected balance fell \$12,129 short of the 4 percent reserve.

On May 8, 1992, Hansen sent⁵ a memo to the Association, which read, in part:

Based on [the condition subsequent] that provision the District will not adopt the Golden Hills District's Certificated Salary-Schedule effective with the payroll paid on May 31, 1992.

This same language does provide that the contingency provisions for salary will be renegotiated.

What is your pleasure?

After the Association received the May 8 memo from Hansen, the parties had one negotiating session, on June 3, 1992. According to O'Kelley, the Association took the position that negotiations must begin with the Golden Hills salary schedule as the status quo established by the unification vote. The District took the position that the prior agreement contained two contingencies which needed to be satisfied before the Golden Hills salary schedule was adopted: (1) the successful unification vote and (2) a general fund projected ending balance above 4 percent. Since the latter contingency was not satisfied, Hansen explained that the status quo from which negotiations must begin is the prior year's contract, not the Golden Hills salary schedule.

⁵Hansen testified that he sent this memo because he had been asked by the Association for official notice in writing if the contingency language was to be invoked. The last date District payroll is ordinarily sent to the county office for processing is May 10. Thus, a change in the May 31, 1992, pay warrant granting a salary increase had to have been communicated to the county office by May 10.

During the June 3, 1992 meeting, the Association proposed that the District pay teachers for only two of the remaining months (July and August 1992) before teachers would automatically be placed on the Golden Hills salary schedule as a result of the unification implementation. Hansen subsequently discussed the proposal with the District board and the District officially rejected the Association's June 3 proposal on June 11, 1992. Hansen then notified the Association in writing⁶ and made no counter-proposal.

Another negotiating session was set for June 16, but it never took place. Hansen said that lawyers became involved and the Association informed him it would pursue other avenues. On June 16, 1992, the instant unfair practice charge was filed.

ALJ'S DECISION

The issue as framed by the ALJ was whether the District unlawfully refused to adopt the higher salary schedule, thereby altering the terms of the collective bargaining agreement, and thereafter failing to negotiate in good faith concerning the promised salary increase for the period of May through August 1992.

Attempting to interpret the meaning of the contract language, the ALJ first noted that:

[T]he record is devoid of any explicit discussion across the table regarding the

⁶The response read, in its entirety: "Because of the current fiscal emergency in the State, it would be imprudent for this Board to encumber any additional funds."

meaning of the relevant language.
(Proposed Decision, p. 16.)

In such cases, language should be construed in accordance with its facial or plain meaning. (The Regents of the University of California (1989) PERB Decision No. 771-H, pp. 5-6.) The ALJ concluded that the language of the MOU, read together with the bargaining history,⁷ should be interpreted to mean that the District was obligated to adopt⁸ the higher salary schedule since it was established as a new status quo by the contract. He also found that the condition subsequent did not detract from this obligation, since:

. . . the general fund contingency is an entirely separate contingency of a different type, and there is no language in the agreement which purports to connect it to the unification vote contingency and the implications of a favorable vote.
(Proposed Decision, p. 17.)

The ALJ emphasized that the District was obligated to adopt the higher salary schedule, but not to pay it immediately;

⁷Although the record contained "limited negotiating history," the ALJ considered testimony indicating that negotiations were influenced by the fact that both parties believed they would benefit from an agreement which adopted the Golden Hills salary schedule upon passage of unification. As the ALJ put it, "The logical inference . . . is that the adoption of the Golden Hills salary schedule upon a favorable unification vote was the quid pro quo for teachers successfully working in support of the unification."

⁸The ALJ noted that, although the agreement provided that the Golden Hills salary schedule would not become "effective" until the payroll paid on May 31, 1992, the terms "adoption" and "effective" dates were not used synonymously, and there was "no language in the agreement that qualifies or diminishes the requirement of mandatory 'adoption' of the new salary schedule as a result of the favorable unification vote."

however, the Golden Hills schedule became the status quo from which negotiations should have begun when the condition subsequent occurred.⁹ Therefore, when the District refused to adopt the Golden Hills salary schedule, it unilaterally changed a negotiable term and condition of employment in violation of EERA.

The ALJ also found that the District's rejection¹⁰ of the Association's compromise proposal was a per se violation of its obligation to negotiate in good faith, since its "curt, one line rejection" suggested to the ALJ that the District entered the negotiations with a fixed position that "hardly evidences a good faith attempt to engage in the kind of give and take contemplated by the Act."

DISTRICT'S EXCEPTIONS

On appeal, the District raises numerous exceptions to the ALJ's proposed decision. Most of the exceptions relate to the District's claim that the contingency would only take effect if the condition subsequent failed to occur: thus, since the general fund projected ending balance fell below the minimum 4

⁹The ALJ determined that it was unnecessary to address the general fund contingency, for even if the ending balance fell below 4 percent, the District was required under the contract to negotiate in good faith from the existing status quo established by the first contingency, which it had failed to do.

¹⁰Although the District cited financial reasons for rejecting the Association's proposal, the ALJ noted that under prior PERB case law, a fiscal emergency does not relieve an employer from its obligations from bargaining under the Act, but at most may form the basis for a negotiating stance which must be presented at the table in a give and take atmosphere aimed at reaching an agreement. (San Mateo County Community College District (1979) PERB Decision No. 94, p. 13; Compton Unified School District (1989) PERB Decision No. 784, p. 5.)

percent, the District was not obligated to adopt the higher salary schedule. The status quo never changed, and the parties had committed to renegotiating a new salary provision.¹¹ Since the Association failed to continue to request negotiations, opting to file an unfair practice charge instead, the District had fulfilled its obligations. Also, it was improper for the ALJ to find that the District acted in bad faith in negotiations subsequent to the May 31 payroll date.

ASSOCIATION'S RESPONSE TO DISTRICT'S EXCEPTIONS

The Association argues that the ALJ interpreted the contract correctly, accorded the proper weight to testimony of witnesses, and made proper findings on questions of fact. The Association's response addressed each exception in turn.¹²

¹¹As noted by the ALJ, even the District acknowledged that the status quo from which negotiations would begin upon occurrence of the condition subsequent was the salary schedule in the prior year's contract.

¹²Regarding the District's exception 1, alleging the omission of certain facts, the omission was harmless and is based on an exaggeration of the testimony in question. Exception 2, regarding language added after September 23, is not supported by the record. Exception 3 challenges the admissibility of hearsay evidence to which no timely objection was made. In exception 4, the District is challenging facts admitted in its own brief and lacks support in the record. Regarding the District's complaint in exception 5, the ALJ's failure to make findings regarding post-agreement conduct lacks reference to erroneous portions of the proposed decision. Similarly, for exception 6, the District provides insufficient reference to the record to support the exception. Exception 7 constitutes a belated attempt to impeach the credibility of O'Kelley's testimony; even if permitted to be raised at this stage, they lack merit because the District has not shown how the ALJ placed too much weight on that testimony.

According to the Association, the District's attempt to infer that the Association understood that the 4 percent contingency was a condition precedent to the change in the status

DISCUSSION

I agree with the ALJ that the decision in this case is a result of contract interpretation. However, I also note that there could be no unlawful unilateral change by the District unless the parties intended to create a new status quo which defined the Golden Hills schedule as a negotiating base whether or not the condition subsequent occurred.

When interpreting the intent of parties to a contract, legal precedent directs us to look for objective manifestations of intent.¹³ Courts should treat a document as what it says it is unless extrinsic evidence supplies notice of ambiguities.¹⁴ The California Civil Code provides similar guidance:

California Civil Code section 1636 provides that:

A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

quo is an "oxymoron" because the two "are not causally related."

Regarding exception 8, which challenges the statement of the issue, the Association responds that the exception is "absurd" since the District always had full awareness of the Association's theory of the case.

For exception 9, in which the District attacked the discussion portion of the proposed decision, the Association disagrees because the ALJ's discussion is well grounded in PERB precedent.

¹³See, e.g., Brobeck, Phleaser & Harrison v. Telex Corp. (1979) 602 F.2d 866, cert. den. (1979) 444 U.S. 981 [62 L.Ed.2d 407].

¹⁴Krasley v. Superior Court (1980) 101 Cal.App. 3d 425 [161 Cal.Rptr. 629].

California Civil Code section 1638 provides that:

The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

It has long been the rule that where a contract is uncertain and ambiguous the court must determine, if possible, what is intended, but in the absence of such ambiguity and uncertainty, the court can only enforce the contract according to its terms.¹⁵

In this case, I have no evidence that the parties intended anything other than the plain meaning of the words in their contract. Furthermore, the language of the contract, read in its entirety, clearly and explicitly defines the obligation of the parties.¹⁶ The words used convey the message that the salary schedule was intended to be renegotiated if the condition subsequent occurred:

Should any combination of events or circumstances cause the General Fund's projected ending balance to fall below the minimum 4% . . . then the contingency

¹⁵Petro v. Ohio Cas. Ins. Co. (1951) 95 F.Supp. 59 (where a contract is uncertain and ambiguous it becomes the duty of the court to determine, if possible, what is intended, but in absence of such ambiguity and uncertainty, and when contract is in all respects valid, power of court is limited to enforcing contract according to its terms).

¹⁶See U.S. v. General Motors Corp. (1963) 216 F.Supp. 362 (in determining meaning and effect of agreements, it is the duty of the court to give effect to their spirit and purpose as determined from all provisions of agreements); Harris v. Klure (1962) 205 Cal.App.2d 574 [23 Cal.Rptr. 313] (in construing a contract, court should strive to ascertain its object as reflected in provisions thereof and should be guided by intentions of parties as disclosed by those provisions and should endeavor to effect the intention and object thus ascertained); see also California Civil Code sections 1636 and 1638, supra.

provision for salary will be renegotiated.
(Emphasis added.)

The effect of the occurrence of the condition subsequent is found in California Civil Code section 1438, which provides that:

A condition . . . referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. [Emphasis added.]

Contrary to the view of the ALJ, the record shows that during negotiations, both parties were concerned about the District's ability to pay the contingent salaries during negotiations,¹⁷ and the actions of the parties after the condition subsequent occurred is additional evidence of their intent. In Anchor Cas. Co. v. Surety Bond (1962) 204 Cal.App.2d 175 [22 Cal.Rptr. 278], the court held that both prior and subsequent negotiations and conversations of the parties may be examined for assistance in ascertaining the true intention of the parties to a contract. In the case at hand, it appears clear

¹⁷For example, the ALJ recited testimony by a District representative (Hansen) that "his concern as he wrote the [condition subsequent] language was to have an 'escape clause' in the event the unexpected occurred." Hansen testified that his purpose in proposing the last paragraph was "to provide that the projected ending balance would not fall below the four percent required by the State's criteria and standards."

During the September 23, 1991, negotiating session, a discussion occurred about the proposal, especially the second contingency. O'Kelley testified that, in her experience, it was unusual for the projected general fund balance to drop below 4 percent. Nevertheless, Association negotiators questioned Hansen about the possibility of a sub-4 percent general fund balance. Hansen responded that he had no knowledge of anything that would cause the balance to fall below that level. No further discussion occurred about the meaning of the contingency language.

from the conduct of the parties before and after the shortfall in reserves became known that the condition subsequent was tied to the obligation to pay defined salaries. If the condition subsequent occurred, the parties intended to go back to the table to negotiate salaries.

Under the plain meaning rule used by the ALJ, it is clear that the unification clause obligated the District to pay defined salaries after the contingency occurred, setting a flexible status quo, that could change because it was tied to a second event that might occur before the obligation became fixed. The status quo was subject to further transformation by the condition subsequent.

Applying the plain meaning rule and the other aids to contract interpretation identified above, I read the condition subsequent to mean that, once it occurred, the salaries to be paid became undefined and the obligation to renegotiate arose.

It is illogical and inconsistent with Civil Code section 1438 to hold that the salary schedule defined by the unification contingency remained the status quo once the condition subsequent occurred. When reserves fell below 4 percent, the District's obligation to pay in accord with a defined salary schedule expired and was replaced by an obligation to negotiate. That is the status quo that came into being by agreement of the parties and I am not permitted to speculate that more was intended by the

parties.¹⁸ This interpretation gives meaning to the entire contract section dealing with salaries, rather than interpreting clauses in a piecemeal fashion.

The record does not support the ALJ's finding that the District acted in bad faith in negotiations subsequent to the May 31 payroll date. I find no refusal to negotiate by the District during the period in question. Hansen's June 11, 1992, letter to the Association simply informed them that the District was officially rejecting the Association's June 3, 1992 proposal. The letter itself did not constitute a refusal by the District to engage in further negotiations. No further demands to negotiate appear in the file; although another negotiating session was set for June 16, the Association informed Hansen it would pursue other avenues.

In conclusion, since the District did not refuse a demand to renegotiate salary after occurrence of the condition subsequent, there was no violation. Accordingly, we reverse the ALJ's finding that the District violated EERA section 3543.5(a), (b) and (c). In the absence of an unfair practice, the Board has no further jurisdiction over this case.¹⁹

¹⁸See, e.g., Sayble v. Feinman (1978) 76 Cal.App.3d 509 [142 Cal.Rptr. 895], citing California Code of Civil Procedure section 1858 (Court has neither the power to make a contractual arrangement for parties which they themselves did not make nor to insert language in agreement that the appealing party wishes were there).

¹⁹EERA section 3541.5 (b), which reads, in pertinent part:

(b) The board shall not have the authority to enforce agreements between the parties,

ORDER

The complaint and unfair practice charge in Case No. S-CE-1492 is hereby DISMISSED.

Member Caffrey's concurrence begins on page 17.

Member Carlyle's dissent begins on page 27.

and shall not issue a complaint on any charge based on alleged violation of any agreement that would not also constitute an unfair practice under this chapter.

CAFFREY, Member, concurring: I concur in the dismissal of the complaint and unfair practice charge in Case No. S-CE-1492.¹ I write separately to state the reasons on which my decision is based.

At the center of the dispute in this case is the meaning of the contractual language agreed to by the Sierra Joint Union High School District (District) and the Sierra High School District Teachers Association, CTA/NEA (Association) on October 8, 1991. The portion of that language in question states, in part:

Contingency:

With the success of the unification election on November 5, 1991, the Sierra Joint Union High School District will:

(a) Adopt the Golden Hills Elementary District's Certificated Salary Schedule to be effective with the payroll paid on May 31, 1992.

(b) Adopt the revised Appendix C, "Schedule of Hourly Compensation and Stipends" beginning with the payroll paid on December 10, 1991.

(Compensation through factors, in lieu of stipends, will not be implemented in the 1991-92 contract year.)

Should any combination of events or circumstances cause the General Fund's projected ending balance to fall below the minimum 4% required by the State's (Criteria and Standards), then the contingency provision for salary will be renegotiated. (Underlining in original.)

¹The administrative law judge (ALJ) who conducted the hearing in this case left Public Employment Relations Board (PERB or Board) employment prior to issuance of a proposed decision. Pursuant to PERB Regulation 32168(b) (Cal. Code Regs., tit. 8, sec. 31001, et seq.), the case was assigned to another ALJ.

The following language, proposed by the Association, was added prior to adoption:²

Should unification not pass, negotiations will reopen on the Base Salary Schedule and Schedule C.

The California Civil Code provides direction in the interpretation of contracts. Civil Code section 1638 states, in part:

The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Civil Code section 1641 states, in part:

The whole of a contract is to be taken together, so as to give effect to every part, if reasonably, practicable, each clause helping to interpret the other.

Civil Code section 1644 states, in part:

The words of a contract are to be understood in their ordinary and popular sense, . . .

Consistent with this guidance, the Board has found no need to go beyond the plain language of the contract to ascertain its meaning, when the contract is clear and unambiguous on its face.

(Marysville Joint Unified School District (1983) PERB Decision No. 314.) However, when the contract language is ambiguous, extrinsic evidence such as bargaining history and the conduct of the parties is properly considered by the Board to determine the

²The parties also agreed to an addendum to this language dealing with the subject of the placement of teachers on the Golden Hills Elementary District (Golden Hills) salary schedule. The meaning of the addendum language is not in dispute in this case.

meaning of the language. (Victor Valley Community College District (1986) PERB Decision No. 570 (Victor Valley).)

Civil Code section 1436 states, in part:

A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed.

The plain meaning of the contract language in question, and the whole of that language taken together, lead to the conclusion that two conditions precedent must be performed before the payment of salaries in accordance with the Golden Hills salary schedule occurs effective with the May 31, 1992, payroll.

The first condition precedent is the success of the November 5, 1991, unification election. With that success, the language indicates that the District will adopt the Golden Hills salary schedule. While the timing of the adoption is unspecified, it presumably is prior to the time the Golden Hills salary schedule is to be effective, the May 1992 payroll paid on May 31, 1992. If the unification election is not successful, the parties have agreed that negotiations over salaries will reopen.

The second condition precedent requires that the general fund ending balance be projected at or above 4 percent. "Any combination of events or circumstances" causing the District's projection to fall below 4 percent will result in renegotiations. While again no timing is specified, the "events or circumstances" are obviously in the future, and the language "any combination" suggests that multiple events or circumstances may occur over some unknown period of time. Presumably, the below 4 percent

projection leading to renegotiations would occur prior to the time the Golden Hills salary schedule is to be effective, the May 1992 payroll paid on May 31, 1992. If the projected balance falls below 4 percent, the parties have agreed to renegotiate "the contingency provision for salary."

In this case, the parties dispute the status quo from which they agreed to renegotiations are to begin, since the first condition was met while the second condition was not. To resolve this dispute we must examine the language of the contract to determine what the parties agreed to renegotiate when they indicated that "the contingency provision for salary" would be renegotiated if the District projected its general fund ending balance below 4 percent.

The Association argues that the success of the unification election requires adoption of the Golden Hills salary schedule, and changes the status quo from which any renegotiations conducted pursuant to the second condition must commence. Under this interpretation, the first condition, once met, must be given full effectiveness without reference to the second condition. Regardless of whether the general fund projected ending balance falls below 4 percent, the Golden Hills salary schedule becomes the status quo from which payments must be made effective May 31, 1992, unless the parties' renegotiations lead to some other conclusion. Such an interpretation requires that the conditions be taken separately, rather than together as required by Civil Code section 1641. It also ignores the ordinary meaning of the

contract language, which is to govern its interpretation pursuant to Civil Code section 1644.

The parties have agreed to renegotiate "the contingency provision for salary" if the second condition is not met. Webster's New World Dictionary (3d college ed. 1988) p.301, defines "contingency" as "some thing or event which depends on or is incidental to another." In this case, the contingency affecting salaries calls for the adoption of the Golden Hills salary schedule to be dependent on the success of the unification election. Additionally, the underlining of the word "contingency" in the second condition is a clear reference to the underlined word "Contingency" which is the heading directly over the language of the first condition. The plain meaning of this contract language, taken together, indicates that by agreeing to renegotiate "the contingency provision for salary," the parties have agreed to renegotiate the first condition with regard to the salary schedule, including what effect, if any, the success of the unification election is to have on salaries. Obviously, the starting point of renegotiations would be the status quo in effect when the parties agreed to this contract language.

The parties agreed to the contract language in October 1991. At that time, each condition referred to a future event which had not yet occurred or failed to occur. Within the language of the two conditions, each party proposed what would happen if one of the conditions was not met. The Association proposed that failure of the unification election would lead to reopened

negotiations on the base salary and stipend schedule. The District proposed that failure of the general fund ending balance to be projected at or above 4 percent would lead to renegotiations on the salary schedule. The parties' agreement in October 1991 that further negotiations would be the result of either condition failing to occur, leads to the conclusion that those negotiations would begin from the status quo which was in effect at the time of that agreement, absent express contractual language to the contrary.

The Association refers to Civil Code section 1654 which states, in part:

In cases of uncertainty . . . the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.

Asserting that the disputed language is ambiguous and uncertain, the Association argues that Civil Code section 1654 requires that the uncertainty must be resolved in favor of the Association and against the District, which drafted the disputed language. The Board dealt with a similar argument in Butte Community College District (1985) PERB Decision No. 555 (Butte CCD), stating, in pertinent part:

. . . the reported cases pertaining to section 1654 indicate that when the contract language is arrived at through the process of negotiations, section 1654 does not apply and the contract provisions in question should not then be construed against either party.
[Citations.]

Here, as in Butte CCD, any uncertainty of language which arguably exists is resolved under the rules of Civil Code sections 1638, 1641 and 1644, applied above.

Assuming arguendo that the language in question is ambiguous, I find support for the interpretation described above in the bargaining history and the conduct of the parties.

(Victor Valley.)

First, the disputed language was proposed by the District. It is reasonable and logical to conclude that the District proposed language which would require renegotiations in the face of a diminishing projected general fund balance, rather than implementation of the higher salary schedule unless the parties renegotiated to some other conclusion. Second, the Association's response to the District's proposal in September 1991 bargaining was to discuss the likelihood of the projected general fund ending balance falling below 4 percent. This conduct suggests that the Association was aware that a projection below 4 percent would effect the payment of salaries based on the Golden Hills salary schedule, assuming success of the unification election. Third, when the District's Board of Trustees adopted a general fund ending balance projection below 4 percent in April 1992, the District advised the Association that the Golden Hills salary schedule would not be adopted, consistent with its interpretation of the disputed language. The District indicated to the Association that the language provided for renegotiations, which the Association requested. At the subsequent negotiating

session, while the Association apparently initially took the position that renegotiations should begin with the Golden Hills salary schedule as the status quo, the District explained its position with regard to the starting point for negotiations, and the Association ultimately offered a salary proposal below the level it maintains was the status quo. The parties by their conduct, therefore, appear to have renegotiated beginning from the status quo in effect in October 1991 when they agreed to the conditional contract language.

Based on the foregoing discussion, I conclude that the plain meaning of the disputed language taken in its entirety, considered in conjunction with the limited bargaining history, required renegotiations pursuant to the second condition to begin from the status quo which was in effect when the parties agreed to the language in October 1991. Therefore, the District did not violate the Educational Employment Relations Act (EERA) when it took this position in May 1992.

Alternatively, the Association argues that, even if the contractual language is interpreted as described above, the District intentionally underestimated its interest revenue and resulting general fund ending balance in order to avoid payment of salaries in accordance with the Golden Hills salary schedule. The Association asserts that the condition leading to renegotiation of salaries did not, in fact, occur, as an

objective projection would have estimated the general fund ending balance at or above 4 percent.³

Much of the hearing in this case was devoted to testimony concerning the District's accounting and budget projection methodologies, and the requirements of the State of California and the Fresno County Office of Education with regard to the District's maintenance of general fund reserves and balances. Additionally, voluminous budget and accounting documents were submitted by the parties as exhibits during the hearing. This testimony and information was, at best, inconclusive to establish that the District intentionally lowered its interest revenue estimate in order to achieve a general fund ending balance projection below 4 percent. Furthermore, the language of the second condition refers to "any combination of events or circumstances" which causes the projection to fall below 4 percent. "Any circumstances" would seem to include fluctuations in the District's projections caused by its assessment of the many factors and variables which affect revenues and expenditures.

The Association simply has not presented evidence sufficient to conclude that the District intentionally underestimated the

³The Association does not indicate how this alleged conduct constitutes a violation of EERA. If the District entered into the agreement on the contractual language with the intent to purposefully underestimate the general fund ending balance, presumably bad faith bargaining would be alleged. However, the alleged conduct could arguably constitute an isolated breach of the contract which PERB is without authority to enforce pursuant to EERA section 3541.5(b). I find it unnecessary to resolve this question, based on the discussion above.

general fund ending balance to be below 4 percent, in order to avoid paying salaries according to the Golden Hills salary schedule. The Association's argument, therefore, is rejected.

Finally, I concur in the finding that the District did not bargain in bad faith following its May 8, 1992, notification of the Association that the Golden Hills salary schedule would not be implemented. At the June 3, 1992, negotiating session, the District's representative rejected the Association's salary proposal. The proposal was subsequently presented to the District Board of Trustees, and on June 11, 1992, the District informed the Association that the fiscal situation made it imprudent to encumber any additional funds for salary increases. A second negotiating session scheduled for June 16, 1992, did not take place. The Association filed the instant unfair practice charge on June 16, 1992.

The duty to bargain in good faith implies an intent by the parties to reach agreement. (Pajaro Valley Unified School District (1978) PERB Decision No. 51.) However, the requirement to negotiate in good faith does not require yielding positions fairly maintained. (Oakland Unified School District (1982) PERB Decision No. 275.) In this case, the abbreviated record of the parties' negotiations between June 3 and June 16, 1992, is insufficient to conclude that the District engaged in bad faith bargaining in violation of EERA.

CARLYLE, Member, dissenting: I dissent. I conclude that the Sierra Joint Union High School District (District) violated the Educational Employment Relations Act (EERA) section 3543.5 (a), (b) and (c)¹ when it changed the salary schedule on a memorandum of understanding (MOU) for 1991-92 and thereafter refused to negotiate in good faith about salary payments for May through August, 1992.

In 1992, after voter approval, the geographic portion of a high school district, which was coterminous with the boundaries of the elementary district in which Sierra High School is situated (Golden Hills Elementary School District), was unified with the Golden Hills District. The new District is the Sierra Unified School District. Although the high school district's three other constituent elementary districts did not choose to participate in unification, the high school district continued in

¹EERA section 3543.5 states, in pertinent part:

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

(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.

existence for the benefit of those students residing in the remaining constituent elementary districts. The high school district is governed by its own separate school board, operated under a separate budget from the unified district, and had its own staff. Students from the high school district comprised roughly 50 percent of Sierra High School's total enrollment of approximately 880 students. These students attended Sierra High School by virtue of an interdistrict attendance agreement with the new unified school district. This arrangement was necessitated by the fact that as a result of the partial unification, the high school district no longer had available a comprehensive high school of its own. Its sole remaining school facility is a small continuation school. Thus, Sierra Unified School District, as of July 1, 1992, became the employer of the Sierra High School certificated staff.

A master contract was negotiated for the 1989-90 school year. Thereafter, negotiations occurred annually on other issues including compensation and benefits. Except as modified by subsequent negotiations, the master agreement continued in effect.

In the spring of 1991 reopener negotiations began for the 1991-92 school year. The Sierra High School District Teachers Association, CTA/NEA (Association) initially proposed a five percent salary increase. The District proposed only step and column increases on the 1991-92 salary schedule, but no base salary increase. In August 1991, the parties resumed .

negotiations and in September 1991, reached an agreement which contained a salary increase and two contingencies. The first provided that "with the success of the unification vote" the District "will" adopt a higher salary schedule, effective May 31, 1992. This would give teachers a raise for four months (May-August, 1992). The second contingency provided that the salary provision would be renegotiated if the projected general fund balance fell below four percent.²

²The pertinent section of the MOU states:

Non-Contingency:

Benefits:

The District will fund the increased cost of the current benefits for the term of the 1991-92 contract.

.....

Schedule C:

(a) Given the circumstance of 6th and 7th period Sports in the 1991-92 contract year, certificated employees under full-time contract with the District will be paid coaching stipends from the current schedule, but reduced to 50% of the values on the schedule. (The contingency language below would increase the stipend values.)

(b) Provisions for the 2.5% factor will continue as in the current contract.

Contingency:

With the success of the unification election on November 5, 1991, the Sierra Joint Union High School District will:

(a) Adopt the Golden Hills Elementary District's Certificated Salary Schedule to be effective with the payroll paid on May 31, 1992.

In November 1991, unification passed. In May 1992, the District claimed the general fund ending balance fell below four percent and refused to adopt the higher salary scheduled. One negotiating session was held in which the Association proposed that teachers receive a raise for only two of the four months. The District rejected the proposal and refused to present a counter-proposal claiming, a financial emergency.

The issue in the case as framed by the Public Employment Relations Board (PERB or Board) administrative law judge (ALJ) was whether the District unlawfully refused to adopt the higher salary schedule, thereby altering the terms of the collective bargaining agreement, and thereafter failed to negotiate in good faith concerning the promised salary increase for the period of May through August, 1992.

The ALJ first concluded that based upon the testimony and the record of the case, no evidence was presented demonstrating an explicit discussion between the parties relative to the meaning of the language concerning the contingencies. Therefore,

(b) Adopt the revised Appendix C, 'Schedule of Hourly Compensation and Stipends' beginning with the payroll paid on December 10, 1991.

(Compensation through factors, in lieu of stipends, will not be implemented in the 1991-92 contract year.)

Should any combination of events or circumstances cause the General Fund's projected ending balance to fall below the minimum 4% required by the State's 'Criteria and Standards', then the contingency provision for salary will be renegotiated. (Underlining in original.)

the ALJ reviewed the language in accordance with its facial or plain meaning. (See e.g., The Regents of the University of California (1989) PERB Decision No. 771-H, pp. 5-6.) The ALJ concluded that the MOU read together with the bargaining history should be interpreted to mean that the two contingencies of the agreement between the parties are separate. When unification passed, the ALJ concluded that the District was obligated to adopt the higher salary schedule and a new status quo was established as to the contract.

Additionally, the ALJ found that the subsequent contingency concerning the 4 percent projected general fund balance did not detract from this interpretation.

The ALJ then considered the bargaining history of the parties which he found supported his interpretation of the MOU. Testimony indicated that both parties believe that they could achieve some benefit from an agreement which adopted the Golden Hills salary schedule upon a favorable unification vote. Further, in the testimony concerning this issue the 4 percent contingency was not discussed in any significant way.

Based upon the above, the ALJ concluded that the plain language in the MOU, taken with a review of the limited bargaining history, required the District to adopt the Golden Hills salary schedule upon the favorable unification vote, thus creating a new status quo. The ALJ then found that when the District refused to adopt the new salary schedule it unilaterally changed a negotiable term and condition of employment.

The ALJ noted that adoption of the Golden Hills salary schedule did not mean that the District was obligated to pay the salary increases immediately, only that as a result of the unification vote the Golden Hills salary schedule became the status quo from which negotiations should have begun. On May 8, 1992, when the District informed the Association that the salary schedule would not be adopted, it unilaterally changed the terms of a collective bargaining agreement, a per se violation of its obligation to negotiate in good faith. (Grant Joint Union High School District (1982) PERB Decision No. 196.)

The ALJ then determined that the District's conduct in officially notifying the Association two days before the cut off date for changes in pay warrants (May 8, 1992) did not evidence a good faith attempt by the District to reach agreement on the issue. While the Association proposed that teachers receive only two of the four payments originally contemplated, the District's one line rejection and unyielding response suggests that it entered the negotiations with a fixed and perceived position that made unrealistic any attempt at good faith bargaining.

Further, the ALJ found that prior PERB case law has found that a fiscal emergency does not relieve an employer from its obligations from bargaining under EERA but at most may form the basis for a negotiating stance which must be presented at the table in a give and take atmosphere aimed at reaching an agreement. (See e.g., San Mateo County Community College

District (1979) PERB Decision No. 94, p. 13; Compton Unified School District (1989) PERB Decision No. 784, p. 5.)

In addition, the ALJ determined that it is unnecessary to address the general fund contingency, for even if the ending balance fell below four percent the District was required under the contract to negotiate in good faith from the existing status quo established by the September 1991 agreement, which it failed to do.

As stated correctly by the other two panel members, this is a case of contractual interpretation. However, stating the issue correctly and arriving at a correct result are not one in the same. I conclude that the ALJ was correct on all findings of fact, conclusions of law, and issues decided. A review of the record substantiates the ALJ's view that little evidence exists as to what the parties were thinking when it drafted the contingencies that appeared in the agreement. Based upon the lack of testimony from the parties to this issue, the ALJ was proper in looking into the plain meaning of the contract. Where the language of the agreement is clear and not absurd, it must be followed. (Civil Code sec. 1638; 1 Witkin, Summary of Cal. Law (9th ed. 1987) sec. 681, p. 615.) Based upon the reading of the contract, I find that the only condition on the duty to pay the salary increase is contained in the first paragraph where it states:

With the success of the unification election on November 5, 1991. the Sierra Joint Union High School District will:

(a) Adopt the Golden Hills Elementary-District's Certificated Salary Schedule to be effective with the payroll paid on May 31, 1992.

(b) Adopt the revised Appendix C, 'Schedule of Hourly Compensation and Stipends' beginning with the payroll paid on December 10, 1991. [Emphasis added]

The language claimed by the District to excuse it from the duty imposed in this first paragraph of the agreement is found in the second paragraph, and reads as follows:

Should any combination of events or circumstances cause the General Fund's projected ending balance to fall below the minimum 4% required by the State's 'Criteria and Standards', then the contingency provision for salary will be renegotiated.

Based upon the language cited above, I concur with the ALJ in finding that:

(1) Passage of the unification measure on November 5, 1991 is a condition precedent to the District to pay two separate salary increases, one effective December 16, 1991 regarding Schedule C and another commencing May 31, 1992 regarding the Base Salary schedule. Thus, a new status quo was established for 1991-92 salaries, including the May 31, 1992 increase to the Base Salary and Schedule.

(2) If the projected ending balance of the general fund drops below four percent, the parties will renegotiate regarding the obligation as established in paragraph one.

The obligation to pay is affirmatively stated and would only become effective if the voter approves the unification measure. Further, under the interpretation afforded the MOU by the other

two panel members, there would have been no logical reason for the Association, its members and supporters, to vote for unification. Obviously, the understanding was struck to garner votes to pass this measure. An interpretation which simply ignores this crucial salient fact would appear to be clearly erroneous.

The language for the agreement was structured by District officials. As the Association points out, the District could have placed the condition regarding the District's general fund ending balance in the introductory clause which would, in effect, obligate the District to pay only if both conditions had occurred.

The District unilaterally changed the status quo and failed to negotiate in good faith. The District's actions violated the applicable law of EERA and the ALJ's decision should be affirmed.