

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**

GEORGE R. GERBER, JR.,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 258,

Respondent.

Case No. LA-CO-845-E

PERB Decision No. 1472

December 12, 2001

Appearances: George R. Gerber, Jr., on his own behalf; California School Employees Association by Madalyn J. Frazzini, for California School Employees Association, Chapter 258.

Before Amador, Baker and Whitehead, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by George R. Gerber, Jr. (Gerber) to an administrative law judge's (ALJ) proposed decision (attached). The unfair practice charge alleged that the California School Employees Association, Chapter 258 (CSEA) violated section 3543.6(b) of the Educational Employment Relations Act (EERA)¹ when it deducted agency fees from Gerber's paycheck without proper notice. The ALJ found a violation.

¹ EERA is codified at Government Code section 3540 et seq. Section 3543.6 states, in pertinent part:

After reviewing the entire record, the Board hereby affirms the ALJ's proposed decision and writes to directly respond to Gerber's objection to the remedy and request for fees and costs.

DISCUSSION

In addition to challenging various aspects of the proposed decision, in which he prevailed, Gerber protests that he was not awarded sufficient interest by the ALJ. He seeks to receive interest for a longer period of time, or until he cashes the fee reimbursement check he received from CSEA. The purpose of an interest award is to make an aggrieved party whole. The Board finds that the ALJ's proposed order accomplishes this goal and hereby denies Gerber's request for an increased interest award.

In his exceptions, Gerber also seeks attorney's fees and costs. PERB awards such costs only after a finding of conduct that is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or otherwise an abuse of process. (Hacienda La Puente Unified School District (1998) PERB Decision No. 1280 (Hacienda La Puente).) Having discovered its error, CSEA made an attempt to correct it by issuing Gerber a refund check. The fact that there was a delay in delivering the check to Gerber does not justify an award of attorney fees or costs under the standards articulated in Hacienda La Puente. Accordingly, the Board denies this request.

It shall be unlawful for an employee organization to:
(b) 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.

ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is found that the California School Employees Association, Chapter 258 (CSEA) violated the Educational Employment Relations Act (EERA), Government Code section 3543.6(b), by collecting agency fees from George R. Gerber, Jr. (Gerber) before sending him the Hudson notice required by PERB Regulation 32992.²

Pursuant to Government Code section 3541.5(c), it is hereby ORDERED that CSEA and its representatives shall:

A. CEASE AND DESIST FROM:

Collecting agency fees from Gerber before sending him a Hudson notice.

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

1. Pay Gerber interest at the rate of seven percent per annum. CSEA shall pay eleven weeks' interest on the \$29.75 deducted on May 31, 2000, and seven weeks' interest on the \$29.75 deducted on June 30, 2000. CSEA shall also pay interest on the sum of these two amounts of interest, for the period from August 17, 2000, until the total is paid.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to classified employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSEA, indicating that CSEA will comply with the terms of this Order. Such posting

² The Hudson notice is named for the decision in Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292, 106 S.Ct. 1066 [121 LRRM 2793], which established the requirement that such a notice be sent to all agency fee payers. The requirement is now also embodied in PERB Regulation 32992 (Cal. Code Regs., tit. 8,

sec. 31001 et seq.).

shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the San Francisco Regional Director of the Public Employment Relations Board, in accord with the regional director's instructions.

Members Baker and Whitehead joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CO-845-E, George R. Gerber, Jr. v. California School Employees Association, Chapter 258, in which all parties had the right to participate, it has been found that the California School Employees Association, Chapter 258 (CSEA) violated the Educational Employment Relations Act (EERA), Government Code section 3543.6(b), by collecting agency fees from George R. Gerber, Jr. (Gerber) before sending him the Hudson notice required by PERB Regulation 32992. (The Hudson notice is named for the decision in Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292, 106 S.Ct. 1066 [121 LRRM 2793], which established the requirement that such a notice be sent to all agency fee payers. The requirement is now also embodied in PERB Regulation 32992 [Cal. Code Regs., tit. 8, sec. 31001, et seq].)

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

A. CEASE AND DESIST FROM:

Collecting agency fees from Gerber before sending him a Hudson notice.

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

Pay Gerber interest at the rate of seven percent per annum. CSEA shall pay eleven weeks' interest on the \$29.75 deducted on May 31, 2000, and seven weeks' interest on the \$29.75 deducted on June 30, 2000. CSEA shall also pay interest on the sum of these two amounts of interest, for the period from August 17, 2000, until the total is paid.

Dated: _____

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 258

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

GEORGE R. GERBER, JR.,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION, CHAPTER 258,

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CO-845

PROPOSED DECISION
(6/8/2001)

Appearances: George R. Gerber, Jr., on his own behalf; Madalyn J. Frazzini, Deputy Chief Counsel, for California School Employees Association, Chapter 258.

PROCEDURAL HISTORY

In this case, an employee alleges that his union unlawfully caused agency fees to be deducted from two of his paychecks. The union denies that its conduct was unlawful.

George R. Gerber, Jr. (Gerber) filed an unfair practice charge against the California School Employees Association, Chapter 258 (CSEA) on July 19, 2000. The Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint on August 29, 2000, alleging in part:

4. On or about May 31 and June 30, 2000, Respondent [CSEA] caused an agency fee to be deducted from Charging Party's [Gerber's] paycheck. Respondent took this action without first providing Charging Party with proper notice as required by PERB Regulation 32992.^[1]

¹ PERB regulations are codified at California Code of Regulations, title 8, section 31001 and following.

The complaint further alleged that this conduct of CSEA violated Government Code section 3543.6(b) of the Educational Employment Relations Act (EERA).²

CSEA filed an answer on September 20, 2000, stating in part:

4. In answer to paragraph 4 of the complaint, CSEA admits that on or about May 31 and June 30, 2000 an agency fee was deducted from Charging Party's paycheck and that such deduction inadvertently occurred prior to receipt by Charging Party of the notice required by PERB Regulation No. 32992 and Charging Party has received a full refund from Respondent for all monies inadvertently deducted; that the May and June deductions were the sole deductions occurring prior to receipt of the required notice by Charging Party, and that Respondent provided the required notice on or about August 17, 2000. Except as thus specifically admitted, Respondent denies each and every other allegation contained in paragraph 4 of the Complaint.

The answer also denied that CSEA's conduct violated EERA section 3543.6(b) and alleged as an affirmative defense that "the May and June deductions which have now been refunded are de minimus conduct."

PERB held an informal settlement conference on October 19, 2000, but the case was not settled. PERB held a formal hearing on January 10 and 25, 2001. At the beginning of the hearing, a motion by Gerber to amend the complaint was denied.³ With the receipt of the final post-hearing brief on April 2, 2001, the case was submitted for decision.

FINDINGS OF FACT

² EERA is codified at Government Code section 3540 and following.

³ In his motion to amend, Gerber sought to add to the complaint the theory that the underlying organizational security provision was null and void. Gerber had presented the same theory in an unfair practice charge that had been dismissed on October 11, 2000. (See Sweetwater Union High School District (2001) PERB Decision No. 1417.)

Gerber is an employee under EERA and is a classified employee of the Sweetwater Union High School District (District). CSEA is an employee organization under EERA and is Gerber's exclusive representative.

Since at least 1983, the collective bargaining agreement between CSEA and the District has included an organizational security provision, providing for maintenance of membership, dues deduction and agency shop. Since 1985, the organizational security provision has included the following section 3.10:

In the event that an employee revokes a dues or service fee authorization or fails to make arrangements with CSEA for the direct payment of service fee, the District shall deduct service fees until such time as CSEA notifies the District that arrangements have been made for the payment of such fees. The District shall deduct service fees automatically upon notice from CSEA, if an employee does not become a member or sign a deduction authorization in accordance with Education Code Section 45168(b).

Since at least 1990, CSEA's policy has been that the required Hudson notice shall be published in the April and May issues of its newspaper, to be sent to all unit members.⁴

In the first part of 1995, Gerber was a CSEA member. On June 30, 1995, however, the collective bargaining agreement between CSEA and the District expired with no successor agreement in place, and Gerber opted to suspend his support for CSEA. On September 14, 1995, Gerber sent memos to CSEA and the District revoking "all previous written authorizations" and asking CSEA and the District to cease the collection of dues or service fees. Gerber told CSEA:

⁴ The Hudson notice is named for the decision in Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292, 106 S.Ct. 1066 [121 LRRM 2793], which established the requirement that such a notice be sent to all agency fee payers. The requirement is now also embodied in PERB Regulation 32992.

Upon the ratification of a new contract between CSEA and the Sweetwater Union High School District, and the resolving of other issues between myself and CSEA, I then will be more than happy to meet with CSEA and see if you can convince me to again pay fees or dues.

Gerber told the District that his memo should "remain in effect until further written authorization is submitted by myself."

It does not appear that CSEA or the District responded directly in writing to Gerber's September 14 memos. An internal District memo dated October 30, 1995, however, states that a CSEA representative had indicated that the District could stop the deduction of dues for Gerber and another unit member. Gerber testified that the September 14 and October 30 memos evidenced an agreement with CSEA that he would not have to pay any dues or fees unless and until he authorized payment himself.⁵

On March 21, 1996, CSEA and the District finally entered into a new successor agreement, to be effective through June 30, 1998. This agreement included an organizational security provision that in turn included the section 3.10 quoted above. Despite this provision, no dues or fees for Gerber were deducted or paid once the agreement took effect. CSEA had no explanation for this, but it appears that a CSEA chapter president may have been willing to "look the other way" with regard to Gerber's fees. On May 20, 1999, CSEA and the District entered into another successor agreement, to be effective through June 30, 2001. This agreement also included the organization security provision and its section 3.10, but still no dues or fees for Gerber were deducted or paid.

CSEA periodically conducts audits of bargaining units with agency shop, to determine whether all unit members are paying dues or fees. CSEA completed an audit of Gerber's unit in early 2000, and on April 17, 2000, it sent the District a list of employees, including Gerber.

⁵ Under EERA section 3563.2(b), PERB does not have authority to enforce agreements between parties. Whether Gerber had a valid agreement with CSEA would not appear to be relevant to the issues in this case, except to the extent that Gerber's belief in such an agreement may help to explain what happened later.

CSEA identified Gerber and the others as non-paying employees and asked the District to "find out why." With regard to Gerber, the District responded by deducting an agency fee of \$29.75 from Gerber's May 2000 paycheck, issued on May 31, 2000.

Gerber was, as he testified at the hearing, "surprised because I had not been paying dues or fees since November of 1995 due to an agreement I had with CSEA." Gerber further testified in part:

The reason for my surprise and confusion was that I had not given any authorization, I had not been approached by either the District or CSEA about paying, I was not given any advance warning or any notification that monies would be taken from my pay.

In a memo to the District dated June 6, 2000, Gerber stated his position as follows:

On 5-31-00, upon receipt of my pay warrant for the month of May, I noticed the withholding of union dues for the amount of \$29.75. (Please see enclosed copy of the pay warrant) I was much surprised about this withholding due to my withdrawing from the union and the paying of monies to them, which was started in 9-99 [sic] and completed in late 10-99 [sic]. (Please see enclosed copies of letters)[⁶]

The reason for my surprise is that I had no prior notice of any withholdings to be taken from my wages. I have never been approached about any withholdings and I definitely have not authorized the withholding of union dues or any other monies for the union.

Due to the unexpected income shortfall I experienced, I would like to correct this error, have this withholding stopped, and the amount reimbursed to me.

If by chance this is not a one time error and you have on file some form of authorization for the above mentioned withholdings or any other document which would cause such action, please

⁶ Apparently these enclosures were the memos of September 14 and October 30, 1995. Gerber's references to "9-99" and "10-99" were apparently in error.

provide me with copies of them. As stated before, I have not given any authorization verbal or written, so if you have anything on file to the contrary, I would like to have it investigated further.

Gerber took his concerns to the District's payroll department, which referred him to the District's labor relations department, which in turn referred him to CSEA Chapter President Lawrence Gilly (Gilly).

Gerber met with Gilly. About their conversation, Gerber testified in part:

I then started to explain why I was out of CSEA and how I had an agreement not to pay dues. I also said that I had not given any authorization for withholdings and that I had not been given any notification.

Gerber showed Gilly the memos of September 14 and October 30, 1995. Gilly still thought the agency fee deduction was appropriate, but he promised to check with "higher-ups" at CSEA. He told Gerber he would try to report back, but he also gave Gerber his number.

Gerber testified that Gilly "did not think notice was needed" for the agency fee deduction to be valid. It is not apparent, however, that Gerber and Gilly were talking about the required Hudson notice, as Gilly had no apparent reason at the time to believe that Gerber had not received the Hudson notice published in the CSEA newspaper. It seems more likely that Gilly understood that Gerber wanted individualized notification, with a right to refuse to authorize agency fee deductions altogether, rather than the generalized Hudson notification, with a right only to object to a portion of the fee.

Gilly did in fact check with a CSEA "higher-up," Penelope DiBernardo, who understood from Gilly that the only issue Gerber was raising was that he (Gerber) had not authorized the agency fee deduction. She confirmed Gilly's understanding that under the organizational security provision no such individual authorization was required. Gilly did not, however, report back to Gerber, who called Gilly several times and tried to leave messages. Gilly testified no messages were actually left.

The District, meanwhile, was apparently more sympathetic to Gerber's position. On June 8, 2000, the District sent CSEA a memo, stating in full:

George Gerber, an HVAC Mechanic with the District, exercised his right to stop deduction of his service fees in 1995 when his bargaining unit was working without a contract. He never signed an authorization for the deduction to be started again.

The list that you sent to payroll to be reconciled included his name. A service fee was deducted from his May pay warrant. Mr. Gerber is insistent that the District may not take a payroll deduction without his signed authorization.

This is your notification that I have instructed the payroll department to stop his payroll deduction.

CSEA responded to the District on June 13, 2000, with a memo from CSEA Field Director John Baird (Baird) asserting that the District would be in violation of the organizational security provision, and section 3.10 in particular, if it did not make the deduction from Gerber's paycheck. In the memo, Baird specifically asserted that "a signed deduction authorization is not necessary." At the hearing, Baird testified he assumed at the time that all unit members (including Gerber) had received the required Hudson notice.

The District promptly changed its position. In an internal memo dated June 13, 2000, the payroll department was authorized "to deduct dues effective June, 2000, for Mr. Gerber." A copy of the memo was sent to Gerber.

Gerber was undiscouraged. He began calling CSEA headquarters in San Jose. He eventually spoke to CSEA Director of Field Operations Marjorie Ott (Ott), who told him it sounded like a "notification deficiency" might have occurred. Ott did not testify at the hearing, but it appears that she may have been the first CSEA official to realize that Gerber may not have received the required Hudson notice. Ott promised to talk to the CSEA legal department

and report back. On approximately June 29, 2000, Ott did in fact ask CSEA Deputy General Counsel Madalyn Frazzini (Frazzini) to look into Gerber's situation.

On June 30, 2000, the District again deducted an agency fee of \$29.75 from Gerber's monthly paycheck. Gerber made more calls and on July 3, 2000, ended up talking to Frazzini (apparently by coincidence). Frazzini agreed there might have been a notification deficiency; she promised to look into it and report back. Frazzini did in fact look into the matter, and she discovered Gerber would not have received the Hudson notice because he was not on the CSEA newspaper mailing list.

Frazzini testified that on July 6, 2000, she asked the CSEA accounting department to cut a refund check for Gerber. A check in the amount of \$59.50 was actually cut on July 27, 2000, and was actually sent to Gerber by Frazzini on August 17, 2000; Frazzini attributed the delay to "the press of business." Meanwhile, on July 19, 2000, Gerber had filed his unfair practice charge.

Along with the refund check, Frazzini sent Gerber a letter dated August 17, 2000, stating in part:

Based upon your request, I have determined that commencing in May 2000, a payroll deduction for service fees was made from your paycheck. A deduction for service fees was also made in June 2000. These deductions occurred prior to your receiving a notice of the basis for the fee as required by law and CSEA policy. I regret this inadvertent mistake and enclose reimbursement in the amount of \$59.50. I understand that this amount represents full reimbursement to you for the monies deducted from your check to date.

Frazzini enclosed a copy of the Hudson notice for the 2000-2001 school year. She indicated Gerber would be deemed an objector to the non-representational portion of the agency fee but

would be expected to begin paying the remainder of the fee directly to CSEA as of September 2000. At the time of hearing, however, no more fees for Gerber had been paid or deducted.

ISSUE

Did CSEA unlawfully cause agency fees to be deducted from Gerber's paychecks?

CONCLUSIONS OF LAW

PERB Regulation 32992 states in full:

(a) Each nonmember who will be required to pay an agency fee shall annually receive written notice from the exclusive representative of:

(1) The amount of the agency fee which is to be expressed as a percentage of the annual dues per member based upon the chargeable expenditures identified in the notice;

(2) The basis for the calculation of the agency fee; and

(3) A procedure for appealing all or any part of the agency fee.

(b) All such calculations shall be made on the basis of an independent audit that shall be made available to the nonmember.

(c) Such written notice shall be sent/distributed to the nonmember either;

(1) At least 30 days prior to collection of the agency fee, after which the exclusive representative shall place those fees subject to objection in escrow, pursuant to Section 32995 of these regulations; or

(2) Concurrent with the initial agency fee collection, provided however, that all agency fees so noticed shall be held in escrow in toto until all objectors are identified. Thereafter, only the agency fees for agency fee objectors shall be held in escrow, pursuant to Section 32995 of these regulations.

This regulation clearly requires (in part) that no agency fees be collected before a Hudson notice is sent to the fee payer.

PERB Regulation 32997 states in full:

It shall be an unfair practice for an exclusive representative to collect agency fees in violation of these regulations.

The use of mandatory language ("shall") in this regulation would seem to indicate that the collection of agency fees in violation of PERB regulations (including PERB Regulation 32992) is necessarily an unfair practice.

In the present case, CSEA admitted in its answer, and the evidence showed, that agency fees were deducted from Gerber's paycheck before he was sent a Hudson notice. This would appear to be a clear violation of Regulation 32992 and thus (under Regulation 32997) an unfair practice.

In its post-hearing brief, however, CSEA argues that there has been no "actionable violation" for the following reason:

Here, CSEA provided a full refund to Gerber as soon as practicable after it verified the amount of his deduction and the fact that he did not receive a Hudson notice.

CSEA relies on Los Rios College Federation of Teachers, Local 2279, CFT/AFT (1992) PERB Decision No. 950 (Los Rios). That decision, however, does not entirely support CSEA's argument. In Los Rios, PERB held in part that the right protected by the Hudson notice could be vindicated by "immediately returning those monies" wrongfully deducted. In Los Rios, monies deducted on October 1, 1991, were returned on October 24, 1991, and monies deducted on November 1, 1991, were returned on or about November 20, 1991. Thus, in each instance, the monies were returned in about three weeks.

In the present case, in contrast, monies were deducted from Gerber's paychecks on May 31 and June 30, 2000, and were not returned to Gerber until August 17, 2000 -- some eleven weeks after the first deduction and almost seven weeks after the second deduction. One could not fairly describe CSEA's conduct as "immediately returning" Gerber's monies within the meaning of Los Rios. Indeed, CSEA did not return the monies until six weeks after

Frazzini asked the CSEA accounting department to cut a refund check (on July 6, 2000) and

until three weeks after the check had actually been cut (on July 27, 2000). I conclude that CSEA's less than immediate return of Gerber's monies was insufficient to vindicate Gerber's Hudson rights and to excuse CSEA's failure to comply with PERB Regulation 32992.

CSEA also argues that its failure to provide a Hudson notice was "de minimus" because it was "simply an inadvertent error." As noted above, however, PERB Regulation 32997 seems to indicate that the collection of agency fees in violation of PERB regulations is necessarily an unfair practice, without regard to whether the violation was advertent or inadvertent. Furthermore, the notion of a "de minimus" violation has only limited application in the agency fee context. In Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292, 106 S.Ct. 1066 [121 LRRM 2793], the United States Supreme Court made clear that a Hudson notice is important to protect an employee's First Amendment rights even if the employee's financial stake is small, and even if the union's use of the employee's funds is only temporary. I conclude that in the present case CSEA's collection of agency fees from Gerber, before CSEA sent Gerber a Hudson notice, did amount to an unfair practice that violated EERA section 3543.6(b).

REMEDY

EERA section 3541.5(c) gives PERB:

. . . 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 [EERA].

In the present case, CSEA has been found to have violated EERA section 3543.6(b) by collecting agency fees from Gerber before sending him the Hudson notice required by PERB

Regulation 32992. It is therefore appropriate to direct CSEA to cease and desist from such conduct.

Because CSEA did not immediately return the monies deducted from Gerber's paychecks, it is also appropriate to direct CSEA to pay interest to Gerber. CSEA shall pay eleven weeks' interest on the \$29.75 deducted on May 31, 2000, and seven weeks' interest on the \$29.75 deducted on June 30, 2000. CSEA shall also pay interest on the sum of these two amounts of interest, for the period from August 17, 2000, until the total is paid. Interest shall be at the rate of seven percent per annum. (See Regents of the University of California (1997) PERB Decision No. 1188-H.)

In his post-hearing brief, Gerber argues that CSEA should also pay him:

- a) My actual out of pocket expenses to proceed with this case.
- b) For my lost wages in order to appear at the various PERB proceedings.
- c) For my time to research, prepare and proceed with this case.

Gerber cites the following language from Hacienda La Puente Unified School District (1998) PERB Decision No. 1280:

Although the Board [PERB] is rarely presented with circumstances that justify an award of attorneys' fees and costs, we have long held that such an award is appropriate where a case is without arguable merit, frivolous, vexatious, dilatory, pursued in bad faith or otherwise an abuse of process.

The present case, however, is not such a case. Although I have disagreed with CSEA's arguments, they were not frivolous or without arguable merit. Furthermore, there is nothing in the procedural history of this case to suggest that CSEA has defended itself in a vexatious or dilatory fashion. Finally, CSEA's actions on August 17, 2000, to send Gerber a Hudson notice and a refund check, betoken a good faith attempt to comply with PERB Regulation 32992,

however belatedly. It is therefore inappropriate to direct CSEA to pay Gerber more than the interest to which I have found him entitled.

It is appropriate, however, to direct CSEA to post a notice incorporating the terms of the order in this case. Posting of such a notice, signed by an authorized agent of CSEA, will provide employees with notice CSEA has acted in an unlawful manner, is being ordered to cease and desist from this activity and take appropriate remedial action, and will comply with the order. It effectuates the purposes of EERA that employees be informed both of the resolution of this controversy and of CSEA's readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is found that the California School Employees Association, Chapter 258 (CSEA) violated the Educational Employment Relations Act (EERA), Government Code section 3543.6(b), by collecting agency fees from George R. Gerber, Jr. (Gerber) before sending him the Hudson notice required by PERB Regulation 32992. (The Hudson notice is named for the decision in Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292, 106 S.Ct. 1066 [121 LRRM 2793], which established the requirement that such a notice be sent to all agency fee payers. The requirement is now also embodied in PERB Regulation 32992 [Cal. Code Regs., tit. 8, sec. 31001 and following].)

Pursuant to Government Code section 3541.5(c), it is hereby ORDERED that CSEA and its representatives shall:

A. CEASE AND DESIST FROM:

Collecting agency fees from Gerber before sending him a Hudson notice.

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

1. Pay Gerber interest at the rate of seven percent per annum. CSEA shall pay eleven weeks' interest on the \$29.75 deducted on May 31, 2000, and seven weeks' interest on the \$29.75 deducted on June 30, 2000. CSEA shall also pay interest on the sum of these two amounts of interest, for the period from August 17, 2000, until the total is paid.

2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to classified employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of CSEA, indicating CSEA will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure the Notice is not reduced in size, altered, defaced or covered with any other material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the San Francisco Regional Director of the Public Employment Relations Board, in accord with the regional director's instructions.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1032 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

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. (Cal. Code Regs., tit. 8, sec. 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Cal. Code Regs., tit. 8, sec. 32135(a); see also Cal. Code Regs., tit. 8, sec. 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Cal. Code Regs., tit. 8, sec. 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, secs. 32135(b), (c) and (d); see also Cal. Code Regs., tit. 8, secs. 32090 and 32130.)

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 Cal. Code Regs., tit. 8, secs. 32300, 32305, 32140, and 32135(c).)

THOMAS J. ALLEN
Administrative Law Judge