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

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 699, Charging Party, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-1085 PERB Decision No. 285 February 17, 1983

Appearances; Michael L. Jensen, Attorney (O'Melveny & Myers) for Los Angeles Unified School District, Robert Hunt for Service Employees International Union, Local 699.

Before Tovar, Morgenstern, and Burt, Members.

DECISION

TOVAR, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions[1] filed by the Los Angeles Unified School District (District) to a hearing officer's proposed decision concluding that the District had violated subsections 3543.5(a) and (b) of the Educational

[1]The District did not raise, by its exceptions or any earlier pleading, the argument that Local 699 may not represent a unit of supervisory employees. Therefore, the District is found to have waived this potential affirmative defense in this proceeding. See Los Angeles Unified School District/Lynwood Unified School District (8/27/82) PERB Order No. Ad-132.

Employment Relations Act (EERA or the Act)[2] by refusing to meet and discuss wages and fringe benefits with the Service Employees International Union, Local 699 (Local 699), the nonexclusive representative of a unit of supervisory employees.[3]

The Board has considered the entire record in this case in light of the District's exceptions. We find the hearing officer's findings of fact free of prejudicial error and incorporate them by reference herein. We also affirm his conclusions of law to the extent they are consistent with this Decision.

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[2]EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise specified. Subsections 3543.5(a) and (b) state:

> It shall be unlawful for a public school employer to:
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> (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.

3There were no exceptions taken to the hearing officer's conclusion that the District did not violate subsection 3543.5(d) by meeting and discussing with employee organizations representing Unit D employees, another unit; conducting a no representation campaign; or creating competing employee organizations. Therefore, those issues are not before us.

DISCUSSION

The District's main exceptions go to the hearing officer's application of the rule of law established by this Board in Professional Engineers in California Government (3/19/80) PERB Decision No. 118-S (PECG) finding that under the State Employer-Employee Relations Act (SEERA),[4] the State employer has the duty to provide the nonexclusive representative of its employees with a reasonable opportunity to meet and discuss over matters fundamental to employer-employee relations.[5] Instead, the District urges us to apply the rule of law established by the Board as then constituted in San Dieguito Union High School District (9/2/77) EERB Decision No. 22,[6] which held that a public school employer was under no obligation to meet and consult with nonexclusive representatives.

While the PECG decision failed to overturn the holding in San Dieguito, we take this opportunity to expressly overrule San Dieguito and to conclude that the reasoning and holding in PECG is applicable to public school employers.

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[4]The SEERA is codified at Government Code section 3512 et seq.

[5]See Regents of UC (UCLA) (12/21/82) PERB Decision No. 267-H; CSU, Sacramento (4/30/82) PERB Decision No. 211-H.

[6]Prior to January 1, 1978, the PERB was known as the Educational Employment Relations Board.

The District argues that the Legislature did not intend to provide representational rights for nonexclusive representatives because EERA does not provide mandatory meet and confer sessions with representatives of employees, as provided for in section 13085 of the Winton Act.7 We reject the District's argument for the reasons expressed below.

In enacting EERA, the Legislature granted significant new collective negotiating rights to school employees. It is unlikely, given the general expansion of rights under EERA, that the Legislature intended to diminish the rights already

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7The Winton Act, formerly California Education Code sections 13080 et seq. repealed, stats 1975 (Chapter 961 section 1), governed employer-employee relations in California's public schools prior to EERA's enactment.

Section 13085 provided in pertinent part:

> A public school employer, or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees as set forth in this code, shall meet and confer with representatives of certificated and classified employee organizations upon request with regard to all matters relating to employment conditions and employer-employee relations, and in addition, shall meet and confer with representatives of employee organizations representing certificated employees upon request with regard to procedures relating to the definition of educational objectives, the determination of the content of courses and curricula, the selection of textbooks, and other aspects of the instructional program to the extent such matters are within the discretion of the public school employer or governing board under the law.

established under the Winton Act and leave employees in units with no exclusive representative without an effective voice in matters as fundamental to the employment relationship as wages and fringe benefits.

As in SEERA,[8] two statutory provisions of EERA militate against such a conclusion.

First, subsection 3543.1(a) provides that nonexclusive representatives have the right to represent their members in their employment relations until an exclusive representative is recognized or certified.[9]

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[8]Section 3515.5 under SEERA provides that:

> Employee organizations shall have the right to represent their members in their employment relations with the state, except that once an employee organization is recognized as the exclusive representative of an appropriate unit, the recognized employee organization is the only organization that may represent that unit in employment relations with the state. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership. Nothing in this section shall prohibit any employee from appearing in his own behalf in his employment relations with the state.

[9]Subsection 3543.1(a) of EERA provides that:

> Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an

Second, EERA does not mandate that employees select an exclusive representative.[10] The Board holds that the

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> appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

[10]Section 3543 of EERA provides a follows:

> Public school employees shall 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. Public school employees shall also have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the public school employer, except that once the employees in an appropriate unit have selected an exclusive representative and it has been recognized pursuant to Section 3544.1 or certified pursuant to Section 3544.7, no employee in that unit may meet and negotiate with the public school employer.
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> Any employee may at any time present grievances to his employer, and have such grievances adjusted, without the intervention of the exclusive representative, as long as the adjustment is reached prior to arbitration pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8 and the adjustment is not inconsistent with the terms of a written agreement then in effect; provided that the public school employer shall not agree to a resolution of

implication of these two sections is to afford representation to employees represented by a nonexclusive representative while an exclusive representative has not been selected.[11] This interpretation will also further the general purpose of EERA by improving personnel management and employer-employee relations.[12] without deciding the full scope of the right of

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> the grievance until the exclusive representative has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

[11]The District's contrary interpretation rests on its misreading of section 3543.2, which sets forth the scope of representation, and specifically the third sentence of that section which provides that "the exclusive representative of certificated personnel has the right to consult" on certain matters of professional concern, in addition to those items about which it has the right to meet and negotiate. The right to consult granted by this section simply expands the right of representation of an exclusive representative of certificated personnel, and cannot reasonably be read to limit the right of representation guaranteed to all employee organizations by section 3543.1.

12section 3540 provides in part as follows:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in

representation of nonexclusive representatives, the Board finds that at a minimum it encompasses the right to meet and discuss with the public school employer subjects as fundamental to the employment relationship as wages and fringe benefits. As we did in PECG, supra, we stress that the obligation imposed on the public school employer to meet with a nonexclusive representative is not the same as that imposed with regard to an exclusive representative. Thus, whereas the public school employer and representatives of recognized or certified employee organizations have the mutual obligation to meet and negotiate in good faith with regard to matters within the scope of representation (section 3543.5), the Board finds that the obligation imposed by EERA on public school employers with respect to a nonexclusive representative is to provide notice and a reasonable opportunity to meet and discuss wages, fringe benefits, and other matters of fundamental concern to the employment relationship prior to the time the employer reaches a decision on such matters.[13]

> the formulation of educational policy. Nothing contained herein shall be deemed to supersede other provisions of the Education Code and the rules and regulations of public school employers which establish and regulate tenure or a merit or civil service system or which provide for other methods of administering employer-employee relations, so long as the rules and regulations or other methods of the public school employer do not conflict with lawful collective agreements.
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> . . . . . .

[13]See, State of California (Franchise Tax Board) (7/29/82) PERB Decision No. 229-S.

We, therefore, affirm the hearing officer's conclusion that the District's admitted refusal to meet and discuss wages and fringe benefits is a breach of Local 699's right to represent its members in their employment relations with the District and, as such, constitutes a violation of subsection 3543.5(b) of the Act.

We also find that the District's refusal to meet and discuss constitutes a violation of subsection 3543.5(a), as it interferes with employee rights established under section 3543 of EERA. See San Francisco Community College District (10/12/79) PERB Decision No. 105.

Request for Oral Argument

The District requests the opportunity to present oral argument before the Board[14] on its statement of exceptions on the ground that the hearing officer's proposed decision is a clear departure from existing Board precedent for meet and confer requirements under EERA.

We deny the District's request on the basis that it has not raised new or additional arguments, which were not already considered in PECG, and therefore no useful purpose would be served in granting such a request.

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[14]See, California Administrative Code, title 8, section 32315.

REMEDY

We affirm the hearing officer's proposed remedy ordering the District: to cease and desist from denying Local 699 its rights to represent its members by failing and refusing, upon request, to meet and discuss wages and fringe benefits; and to cease and desist from interfering with employee exercise of rights under the Act. The District is also ordered to post a copy of the Notice to Employees attached as an appendix hereto at its headquarters office and in other locations where notices to employees are customarily posted.

ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to Government Code section 3541.5(c), it is hereby ORDERED that the Los Angeles Unified School District and its representatives shall:

1. CEASE AND DESIST FROM:

(a) Denying the Service Employees International Union, Local 699 its right to represent its members, prior to the selection of an exclusive representative, by failing and refusing, upon request, to meet and discuss wages and fringe benefits; and

(b) Interfering with employees because of their exercise of their 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.

2. TAKE THE FOLLOWING AFFIRMATIVE ACTION WHICH IS DESIGNED TO EFFECTUATE THE PURPOSES OF THE EDUCATIONAL EMPLOYMENT RELATIONS ACT:

(a) Within five (5) calendar days after service of this Decision, prepare and post copies of the Notice to Employees attached as an appendix hereto, for thirty (30) workdays at its headquarters office and in conspicuous places at the locations where notices to classified employees are customarily posted;

(b) Immediately upon completion of the posting period notify the regional director of the Public Employment Relations Board, Los Angeles Regional Office, in writing, of the action taken to comply with this Order.

Members Morgenstern and Burt joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-1085 Service Employees International Union, Local 699[1] v. Los Angeles Unified School District in which all parties had the right to participate, it has been found that the Los Angeles Unified School District violated Government Code section 3543.5(a) and (b).

As a result of this conduct, we have been ordered to post this Notice and will abide by the following. WE WILL:

1. CEASE AND DESIST FROM:

(a) Denying the Service Employees International Union, Local 699, its right to represent its members, prior to the selection of an exclusive representative, by failing and refusing, upon request, to meet and discuss wages and fringe benefits;

(b) Interfering with employees because of their exercise of their right to form, join, and participate in the activities of employee organizations of their own choosing for employer-employee relations.

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[1]Please note that, since the hearing in Case No. LA-CE-1085, the name of the charging party was changed from Service Employees International Union, Local 699, to Supervisory Employees Union, Local 347, SEIU.

Dated: _____. _____ Los Angeles Unified School District

By _____
Authorized Agent

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