STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

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| CALIFORNIA FACULTY ASSOCIATION, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY, Respondent. | ) | Case No. LA-CE-150-H<br>PERB Decision No. 613-H<br>February 9, 1987 |

Appearances: Reich, Adell & Crost by Anthony R. Segall, for California Faculty Association; William B. Haughton for Trustees of the California State University.

Before Burt, Porter and Craib, Members.

## DECISION

BURT, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by Trustees of the California State University (CSU) to a proposed decision, attached hereto, issued by a PERB Administrative Law Judge (ALJ). In that decision, the ALJ found that CSU violated section 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act (Gov. Code sec. 3560 et seq.) by refusing to comply with a request by the California Faculty Association (CFA) to provide certain salary information.

The Board has reviewed the proposed decision in light of CSU's exceptions and CFA's response thereto, and the entire record in the case, and hereby adopts the proposed decision as the Decision of the Board itself.

In so finding, we do not decide that any wage data, in any of its manifestations, gathered by CSU would necessarily be subject to disclosure. Here, however, it is clear that the wage survey data in question is an integral part of the salary setting mechanism at CSU, and, in the absence of a valid privilege or defense raised by CSU, is relevant and necessary in order for CFA to fulfill its responsibilities as the exclusive faculty representative.

## ORDER

Upon the foregoing facts, 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 Respondent, Trustees of the California State University, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to provide the California Faculty Association with correlated raw salary data obtained by the California State University from higher educational institutions pursuant to its annual survey.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

1. Within ten (10) workdays after this Decision is no longer subject to reconsideration, furnish the California Faculty Association with the name of the institution that corresponds to each of the documents of the incomplete salary survey identified in the record of this case as Charging Party Exhibit 9.

2. Within five (5) days following the date the decision is no longer subject to reconsideration, sign and post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto, signed by an authorized agent of the employer. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, defaced, altered or covered by any material.

3. Written notification of the actions taken to comply with this Order shall be made to the regional director of the Public Employment Relations Board in accordance with his instructions.

This Order shall become effective immediately upon service of a true copy thereof upon the California State University.

Members Porter and Craib joined in this Decision.

APPENDIX

NOTICE TO ALL 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-CE-150-H, California Faculty Association v. Trustees of the California State University, in which all parties had the right to participate, it is found that the Trustees of the California State University violated section 3571(a), (b) and (c) of the Higher Education Employer-Employee Relations Act.

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

A. CEASE AND DESIST FROM:

Failing and refusing to provide the California Faculty Association with correlated raw salary data obtained by the California State University from higher educational institutions pursuant to its annual survey.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE HIGHER EDUCATION EMPLOYER-EMPLOYEE RELATIONS ACT:

Furnish the California Faculty Association with the name of the institution that corresponds to each of the documents of the incomplete salary survey identified in the record of this case as Charging Party Exhibit 9.

Dated: CALIFORNIA STATE UNIVERSITY

By _____
Authorized Representative

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 ALTERED, REDUCED IN SIZE, DEFACED OR COVERED BY ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

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| CALIFORNIA FACULTY ASSOCIATION. | ) | |
| | ) | Unfair Practice |
| Charging Party, | ) | Case No. LA-CE-150-H |
| | ) | |
| v. | ) | PROPOSED DECISION |
| | ) | (7/29/86) |
| TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY. | ) | |
| | ) | |
| Respondent. | ) | |
| | ) | |

Appearances: Reich. Adell & Crost by Anthony R. Segall. Esq.. for California Faculty Association; William B. Haughton. Esq.. for California State University.

Before Manuel M. Melgoza. Administrative Law Judge.

## I. PROCEDURAL HISTORY

The California Faculty Association (CFA. Union or Charging Party) filed the above-captioned Unfair Practice Charge on December 26, 1985, alleging that the California State University (CSU. Respondent or Employer) had refused to comply with a request to furnish salary data collected by CSU as part of a wage and benefits survey of comparative higher education institutions. The Public Employment Relations Board (PERB or Board) issued a Complaint on December 31. 1985 alleging that CSU had violated the Higher Education Employer-Employee Relations Act (HEERA)[1]. sections 3571(c) and. derivatively, 3571(a) and (b) by engaging in the above conduct.

[1]The HEERA is codified beginning at Government Code section 3560. Section 3571 states, in relevant part, as follows:

An informal conference, scheduled for January 7. 1986. failed to result in a complete settlement of the dispute underlying the Complaint. However, on about January 15. 1986. the CFA filed an Amended Unfair Practice Charge, contending that, through settlement negotiations. Respondent had partially complied with the Union's information request, but had deleted the names of the particular institutions to which a set of data pertained. It alleged that the employer was continuing to refuse to identify the data by institution.

An Order Amending the Complaint, in conformity with the Amended Charge, was issued on February 10, 1986 by Administrative Law Judge William P. Smith. In its Answer, Respondent denied that CFA was entitled to the information, alleging that it was confidential and was not relevant or necessary for collective bargaining.

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3571. UNLAWFUL PRACTICES: EMPLOYER

It shall be unlawful for the higher education employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to engage in meeting and conferring with an exclusive representative . . .

An evidentiary hearing was scheduled for March 14. 1986. On that date, the parties agreed that most, if not all, of the facts were not in dispute, and that a decision could be rendered from a stipulated record.

On April 14. 1986. after giving the parties an opportunity to submit a stipulated record, the undersigned issued an Order Re: Stipulated Record, listing the complete record, including stipulations of facts.

The Charging Party filed a Motion to Augment the Stipulated Record, to include an exhibit, on about May 20. 1986. Concurrently, it requested the exhibit's (Charging Party Exh. 9), admission into evidence. The Motions to Augment and to admit the document are hereby granted.[2]

Post-hearing briefs, submitted by both parties, were received by the Los Angeles Public Employment Relations Board on May 28 and 29, 1986. The matter was then submitted for proposed decision.

## II. FACTS

The CFA is an employee organization within the meaning of Government Code section 3562(g) and is the exclusive representative of a unit of faculty employees throughout the California State University system. Respondent is an employer within the meaning of Government Code section 3562(h).

During the period of November 14, 1985 to the date of the issuance of the Complaint in this case. Respondent and Charging

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2Respondent did not oppose the Motions.

Party were engaged in meeting and conferring pursuant to Government Code section 3570. Prior to that time, the CFA and CSU had presented initial bargaining proposals on September 17 and October 28. 1985, respectively.

In preparation for the meeting and conferring process, CFA, by letter dated October 8. 1985, requested that CSU provide the Union with, inter alia, the following information:

> All data, reports, correspondence, and documents received from, and sent to, the so-called twenty (20) comparative institutions utilized by the California Post-Secondary Education Commission (CPEC) which the California State University solicited and obtained for preparation and utilization in the current budget cycle for fiscal year 1986-87.

By letter dated November 5, 1985. CSU responded to the request and refused to turn over raw survey data received from the 20 comparative institutions. Its stated reason for not complying with the request for the raw data was that it (CSU) had pledged to each of the institutions that the data would be treated with strict confidentiality.

On about January 8, 1986. after PERB's issuance of a Complaint in this case, and as a result of informal settlement negotiations, the CSU agreed to provide uncorrelated raw data, omitting identification of the particular institutions.

A. The Salary Survey

The California Legislature created the California Postsecondary Education Commission (CPEC) in part to assure "effective utilization of public Postsecondary education

resources." Education Code section 66900. Recommendations of CPEC are given "primary consideration in developing state policy and funding for Postsecondary education." Ibid.

In order to enable the Legislature to make annual budgetary determinations, specifically those related to faculty salaries and fringe benefits for California institutions of higher education, it (the Legislature) passed a resolution (Senate Concurrent Resolution No. 51 - Relative to academic salaries and welfare benefits) in 1965. charging the CSU with partial responsibility for submitting to the Governor and the Legislature an annual faculty salary and welfare benefits report. Pursuant to the Resolution, the CSU must submit to CPEC data on faculty salaries and the cost of fringe benefits for its own institution and for a group of comparison colleges and universities.

On the basis of these data, CPEC develops estimates of the percentage changes in salaries and the cost of fringe benefits required to attain parity with the comparison groups in the following fiscal year. A report, with recommendations, is submitted by CPEC to the Governor and the Legislature by January 1 of each year. CPEC's report does not contain the raw data collected by CSU.

At about the same time that the CSU conducts the salary survey, its trustees present their proposed budget for the fiscal year. Based in part on the data from the CPEC report and the CSU Trustees' proposed budget, the Governor prepares a

proposed State budget.

Based in part on this report, the Legislature, through its deliberative process, passes its Budget Act in which it allocates to CSU monies earmarked specifically for, inter alia, faculty salary increases. For example, the Budget Act of June 28, 1985 provided $9.9 million for an average 3.1 percent faculty salary increase effective January l. 1986 (Charging Party Exhibit 2).

Collective bargaining negotiations between CSU and CFA proceed concurrently with the budget process and may continue thereafter. The parties are not legally bound to agree on a salary figure equal to the amount appropriated in the Budget Act during June of each year. However, if the negotiated salaries exceed the amounts appropriated in the Budget Act, the CSU must take further affirmative steps to seek an additional appropriation from the Legislature.

In performing its survey, CSU directly contacts each of the 20 comparative institutions and solicits written responses on a standard form which breaks down total faculty compensation by rank. The names of individual professors and the identities of individuals are not requested nor given. The data requested is in the nature of either average salary or total salary outlay by the University broken down by rank. (See Charging Party Exhibit 9.)

When soliciting the salary data. CSU typically sends out a letter containing the following closing statement:

> In closing. I want to thank you very much for your assistance with our annual survey; I also want to reiterate the assurance we made last year that any salary information you send will be treated as confidential.

In addition to the ministerial function of gathering the raw salary data, CSU is involved in making recommendations to CPEC on the methodology used by CPEC to arrive at its final salary report to the Legislature and the Governor. In September of 1984, for example, the CSU urged changes in the survey methodology, recommending that the methodology be adjusted to reflect: (1) that California's economic conditions vary significantly from the rest of the country; (2) the need to revise selection of the 20 comparative institutions; and (3) the impact of the salary study on the collective bargaining process in determining salaries for CSU faculty.[3]

B. The Survey's Relevance to Bargaining

The parties are in disagreement over the question of whether the raw data (correlated by institution) is relevant and/or necessary for the collective bargaining process. CSU arrives at the conclusion that such is not relevant or necessary principally by relying upon a statement made in the declaration of Jacob Samit, Assistant vice chancellor of employee relations. Specifically, Samit asserts that, in his role at the negotiations table on behalf of CSU. neither he nor

[3]In conformity with these recommendations. CPEC implemented revisions in the methodology and incorporated significant changes in its 1985-86 report.

his colleagues have used the raw salary data from the 20 comparative institutions, nor the data in the CPEC report. He concludes that the statistics have never played a role in CSU's negotiations with CFA, and that he has never seen the data.

By contrast, the Charging Party draws attention to CSU's own documents which indicate that CSU has used the survey results to justify its bargaining position during past negotiations. During the parties' 1984 wage reopener negotiations. CFA and CSU negotiated to impasse over a salary increase and proceeded through HEERA's impasse procedures and into the factfinding process. During the factfinding procedure. Jacob Samit. on behalf of CSU. submitted a multi-page document purportedly to justify its proposal for a 9% salary increase. The relevant portion of this document reads:

> Criteria for CSU Position
>
> Comparative Standards:
>
> Ninety percent of the twenty CPEC comparison institutions provided salary increases less than the 9% adjustment offered by the CSU. (Exhibit 6-6).

The exhibit referenced in the above document was an internal CSU memorandum from the CSU personnel analyst who administers the salary survey to Caesar Naples, vice chancellor for faculty and staff Relations. The exhibit contains selected correlated data (identified by institution) from the 1984-85 salary survey, setting forth the percentage salary increase in 1984-85

at each of the 20 comparative institutions. (See Charging Party Exhibit 5.)

In viewing Jacob Samit's declaration referenced above, together with the document (CP. Exh. 5) that he submitted during a previous round of negotiations, it appears that, although CSU's negotiating team may not use the salary survey data directly to compose specific salary proposals, it is evident, and I find, that the salary survey is used, at minimum, to justify bargaining stances on its previous proposals.

In addition, there is evidence in the record that the vice chancellor for faculty and staff Relations acknowledged the relationship between the survey and collective bargaining between CFA and CSU. In his letter of September 25. 1984 to Patrick Callan of CPEC, Caesar Naples wrote, in reference to the annual survey:

> We need to be aware of the impact of this study on the collective bargaining process in determining salaries for our faculty. In an ideal world, we would have complete congruence between the results of the salary study, the appropriation from the Governor and the Legislature and the salaries bargained at the table. Unfortunately, this ideal world is beyond our control.
>
> It is imperative that we understand the potential problems raised by a salary study that could on the one hand raise the expectations of the faculty beyond the ability of the State to justify the funds, or on the other hand could provide seeming justification for too low an allocation from the State. In the past, the Trustees and the Legislature have, when necessary.

> ignored the results of the salary study when they deemed such action appropriate. This is more difficult to do in the face of the negotiating process which has an impasse resolution procedure calling for fact-finding. The CPEC report is certain to be an important piece of evidence to be used to undermine a legislative appropriation.

In light of the above, Samit's conclusion of the ultimate fact that the salary survey data has never played a role in the negotiations process must be rejected.

Aside from the survey's role at the negotiations table itself, there is evidence that CSU has referenced its role in the survey process in communicating its views to the bargaining unit as a whole. For example, it has used official CSU publications to discuss the survey in connection with its (CSU's) efforts to secure wage equity, while disapproving of CFA's failure to play an effective role in CPEC's process of revising the list of comparative institutions. In similar fashion, it has explained the timing of its salary proposals by referring to the status of the salary and budget-setting process, of which the survey is a part.

In a declaration submitted as a part of the record, Paul Worthman, CFA's assistant manager, asserted that CFA's ability to influence faculty salaries - given the role of the survey data in the legislative budget process, in CSU's own budget submission process, and at the collective bargaining table - is a function of its ability to gain access to. analyze, interpret, and present the raw comparative salary survey data

in a manner that would demonstrate alternative conclusions to those reached by the CSU and endorsed by CPEC. He added that, in order to negotiate meaningfully with CSU. the CFA must perform its own analysis of the data in order to, inter alia, make its bargaining proposals, propose the addition or deletion of workload factors in the survey's computations, propose changes in the survey methodology, and verify the source and accuracy of the data that plays such a dominant role in the ultimate salary and fringe benefit budget proposal made by the CSU and in the budget allocation made by the Legislature and the Governor. Without access to the data that is presented to CPEC. the Governor and the Legislature for their state budget deliberations, Worthman contends, the CFA will effectively have no role whatsoever in the process of determining the level of faculty salaries and fringe benefits, and thus no ability to impact wages during collective bargaining.

## III. DISCUSSION

Section 3570 of the HEERA imposes a duty upon higher education employers to meet and confer with its employees' exclusive representatives on all matters within the scope of representation. This duty is analogous to the duty to bargain imposed upon public school employers under the Educational Employment Relations Act and upon private sector employers by the National Labor Relations Act.[4] Intertwined with that

[4]The Educational Employment Relations Act is codified at

statutory obligation is the duty on the part of the employer to supply the employee organization, upon request, with sufficient information to enable it to understand and intelligently discuss the issues raised in bargaining. Morris, The Developing Labor Law. BNA. 1971. at pp. 309—310. This duty is based on the premise that, without such information, employee organizations would be unable to properly perform their duties as bargaining agents and. therefore, no bargaining could take place. Ibid. An employer's refusal to supply information is as much a violation of the duty to bargain as if it had failed to meet and confer with the exclusive representative in good faith. Ibid.

The exclusive representative is entitled to all information that is necessary and relevant to collective bargaining. Stockton Unified School District (1980) PERB Decision No. 143. The refusal to furnish requested information meeting these standards is, in itself, an unfair practice, and may also support an independent finding of surface bargaining. K-Mart Corp. v. NLRB (9th Cir. 1980) 105 LRRM 2431.

> The key inquiry is relevance. "If the information requested has no relevance to any collective bargaining need, a refusal to furnish it could not be an unfair labor practice." Ibid, citing San Diego Newspaper Guild, etc. v. NLRB. 548 F.2d 863. 94 LRRM 2923 (9th Cir. 1977).

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California Government Code section 3540, et seq. The National Labor Relations Act is codified at 29 U.S.C, section 151 et seq.

Relevance must be determined by a standard more liberal than that normally applied in hearings, more akin to a discovery-type standard. Ibid, citing San Diego Newspaper Guild, supra. Information is not made irrelevant simply because a union is able to negotiate a contract without the requested data. NLRB v. Fitzgerald Mills Corp.. 313 F.2d 260, 52 LRRM 2174 (2d Cir. 1963). enforcing 133 NLRB 877. 48 LRRM 1745 (1961). cert, denied. 375 U.S. 834. 54 LRRM 2312 (1963).

It is well settled that wage and related data concerning bargaining unit employees is presumptively relevant and must be provided upon request. Salem Village I. Inc. (1981) 256 NLRB No. 141, 107 LRRM 1364. A union is not required to show the precise relevance of such information unless the employer has submitted evidence sufficient to rebut the presumption of relevance. Salem Village I. Inc.. supra; Grand Islander Health Care Center. Inc. (1981) 256 NLRB No. 189, 107 LRRM 1447; and Stockton USD, supra, at p. 13. If the information is of potential or probable relevance, the party seeking production of the data need not make a showing that the information is clearly dispositive of the negotiations issues between the parties. Salem Village I. Inc.. supra; Curtis-Wright Corporation. 347 F.2d at 69. 59 LRRM 2433 (3d. Cir. 1965); and Western Massachusetts Electric Company (1977) 228 NLRB 607. 95 LRRM 1605.

As noted by Charging Party in its brief, the fact that the wage data requested comes from outside the bargaining unit does not preclude its production so long as the union can make a showing of relevance. Winges Company. Inc. (1982) 263 NLRB No. 21; General Electric Co. v. NLRB. 466 F.2d 1177. 81 LRRM 2303 (6th Cir. 1972); Du Pont de Nemours (1985) 276 NLRB No. 34. 120 LRRM 1108; K-Mart Corp. v. NLRB, supra; NLRB v. Pacific Grinding Wheel Co. 572 F.2d 1343. 98 LRRM 2246 (9th Cir. 1978); and NLRB v. Western Electric. Inc. 559 F.2d 1131. 95 LRRM 3230 (8th Cir. 1977) citing San Diego Newspaper Guild. Local 95 V. NLRB. 548 F.2d 863, 867. 94 LRRM 2923. 2926 (9th Cir. 1977). In both Winges Company. Inc.. supra, and General Electric Co.. supra, the requested information deemed to be relevant to collective bargaining by the NLRB and 9th circuit Court of Appeals, respectively, were surveys of wages paid by area employers, the survey having been conducted by the respondent employer in order to find out what competitor employers were paying.

In light of the relevant legal precedents cited above, the facts of this case warrant a finding that the correlated raw survey data, obtained by CSU from other employers, is relevant and necessary to the collective bargaining process, and is relevant and necessary to CFA's ability to effectively represent the unit in determining their wages. The facts that CSU has supported its post-bargaining proposals by citing specific examples taken from the survey, that it has

acknowledged that the survey would have an impact on collective bargaining, and that it has used its involvement in the survey process (along with CPEC) to communicate with unit employees in order to justify its bargaining strategy, evince a significant connection between the survey data, the negotiations process, and the ultimate wages paid to the unit.

Relevance has also been shown independent of whether the CSU bargaining team used the raw correlated data. Although there is no guarantee that the survey results and CPEC's report will determine the exact amount of wages received by unit employees, it is clear that the survey data plays a significant role in the wage-setting process. Although CSU is empowered to agree, during collective bargaining, to a salary figure that results in expenditures in excess of the amount budgeted by the Governor and the Legislature, it must seek an additional appropriation through the legislative mechanisms in order to consummate that deal.

Possession of the survey data during the time the wage-setting process involving the Legislature is under way allows CFA to become meaningfully involved and enables it to be in a position to effectively represent its members on areas central to its mission as an employee organization. Possession of the data at the bargaining table facilitates its ability to verify CSU's representations and proposals and to explore and present alternatives based on the same data CSU uses to justify its position. After verifying the data and comparing it to

other available information. CFA would thus be able to investigate specific factors -- such as geographic location, workload adjustments, medical or law school programs — that may or may not be reflected in the data supplied by a particular school.

In essence, the uncorrelated data supplied by CSU, omitting the names of the corresponding institutions, is not sufficient to meet CFA's need for the data. In Winges Company. Inc., supra, the union requested from the company, a survey of wages paid by area employers in order to verify the assertion that its salary offers were justified by its need to remain competitive. The union was provided with the numerical results of the survey not matched up with the names of the employers which were identified only by letters of the alphabet, rather than the actual name of the employer. The union testified that the information in that form was of no value. the NLRB agreed and ordered production, noting that the union was entitled to the correlated information in order to check its accuracy.

In reaching the above conclusion, the NLRB relied in part on General Electric Co., supra, a case also cited by the CFA in support of its case. In General Electric, the 6th Circuit Court of Appeal rejected an employer's contention that it was not required to turn over its survey of wages paid by competitor employers on the grounds, inter alia, that the information was not relevant or necessary to bargaining. The employer had supplied a chart that it had compiled with results of its survey, but failed to link the individual companies

surveyed with the wage rates and classifications. The employer refused to turn over the correlated data, and the Court affirmed the NLRB's finding of a violation, noting:

> We are not so naive as to believe that merely because General Electric's negotiators were careful not to mention the wage surveys in discussions with the Union they were thereby rendered irrelevant to the Company's wage scale . . . or that the Company did not rely upon them in assessing its wage rates . . . Without the correlated data in those cases, the Union could not meaningfully analyze and discuss the results of the Company's surveys. Generally, the Union could not determine whether the jobs, equipment, machines and types of work included in the surveys were comparable to those at General Electric's plants . . . [S]ince the particular employers were not linked to the wage rates of the jobs surveyed, the Union could not determine whether the reported rates were accurate, whether the rates in the summary (a chart giving the high, medium and low rate for each job surveyed) included incentive bonuses, and which of the employers reported in which categories. (Id., 81 LRRM 2308.)

In light of the above considerations, it must be determined that the correlated data requested by CFA is relevant and necessary to its proper performance of its statutory responsibilities.

A. Confidentiality

The CSU has asserted that the correlated survey data is not subject to disclosure to CFA because, prior to obtaining the information, CSU made a promise of confidentiality. The only direct evidence offered in support of its claim is a copy of a letter sent by CSU to survey participants containing typical

language that the salary information would be treated as confidential. It is not clear from the letter whether the institutions' identities, as opposed to the data itself, would be kept confidential. As noted above, the contents of the survey have already been provided to the CFA. For purposes of determining whether the data is privileged from disclosure on the basis of confidentiality, it will be assumed that the promise of confidentiality included the identities of the surveyed employers.

Although Respondent concludes that revealing the identities of the institutions may cause them to refuse to participate in future surveys, there is no evidence to support that conclusion. In his declaration (see Resp. Exh. A). Jacob Samit. without a factual basis, similarly concludes that

> I am also informed that to disclose the data in its raw form would breach that promise [of confidentiality] and would severely compromise the prospects of obtaining such data in the future.

There is no direct evidence in the record from which it can be determined that disclosure of the correlated data would undermine CSU's efforts in conducting its annual survey. Nor is there evidence that, as a practical matter. CSU must make the promise in order to secure the data.

Similarly, there is no evidence that CSU is legally required or advised to make a promise of confidentiality. Moreover, no evidence was offered to indicate that any participating institution requested that its data be kept

confidential.[5] CSU's pledge of confidentiality was voluntarily given.

The Charging Party correctly points out that, where a union has established the relevance and need for particular information, the burden of proof is on the party holding the information to show that disclosure would compromise the right of privacy. Modesto City Schools and High School District (1985) PERB Decision No. 479. citing Minnesota Mining and Manufacturing Company (1982) 261 NLRB No. 2 [109 LRRM 1345]; Press Democrat Publishing Company v. NLRB. 629 F.2d 1320 [105 LRRM 3046] (9th Cir. 1980); Johnson v. Winter (1982) 127 Cal.App.3d 435. The CSU has failed to carry its burden both with regard to its factual showing, as noted above, and with regard to its legal argument.

The Respondent relies primarily upon Detroit Edison Co. v. NLRB (1979) 440 U.S. 301 [100 LRRM 2728] to support its claim of confidentiality. In that case, the Supreme Court ruled that an employer was not required to supply a union with copies of information about employee aptitude tests in order to prepare for arbitration of a grievance.

The facts in Detroit Edison are distinguishable from those in this case. In Detroit Edison, the information requested

[5]It is noted that the data supplied by each institution is. itself, a summary of salary expenditures by category, and is not identified by employee, nor broken down into individual salaries. They are gross figures. See Charging Party Exhibit 9.

included actual employee answer sheets and the scores linked with the names of each individual. The aptitude tests had been used by the employer to screen job applicants. The employer argued that the validity of the test depended on its secrecy and that a breach of a promise of confidentiality to the examinees would cause potential embarrassment and harassment of some of the examinees.[6]

Relying on these facts, the Court held that the sensitive nature of the test information need not be disclosed, stating:

> Under these circumstances, any possible impairment of the function of the Union in processing the grievances of employees is more than justified by the interests served in conditioning the disclosure of the test scores upon the consent of the very employees whose grievance is being processed. The burden on the Union in this instance is minimal. The Company's interest in preserving employee confidence in the testing program is well founded. (Id, 100 LRRM 2735.)

In the case at hand, the privacy interests of individual employees are not implicated. The information CFA seeks does not, and cannot possibly, reveal data about individual employees.

The conclusion that the survey data is not protected from disclosure is supported by the Courts and the NLRB. In General Electric, supra, the employer made an identical claim of

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[6]The Company had presented evidence that disclosure of individual scores had in the past resulted in the harassment of some lower-scoring examinees who had, as a result, left the company. Id., 100 LRRM 2735.

confidentiality in connection with its refusal to provide salary survey data correlated by employer. the Court rejected the claim, explaining that:

> Confidentiality of the survey data cannot stand as a defense to requiring General Electric to produce the correlated data. General Electric voluntarily agreed with the employers it surveyed that the correlated data would not be disclosed to third parties. Then, in the proceedings before the Board, the Company contended that such agreements are sufficient to vitiate its responsibilities under the Act. We disagree. It is well established that "the alleged confidentiality of relevant economic data needed for informed bargaining is no defense." N.L.R.B, v. Arkansas Rice Growers ASSOC. 400 F.2d 565. 567. 69 LRRM 2119 (8th Cir. 1968); accord N.L.R.B, v. Frontier Homes Corp.. 371 F.2d 974. 979. 64 LRRM 2320 (8th Cir. 1967); Curtiss-Wright Corp. v. N.L.R.B., supra, 347 F.2d at 71, 59 LRRM 2433.
>
> Employers cannot be allowed to collect wage information on a pledge of confidentiality to parties outside the bargaining unit under these circumstances, then turn around and deny the Union the use of that data based on its voluntary pledge. General Electric makes much of its argument that if we require the names of the area employers to be correlated with the wage data, they would refuse to supply such information to General Electric in the future. The simple answer to that is that there are other ways to obtain the same information without violating the employers' confidence. General Electric and the Union could agree upon a neutral third party to take the survey whereupon each would be given the same quantity of wage data and the secrecy of the individual employers' data would be maintained. This would place the parties on equal footing at the bargaining table, without depriving them of relevant wage information. Id... 81 LRRM 2309.

Similarly, in Winges Company, Inc., supra, the employer offered testimony that it had refused to supply its wage survey to the union because it was able to get the information only by promising its competitors that the results would be held confidential. The Board questioned the Respondent's claim of confidentiality and held that the union was entitled to the information in order to check its accuracy inasmuch as it was related to ongoing negotiations over wages.

## IV. CONCLUSION

Based upon the foregoing, it is determined that the correlated raw salary survey information CFA requested from CSU on about October 8, 1985 is relevant and necessary for collective bargaining between the parties and for fulfilling CFA's statutory obligation to represent unit employees. By refusing to supply the information. CSU has breached its duty to meet and confer with the exclusive representative (CFA), thus violating HEERA section 3571(c) and, derivatively. 3571(b) and 3571(a).

## V. REMEDY

In cases where there has been a finding of a violation of the duty to supply requested information, the appropriate remedy is to order the offending party to cease and desist from refusing to supply the information and to order it to produce such information upon request. Stockton Unified School District (1980) PERB Decision No. 143; Modesto City Schools and High school District (1985) PERB Decision No. 479. Hence. CSU

will be ordered to cease and desist from failing to provide CFA with requested, raw, correlated salary data obtained by CSU during its annual survey described above. CSU is ordered to additionally provide CFA with the names of the institutions that correspond to each portion of the incomplete survey data identified in Charging Party's Exhibit 9.

It is also appropriate that the Respondent be ordered to post a notice incorporating the terms of this order. The notice should be subscribed by an authorized agent of the Employer indicating that it will comply with the terms thereof. The notice shall not be reduced in size, defaced, altered or covered by any material. Posting such a notice will provide employees with notice that the CSU has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the Act that employees be informed of the resolution of the controversy and will announce the Repondent's readiness to comply with the ordered remedy. See Placerville Union School District (1978) PERB Decision No. 69; Pandol and Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587; NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

## VI. PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to Government Code section 3563.3, it is hereby ORDERED that the Respondent,

its agents and representatives shall:

A. CEASE AND DESIST FROM:

(1) Failing and refusing to provide the California Faculty Association with correlated raw salary data obtained by the California State University from higher educational institutions pursuant to its annual survey.

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

(1) Within ten 10 workdays from service of the final decision in this matter, furnish the California Faculty Association with the name of the institution that corresponds to each of the documents of the incomplete salary survey identified in the record of this case as Charging Party Exhibit 9.

(2) Sign and post copies of the attached Notice marked "Appendix" in conspicuous places where notices to employees are customarily placed at its headquarters office and at each of its campuses for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that the notice is not reduced in size, altered, defaced or covered by any other material.

(3) Upon issuance of a final decision, make written notification of the actions taken to comply with this orders to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with his instructions.

Pursuant to California Administrative Code, title 8. part III. section 32305. this Proposed Decision and Order shall become final on August 18, 1986, unless a party files a timely statement of exceptions. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, part III. section 32300. Such statement of exceptions and supporting brief must be actually received by the Public Employment Relations Board itself at the headquarters office in Sacramento before the close of business (5:00 p.m.) on August 18. 1986, or sent by telegraph or certified or Express United States mail, postmarked not later than the last day for filing in order to be timely filed. See California Administrative Code, title 8. part III, section 32135. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall be filed with the Board itself. See California Administrative Code, title 8, part III. section 32300 and 32305.

Dated: July 29, 1986

MANUEL M. MELGOZA
Administrative Law Judge