STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BUTTE COUNTY PART-TIME FACULTY ASSOCIATION/COMMUNICATION WORKERS OF AMERICA,	)	
Charging Party,	)	Case No. S-CE-1111
v.	)	PERB Decision No. 743
BUTTE COMMUNITY COLLEGE DISTRICT,	)	June 19, 1939
Respondent.	)	

Appearances: Charles R. Strong, Representative, for Butte County Part-Time Faculty Association/Communication Workers of America; Brown and Conradi by William E. Brown, Attorney, for Butte Community College District.

Before Hesse, Chairperson; Craib and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on an exception filed by the Butte County Part-Time Faculty Association/Communication Workers of America (PTFA or Association) to the proposed decision (attached hereto) of an administrative law judge (ALJ). The ALJ dismissed the Association's unfair practice charge against the Butte County Community College District (District). At issue is whether the Association proved that the District was aware of the Association's nonexclusive representational status at the time the District unilaterally changed the method by which it calculated part-time instructors' "flex-time" compensation.

FACTUAL SUMMARY

There is virtually no dispute over the facts presented by the ALJ in his proposed decision; rather, the Association excepts to the conclusion reached from those facts. Therefore, we adopt the ALJ's factual summary as our own. For the convenience of this decision, the pertinent facts are listed below.

The part-time faculty at the District began organizing activities during fall 1985. Part-time faculty members, Al Kay and Virginia Fast, met with the District administrators on a number of occasions during 1986 on behalf of the part-time faculty. Issues discussed included the District's parking and pay period policies. The District was represented at these meetings by District Vice President Ernest Matlock. Matlock was aware during these meetings that Kay and Fast were representing the interests of part-time faculty (though not necessarily representing PTFA as an employee organization—the key issue in this case).

The circumstances giving rise to this case involve the District's restructuring of what is called its "flex-time" policy.[1] This policy was utilized in computing the part-time faculty's compensation. The method of computation changed in spring 1987. The alternative method of computation was quite complicated and was not understood by the part-time faculty. When the part-time faculty received their contracts for spring

[1]A complete review of the mechanics of this policy is unnecessary for purposes of this discussion. A thorough analysis is contained in the proposed decision.

1987, many noticed that their "flex-time" contracts were either reduced or nonexistent. Complaints to the District, through department heads and Matlock's office, yielded mixed responses. Testimony indicated that some faculty members were told that a mistake had been made and it would be corrected, and others were told that the mistake would not be corrected. Finally, in early March, Fast requested a meeting with Matlock to discuss the part-time faculty's concern over the "flex-time" problem. The meeting took place March 24, 1987. Testimony differs as to Matlock's explanation of the change in policy. Fast contended that Matlock stated that a mistake had been made, but it would not be corrected. Matlock asserted that he fully explained the reasons for the change. The ALJ credited Matlock and found that he had explained the new policy to those attending the meeting. Matlock refused to reconsider the decision to reformulate the computation of "flex-time."

On July 1, 1987, the Association sent the District a letter formally requesting recognition as a nonexclusive representative of part-time faculty. The letter included the names and addresses of the Association's officers and was sent on PTFA stationery.

On July 13, 1987, the Association filed its unfair practice charge alleging that the District violated section 3543.5,

---

[2]Part-time faculty normally received both a regular contract and a "flex-time" contract.

subdivisions (a) and (b)[3] of the Educational Employment Relations Act (EERA)[4] by failing to provide the Association with notice and an opportunity to meet and consult with the District prior to changing the "flex-time" policy.[5] The District denied any violation of EERA. A hearing on the unfair practice charge was held on November 30 and December 1, 1987.

The ALJ determined that, even though employers subject to the jurisdiction of EERA must notify and meet with nonexclusive representatives, the District did not violate its obligation because it was not on notice, at the time of its decision to

---

[3]Although the Association's charge alleged a violation of section 3543.5, subdivisions (a), (b), and (d), PERB issued a complaint solely for a violation of subdivisions (a) and (b).

[4]The Educational Employment Relations Act is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references are to the Government Code.

Section 3543.5 provides, in pertinent part:

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

[5]As discussed at length in the proposed decision, a public school employer has a duty to meet and discuss with a nonexclusive representative, upon request, any proposed changes in matters fundamental to the employment relationship. (Los Angeles Unified School District (1983) PERB Decision No. 285.)

change "flex-time" policy, that the PTFA was a nonexclusive representative of the part-time faculty. We agree and write only to address an area not covered in the proposed decision.[6]

The Association excepts to the ALJ's determination. It contends that because the ALJ recognized that Kay and Fast met with Matlock to discuss part-time faculty concerns, the District was on notice of the existence of the PTFA as a nonexclusive representative. Its exception begs the ultimate question in the case. Did the Association prove, by a preponderance of the evidence, that Matlock, and hence, the District, knew that Kay and Fast were representatives of the PTFA when he met with them during fall 1986? We hold that it did not.

DISCUSSION

In order to establish a violation of section 3543.5, subdivisions (a) and (b), the Association had the burden of proving that the District failed to give it notice and a reasonable opportunity to meet and consult. PERB Regulation 32178[7] provides that, in unfair practice complaints, "[t]he charging party shall prove the complaint by a preponderance of the evidence in order to prevail." It was, therefore, incumbent upon the Association to introduce evidence that the District knew that PTFA represented the part-time faculty, at the time it

---

[6]To the extent that it is consistent with this discussion, the proposed decision is adopted as the decision of the Board itself.

[7]PERB Regulations are codified at California Administrative Code, title 8, section 31001 et seq.

decided to change its "flex-time" policy. The District could not be required to meet and consult with the Association if it were not on either actual or constructive notice that the Association represented part-time faculty.

The facts surrounding the existence of PTFA as an organization at the time of the change in the "flex-time" policy are sketchy at best. The testimony of Kay and Fast indicates that they met with Matlock on a number of occasions to discuss matters that concerned part-time faculty. Noticeably absent is any testimony that Matlock was informed on these occasions that Kay and Fast were representatives of PTFA. Nor were any documents introduced that indicated that PTFA, as a organization, existed during 1986 when Kay and Fast met with Matlock, or when the decision to change the "flex-time" policy was made.

Matlock testified that, while he was aware that the part-time faculty were organizing as early as spring 1986, neither Kay nor Fast indicated that they were acting in a representational capacity for PTFA until the official notice of July 1, 1987. He did, however, recognize that at the meetings, Kay and Fast were requesting relief for all of the part-time faculty. Matlock also testified that a number of people, in addition to Kay and Fast, came to him "representing or wanting to represent part-timers."

We find that the Association failed to present sufficient evidence to meet its burden. The facts before the Board indicate only that Kay and Fast met with the District about issues of concern to the part-time faculty and that the part-time faculty

were in the process of organizing. The dearth of facts regarding the status of PTFA and the testimony of Matlock are fatal to the Association's charge.

ORDER

In accordance with the discussion above, the complaint in Case No. S-CE-1111 is hereby DISMISSED.

Chairperson Hesse and Member Camilli joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

BUTTE COUNTY PART-TIME FACULTY ASSOCIATION/COMMUNICATION WORKERS OF AMERICA,	)	
Charging Party,	)	Unfair Practice Case No. S-CE-1111
v.	)	
BUTTE COMMUNITY COLLEGE DISTRICT,	)	PROPOSED DECISION (8/10/88)
Respondent.	)	

Appearances: Charles Strong, Communication Workers of America, For Butte County Part-time Faculty Association/Communication Workers of America; Brown and Conradi by William E. Brown, Butte Community College District

William P. Smith, Administrative Law Judge.

PROCEDURAL HISTORY

On July 13, 1987, the Butte County Part-Time Faculty Association/Communication Workers of America (hereafter Charging Party, BCPTFA or Association) filed an unfair practice charge with the Public Employment Relations Board (hereafter Board or PERB) against the Butte Community College District (hereafter Respondent, District or College) alleging violations of sections 3543.5(a), (b) and (d) of the Educational Employment Relations Act (EERA or Act).[1] On September 15, 1987, the General Counsel of the PERB issued a complaint

[1]The EERA commences at section 3540 et seq. of the Government Code.

against the College charging a violation of Government Code section 3543.5(b) and a derivative violation of Government Code section 3543.5(a)[2]. The Respondent's answer, filed on November 18, 1987, denied any violation of the EERA. An informal conference was held and the matter was not resolved. A formal hearing was held on November 30 and December 1, 1987, before the undersigned. Post-hearing briefs were filed and the matter was submitted on February 9, 1988.

INTRODUCTION

This unfair practice charge grows out of a change of policy in the compensation paid to specified part-time teachers. The formula on which the compensation per course was calculated was changed without prior notice to the Charging Party. There was

---

[2]All section references, unless otherwise indicated, are to the Government Code. Sections 3543.5(a) and (b) state:

> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.

no exclusive representative. At the time, the Association was organizing to obtain such status.

Respondent states that its obligation is only to meet and discuss upon request with known employee organizations. Further, it insists that notice of the change was provided to each individual part-time employee via (1) the handbook, (2) individual contract of employment, and (3) individual flextime agreements.

The policy change was made in December, 1986, effective for the 1987 spring semester, which began on January 20, 1987. No request to discuss the matter was received by the College from anyone until early March 1987, which was in mid-semester. The Respondent was not informed there was an employee organization representing the part-time instructors until July 1987.

In dispute is at what time an employer is under an obligation to give "employee organization" status to a group of employees which has been discussing terms and conditions of employment.

FACTS

A. Jurisdiction

The Respondent is a public school employer and the Charging Party, since July 1987, has been an employee organization, as defined by the Act. Charging Party's status prior to July 1987 is at issue.

B. Organizational and Representational Activities - Background

Organizing activities were conducted among the part-time faculty at the College at least since November 1985. Al Kay, a veteran part-time instructor, organized meetings of the part-time faculty at that time. Instructors who attended such meetings discussed various concerns of the part-time faculty about their conditions of employment. A proposed change in parking arrangements was one of the most immediate concerns.

Kay, speaking for the part-time faculty concerns on this subject, met with administrative representatives of the College for the first time in the spring of 1986. No formal organization existed, but Kay claimed to be the spokesperson of the part-time faculty. He, together with others, specifically Virginia Fast, also a part-time instructor, simply brought to the attention of the administration specific concerns of the part-time faculty regarding parking conditions. During 1986 and 1987 several other meetings occurred with Kay and others and representatives of the College. At these meetings various issues of concern to the part-time faculty members were discussed. One subject, for example, was a proposal that the District change the date that the first paychecks of the semester be available.

They made no formal request of the College, prior to July 1, 1987, that they be recognized as either an employee

organization within the meaning of the EERA or as agents or representatives of the BCPTFA or the Communication Workers of America.

In the fall of 1986 Kay and Fast requested and received a list of the part-time instructors from Mr. Ernest Matlock, a College vice president. They received a second list in the spring of 1987. They used the College mail distribution system to contact faculty in both 1986 and 1987. They collected employee signature authorization cards on campus during the fall semester of 1986 and spring of 1987.

It is found that Kay and Fast had the intent of becoming an employee organization and representing employees on employment matters and began to take actions manifesting this intent at least as early as the fall of 1986.

C. District Knowledge of Activities

Matlock met with Kay and Fast, at their request, during the spring and fall of 1986 concerning parking spaces and the pay periods for part-timers. He understood they were seeking changes in the current College polices on both of these subjects not just for themselves, but for the part-time faculty as a whole. He also met with Kay and Fast, at their request, on March 24, 1987 regarding flextime policy. He supplied them with a copy of the policy on flextime.

It is found that the personal knowledge of Vice President Matlock that Kay and Fast, on occasion in conjunction with others, were ad hoc spokespersons for certain part-time faculty regarding work related concerns, was imputed to the College. These concerns included: (1) the school's parking policies, since spring 1985, (2) the pay-period policies, since fall 1986 and (3) flextime policies, since March 24, 1987. There is no evidence the employer was aware of their use of the mail system and no evidence of any sort the employer was aware of their solicitation of authorization cards on campus.

It is found that the District met with Kay and Fast and others, starting in the spring of 1986, and discussed work related concerns whenever requested by them and provided appropriate and accurate information upon their request. The employer knew of various ad hoc representational activities of Kay and Fast on behalf of part-timers prior to the implementation of the policy change.

D. Flextime Policy (1985-1986)

The College finances its instructional programs with funding it receives from the State of California, school district taxes, contracts with other agencies, student fees and various other sources. For funding, as well as for other purposes, the types of courses offered are divided into three general categories. Each category has a different type of

attendance accounting.

Beginning in the fall of 1985, the College paid the part-time instructors on an hourly basis not only for their actual student contact hours but for a specified amount of extra hours each semester. These extra hours were called flextime and were for the purpose of such instructors' engaging in "instructional improvement" activities.[3]

The state funding allowed such payment of flextime but did so under a rather complicated formula that was based on variations in the actual number of class hours taught in a given semester.[4] In order to make its flextime policy understandable the College assigned one flex hour per semester for each semester unit taught. Therefore, a part-time instructor who taught a three-unit course for a semester received three flex or extra hours of payment if he/she engaged in "approved instructional improvement" activities during the semester.

To facilitate the instructors' planning for these activities the College publishes, in advance of the academic year, a booklet of meetings, seminars and workshops, attendance

---

[3]See California Administrative Code, Title 5, section 55720, et. seq.

[4]The number of class hours taught each semester fluctuates based on the manner in which holidays affect the school academic schedule.

at which may be used to meet this "instructional improvement" requirement. This flextime policy continued in effect for the Fall, 1985, Spring, 1986 and Fall, 1986 semesters.

E. Change in Flextime Policy (Spring Semester 1987)

Under the above described policy it was possible, under some calendar circumstances, for the College to pay to the part-time instructor more money that it received from the State. In order to avoid this result the College changed the flextime policy, effective with the Spring semester, 1987. Under the new policy flextime was distributed only to the extent that the payment of teaching hours plus flextime hours did not exceed the money received from the State for that course.

The Spring, 1987 flextime policy continued for that one semester only. The College returned to the 1985-86 policy beginning with the fall semester, 1987. The difficulty in explaining the new policy was one of the reasons cited for the return to the previous policy.

F. Notice of Modification of Flextime Computation

The College did not directly communicate to either the Association or to the instructors the fact that it had modified the amount of flextime to be assigned individual courses. Indeed, there is no evidence of when the association came into existence and claimed the right of representation, other than its letter to the College of July 1, 1987. The results of this

modification did appear in the individual 1987 spring semester contracts tendered by the College to each part-time instructor.

G. Contracts of Employment

The College employs both full-time and part-time instructors. Full-time instructors are paid on an annual salary basis. The part-time instructors are paid on an hourly basis and are employed pursuant to new individual contracts prepared and signed each semester. These individual contracts specify the total hours of employment, the rate of compensation per hour, and the course(s) to be taught. The contract also specifies the dates and hours of classroom instruction for each course(s) and the number of units of college credit assigned to each course. Each instructor is also assigned a specific number of flextime hours commensurate with his/her courseload, at his/her regular rate of pay.

H. Instructors' Receipt of Contracts for Spring. 87 Semester

1. Instructor Al Kay was tendered a contract by the College for the 1987 spring semester. This contract included no flextime for courses for which he had previously would have received flextime. Kay did not understand that the tendered contract reflected a modification of the flextime policy.

2. Instructor Virginia Fast received her 1987 spring semester contract in December of 1986 or January of 1987, she noticed that the flextime was less than she anticipated. Her

contract provided for only three hours of flextime for nine hours of coursework. When teaching the same courses the previous year she received nine hours of flextime. She assumed it was simply a mistake in the contract. The semester started on January 20. She brought the subject up when her division held a meeting on January 15. She called the contract to the attention of the chair of her department, who then sent it to the dean. She got a note back saying that it was a mistake but that was the way that the contract was going to be, that she would have to sign the contract in order to get paid.

Therefore, in early March 1987, Fast and Kay asked to meet with Matlock on the subject of flextime. Matlock met with them on March 24, 1987 and gave them a document that he used to explain the modification of the flextime policy as it related to the category of courses in question. Fast insisted that Matlock told her at that time that his staff had made a mistake in computing the hours of flextime when they wrote the contracts. However, it was too late and the errors were too widespread for him to correct the mistake. Matlock insists he gave Kay and Fast a correct description of the modification of the flextime policy and that he did not say that a mistake had been made in preparing the contracts. To the contrary, he said what he did say was, if any errors were found in any instructor's contracts, the College would correct them retroactively as it always had done in the past. Referring to

the document he used in the meeting, he credibly explained how he described the modification in the flextime policy to Kay and Fast. It is found that Matlock correctly described the new policy.

Fast did not understand the document when she received it and, at the time of the hearing, still didn't. She complained that it was a policy change and she hadn't been informed about it and that she had already performed the flextime. She turned in a complaint through College channels. It was returned with the answer that the College followed the policies and procedures in force at that time.

3. Instructor Inge Schmidt has been a part-time instructor at Butte College for the last two and one-half years. Her understanding of the flextime policy was that if she taught nine semester units, she would receive nine hours of flextime. If she taught one semester unit she would receive one unit of flextime. In the spring of 1987, she taught nine units. She had previously taught the same nine units and had received nine hours of flextime. She was not told prior to the spring semester of 1987 that she would not be earning the same flextime for teaching the same number of hours and units. When she received her contract for spring semester in December of 1986, she became aware a flextime contract was not attached.

Based on past practice she expected to receive two contracts. A contract for teaching and a separate contract for flextime. While they might have been separate contracts, she would receive them at the same time. She called the office of Tom O'Connor, the dean of the Evening College, and was told that there was no flextime provided for her spring schedule because " . . . all of the available hours are being taught, therefore there was no extra time for flextime or something . . . ." She didn't understand the new formula. This conversation occurred in January of 1987.

4. Instructor Paula Busch has been a part-time instructor at the College for four years. Her contract for the spring semester of 1987, showed ten hours of classroom teaching time. Ten hours of flextime was originally on the contract but was crossed out. She first raised the issue at her departmental meeting chaired by Jeff Nelson. Fred Allen, the associate dean of her teaching area, attempted to explain it to the group. After hearing Allen's explanation, she still didn't understand it.

5. Instructor Marjorie McMarion, a part-time instructor for eleven years at Butte College, teaches a basic nutrition course. For spring semester, 1987 she was paid for the same total number of hours as she had received payment for in 1985. the difference was that the hours during the spring semester, 1987, were all straight classroom teaching hours. When she taught the same course in 1985 under the prior policy, she

taught seven hours less and was assigned seven flextime hours.

I. Request for Recognition

By a letter dated July 1, 1987, to Matlock, the Charging Party informed the Respondent of its request for recognition as follows:

> Dear Mr. Mattlock:(sic)
>
> The Butte County Part-Time Faculty Association/Communications Workers of America requests recognition as an employee organization to represent part-time faculty at Butte College.
>
> Our representatives are Al Kay, Chair; and Virginia Fast, Co-Chair; and Don Brooks, President CWA Local 9414. Our mailing address is 1009 Sycamore Street; Chico, CA 95928. Our telephone number is 891-4543.

On August 11, 1987, the Charging Party sent Matlock a follow-up letter saying:

> Dear Mr. Mattlock:(sic)
>
> Today I talked with Mr. Terry Lindsay of the Public Employment Relations Board. Mr. Lindsay told me you were uncertain about my letter of July 1, 1987, requesting that you recognize us as an employee organization, and my follow-up letter of July 19, 1987.
>
> These requests for recognition were informal requests to assure us the right to meet and confer informally with you and other administrators at Butte and access to the privileges given all other campus organizations. We also wanted to make certain you know who our representatives were and how to contact our organization. The formality of the written request was for our records and yours. As you recall, we agreed on July 1, 1987 to meet and confer

> informally as we have before and and [sic] since that meeting. We appreciate your willingness to meet with our representatives.
>
> If we can assist you in any way, please do not hesitate to contact us.

ISSUE

Did the Respondent, when it failed to notify the Charging Party prior to the time it changed the flextime policy for its part-time employees, violate the Charging Party's right to represent its members? If it did, was this also a derivative violation of section 3543.5(a)?

CONCLUSIONS OF LAW AND DISCUSSION

A. Status of Nonexclusive Representative

EERA guarantees a nonexclusive representative certain statutory rights e.g., the right to represent its members, the right of reasonable access to school facilities, and the dues deduction.[5] In addition, the Board has held that, so long

---

[5]3543.1. RIGHTS OF EMPLOYEE ORGANIZATIONS

> (a) 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 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

as no exclusive representative exists a nonexclusive representative has the right to represent its members in grievance procedures. See Mt. Diablo Unified School District, et al. (1977) EERB Decision No. 44. Clovis Unified School District (1984) PERB Decision No. 389 and Santa Monica Community College District (1977) PERB Decision No. 103.

In Los Angeles Unified School District (1983) PERB Decision No. 285, the Board did not decide the full parameters of the nonexclusive representatives' rights but held that they did include the right to meet and discuss subjects that are as fundamental to the employment relationship as wages and fringe

---

> school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.
>
> (b) Employee organizations shall have the right of access at reasonable times to areas in which employees work, the right to use institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation, and the right to use institutional facilities at reasonable times for the purpose of meetings concerned with the exercise of the rights guaranteed by this chapter.
>
> (c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation

benefits.

The leading Board-precedent decision under the Ralph C. Dills Act,[6] the companion law to EERA, on the subject of the employer's duty to a nonexclusive representative is Professional Engineers in California Government (PECG) (1980) PERB Decision No. 118-S; section 3515.5 on which the Board relied is identical to section 3543.l(a) of EERA. In PECG, supra, the Board stated:

> We stress, however, that the obligation imposed on the state employer to meet with a nonexclusive representative is not the same as that imposed with regard to an exclusive representative. Thus, whereas the Governor and representatives of recognized or certified employee organizations "have the mutual obligation personally to meet and confer [in good faith] promptly upon request . . ." the Board finds that the obligation imposed by the statute on the state employer with respect to nonexclusive representatives

---

> when meeting and negotiating and for the processing of grievances.
>
> (d) All employee organizations shall have the right to have membership dues deducted pursuant to Sections 13532 and 13604.2 of the Education Code, until such time as an employee organization is recognized as the exclusive representative for any of the employees in an appropriate unit, and then such deduction as to any employee in the negotiating unit shall not be permissible except to the exclusive representative.

[6]The Ralph C. Dills Act commences at section 3512 of the Government Code and applies to State employees.

> is to provide a reasonable opportunity to meet and discuss wages with them prior to the time the employer reaches or takes action on a policy decision.

As flextime policies are directly involved with both hours and wages there is little doubt that these policies fall within the above described general parameters.

Thus it is concluded that the District had a duty to meet with and discuss contemplated modifications in policies such as flextime with any nonexclusive representative it was aware of.

B. Notice

An employer must be put on notice that an employee organization is assuming a representational role on behalf of specified employees in order for that employer to be obligated to notify such organization prior to a policy modification or implementation that affects such employees.

Charging Party argues that a formal request for recognition is not a requirement for the attainment of employee organization status. It correctly cites Monsoor v. State of California (1982) PERB Decision No. 228-S for this proposition. That case sets forth the minimal requirements necessary to attain employee organization status. However, Monsoor does not address what an employee organization, however

minimally formed, must do to impose on the employer the duty of prior notification of changes in working conditions. Numerous individuals may be acting, at any given time, on behalf of themselves and other fellow workers, in the employer-employee relations field. To impose on the employer a duty to give all such individual(s) notice prior to all policy modifications or implementations arguably within the scope of representation would impose an impossible and unreasonable burden.

Numerous Board cases have dealt with the issue of notice prior to unilateral changes in working conditions. All of these cases hold that the employer has a duty to first give notice of any proposed policy modifications or implementations to any existing employee organization(s) in order for such organization(s) to effectively exercise their right to meet and discuss[7] by first making a timely request to do so. None of these Board cases have dealt with the issue presented here: when is the employer charged with knowledge of the existence of the employee organization?

---

[7]0r to negotiate in the case of an exclusive representative.

In State of California (Franchise Tax Board) (1982) PERB Decision No. 229-S the Board discussed a right of prior notice in its rationale, but it was dicta to the facts and issue of the case. The issue did not involve the failure of the employer to give notice. The employer did not give prior notice. The employees had learned about the proposed change by rumor. Their agent, a nonexclusive representative, had requested and been granted a meeting with the employer to urge modification to the plan. The Board held that the employer had not committed an unfair practice because it had met with the employee organization and considered its concerns.

C. Regulations Re an Analogous Circumstance

PERB regulations provide that an employee organization shall serve the employer with a written request when attempting to obtain recognition as the exclusive representative of an appropriate unit of employees.[18] The request must describe the unit of employees the organization claims to represent, the officers and the address at which the organization

---

[8]See California Administrative Code, title 8, part III, section 33050 et seq.

may be contacted. This process is the first formal step in the attainment of exclusive representative status.[9] These regulations assume an employee organization's interest in attaining exclusive representative status. Experience indicates they serve well for that purpose. Conforming with these regulations lends precision to the employee organization recognition process. After a proper written request has been transmitted and received the employer is aware of the unit of employees the organization claims to represent, as well as the officer(s) and/or agent(s) to contact and as well as where communications or notices are to be sent.

D. Effect of July 1, 1987 Letter

As stated above, it is not necessary to submit the section 33050 notice in order to obtain employee organization status. However, in order to impose a duty on the employer to provide prior notice some sort of communications must be given to the employer setting forth the same information required by that regulation. As the Charging Party's letters to the Respondent on July 1, 1987, and August 11, 1987, supplied it with the requisite information, it is held that the employer was under

[9]If the employer has doubts as to: (1) the appropriateness of the unit sought to be represented or; (2) the support of a majority of employees in the proposed unit for the organization claiming such representation, or if other employee organization(s) intervene, the employer or employee organization(s) can invoke the processes of the PERB to resolve the matter by asking for an investigation and findings. The PERB may hold an election(s) among the employees as necessary.

a duty as of July 1, 1987, to provide prior notice of any policy modifications or implementations.

E. Effect of Meet and Confers Prior to July 1, 1987

Prior to July 1, 1987, the record does not indicate that Kay, Fast, or anyone else, told the employer that Kay and/or Fast considered themselves an employee organization within the meaning of the Act and expected to be granted rights appertaining thereto. The District's management reasonably assumed that the meetings held with them were at an informal supervisor-subordinate level. The subjects of the meetings were the subjects requested by Kay and Fast. Not until the July 1, 1987, letter, in which recognition as an employee organization was requested, did the Respondent have notice of the desire of Kay and Fast et al. to constitute an employee organization under the Act. To impose a duty on an employer to notify employee(s) who have not claimed status as an representative employee organization prior to making a unilateral change in working conditions, would place an unfair burden on the employer. Questions regarding when and how compliance with such obligation had occurred would lead to endless uncertainty and litigation.

The meetings requested by Kay and Fast with a representative of the College prior to the July 1, 1987 notice to the College were not sufficient to charge the College with notice of the existence of an employee organization. In short,

the College, during the efforts of Kay and Fast to create an employee organization, properly took a hands-off stance toward the organizational activities providing only such services and information as lawfully appropriate. Until the letter of July 1, 1987, it had no notice of the existence of an employee organization as defined in the Act. It therefore had no obligation to provide it with prior notice of a change in working conditions. In the absence of such obligation its failure to provide such notice was not a violation of section 3543.5(b)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, Unfair Practice case No. S-CE-1111, Butte County Part-time Faculty Association Communication Workers of America v. Butte Community College District, and the companion PERB complaint are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, part III, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, part III, section 32300. A

document is considered "filed" when actually received before the close of business (5:00 p.m.) on the last day set for filing, " . . . or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . " See California Administrative Code, title 8, part III, section 32135. Code of Civil Procedure section 1013 shall apply. Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. See California Administrative Code, title 8, part III, section 32300, 32305 and 32140.

Dated August 10, 1988

WILLIAM P. SMITH
Administrative Law Judge