STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

COMPTON COMMUNITY COLLEGE FEDERATION OF EMPLOYEES, AFL-CIO, Charging Party, v. COMPTON COMMUNITY COLLEGE DISTRICT, Respondent.	)	Case Nos. LA-CE-2272 LA-CE-2273 PERB Decision No. 798 March 22, 1990

Appearances: Lawrence Rosenzweig, Attorney, for Compton Community College Federation of Employees, AFL-CIO; Jones & Matson by Stephen K. Matson, Attorney, for Compton Community College District.

Before: Shank, Camilli and Cunningham, Members.

DECISION

CUNNINGHAM, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Compton Community College District (District) to the attached proposed decision of a PERB administrative law judge (ALJ). The ALJ held that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when it

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Government Code section 3543.5 pertains to unfair practice charges against an employer and provides, in relevant 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

unilaterally adopted a student grievance policy and calendars for short-term and/or Saturday classes for the fall and spring of the 1985-86 school year. The District's exceptions pertain only to Case No. LA-CE-2272 in which the ALJ found that the District's adoption and implementation of the student grievance policy constituted an unlawful unilateral change.

We have reviewed the record in this case in its entirety, including the proposed decision, the District's exceptions, and the response by the Compton Community College Federation of Employees, AFL-CIO (Federation). We find the ALJ's findings of fact to be free of prejudicial error and adopt them as our own. Likewise, with one exception and one clarification as noted below, we adopt the ALJ's conclusions of law and we affirm her proposed finding that the District made unlawful unilateral changes as charged by the Federation.

DISCUSSION

The District has raised several exceptions to the proposed decision. In large part, the arguments raised by the District on appeal are the same ones which were made below, and are fully addressed in the ALJ's proposed decision. We find these arguments to be without merit for the reasons contained in the proposed decision, and, thus, find it unnecessary to comment

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guaranteed by this chapter.

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

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

further on these items. We do, however, find it necessary to briefly clarify a portion of the ALJ's analysis, and we also disagree with a legal conclusion drawn by the ALJ, as discussed below.

As pointed out in the proposed decision, the Federation contends in this case that the student grievance policy is negotiable under any one of three theories. One of these theories is that the policy is a procedure for the evaluation of certificated employees and, therefore, an enumerated subject of bargaining pursuant to section 3543.2(a)[2] of EERA. The ALJ concluded that the student grievance policy, while not a conventional evaluation procedure, does indeed satisfy that purpose in that it sets up a procedure whereby an employee's performance in a particular situation is evaluated. We agree with this conclusion, although it should be noted that we base this finding on the policy's requirement that student complaints and/or administrative determinations resulting from student complaints are placed in the personnel file of the employee charged. Since it may be safely assumed that teacher evaluation

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[2]EERA section 3543.2 provides, in pertinent part:

> (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean . . . transfer and reassignment policies, . . . procedures to be used for the evaluation of employees, . . . All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating . . . .

procedures include a review of those complaints, along with other material in the file pertinent to performance, we hold that the particular student grievance policy at issue is a subject that falls within the scope of representation. (Jefferson School District (1980) PERB Decision No. 133.) Moreover, we do not adopt the ALJ's statement that this is a "secondary" evaluation procedure. Section 3543.2(a) only provides that procedures for evaluation are negotiable and makes no mention of a lesser category of evaluations. On the record before us, this policy appears to be an evaluation procedure within the meaning of section 3543.2(a), because it requires placement of various materials into District personnel records. The record does not provide sufficient information to allow us to speculate as to the importance that will ultimately be accorded to this material in the overall District evaluation scheme. Therefore, we do not find the ALJ's categorization to be warranted in this instance.

Another of the Federation's theories for the negotiability of the student grievance policy is that said policy encompasses discipline and is, therefore, subject to bargaining. The ALJ finds that the student grievance policy does encompass discipline, but only informal discipline or adverse personnel actions as opposed to formal discipline. The District takes exception to this portion of the proposed decision on the ground that the language of the student grievance policy, on its face, clearly states that the policy is not a disciplinary procedure and, additionally, there is no basis for the ALJ's conclusion

that the policy allows for "informal" discipline. We find that the District's exception regarding the disciplinary issue is meritorious in that it is unclear from the evidence submitted by the parties that the policy would result in any form of disciplinary action being taken against an employee. On its face, the policy does not appear to authorize any remedies which we would find disciplinary in nature. Accordingly, we do not adopt this portion of the ALJ's analysis. Our disagreement with the ALJ on this issue, however, does not affect the result reached in this case, since this was only one of three theories offered in support of the negotiability of the student grievance policy.

In summary, we affirm the ALJ's proposed decision finding that the District violated EERA section 3543.5(c) and (b) in Case Nos. LA-CE-2272 and LA-CE-2273. We do not find that independent violations of section 3543.5(a) have been established in either case; thus, we reverse the proposed decision with respect to this matter, and we find it appropriate to dismiss the portions of the complaints alleging (a) violations consistent with the Board's decision in Tahoe-Truckee Unified School District (1988) PERB Decision No. 668.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, and pursuant to the Educational Employment Relations Act (Act) section 3541.5(c), it

is hereby ORDERED that the Compton Community College District (District) and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to meet and negotiate in good faith with the Compton Community College Federation of Employees, AFL-CIO (Federation) on a student grievance policy, a matter within the scope of representation, by unilaterally adopting such a policy;

2. Refusing to meet and negotiate in good faith with the Federation on the calendar for intersession and Saturday classes, a matter within the scope of representation, by unilaterally adopting calendars for short-term and Saturday classes for the fall and spring of the 1985-86 school year; and

3. Denying the Federation its right to represent unit members in negotiations conducted in good faith.

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

1. Immediately upon service of a final decision in this matter, rescind the student grievance policy unilaterally adopted by the District on October 22, 1985.

2. Within thirty-five (35) days following the date the Decision is no longer subject to reconsideration, 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 Los Angeles Regional Director of the Public Employment Relations Board in accordance with her instructions.

Members Shank and Camilli joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case Nos. LA-CE-2272 and LA-CE-2273, Compton Community College Federation of Employees, AFL-CIO v. Compton Community College District, in which all parties had the right to participate, it has been found that the Compton Community College District (District) violated Government Code section 3543.5(b) and (c).

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

A. CEASE AND DESIST FROM:

1. Refusing to meet and negotiate in good faith with the Compton Community College Federation of Employees, AFL-CIO (Federation) on a student grievance policy, a matter within the scope of representation, by unilaterally adopting such a policy;

2. Refusing to meet and negotiate in good faith with the Federation on the calendar for intersession and Saturday classes, a matter within the scope of representation, by unilaterally adopting calendars for short-term and Saturday classes for the fall and spring of the 1985-86 school year; and

3. Denying the Federation its right to represent unit members in negotiations conducted in good faith.

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

1. Immediately upon service of a final decision in this matter, rescind the student grievance policy unilaterally adopted by the District on October 22, 1985.

Dated: COMPTON COMMUNITY COLLEGE DISTRICT

By _____
Authorized Agent

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

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

COMPTON COMMUNITY COLLEGE FEDERATION OF EMPLOYEES, AFL-CIO, Charging Party, v. COMPTON COMMUNITY COLLEGE DISTRICT, Respondent.	)	Unfair Practice Case Nos. LA-CE-2272 LA-CE-2273 PROPOSED DECISION (3/10/87)

Appearances; Lawrence Rosenzweig, Attorney for Compton Community College Federation of Employees, AFL-CIO; Jones & Matson by Urrea C. Jones, Jr., Attorney for Compton Community College District.

Before: Barbara E. Miller, Administrative Law Judge

I. PROCEDURAL HISTORY

On October 31, 1985, the Compton Community College Federation of Employees, AFL-CIO (hereinafter Charging Party or Union)[1] filed Unfair Practice Case No. LA-CE-2272 against the Compton Community College District (hereinafter Respondent or District) alleging that the District unilaterally adopted and implemented a student grievance policy and procedure in violation of the Educational Employment Relations Act (hereinafter EERA or Act).[2] On November 1, 1985, the Union

[1]At the time the Charge was filed the Compton Community College Federation of Employees went by the name of Compton Community College Federation of Teachers.

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

filed Unfair Practice Case No. LA-CE-2273 against the District alleging that the District violated the EERA by unilaterally adopting a calendar for short-term or intersession classes for the fall semester of the 1985-86 school year.

Pursuant to the Regulations of the Public Employment Relations Board (hereinafter PERB), each charge was assigned to a Regional Attorney from the Office of the General Counsel of the PERB.[3] A Complaint in each case issued on February 11, 1986.[4] On February 27, 1986, the District filed its Answers. Each Answer denies the material allegations in

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Government Code section 3543.5 pertains to unfair practice charges against an employer and provides, in relevant part, as follows:

> 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.
>
> (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

[3]PERB regulations are codified at California Administrative Code, title 8, Part III, beginning at section 32100.

[4]The undersigned amended the Complaint in Case No. LA-CE-2273 prior to taking evidence on July 17, 1986. Originally, the Charge/Complaint alleged that the District had violated the Act when it unilaterally promulgated a short-term or intersession calendar for the fall of 1985. The amendment repeats the allegations with respect to a short-term or intersession calendar for the spring of 1986.

the Complaint and sets forth various affirmative defenses.

The cases were consolidated for purposes of informal conference before an Administrative Law Judge of the PERB. When the parties were unable to resolve their disputes, the two cases were consolidated with six other cases involving the same parties. After a pre-hearing conference on July 14, 1986, and a formal hearing on July 16 and July 17, 1986, the two cases under discussion herein remained consolidated with one another but were severed from the remaining six cases. The parties were given an opportunity to file post-hearing briefs and on October 15, 1986, Case Nos. LA-CE-2272 and LA-CE-2273 were submitted for proposed decision.

II. FINDINGS OF FACT

A. Case No. LA-CE-2272

The Evolution of Management's Student Grievance Policy and Procedure

Early in 1985, the District determined that it should revise the existing policy pertaining to student complaints against members of its certificated and classified staff. Under the direction of Douglas Robinson, Assistant Superintendent and Dean of Student Affairs, the District "solicited input from various colleges up-and-down the State of California." The District wanted to review various student grievance procedures and incorporate the better parts of those procedures into a comprehensive plan. The proposed student grievance policy was ready on June 7, 1985, at which time a

copy was sent to the President of the Academic Senate, the President of the Associated Student Body, administrative staff members, and the leaders of the exclusive representatives of the District's employees, Darwin Thorpe for certificated employees and Bruce McManus for classified personnel.[5] In a cover memorandum signed by Robinson, the addressees were told that Robinson would appreciate it if they reviewed the document and provided him with comments and recommended changes. He asked for their input by Monday, July 15, 1985.

Although the Union did not respond to Robinson's request for input, some individuals did, some modifications were made, and the matter was submitted to the District's Board of Trustees for a first reading on July 16, 1985.[6] Thereafter, the record is quite unclear as to the manner in which the policy was revised. Apparently, based on recommended changes, a second draft of the student grievance policy was generated. In a memorandum dated October 16, 1985, from Robinson to Edison O. Jackson, the President/Superintendent of the District, Robinson states that a second draft was sent to the Union prior to the Trustee's second reading. However, in his testimony,

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[5]Many aspects of the student grievance policy pertain to both certificated and classified employees. The focus herein will be on certificated personnel.

[6]Darwin Thorpe indicated that the Union did not respond to Robinson's communication because Robinson was not part of the District's negotiating team and the parties had agreed to deal with the issue of a student grievance policy at the bargaining table.

Robinson indicated there was no second reading. Moreover, his testimony generally suggests that only the final version of the proposed student grievance policy was submitted to the Union prior to its final adoption by the Trustees.

In any event, the record fails to disclose precisely what happened with respect to the student grievance policy after its first reading before the Trustees on July 16, 1985. The record does reflect that on August 2, 1985, a second draft of the policy was submitted to Superintendent Jackson for his review. Thereafter, the student grievance policy was before the Trustees on two separate occasions in September.

On September 3, 1985, the record reflects that the Trustees were considering a grievance filed by a student against a teacher. At that time, representatives from the NAACP urged the Board to move ahead with adoption of a more rigorous and meaningful student grievance policy. The matter was again before the Board of Trustees on September 17, 1985. The record does not reflect whether or how the matter appeared on the Board's agenda, or what kind of proceeding was conducted.[7] The record does reflect that, as a result of discussions or a "hearing" on September 17, the Board issued an order requiring certain modifications in the student grievance policy and procedure. Included in the three-page order from the Board was

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[7]No agendas were introduced into evidence. Even if the agendas included information about the student grievance policy, there is no evidence the Union received appropriate notice.

the following directive:

> Prior to the submission of the revised student grievance policy and procedure to the Board of Trustees for approval, the proposed modified policy shall be submitted to the Academic Senate, the recognized classified employee representatives, the recognized certificated employee representatives, and the Associated Student Body Council for input, review and comment.

Apparently, pursuant to that directive, on October 3, 1985, Robinson sent a copy of the final draft of the student grievance policy and procedures to Darwin Thorpe and Bruce McManus. The cover memorandum stated:

> The subject policy will be presented to the Board of Trustees on Tuesday, October 22, 1985. If you have any recommended changes, please submit them to this office on or before October 15.

In response to Robinson's memorandum and the final draft of the student grievance policy and procedure, on October 14, 1985, Thorpe sent the following memorandum to Robinson:

> Unclear and internally contradictory statements of the above proposed policy render it, at this time, unworkable, and probably unlawful. While the district's attempts to derive a workable policy are laudable, the absence of genuine committee development of the policy make explanations and criticisms difficult if not impossible.
>
> . . . . . .
>
> To fully consider the policy, and the necessary in-service training implied by the newly heightened availability and visibility of such a potentially forthright document, a meeting should be held between the interested leaders as I had presumed would occur pursuant to our discussions on this

> issue at the bargaining table. This could very well facilitate the production of a legal procedure with which all parties could live, and which would promote a minimum amount of resort to such a future district policy.

The thrust of Thorpe's memorandum was clear. He wanted consideration of the proposed student grievance policy deferred until certain issues were discussed either in committee or at the bargaining table.

Urrea C. Jones, the District's counsel and chief negotiator, also wanted consideration of the student grievance policy taken off the Board agenda for October 22, 1985. In furtherance of that goal, on October 21, 1985, Jones called Robinson and asked him to remove consideration of the policy from the Board's agenda. Robinson was quite opposed to taking the matter off the agenda. He testified that he believed that ample time for input had been provided to employee organizations. Moreover, as will be discussed at pages 10-12, infra., Robinson believed that a potentially volatile situation existed. He was under the impression that students, members of the community, and outside organizers, might engage in violence if the District did not move quickly to adopt a student grievance policy. Based on his reading of the situation, Robinson went to the superintendent and urged him to keep the matter on the agenda. The matter was not removed and on October 22, 1985, the Trustees adopted a student grievance policy and procedure.

The Student Grievance Policy at the Bargaining Table

On May 7, 1985, the representatives of the faculty bargaining unit and the District's negotiating team met to set forth and discuss those matters which were of concern for the upcoming negotiations on a successor agreement. According to Thorpe, the Union had heard rumors to the effect that the District was giving consideration to changing the student grievance policy. Accordingly, the Union identified as a topic for bargaining "guidelines for accusations against faculty by students."

On July 9, 1985, Joan Clinton, the Associate Dean of Liberal Arts and Developmental Studies and a member of the District's bargaining team, sent a memo to the Union setting forth those concerns identified at the meeting of May 7. The list included a reference to the Union's concern about a student grievance policy. Notwithstanding the identification of the student grievance policy as a Union concern, the bargaining team did not exchange proposals and the matter was not discussed at the table until August 20, 1985.

Prior to that time, however, the Union had received a copy of management's draft of a student grievance policy from Robinson. That copy had been sent to the Union's attorney for his review and, when the attorney confirmed Thorpe's belief that the matter was negotiable, Thorpe approached Clinton. In his testimony, Thorpe claimed that the District frequently circumvented the Union and avoided bargaining over matters

within the scope of representation. Thorpe testified he was concerned the District might be attempting the same manuever with respect to the student grievance policy; he was suspicious because Robinson, not the bargaining team, was circulating the draft policy.

Thorpe telephoned Clinton to remind her that the matter was negotiable because it had an impact on faculty. Thorpe believed the telephone conversation took place on August 8. Clinton believed the telephone conversation took place on August 19, 1985. Clinton believed, but was not certain, she told Thorpe the student grievance policy was not a negotiable item. Thorpe denies such a statement being made. In the opinion of the undersigned, it is unnecessary to resolve either of these conflicts in the testimony in order to properly adjudicate the instant dispute. What is important and what no one disputes is that the Union made a demand to bargain.

On August 20, 1985, at a regularly scheduled negotiation session, the matter of the student grievance policy and procedure was discussed. Although witnesses recalled no substantive discussion, there was discussion of referring the matter to committee. Thorpe testified that the committee suggestion was made because formal negotiations on other matters were bogged down. Clinton intimated that the matter was referred to committee because it was not a negotiable item but again she could not testify with certainty whether or not that position was ever articulated by the District to the Union.

Clinton testified the matter of the student grievance policy was discussed briefly at several other negotiating sessions in August but there is no indication as to the content of those discussions. Clinton further testified that her notes from October 14, 1985, indicate that on that date the matter of the student grievance policy and procedure was referred to committee for consideration.

Thus, just as negotiations were about to get underway, Robinson and the Board were preparing for formal action. In order to make what was happening at the bargaining table compatible with what was happening in Robinson's arena, Thorpe wrote a memorandum to Robinson and approached Urrea Jones, * urging him to have the matter of the student grievance policy removed from the Trustee's October 22 agenda. Thorpe told Jones that if the Trustees adopted the policy as scheduled, it would be in violation of the EERA. On October 21, Jones told Thorpe that he had succeeded in having the matter removed from the agenda. Subsequently, on October 22, Jones called Thorpe at home and said that the superintendent was going ahead with the student grievance policy because of pressure from the community; there was nothing that Jones could do.

Community Pressure

Throughout the hearing and in its post-hearing brief, the District asserts that the student grievance policy was adopted "to avert serious harm or disaster to the District." Notwithstanding that rather strident assertion, the evidence

does not support a conclusion that disaster was imminent.

Sometime prior to the events described herein, several students complained about racist or derogatory statements being made by classroom instructors. The NAACP became involved and urged the District to take action against those instructors. Moreover, according to Douglas Robinson, students began participating in activities in which, to his knowledge, they had never participated before. For example, Robinson noticed that students were asking to evaluate faculty members outside the normal evaluation process. Students were urging other students not to take classes from certain instructors and they were requesting permission to distribute literature of a derogatory nature about faculty members.

Robinson described other events as well. In the spring of 1985, there was a threat of bodily harm against one District administrator, the President of the Board of Trustees decided to order security guards at Board meetings, a lawsuit was threatened against a faculty member, and there were angry outbursts by the public demanding that certificated employees be disciplined as a result of student complaints.

Nothing described by Robinson seemed beyond the scope of what a public institution should be ready, willing and able to address. Although an institution should not have to tolerate threats of bodily harm to its employees, at Compton there had been such threats in the spring but there were none in the summer or in the fall when the student grievance policy was

actually adopted. Moreover, upon cross-examination, Robinson admitted that much of the more strident rhetoric had come from a particular faction, which historically has been known for its fervor.[8]

The Student Grievance Policy and Procedure

The new student grievance procedure basically sets out the procedures to be followed by District students when they have complaints against members of the District staff. The procedure provides, in relevant part, as follows:

> A student may file a grievance under these procedures when he or she believes that a College decision or action has unlawfully affected his or her status, rights or privileges.
>
> A student may also file a grievance under these procedures for an alleged violation of rights guaranteed under title IX of the Higher Education amendments or [sic] 1972, title 7 of the Civil Rights Act of 1964, as amended, and Government Code section 11135, which provides:
>
> "No person in the State of California shall, on the basis of ethnic group identification, religion, age, sex, color, or physical or mental disability, be unlawfully denied the benefits of, or be unlawfully subjected to discrimination under any program or activity that is funded directly by the State or receives any financial assistance from the State."

The student grievance policy establishes procedures for two types of grievances - those relating to grades given to students and those unrelated to grades.

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[8]There is so little factual support for the District's assertion of danger, it clearly fails to support the District's defense that the policy was adopted out of business necessity.

With respect to grades, in conformance with the Education Code, a grievance may only be filed to change the grade because of mistake, fraud, bad faith, or incompetency. There seems no dispute that, in the past, students could file grievances or protests regarding grades received. One of the Union's objections to the current procedure is the elaborate way in which it involves counselors in the processing of student grievances. According to Al Cherry, a counselor for the District and a member of the bargaining unit, historically when students approached him with a complaint about a grade given by a particular instructor, he simply sent the student back to the instructor or to the Director of Student Life. Under the new procedure, the counselor's role is more precisely defined.[9] Section I.B. and I.C. provide, as follows:

> B. The counselor shall advise the student to discuss the grade complaint with the faculty member involved and shall schedule in writing an appointment with the faculty member and student within five (5) days of the date of the complaint. The unavailability of the faculty member shall extend the time period set forth herein. The counselor shall attend the conference at the student's request.
>
> C. If the dispute is not resolved to the satisfaction of the student during the conference, the student shall return to his or her counselor within five (5) days of the conference with the faculty member and file a written complaint. The counselor shall

[9]The District suggested the counselor's role in grade complaints was more structured than Cherry admitted. No persuasive evidence was introduced to support that position, however.

assist the student in writing the complaint, if requested.

The Union established that the above-quoted provisions of the student grievance policy change the job description or the duties and responsibilities of the counselor. In the past, counselors were not required to attend conferences between students and teachers regarding grades and counselors were not required to assist students in drafting grade complaints against teachers. Whether or how much the new role for counselors would alter the nature of their job or workload is difficult to determine because it is contingent on the number of grade complaints filed and the number of students who would then request counselor involvement. No information on actual or projected workload increases was provided during the course of the hearing.

The procedures relating to grievances not pertaining to grades are fairly elaborate. In general, the grievance must be in writing and, at some point, the student must agree that the concerned staff member may be given a copy of the grievance. The Director of Student Life is empowered to conduct an investigation, which is not described, and to preside over a conference attended by the employee and the grievant. If the matter is not resolved at that level, it is referred to the area dean or administrator for another conference. Then, if not resolved, the matter is sent to the superintendent. The superintendent then conducts a conference and, if the matter is

not resolved, he/she issues an order to resolve the grievance. That order may be appealed to the Board of Trustees, who then meet with all concerned in executive session. At the final level, the procedure provides that any party to the grievance may submit evidence and argument to the Board of Trustees. The Board is then given the power to reverse or sustain any or all of the superintendent's rulings.

The procedure sets forth permissible types of relief which may be ordered at any stage in the proceedings. The following relief is allowed:

> (a) Specific enforcement of, or adherence to, the rule or regulation found to have been violated by an employee to the grievant's detriment.
>
> (b) Removal or modification of disciplinary sanctions imposed against the student by the staff member.
>
> (c) Such other actions as may be appropriate under the circumstances, except that no employee may be subjected to any formal disciplinary action under the procedures established by this policy. Formal discipline of the employee is a matter which is exclusively within the prerogative of the college administration and is, therefore, confined to the formal procedures established by law for discipline of community college employees. (Emphasis added.)

Elsewhere, the policy again addresses disciplinary action and provides, in relevant part, as follows:

> Nothing contained in this policy shall be construed to preclude the District from undertaking disciplinary action against any District employee in the manner prescribed by law.

Thus, although utilization of the student grievance policy itself cannot result in discipline of an employee as that term is defined in the Education Code, there is nothing which precludes other actions which might be perceived as employee discipline as a result of findings made during the course of the student grievance procedure.

B. Case No. LA-CE-2273

In this case, it is alleged that the District unilaterally established the calendar for short-term and Saturday classes during the fall and spring semesters of the 1985-86 school year.[10] The Complaint also alleges that the District repudiated past practices and the collective bargaining contract by establishing the calendar without first meeting with instructional area representatives (IAR's) and without first giving full-time faculty an opportunity to teach short-term and Saturday classes on an overload basis.

The Collective Bargaining Agreement

The effective dates of the collective bargaining contract between the District and the Union's certificated section are July 1, 1983, through June 30, 1985.[11] Numerous provisions of that agreement address the duties and responsibilities of the parties with respect to calendars and class offerings. For

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[10]Throughout this proceeding, short-term and Saturday classes were frequently referred to as intersession classes.

[11]The parties do not contend that the terms of a contract related to calendar did not extend beyond the expiration date of the contract.

example, Article IV sets forth the duties and responsibilities of instructional area representatives and provides, in relevant part, as follows:

> It shall be the duty and responsibility of each Instructional Area Representative (IAR) to function in the following capacities:
>
> 1. Respond with recommendations to the Associate Dean regarding scheduling times and locations for class meetings of course offerings in the instructional area;
>
> 2. Make recommendations to the Associate Dean regarding assignments of full-time and part-time instructors to courses offered in the instructional area.

In the instant dispute, the Union alleges that the District failed to properly consult with IAR's or to advise them of the proposed intersession calendars. Accordingly, the IAR's could not carry out their duties as set forth in items 1 and 2 above.

Article XIII relates to the calendar and generally provides as follows:

> Work calendars shall be negotiated and such negotiations shall take place no later than thirty (30) calendar days before submission to the Board of Trustees.

Finally, Article XII relates to workload and in a section entitled Extra Pay Teaching Assignments, provides, in relevant part, as follows:

> Limits:
>
> Extra pay teaching assignments over and above the normal teaching load assignments shall be limited to a maximum of six (6) semester units per semester or summer session unless prior approval is granted by the Vice President of Academic Affairs.

Scheduling:

> All full time faculty members shall have their full-time contract load schedule set before part-time instructors are employed. After all full-time contract load schedules have been set, first choice for each remaining class shall be given to the instructor with the most teaching experience for that class within the past three years in which a class was offered at Compton Community College.

With respect to the District's obligation to negotiate the calendar, the Union alleges that the obligation was breached in the fall and spring of the 1985-86 school year. Management does not deny that it failed to negotiate the starting and ending time of the weekday intersession classes. The District argues, however, that since such days were part of the regular teaching calendar for the regular semester, new negotiations were not required. The District does not respond to the allegation that the starting and ending time were entirely new workdays for those part-time instructors who were not teaching in the regular semester. Part-time instructors are in the collective bargaining unit.

Past Practice

The record reflects that prior to the 1985-86 school year the District did conduct short-term and Saturday classes and that the calendar for those classes and, accordingly, the calendar for the class instructors, was negotiated with the Union. Thorpe testified that in the 1984-85 school year the parties negotiated and reached agreement for weekday and

Saturday classes for a fall and spring intersession. Thorpe's testimony was supported by exhibits which reflected the District's commitment to negotiate intersession calendars. In describing the way in which the information was provided for the 1984-85 school year and the nature of the negotiations, Thorpe testified as follows:

> In our negotiations on most of the intersessions held at Compton College the typical format was for the District to notify the Union that we were requested to negotiate a particular calendar and then routinely, either the information such as you see here was provided with a request or we would call or write a memo requesting it and we would be given a copy of the proposed classes and sometimes teachers who might be willing to teach these classes off campus or on campus sites where they might be taught merely as an information item so that we could assess our own members and communicate with our instructional area representatives and then negotiate with the District and sign off on an eventual calendar. This represents that kind of information which we used to routinely get.

In contrast, Thorpe testified that he learned of two intersessions for the fall semester of the 1985-86 school year in a completely different fashion. One intersession was offered from September 23, 1985, to January 24, 1986. Thorpe learned of those classes during a visit to the superintendent's office on an entirely different matter. Thorpe expressed his displeasure to the superintendent, indicated that the unilateral promulgation of such a calendar was an unfair labor practice, but advised the then-new superintendent that as a

goodwill gesture the Union would refrain from filing an unfair practice charge.[12]

Notwithstanding Thorpe's admonitions, sometime during the last week of October 1985, while Thorpe was visiting the District's counseling area he noticed a computer printout for an intersession calendar of classes to be given from November 4, 1985, through January 24, 1986. The District claims that the original short-term program which ran from September 23 and the second program which began on November 4 were not negotiated with the Union because neither program involved Saturday classes. The District claims that the only reason previous calendars had been negotiated was because they involved Saturday classes and, in those instances, only the Saturdays were negotiated.

The District also ran short-term and Saturday classes from March 17, 1986, through June 13, 1986. There is no dispute that there were no negotiations on the weekday class offerings. With respect to Saturday classes, the parties had negotiated and reached agreement that Saturday classes would begin on March 22, and end on June 7, with finals being given on June 14. Sometime during the fall semester, the District notified the Union that it wanted to change the schedule for the Saturday classes, never mentioning that weekday classes

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[12]In the post-hearing briefs, the District and the Union assume this first fall intersession is at issue in this unfair practice proceeding. It is not.

were being planned. The District met with the Union several times, failed to reach agreement and then unilaterally changed the Saturday calendar starting date from March 22 to March 15.

The District's Position

The District did not always take the position it asserts in this unfair practice proceeding. In the 1984-85 school year when both short-term and Saturday class calendars were negotiated, the District apparently recognized its obligation to negotiate both. In a memorandum from Ida Frisby, a District manager, to Clinton dated January 4, 1985, Frisby attached the short-term calendar and asked to be notified of Clinton's plans to comply with negotiating the work calendar as outlined in the collective bargaining contract. Clinton in turn communicated with the Union about negotiations for the calendar. Moreover, when it was necessary to change the starting date for the weekday classes, Clinton wrote to the Union and noted as follows:

> Please let me know when you and your team wish to negotiate the short-term/Saturday calendar, 1985.

Elsewhere in the memorandum Clinton specifically references the change in the starting date for the weekday, not the Saturday, calendar. Thus, based on the evidence presented by the Union and the District, it is concluded that prior to the 1985-86 school year, the District and the Union negotiated short-term and Saturday calendars and that each side understood that such

negotiations were pursuant to the collective bargaining agreement to negotiate such matters, notwithstanding any independent obligation which might exist under the EERA.

III. ISSUES

A. In case No. LA-CE-2272, did the District unlawfully promulgate and implement the student grievance policy?

1. Is the student grievance policy a matter within the scope of representation?

2. Did the Union waive its right to negotiate the student grievance policy?

B. In Case No. LA-CE-2273, did the District establishment of calendars for short-term and Saturday classes in the 1985-86 school year violate the EERA?

IV. CONCLUSIONS OF LAW

Case No. LA-CE-2272 - Student Grievance Policy

Ordinarily, when an employer unilaterally changes a matter within the scope of representation, the employer commits a per se violation of the EERA. Section 3543.2 of the EERA defines the scope of representation and provides, in relevant part, as follows:

> (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean . . . transfer and reassignment policies, . . . procedures to be used for the evaluation of employees, . . . All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, . . .

> (b) Notwithstanding section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of section 44944 of the Education Code shall apply.

A student grievance policy is not a specifically enumerated **subject** in the definition of the scope of representation. The **PERB** has, however, developed a test for determining whether or **not** a matter falls within the scope of representation when it is **not** specifically enumerated. That test, set forth in Anaheim Union High School District (1981) PERB Decision No. 177 **and** approved by the California Supreme Court in San Mateo City **School** District v. P.E.R.B. (1983) 33 Cal.3d 850, provides, in **relevant** part, as follows:

> [A] subject is negotiable even though not specifically enumerated if (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict and, (3) the employer's obligation to negotiate would not significantly abridge his freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the District mission.

Whether or not the Anaheim test is employed, the Charging **Party** asserts that the District's student grievance policy is

negotiable using any one of three approaches. First, the Union maintains that the student grievance policy is a procedure for the evaluation of certificated employees and therefore an enumerated subject. Next, the Union asserts the policy is negotiable pursuant to section 3543.2(b) because it concerns causes and procedures for disciplinary action. Alternatively, it is negotiable because matters relating to discipline logically and reasonably relate to an enumerated subject. Finally, it is alleged the policy is negotiable because it effects the workload or hours of work of certificated employees. Each contention with respect to negotiability will be reviewed.

The Evaluation of Employees

Although the student grievance procedure is not described as an evaluation procedure and is not a procedure for a conventional "evaluation," it clearly satisfies that purpose. The policy establishes the procedure for evaluating or judging the employee's performance in a particular situation.

With respect to grade-related student grievances, the policy sets forth the procedure whereby the administration can determine whether or not a grade was issued as the result of a mistake, bad faith, Incompetency or fraud on the part of the teacher. The student grievance policy provides that any decision which orders a grade change shall be entered into District records. Presumably, a decision which found the teacher not guilty of incompetency or fraud would not be

included in District records, but the policy is silent. Whether a record is retained or not, the whole process constitutes an evaluation of the teacher's performance and the procedures for such an evaluation must be negotiated pursuant to the EERA.

Similarly, other student grievances are subject to an elaborate procedure which potentially results in the evaluation of a faculty member at numerous administrative levels. The procedures set forth in the student grievance policy provide for student input and an administrative investigation of employee conduct. Those procedures are not consistent with the procedures for the student evaluation of faculty set forth in the collective bargaining agreement. Accordingly, the student grievance procedure can be considered an amendment to or a change in the procedures for the evaluation of certificated personnel in those instances when there is a complaint about the performance of a particular certificated employee. Again, although the evaluation is not the conventional evaluation, the procedure for this "secondary" evaluation is not excluded from the definition of the scope of representation. Accordingly, when the District unilaterally promulgated and implemented the student grievance policy without first negotiating with the Union, it violated the EERA.

The Student Grievance Policy as a Disciplinary Procedure

The Charging Party argues that the student grievance policy is negotiable because it relates to the discipline of

employees, in both the certificated and classified service. In response, the District points out that, on its face, the student grievance policy provides that it does not encompass formal discipline and that such discipline can only be imposed in the manner provided by law. Neither party addresses the issue which may be critical in determining whether or not the student grievance policy is negotiable. What the parties ignore is that the student grievance policy allows for sanctions which are punitive but which may not be considered disciplinary in the sense that term is used in the Education Code or in the student grievance policy. As previously noted, an employee can be ordered to comply with a particular District regulation or subjected to other punitive actions as deemed appropriate by the governing board. For example, an employee might be prohibited from teaching certain classes or participating in certain college events. Indeed, the student grievance policy does not preclude an employee being ordered to take some corrective action to remedy alleged wrongs. Any such sanction might easily be considered an adverse personnel action which is logically and reasonably related to the employee's employment status or wages and hours.

The Respondent does not distinguish between formal disciplinary actions described in the Education Code and those disciplinary actions permissible under the student grievance policy. Accordingly, the Respondent argues that no matter pertaining to discipline is negotiable because the Education

Code supersedes the EERA. In other words, the Respondent argues that even if the student grievance policy allows for discipline, it is not negotiable because disciplinary matters are exclusively covered by the Education Code.

In its supersession argument, the District relies heavily on comments made by the Supreme Court in San Mateo City School District, supra and by the Court of Appeal in United Steelworkers of America v. The Board of Education (1984) 162 Cal.App.3d 823. In San Mateo the court noted that the EERA was not intended to "replace or set aside" certain provisions of the Education Code. Indeed, section 3540 of the EERA was designed to preclude contractual agreements which would preempt certain statutory provisions, including, but not limited to, certain provisions pertaining to the discipline of classified employees. In Steelworkers. the Court of Appeal refused to enforce a contractual provision which provided for the arbitration of the discipline of a classified employee in a non-merit school district. The Court determined that the parties had improperly negotiated away the exclusive authority of the governing board to make determinations regarding the causes for disciplinary action.

The Respondent's reliance upon San Mateo and Steelworkers is misplaced.[13] Neither case deals with adverse personnel

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13 since it is found that the court's decision in Steelworkers does not relate to the issues raised herein and does not preclude negotiations on the student grievance policy to the extent it impacts on disciplinary actions which are not

actions which are not defined as disciplinary pursuant to the Education Code but which may be imposed pursuant to the student grievance policy at issue herein. The Education Code does not establish inflexible or immutable standards or procedures for the informal discipline of either certificated or classified employees of the Community College District. In this instance, the District has unilaterally determined what type of investigation to conduct, what materials to retain, whether and what type of notice to provide to the accused employee, the nature of the "hearing" to be afforded, and the designation of the authorities to have final and binding authority with respect to the imposition of sanctions.

Such matters are appropriately negotiated. Although the Respondent correctly asserts that discipline is not an enumerated subject, it is clearly negotiable based upon application of the PERB's Anaheim test.[14] Whether and how an

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formal in nature, it is unnecessary to address the question of whether the holding regarding negotiability in Steelworkers would override Board precedent established in Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District (1984) PERB Decision No. 375, where the Board found that the Education Code did not preclude a provision for the arbitration of discipline of classified employees.

•^Section 3543.2(b) provides that the causes and procedures for discipline of certificated personnel, short of dismissal, are within the scope of representation. From its language, the section applies to certificated personnel in K-12. Although it may have been an oversight, the section does not cover certificated employees of the community colleges and discipline can not be found negotiable as an enumerated subject.

employee is subjected to adverse personnel action impacts upon that employee's status with the employer. Depending upon the nature of the sanctions imposed, informal discipline might directly impact upon wages and hours. The causes and procedures for such discipline are a subject which is conducive to being resolved through the mediatory influences of collective negotiations. Finally, Anaheim is satisfied because negotiations regarding discipline will not unduly infringe on the employer's rights and obligations with respect to fulfilling its mission. See Arvin Union School District (1983) PERB Decision No. 300; San Bernardino City Unified School District (1982) PERB Decision No.. 255.

Increase In Counselor Workload

As a final argument in support of negotiability, the Union contends that the student grievance policy changes the terms and conditions of employment of counselors by adding a new duty and responsibility to their job description, thereby increasing their workload. Essentially, the Union maintains, the District has created a new job responsibility and allocated that responsibility to the already-existing classification of counselor.

The District maintains that the student grievance policy does not set forth any qualitatively different duties and responsibilities for counselors. The District argues that counselors have always assisted students in grade protests and, accordingly, the student grievance policy has not resulted in

any actual change in job duties. Thus, the Respondent argues, pursuant to Alum Rock Union Elementary School District (1983) PERB Decision No. 322, negotiations were not required.

Based upon the testimony of the witnesses and a review of the student grievance policy, it appears to the undersigned that there is some merit to arguments made by both the District and the Union. Counselors are generally responsible for ministering to certain student needs. Historically, counselors had been recipients of student complaints about grades. Whether formally or informally, the counselor ordinarily referred the student back to the grading instructor or to an -administrator at the college.

Nevertheless, I find the new role for the counselor constituted a qualitative change and addition to his/her duties and responsibilities. The counselor was no longer merely the advisor, the District mandated that the counselor act as an advocate as well. The counselor was required to attend meetings with the student and to assist the student in the preparation of his/her grievance. Pursuant to PERB precedent, such a change in a job classification requires negotiations.

The policy is also negotiable because of its logical and reasonable relationship to counselor hours. The student grievance policy increases the number of set tasks the counselor may have to perform with each student. The end result is similar to that discussed by PERB in Davis Joint Unified School District (1984) PERB Decision No. 393. In

Davis, the question was whether the number of students assigned to a counselor was negotiable. The Board noted:

> Where, as here, the work to be performed is in the nature of casework – that is, a set of tasks, assigned by management, to be performed on a student-by-student basis – the relationship between the number of cases ans the hours needed to complete the work is reasonably and logically apparent. Id. at 16.

In the instant case, there is no reason to believe that the number of students assigned to a counselor changed, but the range of tasks per student increased. Like Davis the relationship of the increase in tasks to the hours of work is readily apparent and, absent a viable defense, the District violated the EERA in failing to negotiate with the Union.

The Waiver Defense

The District argues that the Union failed to timely, adequately, and in good faith, respond to notices from management regarding the proposed student grievance policy. Accordingly, the District argues that the Union waived its right to object to the District's adoption of the policy on October 22, 1985.

In order to establish this defense, the PERB requires clear and unmistakable evidence that an employee organization has waived its statutory right to bargain about a specific subject. Amador Valley Joint Union High School District (1978) PERB Decision No. 74; Los Angeles Community College District (1982) PERB Decision No. 252.

Attempting to meet that standard, the District points to the communications from Douglas Robinson to the leaders of the Union seeking input regarding management's proposed student grievance policy and the Union's failure to respond to the communication sent in June.

There is no dispute that the Union did not respond to Robinson's first communication and, if a second was sent, the Union again failed to respond. There is also no dispute that the Union did respond to Robinson's communication in October 1985. In a memorandum dated October 14, 1985, Darwin Thorpe briefly outlined some of the Union's concerns regarding the proposed student grievance policy and urged that, the matter be referred to committee for further discussions.

Based upon the evidence presented, the Union's failure to respond to Robinson's communications cannot be considered a basis for a finding that the Union waived its right to negotiate the student grievance policy. Robinson was not designated as a management negotiator and he did not invite negotiations.[15] Individuals who were designated as management negotiators acknowledged on May 7, and again by memorandum on July 7, 1985, that the student grievance policy was a concern to be discussed as the negotiating table.

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[15]This case is not similar to Modesto City and High School Districts (1986) PERB Decision No. 566. In that case the Board found waiver by inaction but the union refused to respond to requests to negotiate made by members of management's negotiating team.

Although the parties did not discuss issues concerning a student grievance policy until August 1985, nothing was said which suggested that the bargaining table was not the appropriate arena for such discussions.

Clinton testified she believed the Union was told the matter was not a negotiable item some time in August 1985. The Union denies management took that position and, in this instance, the Union's recollections are credited. On August 20, there was some discussion about sending the matter to committee for further discussions and as late as October 14, Clinton's notes reflect that the matter was in fact sent to committee.

If one arm of management was led to believe the Union did not have an interest in negotiating the student grievance policy, management itself is partly responsible. The management representatives on the negotiating team should have been communicating with Robinson so that he would not have interpreted the Union's silence as acquiescence. By the same token, the Union could have prevented any misunderstanding by communicating with Robinson before October 14 and informing him that the matter was one to be dealt with at the bargaining table. Based on Thorpe's testimony, it appears the Union did not want to dignify a management inquiry which the Union considered improper because it was made outside the collective bargaining arena. Nevertheless, some response would have focused the issue earlier and may have obviated the need for this hearing.

Having found that the District's waiver defense is without merit, it is concluded that the District violated section 3543.5(c) when it unilaterally adopted and implemented the student grievance policy. In taking action in violation of section 3543.5(c), the District concurrently violated 3543.5(a) and (b). San Francisco Community College District (1979) PERB Decision No. 105.

Case No. LA-CE-2273 - Short-term and Saturday Classes

In this case, each side recognizes the obligation to negotiate regarding the starting and ending days of certificated service. Palos Verdes Peninsula Unified School District/Pleasant Valley School District (1979) PERB Decision No. 96. The dispute in this case concerns whether or not there is a duty to negotiate the starting and ending time of a short-term calendar and whether the District changed its policy and practice of negotiating such calendars in the past. Both issues must be resolved in favor of the Union.

The starting and ending time of a short-term calendar, whether or not it includes Saturday classes, is a matter concerning hours and is therefore negotiable. For some part-time faculty who are not teaching during the regular semester, the starting date of the short-term or intersession calendar is their first day of work. Even if that were not the case, the collective bargaining contract provides that calendars will be negotiated. Whether or not the starting day on the calendar is the first day of an assignment for a part-timer or the first day of an overload assignment for a

full-time faculty member is not a matter particularized in the collective bargaining agreement.

•The District's argument that short-term calendars were negotiated in the past only if they happened to include a Saturday calendar is not supported by the record. Short-term calendars were negotiated in the past and the District made no effort to claim that negotiations were taking place only because of the presence of Saturday classes. If only Saturdays were negotiable, the District fails to explain why it negotiated short-term calendars as well.

Apparently, in the 1985-86 school year, the District wanted to move quickly. It wanted to offer intersession and Saturday classes in order to increase enrollment and thereby increase funding. Although the District's reasons for establishing the intersession programs may be salutory, the reasons proffered for not negotiating are specious and frivolous. The starting and ending dates of the calendar are clearly negotiable and the District's unilateral action constitutes a change in past practice, a repudiation of the contract, and a violation of section 3543.5(c) and derivatively, 3543.5(a) and (b).[16] Grant Joint Union High School District (1982) PERB Decision No. 196.

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[16]Given the speed at which the calendars were put together, and the testimony of Clinton and Thorpe, there is some question as to whether the District unilaterally changed the policy by failing to give full-time instructors a first choice at overload classes and by failing to properly consult with IAR's. Nevertheless, the Union failed to sustain its

V. CONCLUSION

Based on the foregoing findings of facts and conclusions of law it is found that the Compton Community College District violated sections 3543.5(a), (b), and (c) of the EERA when it unilaterally adopted a student grievance policy and when it unilaterally adopted calendars for short-term and/or Saturday classes for the fall and spring of the 1985-86 school year.

VI. REMEDY

Section 3541.5(c) of the EERA states:

> The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to, the reinstatement of employees with or without back pay, as will effectuate the policy of this chapter.

A cease and desist order is the traditional remedy for an employer's unilateral decision to change an established term or condition of employment and for interference with the negotiating rights of an exclusive representative. See, e.g. Oakland Unified School District v. Public Employment Relations Board (1981) 120 Cal.App.3d 1007.

In certain instances, restoration of the status quo ante is also appropriate.

In the instant case, it is appropriate to order restoration

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burden of proof on either issue and those aspects of Case No. LA-CE-2273 are hereby dismissed.

of the status quo ante with respect to the student grievance policy, unless the parties have subsequently negotiated and reached agreement on this issue. Restoration of the status quo ante may cause some disruption with respect to grievances which are already being processed through the procedure, but, unless the parties can reach agreement, those grievances should be processed in the same way they would have been handled under the old student grievance procedure.

In each case, the employer will be ordered to cease and desist from its unlawful activity. In Case No. LA-CE-2272, the employer should be required to cease and desist from instituting and implementing the student grievance procedure before giving notice and an opportunity to negotiate to the Union representing its certificated and classified employees. In Case No. LA-CE-2273, the employer should be required to cease and desist from implementing intersession calendars without complying with its duty to negotiate the starting and ending time of each intersession.

It is also appropriate that the District be required to post a notice incorporating the terms of the order. The notice should be subscribed by an authorized agent of the District indicating that it will comply with the terms thereof. The notice shall not be reduced in size, defaced, altered or covered by any other material. Posting such a notice will provide employees with notice that the District 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 employer's readiness to comply with the ordered remedy. See Placerville Union School District (1978) PERB Decision No. 69. In Pandol and Sons v. Agricultural Labor Relations Bd. (1979) 98 Cal.App.3d 580, 587 the California District Court of Appeals approved a similar posting requirement. NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

VII. PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in these cases, and pursuant to EERA section 3541.5(c), it is hereby ORDERED that the Compton Community College District, and its representatives shall:

(A) CEASE AND DESIST FROM:

(1) Refusing to meet and negotiate in good faith with the Compton Community College Federation of Employees, AFL-CIO, on a matter within the scope of representation, a student grievance policy, by unilaterally adopting such a policy;

(2) Refusing to meet and negotiate in good faith with the Compton Community College Federation of Employees, AFL-CIO, on a matter within the scope of representation, the calendar for intersession and Saturday classes, by unilaterally adopting calendars for short-term and Saturday classes for the fall and spring of the 1985-86 school year;

(3) Denying the Union its right to represent unit members in negotiations conducted in good faith; and

(4) Interfering with the employees' right to be represented by the Union in negotiations.

(B) TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF THE ACT:

(1) Immediately upon service of a final decision in this matter, rescind the student grievance policy unilaterally adopted by the Board of Trustees on October 22, 1985.

(2) Within ten (10) workdays of service of a final decision in this matter, post at all school sites and at all other work locations where notices to certificated and classified employees are customarily placed, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to 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 these orders to the Los Angeles Regional Director of the Public Employment Relations Board in accordance with his instructions.

All other allegations set forth in the Complaint in Case No. LA-CE-2273 shall be 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, sections 32300, 32305 and 32140.

Dated: March 10, 1987

Barbara E. Miller
Administrative Law Judge