STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA FACULTY ASSOCIATION,	)	
	)	
Charging Party,	)	Case No. LA-CE-239-H
	)	
v.	)	PERB Decision No. 799-H
	)	
CALIFORNIA STATE UNIVERSITY,	)	March 28, 1990
	)	
Respondent.	)	
	)	

Appearances: Reich, Adell & Crost by Glenn Rothner, Attorney, for the California Faculty Association; William B. Haughton, Attorney, for the California State University.

Before Craib, Shank and Camilli, Members.

DECISION

CRAIB, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the California Faculty Association (CFA) to the attached proposed decision of a PERB administrative law judge (ALJ). The ALJ found that the California State University (CSU) violated section 3571, subdivisions (b), (c) and (e) of the Higher Education Employer-Employee Relations Act (HEERA)[1] by failing to provide relevant

[1]HEERA is codified at Government Code section 3560 et seq. Unless otherwise indicated, all statutory references are to the Government Code. Section 3571, subdivisions (b), (c) and (e), states:

> It shall be unlawful for the higher education employer to:
>
> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to engage in meeting and

and necessary information, but found no merit in CFA's allegations that CSU engaged in surface bargaining or made unlawful unilateral changes in long-term and daily use parking rates. CFA excepts only to the finding that CSU did not engage in surface bargaining and to the ALJ's failure to include in the proposed remedy a bargaining order and restoration of the status quo.[2] CFA also requests that the record be reopened so that it may submit newly discovered evidence of bad faith bargaining on the part of CSU. CSU filed no exceptions.

We have reviewed the entire record in this case, including the proposed decision, CFA's exceptions and CSU's response thereto, and, finding the ALJ's findings of fact and conclusions of law to be free of prejudicial error, we affirm the conclusion that CSU did not engage in surface bargaining. In the discussion that follows, we address the motion to reopen the record and the exceptions to the proposed remedy.[3]

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conferring with an exclusive representative.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

[2]Since the ALJ's findings and conclusions concerning all other allegations were not excepted to, they have become final and are not before the Board.

[3]CFA raised no arguments in its exceptions concerning surface bargaining that were not fully and correctly addressed by the ALJ in his proposed decision; therefore, as we are adopting that portion of the proposed decision, it is unnecessary to address the exceptions here.

DISCUSSION

Motion To Reopen The Record

CFA asserts that it has newly discovered evidence that further establishes CSU's bad faith in bargaining over parking fees. The proffered evidence consists of two documents which reflect public transit subsidy programs at CSU Long Beach and CSU Fullerton, adopted in conjunction with the South Coast Air Quality Management District. CFA asserts that this evidence reflects bad faith bargaining because it is inconsistent with CSU's statements at the bargaining table that CSU was not interested in such programs. In response, CSU claims that this evidence is not newly discovered because mention of the subsidy programs was made in its May 10, 1988 response to one of CFA's information requests. CSU further asserts that, in any event, the evidence is not helpful to CFA because the relatively low use of the few subsidy programs in existence demonstrates that such programs could not be of significant help in curing a systemwide shortage of parking.

PERB Regulation 32320, subdivision (a)(2), provides that the Board may reopen the record for the taking of further evidence, but it does not provide a standard to be applied to determine when it is appropriate to do so.[4] However, in San Mateo Community College District (1985) PERB Decision No. 543, the Board adopted the standard set out in Regulation 32410, which

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

governs requests for reconsideration. Regulation 32410, subdivision (a), provides that reconsideration may be granted on the basis of "newly discovered evidence . . . which was not previously available and could not have been discovered with the exercise of reasonable diligence."

CFA's stated purpose in offering the "new" evidence is to show that CSU concealed the fact that it had any interest or involvement in such subsidy programs. However, while the particular documents sought to be introduced by CFA may have been "newly discovered," information CSU provided to CFA in May of 1988 did mention the bus subsidy programs. With the exercise of reasonable diligence, i.e., a careful reading of the materials provided in May of 1988, CFA would have discovered the existence of the subsidy programs at that time and could have used the evidence as it saw fit at the unfair practice hearing in early 1989. Therefore, we conclude that the proffered evidence was previously available and could have been discovered with the exercise of reasonable diligence; accordingly, the record should not be reopened.

The Proposed Remedy

The ALJ found that CSU violated its duty to bargain by failing to provide to CFA, or unreasonably delaying the provision of, the following relevant and necessary information: (1) requests for proposals for construction of new parking facilities; (2) the number of faculty parking permits sold by category or duration and the revenue generated therefrom; and (3)

total parking revenue for 1988-89. The ALJ dismissed three other allegations claiming that CSU failed to provide information.

The proposed remedy for the information violations found by the ALJ is a cease-and-desist order arid a posting of a notice to employees. CFA argues that this remedy does not adequately address the adverse effects upon the bargaining process that resulted from the failure to provide information. CFA suggests that a return to the status quo is warranted, including a bargaining order and reimbursement of the amount of the increase in parking fees.

In some circumstances, a failure to provide necessary and relevant information could interfere with negotiations to the extent that a return to the status quo and a bargaining order would be a proper remedy. However, in this case, we agree with the ALJ that, while the refusals to provide information may have hampered bargaining somewhat, the record supports the conclusion that the parties would have reached impasse even if the information violations had not occurred.[5] In addition, CFA did not except to the ALJ's findings that the unilateral changes in parking rates that actually took place were not unlawful. Therefore, a remedy which includes a return to the status quo, a

[5]CFA disputed CSU's declaration of impasse, but a PERB regional director found that a genuine impasse existed. On appeal, the Board affirmed that finding. (California State University (California Faculty Association) (1988) PERB Order No. Ad-177-H.)

bargaining order and reimbursement of the amount of the increase in parking fees is not appropriate.[6]

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is hereby ORDERED that the California State University and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing or failing to bargain and to participate in good faith in statutory impasse procedures by failing to provide to the California Faculty Association (CFA), or unreasonably delaying the provision of, the following relevant and necessary information: (a) requests for proposals for construction of new parking facilities; (b) the number of faculty parking permits sold by category or duration and the revenue generated therefrom; and (c) total parking revenue for 1988-89.

[6]The cases cited by CFA are inapposite. In Modesto City Schools and High School District (1985) PERB Decision No. 518, the Board ordered that the union be allowed to reopen a grievance because it had been denied vital information necessary to pursue the grievance. In Hamburg Shirt Corporation (1969) 175 NLRB 284 and Barney Manufacturing, Inc. (1975) 219 NLRB 41, the National Labor Relations Board (NLRB), despite having found that the employers had not engaged in surface bargaining, ordered bargaining to resume because the unions had been unlawfully denied the opportunity to make their own time studies in preparation for bargaining over piece rates. However, those decisions turned on the NLRB's finding that the unlawful conduct prevented the unions from being able to bargain intelligently over a fundamental issue (piece rates). Here, it has been found that the violations are of a minor nature that did not seriously affect negotiations.

2. By the conduct described in paragraph 1. above, interfering with the right of CFA to represent its members during negotiations and statutory impasse procedures.

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

1. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration pursuant to PERB Regulation 32410, 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 ensure that this Notice is not reduced in size, defaced, altered or covered by any material.

2. 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.

The motion to reopen the record is DENIED and it is further ORDERED that all other allegations in the charge and complaint are hereby DISMISSED.

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 No. LA-CE-239-H, California Faculty Association v. California State University, in which all parties had the right to participate, it has been found that the California State University violated section 3571, subdivisions (b), (c) and (e) of the Higher Education Employer-Employee Relations Act.

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

A. CEASE AND DESIST FROM:

1. Refusing or failing to bargain and to participate in good faith in statutory impasse procedures by failing to provide to the California Faculty Association (CFA), or unreasonably delaying the provision of, the following relevant and necessary information: (a) requests for proposals for construction of new parking facilities; (b) the number of faculty parking permits sold by category or duration and the revenue generated therefrom; and (c) total parking revenue for 1988-89.

2. By the conduct described in paragraph 1. above, interfering with the right of CFA to represent its members during negotiations and statutory impasse procedures.

Dated: _____ CALIFORNIA STATE UNIVERSITY

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

CALIFORNIA FACULTY ASSOCIATION, Charging Party, v. CALIFORNIA STATE UNIVERSITY, Respondent.	)	Unfair Practice Case No. LA-CE-239-H **PROPOSED DECISION** (8/21/89)

Appearances: Edward R. Purcell, General Manager, for the California Faculty Association; William Haughton, Attorney, for the California State University.

Before Fred D'Orazio, Administrative Law Judge.

PROCEDURAL HISTORY

This unfair practice charge was filed by the California Faculty Association (hereafter CFA or Charging Party) against the California State University (hereafter CSU or Respondent) on June 22, 1988. The General Counsel of the Public Employment Relations Board (hereafter PERB or Board) issued a complaint on September 29, 1988. The complaint, as amended on February 14, 1989, alleged that the Respondent, while negotiating with the Charging Party about parking rates: (1) engaged in an overall pattern of conduct which evidenced bad faith; (2) unilaterally, during negotiations, changed the rate for long-term parking; and (3) unilaterally, during impasse, changed the rate for so-called "daily use" parking. It is alleged that Respondent, by this

conduct, violated Government Code, section 3 571(b), (c) and (e).[1] Respondent answered the complaint on October 19, 1988, and February 21, 1989, denying that it violated the Act. The settlement conference on November 10, 1988 did not resolve the dispute.

A formal hearing was conducted by the undersigned in Los Angeles, California on February 28 and March 1, 1989. Charging party's motion to reopen the record was denied by written order on April 27, 1989. The last post-hearing brief was received on June 8, 1989.

FINDINGS OF FACT

I. THE NEGOTIATIONS:

CFA is an employee organization within the meaning of section 3562(g), and the exclusive representative of a unit of faculty employees (Unit 3) within the meaning of section 3562(j). CSU is an employer within the meaning of section 3562(h).

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[1]*The* Higher Education Employer-Employee Relations Act (HEERA or Act) is codified at Government Code section 3560 et seq., and is administered by the Board. Unless otherwise indicated, all statutory references are to the Government Code. Sections 3571(b), (c) and (e) state that it shall be unlawful for the employer to:

> (b) Deny to employee organizations rights guaranteed to them by this chapter.
>
> (c) Refuse or fail to engage in meeting and conferring with an exclusive representative.
>
> (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3590).

In May 1987, Jacob Samit, assistant vice chancellor for employee relations, informed Ed Purcell, CFA's general manager, that current parking fees might be increased as a result of a CSU study. Samit had been informed by CSU's auxiliary and business services division that the study indicated a need to raise parking fees to finance new construction in the parking program over the next several years. Purcell immediately asked to negotiate any proposed increase, and cautioned Samit to not "initiate any process involving the issuance of revenue bonds to fund construction costs if said bonds are in any way predicated on parking fee revenues derived from faculty."

In June 1987, a task force formally submitted to the CSU Trustees the "Report on Parking Fees in the California State University." The report proposed a five year capital outlay to improve parking at CSU's nineteen campuses.

The parties communicated on an informal basis during the summer. In August 1987, Samit and Paul Worthman, CFA associate general manager, held several meetings to discuss a number of issues then under negotiations. Although the parking fee issue was discussed along with other subjects during the early August meetings, on August 21, 1987, it became the sole topic of discussion. As of that date, no formal written proposals had been exchanged. However, as he would do throughout the negotiations, Samit took the position that members of Unit 3 should pay the same parking fees as all other users, including students, members of other bargaining units, staff, etc.

On August 22, 1987, Worthman presented Samit with a comprehensive request for information to enable CFA to evaluate the CSU position and formulate a proposal. The request sought: (1) sources of parking revenue; (2) general expenditures; (3) budget information; (4) auditor's reports; (5) costs and expenditures for current operations; (6) number of vehicles upon which future estimates are based; (7) total parking permits and faculty parking permits sold by campus; and (8) all other information used by the task force to arrive at the proposed increase.

Frank Gerry, CSU employee relations administrator, responded to Worthman's request on September 4, 1987, providing much of the information requested. Gerry also informed Worthman that CSU does not collect specific information on campus permit sales. The parking revenue, Gerry wrote, is estimated based on overall permit sales, daily fees, metered rates and fees for special events.

In September 1987, the CSU Trustees adopted a resolution increasing monthly fees, effective September 1988. CSU was to develop and implement a complete fee schedule based on the proposed monthly rate. The resolution stated that "any increase in this fee shall not be implemented for employees represented by certain exclusive representatives until collective bargaining negotiations have been completed on this matter with those certain exclusive representatives." As more fully discussed below, that part of the resolution recognizing the obligation to

negotiate with exclusive representatives about parking fee increases was communicated to campus presidents repeatedly throughout the latter part of 1987 and 1988.

The September 1988 increase for nonrepresented employees was the same as the increase proposed for Unit 3 employees by Samit throughout the negotiations.[2] CSU never moved from this position.

At a meeting in November 1987, Worthman requested more information to evaluate the proposed increase. The request sought detailed information regarding income per space, budgeted versus actual costs, and the financial models used to develop the proposed fee increases. By letter dated December 16, 1987, Worthman informed Samit that he had received the information and was in the process of developing a proposal to be "sunshined" on or after February 9, 1988.[3]

Samit testified that the parties met in January 1988, but the record contains no details about that meeting.

By February 11, 1988, the parties had begun a debate, unrelated to the substantive issue on the table, about whether CSU had a legal obligation to "sunshine" CFA proposals under the

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[12]The proposed increase in monthly rates was from $7.00 to $12.00 on most campuses, and from $7.00 to a range of $15.00 to $18.00 on a minority of campuses.

[3]The information received by Worthman was referred to at the hearing as "Assumption 40." It is a computer print out showing detailed estimates concerning revenue and expenditures associated with the proposed fee increase and actual funding of the new parking structures. Apparently, there had been thirty-nine prior "assumptions."

Act's public notice requirements. It was CFA's position that all parking fee proposals were subject to public notice requirements, and that true bargaining should not begin until after that process had been completed. Samit believed that since the current collective bargaining agreement covered parking fees, public notice compliance was unnecessary. In Samit's view, the parking fees clause had been sunshined when the contract was first negotiated, making further public notice "redundant."

On February 22, 1988, CSU posted its initial proposal at the chancellor's office for 48 hours. The CFA proposal, presented to CSU a few days later on February 26, 1988, was also posted at the chancellor's office. Samit testified these postings were only to satisfy CFA. He did not believe CSU had an obligation to do so. CFA was never informed of the postings and no meetings were held for public comment.

Also on February 22, 1988, Worthman asked for more information.[4] He sought any "request for proposal and all bids and proposals for parking construction of surface and structure parking at all campuses submitted to CSU." This two-part request sought: (1) CSU's requests for proposals; and (2) bids and proposals for construction actually submitted to CSU. Worthman also asked to "examine the drawings and designs and cost

[4]For example, the information Worthman had received indicated CSU proposed to spend $44,328,000 in 1988-89 to construct 8,898 new parking spaces. Worthman sought to discover the basis for these overall projections and the estimate per space.

estimates in possession of the CSU for the proposed construction of parking facilities."

The purpose of this request was to ascertain the basis for CSU projections concerning the proposed parking program. Worthman testified that CSU negotiators told CFA negotiators that higher parking fees for faculty members were needed to pay the actual construction costs, as well as the interest on the bonds to be sold to finance the construction. Worthman explained it as follows.

> Q. And why was it important for the Union to seek information of that sort?
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> A. . . . what they were coming to us and saying was, we had to pay substantially higher fees, in some cases, over 100 percent higher fees. We had to pay it, they said, because they needed the money to build this parking program, this specific parking program.
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> As we entered into bargaining, it seemed to me that if it wasn't really going to cost that much, and if the same program could be built for fewer dollars, and if that could be demonstrated, and if we could demonstrate it to them, then in bargaining, we could show them they didn't need all that money, or as much of our money, to build the parking construction that they wished to build.[5]

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[5]Worthman questioned the accuracy of "Assumption 40." He testified that the two major sources CSU used to fund its parking system were bond sales and income from fees; minor sources of funding were interest and reserves. Worthman calculated, based on "Assumption 40," that CSU was proposing to pay approximately 10.75 percent interest return on the bonds it intended to sell to finance the project. Worthman's independent research indicated that comparable bonds at that time were yielding approximately 7.8 percent. CSU had sold bonds in 1984 to finance a parking project. The prevailing rate at that time was 10.75 percent. It was Worthman's view that CSU had simply adopted the old rate for bonds to be issued to finance the current project without

CFA renewed its request several times during the course of negotiations, but never received the information Worthman requested on February 22, 1988.

Samit and Gerry testified the information did not exist. However, the testimony of John Hillyard, assistant vice chancellor for auxiliary and business services, is in certain respects at odds with that given by Samit and Gerry. The February 15, 1989 issue of the Daily Collegian, a newspaper on the Fresno campus, attributed the following statement to Hillyard: "parking construction plans, while beyond the designing stage, are being halted pending an outcome to the impasse." Asked at the hearing if this statement was accurate, Hillyard first said "yes, in fact . . . right now we have delayed on the construction of certain major projects until we are assured of the revenue that we have." However, when asked specifically about the accuracy of the statement that CSU was "well beyond the designing stage," Hillyard clarified this testimony and went on to describe the status of the parking projects. Specifically, he testified that he did not know what the Daily Collegian meant when it stated that construction plans were beyond the designing stage. He made it clear that he did not want that statement attributed to him. Purcell then asked him to explain "exactly what stage you're at in terms of the approved parking construction program." In response, Hillyard

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recognizing that rates had dropped.

said projects approved by the Trustees have an "action year." In September such projects may be approved to begin the "design" phase, but the decision to proceed is made later at the campus level, according to Hillyard. In the construction of parking structures, Hillyard said, CSU uses a "request for proposal kind of process," during which a "request for proposal" is "developed and then put on the street, and the bidders bid both on the design and construction." The procedure for surface lots is a little different. An architect is employed and there is a separate design phase.

Hillyard was shown a copy of the Report on Parking Fees in the California State University (Hillyard was the chairperson of the task force which prepared the report), and asked if any of the parking projects approved by the Trustees in the report were in a "design" stage or a "request for proposal" stage. Hillyard said "definitely requests for proposals have gone forward on some, and I would assume that design has, but again, my staff is more familiar with that." He also testified that "I do know requests for proposals have been prepared" on projects targeted by the task force for 1988-89. Hillyard later testified CSU "might have" projects in the design phase at another division in the chancellor's office.

At the February 26, 1988 meeting, written proposals were exchanged for the first time. CFA presented a comprehensive proposal covering the following areas: (1) parking fees; (2) availability of parking; (3) alternate transportation;

(4) payment of fees; and (5) maintenance of parking facilities. Purcell presented a point-by-point explanation of the proposal.

In response, CSU presented the following proposal.

> Any employee desiring to park at any CSU facility shall be required to pay a parking fee. The amount of the parking fee shall be determined by the Board of Trustees of The California State University.

There was little discussion of this proposal on February 26, 1988. However, during the course of negotiations Samit explained CSU's rationale that new parking spaces were needed on the various campuses and the increase in rates was necessary to finance the new construction.

Purcell testified that, prior to impasse, CSU did not provide a complete response to the CFA proposal of February 26, 1988. In rebuttal, Samit testified that he responded to each point in the CFA proposal during the meetings of February 26, and April 6, 1988, as well as during a series of informal discussions he had with Purcell during this general time period.

Based on Purcell's and Samit's testimony, it is concluded that CSU did not formally present a response to every aspect of the CFA proposal during either the February 26, or April 8, 1988 negotiating sessions. CSU responded to only certain parts of the CFA proposal during either or both of these meetings. However, Samit responded to the remainder of the proposal in informal discussions with Purcell during this approximate time frame. Samit convincingly testified he made it clear that the CFA

proposal was considered, but in the end found by CSU to be unacceptable and an agreement unlikely.[6]

The following point-by-point response described by Samit in his testimony is consistent with this view. CFA had proposed a four-year cap on fees for long-term parking permits. This was rejected by Samit because it would provide no financing for new construction. CFA's proposed cap on fees for short-term or daily-use parking (more fully discussed below) was declared nonnegotiable because such facilities were open to the general public, as well as to faculty members.[7]

In the category "availability of parking," CFA proposed that CSU provide, upon request, reserved parking for all bargaining unit members at the rate of $18.00 per month. Samit responded that there were not enough facilities to provide this. When informed by CFA that it already existed on some campuses, Samit said he would investigate it and respond. Samit gave the same response to a CFA proposal requiring a reasonable relationship between the number of parking permits issued and the number of available spaces. CFA's goal here was to ensure that a faculty

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[6]Samit also testified that alternate approaches to raising parking revenue were explored during the series of meetings prior to the key February 26 and April 8, 1988 negotiating sessions.

Regarding fees for the period July 1, 1987 to June 30, 1991, CFA proposed faculty permits "shall not exceed $33.75 per semester, $22.50 per quarter, or $7.50 per month." For the same period, CFA proposed the "fee charged at parking meters shall not exceed $.35 per hour," and "parking fees for coin-operated parking gates or daily permits shall not exceed $1.25 per session."

member who purchased a permit would, in fact, have a place to park.

In the area of "alternate transportation," CFA proposed that CSU subsidize (at no less than 50 percent) the cost of mass transit or commuter transit for those faculty members who used such means of transportation instead of a personal automobile. CFA proposed using funds from fines and forfeitures (parking tickets) to finance this proposal. To this Samit responded that he would have to check with his principals. He also said that he was in the process of collecting information for a legislative hearing related to alternative transportation and would provide any information collected to CFA. He did so on May 10, 1988.

In the "payment of fees" proposal, CFA asked CSU to deduct, upon request, the monthly cost of parking permits from the pre-tax income of faculty members. After discussing the matter with a consultant, Samit responded that it was illegal to shelter employee parking fees.

Another area of discussion at the February 26, 1988 meeting concerned the "alternative fee structure" suggested by CFA. If adopted, this would have changed the mix between bond sales and parking fee receipts. In other words, more bonds would be sold and less money collected in the form of fees. Assumption 40, among other things, indicated that CSU intended to sell $53,575,000 in bonds over the next five years. Hillyard responded that offering more bonds would have a negative impact on both the ability to sell the bonds and the interest rate.

Hillyard told Purcell he had been advised on this matter by Paine-Webber and a San Francisco law firm.

Hillyard's response prompted Purcell, on March 1, 1988, to request "access to any correspondence between Paine-Webber and CSU concerning proposed bond sales, interest rate projections and dollar amount to be sold in light of the 'market.'" The purpose of the request, Purcell informed Samit, was to help CFA "understand the relationship of the capital which CSU seeks to raise to the parking fee increase it seeks to levy."[8] Purcell also requested access to documents which indicated the status of the bonds.

On March 7, 1988, Samit informed Worthman in writing that CFA's February 22, 1988 request for proposals, bids and designs was "rather far removed" from the scope of negotiations. Nevertheless, Samit wrote, such documents are a matter of public record and "whatever plans we might have" may be examined by contacting Hillyard's office.

The discussion during the negotiating session on April 8, 1988 was mainly about the CFA proposal. At the beginning of the meeting Samit seemed perplexed when Purcell asked him for a response to CFA's February 26, 1988 proposal. However, after receiving a copy of the proposal from Gerry, Samit began his response. When the discussion turned to requests for information

[8]The March 1, 1988 request also sought access to correspondence between CSU and the San Francisco law firm. Unfair practice allegations concerning this request have been dropped by CFA.

related to alternate modes of transportation and average student enrollment by campus (discussed above), Samit asked for a caucus. After a thirty-minute caucus, Samit said he was in the process of collecting information related to the CFA proposal for a legislative hearing. Samit suggested that the meeting be adjourned so that the information could be gathered and shared with CFA later. Samit's suggestion was accepted by CFA.

On May 10, 1988, Samit responded in writing to certain CFA requests for information made earlier in the negotiations. He enclosed the report to Assemblyman Campbell concerning alternate modes of transportation, and charts depicting average student enrollment by campus. Responding to the earlier request for proposals, bids and designs, Samit provided Purcell with a list of current construction projects and again directed Purcell to Hillyard's office for more specific information about the status of each project. Purcell assigned this task to Robin Jacques. Upon contacting Hillyard's office, Jacques was told by Glenn Mitchell, an employee in the office, that the records did not exist.

Investigating the same request, Gerry too was told by Mitchell the information did not exist. Consistent with Hillyard's testimony, Mitchell also told Gerry that CSU proceeded on a "sequential basis;" that is, although CSU may decide to build a facility in 1993, it may not be until 1990 that the project is actually initiated. Mitchell also told Gerry that he was "not sure," but "did not think anything had gone forward."

Purcell and Samit engaged in informal discussions after the April 8, 1988 meeting, but at some unknown point Samit reached the decision that the parties were at impasse and agreement was not possible. On June 3, 1988, CSU declared impasse. On June 30, 1988, the PERB Regional Director determined that an impasse existed.[9]

II. IMPASSE:

CFA's complaints about CSU's conduct during impasse fall into two categories: (1) unilateral changes in parking rates; and (2) failure to provide information.

A. Unilateral changes

There are two types of parking facilities on CSU campuses. The first grants access through the purchase of long-term permits which vary in duration; e.g., month, semester or year. Only faculty members who visit campus several days per week typically use this type of facility.

The second type of facility is controlled by coin-operated parking meters, coin-operated parking gates, or daily parking permits (hereafter referred to as "daily-use" parking). Although anyone (e.g., students, visitors, etc.) can use the daily-use facilities, they are typically used by students and part-time faculty members who visit campus only a few days per week. Of the approximately 20,000 employees in Unit 3, approximately 7,000

[9]CFA disputed the declaration of impasse, but the Board's Regional Director concluded that an impasse existed. On appeal, the Board upheld the Regional Director, but took no position on the issues presented by the instant unfair practice charge. California State University (1988) PERB Order No. Ad-177-H.

are part-timers. Worthman's investigation showed that approximately 30 per cent of Unit 3, primarily the part-timers, use "daily-use" parking. In fact, as of January 1989, 13,787 long-term permits had been sold for school year 1988-89. The close relationship between the number of long-term permits sold and the number of full-time faculty members in Unit 3 supports Worthman's testimony; that is, the full-time faculty members tend to use the long-term facilities while the part-time faculty members typically use the daily-use facilities. In addition, the testimony of Timothy Sampson, professor at San Francisco State, indicates that even full-time faculty occasionally use the daily-use facilities.

On or about September 1, 1988, during impasse, CSU unilaterally increased the daily-use parking rates. There is no dispute that this change occurred.[10]

There is a dispute as to whether the cost of long-term permits was increased. The September 1987 resolution expressly directed campus presidents to not change parking rates for employees under exclusive representation pending the outcome of negotiations. Also, on May 6, 1988 and again on July 20, 1988, D. Dale Hanner, CSU vice chancellor for business affairs, sent memoranda to the nineteen campus presidents directing them to not increase parking permit fees for employees represented by CFA

[10]In 1984, daily-use rates were set at $0.75 to $1.00 per entry and $0.15 to $0.25 per hour. Effective September 1, 1988, these rates were increased to a range of $1.50 to $2.00 per entry and a range of $0.25 to $1.00 per hour.

until bargaining obligations under the Act had been satisfied. Hanner also informed the campus presidents that fees for "students, management employees and all other bargaining units" should be increased in accordance with the Trustees' September 1987 resolution. During this time Samit attended monthly meetings of the CSU Executive Council (comprised of the nineteen campus presidents and vice chancellors and the chancellor) and at each meeting advised the Council that parking fees for CFA-represented employees could not be changed until the completion of negotiations. Accordingly, CSU contends no changes occurred.

CFA called three witnesses to testify about the change. Paul Schmidt, a professor at the Long Beach campus, testified that in early April 1988 he saw a CSU flyer announcing increased rates for 1988-89 parking permits. Schmidt promptly bought a yearly permit at the increased rate. The flyer in question is drafted as a general announcement, and is primarily concerned with securing parking permits by mail. Its caption reads: "1988-89 Parking Permit by Mail Information." It makes no reference to parking rates for employees subject to collective bargaining.

Robert Carlson, a professor at the San Diego campus, testified that on February 2, 1988 he attended a meeting with the dean, assistant deans and associate deans in his department. He said the dean announced a retroactive increase in parking rates, and gave the "impression" that the increase was "fairly imminent." On cross-examination, however, Carlson admitted that

there had been no increase in long-term parking fees on the San Diego campus.

Also called to testify was Marilyn Friedman, a professor at the Los Angeles campus. On July 8, 1988, she bought a yearly permit at the increased rate. In September, 1988, she learned through a CFA publication that she had been overcharged. She immediately went to the cashier's office and was granted a refund.

B. Denial of information during impasse.

On June 27, 1988, Samit responded in writing to Purcell's March 1, 1988 request for information. Samit attributed the delay to an "oversight," and claimed that he was under the impression that Hillyard had already answered some of the questions posed by CFA in the earlier request. Responding to the substance of the request, Samit informed Purcell that there was no correspondence between CSU and Paine-Webber concerning bond sales. Gerry, who played an active role in the negotiations as the person charged with responding to CFA's requests, had learned from Hillyard's office (and apparently relayed the information to Samit) that the only contact between CSU and Paine-Webber was verbal. CSU did not attempt to provide the Paine-Webber information in an alternate written form. However, Hillyard had already told CFA of the advice received from Paine-Webber.

Gerry testified that he was also informed by Mitchell that CSU had not undertaken efforts to move forward with the sale of bonds concerning this particular parking program. This is

consistent with Hillyard's testimony that he and his staff talked with Paine-Webber representatives about the bond issue, but did not exchange written correspondence. Hillyard also testified that it is the normal practice of CSU to transact its bond business by telephone.

On September 20, 1988, during mediation, Purcell sent a letter to Samit seeking more information. The letter asked Samit if CSU had initiated or completed the sale of bonds to fund the capital outlay for the proposed parking program, and sought an accurate description of current construction plans. The request for "bid proposals" was renewed. Purcell also asked for the number of faculty permits per campus (semester, quarter or annual) sold to date in academic year 1988-89, or, alternatively, the number of permits sold by campus at the rate of $7.50 per month, $33.75 per semester or $22.50 per quarter. Since these rates were still in effect for Unit 3, this information would have told CFA how much money was currently being collected in parking fees paid by faculty members.

CFA had first sought this information as part of the comprehensive request presented to CSU on August 22, 1987. CSU earlier estimated in Assumption 40 that it needed a certain amount of fee-generated money to drive the construction program. Purcell testified that it was "quite likely," at least in CFA's view, that CSU was already collecting more than it needed. Purcell thought the September 1, 1988 increase for 300,000 students was enough to fund the new parking projects. He

testified: ". . .if CSU was collecting more money than it anticipated, I thought that would have been a powerful argument as to why the faculty that we represent in Unit 3 should not have to pay a fee increase."

On September 23, 1988, Samit responded to Purcell in writing that there had been no sale of bonds, nor had CSU accepted bid proposals on the parking program. Samit again informed Purcell that CSU does not collect parking revenue data differentiated by bargaining unit or fee sources. Rather, all fee revenue whether generated by students, staff, faculty or administrators is merely reported as revenue. According to Samit, CSU simply could not provide the information either by unit, amount of fee, or duration of permit.

On October 3, 1988, Samit sent Purcell the total number of faculty permits sold at sixteen of the nineteen campuses. This information could not be readily gathered at the remaining three campuses (Fresno, Pomona and San Jose). Those campuses were directed to supply the information as soon as possible. After consulting Mitchell again, Gerry learned the construction was on hold. Accordingly, he informed Purcell that there were no construction plans or "bids" to examine.

On November 14, 1988, CFA representative Steve McDonald requested more information from Samit. The requests for the number of permits sold and the 1988-89 parking revenue were renewed, as was the request for copies of correspondence between CSU and Paine-Webber.

Gerry responded to McDonald in writing on December 19, 1988. He first said the data showing the number of parking permits sold was not yet available for the Fresno, Pomona and San Jose campuses. The request for the 1988-89 revenue data, according to Gerry, was "premature," since such reports are not compiled until the end of the fiscal year. Purcell disagreed with this response. He testified that "common sense told us that the University had to maintain some type of accounting process to maintain records for its cash receipts." Also, CFA research had uncovered a 1985 prospectus for the sale of parking revenue bonds which detailed how CSU collects and accounts (on a monthly basis) for revenue from the sale of parking permits.

In the December 19, 1988 response, Gerry also informed CFA that there "has been no further correspondence" between CSU and Paine-Webber. After receiving Gerry's response, CFA amended the complaint to allege denial of information during the impasse procedures.

On January 9, 1989, Purcell vigorously complained in writing to Samit that CSU was dragging its feet with respect to information requests. Purcell took the position that CFA could not intelligently participate in the upcoming factfinding hearing without the requested information. To clarify the outstanding requests, Purcell again listed the information sought and CFA's supporting rationale.

Specifically, Purcell again asked for the number of faculty permits sold in 1988-89 at the Fresno, San Jose and Pomona

campuses. He again sought the number of parking permits sold by campus and by category (semester, quarter, or annual), as well as the 1988-89 parking revenue.[11] CSU, during earlier bargaining, had provided CFA with detailed information covering the financial operation of the CSU parking system for the 1986-87 fiscal year. More current information, covering the 1987-88 fiscal year, had become available, and Purcell requested it. CSU had also provided CFA with information related to the "Parking Revenue Fund Balance" at the beginning of recent fiscal years. Purcell now sought the most recent figures.

In a January 12, 1989 letter, Gerry responded to CFA's comprehensive request. First, he provided the number of faculty parking permits sold at the San Jose, Fresno and Pomona campuses. Gerry explained further that since CSU does not differentiate the sale of parking permits by bargaining unit, it was necessary for each campus to manually count the number of permits sold to members of Unit 3. Second, he informed Purcell that since CSU does not differentiate between categories or types of permits sold, that information was not available. On a related point,

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[11]In suggesting an alternative approach to gathering information about the categories of permits sold and the revenue therefrom, Purcell pointed out to Samit in the January 9, 1989 letter that Unit 3 employees represented the only group still paying parking rates on the pre-September 1988 schedule. Purcell found it "inconceivable" that CSU did not have an accounting procedure to enable it to identify those parking payments at the old rates and capture the dollars collected in each payment category or the number of permits sold in each category. These comments (as well as similar comments in Purcell's September 20, 1988 letter to Samit) seriously undercut the CFA argument that CSU unilaterally increased long-term parking rates for Unit 3 employees in September 1988.

both Hillyard and Gerry testified that all parking revenue is placed in a general account; therefore, the amount of revenue generated by Unit 3 was not available. According to Gerry, a $7.50 permit purchase is recorded as a "general entry" under "Permits, Revenue." Third, as indicated in his December 19, 1988 response to McDonald, Gerry stated that 1988-89 data are compiled at year's end and will be provided at that time. Gerry addressed other requests for information in the January 12, 1989 letter. For example, the 1987-88 parking audit and the fund balance for the previous two years, requested for the first time on January 9, 1989, were provided.

According to CFA, the complete number of faculty parking permits sold per campus was provided on January 27, 1989. CSU also provided the 1988-89 revenue data on the same date, shortly before the factfinding hearing. Purcell said CFA "had to scramble like the dickens to try and incorporate it into [its] factfinding presentation." This placed a "severe handicap" on CFA, according to Purcell, because a major part of the CFA case was aimed at proving CSU did not need as much money as anticipated.

ISSUES

1. Whether CSU, during the parking negotiations from February 22, 1988 through June 15, 1988, denied CFA information or otherwise breached its obligation to negotiate in good faith, in violation of section 3571(c) and (b)?

2. Whether CSU, in April 1988, unilaterally implemented a rate increase for long-term parking permits, in violation of section 3571(c) and (b)?

3. Whether CSU, on or about September 1, 1988, unilaterally implemented a rate increase for "daily-use" parking, in violation of section 3571(e) and (b)?

4. Whether CSU, during the impasse procedures, denied CFA information or otherwise breached its obligation to participate in the impasse procedures in good faith, in violation of section 3571(e) and (b)?

DISCUSSION

I. The Unilateral Changes

CFA contends that parking is a negotiable subject under the Act. When CSU, during negotiations, unilaterally increased the cost of long-term permits it violated the obligation to negotiate in good faith. In addition, CFA argues, when CSU unilaterally increased the daily-use rates during impasse it breached its obligation to participate in good faith in the Act's impasse procedures. CSU, on the other hand, concedes that the cost of parking is generally a negotiable subject under the Act. However, CSU contends that the evidence does not support a finding that it has increased the cost of long-term parking. As for the change in daily-use rates, CSU argues that it has no obligation to negotiate with an exclusive representative about the decision to increase parking rates at facilities used by staff, students, or the public at large.

An employer violates its duty to negotiate in good faith when it unilaterally implements a new policy or changes an established policy affecting a negotiable subject without affording the exclusive representative a reasonable opportunity to bargain. Such unilateral changes are inherently destructive of employee rights and are a failure per se of the duty to negotiate in good faith. Grant Joint Union High School District (1982) PERB Decision No. 196; Pajaro Valley Unified School District (1978) PERB Decision No. 51. These principles are applicable to cases decided under HEERA. See Regents of the University of California (1983) PERB Decision No. 356-H.

A. Long-Term Parking

The general subject of parking costs is negotiable under the Act. Regents of the University of California, supra, PERB Decision No. 356-H. In this case, CSU was obligated to negotiate with CFA in accordance with Articles 32.18 and 3.1 of the parties' contract. See fn. 13, p. 33, infra.

The complaint alleges that CSU unilaterally increased long-term parking rates during negotiations. However, the charging party has failed to present evidence that this change actually occurred.

Carlson, the professor from San Diego, admitted that no change had occurred at his campus. Friedman, the professor from Los Angeles, testified that she bought a yearly permit at the increased rate, but upon learning that she had been overcharged requested and received a refund. Schmidt, the professor from

Long Beach, was the only witness to testify that he purchased a yearly permit at the increased rate. However, the testimony from a single employee out of a 20,000-member bargaining unit is scant evidence upon which to base a conclusion that a change occurred in long-term parking rates which had a "generalized affect or continuing impact upon the terms and conditions of employment of bargaining unit employees." Grant Joint Union High School District, supra. PERB Decision No. 196, p. 10. Moreover, when evaluated against the weight of evidence in the record, Schmidt's testimony becomes even less convincing.

Throughout the negotiations CSU took steps to preserve the status quo concerning long-term parking rates for Unit 3 employees. The September 1987 resolution expressly provided that there be no change in such rates until the completion of negotiations. This directive was repeated at least twice during 1988, in May and July, in memoranda from Hanna to the nineteen campus presidents. Samit too delivered the same message to the CSU executive council almost on a monthly basis during 1988.

In addition, Purcell's letters of September 20, 1988, and January 9, 1989, admit that Unit 3 members were still under the "pre-1988" long-term parking rates as of those dates. These letters are fatal to the CFA argument.

The fact remains that Schmidt bought a permit at the increased rate in response to a flyer circulated on the Long Beach campus. However, the flyer was not directed primarily at Unit 3 employees. The flyer was drafted as a general

announcement aimed at a broader audience, and was primarily concerned with the purchase of permits by mail. It appears that Schmidt misread the flyer to apply to him as a member of Unit 3 and purchased a permit. Although Schmidt never sought a refund, it is reasonable to infer from the testimony of Friedman that he would have received one had he asked. In fact, CSU concedes in its brief that Schmidt was "over-charged" and would have been entitled to a refund. Thus, it appears that charging Schmidt the increased rate was a mistake. A single administrative error which an employer stands ready to correct is not a refusal to negotiate in good faith. Moreno Valley Unified School District (1982) PERB Decision No. 206, p. 11.

B. Daily Use Parking

There is no dispute that CSU, during impasse, unilaterally increased the rates at daily-use parking facilities. CSU takes the position that this change is outside the scope of representation since Unit 3 employees are permitted to use these facilities on the same basis as are members of the public, other employees and students. To the extent Unit 3 employees use this type of parking facility, CSU contends, they are merely one group of consumers of CSU's parking "product."

Regents of the University of California, supra, PERB Decision No. 356-H does not squarely address the negotiability of parking rates for employer facilities which are used by the public, other employees and students, as well as by bargaining

unit members. Thus, this case presents an issue of first impression.[12]

Since the general subject of parking is negotiable under Regents, it is fair to conclude that the cost of using daily-use parking facilities is, under Anaheim Union High School District (1981) PERB Decision No. 177: (1) logically and reasonably related to the wages of Unit 3 members who use such facilities; and (2) a term and condition of employment of such concern to both management and faculty that conflict is likely to occur and the mediatory influence of collective bargaining is the appropriate means of resolving the conflict. See also Los Angeles Police Protective League v. City of Los Angeles (1985) 166 Cal.App.3d 55 [212 Cal.Rptr. 251] (upholding a local employee relations board decision that monthly parking rates are negotiable under the Meyers-Milias Brown Act).

However, the decision to increase parking rates at such facilities is in large part aimed beyond employees at the broader objective of providing adequate parking facilities at a large public university where State policy requires that the parking system be financially self-supporting. Such decisions are designed to raise revenue for the overall CSU parking program

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[12]The only guidance on this point is found in Regents. Finding parking rates a negotiable subject, the Board also noted that it might look differently at a situation where employees were privileged to use parking facilities on the same basis as the public at large. Under such circumstances, the Board suggested, the employer's argument that it should be free to unilaterally price its parking product might be more persuasive. Regents of the University of California, supra, PERB Decision No. 356-H, p. 13, fn. 5.

so that adequate parking facilities can be made available to the public, students, and staff, as well as to Unit 3 employees. Imposing an obligation to negotiate such a decision would carry the bargaining process beyond the bargaining unit and into CSU's overall mission and its relationships with third parties. As such, it would significantly abridge the employer's freedom to exercise those managerial prerogatives essential to the efficient operation of the campuses and thus the achievement of its mission. Therefore, it is concluded that the decision to increase rates at daily-use parking facilities is not within the scope of representation under the Act.

This does not, however, relieve CSU of the obligation to meet and confer with the exclusive representative on this subject. Even when an employer is free to unilaterally make decisions involving managerial rights, it nevertheless must provide the exclusive representative with notice and an opportunity to bargain over the effects of those decisions on matters within scope. See e.g., Newman-Crows Landing Unified School District (1982) PERB Decision No. 223; Eureka City School District (1985) PERB Decision No. 481.

The decision to increase the daily-use parking rates clearly impacts on parking fees paid by a large number of Unit 3 employees, estimated by Worthman to be as many as 30 per cent of the bargaining unit. Such an increase in parking rates cannot realistically be viewed as having no impact on Unit 3 employees. It is no less negotiable than a comparable decrease in wages.

Los Angeles Police Protective League v. City of Los Angeles, supra, 166 Cal.App.3d 55, 60-61.

The complaint here alleges that CSU unlawfully increased the daily-use parking rates during impasse. In effects-bargaining cases an employer satisfies its obligation to negotiate in good faith if it provides an opportunity for negotiations to take place during the time between the adoption of the resolution announcing the change and the actual implementation of the change. Oakland Unified School District (1985) PERB Decision No. 540, pp. 16-17.

In this case, CFA had notice as early as September 1987 when the Trustees adopted a resolution increasing parking rates in September 1988. It was made clear that rates for Unit 3 would not be increased pending the outcome of negotiations. Thus, there was ample opportunity during this one-year period to negotiate the effects of the decision to increase rates at daily-use facilities. It remains to be determined whether CSU negotiated in good faith during this period.

In February 1988, after several meetings and exchanges of information, the parties finally exchanged initial proposals. CFA rejected the uniform parking scale implicit in the CSU proposal. CSU correctly declared non-negotiable the CFA proposal (see fn. 7, p. 11, supra.) attempting to establish fees at daily-use facilities. This proposal, as drafted, had application beyond Unit 3. It would have effectively undermined CSU's managerial authority to set fees at such facilities. Other

aspects of the CFA proposal (e.g., reserved faculty parking, permit-space ratio, alternative transportation, etc.) dealing with the effects of the decision to increase rates were discussed briefly, but agreement was not reached and the declaration of impasse (found below to have been appropriate under the circumstances) precluded further negotiations at the table. Afterwards, the parties engaged in mediation and factfinding. While the parties were in impasse, CSU increased the daily-use parking rates as announced one year earlier.

In Compton Community College District (1989) PERB Decision No. 720, the Board recently established a test to determine when an employer is free to implement a non-negotiable decision prior to the exhaustion of the impasse procedures. Under the circumstances presented here, CSU was free to implement the decision in September 1988. The decision was not an arbitrary one. It was based on an important managerial interest. Adequate notice was given, allowing a full year for negotiations. Negotiations had occurred and the parties were at impasse at the time of implementation. After the decision was implemented, the parties continued through factfinding. Any further delay in implementation would have interfered with CSU's right to raise parking fees for non-bargaining unit employees. This would have effectively undermined CSU's right to make the nonnegotiable decision and thus its right to improve parking at the nineteen campuses. Compton Community College District, supra. pp. 14-15.

II. Bad Faith Bargaining

The complaint, as amended, contains several incidents alleged to be evidence of bad faith or per se violations of the obligation to negotiate or participate in the impasse procedure in good faith. For purposes of evaluating CSU conduct during negotiations and impasse, these allegations are grouped into four categories: (1) public notice violations; (2) refusal to provide information; (3) insisting on an inflexible position to impasse; (4) dilatory conduct at a negotiating session.

A. Public Notice

CFA contends that CSU's refusal to process the parking proposals under the section 3595 public notice procedure is evidence of bad faith conduct which delayed the negotiations. CSU first argues that there is no obligation to sunshine proposals which are clearly reflected in the existing contract. Alternatively, CSU contends that its February 22, 1988 posting satisfied any public notice requirements.

It is well established that public notice complaints shall not be adjudicated in the context of unfair practice proceedings. A separate procedure for resolving public notice complaints has been established for precisely this purpose. CFA has filed no public notice complaint. Therefore, the undersigned has no authority in this proceeding to render a decision that CSU violated the Act's public notice requirements. Los Angeles Community College District (1981) PERB Decision No. 167. However, compliance with public notice requirements is a factor

which may be considered in evaluating employer conduct during negotiations. Oakland Unified School District (1983) PERB Decision No. 326, p. 40.

Parking rates were covered by the existing agreement, as CSU points out, and the general topic had been subjected to public notice requirements when the contract was initially negotiated. However, the existing contract provides for new negotiations, upon request by CFA, in the event CSU seeks to change the existing fees.[13] The contract language contemplates new proposals, renewed negotiations, and new parking rates. Accordingly, the "initial" proposals presented by the parties on February 22 and 28, 1988, were in reality "reopeners." This placed on CSU the obligation to comply with the public notice

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[13]Section 32.18 of the contract states:

> An Employee is required to pay the parking fee as determined by the CSU for parking at any facility of the CSU. The CSU shall provide for payroll deductions for this purpose upon written authorization by the employee. The CSU shall not change the parking fees payable in effect fall term 1985, without first complying with provision 3.1 of the Agreement. Meeting and conferring over the impact of such a charge shall be about the portion of the rate increase, if any, the faculty unit employees will pay.

The relevant part of Section 3.1 states:

> Employer shall provide notification to CFA at least the thirty (30) days prior to the implementation of systemwide changes affecting the working conditions of faculty unit employees. Upon request of CFA, the CSU shall meet and confer with CFA on the demonstrable impact of such changes.

requirements in the Act. Los Angeles Community College District (1981) PERB Decision No. 158.[14]

However, there is no need to determine if CSU complied with the section 3595 requirements. Even accepting CFA's argument that CSU failed to meet these requirements, this does not lead to the conclusion that CSU's conduct slowed down or otherwise interfered with the actual negotiations. It must be remembered that the focus here is on the employer's negotiating conduct. It is not a public notice inquiry. CSU did not use the public notice requirements as an obstacle to negotiations. To the contrary, Samit took the position that there was no need to sunshine proposals. CSU stood ready to proceed with negotiations. While CFA might very well have prevailed had it filed a public notice complaint, CSU's conduct with respect to

[14]The many cases cited by CSU to the contrary are not on point. Antioch Unified School District (1986) PERB Decision No. 581 involved proposals which were "identical" to proposals which had already been sunshined; thus, the employer was not required to duplicate its public notice efforts. In Los Angeles Community College District (1984) PERB Decision No. 454 an employee organization was given a salary increase pursuant to discretionary authority the employer already possessed under the existing contract. Unlike the present case, there were no "initial" proposals and no negotiations. Sacramento City Unified School District (1982) PERB Decision No. 205 involved "counterproposals," not "initial" proposals." Palo Alto Unified School District (1981) PERB decision No. 184 dealt with the specificity of proposals presented for public notice, an issue not present in this case. Los Angeles Unified School District (1980) PERB Order No. Ad-104 addressed negotiable matters which "remained open" under the existing contract. Thus, it was clear that negotiations would continue.. Unlike the present case, there were no new proposals or initial proposals.

public notice requirements had no significant impact on the negotiations.

B. **Requests For Information**

An exclusive representative is entitled to all information necessary and relevant to the discharge of its duty to represent bargaining unit employees. An employer's refusal to provide such information evidences bad faith unless it demonstrates adequate reasons why it cannot provide the information. Stockton Unified School District (1980) PERB Decision No. 143. Requests for information which involve negotiable terms and conditions of employment are presumptively relevant. Modesto City Schools and High School District (1985) PERB Decision No. 479. Absent a valid defense, refusal to furnish necessary and relevant information is in itself an unfair practice and may also support an independent finding of surface bargaining. Trustees of the California State University (1987) PERB Decision No. 613-H.

1. **Requests for Proposals, Proposals and Bids**[15]

CFA contends that it repeatedly asked for the requests for proposals and any proposals or designs received by CSU, but CSU refused to comply. CSU concedes that it received the requests, but claims the information did not exist. CSU also argues that

[15]Refusal to provide this information was not specifically alleged in the complaint. However, it is intimately related to the subject of the complaint, it arises from the same course of conduct, and it was fully litigated at hearing. Since both parties briefed the issue, it is determined that adequate notice was provided. Therefore, it is considered here as an unalleged violation. Tahoe-Truckee Unified School District (1988) PERB Decision No. 668.

such documents are public records which, if they exist, may be examined upon request. CSU does not contend the information is unnecessary or irrelevant.

As vice chancellor responsible for the entire CSU parking system and the chairperson of the CSU parking task force, John Hillyard was the only witness in a position to have any direct knowledge of these documents. Regarding the proposals and designs, Hillyard testified that he did not know what the Daily Collegian meant when it reported that CSU was "beyond the designing stage," and he did not want that statement attributed to him. While Hillyard "assumed" design had gone forward on some projects, and CSU "might have" projects in the design phase at another division in the chancellor's office, he was careful to state that his staff would be better prepared to answer such questions. When considered with Gerry's and Jacques' testimony that Mitchell said the documents did not exist, Hillyard's testimony cannot fairly be read to establish their existence.

Therefore, it is concluded that there is insufficient evidence in the record to prove actual proposals or designs existed in Hillyard's office or elsewhere. CSU cannot be faulted for not producing these documents. The Bendix Corporation (1979) 242 NLRB 62 [101 LRRM 1118].

Hillyard's testimony regarding the existence of the "requests for proposals" was more certain. He testified that requests for proposals for parking construction projects targeted by the task force for 1988-89 had "definitely . . . gone

forward." He said his staff is more familiar with the status of the projects, "but I do know requests for proposals have been prepared on some of them." Hillyard's testimony is at odds with the CSU position that the information did not exist. Testimony that Mitchell said the requests for proposals did not exist is hearsay and therefore not sufficient to outweigh Hillyard's clear testimony to the contrary on this point. PERB Regulation 32176. According to Hillyard, the information was "definitely" available at some location and presumably within the control of CSU representatives. Yet no CSU representative took the necessary steps to satisfy its obligation to track it down and provide copies to CFA. See Safeway Stores, Inc. (1980) 252 NLRB 682 [105 LRRM 1448].

Worthman testified that the "request for proposals" would have helped CFA understand the basis for CSU projections about the cost of projects Unit 3 members were being asked to subsidize through increased parking rates. Without passing on the merits of Worthman's reasoning, the request for this information was at least presumptively relevant. CSU has not disputed the necessity or the relevance of this information. Aside from a single, off-hand comment by Samit in his letter to Worthman on March 7, 1988, that this particular information was "rather far removed" from the scope of negotiations, CSU during this entire proceeding has raised no arguments to challenge the legitimacy of the request.

Therefore, it is concluded that CSU breached its obligation to negotiate in good faith when it failed to provide CFA with

copies of the "request for proposals" related to parking projects. This conduct violated section 3571(c).

2. **Parking Revenue Data**

CFA contends that despite its repeated requests for parking revenue information, CSU did not respond in a timely fashion. By the time the information was provided, according to CFA, the delay was such that it hampered CFA in its factfinding presentation. Therefore, CFA concludes, CSU has unlawfully failed to provide necessary and relevant information to the exclusive representative in a timely manner. CSU, on the other hand, claims that it provided the information to CFA. Any delay was due to the burdensome nature of the request. CSU does not contend that the information requested is irrelevant or unnecessary.

As CFA points out in its brief, McDonald requested parking revenue data for fiscal year 1988-89 on October 20, 1988, and again on November 14, 1988. Despite the fact that the parties were at that time preparing for the factfinding hearing, it took Gerry more than a month to respond. When he responded on December 19, 1988, Gerry said the request was "premature," since such information is not ordinarily compiled until the end of the fiscal year. Gerry repeated this in a January 12, 1989, letter to Purcell. This assertion proved to be untrue, for CSU eventually provided the information on January 27, 1989. From this evidence, it may reasonably be inferred that the information

was available and could have been compiled in approximately two weeks, instead of three months.

The delay in providing the 1988-89 parking revenue was unreasonable. It placed CFA at a disadvantage in preparing for the crucial factfinding hearing which was to begin a short time later. A major part of the CFA case, it will be recalled, was that CSU didn't need to generate as much money from parking revenue as it claimed. As Purcell pointed out, CFA had to "scramble like the dickens" to incorporate this information into its presentation.

The same reasons that require reasonable diligence in scheduling meetings require reasonable diligence in furnishing information essential to productive bargaining. Otherwise, the likelihood of significant progress toward agreement is hampered. See Local 12, International Union of Engineers (1978) 237 NLRB 1556 [99 LRRM 1196], and cases cited therein. These principles apply with equal force to the factfinding process. CSU has failed to exercise reasonable diligence regarding the 1988-89 parking revenue information, and there is no CSU contention that the information was irrelevant or unnecessary. This conduct violates the obligation to participate in the impasse procedures in good faith in violation of section 3571(e).

CFA also contends in its brief that CSU delayed in providing the 1987-88 revenue. Neither the amended charge nor the amended complaint cover the request for 1987-88 parking revenue. The two pre-factfinding requests for information relied upon here by CFA

contain no reference to the 1987-88 parking revenue. Specifically, the October 20, 1988 request is "referenced" in Gerry's December 19, 1988 letter to McDonald, but there is no specific mention of the 1987-88 revenue request. Similarly, McDonald's November 14, 1988, letter to Samit covers only the 1988-89 parking revenue. There is no mention of the 1987-88 parking revenue request. The 1986-87 revenue was requested on August 22, 1987, in what CFA describes as a "generic" request and provided on September 4, 1987. However, there is sparse evidence in the record showing what, if anything, happened between September 1987 and January 1989, when the 1987-88 revenue was provided. Therefore, it is not appropriate to reach this issue here.[16] See San Ramon Valley Unified School District (1982) PERB Decision No. 230, p. 9-10.

[16]Even if this issue were reached here, CFA's main argument that the delay in receiving the 1987-88 revenue placed it at a disadvantage in presenting its case to the factfinder would be rejected. Unlike the year-to-date 1988-89 revenue which was received a "couple of days" before the factfinding hearing, the 1987-88 revenue was received on January 12, 1989, several weeks before the factfinding hearing. This gave CFA adequate time to incorporate the 1987-88 revenue information into its presentation.

3. Parking Permits Sold in Unit 3[17]

In an attempt to determine the amount of parking revenue generated by Unit 3 members, CFA requested information concerning the number and duration of permits sold to Unit 3 employees on each campus. CFA argues that the delay in providing the number of faculty permits sold and the refusal to provide the duration or type of permits sold, and thus the parking revenue generated by Unit 3 employees, indicates bad faith bargaining.

CSU contends that any delay in providing the number of permits sold was due to the time-consuming nature of the request. Since such records are not normally kept, it was necessary for each campus to manually count the number of faculty permits sold. CSU further claims it does not record the duration or type of permits sold, and all parking proceeds go into a general account. According to CSU, this made it impossible to identify the amount of revenue generated by Unit 3 based on existing records. CSU does not argue that the requested information was unnecessary or irrelevant.

In response to CFA's August 27, 1987 request, Gerry wrote Purcell that the CSU simply did not keep such records. CFA did not challenge Gerry's assertion at that time. The record does

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[17]This request for information was not expressly included in the complaint. However, it is intimately related to the subject of the complaint, it arises from the same course of conduct, and the matter was fully litigated at hearing. Since both parties briefed the issue, it is determined that adequate notice was given. Therefore, it is considered here as an unalleged violation. Tahoe-Truckee Unified School District, supra, PERB Decision No. 668.

not show the matter was raised again until the request was renewed until over a year later, on September 20, 1988, when the parties were in mediation. Thus, in evaluating the CFA argument that the information was provided late, the starting point must be September 20, 1988.

On September 23, 1988, Samit again responded that CSU does not collect parking revenue data differentiated by fee source. However, CSU took a more conciliatory position (from that initially stated by Gerry in his September 4, 1987 letter) regarding the number of faculty permits sold on each campus. In response to CFA's request, CSU took the necessary steps to gather the information. On October 3, 1988, Samit sent Purcell the number of faculty permits sold on sixteen of the nineteen campuses. The number of faculty permits sold on the remaining three campuses (Fresno, Pomona and San Jose) was not then available, but these campuses gathered the information and it was made available on January 27, 1989. Consistent with Samit's letter of September 23, 1988, the response did not include the amount of parking revenue collected from Unit 3, nor did it include the categories of permits sold to faculty by duration or amount.

Manually counting thousands of faculty permits sold in a bargaining unit spread over nineteen campuses can be time-consuming. CSU accomplished this for sixteen of the nineteen campuses in the two-week period between September 20, 1988, and October 3, 1988. The information was then given to CFA. This is

not an unreasonable amount of response time for a request of this sort. CFA had the faculty permit sales figures for the overwhelming majority of the campuses by October 3, 1988, well in advance of the factfinding hearing. It is true that the number of permits sold on the remaining three campuses was provided only a few days before the factfinding hearing, but the delay was because it took more time to collect the information at these three campuses. In addition, the nature and amount of information involved here (number of faculty permits sold on three campuses) is such that it could have been made a part of the CFA presentation with reasonable efforts during the few days prior to the hearing. Therefore, it is concluded that CFA was not disadvantaged as a result of the delay experienced here. CSU did not act unlawfully in the manner it responded to the CFA request for number of faculty permits sold on each campus.

The second part of this request involves the categories or duration of parking permits sold to faculty and the revenue generated therefrom. Purcell argued in his January 9, 1989 letter to Samit that it was "inconceivable" CSU did not employ accounting procedures to identify categories of parking permits sold. As Purcell also pointed out in his January 9, 1989 letter, Unit 3 members were the only employees who were not affected by the September 1988 change in long-term parking increases. Therefore, simply identifying the number of permits sold per campus at the old rates would have produced the information sought. And since the number of faculty permits sold per campus

had already been compiled manually, the information concerning the permit categories and the revenue generated therefrom could have also been tabulated from the same documents at that time, thus producing the information sought.

CSU's argument that this could not be done based on existing records is not convincing. It was established through Gerry's testimony, for example, that a $7.50 permit purchase is recorded as a "general entry" under "Permits, Revenue." There was no further explanation of Gerry's testimony or CSU accounting procedures. However, no matter how Gerry's testimony is interpreted, it casts doubt on the CSU position. If Gerry's testimony is read to mean that each entry (or purchase) is separately recorded, every such entry at the pre-September 1988 prices would have revealed a faculty permit purchased at a particular rate. On the other hand, if Gerry's testimony is read to mean that every "general entry" in the "Permits, Revenue" category is so buried in that account that it could not later be identified, it is inconceivable that CSU could have compiled the figures showing the total number of faculty permits sold by campus. The transaction for every faculty permit would have been forever lost in the general account. Thus, even if formal accounting procedures did not exist, it appears that the information could have been gathered from existing records with the same effort used to determine the total number of faculty permits sold.

Based on the foregoing, it is concluded that CSU, with reasonable efforts, could have provided CFA with the types or duration of faculty permits sold and the revenue generated therefrom. By failing to do so, it breached its obligation to participate in good faith in the impasse procedure in violation of section 3571(e).

4. Correspondence with Paine-Webber

At the February 26, 1988 negotiating session, Hillyard revealed Paine-Webber's advice that offering more bonds would have a negative impact on the ability to sell the bonds and on the interest rate. This prompted CFA to request CSU/Paine-Webber correspondence. CFA disputes CSU's contention that all CSU communications with Paine-Webber were verbal and therefore no correspondence exists. CSU does not claim the Paine-Webber correspondence is unnecessary or irrelevant information.

As the person responsible for bond sales to finance the parking construction, Hillyard testified that it is common practice for CSU to conduct its bond business by telephone. He and his staff talked to Paine-Webber representatives on a regular basis, but they exchanged no written correspondence on this particular bond sale. This is corroborated by Gerry's investigation which yielded no CSU/Paine-Webber correspondence. Therefore, it is concluded that there was no information which could have been provided.

CFA understandably questions CSU's assertion that no such information exists. It does seem likely that advice from Paine-

Webber on such a large bond transaction would have been reduced to written form. However, there is no basis on this record to discredit Hillyard's testimony, or the corroborating results of Gerry's investigation. Nor does the record otherwise permit the inference that this particular correspondence exists. CSU cannot be faulted for failing to provide correspondence which has not been shown to exist. See The Bendix Corporation, supra, 242 NLRB 62.

C. Insisting on an Inflexible Position to Impasse.

CFA argues that CSU's unwavering insistence that Unit 3 members must pay the same parking fees as employees in other bargaining units, students and nonrepresented employees is evidence which points to bad faith bargaining. CSU does not dispute that its negotiators took this position throughout the negotiations. However, CSU argues, the rationale for its uniform schedule proposal was explained to CFA at the table and refusal to yield on a single issue is not an indication of bad faith.

Nothing in the Act requires parties to reach agreement or make concessions on every proposal. Adamant insistence on a bargaining position is not necessarily a refusal to bargain in good faith. The obligation to negotiate in good faith does not require yielding positions fairly maintained. Oakland Unified School District (1981) PERB Decision No. 178, p. 7-8, and cases cited therein; Oakland Unified School District (1982) PERB Decision No. 275. Similarly, failure to make a counterproposal, standing alone, is not a failure to negotiate in good faith.

However, evidence of the failure to make a counterproposal may be weighed with all other circumstances in considering good faith. Oakland Unified School District, supra, PERB Decision No. 275 and cases cited therein. Applying these general principles to the totality of circumstances in this case, it is concluded that CSU's insistence on the uniform parking fee schedule was not a position taken in bad faith.

In Regents of the University of California, supra, PERB Decision No. 356-H, p. 21, the university opposed a status quo remedy, arguing that uniform parking fees is so crucial it would not have agreed to any other proposal. The Board viewed this position as "perilously close" to an outright admission of bad faith bargaining. CFA argues that CSU's insistence on the same position here is bad faith bargaining.

Adherence to this position very well might come perilously close to an admission of bad faith bargaining. However, CSU's conduct in steadfastly maintaining its position on the uniform parking schedule, when viewed in the overall context of the parking negotiations, is more like hard bargaining than bad faith bargaining.

It cannot be overlooked that there was only one subject on the table. This did not allow for the amount of give-and-take characteristic of initial or even reopener negotiations. It was in this context that CFA presented a proposal. CSU responded at the table and in informal discussions between Samit and Purcell. While insisting on a uniform parking schedule, CSU presented a

rationale to support its position. Without passing on the merits of the CSU position, it was not unsupported by rational arguments. CSU wanted uniformity in is parking program, and it needed revenue to finance proposed construction of needed parking facilities. Such conduct does not establish bad faith. See Oakland Unified School District, supra, PERB Decision No. 178, p. 8-9.

There may have been secondary issues raised by the CFA proposal which could have been ironed out by the parties, but it is clear that the parties were hopelessly deadlocked on the primary issue of the uniform parking schedule. Under these circumstances, it was not a sign of bad faith for CSU to stick to its position and declare impasse. The Board has observed that "impasse may exist when the parties are deadlocked on one or several major issues, even if the parties continue to meet and even if concessions on minor issues are possible." Regents of the University of California (1985) PERB Decision No. 520-H, P- 17.

It is also alleged in the complaint that the declaration of impasse in lieu of holding more meetings after the April 8, 1988 meeting suggests bad faith. CFA accuses CSU of "escaping into impasse." This argument too is rejected.

As an integral part of the collective bargaining process, the statutory impasse procedures contemplate a continuation of negotiations, not an "escape" from negotiations. Mediation and factfinding are designed to advance the parties' efforts to reach

agreement. When the parties are deadlocked, as they were here, there can be no adverse inference drawn from the declaration of impasse. See Regents of the University of California, supra, PERB Decision No. 520-H, pp. 23-25.

As noted above, by April 1988 the parties were deadlocked over the issue of uniform parking rates. There was little hope of an agreement without third-party assistance. Even though there was only one subject on the table, the parties, during the course of several months, had considered each other's proposals, met on several occasions, and communicated in writing and verbally. Although CFA was denied some information, it is worth noting that a great deal of information was provided by CSU. Nonetheless, the parties reached a point in their negotiations where continued discussion would have been "futile." See Mt. San Antonio Community College District (1981) PERB Order No. Ad-124.

Based on the foregoing, no adverse inference can be drawn from the CSU declaration of impasse.

D. The April 8, 1988 Meeting

The complaint charges CSU with "attending a negotiating session on or about April 8, 1988, unprepared to discuss the issues and prematurely adjourning the meeting." CFA argues this indicates bad faith. CSU disagrees.

Samit's surprise at Purcell's request for a response to the CFA proposal indicates he initially did not intend to address the proposal. However, he began a point-by-point response when asked to do so. While CFA may not have been satisfied with the content

of the response, Samit's willingness and ability to respond to the proposal does not indicate lack of preparation or bad faith.

When the discussion turned to requests for information related to alternate modes of transportation and average student enrollment by campus, Samit called for a caucus. Afterwards, Samit said he was in the process of collecting information, related to the CFA proposals, for a legislative meeting. He suggested the bargaining session be adjourned so that the information could be gathered and shared with CFA, presumably at a later bargaining session. This was the basis on which the meeting was adjourned. It appears the parties were in substantial agreement at this point in the meeting that this was a sensible way to proceed. Thus, CSU's conduct while at the April 8, 1988 meeting does not indicate bad faith. What is really at issue here is the declaration of impasse on the heels of a meeting which the parties left with the understanding that there would be further talks.

The information was provided on May 10, 1988. While the information was being digested, CSU surprised CFA by declaring impasse. There were a few informal conversations between Purcell and Samit, and at some point CSU decided that further face-to-face talks would be futile. As already concluded, this decision was reasonable under the circumstances and thus no inference of bad faith should attach to it. While CFA may have preferred more negotiating sessions, in reality the parties were at impasse.

CONCLUSION

Pre-impasse Allegations

I have found that CSU, prior to the declaration of impasse in June 1988, did not: (1) unilaterally change long-term parking rates; (2) unlawfully refuse or fail to provide the Paine-Webber correspondence or the proposals or designs; (3) delay in providing the number of faculty permits sold; (4) unlawfully insist on an inflexible position during bargaining; or (5) unlawfully declare impasse. Also, no inference of bad faith is drawn from the CSU conduct at the April 8, 1988 meeting or its position on public notice.

It has also been found that CSU refused to provide the "requests for proposals." This conduct breached the obligation **to** negotiate in good faith, in violation of section 3571(c). The same conduct interfered with CFA's statutory right as exclusive representative to negotiate on behalf of Unit 3 employees, in violation of section 3571(b).

The refusal to provide information and the refusal to sunshine proposals, when viewed in the entire context of pre-impasse bargaining, do not support a finding of surface bargaining under the totality of conduct test followed by the **Board.** See Muroc Unified School District (1978) PERB Decision No. 80.

The parties dealt with the parking issue from May 1987 to June 1988, when they reached impasse. They held at least five meetings to discuss this matter. There were several telephone

conversations and many letters exchanged. Without passing on the merits of the CSU position, proposals were exchanged and discussed in some detail. Detailed amounts of information were provided to CFA, verbally and in writing, and efforts (although unsuccessful) were made to locate additional information. In the end, the parties reached impasse, but the totality of CSU's conduct is not outweighed by a single refusal to provide information. The refusal to provide information is a per se violation of the Act, however, and will be remedied accordingly.

Post-Impasse Allegations

I have found that CSU failed to take reasonable steps to provide the information concerning types or duration of faculty permits sold and the revenue generated therefrom. Also, it has been found that CSU unreasonably delayed in providing the 1988-89 parking revenue. By this conduct, CSU failed to participate in good faith in the impasse procedure, in violation of section 3571(e). This same conduct interfered with CFA's right to represent Unit 3 in the impasse procedures, in violation of section 3571(b).

In addition, there exists no violation regarding the CFA request for 1987-88 parking revenue. Also, CSU did not unreasonably delay providing the number of faculty parking permits sold in 1988-89. Finally, CSU did not unlawfully Implement the increase in daily-use parking rates in September 1988.

REMEDY

Section 3563.3 sets forth the Board's remedial power. That section 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 policies of this chapter.

It has been found that CSU refused to provide the "requests for proposals," unreasonably delayed providing the 1988-89 parking revenues, and failed to provide the number of faculty permits sold by category or duration and the revenue generated therefrom. It is therefore appropriate to order CSU to cease and desist from such conduct. Trustees of the California State University, supra, PERB Decision No. 613-H.

It is also appropriate that CSU be required to post a notice incorporating the terms of the order. The Notice should be subscribed by an authorized agent of the California State University Board of Trustees indicating that CSU will comply with the terms thereof. The Notice shall not be reduced in size. Posting such a notice will provide employees with notice that CSU has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the HEERA that employees be informed of the resolution of the controversy and will announce CSU's readiness to comply with the terms of the ordered remedy. See Placerville Union School District (1978) PERB Decision No. 69; Pandol and Sons v.

Agricultural Labor Relations Board (1979) 98 Cal.App.3d 580, 587 [159 Cal.Rptr. 584]; NLRB v. Express Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415].

CFA seeks legal fees. Under existing Board law, legal fees will not be awarded to a charging party unless there is a showing that the unlawful conduct has been repetitive and that the employer's defenses are without "arguable merit." Modesto City Schools and High School District (1985) PERB Decision No. 518. See also Heck's, Inc. (1974) 215 NLRB 765 [88 LRRM 1049], holding that legal fees are not to be awarded where defenses are at least "debatable." This standard has not been met here. CFA's request for legal fees is denied. See also Sam Andrews' and Sons v. Agricultural Labor Relations Board (1988) 47 Cal.3d 157, casting doubt on the Board's authority to award legal fees in unfair practice cases.

CFA also seeks an order nullifying the declaration of impasse. The Board has defined an impasse as a situation where "the parties have considered each other's proposals and counterproposals, attempted to narrow the gap of disagreement and have, nonetheless, reached a point in their negotiations where continued discussion would be futile." Mount San Antonio Community College District, supra, PERB Order No. Ad.-124, p. 5. As more fully described above, the parties reached this point after the April 8, 1988 meeting. Further discussions would have been futile. While the refusals to provide information may have hampered the bargaining somewhat, it cannot be concluded on the

totality of this record that but for these events the parties would not have reached a genuine impasse. Therefore, CFA's request to nullify the declaration of impasse is denied.

All other aspects of Unfair Practice Charge LA-CE-239-H are hereby dismissed.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record herein, and pursuant to section 3563.3, it is hereby ordered that the California State University Board of Trustees and its representatives shall:

1. CEASE AND DESIST FROM:

(A) Delaying or failing to provide the California Faculty Association with the following relevant and necessary information to enable it to participate in negotiations and/or impasse procedures: (1) requests for proposals for construction of new parking facilities; (2) number of faculty parking permits sold by category or duration and the revenue generated therefrom; and (3) total parking revenue for 1988-89.

(B) By the conduct described in paragraph (A) above, interfering with the right of the California Faculty Association to represent its members during negotiations and the impasse procedures.

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

(A) Sign and post copies of the attached Notice marked "Appendix" in conspicuous places where notices to employees are

customarily posted at each campus 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.

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

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a timely 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, 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, 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, sections 32300, 32305, and 32140.

DATED: August 21, 1989

Fred D'Orazio
Administrative Law Judge