STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD BENNETT, Charging Party, v. CULVER CITY UNIFIED SCHOOL DISTRICT, Respondent.	)	Case No. LA-CE-2743 PERB Decision No. 822 June 27, 1990

Appearances: California Teachers Association by Charles R. Gustafson, Attorney, for Howard Bennett; Atkinson, Andelson, Loya, Ruud & Romo by James Baca, Attorney, for Culver City Unified School District.

Before Hesse, Chairperson; Camilli and Cunningham, Members.

DECISION

CAMILLI, Member: This case is before the Public Employment Relations Board (Board) on appeal by Howard Bennett (Bennett or charging party), to the proposed decision (attached) of an administrative law judge (ALJ) that the Culver City Unified School District (District) did not violate the Educational Employment Relations Act (EERA) section 3543.5(a)[1] by: (1)

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5(a) states:

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

threatening Bennett on November 17, 1987; (2) questioning Bennett for his failure to attend a faculty meeting in December 1987; and (3) issuing a letter to Bennett's personnel file in April 1988 for his failure to follow the District's procedures for arranging for a substitute teacher.

We have reviewed the entire record in this case, including the proposed decision, transcripts, and the charging party's exceptions, and finding the ALJ's findings of fact to be free of prejudicial error, we adopt the ALJ's proposed decision as the decision of the Board itself consistent with the discussion below.[2]

On November 17, 1987,[3] a meeting was held for the purpose of having a Public Employee Retirement System (PERS) health benefits specialist speak to the employees of the District. Bennett attended the meeting, as did Dr. Ralph Villani (Villani), assistant superintendent for personnel and risk management for

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[2]We note the complaint alleges that the District's conduct constitutes a violation of section 3543.5(a) and a derivative violation of section 3543.5(b). The ALJ only addresses and dismisses the (a) violation. We find that there was no evidence presented demonstrating that the District's conduct also violated section 3543.5(b), and accordingly, dismiss the alleged violation of that section.

[3]With regard to the first incident on November 17, 1987, the ALJ analyzed the alleged threat under both a discrimination and interference theory. While the complaint alleges the District's conduct violated section 3543.5(a) and (b), we note that paragraph 4 thereof states only that the District's conduct interfered with the employee's exercise of rights guaranteed by EERA. However, in their post-hearing briefs, both parties fully argued this case under both a discrimination and an interference theory. Therefore, the ALJ's analysis of the conduct under both a discrimination and an interference theory was proper.

the District. After the PERS specialist spoke, questions were asked of Bennett, the specialist, and Villani. During this question and answer period, Villani stated that he had never been in contact with PERS. Bennett, acting under misinformation acquired from a PERS representative not present at the meeting, believed that Villani had, in fact, contacted PERS on behalf of the District. Bennett stated publicly at this meeting that Villani had in fact contacted PERS. After the meeting, as Bennett was speaking with a newspaper reporter, Villani approached him, noticeably upset, and made a statement to the effect of, "Don't ever call me a liar again in public." Bennett denied having done so, and Villani stated, "You had better be in my office next week." Bennett replied, "I'm sorry, I cannot."

To make a prima facie showing of interference, a charging party need only show that the employer's conduct tends to or does result in interference with the employee's rights. (Carlsbad Unified School District (1979) PERB Decision No. 89.) In addition, the Board has held that to determine whether certain conduct constitutes a threat, the Board must look to the overall context to determine whether the alleged threatening comments have a coercive meaning. (John Swett Unified School District (1981) PERB Decision No. 188; Riverside Unified School District (Petrich) (1987) PERB Decision No. 622; Los Angeles Unified School District (1987) PERB Decision No. 611.) The Board has further held that a finding that threatening comments reasonably tended to coerce an employee does not require evidence that the

employee actually or subjectively felt threatened or intimidated, or was in fact discouraged from participating in union activities as a result thereof. (Clovis Unified School District (1984) PERB Decision No. 389 at p. 14, citing NLRB v. Triangle Publications (3rd Cir., 1974) 500 F.2d 597, 598.) Rather, the test requires the application of an objective standard. It must be found that, under the circumstances, the comments reasonably tended to coerce or intimidate an employee in the exercise of protected rights or activities. Id.[4]

We find that taken in the context as a whole, Villani's statements to Bennett were in response to a perceived personal attack on Villani's veracity and integrity. Thus, the Board finds that the comments under the circumstances would not reasonably tend to coerce or intimidate an employee in the exercise of protected activities. (See Riverside Unified School District, supra, PERB Decision No. 622.) Bennett has therefore failed to prove that Villani's conduct tended to or did result in some harm to his protected rights under Carlsbad, supra, PERB Decision No. 89. Based upon all of the above, we conclude that Bennett's allegation of interference must fail.

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[4]Under \Palo Verde Unified School District (1988) PERB Decision No. 689, we note the test regarding harm in a discrimination claim is also an objective test, and the proposed decision misapplies the test to this conduct by stating "Bennett felt no threat from this statement as he immediately told Villani that he would not come to Villani's office the next week." (Proposed decision, p. 13.) This indicates a subjective test was used.

The second incident occurred in December of 1987, wherein Bennett missed a faculty meeting due to a doctor's appointment. A few days after the meeting, Principal Glen Cook requested a doctor's excuse from Bennett. Analyzing this allegation under a discrimination theory, the ALJ finds insufficient proof of nexus, and also states "Bennett suffered no harm because of the request as there is no indication that Bennett found it difficult to provide the doctor's note." (Proposed decision, p. 14.) Although the Palo Verde test does apply to a discrimination allegation, the fact that Bennett did not find it difficult to produce the note is irrelevant. Rather, as discussed above, we note for purposes of clarification that the proper test is an objective one. In any event, we conclude that the issue of harm or adverse action need not be reached in this instance inasmuch as we agree with the ALJ's finding that charging party failed to prove the nexus element required under Novato Unified School District, supra, PERB Decision No. 210.

ORDER

Based on the above reasons, the complaint in Case No. LA-CE-2743 is hereby DISMISSED.

Chairperson Hesse and Member Cunningham joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

HOWARD BENNETT, Charging Party, v. CULVER CITY UNIFIED SCHOOL DISTRICT, Respondent.	Unfair Practice Case No. LA-CE-2743 **PROPOSED DECISION** (1/10/90)

Appearances: Charles Gustafson, Attorney, California Teachers Association, for Howard Bennett; Atkinson, Andelson, Loya, Ruud and Romo by James Baca for Culver City Unified School District.

Before Martha Geiger, Administrative Law Judge.

PROCEDURAL BACKGROUND

Charging Party Howard Bennett (Charging Party or Bennett) is an employee of Respondent Culver City Unified School District (District). In a charge filed April 28, 1988, and amended August 8, 1988, Bennett alleged that the District violated EERA sections 3543.5(a) and (d) when agents of the District interfered with his rights under EERA, and engaged in threats and reprisals against him for the exercise of his protected rights. The allegation of a violation of 3543.5(d) was withdrawn by Bennett, and the General Counsel to the Public Employment Relations Board (PERB or Board) issued a complaint on October 18, 1988, listing four

specific acts engaged in by the District as being violative of section 3543.5(a)[1]

After a timely answer filed by the District on November 7, 1988, the parties engaged in settlement discussions. When these discussions proved fruitless, the matter was set for hearing before the undersigned. At the first day of hearing, on February 14, 1989, the District moved to dismiss the complaint in its entirety, alleging that the allegations made in the complaint were covered by the parties' collective bargaining agreement, which provided for binding arbitration of disputes. Pursuant to the Board's decision in Lake Elsinore School District (1987) PERB Decision No. 646, the District argued that PERB had no jurisdiction to hear the dispute in this matter.[2]

[1] Section 3543.5(a) states:

> 3543.5 UNLAWFUL PRACTICES: EMPLOYER
>
> It shall be unlawful for a public school employer to:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

[2] EERA section 3541.5(a)(2) reads, in relevant part, as follows:

> . . . [T]he board shall not . . .
>
> (2) issue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding

By order dated March 10, 1989, the undersigned partially-denied and partially granted the District's Motion to Dismiss. In an Interlocutory Order, the allegation that the District violated EERA section 3543.5(a) on three occasions was permitted to go to a formal hearing on the ground that deferral to arbitration would, at that point, be futile, as the exclusive representative at the time of those incidents was, by the time of the hearing, no longer the certified representative. The Order to Dismiss was granted as to one incident, which arose under the current collective bargaining agreement. Thus, that matter was deferred to the arbitral process.

Pursuant to the issuance of the Interlocutory Order, the formal hearing on the remaining allegations not dismissed was held on March 20 and 21, 1989. Briefs were submitted by the parties in June 1989, and this decision follows.

FINDINGS OF FACT

Howard Bennett has been a teacher of English in the Culver City Unified School District for approximately 18 years. Active in community affairs, he had in years past engaged in a campaign to clean up Santa Monica Bay, and had received commendations from the district board for that.

In 1987, Bennett commenced a new campaign, this time seeking health benefits for retired employees of the district. Related

> arbitration. However, when the charging party demonstrates that resort to contract grievance procedure would be futile, exhaustion shall not be necessary. . . .

to this interest was his desire to see the District employees covered under the Public Employment Retirement Systems (PERS), presumably in addition to being covered by the State Teachers Retirement System (STRS). On June 2, 1987, Bennett spoke to the District board regarding health benefits for retired employees. He gave the board members both information and a petition with 230 signatures of district employees. At the conclusion of the meeting, one board member spoke to Bennett and told him not to come to the board of education to discuss retirement benefits, but instead to take the issue to the bargaining agent.[3]

On November 17, 1987, Bennett, along with the president of the Culver City Teachers' Association Bess Doerr, arranged for Donald Marshall of the PERS Health Benefits Division to speak to interested employees of the Culver City Unified School District.

The meeting was open to all employees of the district, although most of the participants appeared to be rank and file members of the bargaining unit. Also in attendance was Dr. Ralph Villani, Assistant Superintendent for Personnel and Risk Management. Villani had sought, and received, permission from Doerr to attend the meeting.

Marshall spoke about the role of PERS in health benefits for retired employees. Questions were asked of Marshall, Bennett,

[3] Over objection by the District and a ruling by the ALJ that this testimony was not relevant to the incidents in the complaint, Bennett nonetheless argues in his brief that the board member's comment shows animus. However, the testimony was specifically excluded as being too attenuated to show animus, and thus is included in this discussion solely for the purpose of establishing the timelines of Bennett's campaign.

and Villani by the audience. At some point during the question and answer session, Villani stated that he had never been in contact with PERS.

Bennett, however, in his campaign to extend health benefits to retired employees, had previously contacted a Mr. Saunders at PERS, and had spoken to him about the Culver City Unified School District. Saunders evidently told Bennett that he, Saunders, had a large file of correspondence with the Culver City Unified School District. Thus Bennett was under the impression at the November 17, 1987, meeting that Villani had been in contact with PERS on behalf of the District.

What Bennett did not know at that meeting, however, was that Saunders had confused the Culver City Unified School District with the city of Culver City. Therefore, when Saunders referred to his large file of correspondence, he was referring to the correspondence with the city of Culver City and not with the District. Indeed, Villani was being truthful when he stated at the November 17 meeting that he had not been in contact with PERS.

Because Villani denied being in contact with PERS, and because Bennett was acting on misinformation received from Saunders, Bennett stated publicly that he disagreed with Villani, and that Villani had been in contact with PERS. Bennett's own testimony is that he "contradicted Villani."

At the conclusion of the meeting, Bennett was speaking with a newspaper reporter who attended the meeting. Villani, visibly

upset, approached Bennett and said in a firm voice, "Don't you ever call me a liar again in public." Bennett responded that he didn't call Villani a liar. At that point, Villani said, "You'd better be in my office next week." Bennett replied, "I'm sorry, I cannot."[4]

In December 1987, Bennett missed school due to a doctor's appointment. Prior to having surgery in the spring of 1988, Bennett had to seek a health clearance from a cardiologist. Bennett received word at school that the appointment for the cardiologist had been arranged for later that same day. Bennett went to the doctor, and thus missed a faculty meeting that was scheduled. A few days after the faculty meeting, Culver City

[4] Two days later, on November 19, 1987, Bennett received a letter from Villani concerning materials that Bennett had distributed to district teachers through the district intra-school mail system. Attached to the letter were copies of several cartoons or messages concerning Bennett's campaign to have health benefits extended to cover retirees. The flyers, etc., are dated variously in the fall of 1987.

The campaign for retiree health benefits by Bennett was closely intertwined with an effort by the Culver City Teachers' Association, CTA/NEA, to decertify the Culver City Federation of Teachers, AFT. Bennett had perceived AFT as not being responsive to his campaign for retiree health benefits, and so he had gone on record in several of the memos stating that the teachers should consider changing the exclusive representative from AFT to CTA.

In his letter of November 19, Villani told Bennett that Government Code section 3543.5(2), and the agreement with the then-current AFT affiliate, provided the use of the mails only to the recognized employee organization. Villani requested that Bennett cease and desist from distributing materials through the mail system and not to post materials on bulletin boards unless he had authorization from management.

This letter is not alleged in the complaint to be adverse action against Bennett.

High School principal Glenn Cook, questioned Bennett about his absence. Cook testified that his policy was that all teachers attend faculty meetings unless prior arrangements have been made with him for absence. Bennett had neither sought nor received clearance from Cook prior to missing the faculty meeting. Cook asked Bennett whether he had a doctor's note. Bennett then provided the note to Cook. No other action was taken by Cook because of Bennett's absence from the faculty meeting.[5]

In April 1988, Bennett had eye surgery, necessitating his absence from the classroom for two weeks. Bennett testified that he left a message on the answering machine at the personnel office indicating that he would be away from the classroom for two weeks, from April 4 through April 8 and from April 11 through April 15. He also provided the name of a substitute who was available to cover his classes.

Personnel Clerk Sheryl Beard testified, however, that she spoke personally with Bennett prior to his absence. Beard's testimony is that Bennett indicated he would be out for one week. The district's policy is that a substitute will be hired for only the period that the teacher initially indicates he or she will be gone, and it is the teacher's affirmative duty to notify the personnel office if the absence is to be extended beyond the original estimate. Beard stated she told Bennett that he would

[5] Several other teachers testified that they had, at times, missed faculty meetings. Some were questioned by Cook as to their absences, others were not. The testimony established no consistent past practice as to Cook's actions when a teacher missed a faculty meeting.

have to call the personnel office at the end of the first week (April 8) and notify her if he was going to be out for another week.

In resolving the conflict in these two versions, I credit Beard's testimony. She was direct in her recollection whereas Bennett gave two versions: first that he spoke only to the answering machine, then in rebuttal after Beard's testimony, that he had, indeed, spoken to Beard directly. As Beard is a disinterested witness, and as her recollection was good, I credit her version of the telephone call and its contents.

Bennett did not call the office again to extend his absence to the second week.

On April 11, 1988, because he had not called the personnel office to extend his absence, the district assumed that Bennett would be returning to the classroom. Instead, the substitute who had taken his classes for the first week showed up for duty in his stead. Evidently she had been told by Bennett himself that he would be out for two weeks instead of just one. Thus Bennett made his own arrangement for his substitute for the week of April 11.

Later that same day, April 11, Villani wrote a letter to Bennett indicating that Bennett had not called Sheryl Beard to extend his absence beyond April 8. Furthermore, Villani noted that the district policy was that only the personnel office could arrange for a substitute, and Bennett's contacting of the substitute directly was a violation of this policy. A copy of

the letter was placed in Bennett's personnel file. Bennett, by response letter dated April 18, 1988, and also included in his personnel file, denied that he had violated any district policy. Bennett did not deny that he had contacted his substitute directly, but instead merely noted that he believed he was following "accepted procedures utilized by myself as well as others in the past."

In the complaint issued in this case, the District is charged with violating section 3543.5(a): when (1) Villani allegedly threatened Bennett at the meeting on November 17, 1987; (2) Cook requested an explanation from Bennett as to his absence from the faculty meeting on December 9, 1987; and (3) Villani placed the letter of reprimand in Bennett's file concerning Bennett's contacting of his substitute teacher directly instead of going through the personnel office. The letter to Bennett from Villani, written November 19, 1986, concerning Bennett's use of district mail, is not included in the complaint.

ISSUE

Did the District violate section 3543.5(a) by the above actions?

CONCLUSIONS OF LAW

The controlling case law for an allegation of interference is Carlsbad Unified School District (1979) PERB Decision No. 89. Actions by an employer that interfere, or tend to interfere, with the exercise of protected rights are prohibited. Allegations of reprisals or discrimination are governed by the case law found in

Novato Unified School District (1982) PERB Decision No. 210. A charging party will have stated a prima facie case of discrimination if he can show: (1) he engaged in protected activity; (2) the employer was aware of this activity; (3) the employer took adverse action against the employee; and (4) the motivation for the employer taking the adverse action was the employee's engaging in protected activity. Animus on the part of the District can be proven by a number of factors including the timing of the adverse action; disparate treatment of the charging party; inadequate explanation by the employer to the employee for the action taken; unusually harsh treatment; usual procedures not being followed; or shifting justifications for the employer's action. Timing alone is insufficient to establish an unlawful motivation on the employer's part.

Even when the charging party has met its burden of proof and has proved a prima facie case, the employer can defend its action by showing that it had a legitimate business reason for the taking the action it did, apart from any unlawful motivation. If the employer can convince the trier of fact that it would have taken the same action against the employee even in the absence of any protected activity, the employer will have successfully defended the charge against it. Only if the charging party can show that the legitimate business reason given by the employer was pretextual will a charge of discrimination or retaliation still stand.

With case law for background, the incidents alleged in the unfair practice complaint can now be examined. Concerning the statement made by Villani to Bennett at the November 17 meeting, there is no evidence of either interference or retaliation. Bennett's action in attending and speaking at the meeting on a subject of great interest to the bargaining unit arguably was protected. He was seeking a benefit for bargaining unit employees who would retire. Further, the meeting (and his campaign) were closely tied to the decertification effort by California Teachers Association (CTA) against the Culver City Federation of Teachers (CCFT). Bennett was vocal in his opposition to CCFT. Thus, he did participate in protected activity, and the District was aware of his campaign.

Bennett, however, suffered no adverse action because of his comments at that meeting. Adverse action must be proven in a discrimination case. Palo Verde Unified School District (1988) PERB Decision No. 689. Not until some months later did Villani write a letter of reprimand to Bennett, and that letter clearly referenced an event occurring in April 1988, not November 1987.[6] Thus there is no proof of discrimination or retaliation against Bennett because of his participation in this meeting.

Bennett argues that Villani threatened him at the conclusion of the meeting when he told Bennett not to call him (Villani) a

[6] The complaint did not allege, nor did the evidence show, that the letter to Bennett from Villani concerning the use of district mail was adverse action. It was merely a request to Bennett that he comply with the Government Code and the contract. Bennett thereafter used the US mail service.

liar again in public, and when he stated, "You'd better be at my office next week." Furthermore, Bennett argues that such a statement constituted interference with his exercise of protected activity because the threat would tend to interfere with his exercise of protected rights.

Bennett reads far too much into Villani's statement. While it is true that Bennett never used the word "liar" in his public exchange with Villani, his public contradiction of Villani's statement that the latter had not contacted PERS was rightfully seen by Villani to be challenging Villani's credibility. Thus, while Bennett certainly had the right to disagree with Villani, Villani had every right to take exception to Bennett's contradiction, especially since Villani was correct in this particular instance. He had not contacted PERS. That Bennett's information was based on an honest mistake does not shield him from Villani's outrage at being publicly contradicted. While Bennett did not specifically call Villani a "liar," his public comments about Villani certainly raised a fair inference in the mind of Villani (or any listener) that Villani was lying. Villani rightly took exception to this. In this context, Villani's statement, "Don't you ever call me a liar again in public," is neither a threat nor a statement of interference with Bennett's rights. It is, instead, a statement made by an angry man who has been publicly insulted and has a natural tendency to fight back.

Furthermore, Villani's statement that Bennett had better come to Villani's office the next week is not interference either. Villani was clearly speaking in the heat of the moment, and did not wish to continue the conversation with Bennett in public, in front of a newspaper reporter. Bennett felt no threat from this statement as he immediately told Villani that he would not come to Villani's office the next week. Villani took no action against Bennett because of either Bennett's public statements or because of Bennett's refusal to come to Villani's office. Villani, in anger, expressed a wish to continue the argument, Bennett refused to continue the argument, and the matter died. Therefore, the allegation that the incident on November 17, 1987, was either a threat or interference with Bennett's protected rights is dismissed.

Concerning the encounter with Cook over his absence from a faculty meeting, Bennett argues that he was treated differently than other faculty members who had missed faculty meetings. In fact, however, the testimony of the witnesses indicated that Cook did indeed have a policy whereby he wanted to know when faculty members would be absent from a faculty meeting. Other teachers besides Bennett had been contacted by Cook, either personally or by memo, and asked about their absences or reminded to attend faculty meetings. The policy to be enforced was Cook's. Bennett himself admitted that he does not read all memos, nor know of all of the policies received from Cook. Therefore, although Bennett may genuinely have not known that Cook expected him to attend all

faculty meetings unless other arrangements were made, the policy did exist and Cook acted in conformity with it.

Further, the single incident of requesting a doctor's note from Bennett because of his December absence is not adverse. Bennett suffered no harm because of the request as there is no indication that Bennett found it difficult to provide the doctor's note. Nor is there any indication that Bennett was treated substantially differently from other faculty members who were similarly situated. Thus, Bennett's encounter with Cook in December 1987, was not an action of reprisal, but merely was Cook's legitimate exercise of his supervisory authority over Bennett. The allegation of reprisal in this instance shall be dismissed.

The final incident to be examined is the letter of reprimand sent by Villani on April 11, 1988. Certainly Bennett had continued his campaign for retiree benefits, and the District was well aware of that campaign. Thus the first two elements of a Novato analysis are met. Furthermore, the letter of reprimand is adverse action on the part of the District. The issue here is whether there was a nexus, or connection, between the District's adverse action and Bennett's exercise of protected rights.

Bennett's campaign for retiree health benefits had begun almost a year before. Yet the letter of reprimand to Bennett did not come until some 11 months later. Therefore, the timing is not suspicious enough to raise an inference of animus. Bennett argues that he was the only person ever reprimanded for

contacting his own substitute. To a certain extent, this statement may be true. However, to the District's knowledge, this was the only time a substitute had been contacted directly by the teacher, without the knowledge or action of the personnel office. Thus, while Bennett may perceive his letter of reprimand as being unique, the District's position is that the situation itself was unique. While in the past the District assumed that a teacher was going to stay out on sick leave until the personnel office was notified that the teacher would be returning, that policy had been changed. At the time of this incident, the District assumed that the teacher was returning after a set period of time unless the teacher affirmatively contacted the District personnel office and notified them that he or she was going to extend his original absence.

As noted above, Beard's testimony that she reminded Bennett that he was to contact the office at the end of the first week should he stay out a second week was entirely credible. Bennett did not do so, but instead contacted the substitute himself, a fact impliedly admitted by Bennett in his response to Villani's letter of reprimand. Bennett does not deny the accusations made by Villani in his letter of April 11, but Bennett attempts to excuse his actions by stating that he believed he was following district policy. No evidence was presented to show that Bennett was treated differently than other similarly situated teachers. Since there is no nexus between Bennett's protected activity and the adverse action, Bennett's allegation that Villani's letter

was sent in retaliation for Bennett's protected activity is not proven.

Furthermore, even if animus could be found (and there certainly was personal animosity between Villani and Bennett back in November 1987), the District had a legitimate business reason for the letter of reprimand. Bennett had violated a district policy, and the District had a legitimate business reason for reprimanding him when that policy was violated. Substitutes, being employees of the District and not of the teachers they are replacing, need to be accountable to the personnel office for any number of reasons, not the least of which is control over the hiring and management of staff. Seeking to protect its right to manage staff, the District reprimanded Bennett when he overstepped the bounds of authority. Since there is no evidence that the District violated EERA section 3543.5(a) when it reprimanded Howard Bennett on April 11, 1988, that allegation too shall be dismissed.

HOLDING AND ORDER

Based upon the above findings of facts and conclusions of law, there is no evidence that the Culver City Unified School District violated EERA section 3543.5(a) in its dealing with Howard Bennett. The charge and complaint in this matter are hereby DISMISSED.

Pursuant to California Administrative Code, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the

Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB Regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. See California Administrative Code, title 8, 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: January 10, 1990

MARTHA GEIGER
Administrative Law Judge