STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

FRESNO COUNTY OFFICE EDUCATORS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Case No. S-C-136
v.	)	PERB Decision No. 1171
FRESNO COUNTY OFFICE OF EDUCATION,	)	September 30, 1996
Respondent.	)	

Appearances: California Teachers Association by Diane Ross, Attorney, for Fresno County Office Educators Association, CTA/NEA; Stroup & de Goede by Raymond W. Dunne, Attorney, for Fresno County Office of Education.

Before Garcia, Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Fresno County Office of Education (County) and the Fresno County Office Educators Association, CTA/NEA (Association) to a hearing officer's proposed decision (attached) ordering the County to comply with the Board's order in an earlier unfair practice case. The Board finds the hearing officer's proposed decision to be free of prejudicial error and therefore adopts it as the decision of the Board itself, in accordance with the following discussion.

BACKGROUND

In his proposed decision, the hearing officer decided two issues:

> 1. Have the employees in question . . . made reasonable efforts to mitigate

their damages of loss of pay and benefits?

2. What interim earnings, if any, should be credited against the front pay amount due?

He applied the National Labor Relations Board (NLRB) standard with regard to each of the employees in question, and found that the County had not met its burden of showing that the former employees failed to make reasonable efforts to obtain employment.[1] Since any uncertainty is to be resolved against the employer under the NLRB standard, the hearing officer ordered the County to compensate the former employees at a given rate for a given time period.

COUNTY'S EXCEPTIONS

The County excepted to the proposed decision on numerous grounds. Its chief argument is that PERB should not adopt NLRB precedent in this area, since the County has no opportunity to

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[1]Under NLRB precedent, in order to receive any offset against the amount of back pay due, the employer has the burden of establishing that employees failed to mitigate their damages. (NLRB v. IBEW Local Union 112 (9th Cir. 1993) 992 F.2d 990, 993 [143 LRRM 2256]; Kawasaki Motors v. NLRB (9th Cir. 1988) 850 F.2d 524, 527-528 [128 LRRM 2913] (Kawasaki).) The employer must establish this burden (NLRB v. Brown and Root Inc. (8th Cir. 1963) 311 F.2d 447, 454 [52 LRRM 2115]; NLRB v. Madison Courier. Inc. (D.C. Cir. 1972) 472 F.2d 1307, 1318 [80 LRRM 3377]), and any uncertainty is resolved against the employer (J.H. Rutter-Rex Mfg. Co. (1971) 194 NLRB 19, 24 [78 LRRM 1640]).

In establishing a failure to mitigate, the employer must demonstrate that the claimant failed to make efforts "consistent with the inclination to work and to be self-supporting." (Kawasaki, p. 527; Sioux Falls Stock Yards Co. (1978) 236 NLRB 543, 551 [99 LRRM 1316].) Claimants are not expected to seek a job more onerous than the one from which they were removed, but rather are expected to seek a substantially equivalent job. (Kawasaki, p. 528.) The claimant can still prevail if the record shows reasonable efforts to obtain interim employment. (Id. at 527.)

conduct pretrial discovery; alternately, PERB should conduct its own investigation as the NLRB does. Unless that occurs, the County argues that adopting the NLRB standard places an unfair burden on it, since it has no reliable source of information regarding former employees' mitigation efforts. The County asserts that it is not an acceptable option to call the laid-off employees as adverse witnesses via the subpoena process during the hearing, because:

> . . . few experienced litigators are willing to gamble with calling an adverse witness without prior discovery or other independent information about the likely testimony . . . . Like driving with your eyes closed, you can only end up running into something which will hurt.

ASSOCIATION'S RESPONSE TO COUNTY'S EXCEPTIONS

In response, the Association rejects the County's arguments and urges the Board to uphold the hearing officer's decision. The Association counters that the NLRB standard is appropriate, even though PERB does not have the same type of discovery procedures as the NLRB, since parties can use PERB procedures to obtain necessary information.

DISCUSSION

Burden of Proof

A main issue raised by the County in its exceptions is whether it is appropriate for PERB to adopt the NLRB burden of proof in the mitigation context. We agree with the hearing officer's adoption of that burden because it is consistent with

well-established principles of California contract law and employment law.

For example, California courts have held that when a breach of contract occurs, the injured party is required to do everything reasonably possible to mitigate his own loss and thus reduce the damages for which the other party is liable. (See Johnson v. Comptoir Franco-Beige d'Exportation des Tubes d'Acier et al. (1955) 135 Cal.App.2d 683, 689 [288 P.2d 151]; Sackett v. Spindler (1967) 248 Cal.App.2d 220, 238 [56 Cal.Rptr. 435]; Spurgeon v. Drumheller (1985) 174 Cal.App.3d 659, 665 [220 Cal.Rptr. 195]; see also 1 Witkin, Contracts (9th ed. 1987) sec. 857, pp. 773-774.)[2] The amount of loss that the injured party reasonably could have avoided by mitigating is subtracted from the amount that would otherwise have been recoverable as damages. (Id. at 774.) Although there is no recovery for avoidable loss, the injured party need not engage in impractical or unreasonable efforts to mitigate damages. (Id. at 774-775.)

Accordingly, an employee may recover as damages the amount he would have received under the contract less the amount he earned or might have earned from other employment; however, the employee does not have to accept work of a different character

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[2]This duty to mitigate has been expressly applied to wrongfully discharged public employees as well. (California School Employees Assn. v. Personnel Commission (1973) 30 Cal.App.3d 241, 249 [106 Cal.Rptr. 283]; Carroll v. Civil Service Com. (1973) 31 Cal.App.3d 561, 564 [107 Cal.Rptr. 557].)

from that covered by the contract.[3] As in the NLRB cases relied upon by the hearing officer, California courts require the employer who seeks a reduction in damages by reason of other employment opportunities to prove that the other employment was comparable, or substantially similar, to that of which the employee has been deprived. (Parker v. Twentieth Century-Fox Film Corp. (1970) 3 Cal.3d 176, 182 [89 Cal.Rptr. 737]; for other citations see 1 Witkin, Contracts, supra, p. 776.)

Although the issue presented by this compliance case is one of first impression at PERB, the cases cited demonstrate that the underlying legal principles should be well known to experienced practitioners in California. Furthermore, it is appropriate to apply those principles here, since the issue of proving whether mitigation has occurred is the same in civil breach of employment contract cases as in unfair practice cases. In both settings, the goal is the same: to make the injured party whole by awarding the amount of compensation to which the employee would have been entitled for the unexpired period of the contract, recognizing that the employee's actual damage is the amount the employee is out of pocket by reason of the wrongful discharge or layoff.[4] Therefore, we reject the County's contention that it is unfair to adopt the NLRB burden of proof.

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[3]See 22 A.L.R.3d 1057 for an overview of state court cases discussing reasonable alternative employment for discharged teachers.

[4]See 1 Witkin, Contracts, supra, section 861 at supplemental page 264, discussing the rationale for the mitigation rule.

Discovery Procedures

Another issue raised by the exceptions is whether PERB's discovery procedures provide the County with a fair opportunity to prove its case at the compliance stage. The County seems to argue that if PERB had the same prehearing discovery procedures as the NLRB, all its problems would go away. However, the Board is not persuaded that the differences in procedure caused the County's present predicament. Although we will not speculate on what the outcome would have been if it had used other tactics, numerous other methods were available to the County to procure information.

It is often difficult to obtain information from an adverse party. However, as experienced litigators, the County's attorneys are no doubt familiar with the task facing a party who has the burden of proof. There are many ways to gather information for a PERB hearing; the County's attorneys either were not aware of them or chose not to use them.

For example, PERB regulations[5] provide parties with numerous ways of obtaining information, which may be used at various stages of the process. These include PERB Regulation 32180 (right to call, examine and cross-examine witnesses); PERB Regulation 32176 (oral evidence to be taken under oath); PERB Regulation 32205 (right to request continuance); PERB Regulation 32206 (right to request production of statement made by witness);

[5]PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

and PERB Regulation 32230 (right to request witness's testimony be stricken if witness refuses to answer question).

Additionally, PERB Board agents have broad powers when conducting a hearing. PERB Regulation 32170 provides the following opportunities for parties to request or obtain needed information:

> The board agent conducting a hearing shall have the powers and duties to:
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> (a) Inquire fully into all issues and obtain a complete record upon which the decision can be rendered;
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> (b) Authorize the taking of depositions;
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> (c) Issue subpoenas and rule upon petitions to revoke subpoenas;
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> (d) Regulate the course and conduct of the hearing, including the power to exclude a witness from the hearing room;
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> (e) Hold conferences for the settlement or simplification of issues;
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> (f) Rule on objections, motions and questions of procedure;
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> (g) Administer oaths and affirmations;
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> (h) Take evidence and rule on the admissibility of evidence;
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> (i) Examine witnesses for the purpose of clarifying the facts and issues;
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> (j) Authorize the submission of briefs and set the time for the filing thereof;
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> (k) Hear oral argument;
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> (1) Render and serve the proposed decision on each party;
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> (m) Carry out the duties of administrative law judge as provided or otherwise authorized

by these regulations or by the applicable Act.

In conclusion, the County had the means available to gather information it needed. Since it did not do so, it cannot now complain that it lacks the evidence it needed to meet its burden of proof. Although the standard applied by the hearing officer can be difficult for a former employer to prove, it is appropriate and fair for that burden to be placed on the party found to have committed an unfair labor practice. Given that in adversarial proceedings before PERB one party always has the burden of proof, and given that numerous discovery options are available to parties in PERB proceedings, we hereby affirm the hearing officer's adoption of the NLRB burden of proof. We also find no error in his application of that standard to the evidence presented.

ORDER

Pursuant to the Educational Employment Relations Act (Act), Government Code section 3541.5(c), it is hereby ORDERED the Fresno County Office of Education (County), its governing board and its representatives shall take the following affirmative actions designed to effectuate the policies of the Act:

1. Within ten (10) days of the date this decision is no longer subject to reconsideration, make initial payments to Paula Hart (Hart) at the rate of $4,071.60 per month; to Jean Walker (Walker) at the rate of $3,840.30 per month; and to Rick Kirtland (Kirtland) at the rate of $1,656.80 per month, plus interest for each at the rate of seven (7) percent per annum, for the period

covering February 24, 1995 and ending on the earliest of the following: (a) the date that the County bargains to agreement with the Fresno County Office Educators Association, CTA/NEA (Association) regarding the effects of the decision to lay off the affected employees; (b) the date that the parties exhaust the statutory impasse procedure; or (c) the date on which it becomes clear that the Association has failed to negotiate in good faith.

2. Following its initial payments, if none of the conditions set forth in Paragraph 1(a), (b) or (c) have occurred, the County shall continue to pay Hart, Walker and Kirtland at the rates set forth in Paragraph 1 on a monthly basis until the earliest of the following occurs: (a) the date that the County bargains to agreement with the Association regarding the effects of the decision to lay off the affected employees; (b) the date that the parties exhaust the statutory impasse procedure; or (c) the date on which it becomes clear that the Association has failed to negotiate in good faith.

3. Written notification of the actions taken to comply with this Order shall be made to the Sacramento Regional Director of the Public Employment Relations Board in accordance with the director's instructions.

Members Garcia and Dyer joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

FRESNO COUNTY OFFICE EDUCATORS ASSOCIATION, CTA/NEA,	)	
Charging Party,	)	Compliance Case No. S-C-136
v.	)	(HO-U-583 [S-CE-1571])
FRESNO COUNTY OFFICE OF EDUCATION,	)	
Respondent.	)	PROPOSED DECISION (11/6/95)

Appearances: Diane Ross, Attorney, for Fresno County Office Educators Association, CTA/NEA; Stroup & de Goede by Raymond W. Dunne, Attorney, for Fresno County Office of Education.

Before Roger Smith, Hearing Officer.

PROCEDURAL HISTORY

The issue to be decided in this case is whether the Fresno County Office of Education (County) has fully complied with the Order in Public Employment Relations Board (PERB) Decision No. HO-U-583.

The decision found that the County had violated section 3543.5(b) and (c) of the Educational Employment Relations Act (EERA)[1] when it refused the request of the Fresno County Office Educators Association, CTA/NEA (Union or Charging Party) to meet and negotiate about the effects of the County's decision to lay off employees in the spring of 1993. The Order provided that to remedy the violation the County should:

> Beginning ten (10) days from service of the final decision in this matter, pay to unit members who were laid off in 1993 their

[1]The EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise noted.

> salary and benefits at the rate being paid prior to layoff until the date of the occurrence of the earliest of the following conditions: (1) the date the County bargains to agreement with the Union regarding the effects of its decision to lay off the affected employees; (2) the date the statutory impasse procedure is exhausted; (3) the date upon which it becomes clear that the Union has failed to request negotiations within ten (10) days of service of a final decision in this matter or to commence negotiations within five (5) working days of notice by the County of its willingness to bargain or; (4) the subsequent date upon which it becomes clear that the Union has failed to negotiate in good faith.

This decision became final on February 14, 1995.[2] On February 15, the Union requested the County to meet and negotiate the effects of the 1993 migrant teacher layoffs. On February 22, the County indicated its willingness to meet and indicated it was available to meet on March 3 and "willing to clear our calendars as necessary should the Association be available to negotiate on an earlier occasion."[3] The parties met on March 3 and continued to meet regarding this matter.

On May 17, the County filed a request for impasse

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[2]All dates referenced herein are in calendar year 1995 unless otherwise noted.

Respondent, for the first time in its post-hearing brief raises an argument of waiver by the Union. The County seeks to have this hearing officer cut off liability on March 1, or 5 working days after the County advised the Union of its willingness to meet. It is not required that the Union request to meet within 10 days of the Order becoming final and meet within 5 working days of the County's expression of willingness to meet. The Order cuts off liability if the Union has not requested to meet or there is a failure to meet within 5 working days of the County's expression of willingness to meet. The Union did request to meet within 10 days of the Order becoming final and the parties met within a reasonable time.

determination with the PERB regional office pursuant to Regulation 32792[4] alleging that it had reached an impasse with the Union on the effects of the 1993 layoffs. On May 22, the request for impasse was approved by the regional director. On May 23, the Union requested that PERB enforce the Order as to the liability for pay and benefits to the laid off employees.

On August 22, a formal hearing was conducted in order to gather facts and to allow the parties to present their arguments. Briefs were filed and the matter was submitted for decision on October 25. The issues which are in dispute revolve around four (4) teachers of the approximately 15 whom were laid off. The parties stipulated that all other employees had mitigated their front pay and that all other requirements of the Order had been achieved.

ISSUES

1. Have the four employees in question made reasonable efforts to mitigate their damages of loss of pay and benefits?

2. What interim earnings, if any, should be credited against the front pay amount due?

ANALYSIS

The four employees in question, Paula Hart, Olga Martinez, Rick Kirtland and Jean Walker, were laid off as migrant education instructors in 19.93. In order to demonstrate that these employees failed to mitigate, it is the County's burden to establish such failure. (NLRB v. IBEW Local Union 112 (9th Cir.

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

1993) 992 F.2d 990, 993 [143 LRRM 2256]; Kawasaki Motors v. NLRB (9th Cir. 1988) 850 F.2d 524, 527 [128 LRRM 2913] (Kawasaki).[5] The employer's burden is established by a preponderance of the evidence. (NLRB v. Brown and Root Inc. (8th Cir. 1963) 311 F.2d 447, 454 [52 LRRM 2115]; NLRB v. Madison Courier. Inc. (D.C. Cir. 1972) 472 F.2d 1307, 1318 [80 LRRM 3377].) Any uncertainty is resolved against the employer. (J. H. Rutter-Rex Mfg. Co. (1971) 194 NLRB 19, 24 [78 LRRM 164 0] .

In establishing a failure to mitigate, the employer must demonstrate that the claimant failed to make efforts "consistent with the inclination to work and to be self-supporting." (Kawasaki, at p. 527; Sioux Falls Stock Yards Co. (1978) 236 NLRB 543, 551 [99 LRRM 1316].) Claimants are not expected to seek a job more onerous than the one from which they were removed but rather are expected to seek a substantially equivalent job. (Kawasaki, at p. 528.)

The employer's mitigation test can be met if it demonstrates that (1) a number of positions were available that are substantially equivalent to the one previously held by the claimant; (2) the claimant would have qualified for one of these positions; and (3) the claimant did not apply for these positions. If the employer passes these three steps, a claimant

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[5]See Woodland Joint Unified School District (1986) PERB Decision No. HO-R-108; enforcing HO-U-211 which recites PERB's reliance upon National Labor Relations Board (NLRB) and court opinions in the area of mitigation in back-pay cases. PERB may use federal precedent where it can be applied to public sector labor law. Firefighters v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].

can still prevail if the record shows reasonable efforts to obtain interim employment. Kawasaki, at p. 527.

Paula Hart

Hart was unemployed during the relevant period for purposes of this ruling. Hart was not called as a witness. The County's witness, Lawrence Wilder, Assistant Superintendent for Administration for the County, testified that Hart applied for the position of resource teacher with the County sometime in the spring of 1994 for a vacancy upcoming in the 1994-95 school year. This application came following her being laid off from a position at the West Fresno Elementary School District following the 1993-94 school year.

County Exhibits 5 and 7 reflect that Hart applied for positions with the Fresno Unified School District and the Clovis Unified School District on June 3, 1994 and in April 1994, respectively. Hart's income from the County prior to the layoff was $4,071.60 per month on a 10-month basis.

The County argues that Hart was not diligent in her duty to search for employment and relies on the fact that in 1995 Hart did not renew applications she had submitted for the Fresno Unified School District and the Clovis Unified School District in 1994. The County relies on a declaration from Fresno Unified School District Human Resources Analyst Annette Rider, stating that an excess of 200 persons were hired in the 1994-95 school year, to support its argument that Hart did not exert enough effort.

The employer further contends that County Exhibit 8B demonstrates that the Clovis Unified School District hired 123 new certificated employees in the 1994-95 school year and thus Hart failed to follow through with enough persistence.[6] The County contends that it has met its burden with respect to Hart's failure to mitigate.

Under the established NLRB case precedent, discussed above, the County has failed to demonstrate that Hart failed to make efforts to obtain employment. (Kawasaki.) The County's own evidence demonstrates that Hart applied for positions with both the Fresno and Clovis school districts in the spring of 1994.

In 1994-95, of the 200 teachers Fresno Unified hired and the 123 in Clovis Unified, there was no evidence presented as to what credentials were held by the new hires or if Hart or any of the other employees subject to this proceeding qualified for any of the positions filled. The only other evidence presented was a declaration from Jean Fetterhoff, Assistant Superintendent, Kings Canyon Joint Unified School District. This declaration does not indicate for what time period Fetterhoff conducted her search for applications nor does it state if in fact the Kings Canyon Joint Unified School District hired any certificated employees that have similar credentials or training to Hart's. The declaration indicates that applications from Hart, Rick Kirtland and Jean Walker could not be found.

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[6]The County directs the undersigned to Exhibit 8B at page 3. That exhibit at page 1 demonstrates that there were 24 certificated position job postings from 7/1/94 - 6/30/95 for which there were 230 applicants.

As indicated, pursuant to J. H. Rutter-Rex Mfg. Co., supra, 194 NLRB 19, any uncertainty is resolved against the employer. Therefore, the County is required to compensate Hart at the rate of $4,071.60 per month on a 10-month basis for the period from February 24, until the parties reach agreement or impasse procedures are completed regarding the effects of its decision to lay-off.[7]

Olga Martinez

Martinez was not called as a witness. Charging Party fails to mention her in its post hearing brief. It can be presumed that due to the evidence presented through County Exhibit 4, p. 7, a County developed extract of earnings reported to State Teachers Retirement System (STRS), that Charging Party has dropped its claim of back-pay liability. Exhibit 4 demonstrates that Martinez was earning a higher salary at her new employer, Fresno Unified School District, than she would have earned with the County based on her pre-1993 layoff salary. Therefore, the County has met its burden. Martinez is not owed any back-pay.

Rick Kirtland

Kirtland was not called as a witness. County Exhibit 3, p. 1, demonstrates that Kirtland was employed by the Fresno Unified School District in the relevant period. His salary with the Fresno Unified School District was $1,647.70 per month. While

[7]The record indicates that agreement was reached but was awaiting final ratification by the Union's bargaining unit in early September. There was agreement that the County would submit documentation confirming final agreement on the effects bargaining. Since that time, however, the PERB appointed mediator has certified this impasse to factfinding.

employed with the County, Kirtland's salary base in 1993 was $3,304.50 per month. Based on the evidence presented, the County has failed to meet its burden pursuant to Kawasaki; Therefore, Kirtland is entitled to the difference in earnings from the Fresno Unified School District and his previous wages with the County, $1,656.80 per month based on a 10-month schedule.[8]

Jean Walker

Walker was called as a witness by Charging Party. She testified that following her being laid off she sent out approximately 50 applications for work at school districts throughout California. The applications were not all submitted as the result of Walker's knowledge of a vacancy at a particular district, but rather as a letter of interest. She was not employed during the relevant back-pay period.[9]

Walker testified that she had applied for a teacher position in the spring at a youth authority school in Paso Robles and had made it to the interview stage of the final three candidates, but was not offered the position. She also testified regarding vacancies in 1994-95 in school districts in Sanger, Fowler and Madera that she applied for but did not obtain. Walker testified that she was working through a County program that assists job

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[8]Respondent, through correspondence and its briefs, seeks to have Kirtland's front pay eliminated as a result of the fact that he is only working part-time at Fresno Unified School District. No evidence was provided to support this claim.

[9]Walker testified that she applied for and received a partial STRS pension. Empire Worsted Mills (1943) 53 NLRB 683 [17 LRRM 67], describes interim earnings as earnings received for actual work or services performed. Therefore, pension monies are not considered as interim earnings.

hunters improve their skills and focus on positions that they might qualify for as applicants. She stated she had applied to work at several private schools, and other private businesses including publishing companies as a proof reader. Walker's pre-layoff salary with the County for a 10-month base was $3,840.30.

The County again argues that Walker did not demonstrate that she made serious efforts to seek employment. It argues that Walker's testimony was conclusory, vague and confused. The employer places inordinate importance on Walker's testimony that if she saw a CBEST requirement on any job announcement, she would not apply.[10]

Walker's clear testimony relating her job search at over 50 school districts throughout the Central Valley and other parts of the state, her interview with the California Youth Authority in Paso Robles, and her registration with a County run job placement program, demonstrates that she attempted to find other employment despite the on-set of health-related problems. Her recent efforts to locate work at private Christian schools is not evidence that she has removed herself from the job market, but rather reflects the widening of her search zone. The County has not demonstrated that Walker was inactive in her job search or failed to mitigate nor that her reliance on CBEST requirements limited her search zone so as to limit mitigation. The reliance on Walker's health problems as evidence of her unavailability for work does not meet the standard necessary to use illness as

[10]CBEST is a basic skills test applied to teachers who do not have active credentials.

offsetting for back-pay. The NLRB Casehandling Manual (Part Three) (1989) section 10618.2 instructs us that discriminatees are to be considered unavailable for work when they are ill for periods of over three days. Walker's uncontroverted testimony was that she was in the hospital for "a couple of days," for treatment of a manic depressive condition. This does not demonstrate that Walker was unavailable for work.

The County, in order to comply with the order, should compensate Walker at the rate of $3,840.30 per a 10-month base from February 24, until a final agreement is reached between the parties or the statutory impasse procedures have been exhausted.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case and pursuant to the (EERA) Government Code section 3541.5(c), it is hereby ORDERED that the Fresno County Office of Education (County) shall take the following affirmative action to effectuate the policies of the EERA:

1. Make whole Paula Hart at the rate of $4,071.60 per month on a 10-month basis from February 24, 1995 through the date that the underlying disputed issue regarding layoff is resolved by agreement or exhaustion of the statutory impasse procedures. The County shall make its initial payment to Hart within 5 days of this decision becoming final. This payment shall encompass the period from February 24, 1995 through the nearest payroll date of this decision becoming final.

2. Make whole Jean Walker at the rate of $3,840.30 per

month on a 10-month basis from February 24, 1995 through the date that the underlying disputed issue regarding layoff is resolved by agreement or exhaustion of the statutory impasse procedures. The County shall make its initial payment to Walker within 5 days of this decision becoming final. This payment shall encompass the period from February 24, 1995 through the nearest payroll date of this decision becoming final.

3. Make whole Rick Kirtland at the rate of $1,656.80 per month on a 10-month basis from February 24, 1995 through the date that the underlying disputed issue regarding layoff is resolved by agreement or exhaustion of the statutory impasse procedures. The County shall make its initial payment to Hart within 5 days of this decision becoming final. This payment shall encompass the period from February 24, 1995 through the nearest payroll date of this decision becoming final.

4. Following the initial payments to Hart, Walker and Kirtland, continue making monthly payments, if any, until the underlying issue regarding layoffs is resolved by agreement or the exhaustion of the statutory impasse procedures or the subsequent date upon which it became clear that the Fresno County Office Educators Association, CTA/NEA has failed to negotiate in good faith.

5. Upon this decision becoming final, make written notification of the actions taken to comply with this order to the Sacramento Regional Director of the Public Employment Relations Board in accordance with his instructions.

Pursuant to California Code of Regulations, 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 Cal. Code of Regs., tit. 8, sec. 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 Cal. Code of Regs., tit. 8, sec. 32135; Code Civ. Proc, sec. 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 Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

ROGER SMITH
Hearing Officer