

OVERRULED IN PART by Oroville Union High School District
(2019) PERB Decision No. 2627

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



BURBANK TEACHERS ASSOCIATION,
CTA/NEA,

Charging Party,

v.

BURBANK UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. LA-CE-59

PERB Decision No. 67

August 21, 1978

Appearances; Raymond Hansen, Attorney for Burbank Teachers Association, CTA/NEA; David G. Miller, Attorney (Paterson & Taggart) for Burbank Unified School District.

Before Gluck, Chairperson; Gonzales and Cossack Twohey, Members.

DECISION

This case is before the Public Employment Relations Board (hereafter Board) on exceptions filed by the Burbank Unified School District (hereafter District) and the Burbank Teachers Association (hereafter Association) to the hearing officer's recommended decision, attached hereto. The District excepts to the hearing officer's finding that it violated Educational Employment Relations Act (hereafter EERA) sections 3543.1(c)

and 3543.5(b)^{1/} when it refused to grant released time to Association negotiators for rest and recuperation after a 14-hour mediation session which ended at 3:00 a.m. on a weekday. The Association excepts to the hearing officer's proposed remedy and to his conclusion that the District did not violate section 3543.5(a), (c) and (e)^{2/} by the same refusal

¹The EERA is codified at Gov. Code sec. 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

Sec. 3543.1(c) provides:

A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances.

Sec. 3543.5(b) provides:

It shall be unlawful for a public school employer to:

.

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

²Sec. 3543.5(a), (c) and (e) provides:

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.

.

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

.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

to grant released time.

The Board finds that the District's refusal to grant released time for purposes other than meeting and negotiating does not, under the circumstances of this case, constitute a violation of sections 3543.1(c) and 3543.5(b). Nor does it constitute a violation of section 3543.5(a), (c), and (e).

FACTS

The findings of fact set forth in the attached recommended decision of the hearing officer accurately summarize the record and are adopted by the Board itself.

DISCUSSION

The Board first considered the issue of what constitutes reasonable released time in Magnolia School District.³ In that case, the Magnolia School District refused to grant any released time during the instructional day for mediation. The Board found that the District's rigid refusal to adjust its released time policy, even when it was clearly hampering negotiations, constituted a per se violation of sections 3543.1(c) and 3543.5(b). It stated:

"Reasonable released time" means, at least, that the District has exhibited an open attitude in its consideration of the amount of released time to be allowed so that the amount is appropriate to the circumstances of the negotiations. The District may have to readjust its allotment of released time based upon the reasonable needs of the District, the number of hours spent in negotiations, the number of employees on the employee organization's negotiating team, the progress of negotiations and other relevant factors.

In the present case, the record clearly indicates and the hearing officer found that the District granted reasonable released time for members of the Association's negotiating team for negotiating sessions throughout September, October and November. The central issue before the Board is whether the District's refusal to grant released time for rest and recuperation in the morning after a late night mediation session violated the Association's right to receive "reasonable released time."

The Board has not found any legislative history on the purpose of the released time provision. It is nonetheless reasonable to assume that the legislative intent of the released time provision is to ensure effective representation for employees in negotiations and grievance processing. Released time lessens the burden on employee representatives whose effectiveness may otherwise be limited by time restraints. However, the Legislature clearly did not intend to transfer the entire burden to the districts by requiring them to release employee representatives for all time the employees or employee organizations deem necessary or expend to represent unit employees. Thus, the statute requires districts to provide only a reasonable amount of released time for a reasonable number of employees.

In addition, the language of section 3543.1(c) limits the purposes for which a district is required to grant released time. It does not require a district to grant released time

for all activities related to negotiations of employee organizations. The statute gives employee organizations the right to released time only "when meeting and negotiating and for the processing of grievances."

Meeting and negotiating includes the time spent at the negotiating table. It includes mediation and factfinding, which are continuations of the negotiating process. It also includes caucusing, which is an integral part of the process. Meeting and negotiating does not include the time necessary to prepare for negotiations. Nor, under normal circumstances, does it include rest and recuperation time after a negotiations session is concluded.

There may be situations where meeting and negotiating must logically include some rest time after the negotiating session ends. Such a situation would occur when it would be patently unreasonable, given the legislative intent to limit the burden on employee representatives, to force employee organization negotiating team members to choose between working after the negotiating session ends and losing pay or sick leave. However, such circumstances are rare.

The circumstances in the present case do not present the negotiating team members with such an unreasonable choice. Some hours for rest were available and it was not patently unreasonable to expect the team members to be able to teach the next morning. In this situation, given the statutory language, the District should not be expected to pay the team members while they rested as well as to hire substitute teachers.

Therefore, the Board finds that the District did not violate sections 3543.1(c) and 3543.5(b) .

The Board adopts the hearing officer's conclusion that the Association has failed to prove that the District's refusal to grant released time was in reality an attempt to impose or threaten to impose reprisals on employees or to coerce employees in violation of section 3543.5 (a) . The Board also adopts the hearing officer's finding that the District met and negotiated in good faith and participated in the impasse procedures in good faith, and therefore did not violate section 3543.5(c) and (e) .

Since the Board finds that the District's conduct did not constitute an unfair practice, it need not address the Association's exceptions to the proposed remedy.

ORDER

Upon the foregoing Decision and the entire record in this case, the Public Employment Relations Board ORDERS that:

The unfair practice charge filed by the Burbank Teachers Association against the Burbank Unified School District is dismissed.

By: Raymond J. Gonzales, Member Harry Gluck, Chairperson

/ Jerilou Cossack Twohey, Member

EDUCATIONAL EMPLOYMENT RELATIONS BOARD
OF THE STATE OF CALIFORNIA.

BURBANK TEACHERS ASSOCIATION,)
CTA/NEA Unfair Practice Case No. LA-CE-59
 Charging Party,)
)
 vs.)
)
BURBANK UNIFIED SCHOOL DISTRICT,))
 Respondent.)

)

Appearances: Raymond Hansen, Attorney, for Burbank Teachers Association, CTA/NEA; David Miller, Attorney, for Burbank Unified School District.

Before Jeff Paule, Hearing Officer.

STATEMENT OF THE CASE

On January 10, 1977 the Burbank Teachers Association, CTA/NEA (hereafter "charging party" or "BTA"), filed an unfair practice charge against the Burbank Unified School District (hereafter respondent or District) with the Educational Employment Relations Board (hereafter EERB). The charge alleges that the District violated Government Code Sections 3543.1(a) and (c) and 3543.5(a), (b), (c), (d), and (e).^{1, 2}

¹ Unless otherwise noted, all section references are to the Government Code,

² The following sections provide:

3543.1. (a) Employee organizations shall have the right to represent their members in their employment relations with public school employers, except that once an employee organization is recognized or certified as the exclusive representative of an appropriate unit pursuant to Section 3544.1 or 3544.7, respectively, only that employee organization may represent that unit in their employment relations with the public school employer. Employee organizations may establish reasonable restrictions regarding who may join and may make reasonable provisions for the dismissal of individuals from membership.

(c) A reasonable number of representatives of an exclusive representative shall have the right to receive reasonable periods of released time without loss of compensation when meeting and negotiating and for the processing of grievances. (continued page 2)

On February 14, 1977 the Respondent filed its answer to the charge and a motion for dismissal. On March 25, 1977 the charging party filed an opposition to the motion for dismissal.

A hearing was held on May 16, 1977 at the Los Angeles Regional Office of the EERB.

Essentially, the unfair practice charge alleges that the District failed to provide reasonable released time as required by Section 3543.1(c) when it refused to grant to BTA's negotiating team time to "rest and recuperate" on November 3, 1976 following an exhausting, late night mediation session which started at 1:00 p.m. on November 2, 1976 and adjourned at approximately 3:00 a.m. on November 3, 1976. Further, the charging party contends that the refusal to grant such released time was in reprisal over the failure to reach agreement on the wording of a no-reprisal, clause the charging party insisted on being included in the contract.

The District denies that it acted in reprisal for failure to reach agreement, and argues that Section 3543.1(c) mandates only reasonable released time for meeting and negotiating and that released time may not be granted to allow BTA's negotiators to "rest and recuperate."

The motion to dismiss is disposed of in accordance with the findings and conclusions below.

(cont'd from page 1)

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

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

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

(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

ISSUE

Did the Burbank Unified School District violate Sections 3543.1(a) and (c) and Sections 3543.5(a), (b), (c), (d) and (e) when it refused to grant released time to the Burbank Teachers Association negotiators on November 3, 1976?

FINDINGS OF FACT

The Burbank Unified School District employs approximately 600 certificated employees who serve approximately 13,400 students. Teachers in the Burbank Unified School District work from 8:00 a.m. until 3:00 p.m.

On May 4, 1976, the BTA was voluntarily recognized as the exclusive representative of the certificated employees in the District.

In anticipation of bargaining sessions during the summer recess the parties prepared and signed a "Memorandum of Mutual Understanding and Agreement," dated June 21, 1976, which covered, inter alia, the length of negotiating sessions, the procedure for submission of agendas and the number of bargaining representatives. No provision defining reasonable released time for BTA's bargaining representatives was included in this memorandum.

There were 27 meeting and negotiating sessions during the summer from June 21, 1976 to September 2, 1976 and the procedures set up under the "Memorandum of Mutual Understanding and Agreement" were followed with essential uniformity by both parties. With few exceptions, these sessions started promptly at 1:00 p.m. and ended at 5:00 p.m. Subsequent to the

September 2, 1976 meeting and negotiating session, the parties declared themselves to be at impasse and arranged for mediation pursuant to Section 3548.³

On Tuesday, September 21, 1976, the parties held the first of four mediation sessions under the direction of a mediator appointed by the EERB. At the commencement of the mediation session the parties agreed to the following regarding the issue of released time:

1. That the District will, during the present mediation period, provide released time for up to six BTA bargaining representatives for the purpose of attending sessions called by the mediator, and that
2. This action on the part of the District in no way whatsoever sets any precedents as regards future positions of the District with regard to the providing of released time, nor does it infer in any way that the District has made any future commitment in this regard.

³ Section 3548 provides that:

Either a public school employer or the exclusive representative may declare that an impasse has been reached between the parties in negotiations over matters within the scope of representation and may request the board to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the board determines that an impasse exists, it shall, in no event later than five working days after the receipt of a request, appoint a mediator in accordance with such rules as it shall prescribe. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement.

The first session lasted from 10:00 a.m. to approximately 9:00 p.m., with a luncheon recess, but no break for dinner. At the conclusion of the mediation session, the mediator instructed the parties to reconvene meeting and negotiating sessions on Thursday, September 23, 1976.

Pursuant to the mediator's instructions, the parties met and negotiated on ten occasions in an attempt to reduce the number of issues in dispute. The sessions began either at approximately 10:00 a.m. or soon after lunch. Released time was provided for six BTA negotiators who participated in the sessions prior to 3:00 p.m.. On some occasions more than six BTA negotiators were present during the working day and in these cases the BTA paid for substitutes. The parties were able to reduce the number of unresolved issues and thus arranged for a second mediation session to facilitate the resolution of their remaining differences.

A second mediation session was held over the weekend of October 15, 1976. This "marathon" session began on Friday, October 15, 1976 at 10:00 a.m. and continued non-stop until approximately 3:00 p.m. on Saturday, October 16, 1976, when representatives from both sides went home to rest after approximately 30 hours of continuous negotiating. During the session the mediator made it clear to both sides that he was in charge, and that although all the parties were near exhaustion, they would remain at the negotiating table until he told them they could leave. Representatives from both sides reassembled with the mediator the following morning, Sunday, October 17, 1976, at approximately 10:00 a.m., and negotiated for approximately 14 hours until almost midnight. With the exception of the hours between 10:00 a.m. and 3:00 p.m. on Friday, October 15, 1976, the District was not required to grant released time because the major portion of this marathon session took place in the evenings and over the weekend.

When the parties terminated the October 17, 1976 session, it was felt that substantial agreement had been reached as to all provisions to be included in the contract. Much of the agreement was not in writing, however, and the parties agreed to meet the next morning, Monday, October 18, 1976, to "polish up" the language agreed to over the weekend session and to reduce to writing those provisions of the contract agreed to verbally.

Since the weekend sessions had been long and exhausting, and because the parties were scheduled to meet Monday, October 18, 1976, Dr. Robert Shanks, Superintendent, told the BTA. negotiators to sleep-in and not to worry about arriving at school before 11:00 a.m. Monday morning. He assured them that substitutes would be provided and released time would be granted by the District. There is a dispute as to whether Dr. Shanks granted the released time on October 18, 1976 to the BTA. negotiators for "rest and recuperation" purposes or for meet and negotiate purposes. While the evidence is conflicting on this point, it seems more credible that the released time was granted for both reasons.

The Monday, October 18, 1976, meeting between the parties "to polish up" contract language turned into an actual meeting and negotiating session. The parties discovered that they were not in total agreement and it was mutually decided to request that the mediator return.

On Monday, November 1, 1976, BTA. representatives met with Dr. Shanks from 10:00 a.m. to 6:00 p.m. in order to prepare for the third mediation session scheduled to take place the following day. Released time was provided for this meeting and negotiating session.

The third mediation session began at 1:00 p.m., Tuesday, November 2, 1976. Two members of the BTA. negotiating team, Maureen Doyle and John Gain, met with District negotiators and the mediator from 1:00 p.m. to 3:30 p.m.

Mr. Gain was provided released time. Ms. Doyle arranged for another teacher within the school to cover her class and so released time was not necessary. The other members of the BTA negotiating team arrived at 3:30 p.m., after school was out.

The November 2, 1976 session lasted approximately 14 hours, until 3:00 a.m. on November 3, 1976, and was particularly heated because the parties disagreed over the inclusion of a no-reprisal clause in the contract. The session ended unsatisfactorily with the mediator indicating that agreement had not been reached. At this time Mr. Gain presented to Dr. Shanks a list of those teachers who would be needing substitutes that day, November 3, 1976, so that the BTA representatives could "rest and recuperate" from the strenuous night's negotiations. The six teachers were: John Gain, Maureen Doyle, Peter Laris, Dona Nakashima, Jean Yoder and Bittersweet Wojtyla. The BTA representatives felt that based on the experience of the October 17, 1976 late night session the District would grant the request for released time to "rest and recuperate." Dr. Shanks unequivocally refused to honor the request. He reasoned that unlike the October 17, 1976 session, no meeting and negotiating session was scheduled for the afternoon of November 3, 1976.

Dr. Shanks indicated to the BTA representatives that substitutes would be called, however, and that the teachers involved could either take one day of personal necessity leave, thus losing one day of sick leave, or lose one day of pay. (See Ed. Code Sec. 45207.) All of the BTA representatives refused to utilize personal necessity leave and were therefore docked one day's pay with the exception of Peter Laris, who was paid but lost one day of accumulated sick leave.

On Wednesday morning, November 3, 1976, the six BTA negotiating representatives arrived at the BTA offices between 11:00 a.m. and 12:00 noon. Ms. Doyle called Dr. Shanks and informed him that the BTA team was in its offices and willing to meet and negotiate over the unsettled no-reprisal clause issue. Dr. Shanks refused, indicating that the District's position on the no-reprisal clause had not changed and that he would not meet. No meet and negotiate session was scheduled or occurred.

On November 4, 1977, Mr. Gain called Dr. Shanks and suggested a solution to the no-reprisal clause impasse. A meeting and negotiating session was scheduled for that day at 1:00 p.m. Mr. Gain and Ms. Doyle attended the session and were provided released time. This meeting and negotiating session concluded at 6:00 p.m. at which time the parties reached agreement on the no-reprisal clause.

One final problem developed regarding the length of the contract. The parties again requested the mediator to return and on Wednesday, November 24, 1976, the fourth mediation session was held. A contract finally was consummated on November 24, 1976.

CONCLUSIONS OF LAW

In Magnolia Educators Association vs. Magnolia School District, EERB Decision No. 19 (June 27, 1977), the EERB set forth the standard to be utilized in determining what constitutes reasonable released time within the meaning of Section 3543.1(c)⁴ as follows:

⁴Supra, note 2, at 1.

"Reasonable" released time" means, at least, that the District has exhibited an open attitude in its consideration of the amount of released time to be allowed so that the amount is appropriate to the circumstances of the negotiations. The District may have to readjust its allotment of released time based upon the reasonable needs of the District, the number of hours spent in negotiations, the number of employees on the employee organization's negotiating team, the progress of the negotiations and other relevant factors. A district's policy does not provide for reasonable periods of released time if the policy is unyielding to changing circumstances. (Emphasis added).

In the Magnolia case, the Board found that the Magnolia School District committed a per se violation of Section 3543.1(c) of the EERA because of the "rigidity and inflexibility" of its policy of restricting released time to one-half hour of non-teaching time at the conclusion of each school day. The Board further noted that the District's released time policy was particularly inflexible and inappropriate given the presence of a mediator with a limited and restricted meeting schedule. The failure to mold released time around the scheduling needs of the mediator was additional evidence of the "unreasonableness" of the District's released time policy.

In the instant case, the Burbank Unified School District granted reasonable periods of released time to from one to six members of BTA's bargaining team throughout the months of September, October and November. Generally, the District was willing to adjust its released time policy to meet the circumstances of the particular meeting and negotiating session, as mandated in Magnolia.

Likewise, the BTA generally was reasonable in its demands for released time. During the summer prior to the 1976-77 school year 27 meet and negotiate sessions were conducted. Once school began, the BTA regularly sent only a few members of its negotiating team to morning and afternoon meet and negotiate sessions. The remainder of the team would join the

bargaining sessions at the conclusion of the school day. Further, many of the mediation sessions were held in the evening and over the weekend. On at least one occasion, Maureen Doyle arranged to have an on-campus teacher cover her afternoon class so that the District would not be obligated to hire a substitute. And, on one or two occasions, the BTA paid for a substitute when an extra teacher was required to help out during negotiations.

The "Memorandum of Mutual Understanding" executed on June 21, 1976 and a second agreement dated September 21, 1976, are further evidence of a willingness on the part of both parties to assume a "reasonable" and mutually acceptable posture on the issues of the number of representatives and the amount of released time

However, although the District displayed "reasonable" flexibility throughout most of the meet and negotiate and mediation sessions, its adamant refusal to provide released time to the six members of BTA's bargaining team on Wednesday, November 3, 1976 was not "appropriate to the circumstances of the negotiations" and therefore constitutes a violation of Section 3543.1(c). More particularly, the District's argument that Section 3543.1(c) mandates that released time is reasonable only when it is provided during actual hours of meeting and negotiating is untenable. The phrase "when meeting and negotiating" cannot be construed to limit released time to the actual time spent at the negotiating table, but of necessity includes other activities such as caucusing. There is no hard and fast rule, however, for as Magnolia clearly indicates, what constitutes "reasonable released time" must be calculated on a case by case basis, and varies according to the circumstances surrounding the meeting and negotiating sessions.

In the instant case, all of BTA's representatives had arrived at school at 8:00 a.m. on Tuesday, November 2, 1976. With the exception of Mr. Gain and Ms. Doyle, all taught a full day of school prior to joining the on-going mediation session. The November 2, 1976 session concluded at approximately 3:00 a.m. on November 3, 1976 after nearly 14 hours of mediation. Clearly, all parties were exhausted, especially since the session had been a particularly heated one focusing on BTA's no-reprisal clause proposal. Since the District's school day begins at 8:00 a.m., those teachers who participated in the late night session would be able to get a maximum of approximately four hours sleep. Indeed, the District acknowledged the enervated state of the participants and the difficulty of teaching a full school day when it offered to contact substitutes and to allow the negotiating team to take "personal necessity leave," with the resultant loss of one day's accumulated sick leave.

The reasonableness of the BTA's request for released time on November 3, 1976 is further substantiated by the fact that, as in Magnolia, the parties were attempting to comply with the meeting procedures established by the mediator. Mr. Gain and Ms. Doyle both testified that they felt that during mediation sessions they were under the control of the mediator and were required to stay at the negotiating table until he indicated that they could leave. Apparently the mediator in this case felt that protracted, late night sessions, in which the parties were kept at the negotiating table with few or no interruptions, would facilitate a settlement as opposed to mediation sessions conducted on a more routine schedule.

The fact that the parties felt they were not free to set the adjournment time of the November 2-3, 1976 session and that the mediator felt it to be in

the best interests of the parties to continue negotiating into the early morning hours, BTA's request for released time on November 3, 1976 was "reasonable" and "appropriate to the circumstances of the negotiations." The District's refusal to grant released time on November 3, 1976 violates Section 3543.1(c).

By violating Section 3543.1(c) the District thereby violates Section 3543.5(b) in that it denied to the BTA rights guaranteed under the EERA.

Other Violations

Section 3543.1 (a)

The Charging Party also alleges that respondent failed to comply with the provisions of Section 3543.1 (a).⁵ There is nothing in the record to indicate that the charging party was denied the right to represent its members or that the District allowed any other employee organization to represent certificated personnel in the Burbank Unified School District following BTA's recognition as exclusive representative. Therefore, no violation of Section 3543.1(a) has occurred.

Sections 3543.5(a), (c), (d) and (e)

The charging party further alleges in its unfair practice charge and its briefs that the District's refusal to grant reasonable released time pursuant to Section 3543.1(c) was in retaliation for BTA's failure to reach agreement on the proposed no-reprisal clause during the November 2-3 mediation

⁵Supra, note 2, at 1.

session. The BTA argues that the respondent thereby violated Section 3543.5(a). The charging party's allegation with respect to this section is without merit.

While the November 2-3 mediation session was a heated one and the parties no doubt adjourned the session in a frustrated and angry mood, such feelings are often integral parts of the collective negotiations process and are not in themselves evidence of unfair practices. While the District's reading of Section 3543.1(c) is too restrictive given the circumstances of the negotiations, it is found that the District in good faith incorrectly interpreted Section 3543.1(c). The charging party has failed to prove that the District's refusal was in reality an attempt to "impose or threaten to impose reprisals on employees, . . . or to coerce employees because of their exercise of rights" under the EERA. See San Dieguito Faculty Association vs. San Dieguito Union High School District, EERB Decision No. 22 (September 2, 1977).

The record is likewise bare of convincing evidence that the respondent refused or failed to meet and negotiate in good faith (Section 3543.5(c)), or that it refused to participate in good faith in the impasse procedure (Section 3543.5(e)).⁶ The District participated willingly in meet and negotiate sessions beginning in June of 1976 and it agreed with the charging party that impasse had been reached subsequent to the September 2, 1976 meet and negotiate session. The District thereafter participated cooperatively in the mediation sessions. All of the facts in this case show clearly that the District met and negotiated in good faith and participated in good faith in the impasse procedures set forth under the EERA. Therefore, the charging party's allegations of Sections 3543.5(c) and (e) unfair practices are dismissed.

⁶ Supra, Note 2, at 2.

With respect to Section 3543.5(d)⁷, which states that it shall be unlawful for a public school employer to dominate or interfere with the formation or administration of any employee organization, the charging party has failed to produce any evidence to support this allegation. The allegation under this section is dismissed.

REMEDY

Government Code Section 3541.5(c) provides that the EERB shall have the power to issue a decision and order in an unfair practice case directing an offending party to cease and desist from the unfair practice and "to take such affirmative action...as will effectuate the policies of this chapter."

In Magnolia Educators Association vs. Magnolia School District, supra, the Board found an unfair practice in a Section 3543.1(c) case and while the Board's remedy in that case included a cease and desist order, the Board did not direct the District to grant a specific number of hours of released time for meeting and negotiating. Implicit in the Board's decision in Magnolia, however, is a directive to the District to reconsider its released time policy in light of the Board's opinion.

Likewise, in the instant case, it is felt that directing the District to pay a specific amount for released time on November 3, 1976 would not be appropriate at this time. The parties should first have an opportunity to resolve the matter of compensation for November 3, 1976 to their mutual satisfaction. The District will be ordered to reconsider its refusal to grant released time on November 3, 1976, and to arrive at an appropriate amount of reimbursement which "is appropriate to the circumstances of the negotiations." As stated in Magnolia, the District should consider the following factors: the

⁷ Supra, note 2, at 2.

reasonable needs of the District, the number of hours spent in negotiations, the number of employees on the employee organization's negotiating team and the progress of the negotiations. Additionally, the District should consider the fact that all of the BTA negotiators were at school by 12:00 noon on November 3, 1976.

After considering the above-mentioned factors and arriving at a specific amount of released time, the District will be ordered to submit the figure to the Burbank Teachers Association for its consideration. If the parties are able to stipulate to a specific amount of released time for November 3, 1976, the stipulation will be accepted by the hearing officer and will be incorporated herein.

It is felt that this remedy will better "effectuate the policies of the EERA", foremost of which is to promote the improvement of employer-employee relations in the public school systems. However, in the event the parties are unable to effectuate an agreement with respect to the appropriate amount of released time the hearing officer will decide the appropriate amount.

ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record in this case, and pursuant to Government Code Section 3541.5(c) of the Educational Employment Relations Act, it is hereby ordered that the Burbank Unified School District and its representative shall:

1. CEASE AND DESIST FROM failing to grant to the representatives of the Burbank Teachers Association reasonable periods of released time without loss of compensation;
2. TAKE THE FOLLOWING AFFIRMATIVE ACTION DESIGNED TO EFFECTUATE THE POLICIES OF THE EERA:

Reconsider its refusal to grant released time to the Burbank Teachers Association negotiators on November 3, 1976 and determine an appropriate amount of released time which is consistent with the views expressed in this decision.

IT IS FURTHER ORDERED that, pursuant to EERB Regulation 35029, this decision shall become final on October 13, 1977, provided that no party files a statement of exceptions as provided in Regulation 35030.

IT IS FURTHER ORDERED that the District attempt to effectuate a mutually agreeable amount of released time with the Burbank Teachers Association for November 3, 1976, and if an agreement is reached, to submit the agreement to the hearing officer before October 13, 1977, which said agreement will then be incorporated into a final supplemental order to be issued on October 13, 1977.

IT IS FURTHER ORDERED that if no party files a statement of exceptions, and no stipulation as to the amount of compensation is submitted to the hearing officer before October 13, 1977, the hearing officer shall issue a supplemental order on October 13, 1977 with respect to the remedy only, and either party may file a statement of exceptions only as to that portion of the remedy as is set forth in the supplemental order.

IT IS FURTHER ORDERED that the charge shall be dismissed with respect to any unfair practices which have been alleged and have not been found to be violations of the EERA.

Dated: September 28, 1977

Jeff Paule
Hearing Officer