

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



ANTELOPE VALLEY COMMUNITY  
COLLEGE DISTRICT,

Charging Party,

v.

CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION AND ITS CHAPTER 374,

Respondent.

Case No. LA-CO-28

PERB Decision No. 97

July 18, 1979

CALIFORNIA SCHOOL EMPLOYEES  
ASSOCIATION AND ITS CHAPTER 374,

Charging Party,

v.

ANTELOPE VALLEY COMMUNITY  
COLLEGE DISTRICT,

Respondent.

Case No. LA-CE-110

Appearances: John Wagner, Attorney (Wagner and Wagner) for  
Antelope Valley Community College District;  
Madalyn J. Frazzini, Attorney for California School Employees  
Association and its Chapter 374.

Before Gluck, Chairperson; Gonzales, Member.\*

DECISION

This case is before the Public Employment Relations Board  
(hereafter PERB or Board) on exceptions to a proposed decision  
of a PERB hearing officer filed by both the Antelope Valley  
Community College District (hereafter District) and the

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\* Board Member Moore did not participate in this decision.

California School Employees Association and its Chapter 374 (hereafter CSEA). Each of the parties had filed an unfair practice charge against the other.

#### FACTS

CSEA filed a request with the District for recognition as the exclusive representative of a "wall-to-wall" unit of classified employees on April 1, 1976. The District withheld recognition. Shortly after receipt of CSEA's request, the District designated certain classified employees as management, supervisory and certain as confidential. Hereafter, they will be referred to as "the designees".

On February 16, 1977, at which time its request still had not been granted, CSEA sent a letter to the District superintendent and president, Dr. C. W. Stine, which read, in part:

In an effort to continue previously accepted procedures and the continued well being of our members, CSEA Chapter 374, demands the right to proceed into negotiations on behalf of the members of this chapter. We insist that we be placed on the agenda for the regular Board of Trustees Meeting, April 4, 1977 in order that we may present our salary, fringe benefits and contract proposals for the 1977-78 Academic Year.

Dr. Stine's response, dated February 28, 1977, stated, in part:

The matter of your demand to proceed at this time with negotiations on behalf of members of Chapter 374 has substantial legal and procedural implications. That demand has been referred to our counsel and in the event that we can unilaterally make a determination in the matter, you will be so notified.

On March 15, 1977, Dr. Stine met with the designees. The purpose of the meeting was to suggest that the designees formulate and present a wage and fringe proposal for management and confidential employees of the District. On the same day, Dr. Stine met with all classified employees of the District. At this meeting, he indicated his personal distaste for the Educational Employment Relations Act (hereafter EERA),<sup>1</sup> the likelihood that a unit determination hearing before the PERB would be two years off and the possibility that EERA would be repealed by then.

In the course of this meeting, Dr. Stine referred to "outside influences" on the District. He then invited the employees to present salary and fringe proposals and indicated his preference for dealing with all the classified employees in a single group.

In response to an inquiry as to why certificated employees had received a salary increase whereas classified employees had not, he stated certificated employees had received an increase according to their "activities" as opposed to classified employees who had not pursued the same "activities" at the same time.

On March 19, 1977, the designees met at the home of one of that group. Discussion included the formation of an all-inclusive classified unit to prepare and present economic proposals to the District. A memo to that effect was prepared

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<sup>1</sup>The EERA is codified at Government Code section 3540 et seq. Hereafter, all references are to the Government Code unless otherwise indicated.

and signed by nine of the designees. The memo also called for a meeting of all classified employees to discuss the plan.

That meeting was held on March 24 in a campus facility approved for such use by Mr. Montamble, the District representative for receipt of wage and fringe proposals. Fifty-eight classified employees attended. The meeting was "chaired" by one of the designees who explained that the proposed classified unit would be loosely structured, entail no dues obligation, have no elected officers, have no constitution or by-laws and would remain in effect as long as the employees were satisfied.

Those attending the meeting were asked to sign a supporting document and participate in a secret ballot to determine whether to go forward with the plan.

During the meeting, the chairperson suggested that the District might be receptive to adopting a "median salary schedule" concept which had already been put into effect for certificated employees. CSEA had been unsuccessful in getting such a concept approved by the District though it had attempted to do so continuously since 1974.

Sometime thereafter, the secret ballot was conducted. It called for a yes-no vote on the question of a single classified unit. Originally, the ballot also called for a yes-no vote on the question of the selection of CSEA as the exclusive representative of the unit, but that portion of the ballot was crossed out on the final version. Dr. Stine's secretary typed the ballot form.

On March 28, one of the designees sent a memo to all classified employees announcing the result of the balloting as 71 for a single unit, 8 opposed and 2 not voting. The memo stated that of 56 employees who had signed a petition in support of CSEA's request for recognition, 24 had requested that their names be removed, 12 had left the District and one would be leaving. It also stated that 52 persons had signed the document supporting the designees' plan discussed at the March 24 meeting.

Between March 21 and March 25, the following petition was circulated by persons included in the designee group:

After consideration and discussion with my fellow employees of the advantages and disadvantages of the CSEA Petition for Recognition I signed in 1976, I now feel that the petition no longer serves my best interests.

With this new knowledge, I now request my name be withdrawn.

The record fails to show whether this petition was presented to Dr. Stine or the board of trustees.

On April 22, 1977, CSEA filed an unfair practice charge alleging that the District had violated subsections (a), (b) and (d) of section 3543.5 of the EERA. These provide:

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.

.....  
(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.  
.....

Sometime after CSEA filed its unfair practice charge, five of the designees formed a committee to present a wage and fringe package on behalf of all classified employees. That package was ultimately approved by the District board of trustees.

During the course of the unfair practice hearing, Dr. Stine denied involvement in any of the events following his meeting with the classified employees on March 15. His testimony was that he acquired knowledge of the alleged facts while preparing for the unfair charge.

On May 31, the District filed an unfair charge against CSEA alleging that CSEA, by its February 16 demand to meet and negotiate, was attempting to cause the District to violate section 3543.5(d) of the EERA.

Following an evidentiary hearing, the PERB hearing officer issued a proposed decision which dismissed the District's charge against CSEA and that portion of CSEA's charge which alleged a violation of section 3543.5(a). It sustained CSEA's charge that the District violated section 3543.5(d). The proposed decision was silent as to the alleged violation of section 3543.5(b).

The District's exceptions to the proposed decision are as follows:

(1) The hearing officer failed to find that CSEA intended by its February letter to require negotiations as an exclusive representative and thus to force the District to provide unlawful support to CSEA in violation of section 3543.5(d). In furtherance of this argument, the District claims that the word "demand" is significantly different in meaning from the word "request."

(2) The actions of the designees cannot be attributed to the District since the matter of their status as managerial or confidential employees was placed in issue by CSEA's filing with PERB.

(3) The conclusion that Dr. Stine had called the meeting of designees to suggest that they draw up salary and fringe proposals for managerial and confidential employees is not supported by the evidence.

(4) The hearing officer's conclusion that classified employees had gone without an increase for a long time is not supported by the evidence.

(5) The hearing officer erred in referring to a stipulation between the District and CSEA which was presented in the representation hearing held after the conclusion of the unfair practice hearing and which established that the designees were management, confidential and supervisory employees.

CSEA filed exceptions to the dismissal of that portion of its charge which alleges that Dr. Stine's conduct was in violation of section 3543.5(a) and (b) and to that portion of the proposed remedy which requires posting of a notice of violation on District bulletin boards. CSEA urges that Dr. Stine read such notice to all classified employees.

#### DISCUSSION

Section 3543.5 of the EERA makes it unlawful for a public school employer to engage in certain specified conduct which is considered violative of rights vested in employees and employee organizations. Section 3540.1(k) defines public school employer as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools." Thus, to sustain a charge against the Antelope Valley Community College District Board of Trustees it would be necessary to attribute the actions of the designees, and possibly those of Dr. Stine, to the trustees. The primary questions raised in this case therefore are:



(1) May the designees' actions be attributed to the board of trustees?

(2) If so, were those actions unlawful under the EERA in that they violated subsections (a), (b) or (d) of section 3543.5?

(3) Were Dr. Stine's actions unlawful in that they violated subsections (a), (b) or (d) of section 3543.5?

(4) If so, are they attributable to the trustees?

The agency authority

The designees were identified as managerial and supervisory by official act of the board of trustees after the request for recognition had been filed by CSEA. The hearing officer stated that they "were in fact clothed in the authority of supervisors or management . . . Such employees do, indeed, act on apparent authority of the District."

The law of agency has been consistently applied to the field of labor relations in the private sector, expressly to hold employers accountable for the acts of supervisors and management whether or not such acts are authorized by the employer. The Supreme Court aptly summarized this principle in International Association of Machinists v. NLRB (1940) 311 U.S.

72:

The employer, however, may be held to have assisted the formation of a union even though the acts of so-called agents were not expressly authorized or might not be attributable to him on strict application of the rules of respondent superior. We are dealing here not with private rights [Citation.] nor with technical concepts pertinent to an employer's legal

responsibility to third persons for acts of his servants, but with a clear legislative policy to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence. The existence of that interference must be determined by careful scrutiny of all factors, often subtle, which restrain the employees' choice and for which the employer may fairly be said to be responsible. Thus where the employees have just cause to believe that solicitors professedly for a labor organization were acting for and on behalf of the management, the Board would be justified in concluding that they did not have the complete and unhampered freedom of choice which the Act contemplates....

In 1947, Congress added sections 2(2) and 2(13) to the National Labor Relations Act "declaring, in substance, that usual principles of vicarious liability under the law are to be applied to both union and employer."<sup>2</sup> Congress expressly included in its definition of "employer" in section 2(2) "any person acting as an agent of the employer" and explicitly stated in section 2(13) that whether the acts were actually authorized or subsequently ratified would not be determinative as to whether any person is acting as the agent of another.

In the subsequent application of section 2(2) and 2(13), the courts and the NLRB have held that the question of agency authority should be resolved by determining whether the employees had just cause to believe the supervisor or manager was acting with the apparent authority of the employer. (See J.S. Abercrombie Co. (1949) 83 NLRB 524 [24 LRRM 1115], (enf. 5th cir. 1950) [180 F.2d 578].) Thus, in Local 636, Plumbers v. NLRB (C.A., D.C. 1961) 287 F.2d 354 [47 LRRM 2457], an

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<sup>2</sup>Gorman, Basic Text on Labor Law (1976).

employer was held liable for interfering in union affairs because of his supervisor's activities, even though the actions were not expressly authorized or ratified by the employer. Likewise, in Broyhill Furniture Co. (1951) 94 NLRB 1452 [28 LRRM 1211] the unlawful actions of supervisors were attributed to the employer, even when supervisors were instructed to refrain from interfering with the employees' organizing activities, predicated on the employer's failure to inform the employees of the restrictions placed on the supervisors.

Under California common law,<sup>3</sup> the acts of an agent within his actual or apparent authority are binding on the principal. Apparent authority results from conduct of the principal upon which third persons rely in dealing with agents. The liability of the principal attaches where such reliance was reasonable and results in a change in position by the third party.

Although the EERA does not specifically include "agent" in the definition of employer, it is concluded that historically accepted labor relations principles of agency authority and principal liability must be applied to cases arising under the EERA.

There can be no dispute that a school district is "managed" through a hierarchy of officials and officers ranging from the governing body through the employed staff whose function it is to effectuate its policies and programs. That the Legislature contemplated this chain of authority is indicated by its

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<sup>3</sup>I do not find it necessary to fully explicate the California law of agency. Reference is made to Witkin, Summary of California Law (8th edition 1973) pp. 635 et seq.

reference to representatives of the public school employer found in sections 3543.3<sup>4</sup> and 3548<sup>5</sup> of the EERA. More to the point, to exclude principles of agency from interpretation of the EERA would not only ignore long-established principles of law, but open the door to permitting employers (school boards) to engage in unfair practices through the actions of their administrators and subordinates but escape liability through an artificially narrow interpretation of the word "employer".

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<sup>4</sup>Government Code section 3543.3 states:

A public school employer or such representatives as it may designate who may, but need not be, subject to either certification requirements or requirements for classified employees set forth in the Education Code, shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives of appropriate units upon request with regard to matters within the scope of representation.

<sup>5</sup>Government Code section 3548 states in pertinent part:

...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 facts in this case support a finding that the designees' actions can be attributed to the employer. The first open meeting of the designees, on March 24, was held at a campus facility approved for such use by a District representative for receiving negotiating proposals. Subsequently, the "secret ballot" on unit preference was typed by Dr. Stine's secretary. The designees disseminated bulletins to all classified employees through campus facilities. They also circulated the petition to withdraw support for CSEA though the means of distribution is not apparent in the record.

CSEA filed its unfair charge on April 22, 1977. Dr. Stine claims he first became aware of the matter through this charge. Yet, sometime after that, the designees formed their negotiating committee and presented their proposal to the board of trustees which acted favorably upon them. At the very least, after the filing of the charge, Dr. Stine was in a position to know that his designees were taking certain actions which were complained of as unlawful and therefore had the time to disavow those actions as authorized by himself or by the board of trustees. Instead, the District's only response to all that was going on was to file a charge against CSEA, alleging an unlawful demand for recognition.

Three sets of facts are considered in determining the District's responsibility for the designees actions: (1) The spectrum of actions engaged in by the designees which go well beyond the statutory right of self-organization afforded supervisory personnel; (2) The open and notorious manner in which those actions were taken; and (3) The fact that the District at no time, and particularly after the CSEA charge was filed, did anything to disabuse the wide-spread impression among classified employees that the designees indeed spoke for the District, which it could have done either by withdrawing the designations, by publicly acknowledging that the status of the designees was in dispute and that as a consequence of that dispute their actions were not authorized or ratified by the District, or by expressly disassociating itself from those actions in any manner. In conjunction with the District's silence the record fails to indicate that the designees at any time indicated any disagreement with their designations. They neither directly nor indirectly informed the classified employees that they believed themselves to be nonmanagerial or nonsupervisory employees.

The District asserts that its knowledge of the EERA provisions protecting the self-organizing rights of supervisors mandated it to adopt a "hands off" policy regarding the designees' actions, because such actions arguably fell within

the permissible parameters of the designees' lawful organizing activities. It is true that supervisors enjoy the right of self-organization under the EERA, limited by the requirement that they not be represented by an organization which represents nonsupervisory employees.<sup>6</sup> However, the issue is not whether the designees were entitled to organize and to "make mistakes" free from employer interference, but whether the employer can direct its publicly designated agents to commit actions arguably unlawful under the EERA, and whether such actions can be properly attributed to the employer. While a school employer is admittedly obligated not to interfere with the self-organizing activities of its supervisory personnel, it cannot be permitted to look on in silence while those it has designated as managers and supervisors engage in such unlawful activity.

The designees' activities were not only directed toward supervisory employees, but included organizing activities among

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<sup>6</sup>Government Code section 3545(b)(2) states:

In all cases:

. . . . .  
(2) A negotiating unit of supervisory employees shall not be appropriate unless it includes all supervisory employees employed by the district and shall not be represented by the same employee organization as employees whom the supervisory employees supervise.

nonsupervisory, classified employees and the eventual representation of those employees. This was done with the sanction and approval of the board of trustees, manifested by its favorable action on the designee committee proposals.

In summary, by its acts of designation, its silence during the long period of activities conducted by the designees, its cooperation in those activities by affording the designees the use of District facilities (thus affording the District ample notice of the activities), by its acceptance of proposals on behalf of classified employees and by its favorable action on those proposals, and by creating the impression that the designees spoke for the District and/or acted with the District's approval, the District's actions justify a finding that the designees both in fact and from the point of view of the employees did act as agents of the District, and that the District is therefore liable for those actions.

#### The unlawfulness of the designees' conduct

The designees' actions considered in their totality violated two subsections of the EERA.

The right of self-organization provided to employees by section 3543 includes the right to join and participate in an employee organization of one's choice for the purpose of representation on employer-employee relations. That right is violated when the employer's acts interfere or tend to interfere with its exercise and the employer is unable to justify its actions by proving operational necessity. (See Carlsbad Unified School District (1/30/79) PERB Decision No. 89.) In Carlsbad, PERB further decided that the charge will be



sustained whenever it is proven that but for the exercise of those rights, the employer would not have acted. Here, the record is replete with evidence that the designees did indeed act because of the organizing activities on behalf of CSEA. They met, and they planned and executed a program which eventually resulted in substantial loss of CSEA support. They prepared a ballot calling for a yes-no vote for CSEA which was typed by Dr. Stine's secretary although eventually the ballot only solicited an employee preference for an organization other than CSEA. They announced the results of that balloting to the classified employees through school facilities and circulated a petition to remove the employees' names from the CSEA proof of interest. They formed a committee to formulate salary and fringe proposals on behalf of all classified employees and eventually submitted their proposals to the board of trustees which acted favorably upon them. That package included a salary concept long proposed unsuccessfully by CSEA. At no time did they ever petition for a unit exclusively of supervisors.

In Carlsbad Unified School District, supra, PERB Decision No. 89, the Board also held that unlawful motivation or purpose may be inferred from the entire record. As previously indicated, the District relies on a claimed necessity of a hands-off policy. That claim has already been rejected. Accordingly, it is appropriate to find that the actions of the designees are attributable to the District and not only interfered with the employees' rights to self-organization provided by section 3543.5(a) of the EERA, but were motivated

by an anti-CSEA animus. For these reasons, the hearing officer's dismissal of the 3543.5(a) charge should be reversed.

Little more need be said to demonstrate that the District, by these acts, also violated section 3543.5(d). The committee formed by the designees is an employee organization within the meaning of the EERA. An employee organization is defined in section 3540.1(d) as:

...any organization which includes employees of a public school employer and which has as one of its primary purposes representing such employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

At the meeting of March 24, the designees formed a "unit" which would be loosely structured, entail no dues, hold no election, have no constitution or bylaws, and remain in effect as long as the employees were satisfied with their services. A document expressing support for this structure was circulated among the classified employees and eventually signed by 52 of them. Later, the designees formed a committee to prepare and present wage and fringe proposals on behalf of all classified employees. These were eventually acted upon favorably by the board of trustees.

While the word "unit" normally means a representation unit determined either by the employer and the employee organization through voluntary recognition or the appropriate unit established by PERB, it is clear that in this case, the designees used the term intentionally or otherwise to mean an employee organization of classified employees. That is demonstrated by the reference to dues, bylaws, elected officers

and similar matters. For that reason, the word "unit" as employed by the designees fits the EERA definition of employee organization. Further, the committee formed by the designees to represent classified employees in matters relating to their terms and conditions of employment meets that definition.<sup>7</sup> Since the plan of action surrounding the formation of the unit and the designee committee included encouraging employees to support the designees' organization in preference to CSEA, that plan was in patent violation of the last injunction found in section 3543.5(d), which reads:

It shall be unlawful for public school employer to  
.....  
(d) Dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it, or any way encourage employees to join any organization in preference to another. [Emphasis added.]

In addition, the pervasive involvement by the designees in organizing and administering an employee organization purporting to represent rank and file classified employees clearly constitutes domination and interference with the formation and administration of an employee organization, in violation of the first prohibition in section 3543.5(d).

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<sup>7</sup>See, e.g., North American Rockwell Corp. (1971) 191 NLRB 833 [77 LRRM 1634]; Litton Industries Inc., Erie Marine, Inc. Div. (1972) 196 NLRB 248 [78 LRRM 1041]; Lowen Co., Inc. (1973) 203 NLRB 449 [83 LRRM 114]; Eastern Industries (1975) 217 NLRB No. 118 [89 LRRM 1134]; Rensselaer Polytechnic Institute (1975) 219 NLRB No. 85 [89 LRRM 1879]; Arkay Packaging Corp. (1975) 221 NLRB No. 10 [90 LRRM 1728].

CSEA's charge also alleged a violation of section 3543.5(b). The hearing officer did not address this portion of the charge, but, in its appeal, CSEA has urged a favorable finding. I do not find that the District violated section 3543.5(b).

Dr. Stine's conduct

In considering the nature of Dr. Stine's actions it is necessary to recognize his relationship both to the board of trustees and to the designees. As the superintendent and president of the community college district, Dr. Stine is the District's chief executive officer, responsible for day-to-day management of the District under the supervision of the board of trustees. Absent some clearly negating factor, the college president, as the chief administrator, is ultimately accountable for the actions of his subordinates. And, just as the board of trustees cannot avoid responsibility for the actions of employees on whom it has draped the cloak of managerial authority, so Dr. Stine cannot escape responsibility for his own actions. The board of trustees is liable for the designees' conduct and it is liable for the conduct of Dr. Stine. In short, accountability for the designees' actions flows upward through the levels of immediate supervision to the ultimate school authority, the board of trustees.

The question nevertheless remains whether Dr. Stine's personal involvement and statements at the March 15 meetings

should be treated independently of those for which he is responsible by virtue of the principal-agent relationship with the designees, and, if so, whether he should be afforded the constitutional protection under the shelter of protected speech as the hearing officer decided.

An employer in the private sector has a constitutional right to express opinions that are not coercive in nature. NLRB v. Virginia Electric and Power Co. (1941) 314 U.S. 469 [9 LRRM 405]. However, the court directed a remand in that case to determine whether the employer's communications, although noncoercive on their face, became coercive as part of a total course of conduct in which the employer engaged. Without reaching the question of whether the public employer is entitled to parallel free speech protections under the First Amendment of the Constitution, sound labor policy requires a finding that an employer cannot use speech as a means of violating section 3543.5 of EERA.

That the total conduct of the employer herein was calculated to interfere with, restrain and coerce the employees in the exercise of their organizational rights during the CSEA campaign is amply supported by the record as a whole. Dr. Stine's remarks at the March 15 meeting with the classified employees cannot be separated from the ensuing conduct of the

District. At that meeting he stated his preference for dealing with all classified employees as opposed to the limited group for which CSEA had petitioned; he expressed his doubt that a unit could be attained for some two years, he expressed his distaste for the EERA and he suggested the possibility that it would be repealed. He cited the difference in the activities of the classified and certificated organizations as the basis for disparate wage treatment. While the latter comment itself emits the scent of retaliation, all of the comments can readily be associated with the designees' prompt circulation of the comprehensive ballot and petition for withdrawal of CSEA support. These documents identified not only the employees who agreed with the designees' plan, but permitted identification of those persons who continued to support CSEA.<sup>8</sup>

In summary, Dr. Stine's comments, when viewed in the context of the total conduct engaged in by the District through its agents, created a threatening and coercive climate in which it was not possible for the employees to exercise the rights guaranteed to them by the EERA. This resulted in the virtual

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<sup>8</sup>At the time of these occurrences petitioners proof of support was filed with the employer. On 9/27/77, EERA section 3544 was amended to provide for the filing of proof of support directly with PERB.

destruction of the CSEA chapter seeking to represent classified employees in the Antelope Valley Community College District. Dr. Stine's remarks were part and parcel of the total conduct for which the District is liable as the employer and which violated subsections (a) and (d) of section 3543.5.

The reference to the representation hearing

The hearing officer took official notice of a stipulation offered in a PERB representation hearing conducted after the close of the unfair practice hearing. The District and CSEA stipulated that the designees referred to above were managerial, confidential and supervisory employees.

An administrative agency may take official notice of matters within its own files and records.<sup>9</sup> The question is raised, however, as to when such official notice should be taken and what notice to the parties, if any, should be required. Government Code section 11515,<sup>10</sup> though not

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<sup>9</sup>Anderson v. Board of Dental Examiners (1915) 27 Cal.App. 336, 338 [149 P. 1006, 1007]; California Administrative Agency Practice (Cont. Ed. Bar 1970) Hearing Procedures, section 3.34, p. 167.

<sup>10</sup>Government Code section 11515 states:

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

controlling in PERB procedures, allows official notice to be taken after submission of the case, but requires that the parties present at the hearing be so informed. The parties may then be given the opportunity to submit supplementary argument on the matters officially noticed.

Where official notice is to be taken of matters not referred to in the hearing itself, the parties should be so informed and given a chance to contest debatable facts. Such post-hearing procedure is appropriate.

However, the better general practice would dictate that official notice be taken before the close of the hearing, and that the parties be informed of matters to be noticed and given a reasonable time to refute them. Nevertheless, no harm or deprivation of due process occurs where the facts officially noticed are clearly incontestable. No purpose is served by permitting such matters to be challenged.<sup>11</sup>

In this case, the matters officially noticed by the hearing officer consisted of sworn stipulations of fact entered into by the District which it could not therefore challenge in a separate hearing. No error in the hearing officer's act of officially noticing the District's own stipulation of fact is found.

#### The pay increase for classified employees

The hearing officer's statement that classified employees had gone without an increase for a long time is disputed in the record. There is evidence that a pay increase was granted in

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<sup>11</sup>Davis, Administrative Law Text (1972), generally Chapter 15, "Official Notice".



July 1976. The error, accepting it as such, was harmless. The point made by the hearing officer in the section of the proposed decision in which that statement occurred was that a median salary schedule concept, repeatedly proposed without success by CSEA, was adopted by the District soon after CSEA's petition for recognition was filed and almost immediately following "speculation" by one of the designees at a meeting of classified personnel that such a concept might be approved. It is this combination of facts together with others discussed throughout the proposed decision that led the hearing officer to find an unfair practice had been committed.

#### CSEA's demand

The District's effort to make a meaningful distinction between the word "demand" and "request" is not persuasive.

The District argues that since it had rejected CSEA's request for recognition, CSEA's demand to meet and negotiate was unlawful in that it was designed to force the District to provide prohibited support to an employee organization. The foundation of this argument is that only an exclusive representative has the right to meet and negotiate in good faith, and the District was therefore being forced to grant recognition involuntarily.

It is CSEA's position that its demand letter went no further than to protect its rights, presumably granted by

section 3543.1(a).<sup>12</sup> It is unnecessary to decide whether CSEA had a right to demand good faith negotiations pursuant to its filing of a request for recognition accompanied by a majority show of interest in the proposed unit. A reading of the demand letter establishes that CSEA was only asserting the right to represent its members as it believed section 3543.1(a) provided. The letter opened with this illuminating phrase:

In an effort to continue previously accepted procedures and continued well-being of our members, CSEA Chapter 374 demands ....  
[Emphasis added.]

The reference to "previously accepted procedures" clearly relates to procedures followed for several years under the Winton Act<sup>13</sup> for presenting proposals on behalf of one's members to the district board of trustees. The phrase "well-being of our members" is consistent with Winton Act provisions as well as with the limiting language of 3543.1(a).

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<sup>12</sup>Government Code section 3543.1(a) states:

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.

<sup>13</sup>The Winton Act, former Education Code section 13080 et seq., was repealed effective July 1, 1976, by the EERA.

The hearing officer interpreted the letter in the same manner and should be sustained.

The remedy

The nature and extent of the unlawful conduct engaged in by the District made it impossible for the employees to exercise their free choice in the selection of an exclusive representative. Because the Board had not yet enunciated its policy on the matter of staying elections pending the resolution of certain unfair practice charges, an election was held in October 1977. The employees voted not to be represented by CSEA. The Board would normally find it proper to set election results aside under such circumstances. However, more than one year has elapsed since the results were certified. PERB rule 33250(b)<sup>14</sup> bars a representation election in a unit in which another election was held during the previous twelve months. Since the bar no longer exists, the Board will not provide an unnecessary remedy.

The hearing officer has recommended an order which would prohibit the employer from recognizing the dominated employee organization seeking to represent nonmanagement and nonsupervisory employees on matters within scope. We explicitly clarify that prohibition to include representation of such employees on any matter coming under the EERA umbrella.

Further, in light of the circumstances, the Board finds the results of the election irreparably tainted by the totality of

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<sup>14</sup>California Administrative Code, title 8, section 33250(b).

the District's unlawful actions, and therefore considers the question of representation raised by CSEA to be a continuing one. The District is therefore prohibited from granting voluntary recognition to any other employee organization seeking to represent classified employees. Instead, the District shall notify the Board of any such request for recognition. The Board will then conduct a hearing or order an election as it deems appropriate.<sup>15</sup>

Finally, we find the recommended means of providing notice to the classified employees of their rights and the District's violation of these rights inadequate. The District met face-to-face with the classified employees on at least two occasions, including one in which Dr. Stine addressed the group. At least two memos were circulated to all classified employees by the designees. The harm to the employees and to CSEA was extreme from which recovery may well be slow, if at all. A more effective publication is clearly indicated. The Board, therefore, will require that classified employees be individually notified according to the following order.

#### ORDER

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

1. The charge filed by the California School Employees Association and its Chapter 374 against the Antelope Valley Community College District is sustained insofar as it alleges

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<sup>15</sup>See Government Code sections 3544.1(b) and 3544.7(a).

violation of subsections (a) and (d) of section 3543.5 of the Educational Employment Relations Act.

2. The charge filed by the Antelope Valley Community College District against California School Employees Association and its Chapter 374 alleging a violation of section 3543.6(a) is dismissed.

3. It is further ORDERED that the District shall cease and desist from:

a. Discriminating against employees or otherwise interfering with, restraining or coercing employees because of their exercise of rights guaranteed by the Educational Employment Relations Act by authorizing or permitting its president or its managerial, supervisory or confidential personnel to represent nonsupervisory employees in their employment relations with the District;

b. In any way, encouraging employees to join any organization in preference to another, including by authorizing its president or its managerial, supervisory or confidential personnel to circulate petitions encouraging or soliciting said employees' withdrawal of support or membership in the California School Employees Association or in any other employee organization which seeks to represent said employees, or by permitting its president or its managerial, supervisory or confidential personnel to represent said employees in their employment relationships with the District;

c. Dominating or interfering with the formation of an employee organization by authorizing its president or its managerial, supervisory or confidential personnel to form a committee or any other organization for the purpose of representing said employees in their employment relations with the District.

4. It is further ORDERED that the District take the following affirmative action designed to effectuate the policy of the Educational Employment Relations Act:

a. Prepare and post copies of this Order and the attached notice at each of its campuses and work sites for sixty (60) calendar days in conspicuous places, including all locations where notices to classified employees are customarily posted;

b. Mail to each classified employee within ten (10) days after receipt of this Order a copy thereof together with a copy of the attached notice;

c. At the end of the posting period notify the Los Angeles Regional Director of the Public Employment Relations Board of the action it has taken to comply with this Order.

By: / Harry Gluck, Chairperson

Concurring opinion of Board Member Dr. Raymond J. Gonzales begins on page 32.

APPENDIX

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

After a hearing in which all parties had the right to participate, it has been found that the Antelope Valley Community College District violated the Educational Employment Relations Act by encouraging classified employees to withdraw support from the California School Employees Association, Chapter 374, and to support instead a committee of managerial, supervisory and confidential employees for the purpose of representation on employment relations matters and by assisting in the formation of said committee.

As a result of this conduct we have been ordered to post and mail this notice and we will abide by the following:

WE WILL NOT discriminate against or interfere with classified employees because of their exercise of free choice of representative.

WE WILL NOT encourage membership in any employee organization in preference to another.

WE WILL NOT interfere with the employees' freedom to join or refrain from joining any employee organization.

WE WILL NOT dominate or interfere with the formation of any employee organization purporting to represent employees of the District in their employment relations.

ANTELOPE VALLEY COMMUNITY COLLEGE DISTRICT

By: \_\_\_\_\_  
President

Dated:

This is an official notice. It must remain posted for sixty (60) consecutive days from the date of posting and must not be defaced, altered or covered by any material.

Raymond J. Gonzales, Member, concurring:

I concur in the above Order and I am in basic agreement with Chairperson Gluck's discussion, except as noted below.

I disagree with the Chairperson's assertion that "historically accepted labor relations principles of agency authority and principal liability must be applied to cases arising under the EERA." I believe that in some situations a public school employer, defined in section 3540.1(k) as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools," may be held liable for the unlawful acts of some of its subordinates. Governing boards are responsible for the overall direction of school districts, but day-to-day decisions and actions, which may directly affect the organizational rights of employees, are often made by subordinates without specific authorization or ratification by the governing board. It is reasonable that under some circumstances employees may perceive their employer as responsible for such decisions and actions, regardless of whether the governing board itself is directly involved. Under other circumstances, such a perception may be unreasonable, and it may thus be inappropriate to attribute these actions to the employer. The question is in what situations should the employer be held responsible for acts by subordinates which are unlawful under section 3543.5.

I do not believe it is necessary to adopt a blanket rule developed in the private sector. The differences between the authority of employers in the public and private sectors, and between the provisions of the EERA and the National Labor Relations



Act (hereafter NLRA) are sufficient to justify proceeding cautiously in developing rules for imposing liability on public school employers for acts of their subordinates.

As noted in the Chairperson's discussion, the NLRA contains two provisions specifically dealing with the agency relationship between an employer and its subordinates. Section 2(2) of the NLRA<sup>1</sup> states that the term employer "includes any person acting as an agent of the employer, directly or indirectly . . ." and section 2(13) provides that authorization or subsequent ratification of specific acts is not controlling in holding a person responsible for his agent's acts. The EERA contains no comparable provisions. To me, this indicates that the Legislature did not intend this Board to adopt the private sector rule without qualification, but rather intended it to consider carefully the situations in which it is reasonable to attribute to a public school employer responsibility for unlawful acts it has neither expressly authorized or ratified.

In addition, under the NLRA, supervisors and foremen are generally presumed to be acting and speaking for the employer.<sup>2</sup> This presumption may be appropriate in a structure where supervisors have no organizational rights themselves.<sup>3</sup> However,

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<sup>1</sup>The NLRA is codified at 29 U.S.C. section 151 et seq.

<sup>2</sup>Gorman, Basic Text on Labor Law (1976) at p. 134.

<sup>3</sup>Supervisory employees are specifically excluded from the definition of "employee" in section 2(3) of the NLRA (29 U.S.C. §152(3)).

under EERA, supervisors have the right to organize and negotiate. Supervisors have independent employment interests which may conflict with the interests of rank and file employees. In attempting to manifest these interests, supervisors may engage in activities which may arguably infringe on the organizational rights of rank and file employees. While the status of the supervisory employees may lead rank and file employees to perceive employer involvement in these activities, such activities should not necessarily be attributable to the employer. Thus, under the EERA, it may not be appropriate to apply a presumption that supervisors generally act and speak for the employer.

Therefore, I advocate developing policies in this area tailored to our statute as we gain experience in the kinds of situations in which employer liability for the acts of others is at issue.

Under the facts in this case, the District can reasonably be held responsible for the actions of its designated management and supervisory employees, and cannot now seek to insulate itself by claiming that it could not interfere with the supervisory employees' organizational activities. The District had notice of these actions and not only took no steps to disassociate itself from them but actively created an impression of support by responding favorably on proposals made by the designated employees on behalf of all classified employees.

With respect to the acts of the designated management and supervisory employees, the Chairperson's discussion finding a violation of section 3543.5(a) adequately reflects my views, and his application of Carlsbad Unified School District (1/30/79) PERB Decision No. 89 does not conflict with my concurrence in that case.

However, I continue to adhere to my opinion, set forth in that concurrence, that intent, either actual or inferred, is a requisite for finding a violation of section 3543.5(a).

In the present case, there is ample evidence that the activities of the designated employees, attributable to the employer, interfered with employees' right to self-organization and were taken with the intent to interfere. Intent is shown here by the indications in the record that the activities would not have been taken but for the organizing activities on behalf of CSEA and by the failure of the District to show any valid justification for its conduct.

Except as noted above, I concur in Chairperson Gluck's discussion and in his finding that the District violated sections 3543.5(a) and (d) of the EERA.

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Raymond J. Gonzales, Member

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD

ANTELOPE VALLEY COMMUNITY COLLEGE DISTRICT,	)	
	)	
Charging Party,	)	
	)	CASE NO. LA-CO-28
vs.	)	
	)	
CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 374,	)	
	)	
Respondent.	)	
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CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, CHAPTER 374,	)	
	)	
Charging Party,	)	CASE NO. LA-CE-110
	)	
vs.	)	
	)	
ANTELOPE VALLEY COMMUNITY COLLEGE DISTRICT,	)	<u>PROPOSED DECISION</u>
	)	
Respondent.	)	March 22, 1978
<hr style="border: 0.5px solid black;"/>		

Appearances: John Wagner, Attorney, (Wagner and Wagner) on behalf of Antelope Valley Community College District; Madalyn J. Frazzini, Attorney, on behalf of California School Employees Association, Chapter 374.

Before Sharrel J. Wyatt, Hearing Officer.

PROCEDURAL BACKGROUND

On April 22, 1977, the California School Employees Association, Chapter 374 (hereinafter CSEA) filed an unfair charge against the Antelope Valley Community College District<sup>1</sup> (hereinafter District) charging violation of Government Code<sup>2</sup> Section 3543.5(a), (b) and (d). On May 31, 1977, the

<sup>1</sup> Antelope Valley Community College District is located in Lancaster, California and has an average daily attendance of 3908, Annual Report, Financial Transactions Concerning School Districts in California, 1975-76, Kenneth Cory, State Controller, at p. 525.

<sup>2</sup> All references are to the Government Code unless otherwise indicated.

District filed an unfair charge against CSEA alleging violation of Section 3543.6(a), by attempting to cause the District to violate Section 3543.5(d). These matters were consolidated and an informal conference was held on June 22, 1977. Thereafter, a formal hearing was held at Lancaster, California on July 27 and 28, September 26, 27 and 28, and October 17, 1977.

#### FINDINGS OF FACT

On April 1, 1976, CSEA requested recognition from the District as the exclusive representative for a unit of classified employees employed by the District, excluding management, supervisory, confidential employees. As of the conclusion of this hearing, no exclusive representative had been recognized or certified for classified employees of the District. In the spring and fall of 1976, while a unit question was pending, the District designated certain classifications as confidential and others as management.

The District's case revolves around a letter from a CSEA field representative, Pat Mullvain, dated February 16, 1977 addressed to Dr. Stine, the superintendent and president of the District, requesting an appointment with Dr. Stine to discuss the appropriate unit in relation to CSEA's request for recognition. The letter stated in part:

In an effort to continue previously accepted procedures and the continued well being of our members, CSEA Chapter 374, demands the right to proceed into negotiations on behalf of the members of this chapter. We insist that we be placed on the agenda for the regular Board of Trustees Meeting, April 4, 1977 in order that we may present our salary, fringe benefits and contract proposals for the 1977-78 academic year.

Dr. Stine testified that he interpreted the above paragraph as a demand from CSEA to negotiate and write a contract in response to those negotiations. Dr. Stine responded to the above letter by sending a letter to Mr. Mullvain

on February 28, 1977 in which he referred Mr. Mullvain to Bill Montamble, the District's representative, regarding discussion of the appropriate unit, and went on to state:

The matter of your demand to proceed at this time with negotiations on behalf of members of Chapter 374 has substantial legal and procedural implications. That demand has been referred to our counsel and in the event that we can unilaterally make a determination in the matter, you will be so notified.

Mr. Mullvain testified that he often used the word "negotiate" in relation to meet and confer under the Winton Act and that his intent in using the word was to meet with District representatives, present chapter proposals, confer with the District representatives and attempt to reach some sort of settlement. Mullvain testified that in his opinion, a non-exclusive representative can only represent its members under the EERA.

During the entire period, no other organization had requested recognition by the District or filed an intervention to CSEA's request for recognition.

CSEA's charge involves a series of events commencing shortly before March 15, 1977, when Dr. Stine met with employees who had been designated as management or confidential to form a committee to present proposals on wages and fringe benefits covering designated management and confidential employees. Thereafter Dr. Stine called a meeting for all classified employees on March 15, 1977, at which he indicated that the Educational Employment Relations Board (hereinafter EERB)<sup>3</sup> was currently scheduling case number 100 and the unit determination case number for the District was over number 400. Thus it would be two years before the EERB got that far. By then, the law which Dr. Stine felt was a poor law, might be repealed. Dr. Stine

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<sup>3</sup>Effective January 1, 1978, the EERB became the Public Employment Relations Board, (PERB).

presented an article relative to the Tustin Unified School District<sup>4</sup> decision and expressed objections to "outside influences" on the District. Dr. Stine invited classified employees to bring forth proposals for consideration by the District and indicated his preference for dealing with all classified employees as one group.

In response to a question from the audience on why certificated employees had received an increase and classified had not, Dr. Stine responded that classified people had received an increase according to their activities as opposed to certificated who had not pursued the same activities at the same time.

On March 19, 1977, the Saturday following Dr. Stine's meeting with classified employees, a meeting was held at the home of Sharon Rediess. All persons who attended were persons who had been designated as management or confidential by the District. At that meeting, Dick King did most of the talking and suggested they call a meeting of all classified employees to see if they wanted to form a unit of all classified employees to approach the administration on wages and benefits. A memo was prepared and distributed to all classified employees. Dated March 21, 1977, it was signed by nine persons. Those who signed the memo are:

Vivienne Amman, cafeteria supervisor, designated management;  
Osler Boyd, maintenance/operations supervisor, designated management;  
Dave Bradley, data processing coordinator, designated management;  
George Dluzak, head custodian, designated management;  
Dick King, bookstore manager, designated management;  
Jim McDonald, director of admissions, designated management;  
Sharon Rediess, pool secretary, secretary to vice president academic affairs, designated confidential;  
John Stover, director of fiscal operations, designated management; and  
Jerry Winchell on which there is no adequate record.

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<sup>4</sup>Tustin Unified School District, EERB Decision No. HO-U-2, March 16, 1977.

The memo called for a "Meeting of Antelope Valley College Classified Employees, Thursday, March 24, 4:30 p.m." The meeting was held at the end of a normal work day for most classified employees.

Mr. Montamble is the representative for the administration for receiving initial employee wage proposals and was the person who approved the use of campus facilities for the March 24th meeting. Mr. King signed the request for use of the premises and Mr. Montamble did approve it.

Mr. King, the bookstore manager, called the meeting to order and told the 58 employees in attendance that the purpose of the meeting was to explore the possibilities of forming classified employees into one unit. The audience was told that the proposed unit would have a loose structure with no dues, no elected officers, no constitution or by-laws, and would represent all classified employees in matters pertaining to wages and fringe benefits. The function could be broadened if the need arose. The unit could be limited in life span but need not be so limited if employees felt the unit was representing them fairly and in a positive manner. Employees were requested to sign a document of support and participate in a secret ballot to determine whether to go forward.

Mr. King indicated to classified employees that the administration would be receptive to working with classified employees on a median concept salary schedule.

Mr. Stover, the director of fiscal operations, spoke to the employees to answer questions regarding the "median concept" and indicated it would be as successful for classified employees as it had been for certificated at the District. Fringe benefits were discussed. It was stressed that the purpose of the meeting was to determine if classified employees were interested in uniting in order to present matters pertaining to wages and fringes to the administration.



It was determined that a secret ballot would be taken to determine if employees were interested. Donna Dinger, the CSEA president, agreed to be part of the committee to count the ballots, but later withdrew. Ms. Dinger did not object to the above course of activity.

The ballot provided for a yes/no vote for a unit of all classified employees and a yes/no vote for CSEA. The yes/no for CSEA was crossed out before the ballots were marked because of objections to this portion. Dorothy Bryant, secretary to Dr. Stine, typed the ballot. She was designated a confidential employee.

Similar, separate meetings were held by Mr. Dluzak and Mr. King at the maintenance shop for employees who could not attend the main meeting. Mr. Dluzak told custodians he wanted them all to be at this meeting.

After ballots were counted, Mr. King sent out a memo on March 28, 1977 to all classified employees indicating 71 yes, 8 no and 2 not voting to support a single unit. His memo also indicated that 24 of 56 persons had signed a petition to have their names removed from CSEA's request to be the exclusive agent, and that 12 who had signed the petition had left the District and one who signed would be leaving in May of 1977. He also reported that 52 persons had signed the document of support circulated at the meeting he conducted on March 24, 1977.

At least some employees including Ida Montez, Gwen Winchell and Willie Collins felt that the presentation at this meeting by Mr. King and Mr. Stover was made to them on behalf of management because of the status of those who called the meeting, because Dr. Stine had indicated his preference for no exclusive representative, and/or because the meeting was called so soon after the March 15th meeting with Dr. Stine. Donald B. Hamilton felt compelled to attend the meeting because of the status of those who called the meeting.

Thereafter, five persons were selected to put a proposal together:

Richard King, bookstore manager, designated management;  
Jerry Lewis, athletic trainer/equipment manager, designated  
management;  
Sharon Rediess, pool secretary, designated confidential;  
John Stover, director of fiscal operations, designated  
management;  
James McDonald, director of admissions, designated  
management.

They met to put together a wage and fringe package to present to the administration. Such a package was presented to the administration by Mr. King after this unfair charge was filed and served. The median concept, fringes and holidays presented by the committee were adopted by the board of trustees. Every year since 1974, CSEA had endeavored to have the median concept adopted for classified employees as it had been for certificated employees, but the administration had refused to consider the idea.

Between March 21, 1977 and March 25, 1977, a petition was circulated which stated:

After consideration and discussion with my fellow employees of the advantages and disadvantages of the CSEA Petition for Recognition I signed in 1976, I now feel that the petition no longer serves my best interests.

With this new knowledge, I now request my name be withdrawn.

This petition was circulated by persons designated as confidential or management to employees who worked in their divisions during working hours and at the meeting held by Mr. King with the custodial staff. In nearly every case, the petition was given to the employee and the employee was told they should read it and sign it or not sign it, it was up to them.

Persons who circulated the petition include Mr. Stover, Ms. Rediess, Ms. Amman, Mr. Boyd, Mr. King and Mr. McDonald. At least some employees, including Donald B. Hamilton and Ida Montez, felt that the request that they sign the petition was made on behalf of management because of the status of the persons who circulated the petition. Thereafter, the petition was filed away. The record does not reflect that it was presented to the administration or forwarded to the EERB.

The record is clear that whenever the group initiated by the designated management and confidential employees used District materials, they paid for their use. Employees were not released from work to attend the meetings. Use of District facilities is equally available upon request to CSEA. Therefore, these factors do not enter into consideration in reviewing CSEA's charges. Dr. Stine testified that he does not recall learning of the meeting of March 24, 1977 of all classified employees until he gathered materials together relative to the CSEA's unfair charge on April 29, 1977, and that he first saw the petition to withdraw support from CSEA on that same date. No witness testified that he or she had received direction from Dr. Stine, Mr. Montamble, or any member of the board of trustees regarding the course of the behavior to which CSEA objects herein. Nor does the record reflect that Dr. Stine, Mr. Montamble, or any member of the board of trustees had knowledge of the course of behavior to which CSEA objects.

Official notice is taken of the record in the subsequent unit determination case,<sup>5</sup> in which the same parties stipulated that the District is an employer and CSEA is an employee organization within the meaning of the Act. They stipulated that the confidential positions to be excluded from the unit are the secretary to the superintendent and four senior secretaries. The parties further stipulated that the veterans affairs coordinator, director of auxiliary services, director of admissions, director of fiscal services, director of maintenance and operations, head custodian and head groundsman are excluded as either management or supervisory. The position of cafeteria supervisor was not resolved because that position was vacant at the time of that hearing.

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<sup>5</sup> Antelope Valley Joint Community College District and CSEA Chapter 374,  
PERB Decision No. HO-R-52, January 30, 1978.

The positions of director of student activities and data processing coordinator were in issue in the unit determination hearing and were found to be supervisory within the meaning of the Act.

The stipulation of the parties is supported by the testimony herein. Therefore, the hearing officer accepts the stipulation that Mr. Boyd, the maintenance and operations supervisor, Mr. Dluzak, the head custodian, Mr. McDonald, the director of admissions, and Mr. Stover, the director of fiscal operations are either management or supervisory employees within the meaning of the EERA.

Because Mr. King, the bookstore manager, played a dominant role throughout the course of activities about which CSEA complains, it is necessary to determine his status at the time of these activities.

On July 1, 1977, Mr. King was promoted to the position of director of auxiliary services. At all times relevant to this case he was the bookstore manager. A secretary/bookkeeper, account clerk, and three sales clerks were employed in the bookstore in addition to student assistants and substitutes during rush periods. King was responsible for day-to-day operations: ordering books and supplies, seeing that student needs were met and seeing that a profit was made. He prepared the budget and was responsible for staying within it. It was reviewed by the Bookstore Advisory Committee composed of students, faculty and administrators, It was then sent to the president and to the Board of Trustees.

A few years ago, the administration and the board of trustees determined that they would expand the bookstore. Mr. King had no input in arriving at that decision. He did have input as to how the bookstore would expand after the decision was made.

He was involved in the hiring process by participation on a committee and his recommendations were always followed. He recommended discipline of employees and his recommendation was followed. He also checked the work of bookstore employees and directed them to make corrections.

The unit determination hearing left the position of cafeteria supervisor unresolved because the position was vacant at the time of that hearing. Since it is relevant to determination of this matter, the position must be determined.

Ms. Amman, the cafeteria supervisor, scheduled hours of work, breaks, lunch, and assigned specific duties to three cafeteria assistants assigned to her. No one approved the schedule she set up. She decided who, when and how much overtime would be worked by the three employees. No one approved her scheduling of overtime. She evaluated the three employees. No one reviewed or approved her evaluation.

Upon completion of the hearing, CSEA withdrew charges III, IV, V, VIII, IX and X and amended charges II and VI set forth hereinafter as amended.

#### CONCLUSIONS OF LAW

##### I

The District argues CSEA violated Section 3543.6(a)<sup>6</sup> by attempting to cause the District to violate Section 3543.5(d)<sup>7</sup> by demanding "other support" be given to CSEA by the District in CSEA's letter of February 16, 1977

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<sup>6</sup>Section 3543.6(a) states: "It shall be unlawful for an employee organization to: (a) Cause or attempt to cause a public school employer to violate Section 3543.5."

<sup>7</sup>Section 3543.5(d) states: "It shall be unlawful for a public school employer to: ... (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."

requesting an appointment with Dr. Stine to discuss the appropriate unit and stating:

In an effort to continue previously accepted procedures and continued well being of our members, CSEA Chapter 374 demands the right to proceed into negotiations on behalf of members of this chapter. We insist that we be placed on the agenda for the regular Board of Trustees Meeting, April 4, 1977, in order that we may present our salary, fringe benefit and contract proposals for the 1977-78 academic year.

The District's argument focuses on the words demand and negotiate and interprets the paragraph as a demand to meet and negotiate.

The District cites no precedent to support this novel theory of law.

The alleged demand to negotiate must be read within the context in which it is presented. Here, the demand was made in a letter that also requested a meeting to discuss the appropriate unit.

The record indicates the intent of the writer was to meet and confer. The general demand to proceed into negotiations is followed by specific insistence that CSEA be placed on the agenda of the Board of Trustees to present proposals. The record supports intent by CSEA to be placed on the agenda merely to provide input to the Board of Trustees, in a good faith albeit mistaken belief that CSEA had the right to represent their members pursuant to Section 3543.1(a)<sup>8</sup>

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<sup>8</sup>Section 3543.1(a) states:

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.

The District's interpretation that this letter constituted an unlawful demand to enter into negotiations leading to a written contract is unreasonable in light of the context in which it occurs.

Further, even if CSEA were demanding to meet and negotiate, such a demand would not be unlawful in the factual setting of this case. CSEA had made a request for recognition and there was no intervenor. Thus, it would not have been unlawful for the District to grant voluntary recognition and enter into meet and negotiate sessions at any time they chose to do so. Since it would not be unlawful for the District to assent to a request by CSEA to meet and negotiate, it cannot be found that the request to do so by CSEA is unlawful.

Where an employee organization has merely demanded to negotiate, it has never been held to be a violation of the Labor Management Relations Act, (LRMA) as amended. Such a finding here would violate the statutory purposes of the EERA which is to promote the improvement of personnel management and employer-employee relations<sup>9</sup> by imposing rigid standards which would only serve to impede communication between the parties in an effort to resolve disputes between themselves.

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<sup>9</sup>Section 3540 states: "It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy. . ."

## II

CSEA's Charge I reads as follows:

Employer's President, C. W. Stine, acting apparently and ostensibly in behalf of employer, did engage in a course of conduct continuing to the present, of dominating and interfering in the formation of an employee organization within the meaning of Section 3540.1(d) of the Act, such conduct including but not limited to conducting a meeting on March 15, 1977 and for all Classified Employees of Employer, at which meeting he said that only the Charging Party had presented matters to Employer and urged the employees there present to form a group of employees for the purpose of presenting matters to Employer, this being contrary to the provisions of Section 3543.5(d) of the Act, in that Charging Party filed April 5, 1977.

CSEA's Charge VII reads as follows:

Employer's President C. W. Stine, acting apparently and ostensibly in behalf of Employer, did engage in a course of conduct continuing to the present, of threatening reprisals, interfering, discriminating against and coercing employees because of their exercise of their rights pursuant to the Act, such conduct including but not limited to conducting a meeting on March 15, 1977 for All Classified Employees, at which meeting said Stine did say to the Classified Employees there present that nothing was being done about their case by EERB, that it might be years before EERB got to the case, that if employees were unhappy with their small cost of living adjustment for School Year 1976-1977 they had no one to blame but themselves in that the teachers had gone along with his wishes and not filed for exclusive representation thereby getting considerably more of an increase than the classified employees had gotten, this because a small minority of employees urging others to sign for exclusive representation had made it difficult for all Classified Employees, contrary to the provisions of Section 3543.5(a) of the Act.

These charges are dismissed for failure of proof. The evidence does not support a finding that Dr. Stine, on March 15, 1977 or any other date, dominated or interfered with the formation of an employee organization.

At the meeting on March 15, 1977, Dr. Stine expressed the opinion that it would be two years before the EERB heard the unit case involving



the District, that it was possible that the law would be repealed by that time, that he did not like the law and would prefer to deal with all classified employees as one group, and extended an invitation to classified employees to bring forth proposals for consideration by the District. None of the foregoing constitutes a violation of Section 3543.5(d).<sup>10</sup>

On March 15, 1977, there was no organization to dominate or interfere with, nor did Dr. Stine's presentation urge the formation of such an organization. Expressing a preference for dealing with all classified employees as one group without urging formation of a competing organization and without threats, promises, an offer of support or an indication of willingness to deal only with such a group, does not, standing alone, constitute a violation of Section 3543.5(d). The expression of anti-union opinions or preference for one labor organization over another, without more, is protected free speech.<sup>11</sup>

This holding is in agreement with an argument of the District that Dr. Stine was free to express his views on employee relations provided his expressions did not constitute coercion.

In regard to the charge that Dr. Stine violated Section 3543.5(a), the record does not support this charge. Dr. Stine was asked why certificated employees had received an increase while classified employees had not. His response was that classified people had received an increase according to their activities as opposed to the certificated not pursuing the same activity at the same time. Essentially, Stine was stating that certificated

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<sup>10</sup> Section 3543.5(d) states: "It shall be unlawful for public school employer to: (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."

<sup>11</sup> See N.L.R.B. v Corning Glass Works (CA 1) 1953 204 F. 2d 422, 23 LC 67, 619, 32 LRRM 2136.

employees had received a unilateral increase from the District and classified would have to wait until the unit question was resolved and an election had occurred.

Dr. Stine's statement is an exercise of free speech and it is found that it does not contain any threat to impose reprisals, to discriminate, interfere with, restrain or coerce. It does not promise a raise if employees drop their request for exclusive representation, nor does it promise reprisal if it is continued. No violation of Section 3643.5(a) is found.

### III

CSEA's Charge II, as amended, reads:

Employer's Classified Employees Vivienne Amman, Osker Boyd, Dave Bradley, George Dluzak, Dick King, Jim McDonald, John Stover and Jerry Winchell, having been designated Management pursuant to Section 3540.1(g) of the act, acting apparently and ostensibly in behalf of Employer, did engage in a course of conduct continuing to the present, of dominating and interfering in the formation and administration of an employee organization within the meaning of Section 3540.1(d) of the Act, such conduct including but not limited to conducting a meeting on March 24, 1977 for all Classified Employees of Employer, at which meeting said persons did urge the Classified Employees there present to join the Antelope Valley College Classified Employees Association, an organization planned, initiated and sponsored by Employer, and foisted upon employees who never requested it, contrary to the provisions of Section 3543.5(d) of the Act.

CSEA's Charge VI reads:

Employer's Classified Employees Vivienne Amman, George Dluzak, Osker Boyd, Dave Bradley, Dick King, Jim McDonald, John Stover, and Jerry Winchell, having been designated Management pursuant to Section 3540.1(g) of the Act, acting apparently and ostensibly in behalf of Employer, did engage in a course of conduct continuing to the present, of encouraging employees to join another organization in preference to Charging Party, said Charging Party having filed for exclusive representation on April 5, 1976, such conduct of those persons including but not limited to conducting a meeting on March 24,

1977, at which meeting for all Classified Employees Employer did circulate a petition the signing of which would indicate support for the Antelope Valley College Employees Association, at which meeting Employer did through those management persons circulate a ballot the voting thereupon of yes indicated that the persons wanted the Antelope Valley College Classified Employees Association to represent them in meeting and negotiating, contrary to the provisions of Section 3543.5(d) of the Act.

The evidence reflects that Ms. Amman, Mr. Boyd, Mr. Bradley, Mr. Dluzak, Mr. King, Mr. McDonald and Mr. Stover were, indeed, designated as management. As to Mr. Winchell, the record is unclear as to his designation. Further, some of these employees did act on apparent authority of the District in that they occupied positions which were management or supervisory within the meaning of Section 3540.1 (g) and (m). These positions were occupied by Mr. Boyd, Mr. Dluzak, Mr. McDonald and Mr. Stover.

The position of Mr. Bradley was found to be supervisory,<sup>12</sup> a stipulation consistent with the record herein.

The position of cafeteria supervisor was also supervisory within the meaning of Section 3540.1(m) in that the cafeteria supervisor scheduled and approved who, when and how much overtime would be worked by the employees in her department without the requirement of either prior or subsequent approval.<sup>13</sup>

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<sup>12</sup> See Antelope Valley Joint Community College District, Case No. LA-R-424, PERB Decision HO-R-52, January 30, 1978.

<sup>13</sup> Section 3540.1(m) defines supervisory as:

"Supervisory employee: means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The position of the bookstore manager was also supervisory within the meaning of 3540.1(m) because Mr. King sat on the committee to interview prospective employees and made recommendations that were always followed, and had made a recommendation for discipline of an employee which was followed.

Thus it is the actions of employees who were designated as management and who were in fact clothed in the authority of supervisors or management within the meaning of the Act to which CSEA addresses this charge. Such employees do, indeed, act on apparent authority of the District. Section 3543.5 states: "It shall be unlawful for a public school employer to:" (Emphasis added)

Employer is defined under Section 3540.1(j) as:

"Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools.

Clearly, for purposes of unfair charges pursuant to 3543.5, the Legislature did not intend a narrow interpretation of this section. The governing board of a school district generally acts through its agents. In this case, it is a group of management or supervisory employees who have been cloaked in management or supervisory authority by the board of trustees and who had been designated as "management" employees by the board of trustees.

The purpose of Section 3543 is to protect the rights of employees under the Act. Among those rights are the rights provided under Section 3543 "...to form, join, and participate in the activities of employee organizations of their own choosing..." and "... the right to refuse to join or participate in the activities of employee organizations..."

Such rights become illusory if employees who are designated as management and who have authority as supervisors or management employees are permitted to interfere with these rights. Whether or not these designated

management/supervisory employees acted under the direction and control of the superintendent or the board of trustees, their actions appear to be under the authority of designated management/supervisory employees to other classified employees.

CSEA urges that the case law under the Labor Management Relations Act, as amended, be adopted here. That Act, by amendment has defined an agency test relative to employers and has deprived supervisors of their status as "employees". Thus, they are clearly aligned with management. However, prior to amendment of that Act in 1947 supervisors did have status as employees as they do under the EERA. The test prior to amendment held employers responsible for the acts of supervisors who held positions giving them authority over employees if the employers identified the supervisors with management. (See International Assoc. of Machinists, etc. v. N.L.R.B. (1940) 311 U.S. 72, 7 LRRM 282 at 286, N.L.R.B. v. P.G. & E. (9th C. 1941) 118 F 2d 780, 8 LRRM 848, 4 L.C. 601 393). This subjective test designed to protect rights of employees under the LMRA is adopted under the EERA. The record reflects that some employees attended the March 24th meeting because the persons who called the meeting were viewed as representatives of management. Others felt those who ran the meeting acted on behalf of management because of their status.

The NLRB test ordinarily would look to the degree of supervisory authority to determine if the acts of supervisors are attributable to the employer. Where, as here, the employees have been designated as management and such a large number of management-designated supervisory employees are directly involved in forming an employee organization, it is unnecessary to determine if their level of supervision is sufficiently high to attribute their acts to the employer. Their participation is overwhelming.

CSEA also urges that having designated these employees as management, the District is estopped from denying that these persons acted as their

agent. This argument is found to have merit. In exercising authority to designate employees as management pursuant to Section 3540.1(g), a public school district holds persons so designated out to employees as their agent. Having done so, they should be estopped from denying that such employees acted without their authority.

As set forth hereinafter, the actions of these designated management/supervisory employees did upset the delicate balance in employer-employee relations in favor of the management/supervisor dominated organization and in derogation of the employees' right to support CSEA or to elect no representation. These employees are supervisory or management and are under the direction and control of the District. The District is in a position to control future behavior so such a wrong will not occur again. If the District were not held accountable for the actions of those it places in authority, the balance in employer-employee relations would continually be undermined, the District could gain thereby, rights of employees under the Act would be undermined, and no remedy would be available. Clearly, this was not the intent of the Legislature.

Dr. Stine called the designated management/supervisory employees together to direct them to prepare a proposal on their own behalf. Within days he expressed the desire to deal with all classified employees as one group at a meeting of all classified employees. Within a few days thereafter, the designated management/supervisory employees got together and decided to call a meeting of all classified employees to see if they wanted to form an organization.

The organization conceived and formed by these designated management/supervisory employees was an employee organization within the meaning of 3543.5(d) and 3540.1(d) in that its primary purpose was to represent classified employees in their employment relations with the District. Whether they

felt that Dr. Stine desired this or not, these employees held a relationship of authority on behalf of the District to other classified employees. Classified employees testified that they felt compelled to attend a meeting called by this group of employees.

Persons who spoke at the meeting, cloaked as designated management/supervisory employees indicated the administration would be receptive to a median concept salary range, a sought after concept by classified employees who had gone a long time without an increase and who knew Dr. Stine did not like the idea of meeting and negotiating under the EERA. In this context, the classified employees were asked to both sign a yes/no ballot indicating their desire to join this group suggested and formed by designated management/supervisory employees, and to sign a petition withdrawing support from CSEA. Thereafter, various supervisors presented the petition withdrawing support from CSEA to employees they supervised, saying that the employees could sign or not sign, it was up to them. And Mr. King, a designated management/supervisory employee sent forth a memo to all classified employees advising them that 71 classified employees voted yes for the new group and 24 of 56 persons who had signed the CSEA petition had withdrawn their names and 12 had left the District. Indirectly, Mr. King was telling employees who supported CSEA that this new group formed by designated management/supervisory employees was strong and everyone was jumping off the CSEA band wagon. By innuendo, he suggests others should do the same.

Clearly, this course of activity is a violation of Section 3543.5(d). The new group was conceived, formed and imposed on classified employees by designated management/supervisory employees. Such a course of action constitutes domination and interference in the formation of an employee organization.

The test of whether a challenged organization is employer controlled is not objective, but rather subjective from the viewpoint of the employees (see NLRB v. Thompson Products (CA 6 1942) 130 F. 2d 363, 11 LRRM 521; NLRB v. Tapper Stove Co. (6th C. 1949) 174 F. 2d 1007, 24 LRRM 2125). Domination constitutes support or interference with an employee organization amounting to control of the organization, (see Hershey Metal Products Co. 1948 21 LRRM 1237, 76 NLRB No. 105 695) and has been found to occur where supervisors distributed authorization cards and urged signing them (NLRB v. A & S Electronic (CA 2nd 1970) 423 F. 2d 218, Cert. den. 400 U.S. 833), participated in an ad hoc committee to draft wage and hour proposals (Doces Sixth Ave., Inc. (1976) 225 NLRB 114, 1975 - 6 CCH NLRB 17, 128) or formation of an employee organization was at the suggestion of a company official and with the aid of supervisors (Davis d/b/a/ Queen City Transport (1963) 141 NLRB 964) or supervisor aided in the membership campaign and circulated petitions to withdraw support from another employee organization (Ardivine Mfg. Co. (1965) - 153 NLRB, No. 72, Holland Mfg. Co. 129 NLRB 776, Enfd. CA 3rd 1961 292 F. 2d 840, Lawcon Milk Co. 1962 136 NLRB 538, Enfd. CA 6th 1963 at 47 LC 18, 280) or participated in the formation or administration of an employee organization (Hankins Container Co., Flintkote Div. 1963 CCH NLRB 12, 815, 145 NLRB 640, Wall Tube & Metal Products (1958) 122 NLRB 13). Where, as here, elements of all of the foregoing are present, domination and interference in the formation and administration is an inescapable conclusion.

It is noteworthy that the District did not, at any time, disavow the actions of these designated management/supervisory employees.

Further, by representations that the administration was willing to discuss the median concept with an employee group led by these designated management/supervisory employees, by circulating the petition to



withdraw support from CSEA and by sending in a memo reflecting a landslide in favor of this new group and loss of majority support by CSEA, these management designated/supervisory employees violated Section 3543.5(d) by encouraging employees to join one organization over another.

The District argues that Jerry Lewis, the person who was elected president of CSEA in June of 1977, was elected to the committee to prepare a proposal of this new group and had been designated a management employee and that this is proof that the group was not management dominated.

Mr. Lewis, the athletic equipment manager, was designated as management. The record, however, reflected he was neither management nor supervisory. In the companion unit case (Antelope Valley Joint Community College District, supra) the District stipulated he was not supervisory, a stipulation consistent with the record herein.

Mr. Lewis did not conceive the idea to form a new group, did not participate in calling classified employees to the March 24th meeting, did not circulate the petition to withdraw support from CSEA, was not elected president of CSEA until after all of the activity complained of herein, and, finally, his role on the committee that prepared the proposal was minor at most. His peripheral role does not support the District's argument.

The District argues, likewise, that the presence of Donna Dinger, CSEA president, at the March 24th meeting without comment is proof that the new group was not employer dominated. While a more aggressive leader might have protested in these circumstances, Ms. Dinger's presence with, or without comment, does not negate the fact that the meeting was conceived, planned and conducted by designated management/supervisory employees.

The District argues that until the EERB has determined the appropriate unit and the unit has been recognized or certified, that employees have the right to form organizations of their own choosing for purposes of representation in employer/employee relations and that there is no restriction on who can or cannot be included in such an organization; that absent exclusivity, there is no restriction on who can or cannot be included for purposes of representation under Section 3543. This interpretation is not correct. Section 3540 contemplates that employees shall have the right to form organizations of their choice and to select one employee organization as their exclusive representative. Section 3543 provides the right to join or to refuse to join an employee organization. Where, as here, an organization is conceived, planned, and presented to employees by a group of designated management/supervisory employees, the right to join or not to join that organization is not an unfettered, free choice, but a choice dominated and interfered with by the cloak of authority. Further, the interference by designated management/supervisory employees interferes with the employees right to choose to join or not to join CSEA. Not only has the designated management/supervisory group provided benefits to discourage membership in CSEA, but they circulated petitions for withdrawal of support from CSEA. Obviously, Section 3543 does not contemplate a right to join or not to join that has been so influenced by management/supervisory that no free choice can be exercised.

The District's arguments are without merit.

## REMEDY

Section 3541.5(c) provides that:

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

The remedy provided herein is designed to effectuate the purposes of the EERA. The cease and desist order is to prohibit future acts on the part of the District or the administration which would impinge upon the rights of employees pursuant to Sections 3540 and 3543 to join or not to join employee organizations. Because the District and Administration have authority to direct the activities of management and supervisory employees, the order is designed to require the District to direct the activities of management and supervisory employees so they will not impinge upon the rights of employees who are not management, supervisory or confidential to assure that the rights of employees pursuant to Sections 3540 and 3543 are exercised in a free and unfettered fashion.

It would be inappropriate to unwind the pay increases granted as a result of representation by management designated/supervisory employees. Such an action would merely serve to punish rank and file employees for unlawful activities on the part of management or supervisory employees. It would also be inappropriate to direct that employees give or withhold support for CSEA because their signatures had been unlawfully obtained on a petition to withdraw support from CSEA by management or supervisory employees. The purpose of the EERA is to permit an unfettered choice by employees. The damage that has been done cannot be erased. However, by requiring that the order in this matter be posted, employees are given notice that management and supervisory employees

have acted in an unlawful manner and are being ordered to cease and desist from such unlawful activity. By posting, it is hoped that employees will learn of the unlawful nature of the actions of supervisory and management employees and, with that knowledge, be able to exercise a free and unfettered choice in the exercise of rights under the EERA henceforth, thus effectuating the purpose of the EERA.<sup>14</sup>

In a recent decision of the Court of Appeal, Fifth Appellate District,<sup>15</sup> the Court affirmed a remedy to an unfair labor practice under the Agricultural Labor Relations Act wherein the employer was required to post, mail, and read a notice to employees. CSEA requests the mailing and reading of the order in this case as well as disestablishment of the management/supervisor founded organization. Because we are dealing with a public school employer with a relatively stable working force and bulletin boards where notices to employees are traditionally posted, the expense of mailing notices is found to be inappropriate in this case.

The reading of notices to employees is a remedy that has overtones of humiliation. Because the record does not support a finding that Dr. Stine has specific knowledge, it would be inappropriate to require that he read a notice to employees in this case.

Disestablishment in relationship to non-management, non-supervisory employees is essentially accomplished by the order. A direct order of disestablishment against the competing organization is not possible because that organization was not a party to the proceedings.

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<sup>14</sup>Based on the nearly identical language of the LMRA, as amended, Section 10(c), posting has been held to effectuate the purposes of that Act. See Pennsylvania Greyhound Lines, Inc. v. NLRB, 1 LRRM 303 (1935) Enforced at 303 US 261, 2 LRRM 600 (1938); NLRB v. Empress Publishing Co. 312 US 426, 8 LRRM 415 (1941).

<sup>15</sup>Pandol and Sons v. ALRB and UFW, 5 Civ. 3446, February 21, 1978, Daily Journal Appellate Report, March 7, 1978.

PROPOSED 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(e), it is hereby the Proposed Order that the Antelope Valley Community College District, its governing board, superintendents, and other agents and representatives shall:

A. CEASE AND DESIST FROM:

1. Dominating and/or interfering with the formation or administration of any classified employee organization.
2. Permitting employees who are management or supervisory to dominate and/or interfere with the formation or administration of any classified employee organization.
3. In any way encouraging employees to join any employee organization in preference to another.
4. Permitting employees who are management or supervisory to in any way encourage employees to join any employee organization in preference to another.
5. From conferring, discussing, consulting, meeting and/or negotiating with any officer or representative of the Antelope Valley College Classified Employees or any other employee organization which is administered by management or supervisory employees and attempts or purports to represent employees who are not management or supervisory relative to any matter within the scope of representation pursuant to Government Code Section 3543.2.

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

1. Within 30 days, notify all management and supervisory employees in writing that they are not to dominate or interfere with the formation or administration of any employee organization which represents employees who are not management or supervisory relative to matters within the scope of representation pursuant to Government Code Section 3543.2 and that they will not in any way interfere with the rights of employees who are not management or supervisory to join or not to join any employee organization in preference to another.
2. Within ten workdays, prepare and post copies of this order in each of its buildings and work sites for twenty (20) workdays in conspicuous places, including all locations where notices to employees are customarily posted.
3. At the end of the posting period, notify the Regional Director of the Public Employment Relations Board of the actions it has taken or intends to take to comply with this order.

C. IT IS FURTHER ORDERED THAT:

1. The charge that CSEA violated Section 3543.6(a) is DISMISSED.
2. The charge that the District violated Section 3543.5(a) is DISMISSED.

3. The charge that the District violated Section 3543.5(d) as the result of the March 15, 1977 meeting, or by other action of Dr. Stine, is DISMISSED.

The parties have twenty (20) calendar days after service of this Proposed Decision in which to file exceptions in accordance with California Administrative Code, Title 8, Part III, Section 32300. If no party files timely exceptions, this Proposed Decision will become final on April 17, 1978 and a Notice of Decision will issue from the Board.

Dated: March 22, 1978

Sharrel J. Wyatt  
Hearing Officer