

STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD



NEVADA CITY FACULTY ASSOCIATION, )  
CTA/NEA, )  
 )  
Charging Party, )  
 )  
v. )  
 )  
NEVADA CITY SCHOOL DISTRICT, )  
 )  
Respondent. )  
 )

Case No. S-CE-91

PERB Decision No. 185

December 4, 1981

Appearances: Richard L. Gilbert, Attorney (Blease, Vanderlaan and Rothschild) for the Nevada City Faculty Association, CTA/NEA; Pete Ford, Consultant for the Nevada City School District.

Before Gluck, Chairperson; Jaeger, Moore and Tovar, Members.

DECISION

The Nevada City School District (hereafter District) has filed three exceptions to a Public Employment Relations Board (hereafter PERB or Board) hearing officer's proposed order. The District asserts that the hearing officer improperly:

- (1) found that the District's released-time policy was unreasonable and violated section 3543.5(b) of the Educational Employment Relations Act (hereafter EERA or the Act);<sup>1</sup>
- (2) refused to dismiss as untimely a late filing of a

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

particularization of the charge by the Nevada City Faculty Association, CTA/NEA (hereafter NCFA), the charging party; and (3) found that the District's released-time policy did harm to the negotiating process.

The NCFA filed no exceptions to the proposed decision.

#### DISCUSSION

NCFA has charged the District with a violation of EERA sections 3543.5(a), (b) and (c)<sup>2</sup> by adopting a released-time policy which failed to provide a reasonable number of employees with a reasonable amount of released time for mediation and factfinding and which unreasonably restricted released time to nonclassroom duty hours. The charge also alleges that the District's released-time policy had a negative impact on the

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<sup>2</sup>Section 3543.5(a), (b) and (c) state:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.

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

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

negotiating process and thus constituted a refusal to bargain in good faith. Finally, the charge included an allegation that two NCFA negotiators were intimidated and threatened by the District, thus interfering with their statutory rights.

The factual background to these charges reaches into a period beginning in May 1977. At that time, the District had adopted a released-time policy which flatly prohibited paid released time during classroom hours but permitted released time during other work periods. As a consequence, NCFA filed an unfair practice charge (S-CE-58) alleging that the District had failed to provide a reasonable number of employees with a reasonable amount of paid released time. In August 1977, following the issuance of Magnolia School District (6/27/77) EERB Decision No. 19,<sup>3</sup> the District modified its policy to permit released time during classroom hours but only under other than "normal circumstances."

NCFA had proposed released time which was intended to apportion the financial burden of released time between the parties while opening the opportunity to conduct negotiations at times during the school day other than required by the District's policy. Its proposals were rejected by the District and, in August 1977, NCFA filed an unfair practice charge

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<sup>3</sup>Prior to January 1, 1978, PERB was called the Educational Employment Relations Board.

(S-CE-79), alleging a violation of the District's duty to negotiate in good faith on the subject of released time. Both charges were settled by an agreement reached on September 15, 1977, which also provided that the NCFA charges would be dismissed with prejudice. The District agreed to place its released-time policy in abeyance. Two negotiation sessions were then scheduled to begin on September 22. The parties had entered into a released-time agreement with respect to both of these sessions.<sup>4</sup> However, only one negotiating session was held before the District expressed dissatisfaction with NCFA's substantive proposals, declared impasse, and cancelled the second scheduled session which was to be held on September 26.

The parties proceeded to mediation in October. The District authorized three NCFA representatives to have released time for one-half day for each of the three mediation sessions that were actually held. Later, the District granted five NCFA representatives one-half day each for a factfinding session which was held in December. During the earlier negotiations,

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<sup>4</sup>Charging Party alleges in its particularized charge:

It was specifically agreed that the negotiating on September 22 (the first session) would take place on teacher time and that released time would be provided by respondent for the session on September 26, 1977.

See also Reporter's Transcript, p. 227, lines 1-5.

NCFA had utilized seven negotiators and sessions had typically begun at 3:30 p.m. and lasted two or three hours.

The hearing officer found that the District's original released-time policy (that is the policy placed in effect in May 1977) violated section 3543.1(c) of EERA<sup>5</sup> because it was inflexible on its face. He further concluded that the District's modified policy announced after the issuance of Magnolia, supra, was also unlawful because it lacked standards, failed to define "other than normal circumstances" and forced negotiation sessions to be brief thus imposing an improper burden on the teachers' personal time and physical energies.

However, the hearing officer found that the District's released-time policy for mediation and factfinding, the substance of the current charges, did not violate the Act because the number of employees released coincided with an earlier proposal made by NCFA and that the number was reasonable when measured against the total number of teachers employed by the District.

The hearing officer found no evidence to support the charge that the District had interfered with the rights of the two

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<sup>5</sup>Section 3543.1(c) states:

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

negotiators. Also, while he found that the District policy hindered negotiations and was therefore unreasonable, he dismissed that portion of the charge alleging a violation of section 3543.5(c), concluding that no additional relief could be afforded by such a finding.

The hearing officer's findings and conclusions of law relate to negotiations and the District's released-time policies which were in effect prior to September 1977.<sup>6</sup> The events covering this earlier period were the subject of charges which had been filed by NCFA but withdrawn with prejudice following a settlement of the issues. His ruling as to those events was therefore improper.

The surviving charges concern the District's released-time policy for mediation and factfinding. The hearing officer's conclusion that this policy was not in violation of EERA was not excepted to by either party. This Board has generally declined to raise sua sponte matters to which exceptions have not been taken.<sup>7</sup> It observes that policy in this instance.

Since the only portion of the hearing officer's decision to which exception has been filed is that dealing with charges

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<sup>6</sup>Though the hearing officer's order expressed in general terms does not specify the nature of the District's violation, his dismissal of all charges relating to events occurring after September 1977 leads us to conclude the order applied to the events occurring before the date.


<sup>7</sup>Gilroy Unified School District (7/20/79) PERB Decision  
No. 98

concerning which he had no right to act, the Board now dismisses the charges in their entirety. In so doing, the Board makes no finding with respect to the lawfulness or unlawfulness of any of the District's released-time policies.<sup>8</sup>

ORDER

Upon the foregoing facts, conclusions of law and the entire record in this case, it is hereby ORDERED that the charges filed by the Nevada City Faculty Association, CTA/NEA against the Nevada City School District, Case No. S-CE-91, are hereby DISMISSED with prejudice.

Bv: ~~Harry~~ Gluck, Chairperson

  
John W. Jaeger, Member


Member Tovar's concurrence begins on page 8.

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<sup>8</sup>The District also claims that the charges should not be heard since the parties had agreed to resolve all disputes over released time by meeting and consulting. Since PERB is dismissing all charges for the reasons stated, it is unnecessary to determine whether such an agreement, in fact, was reached or otherwise to resolve this contention. Further, because we hereby dismiss all charges, it is unnecessary to decide the issue of untimely filing of the particularization raised by the District's exception.

Member Tovar concurring:

I concur.

  
\_\_\_\_\_  
Irene Tovar, Member

Member Moore concurring and dissenting:

I disagree with the majority's conclusion that NCFA's instant charge is limited to an allegation that the District failed to provide reasonable amounts of released time to employee representatives during mediation and factfinding. It is my view that the charge now before the Board challenges the validity of the modified released time policy itself.<sup>1</sup>

I find that the record demonstrates that the released time granted during mediation and factfinding was afforded in accordance with the above policy of the District because it perceived those sessions to be other than normal circumstances. While the document signed by the parties on September 15, 1977, states that the District agreed to hold the modified policy in abeyance, the record testimony indicates the contrary. I am

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<sup>1</sup>The District's modified released time policy was enacted in August 1977 and, in pertinent part, provides that meetings for the purpose of negotiating with certificated staff be scheduled "under normal circumstances at times that do not conflict with classes being taught by the employee representatives."



persuaded by the testimony of the District's negotiator,  
Pete Ford:

Q. Has the District ever provided released time for negotiations other than as is set forth in [its modified policy], in accord with any different policy or in violation of that policy?

A. I believe that all release time has been in compliance with this policy.

Q. And did the District apply that policy in according release time for mediation on October 10?

A. Yes.

Q. So that the, this policy has at all times been applied by the District?

A. I think that the District has followed this policy, yes.

[Reporter's Transcript, p. 233, lines 26-27;  
p. 234, lines 1-9.]

Moreover, in a meeting on September 29, 1977, the District offered released time consistent with its modified policy. Both before and after September 15, the District's position regarding released time did not vary from that which it had adopted in August. Indeed, in its exceptions to the hearing officer's decision, the District continues to maintain that its policy of refusing to grant released time during class time except for other than normal circumstances was a reasonable policy in accordance with its statutory obligation.

Based on these factors, I find that the instant NCFCA charge, although filed after the withdrawal of its earlier unfair

practice charges, challenges the legality of the District's released time policy because that policy remained in effect and was, in fact, the basis on which released time for mediation and factfinding was granted.

Turning to the validity of the charge, I conclude that the District's modified released time policy fails to satisfy the requirements of subsection 3543.1(c) of the EERA. Consistent with our decisions in Magnolia School District (6/27/77) EERB Decision No. 19, Anaheim Union High School District (10/28/81) PERB Decision No. 177, and Sierra Joint Community College District (11/5/81) PERB Decision No. 179, I find that the employer may not limit released time to mediation and factfinding sessions. Although the District's testimony suggests that its policy would permit released time from classroom duties prior to impasse, the facts clearly belie that assertion. Thus, while I agree with the majority's decision that the propriety of the District's conduct prior to September 15 is beyond the scope of the instant charge, I nevertheless view that conduct as relevant evidence which may be considered in construing the terms of the District's policy. (NLRB v. Dayton Motels, Inc. (6th Cir. 1973) 474 F. 2d 328 [82 LRRM 2653]; NLRB v. Patterson Menhaden Corp. (5th Cir. 1968) 389 F. 2d 701) [67 LRRM 2545].) In fact, this is the only way to determine that the provision to grant released time for other

than normal circumstances in effect contemplated released time for mediation and factfinding only.

Consistent with the above discussion, I otherwise agree with the majority's decision and concur.

Barbara D. Moore, Member

PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA

NEVADA CITY FACULTY ASSOCIATION, CTA/NEA,	)	Unfair Practice
	)	Case No. S-CE-91
Charging Party,	)	
	)	
v.	)	
	)	
NEVADA CITY SCHOOL DISTRICT,	)	<u>PROPOSED DECISION</u>
	)	
Respondent.	)	(7/ 3 /78)
	)	

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Appearances: Richard L. Gilbert, Attorney (Blease, Vanderlaan and Rothschild) for the Nevada City Faculty Association, CTA/NEA; Pete Ford, Consultant, for the Nevada City School District.

Before Ronald E. Blubaugh, Hearing Officer.

PROCEDURAL HISTORY

In this case, an employee organization attacks a school district's released time policy. The policy is aimed at tightly restricting the amount of teaching time from which employees can be released in order to engage in collective negotiations.

Virtually from the beginning of their relationship, these parties have been in deep disagreement about the issue of released time. Their dispute spawned a series of unfair

practice charges<sup>1</sup> and became a constant source of friction at the negotiating table, at times overshadowing the substance of negotiations.

On October 12, 1977, the Nevada City Faculty Association, CTA/NEA<sup>2</sup> filed the present charge and a companion charge<sup>3</sup> against the Nevada City School District.<sup>4</sup> The charge alleges that the District has denied reasonable released time, failed to negotiate in good faith, discriminated against employees because of their exercise of rights, attempted to control and limit who could negotiate for the Association, breached an earlier agreement on released time and hampered the Associa-

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<sup>1</sup>Unfair practice cases S-CE-58 and S-CE-79 both involved a dispute about released time between these same parties. The two charges were withdrawn on September 15, 1977, when the parties believed they had reached an understanding about released time.

<sup>2</sup>Hereafter, the Nevada City Faculty Association, CTA/NEA will be referred to as the "Association."

<sup>3</sup>The companion charge, S-CE-90, involved an alleged unilateral freeze in wages. A consolidated hearing was conducted on S-CE-90, S-CE-91 (the present case) and S-CO-21, a charge filed by the Nevada City School District against the Association. Upon the successful negotiation of a contract, the Association withdrew S-CE-90 (on March 21, 1978) and the employer withdrew S-CO-21 (on March 9, 1978).

<sup>4</sup>Hereafter, the Nevada City School District will be referred to as the "District."

tion's ability to carry out its role in impasse procedures.<sup>5</sup> The Association contends that this alleged conduct was in violation of Government Code sections 3540, 3543.5(a), (b) and (c) and 3548.

On November 7, 1977, a hearing officer ordered the Association to particularize the charge and gave a deadline of November 21, 1977 for compliance. When the Association had failed to respond by December 2, 1977, the District moved for dismissal. On December 7, 1977, the Association filed a response to the order to particularize. On December 19, 1977, a hearing officer issued a "partial summary judgment" in favor

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<sup>5</sup>The Association's statement of the charge reads as follows:

1. The Board and its agents have repeatedly refused to provide "reasonable" release time in order to carry out the Association's responsibility to negotiate a contract and to properly represent members of the bargaining unit.
2. The District has failed to negotiate in good faith and has stalled and impeded the bargaining process.
3. The Board of Trustees, Nevada City School District, has discriminated and has threatened to discriminate against the Nevada City Faculty Association because of their exercise of the rights guaranteed by this Chapter.
4. The Nevada City School District Board of Trustees has attempted to control and limit who may negotiate for the Nevada City Faculty Association.
5. The Board of Trustees have breached an agreement entered into in good faith by the Association to withdraw an employer "Unfair" Practice Charge on this same subject. (See EERB Case Number S-CE-58.)
6. The Board of Trustees have restricted the Association's ability and abridged its rights in carrying out its responsibilities under the Impasse procedures (mediation) provided for in the Rodda Act by not allowing for sufficient release time and by not releasing all members of the Associations bargaining team to participate in mediation.

of the District, dismissing the alleged violation of Government Code sections 3540 and 3548 and striking several factual allegations from the original charge. With the partial summary judgment, the remaining code sections which the District was accused of violating were Government Code sections 3543.5(a), (b) and (c).<sup>6</sup>

On December 21, 1977, the Association filed a request for acceptance of its untimely response to the order to particularize and a declaration in support. On January 6, 1978, the District filed a response to the particularized unfair practice charge and requested that the charge be dismissed because of the Association's untimely response to the order. On January 10, 1978, a hearing officer denied the District's motion to dismiss.

A hearing on this matter was held in Nevada City on January 18 and 19, 1978.

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<sup>6</sup>Government Code section 3543.5 provides as follows:

- It shall be unlawful for a public school employer to:
- (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.
  - (b) Deny to employee organizations rights guaranteed to them by this chapter.
  - (c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.
  - (d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.
  - (e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548).

## FINDINGS OF FACT

The Nevada City School District is located in Nevada City and the nearby mountainous regions of Nevada County. The District provides instruction for students in kindergarten through the eighth grade. At the time of the hearing, the District had two schools with a third school under construction. Its average daily attendance was approximately 1,115 students and the District employed approximately 93 persons of whom about 49 were certificated employees. The District's 1977-78 budget was approximately \$1.8 million of which \$768,392 went to salaries for certificated employees.

On April 12, 1977, the District's governing board recognized the Association as the exclusive representative of a unit comprised of all certificated employees except summer school teachers, home teachers, substitute teachers and all management, supervisory, confidential and temporary employees.

The parties commenced negotiations on an initial contract on April 19, 1977, one week after the Association was recognized as the exclusive representative. By the date of the hearing, they had conducted 22 negotiating sessions, four of which involved either mediation or factfinding. Six of the negotiations sessions were held during the summer months when the members of the certificated negotiating committee were on vacation.



In late 1976 and early 1977, prior even to the recognition of the Association as the exclusive representative, the parties discussed the ground rules they ultimately would follow in negotiations. In the discussions about ground rules, the District was represented by its superintendent, Daniel Woodard. During those pre-negotiations sessions, the parties reached general agreement about the ground rules, one of which provided that negotiating sessions would be one hour in length and could be extended by mutual agreement.

By the time of the first negotiating session on April 19, the District had employed Pete Ford, a private consultant, to conduct the negotiations. The first subject of discussion at the first meeting was ground rules, including specifically the matter of released time. The parties disagreed about released time at that initial meeting and they continued to disagree about that subject for the duration of the negotiations. Entwined with the released time dispute was a disagreement about the length of negotiating meetings. Rejecting the one-hour provision in the ground rules which the parties had discussed prior to his participation, Mr. Ford continuously pressed for longer sessions. The Association was unwilling to engage in lengthy sessions in the absence of being released from some classroom duties.

At the beginning, the Association requested released time for six committee members. The District objected to the size of the committee and suggested that the Association have one

committee member for each 15 members of the negotiating unit. The Association agreed to cut the size of its committee to three members if the District would provide adequate released time. Under the Association's proposal, the parties would negotiate partly during hours the teachers were released from school responsibilities and partly during the hours after school. As proposed by Milton Stackhouse, the Association's chief negotiator, the parties would meet from 8 a.m. to 4 p.m. one day and then schedule the next negotiating session from 4 p.m. to about 10 p.m. When that proved unacceptable, the Association proposed that meetings begin at 1 p.m. and continue until about 6:30 p.m. or 7 p.m., placing the first part of the session on released time and the second part on the teachers' own time. That proposal also was unacceptable to the District. At no point would the District agree to the Association's request that the parties negotiate half of the time during normal working hours and half of the time after working hours.

The District's consistent philosophy about the issue of released time was that teachers should not be freed from classroom duties with students. Although the District somewhat modified its approach toward released time over the months of negotiations, this basic philosophy remained unchanged. It was first expressed in a policy developed in late 1976 and adopted by the District's governing board on May 10, 1977. The key section of the policy reads as follows:

Meetings for the purpose of negotiating with certificated staff shall be scheduled at times that do not conflict with classes being taught by the employee representative. Non-instructional certificated employees shall attempt to schedule their primary duties so that released time from primary duties will not be required. Released time for certificated employees shall be given from other than their primary duties. Certificated representatives shall not be released from classes but may be released from such other duties as committee assignments, curriculum development, student advising, sponsorship of extra-curricular activities, research or student follow-up. Such released time shall be granted to one certificated employee representative for a given number of employees in the unit. This representation will be agreed to by the Board's representative and the employee unit.

Following the Educational Employment Relations Board's<sup>7</sup> Decision No. 19, Magnolia Educators Association v. Magnolia School District (6/27/77), the District governing board developed a revised released time policy. The revised policy, which was adopted on August 16, 1977, provides in part as follows:

Meetings for the purpose of negotiating with certificated staff shall be scheduled under normal circumstances at times that do not conflict with classes being taught by the employee representative. Non-instructional certificated employees shall attempt to schedule their primary duties so that released time from primary duties normally will not be required. Certificated representatives under normal circumstances shall not be released from classroom teaching assignments but may be released from such other duties as committee assignments, curriculum development, student advising, sponsorship of extra-curricular activities, research or student follow-up, etc.

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<sup>7</sup>Effective January 1, 1978, the Educational Employment Relations Board was renamed as the Public Employment Relations Board, Chapter 1159, Statutes of 1977.

The revised policy does not define what is considered to be other than "normal circumstances" which might justify release of negotiators from teaching time. However, during the hearing the District's negotiator Mr. Ford said that mediation and factfinding were the primary examples of when released time could be granted from teaching. He said the District also believed that released time from teaching would be appropriate in a situation where "there was a great deal of language that needed to be plowed through or [where] some very significant issues . . . needed to be brought to bear for a concentrated period of time . . . ." But for released time to be permitted in such a circumstance, he continued, there would have to be adequate preparation in previous negotiating sessions and evidence of a mental attitude by members of the negotiating teams that it was time to get "some real negotiations accomplished."

Following the September 1977 settlement of the two earlier unfair practice charges, the District placed its released time policy "in abeyance" for about five months. On September 15, the parties agreed in writing that they should negotiate during nonteaching hours in the afternoon of September 22 in an effort to reach agreement. It was further agreed that, if necessary, another meeting would be held beginning at 9 a.m. September 26. The September 26 meeting was to be on released time.

From the District's point of view, the meeting of September 22 did not go as expected. Mr. Ford testified that the negotiating package the parties were working on completely fell apart because the Association retrenched and took positions which were unacceptable to the District. He therefore declared that the parties were at impasse and canceled the September 26 meeting at which the Association negotiators were to receive released time.

In accord with its policies, the District regularly granted released time during nonteaching hours. The workday for District teachers is 8:30 a.m. to 4:00 p.m. Three of the four negotiating committee members who testified finished their last daily contact with students at 3:30 p.m. The fourth negotiating committee witness was finished at 2:40 p.m. Most of the negotiating sessions started at about 3:30 p.m., thereby providing negotiating committee members with about 30 minutes of released time per negotiating session.

Released time from teaching was given during mediation and factfinding. Three Association committee members each were granted one-half day of released time during mediation sessions on October 10, 17 and 25, 1977. Five Association committee members each were granted one-half day of released time for a factfinding session on December 19, 1977. Providing substitutes for the released teachers cost the District \$210 for the three days of mediation and the one day of factfinding.

In addition, the District paid the cost of substitute teachers for seven Association representatives to attend EERB proceedings on September 15, 1977 and for two Association representatives to attend EERB proceedings on December 7, 1977. Substitute teachers cost the District \$30 per day.

The Association's negotiating committee was comprised of seven members throughout most of the negotiations. Each person on the team was assigned specific duties and was responsible for a certain portion of the proposal. During the summer some of the members went out of town and other unit members filled in for them in an effort to keep the committee to seven members. The committee member who did most of the speaking for the Association was Milton Stackhouse. He testified that even though other members did not say much during the across-the-table sessions with the District, they contributed advice during Association caucuses and sent him notes while they were at the table. A few negotiating sessions started prior to 3:30 p.m. On those days, the Association would begin with only those committee members who had completed their teaching or other student contact. As the other members finished teaching, they would join the negotiations.

The District's released time policy created a number of difficulties for the Association. Mr. Stackhouse estimated that committee members spend two or three hours in preparation for each hour of actual negotiations. Under the District's

policy, all of the preparation and the vast bulk of the negotiating was completed on the employees' own time. The primary problem created by the District's released time policy is that it led to relatively short negotiating sessions. Of the 22 negotiating sessions conducted by the date of the hearing, six lasted fewer than two hours and only five lasted more than three hours. Negotiating sessions were kept relatively short, even though the District's negotiator regularly asked for longer meetings, because the teachers found it too tiring to hold long negotiating sessions after a full day in the classroom. Mr. Stackhouse explained:

. . . The fatigue sets in very quickly [when] you've been working all day with children in the classroom . . . It's pretty obvious that [when] you spend all day with children answering any multitude of questions, you aren't sharp, you need some time to reflect on what you're going to talk about. We never had time for that reflection . . . You went right from your room at 3:30 and sat down in the library and started to negotiate and it wasn't conducive to good negotiations.

Moreover, he said, negotiations in the afternoon and evening hours cut into time needed to prepare for teaching the following day:

. . . we just couldn't handle the hours, really, the hours in the evening. We could only go a certain amount of time and with your teaching time the next day that you had to prepare for and correcting 160 papers, you just can't do it. So you can only go how long a day in order to get prep time for the next day at school. So I'd have to say yes. It [the District's released time policy] has a negative approach to the whole affair. I think if we could have had release time we could have done lots better.

The parties spent numerous hours discussing the released time issue. A log of meeting dates kept by the Association shows that the subject came up at six negotiating sessions. The parties could not even agree on an approach for discussing the issue of released time. The District wanted to negotiate a policy for how released time would be provided. The Association wanted to negotiate a schedule of dates and times when released time would be granted. After September 29, 1977, the Association did not offer any other proposals on released time because the parties were by then hopelessly deadlocked on the issue.

Under the District's procedure, all requests for released time were to be made to Mr. Ford, the District's negotiator. The Association was told that it should not approach the principals or submit forms to District administrators. On September 22, 1977, Mr. Ford specifically advised the Association negotiators that they were to deal directly with him on released time requests. Although requests for released time were to be made to Mr. Ford, the power to grant released time was retained by the District governing board. Mr. Ford and/or the superintendent would present the request to the governing board and make a recommendation about whether or not to grant it.

On October 2, 1977, the Association wrote the superintendent and asked that seven members be released from duties at 1 p.m. October 10 in order to attend the mediation session



scheduled for that day. On October 4, 1977, the superintendent responded that the District would release three persons from 1 p.m. through 4 p.m. on October 10 and asked the Association to notify him of the identities of the three persons who should be released. On October 5, 1977, the Association sent the superintendent a letter which reads as follows:

Under protest we are submitting the following three names for released time on October 10 at 1 p.m. for mediation: Debora Luckinbill, Paul Eelkema and Roberta Smith.

We have negotiated for the past five months with a full bargaining team of seven members, and we feel that it will be impossible to mediate a contract without the input of the total bargaining team.

On October 10, two other members of the negotiating team left their schools prior to 4 p.m. in order to attend a part of the mediation session. Negotiating committee member David Mott left school at 3:30 p.m., which was after the completion of his teaching duties. By leaving the school 30 minutes early he skipped a faculty meeting. He did not advise the principal in advance of his departure, even though it is customary in the District that teachers advise the principal whenever they depart prior to the end of the day. On October 11, Mr. Mott was called into the office of the principal and asked why he had not been present at the previous day's faculty meeting. Mr. Mott explained that it was his understanding that he could leave at 3:30 p.m. to attend the mediation because he previously had been released 30 minutes

prior to the end of school to attend negotiations. After Mr. Mott gave this response, the principal replied that Mr. Mott should have been at the faculty meeting and then added "You understand where I'm coming from." Mr. Mott was not disciplined from his early departure on October 10. Asked if he was intimidated or threatened by the principal, Mr. Mott replied:

I don't recall any specific words that said there would be any retribution, but the manner and the context of it, in my opinion, was harassing.

Elaine Marsh was the other negotiating committee member who left early on October 10 in order to attend the mediation. Like Mr. Mott, Ms. Marsh was under the impression that negotiating committee members not released at 1 p.m. on that day were free to go to the mediation as soon as they finished with children. At 2:40 p.m. after her students left for the day, Ms. Marsh went to the office of her principal and asked if she could go to the mediation. The principal did not object and so Ms. Marsh left the school. The following day, the principal told Ms. Marsh that the superintendent was displeased because the principal had let Ms. Marsh leave school early. Ms. Marsh said she "just maybe slightly" felt threatened by this exchange. She said she would not want to again run the risk of getting her principal in trouble by leaving school early.

## LEGAL ISSUES

1) Did the District violate Government Code section 3543.5(b) by denying reasonable periods of released time to the Association during negotiations?

2) Did the District violate Government Code section 3543.5(b) by denying released time to a reasonable number of Association representatives during mediation?

3) Did the District violate Government Code section 3543.5(a) by its conduct toward two teachers who left school on October 10, 1977 prior to the end of the normal work day in order to attend mediation?

4) Did the District violate Government Code section 3543.5(c) by enforcing its released time policy?

## CONCLUSIONS OF LAW

The Educational Employment Relations Act<sup>8</sup> provides that a reasonable number of representatives from the negotiating agent shall be entitled to receive a reasonable amount of released time for meeting and negotiating and processing grievances.<sup>9</sup> A public employer who refuses to grant a reasonable amount of released time thereby denies an employee organization rights guaranteed to it by the EERA, in violation of

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<sup>8</sup>Government Code section 3540 et seq.

<sup>9</sup>Government Code section 3543.1(c) provides as follows:

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

Government Code section 3543.5(b).<sup>10</sup>

The PERB has considered the released time issue in Magnolia, supra, EERB Decision No. 19. In that case, the PERB wrote:

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

In the present case, the Association relies heavily on Magnolia and argues that the District's refusal to grant released time from teaching is of itself unreasonable. Moreover, the Association continues, the District acted unreasonably even when it granted released time from teaching. It was unreasonable, the Association contends, for the District to provide released time during mediation to only three of the seven members on the Association's negotiating committee.

The District responds that its policy was in accord with Magnolia, that it evidenced a flexibility and willingness to adjust to the circumstances. In addition, the District argues, the Association has failed to show any delay in negotiations or

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<sup>10</sup>See footnote No. 6, supra.

interference with negotiations caused by the policy.<sup>11</sup>

Initially, it is apparent that the May 10, 1977 version of the released time policy was inflexible on its face. That original version provided no possibility for certificated employees to be released from teaching for negotiations. After the PERB decision in Magnolia, the District modified the policy by adding the phrase "under normal circumstances" to the various prohibitions against releasing teachers from classroom duties. The policy does not define what situations would qualify as being other than "under normal circumstances." The District's negotiator listed mediation and factfinding as examples of when negotiating committee members would be released from teaching. In practice, the District released three committee members from a half-day of teaching in order to attend three mediation sessions. It also released five committee members from a half-day of teaching in order to attend fact-finding. The District's negotiator also said that negotiating committee members could be released from teaching in order to attend lengthy sessions aimed at "some real negotiations." In practice, however, no released time was ever given for such a session.

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<sup>11</sup>In its brief, the District also resurrects its argument that the charge should have been dismissed because the Association did not file a timely response to the order to particularize. This argument was disposed of in a pre-hearing order by a hearing officer who denied a motion to dismiss filed by the District. This written decision therefore will not readdress that question.

The question thus presented by the District's policy is whether Government Code section 3543.1(c) requires a school district to release employee negotiators from teaching for any purpose other than mediation and factfinding. It is the conclusion of the hearing officer that the statute and the PERB decision in Magnolia require more released time than that granted solely for mediation and factfinding.

The statute compels an employer to grant "reasonable periods of released time without loss of compensation when meeting and negotiating . . ." The PERB concluded in Magnolia that "had the legislature found that released time during the instructional day could never be appropriate, it could have so provided." Similarly, had the Legislature intended that released time during the instructional day was appropriate only for mediation and factfinding, the Legislature could have so provided.

In Magnolia the employer enforced a rigid policy that proved to be a hindrance to negotiations. While the decision focuses on how the policy hindered the mediator, there is nothing in the decision to indicate the PERB was restricting its analysis solely to mediation. Indeed, the PERB interpreted the released time section of the statute to allow for "the amount of released time that would be appropriate under the circumstances of the negotiations in the individual district."

In the present case, it can hardly be doubted that the District's released time policy proved to be a hindrance to

negotiations. As a direct result of the policy, the individual negotiating sessions were kept relatively short. By requiring that all negotiating sessions be held after the instructional day, the District made the whole process unduly burdensome on the teachers. The teachers entered the sessions tired and as the negotiations crowded into the evening hours they lost time needed to correct papers, write exams and prepare for their classes the following day. The teachers, therefore, kept the meetings short. Shorter meetings inevitably meant that the whole process would drag on longer than necessary.

It is apparent, therefore, that by its unyielding approach to released time, the District has hindered the process unduly. It is concluded that the District has not granted reasonable periods of released time without loss of compensation for meeting and negotiating.

The Association argues, also, that the District was unreasonable in allowing only three committee members to attend mediation. Thus, in addition to its contention that the District refused to allow reasonable periods of released time, the Association also maintains that the District refused to permit a reasonable number of negotiators to be released.

Magnolia does not specifically address the question of how many negotiators a District must release. But it seems

implicit that an employer must release "a reasonable number" under the circumstances of the individual District. What is a reasonable number in one district may be unreasonable in another. Obviously, a school district with 1,000 teachers can release five negotiators far more easily than a district with 10 teachers.

The parties have competing interests. The employee organization wants a committee large enough to divide the work and to be representative of the membership. The employer wants the least possible disruption of its educational program. In deciding how many negotiators should be released, the parties must recognize both needs. An employee organization cannot insist on a committee so large that it hampers the operation of the school district. The employer cannot insist on a committee so small that it restricts employee decision making to an unrepresentative few.

In this case, the District has 49 certificated employees. The Association regularly had seven members on its negotiating committee. During mediation, the District released three committee members and during factfinding it released five committee members. It is significant that early in the negotiations, the Association offered to reduce its negotiating committee to three persons if the District would provide released time from instruction. Apparently, at the start of negotiations the Association believed that it could meet its needs with only three negotiators. The Association does not



explain how events changed so that the District later acted unreasonably by releasing three negotiators for mediation. Given the relatively small size of the District's teaching staff, the release of three teachers for mediation and five teachers for factfinding seems most reasonable.

It is concluded, therefore, that the District did release a reasonable number of representatives from the Association to appear at the mediation session of October 10, 1977 and those held subsequently.

The Association next contends that the District violated Government Code section 3543.5(a) by reprimanding negotiating committee members David Mott and Elaine Marsh for leaving their schools early on October 10, 1977. The Association contends that the reprimand of the two teachers constituted an unlawful reprisal.

Government Code section 3543.5(a)<sup>12</sup> makes it unlawful for a public school employer to impose or threaten reprisals on employees or to discriminate against them for the exercise of rights under the EERA.<sup>13</sup> It is thus unlawful for an employer to punish employees solely for their participation in the activities of employee organizations. The PERB has considered

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<sup>12</sup>See footnote No. 6, supra.

<sup>13</sup>Government Code section 3543, which lists the rights of employees under the EERA, provides in part as follows:

Public school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. . . .

the meaning of that section in two cases, San Dieguito Faculty Association v. San Dieguito Union High School District, EERB Decision No 22 (9/22/77) and California School Employees Association v. Pittsburg Unified School District, PERB Decision No. 47 (2/10/78). In order to establish a violation under these decisions, the charging party must show that the employer's conduct either:

1) was carried out with "the intent to interfere with the rights of the employees" or,

2) "had the natural and probable consequence of interfering with the employees exercise of their rights . . . notwithstanding the employer's intent or motivation."

By no reading of the facts has the Association shown that the alleged reprimands of Mr. Mott and Ms. Marsh constituted unlawful reprisals for organizational activity. Although they innocently believed otherwise, the two teachers had not been released early on October 10. Yet they were not disciplined for their early departure. Mr. Mott merely was told that he should not have skipped the faculty meeting. The principal's comment "You understand where I'm coming from" is ambiguous at best and can hardly be characterized as a threat. Mr. Mott said there were no other words indicating retribution and there was no evidence of retribution. Moreover, there is nothing inherently unreasonable about a principal inquiring about why a teacher skipped a faculty meeting.

Ms. Marsh said she was "just maybe slightly" intimidated by comments from her principal the day after she left for the negotiating session. But her main concern was that she would not want to get her principal in trouble again. It was the principal who got into trouble for Ms. Marsh's early departure on October 10, not Ms. Marsh.

There was no evidence of a District intent to interfere with the rights of those two employees and it can hardly be argued that the conversations with the principals had the natural and probable consequence of interference. For these reasons, it is concluded that the allegation that the District violated Government Code section 3543.5(a) must be dismissed.

Finally, the Association argues that the District's released time policy constitutes a refusal to negotiate in good faith and thereby violates Government Code section 3543.5(c). The Association makes no contention that the District refused to negotiate about released time. Rather, it contends that the District's entire approach to released time so impeded negotiations that it amounted to a refusal to bargain in good faith. The PERB considered and refused to act upon a similar argument in Magnolia. Upon finding a violation of Government Code section 3543.5(b), the PERB concluded:

Having found such a violation, we need not inquire whether the District also violated Government Code section 3543.5(c), as alleged by the Association, because a finding of such a violation would not allow the Association relief additional to that already afforded. Thus, we decline to address that issue.

It is concluded, therefore, that because the Association could receive no additional relief from a finding that the District also violated Government Code section 3543.5(c), that allegation must be dismissed.

#### THE REMEDY

It is appropriate that an order be issued to the District that it cease and desist from failing to grant reasonable periods of released time to the Association. Such an order is in accord with Government Code section 3541.5(c) under which the PERB is given:

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

It is clear that unless the PERB directs the District to cease from its refusal to grant reasonable periods of released time, employee organizations will continue to have difficulty in obtaining released time.

It also is appropriate that the District be required to post a copy of this order. Posting of the order will provide employees with notice that the District has acted in an unlawful manner and is being required to cease and desist from this activity. It effectuates the purposes of the EERA that employees be informed of the resolution of this controversy. A posting requirement has been upheld in a California case

involving the Agricultural Labor Relations Act, Pandol and Sons v. ALRB and UFW (1978) 77 Cal.App.3d 822. Posting orders of the NLRB also have been upheld by the United States Supreme Court, NLRB v. Empress Publishing Co. (1941) 312 U.S. 426 [8 LRRM 415]; Pennsylvania Greyhound Lines, Inc. v. NLRB (1938) 303 U.S. 261 [2 LRRM 600].

#### ORDER

Upon the foregoing findings of fact, conclusions of law, and the entire record of this case, it is found that the District has violated Government Code section 3543.5(b), and pursuant to Government Code section 3541.5(c) of the Educational Employment Relations Act it is hereby ordered that the Nevada City School District, Board of Education, superintendent and representatives shall:

A. CEASE AND DESIST FROM:

Enforcing District regulations so as to deny to a reasonable number of representatives of the Nevada City Faculty Association, CTA/NEA reasonable periods of released time without loss of compensation when meeting and negotiating;

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

1. Prepare and post at its headquarters office and in each school for twenty (20) working days in a conspicuous place at the location where notices to certificated employees are customarily posted, a copy of this order;

2. At the end of the posting period, notify the Sacramento Regional Director of the Public Employment Relations Board of the action which has been taken to comply with this order.

It is further ordered that:

1. The Association's allegation that the District violated Government Code section 3543.5(b) by granting released time to only three Association representatives for the mediation sessions of October 10, 17 and 25, 1977 is hereby dismissed, and

2. The Association's allegation that the District violated Government Code section 3543.5(a) by its reprimand of Mr. Mott and Ms. Marsh for their early departure from school on October 10, 1977 is hereby dismissed, and

3. The Association's allegation that the District violated Government Code section 3543.5(c) by its denial of released time is hereby dismissed.

Pursuant to Title 8, California Administrative Code 32305, this proposed decision and order shall become final on July 28, 1978, unless a party files a timely statement of exceptions. See Title 8, California Administrative Code 32300.

Dated: July 3, 1978

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Ronald E. Blubaugh  
Hearing Officer