

DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD  
OF THE STATE OF CALIFORNIA



PALOS VERDES FACULTY ASSOCIATION, )  
CTA/NEA, )  
Charging Party, ) Case No. LA-CE-361  
v. ) PERB Decision No. 195  
PALOS VERDES PENINSULA UNIFIED )  
SCHOOL DISTRICT, ) February 26, 1982  
Respondent. )

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Appearances: A. Eugene Huguenin, Jr., Attorney (California Teachers Association) for Palos Verdes Faculty Association, CTA/NEA; David G. Miller, Attorney (Paterson & Taggart) for Palos Verdes Peninsula Unified School District.

Before Gluck, Chairperson; Jaeger and Moore, Members.

DECISION

The Palos Verdes Faculty Association, CTA/NEA (Association) excepts to a hearing officer's proposed decision that the Palos Verdes Peninsula Unified School District (District) did not violate subsections 3543.5(a) or (b) of the Educational Employment Relations Act (EERA)<sup>1</sup> when it disciplined five

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<sup>1</sup>The Educational Employment Relations Act is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

Section 3543.5 reads, in pertinent part:

It shall be unlawful for a public school employer to:

(a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to

teachers for failing to give written final examinations. The Board affirms that decision for reasons discussed herein.

#### FACTS

The Association was certified as the exclusive representative of the certificated employees of the District in November 1976. In March of 1977, the parties commenced contract negotiations. During May of 1977, the Association called a meeting to discuss possible means of applying pressure on the District if an agreement was not reached by September of 1977.

In September, another meeting was called to discuss the status of negotiations. At that meeting the Association president suggested that bargaining unit members withhold or reduce their participation in "voluntary" activities. Such activities included service on volunteer committees, writing of nonessential recommendations for students, correction of papers at home, and sponsorship of student clubs. At that time some teachers began to withhold their participation in these activities.

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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.

In response to these actions, the District discussed the withholding of services with the Association during a negotiation session and published the following communication to the bargaining unit members on October 19, 1977:

The Board's representative indicated to PVFA that a few individual teachers were no longer engaging in withholding of purely voluntary services but are now engaging in activities which directly relate to classroom teaching as part of a process to put pressure on the district in negotiations. The Board's representative indicated that the withholding of purely voluntary activities "those activities which may not be required by the district" is one thing but the refusal to participate in mandatory activities such as the attendance at faculty meetings, Back-to-School Nights, and supervision of student activities is clearly unprofessional and unlawful. . . . [T]hose teachers, if any, who refuse to make assignments to students, give tests, or do not teach as part of a concerted effort to put pressure on the negotiating process will be disciplined.

Negotiations continued throughout the school year, but no agreement was reached. Association members continued to withhold participation in certain activities. On May 24, 1978 the assistant principal at one of the District's three high schools issued a memorandum to the faculty regarding the June final examination schedule. In pertinent part the memorandum states:

(2) Student attendance is mandatory for the full two hours of each class scheduled whether or not an examination is required. Teachers not requiring a final examination are to provide alternate educational plans for their classes.

On May 25, 1978, the Association held another meeting concerning the status of negotiations. At the meeting, it was decided that the teachers should expand their concerted efforts to exert pressure on the District by meeting what the Association characterized as "the minimum requirements in testing and final exams." The testimony at the hearing indicates that this was understood to mean that teachers would not give written final examinations.

There is conflict in the testimony regarding the District's past practice concerning the giving of final examinations. The District's witnesses testified that the policy was to require teachers to give a final examination or receive permission not to give one from an administrator. Association witnesses countered that teachers had traditionally been allowed to make their own decisions whether or not to give final examinations.

The hearing officer resolved this conflict in favor of the Association.<sup>2</sup> That finding is bolstered by two additional pieces of evidence. First, on August 1, 1978, subsequent to the incident which gave rise to the discipline, the District added the following language to the Semester Examinations section of the Palos Verdes High School Teachers Handbook:

Teachers will give a two-hour written final examination during the scheduled examination

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<sup>2</sup>He concluded, however, that the principal, who was authorized to administer grading policy, had the authority to order teachers to give final exams.

periods listed in the Faculty Handbook.  
Teachers who wish to give other than  
two-hour written final examinations shall  
receive prior approval from the principal.

These two sentences, in effect, replaced the following Handbook language, "[T]wo-hour examinations are scheduled at the end of each semester." Second, on November 15, 1978, the District issued Instruction Administrative Regulation 2135 which ordered that written final examinations shall be administered in all classes except where prior approval of the principal has been requested and received from the principal. This evidence, plus the testimony on the subject, leads the Board to the conclusion that before June 12, 1978 teachers had discretion over the decision to give final examinations in their respective classes.

On June 12, 1978, the principals of the District's three high schools met to discuss what their response would be to the activities of the Association with regard to the administration of final examinations. The following directive was issued:

Some teachers have stated publicly that they are not planning to give final examinations as a part of a slow-down associated with collective bargaining. This makes the students the victims of a political process. It will not be tolerated.

Teachers are directed to give a two-hour written final examination during the scheduled examination periods on June 16, 19, 20 and 21, 1978.

This applies to all teachers except those whose past practice has been to give a final examination in other than written form due to the nature of the course. Those teachers may continue this practice if they request

and receive approval from the principal on  
or before June 15, 1978:<sup>3</sup>

In response, the Association issued the following  
memorandum on June 14, 1978:

PVFA DIRECTIVE

We have had too many questions from members  
recently regarding final exams.

At the PVFA General Meeting on May 25th the  
teachers voted 90% to do only the minimum  
required by the district. Final exams are  
not required by district or individual  
school policy. This is the PVFA membership  
position.

On June 19, 1978, the first of three days scheduled for  
final examinations, administrators at Palos Verdes High School  
began visiting classrooms of teachers at that high school to  
determine whether they were administering a written final  
examination. A list was compiled of seven teachers who had not  
given examinations and who had not acquired prior permission  
not to give examinations: Fred Crook, Richard Hadley,  
Perry Lynn, Ann Marie Smyth, Dorothy Lee, Wilfred Lee, and  
Engin Uralman.<sup>4</sup>

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<sup>3</sup>The evidence was that, in applying this directive, the  
District excused all teachers who offered educational  
justification for not giving finals from doing so, regardless  
of what their practice had been in the past or the nature of  
the course.

<sup>4</sup>Lynn's uncontradicted testimony indicates he gave a  
final examination in one class, while Smyth testified that she  
had administered final examinations in two classes.

All seven received letters of reprimand,<sup>5</sup> and six received statutory 90-day notices of unprofessional conduct and had three days' pay docked from their warrants. The District offered to restore the pay if they signed a "sworn affidavit" stating that their failure to give exams "was not part of any deliberate slowdown or boycott either individual or collective."

Only one teacher, Fred Crook, signed the affidavit, and his discipline was reduced accordingly.<sup>6</sup> The other five teachers refused to sign the statement, and were disciplined in full.

Subsequently, the discipline of Richard Hadley, the most visible proponent of the exam boycott,<sup>7</sup> was rescinded because the District believed that he had received ambiguous directions. Sharon Dezutti, known to the District as the president-elect of the Association, also received no punishment even though she did not give exams. Prior to the testing

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<sup>5</sup>These letters stated in pertinent part:

Your action in failing to give written final examinations as a part of the teaching slowdown advocated by the Palos Verdes Faculty Association in connection with collective bargaining and the resulting adverse effect on students are highly unprofessional and constitute grounds for which you are hereby reprimanded.

<sup>6</sup>Crook's pay was restored but, according to his uncontroverted testimony, the letters of reprimand remain in his personnel file.

<sup>7</sup>Hadley had made a statement to the Los Angeles Times describing the teachers' proposed boycott of exams.

period, and in response to the District's explicit inquiry, she offered educational reasons for not giving finals.

All of those disciplined were Association members and had participated in the year-long protest activities and, all but one, taught in the social studies department at Palos Verdes High, an acknowledged "hotbed" of Association activity. Four of the six were either current or immediate past officers of the Association or members of the negotiating team. Other than Hadley and Dezutti, certain other teachers who failed to give exams may not have been checked by the District and were not subsequently disciplined. However, there was no evidence that these individuals were members of or active in the union.

#### DISCUSSION

To find a violation in the District's conduct, it would be necessary to first find that the employees' failure to give final examinations was an activity protected by the EERA. Section 3543 of the Act establishes the right of employees to participate in the activities of employee organizations for the purpose of representation on all matters of employer-employee relations.

Like equivalent sections of the National Labor Relations Act (NLRA), EERA does not describe any conditions under which employee participation in organizational activity, even for legitimate purposes, will be denied protection against employer countermeasures. The National Labor Relations Board (NLRB) and



federal courts have nevertheless interpreted the NLRA to find certain forms of employee conduct to be unprotected. Such conclusions have ranged from finding that given conduct is illegal to simply being inconsistent with the spirit of the act.<sup>8</sup>

Here the District argues that the teachers' refusal to give final examinations constituted an unlawful slowdown. The Association counters with the claim that the teachers were entitled to use their discretion in the matter of giving examinations and that one cannot be deemed engaged in a slowdown for not doing work which is not required.

The shortfall in the Association's argument is its failure to distinguish between "discretionary" and "voluntary" work. We view the latter as work which employees are free to do or not without limitation on their choice. But, discretion implies the exercise of judgment pursuant to the discernment of underlying standards.

The testing of students is unarguably an aspect of the educational process, a means of evaluating student progress and

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<sup>8</sup>See Morris, Developing Labor Law, pp. 529-535, and NLRB v. Fansteel Corp. (1939) 306 U.S. 240 [3 LRRM 673] (sit down strike); Tidewater Oil Co. (1964) 145 NLRB 1547 [55 LRRM 1213] (violence against employer's property); Emporium Capwell Co. v. Western Addition Community Organization (1975) 420 U.S. 50 [88 LRRM 2660]; Elk Lumber Co. (1950) 91 NLRB 333 [26 LRRM 1493]; Phelps Dodge Copper Products Corp. (1952) 101 NLRB 360 [31 LRRM 1072].

achievement and, possibly, of the educational process itself. Teachers, the professional educators directly responsible for both, have been given the freedom to decide whether giving examinations is necessary or desirable to accomplish these fundamental educational objectives.<sup>9</sup> Thus, the teachers' refusal to give tests for reasons other than their professional judgment, namely, as a pressure tactic during the course of negotiations, was tantamount to a partial work stoppage or slowdown.

The fact that the teachers worked all required hours does not alter the conclusion reached here. Employees may not pick and choose the work they wish to do even though their action is in support of legitimate negotiating interests.<sup>10</sup> Accepting full pay for their services implies a willingness to provide full service.

Being aware of the Association's unprotected plan of action, the District could properly seek to determine the reason why any teacher failed to give a final examination<sup>11</sup>

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<sup>9</sup>To find that testing was intended to be purely voluntary as a matter of the teachers' working conditions would require this Board to reach the unwarranted conclusion that examinations had no educational significance to District policy makers.

<sup>10</sup>Phelps Dodge, supra, fn. 9.

<sup>11</sup>Compare Sacramento City Unified School District (8/14/79) PERB Decision No. 100, where an employer disciplined all employees who were absent from work in an alleged work

and lawfully discipline those teachers who failed to do so for the proper reasons.

Employees who did not respond to the District's inquiry in timely fashion cannot use their own failure to cooperate in that inquiry as a shield against subsequent discipline.

In sum, the teachers' activity under the facts here cannot be protected under section 3543. An employer does not violate 3543.5(a) or (b) by disciplining employees for participation in unprotected conduct.

The Association argues, however, that the District's disciplinary action was directed against union activism, per se, that it was past activities and anti-union animus that were the bases of the District's countermeasure. The record does not support such a claim.

While an employer may freely discipline any and all employees engaged in unprotected conduct, when the decision to do so is motivated by anti-union animus<sup>12</sup> the Act is violated. The facts here fail to demonstrate such animus.

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stoppage without attempting to determine which employees were actually engaged in the organizational activity. The Board found that the hearing officer had improperly placed on the union the burden of showing that the employees were absent for reasons unrelated to the job action.

<sup>12</sup>Hammerhill Paper Co. v. NLRB (3 Cir. 1981) 658 F.2d 155 [108 LRRM 200], "We have not the slightest doubt that the employer's decision to enhance [the steward's] punishment . . . based solely on his union office, constituted a violation of section 8(a)(3)." (Emphasis added.)

While the evidence is inconclusive as to the manner in which the District's policy was monitored, it would not have been unreasonable for the District to initially focus its attentions on the social studies department at Palos Verdes High, as the Association claims. Indeed, the District had indications that the impetus for the exam boycott came from this area of the school.

The fact that five of the six were particularly active union members and all participated in the year-long boycott activity does not convince us of any wrongdoing by the District.<sup>13</sup> It is to be expected that union members would be the employees most likely to participate in union activities, protected or not. Thus, they would be most likely to receive discipline for engaging in unprotected conduct. Also, except for Hadley and Dezutti the evidence did not indicate whether those who were not punished although they did not administer tests were activists or leaders.

The fact that the District went out of its way to ascertain whether the two most obvious and vocal Association activists (Hadley and Dezutti) intended to give exams or would have

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<sup>13</sup>We note that one of the six, Uralman, did not occupy a leadership role in Association activity. He held no position in the Association and although he had attended some picketing actions, 50-100 other teachers had done so as well. That the District singled Uralman out for punishment because of his union status or previous activity is unlikely.

legitimate reasons for not doing so and the fact that they were subsequently not disciplined gives further evidence of the District's lack of independent anti-union animus.

ORDER

The complaint filed by the Palos Verdes Faculty Association against the Palos Verdes Peninsula Unified School District is hereby DISMISSED.

By: Harry (Gluck, Chairperson

Barbara D. Moore, Member, concurring:

I agree with my colleagues that the decision to administer final examinations under the circumstances here presented was not purely voluntary and that the refusal by the teachers to give such examinations was based upon other than educational considerations and thus amounted to a partial work stoppage which was unprotected under EERA. I further agree that the Association failed to demonstrate that the District discriminatorily enforced its examination policy.

Thus, while I do not quarrel with the conclusions reached by Chairperson Gluck in his lead opinion, my reading of the record does not fully comport with his view of the facts, particularly with respect to the District's enforcement of its

final exam policy. Since the case turns on how one judges the facts, I offer this separate opinion to specify the reasons for which I find no violation in this case.

The lead opinion refers to the social studies department as an "acknowledged hotbed" of Association activity and indicates that the District "initially focused" on that department in enforcing its exam policy. These characterizations convey the impression that the District's interest in the social studies department was based upon knowledge of and hostility toward union activity per se in that department. The record gives no indication that the District ever referred to that department as a "hotbed" of union activity or by any other such term, nor does it demonstrate that the District enforced its final exam policy any differently in the social studies department than in any other. While the District administrator instructed personnel to make sure that they checked the social studies department; he further instructed them to check each classroom in every academic department. Clearly, the District wanted to ensure that its exam policy was being followed in the social studies department, as it had received phone calls from parents and questions from concerned students regarding the stated intent of teachers in that particular department to refuse to give final exams; further, a teacher in that department (Hadley) had publicly stated that he would not give a final. But, the District's "focus" on that department, such as it was, was neither discriminatory nor improperly motivated.

The record reflects that the classroom check was accomplished by a site administrator unobtrusively observing each classroom from the exterior hallway. Testimony by certain teachers indicates that they did not notice anyone checking their classrooms. In view of the method employed by the District to check classrooms, it is quite understandable that certain teachers did not notice the checkers. I believe that it overstates the record to state that certain teachers may not have been checked at all.

To prove a pattern of discriminatory enforcement of the final exam policy by the District, the Association would have been greatly aided by evidence indicating that the District selectively disciplined Association activists while ignoring known failure by non-Association adherents to comply with the policy. The record reflects, to the contrary, that the two most vocal and visible Association activists and proponents of the Association's year-long slowdown tactics, Hadley and Dezutti, failed to give exams, that the District knew of their failure to do so, and that it failed to discipline them. Prior to the exam period, the District questioned each of them regarding their announced intention to refuse to give exams. Neither Hadley nor Dezutti explicitly indicated that their reasons for refusal to administer finals were unrelated to the Association's slowdown, and each openly refused to administer finals, with the District's knowledge. Rather than seizing on

this tailor-made opportunity to discipline the Association's president and past president, the District resolved the ambiguities in their explanations in favor of Hadley and Dezutti and failed to discipline them. As noted in the lead opinion, with respect to those few individuals who testified that they did not give exams and were not disciplined, the record does not indicate whether they were union activists or leaders. Thus, it is not apparent from the record that the District singled out union activists for discipline while failing to discipline non-union activists.<sup>14</sup>

My dissenting colleague alludes to the District's

. . . attempt to give the disciplined teachers an opportunity to avoid punishment if they agreed to sign a 'sworn statement' disavowing the 'slowdown' as the reason for their failure to follow District examination policy,

noting that Fred Crook's discipline was reduced when he signed such a statement, and concludes that the use of such a statement " . . . suggests that its primary focus was on discrediting the Association's tactics rather than upholding its exam policy." First, there is no evidence that the District actually made any use of the affidavit. Moreover, the

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<sup>14</sup>Both the lead opinion and the dissent note that two teachers who were disciplined gave exams in one or two of their classes. This fact is of no probative value. Since neither teacher gave finals in all of their classes, each failed to comply with the District's policy. This is all they were disciplined for. There is no allegation that they were disciplined for failure to give exams which they in fact gave.



dissent ignores the fact that, as a condition to signing the affidavit, Crook extracted from the District a promise to attach a supplemental affidavit and to publish that affidavit to the same extent that it might publish the "slowdown disavowal." In his supplemental affidavit, Crook professed his past, present and future undying loyalty to the Association and his support for all the "severest of actions" called for by it as part of its slowdown, including the refusal to give final exams. He went beyond this, chiding the District for alleged "failure to negotiate a contract in good faith." The District's reduction of Crook's discipline despite his strong statement of support for all of the Association's tactics and his harsh criticism of the District undercuts the dissent's contention that the District's "primary focus was on discrediting the Association's tactics rather than on upholding its examination policy."

In sum, I find that the District made a good-faith effort to enforce its final exam policy. While the record indicates that the District's enforcement may not have been uniform and perfect, the facts do not establish that the District engaged in discriminatory enforcement of that policy. Thus, and particularly in light of the factual findings outlined above, I concur in the lead opinion.

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Barbara D. Moore, Member

John W. Jaeger's concurrence and dissent begins on page 18.

John W. Jaeger, Member, concurring in part and dissenting in part:

The duty of teachers to measure the knowledge or achievement of students through testing is an integral part of the District's educational program. The granting of discretionary authority to teachers to implement this aspect of the educational program cannot be construed as giving them a free and unconstrained choice in performing required job duties. Treating such discretionary responsibility as merely a voluntary activity, because the duties were not precisely delineated or transmitted like orders in a manufacturing plant, could undermine the employment relationships. The functional nature of work in the educational setting requires teachers to exercise professional judgment in meeting the District's educational goals and fulfilling their responsibilities as District employees.

I concur with the majority that testing, including the giving of final examinations, was work which the teachers were required to perform, and the concerted refusal to administer final examinations was not a protected activity. However, I feel that there is sufficient evidence in the record to support a finding that the disciplined teachers were disciplined discriminatorily in retaliation for their outspoken union activism. I respectfully dissent.

Although an employer may freely discipline employees for their participation in unprotected activities, that discipline

must not be applied discriminatorily. Stated another way, the "[employer's] freedom to discipline anyone [who engages in unprotected conduct] remain[s] unfettered so long as the criteria employed [is] not union related." Precision Casting (1977) 233 NLRB 183, [96 LRRM 1540]; see also Wright Line (1980) 251 NLRB 150, [105 LRRM 1169].

The potential for unlawful discrimination is particularly strong where the employer, as in this case, chooses to discipline only some of the participants in the unprotected activity. While it is not unlawful for an employer to discipline employees selectively because of their leadership of unprotected activities, the determination as to who will receive discipline must be based strictly upon employee misconduct and not union status. Armour-Dial Inc. (1979) 245 NLRB 959, [120 LRRM 1441]; Lenscraft Optical Corp. (1960) 128 NLRB 807 [46 LRRM 1412]; California Cotton Cooperative (1954) 110 NLRB 1494 [35 LRRM 1391]. While it is true, as the majority points out, that union members are the employees most likely to participate in an unprotected slowdown called by their union, when the employer chooses to seek out and discipline wrongdoers selectively, it walks a precarious line. In my opinion, the District crossed that line in this case.

All of the teachers disciplined were active union supporters. Perry Lynn was a former president of the Association, and currently, a PVFA representative from Palos

Verdes High School. Both Ann Marie Smyth and Wilfred Lee were members of the bargaining team. Dorothy Lee was a long-time union member and also a PVFA representative from Palos Verdes High School. Eugin Uralman was a long-time member of the union. All except one of the teachers were associated with the social studies department of Palos Verdes High School, and all had actively participated in the Association's "slowdown" activities during the school year.<sup>15</sup>

From the outset, the attention of District officials was focused on the social studies department of Palos Verdes High School. Not only was no attempt made to enforce the June 12 directive at the District's other two high schools, but at Palos Verdes High School, any attempt to determine who was complying with the directive beyond those teachers ultimately disciplined was, at best, half-hearted. Edwin Moore, the principal of Palos Verdes High School, testified that during the examination week he sent administrators around to all of the school's classrooms to ascertain whether teachers were complying with the directive. However, David Calkins, a math teacher at Palos Verdes High School, testified that he was not checked by any administrators during the examination period, did not give final examinations, and was not disciplined. Another teacher, Brian Gauthier, testified that Moore stepped into the doorway of the classroom but when confronted by what

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<sup>15</sup>Dorothy Lee was an English teacher.

was obviously a non-examination situation, left with "a look of disgust" and without comment. Mr. Gauthier was never disciplined. In contrast, administrators personally questioned all of the disciplined teachers. Some were even questioned on more than one occasion. Fred Crook, whose discipline was subsequently reduced when he signed a sworn statement disallowing the slowdown, testified that several teachers saw district administrators bypass other classrooms in order to check first on the social studies department.

The District admitted that it had concentrated its investigation on the social studies department at Palos Verdes High School, but felt that that concentration was warranted as it had received information linking that department with the slowdown effort. Fred Crook testified that when he asked Dr. Norcross, the district superintendent, why so much attention was focused on the social studies department, Dr. Norcross replied that that department "had been public in its intentions" with regard to the slowdown. The unanswered question is, on what basis did the District come to the conclusion that the social studies department was a hotbed of unlawful slowdown activity?

Edward Moore testified that the evidence implicating the social studies department consisted primarily of the newspaper article in the Los Angeles Times in which social studies teacher Richard Hadley stated that, as part of the

Association's slowdown effort, he did not intend to give final examinations. In addition, Moore testified that he received inquiries from parents and students which "happened to deal" with the social studies department. An examination of the article reveals no mention at all of any other teacher besides Hadley who was refusing to give examinations at Palos Verdes High School, and thus fails to implicate the social studies department.

Moore's testimony concerning parental and student inquiries regarding the social studies department similarly fails to substantiate the District's claim that the department "had been public in its intentions" with regard to the slowdown. This testimony is very vague, insofar as Moore failed to testify as to which teachers, beyond Hadley, were the subject of the inquiries, and whether--particularly with respect to his conversations with students--he was a passive recipient of the information or actively sought it out.

There is, in short, no reason why the District should have associated a group of social studies teachers with unlawful activity because of the public statements of one teacher, but for the fact that the disciplined teachers were well known union activists and supporters of PVFA's legitimate "slowdown" activities during the previous year.<sup>16</sup>

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<sup>16</sup>The majority notes that Hadley and Dezutti, the two most active supporters of the slowdown, were not disciplined, while Uralman, who did not particularly distinguish himself as

Viewing the case in the totality of the circumstances, I would find that disciplined teachers were unlawfully discriminated against in violation of the Act. Carlsbad Unified School District (1/30/79) PERB Decision No. 89; NLRB v. Erie Resistor Corp. (1963) 373 U.S. 221, [53 LRRM 2121].

Finally, I turn to the District's attempt to give the disciplined teachers an opportunity to avoid punishment if they agreed to sign a "sworn statement" disavowing the "slowdown" as the reason for their failure to follow District examination policy. All of the teachers who were ultimately disciplined

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a leader of Association activity, was disciplined. They suggest that this is evidence that the District lacked anti-union animus. I do not believe that the District's inconsistencies should, in this case, work to its credit. That some union activists are not disciplined does not necessarily detract from the discriminatory character of the employer's conduct towards those who are. The record indicates that the District did not enforce its directive at any of the three district high schools except Palo Verdes High School. Sharon Dezutti taught at Miraleste High School. As for Richard Hadley, the reasons why the District at first imposed discipline against him and then subsequently withdrew it are somewhat unclear. Hadley was the only one of the disciplined teachers who was approached by Edward Moore prior to examination week and questioned as to his intentions. There is conflict in the testimony as to whether Hadley told Moore that his reasons for not giving examinations were related to the slowdown effort or educationally based. In any case, the District was, itself, sufficiently unclear about the conversation as to prompt it to withdraw the disciplinary actions taken against Hadley after they were imposed. Finally, the fact that Uralman was not as much a leader in the Association as the other disciplined teachers does not convince me that the District lacked discriminatory intent. Uralman had been a long-time Association member, and had vigorously participated in PVFA activities during the 1977-78 academic year, including picketing and attendance of school board meetings.

refused to sign the statement. They did so primarily because they felt that signing the statement would create the appearance that they were publicly repudiating the Association's year-long tactic of withholding voluntary services. It is not unlikely that the District's use of a sworn statement disavowing the slowdown suggests that its primary focus was on discrediting the Association's tactics rather than on upholding its examination policy.

Based on the above evidence, I would find that the District disciplined these teachers discriminatorily in violation of subsections 3543.5(a) and (b).

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John W. Jaeger, Member J