STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

VENTURA COUNTY FEDERATION OF COLLEGE TEACHERS, AFT LOCAL 1828,	)	
Charging Party,	)	Case No. LA-CE-3802
v.	)	PERB Decision No. 1340
VENTURA COUNTY COMMUNITY COLLEGE DISTRICT,	)	August 3, 1999
Respondent.	)	

Appearances; Lawrence Rosenzweig, Attorney, for Ventura County Federation of College Teachers, AFT Local 1828; Burke, Williams & Sorensen by Jack P. Lipton, Attorney, for Ventura County Community College District.

Before Caffrey, Chairman; Dyer and Amador, Members.

DECISION

AMADOR, Member: This case comes before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Ventura County Community College District (District) to an administrative law judge's (ALJ) proposed decision (attached). The ALJ found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when

[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (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

it failed to provide necessary and relevant information.

After reviewing the entire record, including the ALJ's proposed decision, the District's exceptions, the Ventura County Federation of College Teachers, AFT Local 1828's (Federation) response and the hearing transcript, the Board hereby affirms the proposed decision in part and reverses the proposed decision in part, in accordance with the following discussion.

DISCUSSION

The Board finds the ALJ's findings of fact to be free of prejudicial error and hereby adopts them as the findings of the Board itself.

The instant case involves a dispute over three separate information requests made by the Federation: (1) the list of employees being interviewed as part of the review of the Ventura College basketball program; (2) the interview selection criteria and the scope of the interview; and (3) the anonymous letter sent to the District concerning the basketball program. For the reasons explained below, we find that the Federation is not entitled to receive the first two types of information, but that it was entitled to receive the anonymous letter in a timely fashion.

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guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(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.

EERA section 3543.5(c) imposes on the public school employer the duty to meet and confer in good faith with an exclusive representative. The employer's duty to furnish the exclusive representative with information stems from this underlying statutory duty to bargain. (Cowles Communications, Inc. (1968) 172 NLRB 1909 [69 LRRM 1100]; Stockton Unified School District (1980) PERB Decision No. 143 (Stockton).) The duty arises when the exclusive representative makes a good faith request for information relevant and necessary to its representational duties. (Stockton; see also, State of California (Department of Transportation) (1997) PERB Decision No. 1227-S (Transportation); Chula Vista City School District (1990) PERB Decision No. 834 (Chula Vista); NLRB v. Boston Herald-Traveler Corp. (1954) 210 F.2d 134 [33 LRRM 2435]; Westinghouse Elec. Supply Co. V. NLRB (1952) 196 F.2d 1012 [30 LRRM 2169].)

Information pertaining immediately to mandatory subjects of bargaining is so intrinsic to the core of the employer-employee relationship that it is presumptively relevant.[2] The employer must provide presumptively relevant information or rebut the presumption of relevance. If rebutted, the exclusive representative must demonstrate the relevance of the requested

[2]PERB has found various types of information to be relevant when the exclusive representative requests the information for collective bargaining or contract administration purposes. (See, e.g., Stockton [health insurance data]; Trustees of the California State University (1987) PERB Decision No. 613-H (CSU Trustees) [wage survey data]; Newark Unified School District (1991) PERB Decision No. 864 [staffing and enrollment projections]; and Oakland Unified School District (1983) PERB Decision No. 367 (Oakland USD) [seniority lists].)

information to its representational responsibilities. (Los Angeles Unified School District (1994) PERB Decision No. 1061 (Los Angeles USD); CSU Trustees.) For information concerning subjects for which there is no presumption of relevance, the exclusive representative bears the burden of establishing that the information is relevant to its statutory representational responsibilities. (Los Angeles USD; Reiss Viking (1993) 312 NLRB 622 [145 LRRM 1190]; Duquesne Light Co. (1992) 306 NLRB 1042 [140 LRRM 1079].)

The Board has recognized several employer defenses for failing to provide relevant information. For example, an employer need not comply with an information request if it shows the request is unduly burdensome or the requested information does not exist. (Stockton; Chula Vista.) No violation will be found if the employer responds and the union never reasserts or clarifies its request. (Oakland USD.) In addition, the employer need only comply with portions of the request that clearly ask for necessary and relevant information. (Azabu USA (Kona) Co. (1990) 298 NLRB 702 [134 LRRM 1245] (Azabu).) Although an employer cannot unreasonably delay providing relevant information (Chula Vista at p. 51), the employer need not furnish the information in a more organized form than its own records. (NLRB v. Tex-Tan. Inc. (1963) 318 F.2d 472 [53 LRRM 2298]; Los Rios Community College District (1988) PERB Decision No. 670.) Since information request cases turn on the particular facts involved, each request is analyzed separately. (Chula Vista.)

Turning to the three categories of information requests at issue in this case, none appears to relate to subjects which have been found to be presumptively relevant to representational duties. Accordingly, the issue before the Board is whether the Federation has established the relevance of the requested information items.

List of Faculty to be Interviewed

The Federation requested that the District provide it with the list of all faculty who were to be interviewed by Paul Chamberlain International as part of the review of the Ventura College basketball program. The Federation asserts that it needed the list to prepare for an individual employee's grievance and to represent other faculty members if necessary.

Initially, the Board notes that it is not clear that, at the time the request was made, a complete list existed, or, in the alternative, that the District knew all the names that would ultimately appear on such a list. As stated above, an employer need not comply with an information request where the requested information does not exist. (Stockton; Chula Vista.)

With regard to the relevance of the list to the Federation's handling of an individual employee grievance, the Board has held that the exclusive representative is entitled to information which is relevant and useful to the union's determination of the merits of a grievance. (Chula Vista at p. 51, citing NLRB v. Acme (1967) 385 U.S. 432, 437-438 [64 LRRM 2069].) In this case, the individual employee grievance had been filed well before the

Federation's request for the list. The grievance challenged the District's decision to non-reelect the employee based on the District's tenure-review process. The Federation has not established a need for the list in order to determine the merits of that employee grievance.

The Federation also claims that it needed the list to assist "potential grievants." This assertion is speculative and falls far short of establishing the necessity and relevancy of the requested information. As the Board held in Los Angeles USD:

> [T]he showing by the union must be more than a mere concoction of some general theory which explains how the information would be useful to the union in determining if the employer has committed some unknown contract violation. [Id. at p. 10.]

The record establishes that individuals were notified in advance that they had been selected to attend an interview, and it also establishes that no employee was denied the opportunity to request and obtain union representation during that interview. The Federation has failed to show that the list was necessary and relevant to its representational obligation to any person who was interviewed or to any specific grievant.

Since the necessity and relevance of the requested list to the Federation's representational duties has not been established, the allegations that the District violated EERA section 3543.5(a), (b) and (c) by failing to provide the list must be dismissed.

Request for Interview Selection Criteria and Scope of Interview

The Federation offers various hypothetical purposes for

which this category of information might be used, but it has not demonstrated how the information was necessary and relevant to its representational duties. Again, the Federation's claim that it needed this information to assist "potential grievants" is speculative and falls far short of the necessary showing of relevancy. Additionally, PERB has held that there is no obligation for an employer to provide detail regarding the thought process or rationale underlying its managerial decisions. (See Transportation at p. 14.)

Since the necessity and relevance of the requested information has not been established, the allegation that the District's failure to provide this information violated EERA section 3543.5(a), (b) and (c) is dismissed.[3]

Anonymous Letter

The Board finds the ALJ's conclusions of law concerning the Federation's request for the anonymous letter concerning the Ventura College basketball program to be free of prejudicial error and adopts them as the conclusions of the Board itself.

ORDER

Upon the findings of fact and conclusions of law and the entire record in this case, the Board finds that the Ventura County Community College District (District) violated the

[3]Even if the Federation had established the relevance of this category of information, we conclude that the District satisfied its obligations under EERA. An employer need only comply with portions of the request that clearly ask for necessary and relevant information. (Azabu.) The District's response met this standard.

Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c) by failing and refusing to meet and confer in good faith with the Ventura County Federation of College Teachers, AFT Local 1828 (Federation) and by refusing to timely provide information relevant and necessary to the representation of members of the bargaining unit regarding the investigation of the Ventura College basketball program. This action also interfered with bargaining unit members' right to be represented by their chosen representative in violation of EERA section 3543.5(a) and with the right of the Federation to represent its members in violation of EERA section 3543.5(b).

Pursuant to EERA section 3541.5(c), it is hereby ORDERED that the District and its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and confer in good faith with the Federation by refusing to timely provide information relevant and necessary to the representation of members of the bargaining unit regarding the investigation of the Ventura College basketball program. This information consists of the anonymous letter regarding the men's basketball program.

2. Denying the Federation its right to represent its members.

3. Interfering with bargaining unit members' right to be represented by their chosen representative.

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

1. Within ten days following the date this Decision is no longer subject to appeal, post at all work locations where notices to employees customarily are placed, copies of the Notice attached as an Appendix hereto. The Notice must be signed by an authorized agent of the District indicating the District will comply with the terms of this order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced or covered by any other material.

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

Chairman Caffrey and Member Dyer joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-3802, Ventura County Federation of College Teachers v. Ventura County Community College District in which all parties had the right to participate, it has been found that the Ventura County Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c) by failing and refusing to meet and confer in good faith with the Ventura County Federation of College Teachers, AFT Local 1828 (Federation) and by refusing to timely provide information relevant and necessary to the representation of members of the bargaining unit regarding the investigation of the Ventura College basketball program. This action also interfered with bargaining unit members' right to be represented by their chosen representative in violation of EERA section 3543.5(a) and with the right of the Federation to represent its members in violation of EERA section 3543.5(b).

As a result of this conduct, we have been ordered to post this Notice and we will:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and confer in good faith with the Ventura County Federation of College Teachers (Federation) by refusing to timely provide information relevant and necessary to the representation of members of the bargaining unit regarding the investigation of the Ventura College basketball program. This information consists of the anonymous letter regarding the men's basketball program.

2. Denying the Federation its right to represent its members.

3. Interfering with bargaining unit members' right to be represented by their chosen representative.

Dated:_____ By:_____
VENTURA COUNTY COMMUNITY COLLEGE DISTRICT
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED, OR COVERED WITH ANY OTHER MATERIAL.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

VENTURA COUNTY FEDERATION OF COLLEGE TEACHERS, Charging Party, v. VENTURA COUNTY COMMUNITY COLLEGE DISTRICT, Respondent.	)	Unfair Practice Case No. LA-CE-3802 PROPOSED DECISION (9/1/98)

Appearances: Lawrence Rosenzweig, Attorney, for Ventura County Federation of College Teachers; Burke, Williams and Sorensen by Jack P. Lipton and Daniel J. Hammond, Attorneys, for Ventura County Community College District.

Before Gary M. Gallery, Administrative Law Judge.

PROCEDURAL HISTORY

The exclusive representative of college teachers contends here that the District failed to provide necessary and relevant information.

This case commenced on June 9, 1997, when the Ventura County Federation of College Teachers (Federation) filed an unfair practice charge against the Ventura County Community College District (District). After investigation, and on October 8, 1997, the general counsel of the Public Employment Relations Board (Board or PERB) issued a complaint against the District.[1] The complaint alleged that in May of 1997 the District hired the Paul Chamberlain International (PCI) firm to

[1]There was also issued a refusal to defer order by the general counsel.

investigate the District's Men's basketball program. On May 15, 1997, it was alleged, the District sent letters to faculty-members directing them to be interviewed by a representative of PCI. It was then alleged that the Federation requested the following information relevant and necessary to discharge its duty to represent employees:

1. A list of faculty members directed to be interviewed;

2. A copy of the employment contract between the District and PCI;

3. The subject and scope of the interviews;

4. Reasons why particular faculty members were selected to be interviewed;

5. The service to be provided by PCI;

6. The date when the District governing board approved the contract; and

7. A copy of the anonymous letter alleged to have initiated the need for the investigation.

It was alleged that on June 6, 1997, the District responded to the requests and refused to provide the information.

The District's conduct was said to be a failure and refusal to meet and negotiate in good faith in violation of section 3543.5(c) of the Educational Employment Relations Act.[2] It

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[2]Unless otherwise indicated, all statutory references are to the Government Code. EERA is codified at section 3540 et seq. In relevant part, section 3543.5 provides that it is unlawful for the public school employer to:

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

further constituted interference with the rights of bargaining unit members to be represented by the Federation in violation of section 3543.5(a) and denied the Federation its rights to represent bargaining unit members in violation of section 3543.5(b).

The District filed its answer on October 28, 1997, denying any violation of the EERA.

A settlement conference did not resolve the dispute. Formal hearing was held on May 27, 1998, in Los Angeles, California. Post-hearing briefs were filed on July 24, 1998, and the matter was submitted for decision.

FINDINGS OF FACT

The Federation is the exclusive representative of college teachers within the meaning of section 3540.1(d). The District is a public school employer with the meaning of section 3540.1(k).

At all times relevant to this case, Philip Westin (Westin) was chancellor of the District; Richard Currier (Currier) was the District's lead negotiator, Harry Korn (Korn) was grievance chair

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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. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.
>
> (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.

of the Federation and Ruth Hunt (Hunt) the executive director of the Federation. Elton Hall (Hall) was the lead negotiator for the Federation.

Virgil Watson (Watson) served as the men's basketball coach during the 1996-97 school year at the District's Ventura College. At some point in the spring of 1997 he was informed that he would not be rehired for the 1997-98 school year. In March 1997, a grievance was filed on his behalf by the Federation. The grievance was predicated upon various contract and Education Code section violations in the non-renewal of Watson's contract. According to Horn, the grievance focused upon the tenure-review process, and did not touch upon Watson's conduct in the athletic department. The grievance was appealed through each of the steps. At each level, the Federation requested the grievance advance directly to arbitration, the final step at each level.[3]

Meanwhile, in the springtime, the District employed PCI to conduct an investigation of the Ventura College basketball program. Tim Davis (Davis) testified that he was in charge of the investigation and PCI interviewed around 80 faculty members. The interviews started on April 24, 1997, and ended on June 9, 1997. Apparently there were a few more interviews later in the summer. There is no evidence to support a finding that all faculty were represented by the union in the interviews.

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[3]The reason for the request, said Korn, was that the Board of Trustees had already terminated Watson, and the Federation wanted a decision as quickly as possible.

The questions used by the interviewers were, in part, drawn from the contents of the anonymous letter described below. The interviewers had a packet of materials, including the anonymous letter.

Sometime before May 15, 1997, Korn was invited to be interviewed by PCI. He was advised the interview was voluntary. He then declined. Later, on May 15, 1997, Westin provided Korn a directive that he meet with and be interviewed by a representative of PCI.[4]

On May 19, 1997, Korn hand delivered a letter to Westin's office requesting that the Federation "as representative of all District faculty," be provided with the names of all faculty who had been directed by Westin to be interviewed.[5] The Federation wanted a response by the next day. On May 21, Westin responded by refusing to provide the information.

Westin wrote:

> Let me clarify that I was directed by the Board of Trustees to communicate with some employees of the District. Communications between employer and employee are

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[4]Westin's letter, marked "PERSONAL AND CONFIDENTIAL", stated:

> I have been directed by the Board of Trustees of the Ventura County Community College District to direct you to meet with, and be interviewed by a representative of [CPI], a firm retained by the District to perform an investigation into issues surrounding the Ventura College men's basketball program.

[5]Korn testified that his request was spurred by his involvement in the Watson grievance and the union's concern if other people should be involved in the grievance.

> confidential unless waived by the employee. Therefore, it is my opinion that the Federation is not entitled to the listing which you requested.
>
> If you care to provide me with a legal opinion that differs from mine, I will pursue the matter further; otherwise, I will consider the matter closed.

Korn said the information has never been provided.

Also on May 19, Federation Executive Director Hunt, on behalf of the Federation, requested from Westin information as to the kind of service PCI was providing the District, the subject and scope of the interviews, reasons why the faculty who had been selected were selected, the service to be provided by PCI and the date of the governing board meeting at which the contract with PCI had been approved.

Hunt further requested that Westin inform the faculty that they were entitled to representation at the interviews.

Also on that day, Hunt requested of Currier a copy of the contract between the District and PCI.

On May 22, Korn requested from Westin a copy of the anonymous letter regarding the basketball program that the Federation believed started the investigation.[6] He also requested the date in which any District employee first received the letter. Also, he requested copies of memos to various

[6]Korn said he learned of the letter when attending an interview of another faculty member. The investigator alluded to the letter and confirmed Korn's inquiry if that was the basis of the investigation. In fact, the agent showed Korn a copy of the letter and he read it. The agent would not give him a copy, he said.

District personnel that were mentioned in press accounts and cited by District spokespersons as another reason for the investigation. Finally, he requested the "results of the investigation as it pertains to any member of the unit which AFT represents."

Westin responded to Hunt's May 19 letter on June 6, 1997. He stated:

> The Athletic Code of the California Community Colleges Commission on Athletics ("COA") states that it is the responsibility of the District to administer its intercollegiate athletic program in compliance with the Athletic Code and Conference Policies and Procedures. The Code confers on the District and [sic] responsibility to ensure code compliance and to report any violations to the Commission.
>
> The District has received information from a variety of sources that several potentially serious violations of COA rules have occurred in the Ventura College Men's Basketball Program. To meet the District's responsibility under the Code, Paul Chamberlain International was retained to conduct a fact finding inquiry. Upon completion of this inquiry, a report will be made by the District to the COA.
>
> It is my understanding that your husband, Harry Korn, has participated in several of these interviews already. Thus, he knows the questions being asked. The individuals chosen for interviews were selected on the basis that they <u>could</u> have information relevant to this inquiry.
>
> It is also my understanding that no faculty who has requested representation during his or her interview has been denied such representation.

Hunt responded on June 10 complaining that Westin had failed to answer two and even to respond to a third of the four requests

for information. She again requested the scope of PCI's investigation and the specifics of the subjects of the investigations. She contended that his response on the selection question was non-responsive and again asked why specific faculty-were invited for interview. She again asked for the date the trustees approved the PCI contract. Finally, Hunt complained that the Federation still had no response for its request to Currier for a copy of the contract with PCI. If no contract existed, she asked for the circumstances that PCI came to represent the District with no contract for services.

On June 13, Westin responded noting that during negotiations, requests for information are to go Currier and directed her letter to Currier.

On July 29, 1997, the District Board of Trustees approved a purchase order to PCI for the investigation at Ventura College in an amount just over $24,000.

On August 9, 1997, Currier wrote to Hall stating: "As I assume the Federation is aware, there is no contract a [sic] this time between Paul Chamberlain, International and the District."

On August 18, Currier sent Hall a copy of the anonymous letter. He expressed the understanding that the letter had previously been made available to the Federation. Korn said the letter had never been made available prior to this time.

The anonymous letter made charges against the head and assistant coaches relating to registering out-of-state students as California residents, paying rent for players, recruitment of

players, purchase of travel tickets for player recruitment, giving grades to players without proper attendance or assignment completion, and among others, illegally transporting players and providing extra benefits to players during the off-season.

The official report on the investigation was issued on August 27, 1997. It found numerous violations of the Commission On Athletics (COA) rules prohibiting player treatment by the head, assistant coaches and mentors.[7]

The parties have a collective bargaining agreement that contains a grievance procedure that concludes with binding arbitration. The agreement also contains the following provision:

> In addition to other information to be provided under this Article, District management shall make reasonable efforts to provide authorized Federation representatives with access to all documents of public record that would assist the Federation in carrying forth its duties of representation and administration of this Agreement.[181]

ISSUES

Did the District fail to meet and confer in good faith with the Federation by its response to the requests for information?

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[7]The report blamed delay in its production, in part, on the refusal by some faculty to voluntarily participate in the investigation, specifically noting that two of the seventy interviewed insisted on having both an attorney and union representative present.

[8]Article 17, sec. 17.8.

CONCLUSIONS OF LAW

Deferral

The District urges that PERB has no jurisdiction in the matter as the collective bargaining agreement arguably prohibits the conduct at issue here, and the agreement culminates in binding arbitration.

Under section 3541.5, PERB is precluded from issuing a complaint on:

> . . . conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration. . . .

In Lake Elsinore School District (1987) PERB Decision No. 646, the Board held that it has no jurisdiction over matters involving conduct arguably prohibited by a provision of the collective bargaining agreement.

The agreement requires the District to "make reasonable efforts to provide authorized Federation representatives with access to all documents of public record".

To the extent the Federation's requests did go to public documents, such as the copy of the contract with PCI, later to be found only a purchase order, deferral of that request, and the District's response is required. However, the Federation already has been given the document. Whether the response was timely, a separate issue, should be deferred to the grievance procedure.

As the provision covers only public record documents, the District would not be required to provide some of the information

that was requested here. The District took the position that the list of names of faculty who were directed to attend the investigative interview was confidential.[9] This would not be covered by the provision just cited. Information regarding the scope of the interview, and the criteria used by the District to select faculty members for interview, if in writing, were apparently regarded as confidential. Since the provision does not cover non-public documents, it would afford the Federation no recourse. Thus, as to these matters, the District's conduct is not arguably prohibited by the contract and deferral is not appropriate.

The Request for Information

Section 3543.5 (c) obligates the District to meet and negotiate in good faith with the exclusive representative. Within that statutory obligation is the duty to provide information to the employee organization. (Trustees of the California State University (1987) PERB Decision No. 613-H (Trustees).) An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143.) The employer's refusal to provide such information is a refusal to negotiate in good faith, unless the employer can provide adequate reasons why it cannot provide the information. (Ibid.) A more liberal standard, like those

[9]Indeed, Westin's order to Korn was labeled "PERSONAL AND CONFIDENTIAL".

used in discovery, is applied to determine relevance. Failure to provide requested information meeting the standard is itself an unfair practice. (Trustees.)

The Faculty List

The Federation argues the list was necessary because it wanted to know who was being interviewed. It argues its grievance regarding Watson's termination and the investigation of the basketball program were related to Watson. Learning of potential witnesses and the gathering of evidence were necessary to the grievance preparation.

Secondly, argues the Federation, it represented other faculty members in conjunction with the investigation and it needed the list to be able to offer representation to faculty being interviewed.

As the final report reflected, Watson was involved in violation of rules. In addition, the report concludes other coaches, faculty and mentors violated the rules. The Federation represents these persons also.

The District argues that the Federation failed to show that the faculty list was necessary and relevant to its representation responsibilities. It discounts Korn's testimony that the information was relevant to Watson's grievance. It further argues that since the grievance was focused upon the tenure-review process, the faculty list of employees directed to attend the investigative interviews was not related to the grievance.

The District further argues that its withholding the list was based upon confidentiality and that the Federation failed to carry a burden of showing why the privacy interests did not protect the information.

Finally, the District argues that the Federation already possessed the identity of faculty who were interviewed. It predicates this argument on a conclusion that since there was no evidence that any instructor was interviewed without representation, it must be concluded that the union represented all faculty interviewed.

I conclude the faculty list was necessary and relevant to the Federation's representational responsibility. While it is true that the focus of Watson's grievance was on tenure-review, it is also readily apparent that his non-rehire might have been occasioned because of allegations of misconduct in his coaching position. Knowing of others involved, from the faculty list, the Federation could have possibly broadened the scope of the grievance, or at least garnered additional evidence with which to assist Watson.

Moreover, the Federation represented other faculty members who appear to be within the scope of the investigation. The anonymous letter charged assistant coaches, as well as Watson, with COA violations as well as Watson. The District asserted in Westin's June 9 letter that all faculty who "could" have information relating to the investigation were being interviewed. Under the liberal discovery standard employed in requests for

information cases, knowing who the District considered "could" have information on the charges was highly relevant to the Federation's representation of all faculty.

Finally, as the Federation argues, it had a representational responsibility to all faculty brought into the fray. It was entitled to know who was being interviewed.

The District's refusal, based only upon the District's assertion that communications to employees was confidential, is not justification for refusing to provide a list of names of faculty being interviewed. The list does not contain any communication to the employees, but rather who was to be interviewed.

Nor is the refusal justified by the Federation's failure to prove the list was non-confidential. This shift of the burden by the District is not supported by the Federation's statutory right to information concept enumerated above.

Finally, the District's argument that the Federation represented all faculty interviewed and therefore a finding can be made that the Federation knew all faculty that were interviewed is not supported by the evidence. It is sheer speculation to conclude that all faculty interviewed had union representation.

The District's refusal to provide the faculty list was a violation of its obligation to meet and negotiate in good faith, required by section 3543.5(c). This same conduct violates the Federation's rights to represent its members, in violation of

section 3543.5(b), and also interferes with bargaining unit members rights to be represented by the Federation, in violation of section 3543.5(a).

The Request for Interview Selection Criteria and Scope of Interview

The Federation argues that its requests for information regarding why certain faculty were interviewed and the scope of the interview was not answered by the District. Westin's June 10 response that they were selected because they "could" have information relevant to the inquiry was no response at all. In addition, argues the union, Davis provided information on the selection criterion (because they were mentors) and were questioned about potential violation of athletic rules.

What criteria the District employed for selecting certain faculty and the scope of the interview was certainly germane to the Federation's representational status for all the faculty. With that information, it could well have curtailed, the large number of faculty that were interviewed, or may have changed the manner in which they were selected. This information impacted the Federation's ability to represent the faculty members, and would have been information used to strategize that representation.

The District responded that faculty who "could" have information would be interviewed. This conveyed no criteria at all. Even in the face of Hunt's second request for clarification, the District provided no additional information.

The scope of the interview was shaped by the packet of material used in the interview by the interviewer. That material should have been provided to the Federation.

I conclude that the District withheld information regarding the criteria for selecting the faculty to be interviewed and the scope of the interview. Davis testified that being a mentor was a criteria that was used and this information could have been conveyed to the Federation upon their request.

The Anonymous Letter

The Federation contends the District's delay in providing a copy of the anonymous letter is a violation of the Act. The letter was requested On May 22 and not provided until August 18, 1997.

The District argues that the Federation did not establish the necessity and relevance of the letter at the formal hearing. It further argues that the Federation did not adequately identify the document.[10] It further excuses the delay because the District was under the impression the Federation had the letter, and the contention that the Federation "improperly routed the letter," by going to the chancellor when the correct route was to the District's chief negotiator.

These arguments are without merit. The Federation was on record as representing the interest of faculty who were to be interviewed. At the time of the request for the anonymous

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"Apparently on the notion that the request tied the letter to the causation of the investigation. Yet the District argues the letter did not cause the investigation.

letter, the District interviewers were already conducting interviews using a package which included the anonymous letter.

The letter was part of the investigation. Questions used in the interview were predicated, in part, on assertions made in the letter. Clearly, a part of its assistance to those interviewed, the Federation was entitled to have the document for review.

In addition, the delay in providing the anonymous letter deprived the Federation the use of the letter in the interviews. The interviews were concluded in June, and the letter was not provided until August. As the Federation argues, the letter contended players were given grades without proper attendance and without completing assignments. Possession of the letter would have aided in the representation of faculty who were interviewed. It may have shaped the outcome of the report which found members of the faculty out of compliance with the COA.

The relevance and necessity of information requested is not dependent upon evidence at an unfair practice hearing. It is the liberal standard applied under the above standard.

The Federation asked for the "anonymous letter." There was no evidence at the hearing that the District did not know what document the Federation was referring to in its request for the anonymous letter. There was no other document in the investigation that constituted an anonymous letter that might have confused the District. The District did not, at the time, profess confusion about the Federation's request, nor did it seek

clarification. The District knew what the Federation wanted. It just didn't want to provide the union with a copy.

If the District thought the Federation already had a copy of the letter, it did so in the face of the multiple requests therefore. It should have taken the Federation's word on the issue and provided the copy upon request.

That the Federation requested the letter from Westin is no excuse for the District not to provide the letter. Westin took a active role in the scenario, by directing faculty to attend the interviews. He took an active role in responding to the information requests Korn made on May 19 by his response of May 21 wherein he asserted the communications were confidential.[11] He responded to Hunt's May 19 request on June 6 with an expansive description of the District's responsibility under the COA.

It was only after this exchange that Westin changed his role. Based on the assertion that, "during negotiations," requests were to go to Currier. The requests for information had nothing to do with negotiations between the parties.[12]

I conclude the District again violated its obligation to provide the requested information. It failed to give the Federation a list of faculty who were interviewed; it failed to

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[11]In that same letter he invited Korn to provide him with a showing of non-confidentially. This is hardly consistent with a policy that all communications were to be with Currier.

[12]The District presented no evidence of any relationship between the Federation's requests for information and any bargaining issues.

advise the Federation as to the criteria for faculty to be interviewed and the scope of the interview; and it failed to give, in a timely manner, a copy of the anonymous letter.

REMEDY

PERB is empowered to:

> To investigate unfair practice charges or alleged violations of this chapter, and take such action and make such determinations in respect of these charges or alleged violations as the board deems necessary to effectuate the policies of this chapter.[1131]

It has been found that the District violated its obligation to the Federation to meet and confer in good faith by its refusal to respond, and making belated responses to requests for information. Specifically, it failed to give the Federation a list of faculty who were interviewed; it failed to provide criteria for interview of faculty and the scope of the interview; and it failed to provide, in a timely manner, a copy of the anonymous letter. This conduct violates section 3543.5(c). The same conduct denied the union the right to represent its bargaining unit members in violation of section 3543.5(b). At the same time, it denied bargaining unit members their right to be represented by the union of their choice, in violation of section 3543.5(a). The District should be ordered to cease and desist in this conduct. It should also be ordered to provide the union with a copy of the list of faculty who were interviewed, and any documentation outlining the scope of

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"Section 3541.3 (i) .

investigation undertaken by PCI. The Federation got a copy of the anonymous letter on August 18. While no order regarding that document will be made, the aforementioned cease and desist order will address untimely delays in responding to requests for information.

It is also appropriate that the District be required to post a notice incorporating the terms of the order at places where notices are traditionally posted. The notice should be subscribed by an authorized agent of the District, indicating that it will comply with the terms thereof. The notice shall not be reduced in size. Posting such a notice 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 and will comply with the order. It effectuates the purpose of EERA that employees be informed of the resolution of the controversy and will announce the District's readiness to comply with the ordered remedy. (Davis Unified School District et al. (1980) PERB Decision No. 116; Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law and the entire record in this case, and pursuant to the Educational Employment Relations Act (EERA), Government Code section 3543.1, it is hereby ordered that the Ventura County Community College District shall:

A. CEASE AND DESIST FROM:

1. Failing and refusing to meet and confer in good faith with the Ventura County Federation of College Teachers (Federation) by refusing to provide information relevant and necessary to the representation of members of the bargaining unit regarding the investigation of the Ventura College basketball program. This information consisted of a list of faculty interviewed about the program, criteria for selection of faculty to be interviewed and the scope of the interview.

2. Failing and refusing to meet and negotiate in good faith with the Federation by failing to timely provide a copy of the anonymous letter that brought about the investigation of the basketball program.

3. Denying the Federation its right to represent its members.

4. Interfering with bargaining members right to be represented by their chosen representative.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICES OF EERA:

1. Provide the Federation with a copy of the list of faculty that were interviewed during the investigation of the Ventura College basketball program, and the criteria used for their selection as well as the scope of the interview.

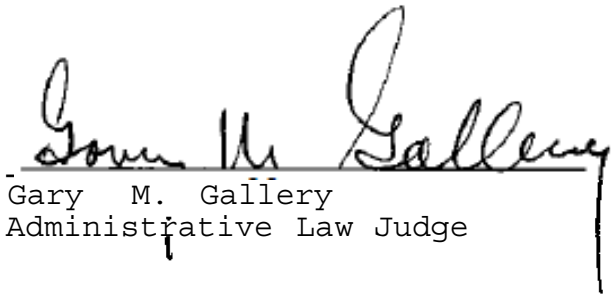
2. Within ten days of service of this proposed decision, post at all work locations where notices to employees customarily are placed, copies of the notice attached as an appendix hereto. Such posting shall be maintained for a period

of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that said notices are not reduced in size, altered, defaced or covered by any other material.

3. Upon issuance of a final decision, make written notification of the actions to comply with the Order to the San Francisco Regional Director of the Public Employment Relations Board in accord with the director's instruction.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . ." (See Cal. Code Regs., tit. 8, sec. 32135; Code Civ. Proc., sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or

filed with the Board itself. (See Cal. Code Regs., tit. 8, secs. 32300, 32305 and 32140.)



Gary M. Gallery
Administrative Law Judge