STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ORANGE UNIFIED EDUCATION ASSOCIATION, Charging Party, v. ORANGE UNIFIED SCHOOL DISTRICT, Respondent.	Case No. LA-CE-4174-E PERB Decision No. 1416 December 11, 2000

Appearances: Charles R. Gustafson, Attorney, for Orange Unified Education Association; Hill, Farrer & Burrill by James A. Bowles, Attorney, for Orange Unified School District.

Before Dyer, Amador and Baker, Members.

DECISION

BAKER, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the Orange Unified Education Association (Association) from the Board agent's dismissal of its unfair practice charge. The charge alleges that the Orange Unified School District (District) unilaterally implemented changes in the terms and conditions of employment, in violation of section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA).[1]

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

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

The Board has reviewed the entire record in this case, including the original and amended unfair practice charge, the warning and dismissal letters, the Association's appeal, the District's response, and all exhibits submitted by the parties. Based upon this review, the Board finds that the Association has raised facts sufficient to constitute a prima facie showing that a violation of the EERA has occurred. (Riverside Unified School District (1986) PERB Decision No. 562a (Riverside); San Juan Unified School District (1977) EERB Decision No. 12.[2]) The Board remands this case to the General Counsel's Office for issuance of a complaint in accordance with the following discussion. In doing so, the Board strongly underscores that no conclusions are to be drawn from its decision to remand this matter, and that the Board is not predisposed as to the ultimate merits of this case.

FACTUAL SUMMARY

The Association is the exclusive representative of the District's certificated bargaining unit. The District and Association are parties to a collective bargaining agreement (Agreement) which expired on June 30, 1999. Pursuant to the Agreement, both parties were

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> (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. 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.

[2] Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board (EERB).

entitled to reopen salary, benefits, and two other articles for the 1998-1999 school year. The parties also agreed that salary and benefits for the 1999-2000 school year would be addressed.

On April 2, 1998, the parties exchanged initial proposals for the reopener negotiations. In addition to salary and benefits, the District reopened lesson plans and early retirement. The Association reopened class size and early retirement.

After months of negotiations, the parties were still hopelessly deadlocked on several issues, including the elimination of the Orange Trust,[3] retiree health benefits and salary. On November 24, 1998, the District filed a request for impasse with PERB. On November 25, 1998, PERB declared the parties at impasse. On December 10, 1998, January 8, January 29, and February 3, 1999, the parties met with a mediator. On February 16, 1999, based on a request by the parties, PERB submitted a list of fact-finders.

On February 3, 1999, after a mediation session where no proposals were exchanged, Association representatives met with the District representative to discuss the District's last proposal and any Association questions. The Association contends the District representative stated that if the parties could not reach agreement during fact-finding, the District would implement its final offer.

On April 21 and 22, 1999, the parties met for a factfinding hearing. On May 4, 1999, the panel members met in an executive session. On May 14, 1999, the Factfinding Report and Recommended Terms of Settlement were issued with both the District and Association members concurring.

[3]The Orange Trust had been previously established by the Association and the District as a delivery system for health and welfare benefits.

On May 17, 1999, the Association and District reached a tentative agreement for both the 1998-1999 and 1999-2000 school years, adopting the factfinding report in its totality. The approximate annual cost of the tentative agreement was 9 million dollars and included provision for a 3 percent salary increase in 1998-1999, and an additional 5.32 percent increase in 1999-2000, three additional work days, and health and welfare benefits. The tentative agreement also included provisions regarding leaves of absence and the elimination of the Orange Trust. On June 4, 1999, the Association announced the tentative agreement had failed to be ratified by the membership.[4]

On June 18, 1999, the Association requested that the District meet and negotiate. The District refused unless the Association was willing to make changes to its then present bargaining proposals. Otherwise, the District considered the parties to still be at impasse.

On November 29, 1999, the Association presented the District with a 100-plus page proposal for a 1999-2002 successor agreement. On December 7, 1999, the District rejected the Association's proposal, stating that the new proposal would bankrupt the District.[5]

On January 31, 2000, the parties held their first bargaining session to discuss the Association's November, 1999 proposal. At this session, the District costed out the

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[4]Circumstances surrounding the failed ratification vote constituted the basis of the PERB complaint issued in LA-CO-805, which stemmed from an unfair practice charge filed by the District against the Association.

[5]On December 6, 1999, the District distributed an agenda for the upcoming Board of Trustees meeting. The Association's November 29 proposal was listed as an item on the agenda. However, the District did not attach a copy of the proposal to the agenda itself. This failure to include the proposal led to the filing by the Association of unfair practice Case No. LA-CE-4146, which was dismissed on January 21, 2000, by the same Board agent who dismissed the instant proceeding.

Association's newest proposal at 21 million dollars.[6]

On February 29, 2000, the Association presented another bargaining proposal, which did not state the term of the agreement, and which included a salary increase of 8 percent for 1998-1999 and 1999-2000, a District buyout of retiree health benefits, increased District contributions towards health benefits, and the folding of the Orange Trust into another public trust. The Board agent found that this proposal differed significantly from the previous tentative agreement.

On the same day, February 29, the District countered with a proposal of its own, the term of which was 1998-2001. In this offer the District proposed an 8 percent salary increase for the 1998-1999 and 1999-2000 school years. On the issue of health benefits, the District proposal was identical to that contained in the tentative agreement. The District also proposed a $5,000 mandatory buyout for retiree health benefits, and the transition of the Orange Trust to District administration of benefits. The Board agent found that this proposal appeared to be consistent with the tentative agreement.

On March 3, 2000, the Association countered with another proposal that included a larger salary increase, a decreased District voluntary buyout of retiree health benefits, and mandatory withdrawal of all PERB unfair practice charges. The proposal also called for a slight decrease from the previous proposal in District contributions per active employee for health benefits, and the merger of the Orange Trust.

On March 7, 2000, the District proposed an agreement with a 1998-2000 term, which included an 8 percent salary increase for the 1999-2000 school year. On March 13, 2000, the

[6]The parties also met on February 3, 2000, but this session dealt mostly with the Association's failed ratification vote in June 1999. The District requested the Association hold a "revote" on the tentative agreement, but the Association refused to consider this proposal.

District removed the issue of mandatory buyout of retiree health benefits from the table. This issue had been a major sticking point between the parties and had been included in the rejected tentative agreement. In response, the Association proposed a 10.5 percent salary increase for 1998-2000, merger of the Orange Trust and withdrawal of the PERB unfair practice charges. The Association also proposed the District contribute the same amount towards health benefits as it had in its February 29, 2000 proposal. The Board agent found that it appeared the Association had made no concessions in its proposal.

The District presented its last proposal on March 13, 2000. This proposal, which covered the years 1998-2001, addressed the issues of salary, health benefits, the Orange Trust, leave of absences and calendar days. The Board agent found that this proposal was identical to the tentative agreement language rejected by the Association in May, 1999. On March 14, 2000, the District negotiating team urged the Board of Trustees to implement its March 13, 2000, proposal with regard to years 1998-1999 and 1999-2000.

On March 24, 2000, the Association president telephoned the District's attorney, and informed him that the Association intended to strike on April 26 and April 27, 2000. On this same day, the District's counsel sent the Association president a letter stating the District's position on the strike. In this correspondence the District's counsel stated that it was the District's position that such a strike was illegal and unprotected activity and that because of the unfair practices committed by the Association in bargaining, which were the subject of three pending PERB complaints, the Association could not lawfully strike. The letter went on to state that it was preferable for the parties to return to the bargaining table rather than for the Association to engage in illegal strike activity and that the District intended to request PERB to enjoin any illegal strike activity. The letter additionally claimed that the District would seek

monetary damages for any illegal activity and that the District reserved the right to take disciplinary action against employees who engaged in illegal activity.

Original Unfair Practice Charge

The original unfair practice charge, in which the Association alleged that the District had unilaterally implemented an increase in salary and health benefits in violation of section 3543.5(a), (b) and (c) of the EERA, was filed on April 3, 2000. Based on the facts set forth above, the Board agent found that the original charge failed to state a prima facie violation of the EERA.

In her warning letter of April 21, 2000, the Board agent found that the Association had presented the matter as a simple unilateral change case. However, the Board agent noted that the Association failed to address the fact that the District's changes in working conditions were all contemplated in the tentative agreement and the fact-finding report, and that the bases for the unfair practice charge had taken place post-impasse. In order to determine whether the charge stated a prima facie case, the Board agent analyzed the parties behavior both during and after impasse.

The Board agent correctly noted that under Modesto City Schools (1983) PERB Decision No. 291 (Modesto), after the recommendations of the factfinding panel have been issued and considered in good faith, the parties may remain at impasse or return to the bargaining table until they reach agreement. Under Modesto, the parties need only consider the factfinder's report in good faith and determine whether it changes the circumstances. Here, the District and Association agreed to implement the factfinders report in its entirety. However, the Association failed to ratify the tentative agreement. The Board agent found that

it did not appear the Association had made any further concessions, and thus neither party had a continuing duty to bargain. (Charter Oak Unified School District (1991) PERB Decision No. 873 (Charter Oak); Rowland Unified School District (1994) PERB Decision No. 1053 (Rowland) [once impasse is reached either party may refuse to negotiate further and the employer is free to implement changes reasonably comprehended with its last, best and final offer].)

The Board agent went on to find that the District's implementation of changes for the 1998-1999 and 1999-2000 school years appeared to be reasonably comprehended within its last, best and final offer. Therefore, the question became one of whether impasse was broken when the parties met and exchanged proposals. ((Public Employment Relations Board v. Modesto City Schools District (1982) 136 Cal.App.3d 881, 899 [186 Cal.Rptr. 634] (PERB v. Modesto); Airflow Research & Mfg. Corp. (1996) 320 NLRB 861, 862 [152 LRRM 1001] [although the duty to bargain is dormant while the parties are participating in impasse procedures, either the employer or the employee organization can be required to negotiate further in good faith when the impasse is broken by a change in circumstances].)

The Board agent found that there were no significant factors present to warrant a finding that impasse was broken. While acknowledging that a significant change in bargaining position can break an impasse, the Board agent found that nothing in the parties' proposals demonstrated that such a situation had occurred. The Board agent found that the District's position on the implemented issues, after the rejection of the tentative agreement, had been consistent and in accordance with its last, best and final offer. In contrast, the Board agent found that the Association had regressed on at least six of the agreed upon issues, including salary, benefits, and the Orange Trust, and that instead of presenting concessions that would

increase the likelihood of an agreement, the Association had chosen to present proposals that drove the parties further from agreement. Furthermore, when the District proposed eliminating an item included in the tentative agreement (the mandatory buyout of retiree health benefits), the Association made no concessions in its proposals and continued to insist on regressive terms, demonstrating that a break in the deadlock was not possible.

The Board agent found that, since there had been no significant change in bargaining between the parties, it appeared the parties remained at impasse. The Board agent noted that she had contacted the Association representative and had requested the Association to address the issue of post-impasse implementation under Charter Oak , and that the Association had failed to address this issue. The Board agent additionally noted that, in her dismissal of unfair practice charge LA-CE-4146,[7] she had explained to the Association that unless it demonstrated some significant change in the bargaining process, the parties were at impasse and the District could not be considered to have a continuing duty to bargain in good faith. The warning letter also stated:

> [T]he District need not consider Association proposals which add no concessions. Moreover, facts provided fail to indicate either party engaged in conduct which would break the impasse.

The Board agent concluded by finding that, since the parties had participated in all impasse procedures, the District could implement its last, best and final offer with regard to the issues presented, and that a prima facie case did not exist.

[7]See footnote 5, supra. In LA-CE-4146, the Association's bargaining representative was the same as in the instant case, and the unfair practice charge involved the same subject matter, albeit an earlier proposal, as the instant case.

First Amended Charge

On April 26, 2000, the Association filed a first amended charge. In this charge the Association responded to the Board agent's warning letter by alleging that at no time during the post November 29, 1999 negotiations did the District inform the Association that the District considered the parties to be at impasse. However, the Association did not provide any legal authority for the proposition that the District must inform the Association of their continuing impasse. In addition, the Association failed to address the admonition contained in the Board agent's dismissal of the charge in Case No. LA-CE-4146.

In light of this admonition, the Board agent reasoned, the Association was aware of PERB's legal analysis of the situation, and should have known that PERB and the District considered the parties to be at impasse. Moreover, the Association failed to address the Board agent's repeated requests for facts demonstrating the parties did not remain at impasse. The Board agent again found that the changes implemented by the District were reasonably comprehended within its last, best and final offer, and as such did not violate the EERA.

The amended charge contained an additional allegation that the letter from the District's counsel to the Association of March 24, 2000, had threatened employees for engaging in protected activity. The Board agent found that the letter did nothing more than state the District's position with regard to the Association's potential strike. The District recitation of its rights under the EERA did not constitute unlawful discrimination or interference. As such, this allegation failed to state a prima facie case and was dismissed.

The final allegation in the amended unfair practice charge claimed that a District Board member had written a letter published in the Orange County Register which "makes a proposal regarding negotiations that the District had not previously made at the bargaining table." The

Board agent found that, although the letter had presented a proposal regarding a third-party mediator, it appears the District Board member did not intend to act on behalf of the District when writing the letter. He did not identify himself as a Board member, but instead signed the letter as a concerned citizen. It was the newspaper which identified him as a Board member. As the charge presented no facts indicating the District Board member was acting on behalf of the District, the Board agent found that this allegation failed to state a prima facie violation of the EERA. (Inglewood Unified School District (1990) PERB Decision No. 792.)

DISCUSSION

The Association asserts that the District unilaterally implemented an increase in salary and health benefits in violation of EERA section 3543.5(a), (b) and (c). In determining whether a party has violated EERA section 3543.5(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (Stockton Unified School District (1980) PERB Decision No. 143.) Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer implemented a change in policy concerning a matter within the scope of representation, and (2) the change was implemented before the employer notified the exclusive representative and gave it an opportunity to request negotiations. (Walnut Valley Unified School District (1981) PERB Decision No. 160; Grant Joint Unified High School District (1982) PERB Decision No. 196.)

The Board agent was correct in finding that this is not a simple unilateral change case. There is no dispute between the parties to this action that, following many months of negotiations, impasse was reached on the 1998-1999 and 1999-2000 reopener agreement. The dispute centers around the significance of what occurred following impasse. Thus, it is

necessary to analyze the totality of the parties' behavior after impasse had been reached in order to determine whether the charge states a prima facie case.

As the Board agent properly noted, once impasse has been reached either party may refuse to negotiate further, and the employer is free to implement changes that were reasonably comprehended in its last, best and final offer. (Rowland.) Impasse suspends the parties obligation to bargain only until changed circumstances indicate that an agreement may be reached. (Modesto.) However, the duty to bargain is revived when one party proposes a concession from its earlier bargaining position which indicates that agreement may be possible. As the court noted in PERB v. Modesto, at 899:

> An impasse is a fragile state of affairs and may be broken by a change in circumstances which suggests that attempts to adjust differences may no longer be futile. In such a case, the parties are obligated to resume negotiations and the employer is no longer free to implement changes in working conditions without bargaining. Just as there is no litmus-paper test to determine when an impasse has been created, there is none which determines when it is broken.

The Board has a number of concerns regarding the facts of this case. These concerns have led us to conclude that the Board should remand the matter to the General Counsel's Office with instructions to issue a complaint.

1. The Subject Agreement

Initially, the Board is uncertain which agreement is the subject matter of the instant unfair practice charge: the reopener agreement or the successor agreement. We note that the parties began by negotiating a reopener for 1998-1999 and 1999-2000. It was this agreement which was the subject of the impasse, the factfinder's report, and the tentative agreement that was voted down by the Association's membership on June 4, 1999.

Almost 6 months later, on November 29, 1999, the District had not yet implemented its last, best and final offer. On that date, the Association presented a proposal that it alleges was a successor agreement for 1999-2002, but which the District maintains was in reality another proposal on the successor contract. In its appeal, the Association claims that the dismissal letter:

> [W]rongly characterizes the round of bargaining between the Association and the [District], which began with the Association's proposal of November 29, 1999, as post-impasse bargaining, an extension of the bargaining that had ended with a tentative agreement that was rejected by the Association's membership in a ratification vote in June, 1999.

This allegation appears to be accurate. Both the original and amended unfair practice charge are based on the November 29, 1999 proposal by the Association, which the Association claims, and which the warning letter confirms, was the Association's initial proposal for a 1999-2002 successor agreement. However, when reading the warning and dismissal letters, it appears that they focus on the facts surrounding the reopener, and that the successor agreement was considered as a continuation of post-impasse bargaining on the reopener.

It is therefore unclear whether the bargaining which followed the Association's proposal of November 29, 1999, was in fact a continuation of the previous bargaining or rather involved proposals for a successor agreement. It is also unclear whether the various proposals which occurred during this period indicate that the District was continuing to bargain over the original reopener or rather that the District considered the post-November negotiations as a new round of bargaining, independent of any post-impasse bargaining, which was thereby terminated. The Board does not have sufficient facts to accurately address these questions.

2. The Question of Whether Impasse Had Been Broken

A. The Term of the Agreement

The uncertainty as to the contract in question is illustrated by the District's opposition to the appeal. In its opposition, the District claims that the dismissal was proper in that the parties were at impasse from June 4, 1999, when the tentative agreement was rejected, until March 14, 2000, when the District implemented its last, best and final offer. The Board is troubled with the District's claim of continuing impasse, and that it had implemented its last, best and final offer.

Following the November 29, 1999 and February 29, 2000 proposals by the Association, the District countered with a proposal of its own on February 29, 2000. This proposal was not for the term 1998-1999 and 1999-2000, but for 1998-2001. Thirteen days and three counterproposals later, on March 13, the District made what was to be its final proposal, which also covered the years 1998-2001. The next day the District, claiming impasse, implemented its changes for the years 1998-1999 and 1999-2000.

The Board is concerned by the actions of the District. The term 1998-2000 was not the period specified by the District in either its offer of February 29, or in its last offer of March 13. As we have seen, that term was for 1998-2001.[8] However, the period from 2000-2001 was outside the scope of the factfinder's report and, as such, could not have been the subject of the impasse.

It appears that after February 29, the District had proposed a change in the term of the agreement from 1998-1999 and 1999-2000 to 1998-2001. If such proposals constituted a

[8]When it asked the Board of Trustees to implement what it characterized as its last, best and final offer for the period 1998-2000, the District informed the Board of Trustees that it would continue to negotiate with the Association for the period 2000-2001.

change in circumstances suggesting that the effort to reach agreement was no longer futile, such proposals may, by themselves, have been sufficient to break impasse.[9]

B. Proposed Changes in Salary

Even assuming that we are addressing the 1998-1999 and 1999-2000 reopener, the District's proposals following the rejection of the tentative agreement contained changes in salary which appear to differ from the salary provisions in the tentative agreement.

The tentative agreement called for wages for the 1998-1999 calendar year to be increased by 3 percent effective as of July 1, 1998, and for the wages for the 1999-2000 calendar year to be increased by approximately 5.32 percent to 9.71 percent. On February 29 and March 17, the District made offers which proposed an 8 percent salary increase for 1998-1999 and 1999-2000. On March 7, the District offered an 8 percent salary increase for 1999-2000. The District claims that such salary increases were "consistent/comprehended within the Tentative Agreement."[10] The Association claims that the 8 percent increase in 1998-1999 and 1999-2000 was not contemplated within the tentative agreement.

The Board is uncertain exactly how the 8 percent salary increases for 1998-1999 and 1999-2000 were contemplated within the tentative agreement. (Cf. Laguna Salada Union School District (1995) PERB Decision No. 1103.) Without more facts, we believe that this

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[9]Although the duration of a collective bargaining agreement has been found to be a mandatory subject of bargaining under the National Labor Relations Act (NLRB v. Yutana (9th Cir. 1963) 315 F.2d 524 [52 LRRM 2750] (Yutana)), the Board has not determined whether the duration of an agreement is a subject within the scope of representation under EERA. (Rowland, p. 11.)

[10]The term "reasonably comprehended" excludes those changes better than the last offer, and also any changes which the parties did not discuss during negotiations which are less than the status quo. (Charter Oak.)

proposed salary increase also presents factual and legal questions as to whether impasse was broken.

C. Mandatory Buyout of Health Benefits

On February 29, 2000, the District proposed a mandatory buyout for retiree health benefits. This issue had been a major sticking point between the parties, and had been included in the rejected tentative agreement. On March 13, 2000, the District removed the mandatory buyout from the table. The Board questions whether the removal of the mandatory buyout provision was a sufficient concession to break impasse.

In the Motion to Implement the District Bargaining Proposal, presented to the Board of Trustees on March 14, the District admits that "in a major concession to reach agreement with OUEA on March 13, 2000 the District withdrew the requirement for a mandatory buyout of retiree medical benefits." Under existing caselaw, it appears incongruous to admit that a major concession has been made, but continue to claim that impasse has not been broken. Although the Board does not believe that it should make the decision as to whether impasse was broken based exclusively on the statement of a party, it also believes that such a party admission raises further questions as to whether impasse survived the post-November, 1999 bargaining.

D. Association's Failure To Show That Impasse Had Been Broken

In the warning letter, the Board agent requested that the Association address the issue of post-impasse implementation. In the dismissal letter, the Board agent noted that the Association had failed to respond to this request. In doing so, the Board agent directed the Association's attention to her dismissal of unfair practice charge LA-CE-4146, where she had previously explained to the Association that unless it demonstrated some significant change in

the bargaining process, the parties were at impasse and the District could not be considered to have a duty to bargain in good faith.

We acknowledge that the Association bears the burden of providing the Board agent with sufficient facts to prove a prima facie case. However, the District's offers of February 29, March 7 and March 13, and the questions of whether this was bargaining on the reopener or on a successor proposal, and whether the District's offers contained concessions which were sufficient to break the impasse, had already been presented to the Board agent. This is a question that the Board is incapable of reviewing without further facts, and which the Board may later decide to accord different weight than did the Board agent. (Riverside.)[11]

3. Notice Regarding District's Implementation of its Last, Best and Final Offer

In its first amended charge, the Association alleged, inter alia, that the District had presented its last, best and final offer on March 13, and that it immediately proceeded to implement this offer on the following day, March 14, without declaring impasse and without prior notification. In her dismissal letter the Board agent noted that the Association did not provide any legal authority for the proposition that the District must inform the Association of their continuing impasse.

The Board notes that some six proposals had been exchanged by the parties between November 29, 1999 and March 13, 2000. In addition, the Association alleges that there was another bargaining session scheduled for March 17, 2000. On March 13, over nine months after the defeat of the tentative agreement by the Association's membership, the District

[11]Additionally, the Board is unwilling to presume notice of PERB's position on impasse from the prior warning letter in Case No. LA-CE-4146. Notice in one case, even though it involves the same parties, the same union representative, and the same subject matter, is not necessarily sufficient to constitute notice in another case.

presented its last offer, and its third post-impasse proposal, with no notice that this was to be its last, best and final offer.

The Board is concerned that, because of the exchange of numerous proposals after November, 1999, the Association did not have sufficient notice that the District's last, best and final offer was in fact its last, best and final offer. Although it is true that the District had warned the Association that it considered the parties to be at impasse on a number of occasions, none of these admonitions appear to have occurred subsequent to the round of bargaining that commenced on November 29, 1999. All of these facts, coupled with the fact that the parties appeared to have scheduled another meeting on March 17, leads us to conclude that notice may have been necessary in the instant case. (Yutana at 530.)

ORDER

Under the totality of all of the circumstances before us, the Board orders that Case No. LA-CE-4174 is hereby REMANDED to the PERB General Counsel's office for issuance of a complaint in conformity with this decision. The Board again makes it clear that in remanding this case it does not intimate what the result of such a remand should be, and that it is not predisposed to any findings that may result from the issuance of complaint.[12]

Members Dyer and Amador joined in this Decision.

[12]In light of this order, the Board finds it unnecessary to address the questions raised by the District's letter of March 24, 2000, and the letter written by the District Board member to the Orange County Register. Such determinations should be made below.