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ORIGINAL

Decision No. 83185

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

SAN MATEO JUNIOR COLLEGE DISTRICT,

Complainant,

vs.

THE PACIFIC TELEPHONE AND TELEGRAPH COMPANY,

Defendant.

Case No. 9449
(Filed October 5, 1972;
amended February 14, 1973)

Lemuel M. Summey, Attorney at Law, for College of San Mateo, complainant.
Robert E. Michalski, Attorney at Law, for The Pacific Telephone and Telegraph Company, defendant.

O P I N I O N

After a prehearing conference on December 1, 1972, a duly noticed public hearing was held on the matter before Examiner Coffey in San Francisco on December 15, 1972, February 26, 27, June 4, 25, and 28, 1973. The matter was submitted on May 5, 1974 after the filing of briefs, proposed decisions, and comments thereon by both parties.

This is a complaint by San Mateo Junior College District (District) against The Pacific Telephone and Telegraph Company (Pacific) in which the District seeks relief from installation and basic termination charges imposed by Pacific as a result of the installation and removal of a Centrex system at the College of San Mateo. The District is also apparently seeking

damages for the alleged differences in operating costs between Centrex and the PBX system it replaced.[1/]

Positions of Parties

District contends that before the effect of Pacific's tariffs can be considered, it must first be established that a contract for Pacific's services was approved or ratified by District's governing board. The tariffs would be applied in implementing the contract. District contends that Section 15961 of the Education Code specifically requires formal governing board approval of a contract

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1/ In its original complaint, District requested an "order to have the defendant remove the Centrex Telephone System and reinstall the original PBX 701 System without expense to the San Mateo Junior College District".

In its first amended complaint, the original prayer was expanded to include a request that Pacific reimburse the District for the initial installation charge, "believed to be $5,640", and a claim for damages of $18,000, representing the alleged differences in system operating costs for the period of time involved.

By Exhibit No. 32 the complaint was again amended. The request for damages was dropped, but the amount sought for reimbursement for installation charges was increased from $5,640 to $20,476.53. Apparently District's damage claim was combined with the installation charge.

This record shows that the installation charges were $5,640 and that the termination charges as of June 1, 1973 were $18,783.10. A basic termination charge is a charge which arises upon total disconnection of the Centrex system. A credit of 1/60 of this charge is given for each full month that the system remains in operation. The balance must be paid by the customer. There is no charge if a system is disconnected more than 5 years after it was installed. In the case of the Centrex installed at the College of San Mateo, the basic termination charge at the time of installation, April 1, 1971, was $32,000. The amount payable on this charge as of June 1, 1973 was $18,783.10.

for Pacific's work to be performed before District is obligated to pay such installation and termination charges and that no contract was in fact approved or ratified by District's Board. District also contends that the approval or ratification of such a contract cannot be legally imputed to District under the principle of equitable estoppel; and, even if it could be, District's actions would not justify its application in light of the evidence. District contends that Education Code Section 15961 is not in conflict with Pacific's tariffs in that under the rules of statutory construction they can be harmonized and read together. Therefore, District contends that it should be relieved from paying to Pacific the installation and termination charges.

In response, Pacific contends that no formal resolution need be adopted in order to impose a charge for communication services and that as a matter of law Pacific has a duty to collect the rate charged under applicable tariffs. Pacific contends further that the facts of the record establish that the Board had both authorized the Centrex installation by approving a purchase order for telephone service and ratified the installation by voting to approve payment for it. Additionally, Pacific has asserted that the District's claim is precluded by the equitable doctrines of estoppel and unclean hands.

Facts

Major uncontested events in the chronology of the Centrex installation at the College of San Mateo are as follows:

District is composed of three colleges: the College of San Mateo, Canada College, and Skyline College. The administrative head of the District bears the title of chancellor. Since 1968 the chancellor has been Mr. Clifford Erickson. The president of the College of San Mateo during significant portions of the time here concerned was Mr. Robert L. Ewigleben. Mr. John F. Mullen, a professor of mathematics, was also staff assistant to Mr. Ewigleben. Mr. Matteo Fasanaro was assistant superintendent for business affairs for District.

In the spring of 1969, Mr. Ewigleben initiated a study into the feasibility of installing a Centrex system at the college to replace its PBX system. Mr. Mullen participated in the study, was Pacific's contact at District, and acted as the college's Centrex coordinator.

The first contact with Pacific regarding Centrex was on August 21, 1969 when Mr. Mullen called Mrs. Betty Bosen, Pacific's marketing representative, to discuss the matter. In accordance with the request made by Mr. Mullen at that time, Mrs. Bosen prepared and submitted a Centrex proposal to the college on September 2, 1969.

By letter dated October 27, 1969 the president of the College of San Mateo confirmed the order for the Centrex system. Mrs. Bosen accepted the order by letter dated January 28, 1970.

Prior to installation, Pacific's employees and the District's employees met regarding the operation of the Centrex system and the arrangement of directory listings. Mr. Mullen signed an authorization for equipment space.

In December 1970 Mr. Erickson advised Pacific to stop installation of Centrex, the cabling for which was being installed in a street leading to District facilities. This advice was based on the absence of authorization therefor. In response to Pacific's representations of assessment of termination charges if installation stopped, in addition to operational savings with Centrex if installed, Chancellor Erickson in the third week of December 1970 withdrew his stop order. Pacific assumed President Ewigleben constituted full and adequate District authority to order Centrex and that his letter of October 27, 1969, together with subsequent discussions between Pacific's De Luna and Chancellor Erickson, constituted "an order" for the installation of Centrex. Pacific acknowledges that it did not receive any written authorization for installation from District's board.

The Centrex was installed at the College of San Mateo on April 1, 1971.

On June 9, 1971 Mrs. Bosen and Mr. McArdle of Pacific discussed the first billing for the Centrex system with Mr. Mullen. These bills for installation and service, with certain adjustments agreed to by Mr. Mullen, were presented to the Board for payment, received Board approval at one of its regular meetings, and were subsequently paid.

After the system was installed, a number of meetings were held between representatives of the college and Pacific regarding possible measures to reduce the cost of Centrex and increase its working efficiency. These meetings took place on October 21, 1971, December 9, 1971, February 8, 1972, and March 28, 1972. During the course of these discussions no reference was made to lack of authorization for the installation.

By letter dated March 10, 1972, almost one year after the installation, the District first requested Pacific to convert the Centrex system to a PBX system at no cost to the District. Thereafter, for a period of approximately six months, correspondence was conducted concerning basic termination charges, the effect of reconversion, and further studies. Finally, on October 5, 1972 the District filed its complaint.

Issues

The specific issues in this proceeding as seen by District are:

1. Did the governing board of District approve or enter into a contract for the removal of the PBX 701 system and for the installation of the Centrex system?

2. If no such contract was approved or entered into by the Board prior to such removal and installation, did the Board in fact subsequently approve or ratify a contract therefor?

3. Are Pacific's tariffs in conflict with Education Code Section 15961; and if so, which prevails in this proceeding?

4. If District did not in fact approve or ratify a contract for work performed, may a contract be implied because of the actions and conduct of the parties?

5. Do circumstances and actions of District personnel legally justify involving the doctrine of equitable estoppel to deem a contract to exist?

6. What relief, if any, is the District entitled to?

The specific issues in this proceeding as seen by Pacific are:

1. Does Education Code Section 15961 exempt the District from the requirements of tariffs filed with this Commission (and thus the obligation to pay) when communication service has been provided to and accepted by the District without formal Board approval?

2. If formal Board approval is required, has there been ratification of the Centrex installation by the Board?

3. Prior to installation, did employees of Pacific mislead the District as to either the basic termination charge or the operating expenses of the Centrex system?

4. Is the District precluded by its conduct from asserting this claim?

5. Is a damage award appropriate?

6. Is the District entitled to any relief?

Education Code Section 15961

Education Code Section 15961 provides:

> "Whenever in this Code the power to contract is invested in the governing board of the school district or any member thereof, such power may by a majority vote of the board be delegated to its district superintendent, or to such person as he may designate, or if there be no district superintendent then to such other officer or employee of the district as the board may designate. Such delegation of power

> may be limited as to time, money or subject matter or may be a blanket authorization in advance of its exercise, all as the governing board may direct; provided, however, that no contract made pursuant to such delegation and authorization shall be valid or constitute an enforceable obligation against the district unless and until the same shall have been approved or ratified by the governing board, said approval or ratification to be evidenced by a motion of said board duly passed and adopted." (Emphasis added.)

District's Argument

Maintaining that the fundamental issue in this proceeding is whether there must have been a binding contract before Pacific's tariffs could even be considered in the first instance, District presented the following arguments:

To conclude that this Education Code Section has application in this case is not derogation of or in conflict with Pacific's tariffs. While these tariffs are considered to be the law, they are only so considered for all purposes in the limited areas of the establishment and controlling of rates for services, and said tariffs under the rules of statutory construction must be construed with reference to other laws and statutes and harmonized with them if possible (Boyd v Huntington (1932) 215 C 473; 11 P 2d 383). This rule of statutory construction applies even where laws appear to be in conflict (Southern Pacific Co. v Railroad Comm. (1939) 13 C 2d 89; 87 P 2d 1055). There is no conflict here. The various laws of this state, for the purpose of statutory construction, are regarded as blending together and constituting but a single statute (Armenta v Churchill (1954) 42 C 2d 448; 267 P 2d 303). When and if there is a conflict, the conflict provisions must be harmonized so that all may have effect, if possible (Gonzales v Wasson (1876) 51 C 295).

Section 15961 of the Education Code, for the purpose of statutory construction, is a special act dealing with the measure and mode of authority of the governing board of the school district. A special statute dealing expressly with a particular subject controls and takes precedence over a general statute covering the same subject (Burum v State Compensation Ins. Fund (1947) 30 C 2d 575; 184 P 2d 505).

Section 15961 of the Education Code, according to its strict wording, requires the governing board to give prior approval to a contract or, in the alternative, to subsequently ratify a contract as a prerequisite to the district's being bound thereby. The section does not speak in terms of board approval or ratification of actions of district personnel as distinguished from approval or ratification of contracts. Having this distinction in mind, District argues that it is apparent that there is no evidence of record that a contract as between District and Pacific was either previously approved or subsequently ratified by District's governing board.

Existing law is clear that estoppel does not apply under the circumstances here prevailing (Santa Monica Uni. Sch. Dist. v Persh (1970) 5 CA 3d 945; 85 Cal Rptr 463). This case is cited as controlling authority to the effect that a school district contract which has not been approved or ratified pursuant to Education Code Section 15961 does not comply with the required formality as mandated by said section and is not enforceable against the District. The Court of Appeal also ruled in addition to the foregoing that persons dealing with the school district are chargeable with notice of limitations on its power to contract, citing Miller v McKinnon (1942) 20 C 2d 83; 124 P 2d 34; and 140 ALR 570. Therefore, District contends Pacific either knew or should have known of such limitation of power upon District and its personnel. Answering Pacific's contention that the Santa Monica case is not applicable to the circumstances here prevailing because the complainant against the school district

was a private citizen as distinguished from a public utility and was not under preemptive state regulatory control, District maintains that the principles of law enunciated in this case pertain to contracts as distinguished from ratemaking powers and to the applicability of Education Code Section 15961 to such contracts. The court in the Santa Monica case, in addition, ruled upon limitations on the power of a district to enter into contracts except in the mode and manner prescribed, and held that the doctrine of equitable estoppel cannot be invoked to circumvent the statutory requirements of said Education Code Section. Finally, District argues that, contrary to Pacific's contentions, the Santa Monica case does not relate to nor is it in derogation of the Public Utilities Commission's recognized ratemaking powers, that the issues raised herein do not involve ratemaking powers as distinguished from other subject areas of the law, such as contract law, as reflected in the issues enumerated above, and that the Public Utilities Commission does not preempt or control in these other fields or subject areas of the law.

Discussion

1. Applicability of Education Code Section 15961.

Mr. Erickson, Chancellor for the District since 1968 and the District's first witness, testified that the matter of converting the PBX to Centrex at the College of San Mateo was brought to his attention by its president, Mr. Ewigleben, sometime in 1969; that it was brought to the attention of the Council of Presidents in the summer of 1970 (Tr. 13); and that the first time he was aware that any new equipment was actually being installed on the campus was sometime in early December of 1970 when he saw telephone company employees pulling cables. Mr. Erickson stated that the matter was never presented to the Board until the question of the removal of the Centrex was discussed in February 1972, the Board at no time approved the installation of the Centrex system, and no one but the

Board had authority to authorize a project of this magnitude (Tr. 20, 21). However, subsequent testimony by Mrs. Bluth, the District's controller, indicated that purchase orders had, in fact, been issued for the Centrex system (Exh. 29, 30). On cross-examination Mr. Erickson testified that the purchase order is the authorization for the expenditure of money.

It thus appears that there was adequate authorization for the Centrex system installation in compliance with Section 15961, and the District's contention must fail. But even if we were to assume, with the District, that there was no formal authorization for Centrex, we would conclude that as a matter of law such authorization is unnecessary.

The writings exchanged between Mr. Ewigleben and Mrs. Bosen clearly constitute an offer and acceptance for the installation of Centrex (Tr. 123, 130, Exh. 12, 18), and the final oral commitment by Chancellor Erickson in January 1970 to go ahead confirms this. In asserting that the agreement is unenforceable, the District relies almost exclusively on the case of Santa Monica Unified Sch. Dist. v Persh (1970) 5 CA 3d 945, but the case is not applicable to the situation before this Commission. In Santa Monica, Section 15961 was effectively used to prevent specific performance of a land sale contract with a school district. However, the prospective vendor in that case was a private citizen; he was not under preemptive state regulatory control. Further, the vendor had conferred no benefit on the school district.

The principles of public utilities regulation as set forth in the Public Utilities Code apply to all of Pacific's customers, private and public. Recently in the case of James B. Packard v The Pacific Telephone and Telegraph Company, Decision No. 79930 (April 11, 1972) this Commission held:

> "It would appear that Complainant is under the misapprehension that utility rates are a private contract matter between the utility and the customer. This is not so. Just and reasonable rates are set by this Commission (Public Utilities Code, §451) and the utility is required to charge those rates, and no others, unless with the special permission of the Commission. Public Utilities Code, §453." (Emphasis added.) (See also San Gabriel Valley Water Company (1948) 48 CPUC 87, 88.)

Where, as here, service tariffs of a public utility are governed by specific regulatory provisions and a District is bound by general procedural requirements, the conclusion is inescapable that the former must prevail.

The principle that specific tariff charges take precedence over other more general law was implemented by this Commission in the case of Johnson v P.T. & T.Co. (1969) 69 CPUC 290. The claimant took the position that a check for $102.19, marked "payment in full" and cashed by Pacific, constituted an accord and satisfaction and therefore a release from liability for the full amount he owed ($228.63). The Commission stated at page 295:

> "While the general rule may be that cashing of a check which states that it is full payment of a claim releases the debtor from liability, this is not true in the case of a public utility in the collection of its tariff charges."

Quoting the case of Transmix Corp. v Southern Pac. Co. (1960) 187 CA 2d 257, this Commission noted that there must be inflexibility in the enforcement of published rates. A public utility cannot, in any way, increase or decrease a rate until the published tariff itself is changed.

The specific issue presented to the Commission in the case now before it calls for an application of the principle applied in the Johnson case. In the one reported case in the nation in which this specific issue was litigated, the court came to precisely that conclusion. The case of Scranton Electric Co. v School Dist. of Borough of Avoca (1944) 37 Atl 2d 725, held that the general rule that formal Board action and a written contract are necessary to bind a school district was not applicable to a claim by a public utility for electric current furnished to the school district. The court said that public service company law and public utility law, fixing the rate of such services, prevailed irrespective of any formal contract or consent on the part of the school district authorities.

> "It is the general rule that where formal action and a written contract are necessary to bind the school district, such requirements must be met in order to predicate liability. But Section 403 of the School Code...does not apply to the present situation. The Public Service Company Law and the Public Utility Law prevail. . . . How can a legislatively fixed rate be the subject of 'terms and conditions' to receive the consent of the local authorities? . . . Rate making by a public service company involves no element of consent by a municipality when made...when a rate becomes effective, it is a rate established by law. It cannot be varied by the parties, and the company departs therefrom at its peril. . . . It clearly was not the intention...to subject such legislative rate to a further revisory control in municipalities in that it must consent, thus tending to destroy the scheme of the act on this subject." (37 Atl 2d 725, 728.)

It is clear, therefore, that as a matter of law the provisions of Pacific's tariffs relative to payment of a basic termination charge prevail over the authorization requirements of the Education Code.

2. Ratification.

Pacific's position that the Board ratified the installation of Centrex after it was installed is supported by the record and by law. After the Centrex had been installed, bills for its installation and service charges were presented to the college (Exh. 7). Mr. Erickson and Mrs. Bluth both testified that the procedure at the college was that no bill could be paid until vouchers had been verified and presented to the Board for approval. This procedure was followed, and the bills were paid after the Board had approved (Tr. 44-45, 56, 58, 233). There was no payment under protest. These bills were paid without any qualification or reservation. All bills were paid thereafter and have been since. Mr. Erickson testified that the first formal notification to Pacific of any desire on the part of the District to cancel the Centrex system and request reinstallation of the PBX system was in his letter of March 10, 1972 (Tr. 38, 43).

It is established that if a principal (the Board) could lawfully authorize an agent (Chancellor Erickson, President Ewigleben) to perform an act, he may ratify that act after it is performed by the agent without authority (City of Monterey v Jacks (1903) 139 Cal 542, 73 P 436, affd. 203 US 360; Reusche v California Pac. Title Ins. Co. (1965) 231 CA 2d 731). Ratification is the subsequent affirmance by one person or body of people of an act which another without previous authority has assumed to do as his agent. Ratification has the same effect as if original authority had been conferred (Jacks v Taylor (1917) 34 CA 95, 97; McCracken v City of San Francisco (1960) 16 Cal 591; Union Trust and Realty Co. v Best (1911) 160 Cal 263, 116 P 737).

Section 15961 calls for either prior authorization or ratification by a vote of the Board. When the Board voted to approve payment of the bills, it ratified the actions of its agents in ordering the Centrex system. The only element of a contract for telephone service the Board has under its control is whether it will accept the service under the tariffs filed with this Commission. The facts constituting ratification of the installation are uncontroverted. We hold that the requirements of Section 15961 have been met.

3. Dispute Over Centrex Costs and Basic Termination Charge.

During the hearing, witnesses for the District claimed that they had been misled by Pacific employees concerning the termination charges applicable before complete installation of Centrex and concerning operating costs of the system. Initially, Mr. Fasanaro, Deputy Business Manager for the District, and Mr. Erickson stated that although they knew that the installation was unauthorized, they did not cancel it because they had been misled by Mr. De Luna of Pacific concerning the charges that would be imposed in the event of cancellation prior to installation (Tr. 16, 188). But Mr. Erickson and Mr. Fasanaro admittedly have only confused recollections (Tr. 375). Mr. Fasanaro conceded that "Everyone was throwing figures around at the time" (Tr. 187).

Mr. De Luna, on the other hand, emphatically denied that such representations were made (Tr. 160, 256), and he is supported in his assertion by the testimony of Mrs. Bosen who kept detailed logs of conversations with Mr. De Luna (Exh. 16) and by the tariffs in effect at the time which did not allow a termination charge prior to installation (Tr. 160, 285, Exh. 19, 20). Additionally, Mr. De Luna had advised Mr. Mullen in September 1970 that there would be no termination charge should the college cancel at that time (Tr. 173, Exh. 6).

Mr. Fasanaro revealed later in the hearing that political considerations were the prime factor in deciding to go ahead with Centrex. He stated that they were in the middle of a bond issue campaign and that cancellation at that time would have resulted in negative publicity and would have alienated the Communications Workers Union (Tr. 340).

We thus conclude that even if misrepresentations concerning the termination charge were made to the District, they were not significantly influential in the determination to go ahead with the Centrex installation.

Concerning Centrex cost, the District took the position that Pacific had misled it concerning the cost of the Centrex system (Tr. 9-10). Evidence supports the conclusion that the District's position is without foundation. As early as September 2, 1969 when Pacific first submitted its Centrex proposal to the District, it was clearly shown that equipment costs for Centrex systems were higher than those for the old PBX system (Tr. 249, Exh. 13). Pacific stated repeatedly that Centrex equipment cost was higher (Tr. 247, 292, 304). It was Pacific's claim that if Centrex was utilized properly these increased equipment costs would be offset by increased system efficiencies and operator savings (Tr. 252, 292, 304).

After Centrex was installed, Pacific's communications expert made numerous suggestions to increase the efficiency of Centrex operations and to reduce costs. But most of the suggestions were rejected (Tr. 292, 299-304). The figures presented by the District to demonstrate increased costs (Tr. 219-222, Exh. 26, 27, 28) failed to take into account operator savings or suggested efficiencies (Tr. 224). Pacific presented evidence at the hearing that even if the figures utilized by the District were accepted the college should have been able to realize a net annual savings with Centrex over the PBX system of $13,125.28 (Tr. 303-306, Exh. 39).

We conclude that the District was told in advance and repeatedly that the actual cost of the Centrex system would be greater than those of the old PBX. Its failure to realize overall cost savings resulted at least partially from a failure to utilize the Centrex system properly.

4. Damage Award.

It is the District's position that since the Centrex system proved unsatisfactory, the District is entitled to reimbursement of the difference in basic telephone charges between the 701 PBX system and the Centrex system paid to Pacific during the last two years. The District is asserting a claim for damages which this Commission has no power to award (San Francisco-Oakland Terminal Railways (1915) 8 CRC 48; Watson-Rooter Corp. of American v P.T. & T. Co. (1970) 71 CPUC 482 (unreported opinion)). The Superior Court has exclusive jurisdiction over actions for damages against public utilities (W. Schumacher v P.T. & T. Co. (1965) 64 CPUC 295; Cal. Pub. Util.Code § 2106). We note, however, that even if this Commission had the power to award such damages, the District has produced no evidence which would justify such an award. The record shows that the District was furnished a careful analysis showing the differences in monthly charges between the two systems as well as the projected operator savings before the conversion to the Centrex system. The District's estimates of increased costs are by its own admission defective and offset by Pacific's estimates of savings which would result from the proper utilization of the system.

No other points require discussion.

Findings

1. On August 21, 1969, John Mullen, an employee of San Mateo College, contacted Mrs. Bosen, Pacific's marketing representative, with reference to installation of a Centrex system at the College of San Mateo (Tr. 122).

2. On September 2, 1969, Mrs. Bosen presented a proposal to Mr. Mullen (Exh. 13) comparing the existing 701 PBX system with a Centrex I and a Centrex II system.

3. On October 27, 1969, Mr. Ewigleben, president of the College of San Mateo, wrote a letter to Mrs. Bosen (Exh. 12) confirming the order for a Centrex II-C.O. for the College of San Mateo for installation in the spring of 1971 (Tr. 130).

4. During the period October 27, 1969 to April 1, 1971 numerous meetings and conversations were held between Mrs. Bosen and other representatives of Pacific and Mr. Mullen and other representatives of the College of San Mateo relative to such matters as the method of operation of the Centrex system, directory listings, and changes in the system.

5. On April 1, 1971 the Centrex system was cut over and operative.

6. On June 9, 1971 Mrs. Bosen and Mr. McArdle discussed the first billing for the Centrex system with Mr. Mullen and made adjustments in the bill (Tr. 138).

7. Communications service for the district is authorized for one year in advance by Board approval of a purchase order (Tr. 72, 75, 230-235, Exh. 29, 30). No expenditure can be made without the prior authorization of the Board in the form of a purchase order (Tr. 75).

8. The first bill including charges for installation of the Centrex system and all subsequent bills to and including the dates of hearing on this matter were all paid by the District (Tr. 141).

9. Payment of the bills was made after vouchers had been presented to the Board and received Board approval (Tr. 44-45, 56-58, 233).

10. Before presentation to the Board, the vouchers were checked against the yearly purchase orders for compliance with budget allocations.

11. Exhibit 13 indicated that a basic termination charge would apply to the Centrex in the event of cancellation after cutover and Pacific's tariffs (Exh. 17) provided for such a charge.

12. Pacific's tariffs (Exh. 17) provide that a basic termination charge is payable only upon total disconnection of the Centrex system within five years after installation of equipment on the customer's premises.

13. The basic termination charge due on the Centrex system as of June 1, 1973 is $18,783.10.

14. All charges for telephone service quoted to complainant and paid by complainant have been in accordance with Pacific's filed tariffs.

15. There is no evidence in the record to indicate that any promises or assurances were made to San Mateo College or District officials that the costs of the Centrex system would be less than the 701 PBX system it was replacing.

16. The District was advised before installation that Centrex charges would be higher, but overall expense should be about the same or less if the system were utilized efficiently (Tr. 247-252, Exh. 13).

17. The first indication Pacific had that the District was taking the position that the installation of the telephone system was unauthorized because it had not been installed pursuant to a contract approved by the Board of Trustees was on or about February 22, 1972, in a report to the Board by Mr. Erickson.

18. The District accepted the benefits of the Centrex system without complaint until June 2, 1972 when it gave Pacific the first formal notification that installation was unauthorized and should be removed without cost to the District.

Conclusions

1. A public utility cannot by contract, conduct, estoppel or waiver, directly or indirectly increase or decrease the rate as published in its tariff until the published tariff itself is changed.

2. Utility rates are not a matter of private contract between a utility and its customers. Just and reasonable rates are set by this Commission and a utility is required to charge those rates.

3. All tariffs applicable to the service rendered must be complied with by the customer.

4. Board authorization of the yearly purchase order for telephone service constituted authorization in compliance with Education Code Section 15961.

5. Board approval of the Centrex bills paid by the District to Pacific constituted ratification of the Centrex installation in compliance with Education Code Section 15961.

6. Acceptance of telephone service by the District resulted in acceptance of the tariffs which govern provision of that service. If a conflict exists between Education Code Section 15961 and filed tariffs in this situation, it must be resolved in favor of the tariffs.

7. The District is bound to pay the charges set forth in Pacific's tariffs for the services rendered or which are imposed upon termination of the service.

8. This Commission has no power to award damages.

9. Claimant is not entitled to any relief in this proceeding.

C. 9449 cmm

O R D E R

IT IS ORDERED that the relief requested by the San Mateo Junior College District is denied.

The effective date of this order shall be twenty days after the date hereof.

Dated at San Francisco, California, this 23rd day of MAY, 1974.

President

Commissioners

Commissioner THOMAS MORAN

Present but not participating.