



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

WEST VALLEY- MISSION FEDERATION OF
TEACHERS, AFT LOCAL 6554,

Charging Party,

v.

WEST VALLEY-MISSION COMMUNITY
COLLEGE DISTRICT,

Respondent.

Case No. SF-CE-3482-E

PERB Decision No. 2917

September 4, 2024

Appearances: Law Offices of Robert J. Bezemek by Robert J. Bezemek, Tanya Smith, and Alexandra A. Iova, Attorneys, for West Valley-Mission Federation of Teachers, AFT Local 6554; Atkinson, Andelson, Loya, Ruud & Romo by Alex A. Lozada and DeAnna L. Solina, Attorneys, for West Valley-Mission Community College District.

Before Krantz, Paulson and Nazarian, Members.

DECISION

NAZARIAN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Respondent West Valley-Mission Community College District to a proposed decision of an administrative law judge (ALJ). The ALJ found that the District violated the Educational Employment Relations Act¹ (EERA) by unilaterally changing terms and conditions of employment when it required academic counselors, who are non-instructional faculty represented by

¹ EERA is codified at Government Code, section 3540 et seq. Unless otherwise noted, all statutory references are to the Government Code.

Charging Party West Valley-Mission Federation of Teachers, AFT Local 6554 (WVMFT), to work 100 percent in person during the Spring 2022 school term, whether the counseling sessions were in person or online.

In its exceptions, the District argues that it did not violate EERA because it was not required to bargain over merely returning to the pre-COVID-19 status quo.

Employing this argument, the District attempts to distinguish our decision in *Oxnard Union High School District* (2023) PERB Decision No. 2803 (*Oxnard*), where we found that the high school district unilaterally repudiated COVID-19 memoranda of understanding (MOUs) that required hybrid education to be offered on a voluntary basis for teachers. In that decision, we found that changes to work-from-home policies, irrespective of an applicable MOU, are within the scope of representation and subject to decisional bargaining.

For the reasons below, we overrule the District's exceptions and affirm the proposed decision. Changes in remote work policies as the District emerged from the COVID-19 pandemic were subject to decisional bargaining. Further, the District's claim that it had no bargaining obligation as it was simply returning to a pre-pandemic status quo is legally and factually untenable. Accordingly, we find that the District's conduct violated EERA. We also affirm the proposed decision's remedy, with minor modifications.

FACTUAL BACKGROUND

I. The Parties and their Collective Bargaining Agreement

The District is a public school employer within the meaning of section 3540.1, subdivision (k). The District operates two colleges: West Valley College in Saratoga

and Mission College in Santa Clara. The District's central administration is headed by a chancellor and various vice chancellors, including during the relevant periods, Associate Vice Chancellors of Human Resources Albert Moore and Eric Ramones. The senior leadership of each college is headed by a president, vice presidents, and deans. At Mission College, this included President Daniel Peck, Vice President of Student Services Omar Murillo, and Dean of Student Services Richard Alfaro; and at West Valley College, President Stephanie Kashima and Dean of Academic Counseling and Student Success Dr. Murrell Green.

WVMFT is an employee organization within the meaning of section 3540.1, subdivision (d). WVMFT is the exclusive representative of certificated and academic employees, including academic counselors, employed by the District. WVMFT's president is Kate Disney. Academic department chairs are also members of the bargaining unit; the chair of the Counseling Department at Mission College during the relevant time was Thuy Trang; the co-chairs of the Counseling Department at West Valley College were Melissa Salcido and Philip Severe.

The parties are subject to a collective bargaining agreement (CBA), effective during the relevant time period. Article 18.9.1 of the CBA provides the process for faculty to propose and receive approval of work schedules:

"When deemed most feasible by a department . . . each faculty member shall propose to the appropriate Department Chair and Dean his/her work schedule for the following academic year . . . The appropriate Department Chair and Dean shall review the request and approve or return it to the faculty member for discussion:

"a. Though the appropriate Department Chair and Dean have the final decision concerning the assignment of

work days, reasonable effort shall be made to accommodate the needs and preferences of the faculty member.

“b. In cases where departmental staffing needs are unmet, the first recourse will be to present the need parameters to the departmental staff for discussion. If resolution does not occur through this process, the appropriate Department Chair and Dean shall have final decision.

“c. In all cases, student needs shall be the determining factor in scheduling all non-instructional faculty members.

“d. Exceptions to scheduling as per the above procedures require the approval of the non-instructional faculty member and the appropriate Vice President or designee.”

Article 51.2 (Distance Education Instructional and Non-Instructional Activities

Facilitated by Communication Technology) states:

“The use of communication technology to support instruction, to provide services to students and for other non-instructional purposes may comprise a regular component of a non-instructional faculty member’s load. Such assignments may be conducted in a location remote from the primary worksite. Such assignments shall be made in accordance with Article [18.9] subject to approval of the appropriate Vice President or designee.”

II. Pre-COVID-19 Application of Policies on Remote Work and Scheduling

Counselors, department chairs, and deans worked collaboratively through the Article 18.9.1 scheduling process to set schedules for counselors. Typically, counseling faculty would propose schedules by inputting preferred time blocks on load sheets. The department chairs would develop a master schedule, working with faculty

to ensure coverage. The chairs would subsequently submit the proposed schedules to their respective dean, who would ensure the District approved the schedules.

Prior to March 2020, at least two counselors performed work remotely when not required to be on campus. Specifically, Wanda Wong began performing some counseling sessions via Skype, and Nohemy Chavez responded to student questions via e-mail remotely during winter and summer sessions.

III. Changes at the Outset of the COVID-19 Pandemic

In March 2020, all counselors began working remotely. Shortly after counselors began working remotely, the District circulated a “telecommuting agreement” to personnel, including counselors. After WVMFT objected to the agreement, Moore acknowledged that the agreement was not intended for use with WVMFT’s bargaining unit, as the parties already reached agreement on remote work in CBA Article 51.2.

Counseling faculty exclusively worked remotely during the remainder of the Spring 2020 semester through the Summer 2021 session. Faculty responded to student requests via e-mail and phone and conducted virtual counseling sessions via phone and video conferencing software. In June 2020, the District launched Cranium Café, an online scheduling platform that allowed counseling faculty to schedule and conduct virtual counseling sessions.

IV. Some Counseling Faculty Voluntarily Return to In-person Counseling

In preparation for the Fall 2021 session, the District sought to transition students and faculty back to campus for in-person instruction. In August, Ramones informed Disney that the District also wanted counseling faculty and other non-instructional faculty to return to work in person to meet the needs of returning

students. The parties discussed in-person counseling at an August 26 meeting. Disney stated that department chairs were working with their deans and vice presidents on the issue. In an e-mail summarizing the August 26 meeting, Ramones did not state that the District wanted counselors to work 100 percent from campus or that it wanted counselors to perform virtual counseling sessions from campus offices rather than remotely. Rather, Ramones stated, “we want to collaborate with you to ensure there is an increased presence at both colleges to meet the needs of our students.” In an e-mail to deans in advance of the Fall semester, Ramones stated, “a combination of working remotely on some days and in-person some days is allowable at your discretion.” During the Fall semester, a few counselors conducted in-person sessions, but most conducted virtual sessions away from campus.

V. Department Chairs and Faculty Develop Spring 2022 Schedules

The parties began discussions about Spring 2022 schedules in October 2021. Trang approached scheduling differently than before the pandemic because of the complexity of in-person and virtual counseling sessions. Trang e-mailed Dean Alfaro to propose that faculty work in person at least two days or a minimum of 12 hours per week to provide in-person counseling. Alfaro affirmed these parameters in an e-mail to all counseling faculty at Mission College.

Trang prepared a master schedule with faculty covering 40 percent in-person and 60 percent virtual counseling sessions, and she sent it to Dean Alfaro and VP Murillo on October 14. On October 21, Alfaro informed Trang that Murillo approved the framework. On October 25, Alfaro clarified, stating: “Please keep in mind that virtual services does not equate to remote since virtual can be done on campus as well,

although we will take it into consideration for Spring 2022. Counseling Faculty schedules still need to go through the scheduling approval process, which should begin early November so they can be reviewed by the Director and Dean SS/Chair for approval. More guidance to come on the scheduling process.”

On November 17, Alfaro e-mailed the counselors, stating that 40 percent of each counselor’s schedule should be focused on in-person counseling services. For the remainder, Alfaro stated, “To be sensitive to everyone’s transition back to campus, we do feel it’s appropriate to provide the option to work a portion of your schedule remotely as part of the transition, just as we worked with our Classified staff in their return.” In a December 3 e-mail to counseling faculty, Alfaro reaffirmed the 40/60 framework, describing it as a “full return this spring” that it would help provide services for the 60 percent of classes offered in person, compared with 80 percent pre-COVID.

VI. The District Announces a “100 Percent In-Person” Policy

During the same time, West Valley leaders and faculty were negotiating over how much remote work counselors should conduct and began to coalesce around a 60 percent in person, 40 percent remote framework. However, on December 1, Dean Green informed Co-Chair Salcido that counselors would be required to be in person 100 percent of the time. Green testified that he received the 100 percent requirement from President Kashima.

On December 12, Salcido e-mailed Green proposed schedules that guaranteed at least one counselor working in person each day. Dean Green did not approve Salcido’s proposed schedules because District had “a 100 percent mandate to return for the department.” Green further disagreed with the framework, as it sought to have

60 percent in-person staffing based on the whole group of counseling faculty, rather than requiring each individual to be in the office 60 percent of the time.

On or around December 13, Murillo informed Mission College counseling faculty that non-instructional faculty would be “100 percent in-person” effective January 1, 2022. Trang e-mailed President Peck about her disappointment in the announcement. Peck responded directly to Trang’s e-mail:

“My regret is that the department and yourself have been placed in this situation . . . I want to acknowledge the sincere and collaborative approach that you, the department, and Dean Alfaro have engaged in as you have discussed and prepared for Spring . . . all non-instructional faculty at both colleges are being asked to fully return in spring . . . I recognize that this is difficult news – partially because of individual concerns, but mostly because *this is a sudden change of direction with no advance consultation.*”

(Italics added.)

On January 19, 2022, Trang e-mailed Dean Alfaro and VP Murillo, asserting that the contract allowed counselors to perform remote work. On January 21, Murillo replied to the group emphasizing that the District wanted to return to 100 percent in-person work because:

“The direction shared with you all in late December is built on the importance of creating as dynamic and positive experience for students on campus as possible. This goes beyond coverage and is about creating an immersive and engaging experience on campus—both for student’s regularly taking in-person classes, and for those coming to campus specifically to access support services. We heard from both students and faculty over the last semester how a limited presence on campus led to lower engagement and a less-fulfilling in-person experience. It is critical for current

students' success and for growth in registration for in-person classes in Summer/Fall 2022 that we create this fully immersive environment, which is why we have also asked all administrators and classified to return to full in-person schedules."

Murillo also stated that the "administration maintains the right of assignment. At this time, we are not changing the direction provided and we ask that all counseling faculty comply as directed." However, some counselors continued to conduct virtual counseling sessions remotely.

On February 4, 2022, WVMFT's attorney sent a letter to the District Chancellor and Vice Chancellor Ramones, demanding that the District honor section 51.2 and rescind the "100 percent in-person" policy. Throughout February, attorneys for the parties exchanged arguments over whether the District's "100 percent in-person" policy was lawful, including the application of *Oxnard, supra*, PERB Decision No. 2803, to the facts of this case.²

Additionally, in mid-February, the District began warning counseling faculty who continued to perform remote work. Dean Alfaro and Dean Green gave oral and written warnings to some of these counselors. While some counseling faculty began complying with the in-person work requirements, others continued to work remotely.

PROCEDURAL HISTORY

WVMFT filed this case on February 23, 2022, alleging that the District violated EERA section 3543.5, subdivision (c) by unilaterally changing policy without providing

² Nonetheless, the District's post-hearing brief does not mention, let alone attempt to distinguish, *Oxnard, supra*, PERB Decision No. 2803.

WVMFT notice and an opportunity to bargain. PERB's Office of the General Counsel reviewed both parties' positions and issued a complaint on September 2. The District filed an answer to the complaint on September 22, denying the substantive allegations and alleging several affirmative defenses.

After the parties were unable to settle the matter at an informal conference on October 17, 2022, the ALJ held a virtual hearing on February 7 and 8, 2023. During the hearing, WVMFT moved to amend the complaint, and the ALJ granted the motion. The parties submitted post-hearing briefs on April 19. On May 3, the District objected to WVMFT's post-hearing brief for introducing new evidence and requesting attorney fees. The ALJ provided WVMFT an opportunity to respond, and WVMFT did so on May 17.

On November 15, 2023, the ALJ issued a proposed decision, finding that the District violated section 3545.5, subdivision (c) by unilaterally changing counseling faculty work location without providing WVMFT notice and opportunity to bargain. The District filed exceptions to the proposed decision on December 20, and WVMFT filed its response to the exceptions on January 23, 2024; the District filed a reply brief on February 2, 2024.³

³ WVMFT did not file cross-exceptions to the dismissal of its independent interference claim. For this reason, the ALJ's conclusion that the District established its affirmative defense to WVMFT's independent interference claim is final and binding on the parties. (*The Accelerated Schools* (2023) PERB Decision No. 2855, p. 3.)

DISCUSSION

When resolving exceptions to a proposed decision, we apply a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) However, we need not address arguments that the ALJ sufficiently addressed. (*Ibid.*) Here, the District argues that because we should find counseling faculty performed their duties “100 percent in person” before the COVID-19 pandemic, and because the District informed WVMFT of its intention to return to pre-pandemic policies in August 2021, WVMFT failed to demonstrate a prima facie unilateral change. However, like the ALJ, we find that WVMFT established a prima facie unilateral change violation, and that the District established no defense.

I. WVMFT Alleged a Prima Facie Unilateral Change

A unilateral change to a matter within the scope of representation is a per se violation of the respondent’s duty to bargain in good faith. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 22.) Because a unilateral change has an inherently destabilizing and detrimental effect upon the parties’ bargaining relationship, it is unlawful irrespective of intent. (*City of Montebello* (2016) PERB Decision No. 2491-M, p. 10; *County of Riverside* (2014) PERB Decision No. 2360-M, p.18.)

To establish a prima facie case that a respondent employer made an unlawful unilateral change, a charging party union that exclusively represents a bargaining unit must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees’

terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9.)

Neither the District's closing brief nor its exceptions contest that unilaterally changing work location has a generalized effect or continuing impact. Though the District's exceptions contend that the proposed decision incorrectly found a generalized effect and continuing impact from its mandate to return to 100 percent in-person work, the substance of its argument concerns whether there was a change in the status quo. Accordingly, we, like the proposed decision, find the third element of the unilateral change test satisfied. We also address the District's arguments that it provided advance notice and opportunity to bargain below.

A. Change from the Status Quo

There are three primary means of establishing that an employer changed or deviated from the status quo: (1) a deviation from a written agreement or written policy; (2) a change in established past practice; or (3) a newly created policy or application or enforcement of existing policy in a new way. (*Bellflower Unified School District, supra*, PERB Decision No. 2796, p. 10)

The District urges us to find the applicable status quo is that which preceded the COVID-19 pandemic, and it argues that no counseling faculty performed work

remotely during that time.⁴ However, record evidence demonstrates that not only did counseling faculty perform work remotely before the pandemic, a remote work policy existed in the CBA for years prior to the pandemic. The existence of such a policy demonstrates that the District's "100 percent in-person" policy changed a written policy and/or was, at minimum, a new policy or application or enforcement of an existing policy in a new way.

Additionally, the "100 percent in-person" work requirement deviates from the bottom-up, collaborative scheduling process found in Article 18.9.1 of the parties' CBA. There, counselors propose schedules and the Dean and Department Chair organize and approve schedules to match operational and student needs. It is only if an exception to this established process is required that both the appropriate Vice President and the affected faculty member must approve.

The District claims that the CBA's plain language in this provision contemplates only work schedules, not work modalities. However, section 51.2 of the CBA plainly rebuts this claim by stating that remote work assignments should be made according to the scheduling process in Article 18.9.1. Further, record evidence demonstrates that both parties viewed the collaborative process in Article 18.9.1 as the proper forum to determine schedules for in-person and remote modalities. Pre-pandemic, at Mission College, Dean Alfaro and Chair Trang, with the approval of VP Murillo, presented a scheduling framework for virtual and in-person counseling sessions. Counseling

⁴ Notably, WVMFT does not raise the March 2020 change to 100 percent remote work as an issue. In *Oxnard, supra*, PERB Decision No. 2803, we found that the school district was permitted to require employees to work from home in March 2020, provided it bargained in good faith as time allowed. (*Id.* at pp. 44-45.)

faculty completed their schedule requests within this framework. West Valley Dean Green and Co-Chairs Severe and Salcido operated under a similar framework. Thus, to the extent the District claims it had a practice of allowing counselors to work remotely at its sole discretion, the record does not support that claim. But even if it did, such a history would not privilege the District to implement a new, 100 percent in-person policy. (*West Contra Costa Unified School District* (2023) PERB Decision No. 2881, p. 12 (*West Contra Costa*), citing *County of Kern* (2018) PERB Decision No. 2615-M, pp. 6-9 [employer’s changes are consistent with a dynamic status quo only if the changes follow a nondiscretionary pattern of change].)

The District also claims that *Oxnard*, *supra*, PERB Decision No. 2803, permits it the management right to return to the status quo after a public health emergency. However, the District ignores the obligation to bargain that *Oxnard* requires in advance of the return to status quo: “The right to respond to a public health emergency by instituting distance learning must logically include, as a general proposition, the right to return to the status quo in stages, *while providing employee unions with advance notice and opportunities to bargain* when time allows.” (*Oxnard*, *supra*, PERB Decision No. 2803, pp. 45-46 (italics added), citing *Regents of the University of California* (1998) PERB Decision No. 1255-H.) While *Oxnard* left open the question whether, absent return to work MOUs, a public school employer has a right to return to in-person offerings with less than a month notice, the decision states that “the parties would still have a bargaining obligation.” (*Oxnard*, *supra*, p. 46.) And as explained below, the District failed to provide advance notice or the opportunity to bargain. Further, though the District attempts to paint the “100 percent in-person” policy as

simply a return to the pre-pandemic status quo, record evidence demonstrates that the “100 percent in-person” policy represents a new or changed policy, or, at minimum, a new interpretation of existing policy.

B. Scope of Representation

Pursuant to the test the Board adopted in *Anaheim Union High School District* (1981) PERB Decision No. 177 (*Anaheim*), a non-enumerated issue falls within the scope of representation under EERA if: (1) It is logically and reasonably related to wages, hours, or an enumerated term and condition of employment (i.e., it involves the employment relationship); (2) The subject is of such concern to management and employees that conflict is likely to occur, and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict; and (3) The employer’s obligation to negotiate would not significantly abridge its freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of the employer’s mission. (*San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, 857-858; *Oxnard, supra*, PERB Decision No. 2803, p. 42; *San Bernardino Community College District* (2018) PERB Decision No. 2599, p. 8; *Anaheim, supra*, PERB Decision No. 177, pp. 4-5.) A contemplated change involving a non-mandatory subject of bargaining may nonetheless trigger a duty to engage in effects bargaining if the change would affect terms or conditions of employment. (*County of Santa Clara* (2019) PERB Decision No. 2680-M, pp. 11-12.)

In *Oxnard*, we applied the *Anaheim* test and determined that work-from-home policies involve a mandatory bargaining subject. (*Oxnard, supra*, PERB Decision

No. 2803, pp. 41-44.) The District claims the change within the scope of representation in *Oxnard* was limited to the employer's repudiation of pandemic-specific MOUs, and not employer-imposed work-from-home policies. This is plainly wrong, as it contradicts *Oxnard*'s holding that work-from-home policies satisfy the *Anaheim* test. (*Oxnard, supra*, pp. 43-44.) There is no cause to "reinvent the wheel" by applying *Anaheim* from scratch to a topic we have already found is bargainable. (*Oakland Unified School District* (2023) PERB Decision No. 2875, p. 126, fn. 11.) In any event, work-from-home policies easily satisfy the first two elements of the *Anaheim* test. And, as to the third element, bargaining over changes to a work-from-home policy would not unduly infringe on managerial freedom, as delay in finalizing a new policy is unlikely to significantly frustrate any essential public education goal. (*Anaheim, supra*, PERB Decision No. 177, pp. 4-5.) "While time may be of the essence during a pandemic, that consideration goes to the limitations on bargaining obligations when an emergency compels an employer to act rapidly," but does not, "turn the topic into a non-mandatory subject of bargaining under *Anaheim*." (*Oxnard, supra*, p. 43.)

Here, the District does not claim that an emergency required it to move to 100 percent in-person work before providing notice and an opportunity to bargain. In fact, the parties were working toward reverting to the pre-pandemic status quo in stages. Between March 2020 and Summer 2021, counselors were working remotely. The parties began discussions to transition to a voluntary hybrid format for Fall 2021 and a mandatory hybrid format for Spring 2022. There is no evidence that these stages of in-person and remote work, as negotiated between the deans and department chairs,

would infringe on the District's right to return to the status quo in stages. (*Oxnard, supra*, PERB Decision No. 2803, p. 45.) Rather, the District chose to unilaterally scrap its plan of a staged return to the status quo and instead unilaterally implement a new "100 percent in-person" policy that was fundamentally different from the pre-pandemic status quo.

C. Notice and Opportunity to Bargain

Although the amount of time varies depending on the circumstances of each case, "an employer must give notice sufficiently in advance of reaching a firm decision to allow the representative an opportunity to consult its members and decide whether to request information, demand bargaining, acquiesce to the change, or take other action." (*Regents of the University of California* (2018) PERB Decision No. 2610-H, p. 45.) When the employee organization first learns of the proposed change by virtue of "the employer's *implementation* of that change, by definition, there has been inadequate notice." (*City of Sacramento* (2013) PERB Decision No. 2351-M, p. 33.) "In such cases, the employer's 'notice' is nothing more than its announcement of a *fait accompli*." (*Ibid.*) "In the face of unilateral implementation, a demand to bargain is futile," because at that point there is no "level playing field" for fair negotiations to occur. (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 24.)

Here, the District claims that it notified WVMFT in August 2021 of its intention to return all faculty to in-person work. However, the District's meeting with WVMFT on August 28 rebuts such an assertion. There, WVMFT President Disney was clear that any return to in-person work during the Fall 2021 semester would need to be *voluntary*. Even District communications with deans gave them discretion to allow

hybrid work. The District presented no testimony that the District otherwise informed WVMFT that the return to in-person work would be *mandatory* until December 1. Thus, there was no notice of a firm decision until at least December 1. Dispositively, President Peck acknowledged the “100 percent in-person” announcement as a “sudden change of direction with no advance consultation.”

II. Waiver Defense

An employer may lawfully take unilateral action on a matter within the scope of representation where the exclusive representative has waived its right to negotiate over changes to that subject. (*City of Culver City* (2020) PERB Decision No. 2731-M, p. 13, citing *Modoc County Office of Education* (2019) PERB Decision No. 2684, p. 11 (*Modoc COE*).) Because waiver is an affirmative defense, the party asserting it bears the burden of proof, and any waiver of the right to bargain must be “clear and unmistakable,” demonstrating an “intentional relinquishment” of that right. (*Modoc COE, supra*, p. 11; *California State Employees’ Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 937.)

“Waiver is most readily apparent where the specific subject is covered by the express terms of an existing collective bargaining agreement.” (*Modoc COE, supra*, PERB Decision No. 2684, p. 12, quoting *Placentia Unified School District* (1986) PERB Decision No. 595, p. 4.) “On the other hand, broadly-worded managements rights clauses are often inadequate to constitute a waiver of the right to negotiate over a specific subject.” (*Modoc COE, supra*, PERB Decision No. 2684, p. 13.)

Here, the District argues that because the parties agreed to a process for remote work approval in section 51.2, it is privileged to not permit employees to work

remotely. Further, the District claims that it granted some counseling faculty permission under section 51.2 to work some of their assignments remotely. However, we find these reasons insufficient to meet the District's burden.

Section 51.2 is written to consider individual faculty requests for remote work. While the parties agreed that this section applied *en masse* to permit all faculty to work remotely during the pandemic, the parties disagree over the District's new policy categorically disallowing remote work unless necessary to accommodate a disability. As noted above, the District's "100 percent in-person" policy was described by its own management as a "sudden change of direction with no advance consultation." Further, the District's refusal to consider hybrid schedules and decision to only consider individual requests for remote work to accommodate a disability, demonstrates a departure from established procedure. Having enforced section 51.2 in a new way, the District cannot now use section 51.2 as a shield to avoid its bargaining obligation.

While the District identifies one example of granting remote work to Department Chair Trang, the District's top-down pronouncement deterred other faculty from seeking remote work under section 51.2. The District introduced no evidence that it informed counseling faculty that they still had the right to request remote work under section 51.2. And Dean Green even informed employees the only way to seek approval for remote work was through the reasonable accommodation process, not section 51.2. Therefore, the District failed to carry its burden to demonstrate that

section 51.2 waived the union's right to bargain over a materially new remote work policy.

III. Remedy

The appropriate remedy for an employer's unlawful unilateral change normally includes at least an order to bargain, make-whole relief, rescission of changes, a cease-and-desist order, and a notice-posting order. (*West Contra Costa, supra*, PERB Decision No. 2881, p. 18; *Imperial Irrigation District* (2023) PERB Decision No. 2861-M, p. 64.) After an emergency has lapsed, we follow this same guide for remedies but give special consideration for the particular emergency circumstances that once existed. (See, e.g., *County of Santa Clara* (2023) PERB Decision No. 2876-M, pp. 37-38 (judicial appeal pending); *Imperial Irrigation District, supra*, pp. 64-68.)

With appropriate bargaining, the District is entitled to return to its pre-COVID-19 status quo. (*County of Santa Clara, supra*, PERB Decision No. 2876-M, pp. 33-35; *Imperial Irrigation District, supra*, PERB Decision No. 2861-M, p. 56; *Oxnard, supra*, PERB Decision No. 2803, pp. 45-46.) Therefore, we find it appropriate, upon a demand by WVMFT within 60 days after this decision is final, at the conclusion of the academic term when this decision is final, to order the District to rescind the "100 percent in-person" policy and bargain with WVMFT over its work-from-home policy.

Unlike the ALJ's proposed remedy ordering the return to an all-remote work policy with faculty returning to in person voluntarily, we find that the hybrid framework agreed to at both colleges immediately before announcement of the "100 percent

in-person” policy is an appropriate stage to return the parties to, should they not complete bargaining before commencement of the next academic term.

We also find it appropriate to order the traditional cease-and-desist and notice-posting orders. We additionally order the District to rescind and remove any documentation of oral and written warnings issued to unit members for violating the “100 percent in-person” policy.⁵

As is traditional, we order the District to make counselors whole for economic losses they suffered as a result of the District’s unilateral change. (*County of Santa Clara* (2024) PERB Decision No. 2900-M, pp. 27-28, 31-33 (judicial appeal pending) [PERB remedial standards cover most direct or foreseeable harms resulting in material part from a violation].) In compliance proceedings, among other economic harms, WVMFT may present evidence regarding mileage and childcare expenses counselors incurred when they were required to shift from a hybrid work schedule to a 100 percent in-person work schedule commencing in September 2022.⁶

⁵ PERB has broad remedial authority to rescind discipline in order to make affected employees whole. (See *San Bernardino Community College District* (2018) PERB Decision No. 2599, pp. 14-15.) This measure is appropriate here to remedy the District’s unilateral implementation of the “100 percent in-person” policy.

⁶ For Mission College faculty, make-whole relief includes reasonable mileage and childcare expenses incurred because they were required to work in person three days per week, whereas they would have worked entirely remotely under the hybrid stage. For West Valley College faculty, make-whole relief includes reasonable mileage and childcare expenses incurred because counseling faculty there worked in person two days per week, but would have worked entirely remotely under the hybrid stage.

ORDER

Based on the foregoing and the entire record in this case, the Public Employment Relations Board (PERB) finds that the West Valley-Mission Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., when it unilaterally implemented a “100 percent in-person” policy without first providing West Vally-Mission Federation of Teachers, AFT Local 6554 (WVMFT) with notice and an opportunity to negotiate over the District’s decision to do so. This conduct also derivatively interferes with the right of employees to be represented by WVMFT and denies WVMFT its right to represent employees in their employment relations.

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

A. CEASE AND DESIST FROM:

1. Unilaterally changing terms and conditions of employment without providing WVMFT with notice and reasonable opportunity to meet and confer as required by EERA.
2. Interfering with the right of employees to be represented by WVMFT in their employment relations with the District.
3. Denying WVMFT its right to represent employees in their employment relations with the District.

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

1. Upon request of WVMFT within 60 days of this decision becoming final, rescind the decision to require all counseling faculty to work 100 percent in person, on campus, to take effect at the conclusion of the academic session immediately following this decision becoming final.

2. Upon request of WVMFT within 60 days of this decision becoming final, bargain in good faith with WVMFT over the District's work-from-home policy.

3. Rescind and destroy all copies of any documentation of oral and written warnings, or other counseling or discipline issued to unit members, for violating the 100 percent in-person policy.

4. Make unit members whole for any harms incurred in material part because of the District's unilateral imposition of the 100 percent in-person policy, with interest accrued to the date of payment at an annual rate of seven percent, compounded daily.

5. Within 10 workdays following the date this decision is no longer subject to appeal, post at all work locations where notices to WVMFT-represented employees are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the District must sign the Notice, indicating that the District will comply with the terms of this Order. The District shall maintain the posting for a period of 30 consecutive workdays. The District shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. In addition to physically posting this Notice, the District shall communicate it by

electronic message, intranet, internet site, and other electronic means the District uses to communicate with WVMFT-represented employees.⁷

6. Notify OGC of the actions the District has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on WVMFT.

Members Krantz and Paulson joined in this Decision.

⁷ Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.



**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. SF-CE-3482-E, *West Valley-Mission Federation of Teachers, AFT Local 6554 v. West Valley-Mission Community College District*, in which all parties had the right to participate, the Public Employment Relations Board has found that the West Valley-Mission Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq.

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

A. CEASE AND DESIST FROM:

1. Unilaterally changing terms and conditions of employment without providing West Valley-Mission Federation of Teachers, AFT Local 6554 (WVMFT) with notice and reasonable opportunity to meet and confer as required by EERA.
2. Interfering with the right of employees to be represented by WVMFT in their employment relations with the District.
3. Denying WVMFT its right to represent employees in their employment relations with the District.

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

1. Upon request of WVMFT within 60 days of this decision becoming final, rescind the decision to require all counseling faculty to work 100 percent in person, on campus, to take effect at the conclusion of the academic session immediately following this decision becoming final.
2. Upon request of WVMFT within 60 days of this decision becoming final, bargain in good faith with WVMFT over our work-from-home policy.
3. Rescind and destroy all copies of any documentation of oral and written warnings, or other counseling or discipline issued to unit members, for violating the 100 percent in-person policy.
4. Make unit members whole for any harms incurred in material part because of the District's unilateral imposition of the 100 percent in-person policy, with interest accrued to the date of payment at an annual rate of seven percent, compounded daily.

Dated: _____

WEST VALLEY-MISSION COMMUNITY
COLLEGE DISTRICT

By: _____
Authorized Agent

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