



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

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION-CHAPTER 115,

Charging Party,

v.

HACIENDA LA PUENTE UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. LA-CE-6653-E

PERB Decision No. 2930

November 15, 2024

Appearances: Alex Leenson, Staff Attorney, for California School Employees Association-Chapter 115; Leal & Trejo by William J. Trejo and Michael E. Wolfsohn, Attorneys, for Hacienda La Puente Unified School District.

Before Banks, Chair; Paulson and Nazarian, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Hacienda La Puente Unified School District to the proposed decision of an administrative law judge (ALJ). The complaint alleged that the District violated the Educational Employment Relations Act (EERA) by retaliating against and/or interfering with the rights of Margarita Caldera, the exclusive representative's chapter president.¹ Following an evidentiary hearing, the ALJ found that the District violated EERA by (1) initiating and conducting investigations regarding

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

Caldera for her protected activity on behalf of California School Employees Association-Chapter 115 (CSEA); (2) failing to immediately stop its investigations upon learning that they were based on Caldera's protected activity; (3) concluding that Caldera's protected speech violated the District's civility policy and threatening corrective action; (4) issuing Caldera a directive not to discuss the investigation with employees; (5) directing the Caldera to follow the District civility policy and be professional in all communications to District employees and officials; and (6) refusing to timely provide information requested by CSEA.

The ALJ issued a proposed decision ordering the District to cease and desist retaliating against Caldera for exercising rights under EERA, interfering with rights guaranteed to employees under EERA, and interfering with CSEA's right to represent bargaining unit employees. The proposed order also ordered the District to provide information it had withheld and to meet and negotiate with CSEA about the provision of any missing information it had requested. The District filed exceptions, and CSEA responded.²

² Neither party excepted to the ALJ's determination that the District interfered with Caldera's right to engage in protected conduct in violation of EERA section 3543.5, subdivision (a) nor the ALJ's determination that the District failed to provide CSEA with necessary and relevant information in violation of EERA section 3543.5, subdivision (c). The District also did not except to the ALJ's determination that it had knowledge of the chapter president's protected conduct. Likewise, neither party excepted to the ALJ's finding that the District's investigations, conference summary, and directives were adverse actions. Further, neither party excepted to the determination that the chapter president's criticisms of District officials were logical extensions of group activity. Accordingly, these conclusions are not before the Board on appeal but remain binding on the parties. (PERB Regs. 32215, 32300, subd. (c); *County of Orange* (2018) PERB Decision No. 2611-M, p. 2, fn. 2; *City of Torrance* (2009) PERB Decision No. 2004-M, p. 12.) As neither party excepted to the ALJ's

Based on our review of the proposed decision, the entire record, and relevant legal authority in light of the parties' submissions, we conclude that the ALJ's legal conclusions are well-reasoned and in accordance with applicable law. Accordingly, we affirm the proposed decision, as supplemented by the discussion below. Additionally, we modify the remedy to include a spoken notice reading by the District.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Chapter President's Actions

Margaret Caldera was CSEA's Chapter President at the District at all times relevant to this matter until January 2023.³ From June 2019 through January 2021, Caldera raised concerns to District management, the Board of Education, and the District Superintendent regarding Personnel Commission Director Israel Cobos and Assistant Superintendent of Human Resources Jill Rojas.

In August 2019, at a Personnel Commission meeting, Caldera made comments criticizing Cobos's handling of the pending appointment of a Personnel Commissioner. She continued to criticize his handling of the appointment throughout 2019 and into early 2020. In March 2020 she emailed Cobos regarding her concerns with a report he authored and demanded that CSEA be more involved in the process going forward.

Around the same time period, Caldera communicated with CSEA members regarding concerns about Rojas and encouraged members to take action. Specifically,

proposed remedy for the information request violation, we incorporate that remedy into our order.

³ We summarize facts relevant to our discussion, based on the ALJ's findings in the proposed decision.

between April and June 2020, Caldera encouraged CSEA members to write letters to the District's Board of Education demanding that the District bargain the effects of any policy changes due to the COVID-19 pandemic. She called CSEA members to encourage them to attend Board of Education meetings, to voice concerns about Rojas's handling of contract negotiations, and COVID-19 pandemic policies. She also directed CSEA to send a "Call to Action" e-mail message to CSEA and community members on June 15, 2020. In that email, she called on members to send e-mails to the Board of Education to hold Rojas accountable for policy mistakes and to encourage the Board to direct Rojas to settle negotiations of the parties' collective bargaining agreement (CBA).

Additionally, Caldera attended multiple Board of Education meetings to voice concerns. At the April 23, 2020 meeting she stated publicly that the District had derailed bargaining with CSEA and urged the Board of Education to direct the District to close the parties' contract.⁴ At the May 20, 2020 Board of Education meeting, Caldera reiterated this request and expressed concern about having District employees return to work while the statewide "Safer at Home" order was still in effect.⁵ During this time, Caldera continued to criticize Rojas, stating at the May 28, 2020

⁴ Around this same time, CSEA filed an unfair practice charge, case number LA-CE-6559-E, with PERB.

⁵ On March 19, 2020, the state of California issued statewide mandatory restrictions to help contain the COVID-19 virus outbreak. The "lockdown" order, labeled "Safer at Home," instructed Californians to stay at home, except for necessary travel to obtain food, prescriptions, health care, and commuting to jobs considered essential.

Board of Education meeting, that CSEA had misgivings about Rojas's conduct at the bargaining table and about Rojas's failure to address employees' COVID-19 concerns.

Caldera contacted Rojas and other District officials directly regarding her concerns about Rojas's failure to address safety concerns relating to the COVID-19 pandemic. On May 29 and June 1, 2020 she sent e-mail messages to Rojas, Assistant Superintendent Annie Bui, and the Board of Education, asking for clarity regarding certain CBA provisions and requesting that the District take steps to correct actions taken by Rojas.

In early June 2020, Caldera also filed a complaint with the California Division of Occupational Safety and Health (Cal/OSHA) describing concerns with the District's cleaning practices and reported Rojas's failure to disclose several positive COVID-19 cases. Caldera informed the Board of Education at the June 11, 2020 meeting that she had filed the Cal/OSHA complaint. At the same meeting, she reported that Rojas was failing to communicate positive COVID-19 cases, failing to enforce COVID-19 safety protocols, and refusing to bargain with CSEA over the effects of policy changes due to the COVID-19 pandemic.

In January 2021, CSEA took a vote of no confidence in Rojas, and Caldera reported this to both the Board of Education and Rojas herself. On January 9, 2021 Caldera sent an e-mail message to the Board of Education and Superintendent Dr. Alfonso Jimenez announcing CSEA's vote of no confidence in Rojas. Then, during a Board of Education meeting on January 14, 2021, Caldera read a letter that declared CSEA's vote of no confidence in Rojas.

II. The District's Response to Caldera's Actions

In March 2020, shortly after Caldera reported her concerns about the Personnel Commission appointment to management, Personnel Commission Director Cobos filed a complaint about Caldera. On March 20, 2020, Rojas notified Cobos that due to COVID-19, all current complaints were being placed on hold until school resumed. Then, on June 29, 2020, the District initiated an investigation into Caldera in response to that complaint. On June 29, 2020, Caldera met with Jeff Stewart from Stewart Investigative Services regarding Cobos's complaint. On October 8, 2020, Stewart's report was provided to the District's counsel. Caldera never officially received a copy of the report. The District issued Caldera a written notice of a Meeting to Discuss Unprofessional Conduct on February 24, 2021, and on March 2 issued Caldera a letter titled, "Notice of Investigatory Interview." Caldera met with Principal Collin Miller the next day.⁶ After the meeting, Miller provided Caldera with a Conference summary which indicated that the District determined that her criticisms of Cobos had violated the District's civility policy. The letter also directed Caldera to, among other things, abide by the District's civility policy and to keep the content of the March 3 meeting confidential, except as to her representative.

The District also initiated an investigation into Caldera based on complaints from Rojas and Bui. In July 2020 Rojas and Bui filed separate complaints that Caldera had interrupted committee meetings, called Rojas a liar, and acted in a hostile manner. The District did not initiate its investigation into these complaints until January

⁶ Miller was Caldera's immediate supervisor for her position of office assistant at Sparks Middle School.

22, 2021, when Jimenez issued Caldera a Notice of Workplace Investigation related to these complaints. On March 2, 2021, Caldera was issued a Notice of Investigatory Interview by Jimenez regarding written complaints filed against her.⁷ On April 15, 2021, Caldera met with outside investigator Alyssa Jarvis. Jarvis's investigation was related solely to meetings where Caldera was speaking in her capacity as a union president. Jarvis provided the District with her report on June 1, 2021 indicating, among other things, that Rojas's and Bui's claims of harassment and hostile work environment lacked merit.

As a result of the two investigations, Caldera continued to speak on behalf of CSEA at Board of Education meetings and Personnel Commission meetings, but the investigations impacted the manner in which she spoke at meetings. Fearing the District would terminate her if she continued to speak out, she decided not to seek reelection as Chapter President. As of January 2023, Caldera stepped down as Chapter President; she is currently the Chapter Vice-President.

On June 29, 2021, CSEA filed an information request related to its representation of Caldera during her investigations. CSEA did not receive the requested information.

III. Procedural History

CSEA filed an unfair practice charge related to the District's actions toward Caldera and its failure to provide requested information on September 2, 2021. The Office of General Counsel (OGC) issued a complaint on March 2, 2022, alleging that

⁷ This was a separate letter from the other March 2, 2021 Notice of Investigatory Interview related to Cobos's complaint.

the District violated Government Code section 3543.5, subdivision (a) by retaliating against Caldera because she engaged in protected activity and interfering with Caldera's right to representation by CSEA. The complaint also alleged that the District violated CSEA's right to represent employees in violation of Government Code section 3543.5, subdivision (b), and that the District's failure and refusal to meet and negotiate in good faith with CSEA regarding its information request violated Government Code section 3543.5, subdivision (c).

The ALJ held an eight-day formal hearing on July 20, 21, August 29, and November 3, 2022, and March 28, 29, 30, April 17, and June 12, 2023. Post-hearing briefs were submitted on August 21, 2023.

The ALJ issued a proposed decision on April 18, 2024, finding that the District violated EERA when it took adverse action against Caldera. The ALJ determined that Caldera's statements at Board of Education meetings and those made directly to District officials were made in her capacity as CSEA chapter president, representing bargaining unit members in labor relations with the District. The ALJ found that that Caldera did not disrupt the meetings, and that statements to District officials did not exceed protections afforded by EERA. Furthermore, the ALJ found that there was no evidence that Caldera's speech caused any substantial disruption or material interference in the workplace and that the District failed to carry its burden to prove that Caldera's speech lost its statutory protection at any point. The ALJ further determined that the District's March 2021 directives to Caldera interfered with protected rights. Finally, the ALJ found that the District violated EERA when it failed to timely provide the requested information to CSEA.

The District filed exceptions on May 28, 2024 and CSEA responded on July 8, 2024.

DISCUSSION

In resolving exceptions, the Board applies a de novo standard of review. (*Mt. San Jacinto Community College District* (2023) PERB Decision No. 2865, p. 17 (*Mt. San Jacinto*)). However, the Board need not address arguments that the proposed decision adequately addressed or arguments that would not affect the outcome. (*Ibid.*)

The Proposed Decision adequately addressed most of the arguments the District raises in its exceptions. The crux of the District's argument is that Caldera's actions and speech lost protection due to the manner in which she presented her complaints to certain District administrators, and that the ALJ was incorrect in holding that it took adverse action against Caldera based on a retaliatory motive. For the first time on appeal, the District argued that it was required under the Fair Employment and Housing Act (FEHA) to investigate Caldera's actions and issue directives to her.

I. CSEA Established Prima Facie Discrimination

The District disputes the ALJ's findings that Caldera's speech was protected and that it failed to prove its affirmative defense that it had a lawful, non-retaliatory motive for taking adverse action against Caldera. However, the ALJ correctly applied the test set forth in *Novato Unified School District* (1982) PERB Decision No. 210 (*Novato*) to determine that the District's actions violated EERA.

A. Caldera's Conduct Was Protected Under EERA

PERB considers a charging party's discrimination or retaliation claim under the framework set forth in *Novato* and its progeny. (*San Diego Unified School District*

(2019) PERB Decision No. 2634, p. 12 & fn. 6.) Under *Novato*, the charging party's prima facie case requires each of the following four elements: (1) one or more employees engaged in activity protected by a labor relations statute that PERB enforces; (2) the respondent had knowledge of such protected activity; (3) the respondent took adverse action against one or more employees; and (4) the respondent took the adverse action "because of" the protected activity, which PERB interprets to mean that the protected activity was a substantial or motivating cause of the adverse action. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 26; *City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 15 (*San Francisco*).) If the charging party establishes a prima facie case, and the evidence also reveals a non-discriminatory reason for the employer's decision, the respondent may prove, by a preponderance of the evidence, that it would have taken the exact same action absent protected activity. (*San Francisco, supra*, PERB Decision No. 2712-M, p. 15.) In such "mixed motive" or "dual motive" cases, the question becomes whether the adverse action would not have occurred "but for" the protected activity. (*Id.* at p. 16.)

Additionally, holding union office is itself activity protected under EERA sections 3543 and 3543.5. (*Visalia Unified School District v. Public Employment Relations Board* (2024) 98 Cal.App.5th 844, 863-870.) Serving as a union officer warrants particular protection because officers act as the union's face and risk disproportionate backlash and criticism. (*Id.* at p. 869.)

Here, Caldera was the CSEA chapter president from 2019 to 2021 and her actions in that capacity are the cause of the District's investigation and the reason that

the District issued its directives. Her speech criticizing District officials, and her actions encouraging CSEA members to engage in concerted activities related to District policies, were protected under EERA.

B. Caldera's Speech Did Not Lose Protection

PERB-administered statutes protect most union and employee speech related to legitimate labor and employment concerns. (*Mt. San Jacinto, supra*, PERB Decision No. 2865, p. 18.) Employees typically have a statutory right to criticize working conditions, management, or union leadership, if the criticism relates to advancing employee interests or is a logical extension of group activity. (*Ibid.*) Such speech does not lose protection merely because it is intemperate, disparaging, or inaccurate, or engenders ill feelings and strong responses, unless the employer meets its burden to prove such speech was maliciously dishonest or so insubordinate or flagrant as to create a substantial disruption or the serious risk thereof. (*Id.* at pp. 21-22.)

There are two tests for determining whether ostensibly protected speech has lost protection. (*Chula Vista Elementary School District* (2018) PERB Decision No. 2586, p. 18, fn. 9 (*Chula Vista*)). The first test applies when an employer claims that an employee has made a false criticism. (*Ibid.*) This has been referred to as a “content-based” test under which speech only loses protection if it is “maliciously false.” (*Ibid.*) The second test, a conduct-based one, looks to whether the employee engaged in face-to-face communications with an administrator in a manner that “was so opprobrious or disruptive to operations that it lost statutory protection.” (*Ibid.*)

Here, the ALJ adequately addressed these issues and properly applied both tests, finding that Caldera's speech was not maliciously false nor so opprobrious and

disruptive as to lose protection. The District disputes the ALJ's determination that Caldera's speech towards Cobos, Rojas, and Bui was protected but fails to present any evidence or argument to refute the ALJ's findings. As such, we leave these determinations undisturbed.

C. The District Took Adverse Action Because of Caldera's Protected Activity

The ALJ adequately addressed the second and third prongs of the *Novato* test, properly finding that the District had knowledge of Caldera's protected activity and that it took adverse action against her. Because the District did not file exceptions to these determinations, those conclusions are not before us here.

As to the fourth prong, PERB examines several factors when determining whether an employer took the adverse action "because of" the protected activity. While PERB considers all relevant facts and circumstances in assessing an employer's motivation, we have identified the following factors as being the most common means of establishing a discriminatory motive, intent, or purpose: (1) timing of the employer's adverse action in relation to the employee's protected conduct; (2) disparate treatment; (3) departure from established procedures or standards; (4) an inadequate investigation; (5) a punishment that is disproportionate based on the relevant circumstances; (6) failure to offer a contemporaneous justification, or offering exaggerated, questionable, inconsistent, contradictory, vague, or ambiguous reasons; (7) employer animosity towards union activists; and (8) any other facts that might demonstrate the employer's unlawful motive. (*San Francisco, supra*, PERB Decision No. 2712-M, p. 21.)

Here, the ALJ found the following circumstantial evidence indicative of retaliatory motive: (1) close temporal proximity between Caldera's protected activity (reading the letter of no confidence in Rojas) and the District's initiation of the investigation based on Bui's and Rojas's complaints and its issuance of the conference summary; (2) the District's departure from established past practice by delaying the conference summary meeting/memorandum for approximately five months from when the investigation report was issued (the District typically meets with an employee much sooner after the investigation report is issued); (3) the District's exaggerated justifications for taking action including its continued claims that Caldera's speech was false, harassing, and that it created a hostile work environment when its own investigator found those allegations lacked merit; and (4) the existence of contemporaneous unfair practices—the District's interference with protected conduct and its failure to provide necessary and relevant information—were clear indicators of anti-union animus. Accordingly, the ALJ properly found that circumstantial evidence showed a clear nexus between Caldera's protected conduct and the adverse actions taken against her.

As such, we affirm the ALJ's determination that CSEA established a *prima facie* case of retaliation and interference.

II. The District Failed to Establish an Affirmative Defense

Where an employer's words or actions reveal that adverse action was taken in response to the employee's protected activity, such conduct serves as direct evidence of unlawful motive. (*Chula Vista, supra*, PERB Decision No. 2586, pp. 26-27.) Here, the District does not deny that Caldera's protected activity was a basis for the

investigations and conference summary reprimand. However, the crux of the District's argument in its exceptions is that it had a legitimate non-retaliatory motive for taking adverse action against Caldera. The District argues that it had a legal duty to investigate employee complaints about Caldera, and it was this duty, and not retaliatory intent, that motivated its actions. However, as explained herein, that argument fails because the District had no legal duty, whether under its own policies or statute, to continue to investigate and reprimand Caldera after it was clear that the allegations were based on protected conduct.

In its exceptions, the District argues that it had a duty under FEHA and District policies to investigate employee complaints against Caldera. This argument fails for two reasons. First, the District failed to raise any FEHA-based defenses at hearing or in its post-hearing brief before the ALJ, and, therefore, has waived any such defenses. Second, any defense based on FEHA or District policy fails because the District conducted its investigation without considering whether Caldera's activity was protected under EERA or whether Caldera lost statutory protection by how she engaged in the activity.

A. Waiver of FEHA Defense

It is a well-established rule of administrative appellate procedure that a matter never raised before the trial judge is not properly reviewed by the appellate tribunal on appeal. (*Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C, p. 12 citing *Colusa Unified School District* (1983) PERB Decision No. 296, p. 4.) Thus, the Board generally declines to review a party's exception raising an issue it failed to present to the ALJ. (*Los Angeles County Superior Court, supra*, p. 12.) Where a

party's post-hearing brief fails to include any arguments supporting application of a certain standard, an exception asserting that that standard should apply is not properly before the Board, and the Board is not required to review it. (*Ibid.*)

Here, the District failed to assert FEHA as a defense at hearing or in its closing briefs.⁸ As such, we determine this defense waived.

B. No Lawful Alternative Motive for Taking Adverse Action

Even if it had not waived a FEHA-based defense, the District fails to establish that FEHA would justify its adverse actions against Caldera. This is because the District cannot establish that it had a lawful alternative motive for taking adverse action against her.

As previously discussed, where a *prima facie* case is established, and the evidence also reveals a non-discriminatory reason for the employer's decision, the respondent may prove, by a preponderance of the evidence as an affirmative defense, that it would have taken the exact same action even absent protected activity. (*San Francisco, supra*, PERB Decision No. 2712-M, p. 15.) As stated before, in "mixed motive" or "dual motive" cases, the question becomes whether the adverse action would not have occurred "but for" the protected activity. (*Id.* at p. 16.) That is, the respondent may still prove, by a preponderance of the evidence, that it would have taken the same action even absent protected activity. (*Palo Verde Unified School*

⁸ The District's closing brief did include one line which, in passing, listed Government Code section 12940 along with other statutes. But it strains credulity that such a fleeting mention of FEHA could be construed an assertion of an affirmative defense under that statute.

District (2013) PERB Decision No. 2337, p. 12-13; *McPherson v. Public Employment Relations Bd.* (1987) 189 Cal.App.3d 293, 304.)

While the District did not assert a FEHA defense at hearing, it did argue that it had a duty under its civility policy to initiate investigations into Cobos, Rojas, and Bui's allegations. The ALJ addressed this argument in the Proposed Decision, finding that it was obvious the allegations against Caldera were for actions that were protected. The ALJ further determined that, knowing this, the District nonetheless continued conducting investigations of Caldera, interviewing her twice as part of those investigations, issuing findings that Caldera had violated District policy, and reprimanding Caldera about her actions in writing via a conference summary. The ALJ specifically found that the District did not violate EERA by merely initiating its investigation into Caldera's conduct, but rather, it violated EERA because it continued the investigations and issued a conference summary after it was clear the allegations were based on protected conduct.

The District relies on *Regents of the University of California* (2012) PERB Decision No. 2302-H (*Regents*) to justify its conduct, but that reliance is misplaced. *Regents* is distinguishable from this case because, unlike Caldera, the employee in *Regents* had a long history of work performance issues prior to engaging in any protected activity. (*Id.*, adopting proposed decision at pp. 32-33.) In that case, the employee's protected activity was alleged to have been one of the reasons for adverse action, but the employer could show that the employee had failed to follow direct orders on multiple occasions and had inappropriately challenged his supervisors about assigned tasks. (*Ibid.*) In neither example was protected activity at issue and the

employer was able to establish that it had a legitimate basis for taking adverse action. (*Ibid.*) Here, by contrast, all of Caldera's conduct underlying the District's adverse action was EERA-protected activity. The District failed to rebut the ALJ's determination that all activity at issue was protected. Therefore, the District's claims of legitimate motive based on its civility policy were pretextual, and it failed to prove its affirmative defense. Based on this rationale, the District's claims of legitimate motive based on FEHA were similarly pretextual.

III. Remedy

The Legislature has vested PERB with broad authority to decide what remedies are necessary to effectuate the purposes and policies of EERA and the other acts we enforce. (EERA, § 3541.5, 1st par. & subd. (c); *Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178, 189.) PERB remedies must serve the dual purposes of compensating for harms that an unfair practice causes and deterring further violations. (*County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053, 1068; *The Accelerated Schools* (2023) PERB Decision No. 2855, p. 16 (*Accelerated Schools*); *Bellflower Unified School District* (2022) PERB Decision No. 2544a, p. 26.) Our de novo review on exceptions to a proposed decision includes review of the proposed remedy. (*Accelerated Schools, supra*, pp. 16-31).)

PERB orders spoken notice if customary notice methods, in combination with other remedies, are insufficient. (*Mt. San Jacinto, supra*, PERB Decision No. 2865, p. 42; *Regents of the University of California* (2021) PERB Decision Number 2755-H, p. 56.) Notice reading is a way to let in a warming wind of information to not only alert

employees to their rights but also impress upon them that, as a matter of law, their employer or union must and will respect those rights in the future. (*Mt. San Jacinto, supra*, pp. 42-43, citing *Noah's Ark Processors, LLC D/B/A WR Reserve* (2023) 372 NLRB 80, p. 6, citations omitted.)⁹

Here, such a remedy is necessary given the District's egregious violations, the District's power to control terms and conditions of employment, and the economic dependence of employees on the District as their employer. When an employee is acting in his or her capacity as a union official in collective bargaining, investigating or presenting grievances or administering agreements with the employer, the employer is not authorized to pull rank and threaten to use its disciplinary process for official acts taken on behalf of the union. (*Santa Clara Valley Water District* (2013) PERB Decision No. 2349-M, p. 23 and cases cited therein; *State of California (Department of Corrections & Rehabilitation)* (2012) PERB Decision No. 2285-S, pp. 11-13, 17.) While EERA does not immunize employees from investigations or discipline simply because they are union officials (*Moreland Elementary School District* (1982) PERB Decision No. 227, p. 16), neither does it permit an employer to resort to self-help to discipline or

⁹ Although California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, PERB considers federal precedent for its potential persuasive value. (*Operating Engineers Local Union No. 3, AFL-CIO (Wagner et al.)* (2021) PERB Decision No. 2782-M, p. 9, fn. 10; *City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 47, fn. 16; *City of Commerce* (2018) PERB Decision No. 2602-M, pp. 9-11.) As noted, PERB's touchstone in assessing non-standard remedies is whether customary remedies are adequate. While this standard overlaps with the National Labor Relations Board's approach, it may or may not turn on the severity of the violation.

threaten discipline against the Union, even when it engages in unlawful conduct. (*International Brotherhood of Electrical Workers v. City of Gridley* (1983) 34 Cal.3d 191, 196-206; *Santee Elementary School District* (2006) PERB Decision No. 1822; *San Marcos Unified School District* (2003) PERB Decision No. 1508; *Rio Hondo Community College District* (1983) PERB Decision No. 292.) That is, the employer's investigative and disciplinary proceedings are available for dealing with employees, but self-help is not an option for the employer to deal with those same individuals in their capacities as union officers.

The remedy in the Proposed Decision in this matter does not fully restore the status quo, as Caldera declined to run for chapter president out of fear of additional retaliation from the District. Although she is currently the Chapter Vice-President, the District's pervasive retaliatory conduct may have harmed Caldera's reputation in a way which could impact her ability to run for chapter president in the future. Moreover, the District's conduct could leave employees chilled by the District's retaliatory acts. This case therefore calls for a non-standard remedy.

We supplement the remedy to include a verbal reading of the notice posting by District Superintendent Jimenez to those District employees in Caldera's bargaining unit. Such an order is needed here to blunt the impact of the District's unlawful conduct, which may otherwise persist. We direct that the District shall conduct the reading in a manner designed to reach the most employees possible, and that the District shall allow a CSEA representative to be present.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that Hacienda La Puente Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a) and (b), by (1) initiating and conducting investigations against an employee who serves as Chapter President for the California School Employees Association-Chapter 115 (CSEA); (2) failing to immediately stop its investigations after acquiring information that they were based on the employee's protected activity; (3) concluding that the employee's protected speech violated the District's civility policy; and (4) threatening corrective action. The District also violated the above subdivisions of EERA by issuing the employee a directive not to discuss the investigation with employees and a directive to follow the District civility policy and be professional in all communications to District employees and officials. The District also unreasonably refused to provide information to CSEA and refused to meet and negotiate in good faith with CSEA regarding its information request, in violation of Government Code section 3543.5, subdivision (c).

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

A. CEASE AND DESIST FROM:

1. Retaliating against employees for exercising rights under EERA.
2. Interfering with or harming rights guaranteed to employees under EERA.

3. Interfering with CSEA's right to represent bargaining unit employees.

4. Failing or refusing to meet and negotiate in good faith with CSEA by failing or refusing to provide, or unreasonably delaying the provision of, information that is necessary and relevant.

5. Failing or refusing to meet and negotiate in good faith with CSEA regarding potential accommodations for CSEA-requested release of information.

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

1. Rescind and expunge from all files it maintains regarding Caldera the October 8, 2020 Investigative Report, February 24, 2021 Meeting to Discuss Unprofessional Conduct, March 2, 2021 Notice of Investigatory Interview, March 3, 2021 Conference Summary Memorandum containing a confidentiality directive, January 22, 2021 Notice of Workplace Investigation, March 2, 2021 Notice of Investigatory Interview, and April 15, 2021 Investigation Report.

2. Inform CSEA and Caldera in writing that it deems the complaints filed on or about March 6, 2020; July 28, 2020; and July 29, 2020 to have been formally withdrawn.

3. Upon request, meet and negotiate with CSEA about any additional information outstanding, and provide CSEA with the requested information deriving from such agreement after concluding such meeting and negotiating with CSEA.

4. Within 10 workdays following the date this decision is no longer subject to appeal, post at all work locations where notices to employees in classified

bargaining unit are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means used by the CSEA to communicate with classified employees. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.¹⁰

5. Within 60 workdays after this decision is no longer subject to appeal, or, at the request of the CSEA, to coincide with the beginning of the semester, hold a meeting or meetings, scheduled to ensure the widest possible attendance, at which the attached Notice (the Appendix) is to be read aloud by District Superintendent Alfonso Jimenez to CSEA-represented employees in Caldera's bargaining unit. A CSEA representative shall be allowed to attend the meeting or meetings.

6. Notify the Office of General Counsel (OGC) of the actions the District has taken to comply with this Order by providing written reports as directed by OGC and concurrently serving such reports on CSEA.

Members Paulson and Nazarian joined in this Decision.

¹⁰ Either party may request that the Office of General Counsel (OGC) 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. (*City and County of San Francisco* (2023) PERB Decision No. 2858-M, p. 19, fn. 10.)

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



After a hearing in Unfair Practice Case No. LA-CE-6653-E, *California School Employees Association-Chapter 115 v. Hacienda La Puente Unified School District*, in which all parties had the right to participate, it has been found that the Hacienda La Puente Unified School 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. Retaliating against employees for exercising rights under EERA.
2. Interfering with or harming rights guaranteed to employees under EERA.
3. Interfering with CSEA's right to represent bargaining unit employees.
4. Failing or refusing to meet and negotiate in good faith with CSEA by failing or refusing to provide, or unreasonably delaying the provision of, information that is necessary and relevant.
5. Failing or refusing to meet and negotiate in good faith with CSEA regarding potential accommodations for CSEA requested release of information.

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

1. Rescind and expunge from all files it maintains regarding Caldera the October 8, 2020 Investigative Report, February 24, 2021 Meeting to Discuss Unprofessional Conduct, March 2, 2021 Notice of Investigatory Interview, March 3, 2021 Conference Summary Memorandum containing a confidentiality directive, January 22, 2021 Notice of Workplace Investigation, March 2, 2021 Notice of Investigatory Interview, and April 15, 2021 Investigation Report.
2. Inform CSEA and Caldera in writing that it deems the complaints filed on or about March 6, 2020; July 28, 2020; and July 29, 2020 to have been formally withdrawn.

3. Upon request, meet and negotiate with CSEA about any additional information outstanding, and provide CSEA with the requested information deriving from such agreement after concluding such meeting and negotiating with CSEA.

Dated: _____

HACIENDA LA PUENTE UNIFIED SCHOOL
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.