STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA STATE UNIVERSITY EMPLOYEES UNION, Charging Party, v. TRUSTEES OF THE CALIFORNIA STATE UNIVERSITY (STANISLAUS), Respondent.	Case No. SA-CE-427-H PERB Decision No. 2940-H January 31, 2025

Appearances: Weinberg Roger & Rosenfeld by Kerianne Steele and Ailyn Gonzalez, Attorneys, for California State University Employees Union; California State University Chancellor's Office, by Diva M. Sanchez, Attorney, for Trustees of the California State University (Stanislaus).

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on California State University Employees Union's (CSUEU) appeal of the dismissal of its unfair practice charge against Trustees of the California State University, Stanislaus. CSUEU's charge alleged that the University violated the Higher Education Employer-Employee Relations Act (HEERA) when it refused to provide the union with a copy of a report on the University's investigation of a peace officer's alleged harassment of a CSUEU-represented employee.[1] PERB's Office of

[1] HEERA is codified at Government Code section 3560 et seq.

the General Counsel (OGC) determined that the report was confidential pursuant to Penal Code section 832.7, and that the University could not provide it except through the discovery process described in Evidence Code sections 1043 and 1046. On this basis, OGC concluded that the report was not disclosable through HEERA's request-for-information process and dismissed the charge.

On appeal, CSUEU argues that Penal Code section 832.7 should not be read to strictly prohibit disclosure of information that is necessary and relevant to the union's representational duties. Instead, CSUEU argues, privacy interests must be balanced against the union's broad right to information under HEERA. CSUEU further argues that, because of their representational duties, exclusive representatives should not be held to the same standards and procedures for disclosure as members of the general public.

We find that the University did not violate HEERA by refusing to furnish the investigation report in response to CSUEU's request for information. Confidential peace officer personnel records may only be disclosed to an exclusive representative in accordance with Penal Code section 832.7. Where, as here, the exclusive representative seeks information outside the context of any pending proceeding where section 832.7's safeguards can be maintained, meeting and conferring would be futile. We therefore affirm OGC's dismissal of the unfair practice charge.

FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

CSUEU is the exclusive representative of CSU employees in Unit 7, the Clerical/Administrative Support Services bargaining unit, including Dispatchers.

Erin Salcedo was a Dispatcher at the University, and in that capacity worked closely with peace officers in the University Police Department (UPD). UPD peace officers are in a separate bargaining unit represented by a different organization, the Statewide University Police Association (SUPA).

In or around December 2022, Salcedo submitted a formal complaint to the University alleging harassment, disparate treatment, and hostile work environment caused by the acts of a peace officer in the SUPA bargaining unit. The Stanislaus County Sheriff's Department (SCSD) investigated the allegations and created a report. SCSD provided the investigation report to the University Chief of Police, and thereafter the Chief of Police forwarded it to University human resources representatives. The University notified Salcedo on or about February 2, 2023 that her allegations were not sustained.

On or about August 8, 2023, CSUEU submitted a request for information seeking, among other things, a copy of the investigation report.

On or about August 10, 2023, Paul Norris, University Executive Director for Equity Programs and Compliance and Interim Senior Associate Vice President, responded to CSUEU by e-mail. Norris stated that "per California Penal Code Section 832.7, [the University is] precluded from distributing copies of SCSD's report on the matter, absent a court order." Counsel for CSUEU responded on December 14, asserting that "CSU must agree to meet and confer over any confidentiality concerns involved in providing the report. A failure to do so would present a basis for an unfair practice charge."

On January 12, 2024, the University, through Guillermo Santucci, University Assistant Director of Systemwide Labor Relations, again stated that it would not provide the investigation report due to Penal Code section 832.7. CSUEU replied through counsel on January 25, "CSU has an obligation to balance CSUEU's interest in the information with the interests of the peace officer(s) that are outlined in [the Public Safety Officers Procedural Bill of Rights, Government Code section 3300 et seq.]. CSU has a duty to meet and confer with us over methods to address its confidentiality concerns. A flat denial, which is what you've written below and which CSU has stated verbally too, is unlawful. Make a proposal to us to address your confidentiality concerns (i.e., redaction, a protective order)."

On March 18, 2024, CSUEU filed its unfair practice charge alleging that the University violated HEERA when it refused to furnish the investigative report or meet and confer with the union to address any confidentiality concerns. On May 29, OGC sent CSUEU a Warning Letter, advising that the allegations did not state a prima facie case and providing a deadline to amend the charge. On June 6, counsel for CSUEU sent an e-mail to the Board agent stating that it would not be filing an amended charge and would appeal the dismissal. On June 12, OGC dismissed the charge for the reasons described in the Warning Letter. On July 2, CSUEU filed the instant appeal.

DISCUSSION

In an appeal of a dismissal, we review OGC's decision de novo, applying the same legal standard OGC applied to the allegations in the charge. (*City and County of San Francisco* (2020) PERB Decision No. 2712-M, p. 2.) At this stage of litigation, "the charging party's burden is not to produce evidence, but merely to allege facts that, if

proven true in a subsequent hearing, would state a prima facie violation." (*County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 13, fn. 8.) We thus assume the charging party's factual allegations are true, and we view them in the light most favorable to the charging party. (*Cabrillo Community College District* (2019) PERB Decision No. 2622, p. 4.)

We first discuss the general law on exclusive representatives' right to information, including where confidentiality concerns are present in the disclosure of certain information. We then discuss the statutory scheme governing the confidentiality and disclosure of peace officer personnel records. Lastly, we explain how these principles interact in the context of an unfair practice charge alleging that an employer unlawfully refused an information request involving peace officer personnel records. We conclude that an employer does not violate HEERA when it refuses to provide confidential peace officer personnel records to an exclusive representative outside of a legal or administrative proceeding in which the judge or hearing officer orders disclosure in accordance with Evidence Code sections 1043 and 1045.

I. Exclusive Representatives' Right to Information

An exclusive representative is presumptively entitled to information that is necessary and relevant in discharging its representational duties or exercising its right to represent bargaining unit employees regarding terms and conditions of employment within the scope of representation. (*Contra Costa Community College District* (2019) PERB Decision No. 2652, pp. 16-17; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 17 (*Petaluma*).) In this

context, the terms “necessary” and “relevant” do not have separate meanings. (*Petaluma*, *supra*, PERB Decision No. 2485, p. 21.) PERB uses a liberal, discovery-type standard, like that used by the courts, to determine relevance. (*Id*. at p. 17.)

In *City of Redding* (2011) PERB Decision No. 2190-M, the Board held that investigatory reports relating to hostile work environment claims impacting bargaining unit members are presumptively relevant. (*Id*. at p. 2.) If such reports contain private information of third parties, the Board applies a balancing test that weighs a union’s need and interest in obtaining the information against the employer or third party’s privacy and confidentiality interests. (*Ibid.*)

Typically, an employer may not flatly refuse to provide information based on privacy concerns. Doing so “convert[s] the applicable procedure from a two-way negotiation to a unilateral decision.” (*Sacramento City Unified School District* (2018) PERB Decision No. 2597, p. 13.) Rather, the parties must meet and confer in good faith to reach an accommodation. (*Id.* at p. 12.) Appropriate accommodations for private information include redactions, and arrangements to limit using materials for a given arbitration or negotiation and to prohibit public disclosure. (*Id.* at pp. 12-13.)

Because an exclusive representative has a greater right to information than members of the general public, defenses to disclosure under the California Public Records Act (CPRA, Gov. Code, § 6250 et seq.) do not automatically apply to a request for information under a collective bargaining statute. (*County of Tulare* (2020) PERB Decision No. 2697-M, p. 14, fn. 9.) Thus, for example, a union may obtain a public entity’s internal deliberative records relating to its obligations under California

labor law. (*Ibid.*) But a union may not obtain information concerning an employer's bargaining strategies, unless the need for disclosure outweighs the employer's confidentiality interest. (*Ibid.*; *Pasadena Area Community College District* (2022) PERB Order No. Ad-490, p. 12.)

II. Confidential Peace Officer Personnel Records and *Pitchess* Motions

In *Pitchess v. Superior Court* (1974) 11 Cal.3d 531, a criminal defendant was charged with committing battery against four deputy sheriffs. The defendant claimed that he acted in self-defense in response to the use of excessive force by the deputies, and he sought to discover evidence of their "propensity for violence." (*Id.* at p. 534.) Specifically, he sought records of several investigations conducted by the sheriff's internal unit investigating citizen complaints of excessive force by the deputies in the past. (*Ibid.*) The California Supreme Court held that criminal defendants had a limited right to discover from a police officer's employing agency the existence of any previous complaints about the officer's use of excessive force. (*Id.* at pp. 537-538.)

In 1978, the Legislature enacted a set of discovery statutes in response to the Court's opinion in *Pitchess*. As summarized by the Court in a later case:

> "Under the *Pitchess* statutes, a public entity that employs peace officers must investigate and retain citizen complaints of any officer misconduct, such as the use of excessive force. (Pen. Code, § 832.5.) Litigants, upon a showing of good cause, are given limited access to records of such complaints and investigations (Evid. Code, §§ 1043, 1045), but such records are otherwise 'confidential' and may 'not be disclosed' (Pen. Code, §§ 832.7, subd. (a), 832.8, subd. (e)). Also protected as 'confidential' are '[p]eace officer . . . personnel records' and 'information obtained from these records.' (*Id.,* §

> 832.7, subd. (a).) Such 'personnel records' include an officer's personal and family information, medical history, election of benefits (*id.,* § 832.8, subds. (a), (b) & (c)), as well as matters related to the officer's 'advancement, appraisal, or discipline' (*id.,* subd. (d)). In addition, confidentiality applies to any information that 'would constitute an unwarranted invasion of [a peace officer's] personal privacy.' (*Id.,* § 832.8, subd. (f).)"

(*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 68.) These statutes "reflected the Legislature's attempt to balance a litigant's discovery interest with an officer's confidentiality interest." (*Riverside County Sheriff's Dept. v. Stiglitz* (2014) 60 Cal.4th 624, 639.)

Most relevant to this case is Penal Code section 832.7, which provides that "the personnel records of peace officers and custodial officers and records . . . or information obtained from these records, are confidential and shall not be disclosed in any criminal or civil proceeding except by discovery pursuant to Sections 1043 and 1046 of the Evidence Code." (Pen. Code, § 832.7, subd. (a).)

As interpreted by the courts, Penal Code section 832.7's statement that certain records "are confidential," "establishes a general condition of confidentiality" for specified information. (*City of Hemet v. Superior Court* (1995) 37 Cal.App.4th 1411, 1427.) "The following clause, relating to disclosure in judicial proceedings, merely creates a *limited exception* to the general principle of confidentiality." (*Ibid.*, emphasis in original.) Thus, section 832.7 applies "beyond criminal and civil proceedings," and cannot be circumvented by third parties invoking CPRA. (*Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, 1286.)

Evidence Code sections 1043 and 1045 establish procedures for discovery of records or information covered by Penal Code section 832.7. Section 1043, subdivision (b) requires a party seeking the records to file a noticed motion including "all of the following:" "(1) Identification of the proceeding in which discovery or disclosure is sought, the party seeking discovery or disclosure, the peace or custodial officer whose records are sought, the governmental agency that has custody and control of the records, and the time and place at which the motion for discovery or disclosure shall be heard. (2) A description of the type of records or information sought. (3) Affidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records." The employing agency must "immediately" notify the peace officer whose records are sought upon receipt of the motion. (Evid. Code, § 1043, subd. (c).)

As noted by the Supreme Court, "[a] finding of 'good cause' under section 1043, subdivision (b) is only the *first* hurdle in the discovery process." (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 83, emphasis in original.) Next, the court ruling on the motion must examine the records in camera and exclude from disclosure both "the conclusions of any officer investigating a complaint," and facts "that are so remote as to make disclosure of little or no practical benefit." (Evid. Code, § 1045, subd. (b).) Finally, the court "shall" order that any records disclosed "may not be used for any purpose other than a court proceeding pursuant to applicable law." (Evid. Code, § 1045, subd. (e).)

These same procedures apply in administrative proceedings, including arbitrations governed by collective bargaining agreements. (*Stiglitz*, *supra*, 60 Cal.4th 624, 628.) In such cases, the arbitrator is empowered to conduct the in camera document review and rule on the motion. (*Id.* at p. 647.) A PERB administrative law judge (ALJ) plays the same role when a party files a *Pitchess* motion as part of litigating a PERB case before an ALJ. (*County of Santa Clara* (2018) PERB Decision No. 2613-M.) However, as explained further below, there is no such process available in the present circumstances.

III. An Employer has no Duty to Provide Peace Officer Personnel Records Except through the *Pitchess* Process

In its appeal, CSUEU asks us to harmonize HEERA with Penal Code section 832.7 and hold that an employer may not flatly refuse to furnish copies of peace officer personnel records, but instead must meet and confer over ways to ameliorate confidentiality concerns.[2] Indeed, as discussed *ante* in section I, PERB has repeatedly affirmed that an employer may not flatly refuse to provide information on the basis of privacy concerns, or unilaterally determine how to address privacy concerns. However, because of the unique statutory scheme governing peace officer personnel records, a different procedure must be followed where Penal Code section 832.7 is the source of the confidentiality concern. As we will explain, an exclusive representative may obtain such information pursuant to its representational duties, but only if it effectively complies with Evidence Code sections 1043 and 1045. Because

[2] CSUEU does not dispute that the investigation report is a personnel record covered by Penal Code section 832.7.

compliance is only possible in the context of a pending hearing, such as a grievance arbitration—where a hearing officer is empowered to determine good cause and materiality, and to review documents in camera—no violation is established in this case.

We first observe that, if CSUEU had requested copies of the investigative report as part of prosecuting a case before an arbitrator, ALJ, or court, there is no doubt that Penal Code section 832.7 would require it to comply with Evidence Code sections 1043 and 1045. Courts have repeatedly held that these provisions "constitute the *exclusive* means by which a litigant *in a civil action* may obtain discovery of records governed by those statutes." (*City of Hemet*, *supra*, 37 Cal.App.4th 1411, 1423, citing cases, emphasis in original.) As noted above, the same procedures apply in administrative hearings, including arbitrations governed by collective bargaining agreements. (*Stiglitz*, *supra*, 60 Cal.4th 624, 628.)

Thus, if CSUEU had filed a grievance and proceeded to arbitration over the conduct Salcedo complained of, CSUEU could file a motion pursuant to Evidence Code section 1043 seeking a copy of the investigative report. The University would be required to immediately notify the peace officer who was the subject of the investigation. The arbitrator would make a determination on CSUEU's good cause to obtain the records and their materiality to the dispute; we assume in a case such as this that CSUEU's representational duties would allow it to easily satisfy those requirements. (See *City of Santa Cruz*, *supra*, 49 Cal.3d 74, 84 [noting the "relatively relaxed standards for a showing of good cause under section 1043"].) The arbitrator would then conduct in camera review of the documents and apply the guidelines set

forth in section 1045, "guarantee[ing], in turn, a balancing of the officer's privacy interests against the defendant's need for disclosure." (*Ibid.*)

But here, CSUEU did not request the investigation report in the context of any pending action before a hearing officer. Rather, as explained by CSUEU in a December 14, 2023 letter to the University, it sought the investigation report "in light of concerns regarding disparate treatment between CSUEU-represented employees and SUPA-represented employees, among other concerns." We agree that the information sought is plainly necessary and relevant to CSUEU's representational duties, even outside the context of a pending action. (*City of Redding*, *supra*, PERB Decision No. 2190-M, p. 2.) We must therefore consider Penal Code section 832.7's impact on CSUEU's right to receive the information.

First, we note that, on its face, section 832.7 appears to set forth disclosure procedures only applicable to criminal and civil proceedings. Several courts have considered whether, therefore, the same procedures apply outside the litigation context.

In *Bradshaw v. City of Los Angeles* (1990) 221 Cal.App.3d 908, the Second District Court of Appeal interpreted Penal Code section 832.7 narrowly, reasoning that the statute's dictate that certain records are "confidential" was descriptive and prefatory to the ensuing language. Thus, peace officer personnel records "are confidential only in the sense that, as stated in the ensuing statutory language, such records, 'shall not be disclosed in any criminal or civil proceeding except by [appropriate judicial] discovery . . . .'" (*Bradshaw*, *supra*, 221 Cal.App.3d 908, 916.) It follows from this view that, "[s]ince the statute specifically refers only to restrictions on

disclosure in 'criminal or civil proceedings,' the statute thus does not prohibit a public agency from disclosing the records to the public." (*Ibid.*)

In a subsequent case, the Second District Court of Appeal took a different tack, though without referencing *Bradshaw*. A legal secretary in the office of a plaintiff's attorney petitioned under CPRA to compel disclosure of records of a county sheriff's office, after a court in a separate civil action alleging excessive force by sheriff's deputies denied that attorney's client's discovery motion for the same records under Evidence Code sections 1043 and 1045. (*County of Los Angeles v. Superior Court* (1993) 18 Cal.App.4th 588, 590-591.) As explained by the court, "the ultimate purpose of the [CPRA] request [was] to discover indirectly information of the kind governed by [the *Pitchess* statutes]." (*Id.* at p. 599.) The court observed that the *Pitchess* statutes "set forth detailed and careful procedures to assure that the sensitive information contained in records relating to allegations of police misconduct will be disclosed only upon a showing of manifest necessity. Such procedures would be nullified if . . . the same information, or information leading to it, could be obtained as a matter of right through the Public Records Act." (*Id.* at p. 600.) To avoid this result, the court concluded that CPRA "simply cannot be construed in a way that authorizes the circumvention of rulings of a court made pursuant to important discovery statutes protecting the confidentiality of law enforcement information." (*Ibid.*)

The First District Court of Appeal and the Fourth District Court of Appeal rejected *Bradshaw*'s interpretation of Penal Code section 832.7. In *City of Richmond v. Superior Court* (1995) 32 Cal.App.4th 1430, a newspaper brought an action under CPRA to compel a city to disclose records of investigations of citizen complaints

against the city's police department. (*Id.* at p. 1432.) The newspaper, relying on *Bradshaw*, argued that because it was not seeking discovery during a pending civil action, CPRA procedures, rather than the Evidence Code, applied to its request. (*Ibid.*) The trial court agreed and ordered the city to disclose its records for in camera review and to prepare a descriptive index. (*Id.* at p. 1433.)

On appeal, the First District Court of Appeal stated, "We disagree with *Bradshaw*'s suggestion that Penal Code section 832.7 did not establish the confidentiality of these records." (*City of Richmond*, *supra*, 32 Cal.App.4th 1430, 1439.) The court found that "the term 'confidential' in Penal Code section 832.7 has independent significance" from the discovery procedures also mandated by the statute. (*Id.* at p. 1440.) The court observed that "there is little point in protecting information from disclosure in connection with criminal and civil proceedings if the same information can be obtained routinely under CPRA." (*Ibid.*) The court agreed with the newspaper that, in principle, CPRA procedures applied. "By its terms, section 832.7 describes procedures for litigants in criminal and civil proceedings, not procedures for nonlitigants seeking public records." (*Ibid.*) However, section 832.7's confidentiality mandate meant that the records were exempt from disclosure under CPRA, as records for which disclosure "is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (Gov. Code, § 7927.705, formerly § 6254, subd. (k).)

The Fourth District Court of Appeal came to a similar conclusion in *City of Hemet*, *supra*, 37 Cal.App.4th 1411, holding that "'confidential,' in section 832.7 *means* 'confidential,'" and thus that covered records were exempt from disclosure

under CPRA. (*Id*. at pp. 1426-1427, emphasis in original.) The court, following *City of Richmond*, held, "[w]e agree that, in the abstract, CPRA may be used to request personnel records if no action or proceeding is pending. However, our decision, like that in *City of Richmond*, makes such a practice pointless." (*Id.* at p. 1427, fn. 16.)

The Supreme Court in *Copley Press*, *supra*, 39 Cal.4th 1272 disapproved of *Bradshaw*, and instead adopted the view of the courts of appeal in *City of Hemet*, *City of Richmond*, and other cases, that Penal Code section 832.7 applies beyond criminal and civil proceedings. (*Id.* at p. 1286.) The Court held, "We cannot conclude the Legislature intended to enable third parties, by invoking the CPRA, so easily to circumvent the privacy protection granted under section 832.7." (*Id.* at p. 1286.) At least partly on the basis of this concern, the Court concluded that section 832.7 protections rendered peace officer personnel records exempt from disclosure, under CPRA's exemption for records privileged under the Evidence Code. (*Id.* at pp. 1280, 1305, fn. 29, citing Gov. Code, § 6254, subd. (k), recodified at § 7927.705.)[3]

Returning to the matter before us, we are guided by these same concerns that Penal Code section 832.7's privacy protections could be circumvented if they did not apply in the context of a pre-dispute information request. (See *Copley Press*, *supra*, 39 Cal.4th 1272, 1286 and fn. 6; see also *County of Los Angeles*, *supra*, 18 Cal.App.4th 588, 600.) As discussed above, if CSUEU was prosecuting a grievance over Salcedo's claims, or an unfair practice hearing in which a peace officer personnel

[3] The Court also noted that, subsequent to *Bradshaw*, the Legislature had amended CPRA to expressly provide that Penal Code section 832.7 operated to exempt records from disclosure. (*Copley Press*, *supra*, 39 Cal.4th 1272, 1283, citing Gov. Code, § 6276.34, recodified at § 7930.180.)

record was arguably relevant to a discrimination claim or other charge, the union would need to comply with Evidence Code sections 1043 and 1045 to obtain a copy of the personnel record. The protections of section 832.7 would be undermined if CSUEU could avoid that process altogether through a request for information submitted before any action was pending before a hearing officer. In other words, PERB will not issue a complaint alleging failure to provide information merely as a mechanism to assign an ALJ and allow a *Pitchess* motion to be filed; such bootstrapping falls outside the substantive and procedural boundaries of the confidentiality exception explained in the above-referenced jurisprudence.

This is not to say that the investigation report is entirely exempt from disclosure under HEERA. In many cases, records covered by Penal Code section 832.7 will be necessary and relevant to a union's representational duties. In recognition of the fact that unions have greater rights to information than members of the general public, we hold that peace officer personnel records' exemption from disclosure under CPRA, especially Government Code section 7927.705, does not render them absolutely privileged under HEERA. (*County of Tulare*, *supra*, PERB Decision No. 2697-M, p. 14, fn. 9.) However, the procedures for disclosure under HEERA must maintain the balance that the Legislature struck with the *Pitchess* statutes. (See *Stiglitz*, *supra*, 60 Cal.4th 624, 639.) Although the procedures in Evidence Code sections 1043 and 1045 do not directly apply outside of a civil or criminal proceeding (see *City of Richmond*, *supra*, 32 Cal.App.4th 1430, 1440), they represent critical safeguards for peace officer personnel records under Penal Code section 832.7. We interpret HEERA to require the same level of protection. Compliance with these safeguards is impossible if there

is no pending proceeding where the requesting party may file a motion to establish good cause to receive and materiality of the records, and a hearing officer can conduct in camera review prior to disclosure. For this reason, we find that an exclusive representative is not entitled to receive records covered by Penal Code section 832.7 in the factual circumstances presented in this case. An exclusive representative may instead obtain such records by invoking Evidence Code section 1043 in any hearing or arbitration where they are material.

ORDER

The unfair practice charge in Case No. SA-CE-427-H is DISMISSED WITHOUT LEAVE TO AMEND.[4]

Chair Banks and Member Krantz joined in this Decision.

[4] On August 6, 2024, one day after filings were complete and the case was placed on the Board's docket, SUPA filed a petition to file an informational brief in this matter pursuant to PERB Regulation 32210. (Cal. Code Reg., tit. 8, § 32210.) In light of the Board's disposition of CSUEU's appeal, we exercise our discretion to deny SUPA's petition to file an informational brief.