



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

BERKELEY COUNCIL OF CLASSIFIED
EMPLOYEES,

Charging Party,

v.

BERKELEY UNIFIED SCHOOL DISTRICT,

Respondent.

Case No. SF-CE-3556-E

PERB Decision No. 2959

April 28, 2025

Appearances: Weinberg, Roger & Rosenfeld by Stewart Weinberg and Michaela Posner, Attorneys, for Berkeley Council of Classified Employees; Fagen Friedman & Fulfroost by Roy Combs and Lynn Wu, Attorneys, for Berkeley Unified School District.

Before Banks, Chair; Krantz and Krausse, Members.

DECISION¹

KRAUSSE, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Charging Party Berkeley Council of Classified Employees (BCCE) to a proposed decision of an administrative law judge (ALJ). The complaint alleged that Respondent Berkeley Unified School District violated the Educational Employment Relations Act (EERA) when it involuntarily

¹ PERB Regulation 32320(d) authorizes the Board to determine whether a decision, or any part thereof, shall be designated as non-precedential. Having considered the regulation's criteria, we designate the Factual and Procedural Background, Parts I and II of the Discussion, the Order, and the Appendix as non-precedential. Part III of the Discussion is precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

transferred bargaining unit employee Amber Spencer in retaliation for her protected activity.²

After a formal hearing, the ALJ issued a proposed decision finding that BCCE established its prima facie case that the District retaliated against Spencer because of her protected activity. The proposed decision also found, however, that the District established its affirmative defense that it would have taken the same action absent protected activity and dismissed the complaint. BCCE filed exceptions asking the Board to reverse the proposed decision, including reversal of the ALJ's determination regarding redaction of a proposed exhibit. The District filed no exceptions and urges us to affirm the ALJ's decision. Having reviewed the proposed decision, the entire record, and the parties' arguments, we affirm the ALJ's determination that BCCE proved a prima facie retaliation claim, but reverse the proposed decision's finding that the District established its affirmative defense. Accordingly, we find that the District violated EERA. Our reversal requires consideration of additional remedies proposed by BCCE, which we consider but decline to grant.

FACTUAL AND PROCEDURAL BACKGROUND*

DISCUSSION

I.-II.*

² EERA is codified at Government Code section 3540 et seq.

* See footnote 1, *ante*.

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. (Gov. Code, § 3541.5, 1st par. & (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; *Bellflower Unified School District* (2022) PERB Decision No. 2544a, p. 26.)

As part of the Board's standard remedies, we order the August 2, 2023 Involuntary Transfer letter and any other documents reflecting the involuntary transfer for "irreconcilable staff differences" to be removed from any files the District maintains pertaining to Spencer.

The Board's standard restorative and compensatory remedy in retaliation cases includes restoring the injured party to the position they would have been in but for the unfair practice. Moreover, the parties have stipulated that any reinstatement order would not cause displacement of the employee temporarily serving in the Executive Assistant I position supporting the Associate Superintendent of Educational Services. Thus, we will order that Spencer may elect to return to that position. To facilitate harmonious labor relations and a positive work environment, if Spencer opts to return to that former position, we will order that the parties, including Spencer and

Hoogendyk, first participate in a mediation presided over by the State Mediation and Conciliation Service, which will be provided at no cost to the parties.

PERB orders non-customary remedies, including spoken notice, if customary notice methods, in combination with other remedies, are insufficient. (*Mt. San Jacinto Community College District* (2023) PERB Decision No. 2865, p. 42; *Regents of the University of California* (2021) PERB Decision No. 2755-H, p. 56.)

Here, BCCE claims that the chill in the workplace caused by the District's conduct and the unnecessary damage to Spencer's reputation warrant a spoken notice remedy and a new remedy: required training for the District's staff. BCCE claims that because the unlawful conduct concerned an assistant superintendent, Hoogendyk, and a superintendent, Ford Morthel, the additional remedies will address violations at the highest level of District employment.

We are not persuaded that traditional remedies are insufficient. Removing the August 2, 2023 Involuntary Transfer letter and any other documentation reflecting the involuntary transfer from the District's files and reinstating Spencer, at her option, to her previous Educational Services position is fully restorative. Finally, while we decline to require training, we will require mediation if Spencer elects to return to her previous position, as discussed above.

ORDER*

APPENDIX*

Chair Banks and Member Krantz joined in this Decision.