STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SACRAMENTO CITY TEACHERS ASSOCIATION, CTA/NEA Charging Party, v. SACRAMENTO CITY UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-2961-E PROPOSED DECISION May 28, 2021

Appearances: California Teachers Association, by Jacob F. Rukeyser, Attorney, for Sacramento City Teachers Association, CTA/NEA; Lozano Smith by Travis J. Lindsey, Attorney, for Sacramento City Unified School District.

Before Katharine Nyman, Administrative Law Judge.

INTRODUCTION

An exclusive representative alleges a public school employer failed to meet and negotiate in good faith in violation of the Educational Employment Relations Act (EERA)[1] when it failed to timely provide necessary and relevant information upon request. The employer denies any violation of law.

PROCEDURAL HISTORY

On February 22, 2019, the Sacramento City Teachers Association, CTA/NEA, (SCTA) filed an unfair practice charge with the Public Employment Relations Board (PERB or Board) against the Sacramento City Unified School District (District).

[1] EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code, unless otherwise specified.

On April 2, 2019, the District filed a position statement in response to the charge.

On January 23, 2020, the PERB Office of the General Counsel issued a complaint alleging the District failed or refused to provide SCTA with requested information that is necessary and relevant to its representational duties. This conduct was alleged to violate EERA section 3543.5, subdivision (a), (b), and (c).

The District filed an answer to the complaint on February 13, 2020, denying the substantive allegations and asserting multiple affirmative defenses.

An informal settlement conference was held on June 30, 2020, but the matter was not resolved.

The parties participated in a virtual formal hearing on November 19, 2020 in Sacramento. At the start of the formal hearing, SCTA moved to amend the complaint to reflect 2019 dates instead of 2018 in paragraphs 3, 4, 5 and 6. The motion was granted without objection.

The case was submitted for decision on January 22, 2021, after receipt of post-hearing briefs.

FINDINGS OF FACT

Parties and Jurisdiction

SCTA is an exclusive representative within the meaning of EERA section 3540.1, subdivision (e), of the District's certificated employees. John Borsos (Borsos) is the Executive Director of SCTA, and David Fisher (Fisher) is the President.

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k). Jorge Aguilar (Aguilar) is the District's Superintendent and

Raoul Bozio (Bozio) is the District's In-House Counsel. Both Aguilar and Bozio are management employees within the meaning of EERA section 3540.1, subdivision (g).

SCTA and the District are parties to a collective bargaining agreement (CBA) addressing terms and conditions of employment for certificated employees in SCTA's bargaining unit. The CBA was set to expire in June 2019.

Background

In the fall of 2018, the District was facing significant financial issues including potential insolvency. In August, the Sacramento County Office of Education (SCOE), an independent agency tasked with reviewing Sacramento County school district budgets, rejected the District's budget citing projected shortfalls. As a result, SCOE appointed a fiscal advisor to work with the District on its budget and provide oversight and input into District economic and financial decisions.

In December 2018, Aguilar wrote to Fisher. The letter explained that SCOE provided guidance to the District of the importance of beginning negotiations with labor partners immediately given the District's budget situation. SCOE also directed the District to submit a "viable Board-approved budget and multi-year expenditure plan that will reverse the deficit spending trend." After receiving Aguilar's letter, Borsos emailed Bozio requesting the following information:

1. "Any and all correspondence (including but not limited to mail, email and text messages) between representatives of the District and SCOE related to collective bargaining between the District and its "labor partners" from January 1, 2018 to the present."

2. "Any and all correspondence, meeting notes and other documentation (including but not limited to mail, email and text messages) between representatives of the District and SCOE related to "direction" or other guidance and/or

> communication regarding the District budget from January 1, 2018 to the present."

Bozio responded to the information request on January 17, 2019. In his response, Bozio provided a copy of a January 14 letter sent to Aguilar from David W. Gordon (Gordon), SCOE Superintendent. The letter, with the subject "2018-2019 First Period Interim Report," asked the District to provide SCOE with "concrete calculations on valuations of additional budget reduction items as part of a completed budget reduction plan by January 22, 2019."

The Present Dispute

On January 15, 2019, the Governor issued a new State budget for the upcoming fiscal year. As a result, on January 23, Borsos emailed Bozio and Dr. John Quinto (Quinto), the District's Chief Business Officer, requesting "the new calculations regarding the District's budget (FCMAT calculator) based on the Governor's January 15, 2019 Budget."

The FCMAT calculator is a tool designed by the State's Fiscal Crisis and Management Assistance Team. It allows school districts, and the public, to calculate potential impacts a State budget might have on a school district's budget. Borsos testified that SCTA made the request to obtain certain numerical assumptions the District used to develop its budget, such as District prospective enrollment numbers.

Receiving no response from the District, Borsos sent a follow-up email on January 30.

On January 31, 2019, Bozio emailed Borsos a District-generated single-page spreadsheet titled "Changes in LCFF[2] Revenue based on Governor's Proposed Budget." Within minutes, Borsos responded to Bozio, stating that the spreadsheet provided was not what SCTA requested, and asking for the "FCMAT calculator spreadsheet" previously requested.

On February 13, 2019, Borsos emailed Aguilar, Quinto and Bozio. In his email, Borsos identified the January 14 letter from SCOE requesting "concrete calculations on valuations of additional budget reduction items as a part of a completed budget reduction plan by January 22, 2019." Borsos requested that the District provide SCTA with "the information [the District] provided to SCOE" in response to its January 22 request. Additionally, Borsos requested the District's "most recent FCMAT calculations in an excel format," stating that the District had, to date, refused to provide SCTA with the information.

On February 14, 2019, Borsos emailed Bozio and Quinto stating SCTA had still not received the District's "FCMAT calculator regarding its budget for 2019-20 and 2020-21."

Bozio responded collectively to both information requests on February 21, 2019. This email stated that with respect to SCTA's request for concrete calculations referenced in the January 14 SCOE letter, the District determined "that there are no responsive non-exempt District records to this request." In response to SCTA's January 23 request for the District's FCMAT calculations, Bozio believed the District

[2] LCFF stands for Local Control Funding Formula, a funding mechanism establishing uniform grade span grants through the California Department of Education.

had already provided responsive information on January 31. In response to SCTA's follow-up requests, Bozio provided the publicly available website link to the FCMAT calculator and a "snapshot" of the "Sacramento City Unified 2018-2019 Governor proposal." Bozio further instructed SCTA to clarify the information it was seeking, "should [it] be seeking particular data that is contained in District non-exempt records."

Within minutes, Borsos responded to Bozio, asking the District to clarify why it believed certain responsive records were exempt. Borsos told Bozio that the District had previously shared its FCMAT calculations "as [had] nearly every other District in the state, when a CTA local has requested," asking why the District was refusing to provide the requested information.

SCTA filed the present unfair practice charge on February 22, 2019. On March 1, Bozio responded to Borsos, addressing both requests. Regarding SCTA's request for the FCMAT calculations, Bozio provided an additional description of the FCMAT calculator tool. Bozio stated that the "District Business Department and the SCOE appointed fiscal advisor have now thoroughly reviewed the requested 'FCMAT Calculations', and the SCOE fiscal advisor has approved the sharing of these documents." In response to SCTA's request for the concrete valuations the District was asked to provide to SCOE, Bozio clarified the District's determination that it had no responsive non-exempt records. Bozio stated:

> "The District possess no identifiable responsive documents to this request because the request is vague, ambiguous, and overbroad with regard to the description of the information requested. To the extent SCTA is seeking to obtain various budget options and calculations that are currently being considered and discussed between the District and SCOE, such would not constitute final records that would qualify for production as non-exempt responsive

> records. Any such information would clearly constitute draft material that contain the deliberative processes and work product of the District and SCOE, rather than regular finalized records that are subject to disclosure under the CPRA[3] or EERA. (See Government code 6254(a), 6254(k), and 6255.) Providing such information would not serve a public interest nor be necessary and relevant to SCTA's representation of its members. Therefore, the interests served by disclosure of any such information are clearly outweighed by the need to maintain confidentiality."

On March 27, 2019, Borsos sent Bozio another email, stating that the District had not provided its response to SCOE's January 14 letter. Bozio responded the following day providing a copy of a January 23 letter the District sent to SCOE. The January 23 letter included a timeline of the District's negotiations with its labor partners but did not include any concrete calculations for a budget reduction plan.

ISSUES

1) Did the District violate the duty to meet and confer in good faith by failing to timely respond to SCTA's January 23, 2019 request for information?

2) Should SCTA's allegation that the District violated the duty to meet and confer in good faith by failing to timely respond to SCTA's February 13, 2019 request for information be considered as an unalleged violation? If so, was there a violation?

CONCLUSIONS OF LAW

An exclusive representative is entitled to all information that is necessary and relevant to the discharge of its duty to represent bargaining unit employees. (*Petaluma City Elementary School District/Joint Union High School District* (2016)

[3] California Public Records Act (CPRA) is codified at Government Code sec 6250 et seq.

PERB Decision No. 2485 at p. 17 (*Petaluma City ESD*).) PERB uses a liberal, discovery-type standard similar to that used by the courts, to determine relevance. (*Id.* at p. 16.)

When a union requests relevant information, the employer must either fully supply the information or timely and adequately explain its reasons for not doing so, and the employer bears the burden of proof as to any defense, limitation, or condition that it asserts. (*Sacramento City Unified School District* (2018) PERB Decision No. 2597, citing *Petaluma City ESD*, *supra*, PERB Decision No. 2485, pp. 19, 24.) A party answering a request for information must exercise the same diligence and thoroughness as it would "in other business affairs of importance," and a charging party need not show that it suffered harm or prejudice as a result of a responding party's lack of care. (*Ibid*.)

Failing to provide necessary and relevant information upon request, absent a valid defense, is a per se violation of the duty to negotiate in good faith. (*Petaluma City ESD*, *supra*, PERB Decision No. 2485, pp. 19-20.) Even an unnecessary delay in providing such information constitutes a violation. (*Ibid*.) Thus, an employer that considers the request to be overly broad, burdensome, or ambiguous must still respond in a timely manner, either by attempting to comply, seeking clarification, or notifying the union of any concerns it has about producing the information. (*Id*., citing *UC Davis*, *supra*, PERB Decision No. 2101-H, pp. 35-36, *Keauhou Beach Hotel* (1990) 298 NLRB 702, and *Postal Serv.* (1985) 276 NLRB 1282, p. 1287; *Trustees of the California State University* (2004) PERB Decision No. 1597-H, p. 3 (*Trustees of the CSU*).)

The employer may raise bona fide objections to the form or the cost of the information requested. (*Los Rios Community College District* (1988) PERB Decision No. 670, pp. 12-13 (*Los Rios CCD*).) However, it must timely assert its objections to disclosure. (*Petaluma City ESD*, *supra*, PERB Decision No. 2485, p. 23; see also *Modesto City Schools and High School District* (1985) PERB Decision No. 479, p. 10.) In such instances, both parties must make a good faith attempt to resolve those objections in a mutually satisfactory way. (*Los Rios CCD*, *supra*, pp. 12-13; *Trustees of the CSU*, *supra*, PERB Decision No. 1597-H, p. 3)

The duty to supply requested information requires the same diligence and thoroughness exercised in other business affairs of importance. (*Petaluma City ESD*, *supra*, PERB Decision No. 2485, p. 19, citing *Compton Community College District* (1990) PERB Decision No. 790, adopting proposed dec., at p. 29 (*Compton CCD*) and *National Labor Relations Bd. v. Truitt Mfg. Co*. (1956) 351 U.S. 149, 153-154.) The fact that an employer eventually furnishes the requested information does not excuse an unreasonable delay. (*Petaluma City ESD*, p. 20, citing *Compton CCD*, p. 5, *Chula Vista City School District* (1990) PERB Decision No. 834, p. 51, and *K & K Transp. Corp., Inc*. (1981) 254 NLRB 722.) The reasonableness of the delay turns on the individual circumstances of each case. (*Petaluma City ESD*, p. 19.) However, the exclusive representative is not required to demonstrate that it was prejudiced to establish that the employer's delay in responding was unreasonable. (*Id*. at pp. 23-24.)

The January 23 Request

The District has not, at any point in time, disputed the relevance of the information SCTA requested in its January 23rd request. Nevertheless, SCTA's January 23 information request sought the District's FCMAT calculations or budget data. At the time SCTA made its request for information, the District was facing potential insolvency and entering negotiations with its labor partners, including SCTA. The Board has held that necessary and relevant information includes information regarding an employer's budget calculations because an employer's budget constraints have a direct bearing on the scope of collective bargaining. (See, e.g. *Children of Promise Preparatory Academy* (2018) PERB Dec. No. 2558, pp. 14, 24.) Based on PERB precedent, the information SCTA requested on January 23rd was necessary and relevant to the parties' negotiations.

Having determined that the requested information was relevant, the next question is whether the District complied with its obligations under EERA.

On January 23, 2019, Borsos first submitted his request for the District's FCMAT calculations to both Quinto and Bozio. Seven days later, on January 31, Borsos sent a follow-up email to Quinto and Bozio stating that SCTA had not yet received a response to its request. Bozio responded the following day, providing a single page spreadsheet titled "Changes in LCFF Revenue based on Governor's Proposed Budget." Borsos initially responded to Bozio within minutes, stating that the information provided by the District was not responsive to the request and asking for the District's "FCMAT calculator spreadsheet." Borsos then sent two additional follow up emails requesting the same information on February 13 and February 14. Twenty-

one days after Borsos' January 31 response, Bozio provided SCTA with an explanation of the FCMAT calculator tool, a link to the calculator itself, and a single page snapshot of the District's revenue data on February 21. After Borsos immediately objected to the information in the February 21 email, Bozio responded one week later, providing SCTA additional documents including some FCMAT calculations, stating that the "SCOE fiscal advisor [had] approved" the sharing of the documents after having thoroughly reviewed the requested information. In total, over five weeks elapsed between Borsos' initial January 23 information request and the District's first production of any FCMAT calculations.

The Board has previously held that an employer's six-week delay in responding to a request for information, without any contemporaneous explanation, is unreasonable. (*Petaluma City ESD*, *supra*, PERB Decision No. 2485.) Unlike in *Petaluma*, the District did not outright fail to respond for six weeks. Rather, the District engaged in a series of back-and-forth emails providing SCTA with various pieces of information. The issue is not whether the District failed to respond at all, but if it used the same diligence and thoroughness as it would in other business affairs of importance in its multiple responses. I find that it did not, for the following reasons.

SCTA's January 23 information request clearly sought the FCMAT calculations used to create the District's budget. Bozio's initial response for the District contained no FCMAT calculations. Bozio testified that when he initially received SCTA's request, he was not familiar with the FCMAT calculator. This conduct alone does not show a failure to use diligence and thoroughness in responding to an information request. However, after receiving the first follow-up email from Borsos, Bozio again

failed to provide SCTA with any FCMAT calculations. This repeated failure to provide information requested shows a failure to use appropriate diligence and thoroughness in responding to a request. If Bozio was unfamiliar with the FCMAT calculator, he could have asked other District personnel with relevant knowledge for assistance in providing a response. If Bozio remained unclear about the information SCTA was seeking, he could have sought clarification from Borsos directly. He did neither.

Following SCTA's second clarifying request, the District did provide some FCMAT calculations on March 1, after receiving approval from the SCOE fiscal advisor. None of Bozio's initial communications with SCTA state that the District believed it first needed to seek approval from the SCOE financial advisor. If the District believed it needed approval before providing the requested information, it should have stated that to SCTA instead of providing non-responsive documentation. Its failure to do so suggests gamesmanship and an intent to frustrate the information request process.

The District argues that there was no unfair practice because SCTA did not reassert or clarify its request for the FCMAT calculations after its March 1 response. However, SCTA was not required to do so because it had already filed this charge.

Because the District took nearly six weeks to provide SCTA with any FCMAT calculations, I find that SCTA has established that the District failed to exercise the same diligence and thoroughness as it would in other business affairs of importance. The District's failure constitutes a violation of the duty to meet and confer in good faith.

February 13 Request

1. Unalleged Violation

SCTA's post hearing brief asserts an unfair practice not in the complaint. SCTA alleges that the District failed to bargain in good faith when it refused its February 13, 2019 request for information seeking the District's concrete valuations shared with SCOE.

After investigation of an unfair practice charge, a Board agent will issue a complaint if factual allegations in the charge state a prima facie case. (PERB Reg. 32640 (a); *Oakland Unified School District* (2009) PERB Decision No. 2061.) An unfair practice complaint informs the parties of the specific allegations in dispute and establishes the parameters of the formal hearing. All other factual allegations in the charge, whether formally dismissed or overlooked, are not at issue in the hearing.

If a charging party believes a complaint is not complete, it may move to amend the complaint before the formal hearing to include the additional allegations. (PERB Reg. 32647; *County of Riverside* (2006) PERB Decision No. 1825-M; *Coachella Valley Mosquito & Vector Control District* (2009) PERB Decision No. 2031-M [charging party had ample opportunity to move to amend the complaint before the hearing].) A charging party may also move to amend the complaint during the formal hearing. (PERB Reg. 32648.) If the motion to amend is granted, the respondent is put on notice of the additional allegations against which it must defend and may file an amended answer. (PERB Reg. 32649.)

In limited circumstances, PERB may consider allegations of unfair practices that are not in the complaint and where a motion has not been made to add them to

the complaint. PERB may consider unalleged violations when the following criteria are met: (1) adequate notice and opportunity to defend has been provided to the respondent; (2) the acts are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the unalleged violation has been fully litigated; and (4) the parties have had the opportunity to examine and cross-examine witnesses and introduce evidence on the issue. (*Fresno County Superior Court* (2008) PERB Decision No. 1942-C; *County of Riverside* (2010) PERB Decision No. 2097-M; *Tahoe-Truckee Unified School District* (1988) PERB Decision No. 668.) The unalleged violation also must have occurred within the applicable statute of limitations period. (*Fresno County Superior Court*, *supra*, PERB Decision No. 1942-C.)

In *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1187, the Board held that the purpose of the unalleged violation standard is to "insure that the Board decides a case based on an unalleged theory only when it is clear that the parties have been afforded their due process rights." The Board further cautioned, "PERB must be very circumspect when determining whether to adjudicate an unalleged violation and should only do so if there is clear evidence that all of the above criteria have been met." (*Fresno County Superior Court*, *supra*, PERB Decision No. 1942-C, p. 15.)

The criteria for an unalleged violation that the District refused to timely provide the information requested on February 13, 2019, has been met. The subject of the allegation is closely related to the subject of the complaint, that the District violated its duty to bargain in good faith when it refused its request for information. The District knew that the February 13 request for information was an issue during the hearing,

addressed the matter in its examination and cross-examination of witnesses, and introduced relevant evidence. In addition, the allegation is timely because the February 13 request was made within days of the January 23 request in the complaint. The allegation was therefore fully litigated and may be considered.

2. Relevance and Compliance

SCTA's February 13 information request sought the District's "concrete calculations on valuations of additional budget reduction items as part of a completed budget reduction plan" provided to SCOE. As stated above, information regarding an employer's budget calculations is necessary and relevant because an employer's budget constraints have a direct bearing on the scope of collective bargaining. (See, e.g. *Children of Promise Preparatory Academy*, *supra*, PERB Dec. No. 2558, pp. 14, 24.) Therefore, the information SCTA requested on February 13 was necessary and relevant to the parties' negotiations.

On February 13, 2019, Borsos first requested the District's "concrete calculations on valuations of additional budget reduction items as part of a completed budget reduction plan" provided to SCOE. Bozio's February 21 response stated only that the District had determined there were no "responsive non-exempt District records to this request." When Borsos immediately asked for the District's basis for determining some documents exempt, Bozio did not reply for eight days, and after SCTA filed the present unfair practice charge. In his March 1 response, Bozio described SCTA's February 13 request as "vague, ambiguous, and overbroad" and "clearly constitut[ing] draft material that contain the deliberative process and work

product of the District and SCOE" rather than finalized records subject to disclosure under "the CPRA and EERA."

The District's initial February 21 response stating only that there were no "non-exempt" documents amounts to a refusal to provide SCTA with the information requested. When responding to a request for information, PERB requires an employer to first "timely and adequately explain" its refusal to furnish requested information. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2597, p. 8.) Here, the District provided no explanation for why it believed some requested documents were exempt. It merely stated that it possessed no non-exempt documents. The District's failure to explain its refusal to provide information in its February 21 response therefore violated EERA.

The District's March 1 response is similarly flawed. The District stated that not only was SCTA's document request "vague, ambiguous, and overbroad," but that it also sought information that would constitute draft material containing the deliberative processes and work product of the District and SCOE, citing provisions of the CPRA.

First, the Board has made clear that an employer confronted with a confusing or overbroad request cannot lawfully deny it outright but must engage with the requesting union in an effort to better understand what is being sought. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2597, p. 12 citing cases). The District had a duty to seek an accommodation. As written, the District's March 1 response makes no attempt or effort to better understand the information SCTA sought.

Second, an "employer, as part of its duty to fully answer a union's request or else timely and adequately explain a valid defense to disclosure, may not rely upon a

CPRA exemption in place of a defense recognized under PERB precedent." (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2597, p. 10.) PERB has held that defenses or limitations on disclosure made available under the CPRA, including any CPRA-authorized deliberative process privilege, are not applicable to information requests arising under the PERB-administered statutes because a union has a greater right to information than members of the general public. (*County of Tulare* (2020) PERB Dec. No. 2697-M, pp. 14-15, no. 9 citing *Sacramento City Unified School District*, *supra*, PERB Decision No. 2597, pp. 10-11.) While the CPRA prevents members of the public from obtaining a public entity's internal deliberative records pertaining to certain of its obligations under CPRA, when a union requests relevant information from an employer, the employer benefits only from the more limited privilege that protects both unions and employers from being forced to reveal to the other party their internal collective bargaining strategies or tactics. (*Ibid*.)

In explaining why it believed it possessed exempt responsive documents, the District stated first that its records were draft material subject to the deliberative process privilege, citing the CPRA. Therefore, District's reliance on a CPRA exemption to withhold information responsive to SCTA's request violated EERA.[4]

Finally, the District cited the attorney work product privilege as further support for its decision to not provide responsive documents. The attorney work product

[4] To the extent the District intended to assert that the information request instead sought privileged internal collective bargaining strategies or tactics, it failed to raise this defense in any communication with SCTA as required. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2597, p. 8, citing *Petaluma Schools*, supra, PERB Dec. No. 2485. pp. 19, 24.)

doctrine protects from disclosure a "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." (Code Civ. Proc. § 2018.030.) The doctrine serves the policy goals of providing attorneys with the privacy necessary to prepare cases for trial, allowing for the investigation of favorable and unfavorable aspects of those cases, and prevents opposing counsel from taking unfair advantage of their adversary's efforts. (Code Civ. Proc. § 2018.020; *Santa Monica Community College District* (2012) PERB Decision No. 2303, adopting proposed decision, p. 8; *City of Petaluma v. Superior Court* (2016) 248 Cal.App.4th 1023, 1033.) The attorney work product doctrine arises from the attorney-client privilege and "applies to documents related to legal work performed for a client." (*Watt Industries, Inc. v. Superior Court* (1981) 115 Cal.App.3d 802, 805; *Wellpoint Health Networks, Inc. v. Superior Court* (1997) 59 Cal.App.4th 110, 122; *City of Petaluma*, *supra*, 248 Cal.App.4th 1023, 1033.)

The District has failed to establish an attorney-client relationship between its In-House Counsel Bozio and SCOE. While the District argues that Bozio played a role in responding to SCOE's January 14 letter, Bozio himself testified that any budget reduction documents the District provided to SCOE were prepared by Quinto and the District's Budget Department. SCTA's request specifically asked for information provided to SCOE in response to its January 14 letter. Even if District documents could be considered attorney work product, the District waived such protection when it disclosed the information to SCOE, an outside, independent third-party entity with which the District had no attorney-client or joint employer defense relationship. (*Santa Monica Community College District*, *supra*, PERB Decision No. 2303, adopting

proposed decision, p. 9 ["the work product privilege may be waived by conduct that is inconsistent with such claim"] citing *BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal. App.3d 1240, 1261.)

Because there was no attorney-client relationship between SCOE and the District, any communication between the two entities is not protected by the attorney work product doctrine. Therefore, the District's reliance on attorney work product doctrine to withhold information responsive to SCTA's request also violated EERA.

REMEDY

PERB has broad remedial powers to effectuate the purposes of EERA. EERA section 3541.5, subdivision (c), provides:

> "The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter."

The District failed to meet and negotiate in good faith with SCTA violation of EERA section 3543.5, subdivision (c), when it failed to timely provide necessary and relevant information requested by SCTA. By the same conduct, the District interfered with the rights of employees to be represented by SCTA in violation of EERA section 3543.5, subdivision (a), and denied SCTA the right to represent bargaining unit employees in their employment relations with the District in violation of EERA section 3543.5, subdivision (b). It is appropriate to order the District to cease and desist from such conduct.

In cases involving a failure to provide necessary and relevant information, an employer is typically ordered to provide the requested information upon the charging

party's request. (*Trustees of the California State University* (1987) PERB Decision No. 613-H, adopted proposed decision, p. 22.) The District is ordered to provide, upon SCTA's request, any outstanding information responsive to SCTA's January 23, and February 13, 2019 requests for information.

Finally, it is appropriate to order the District to post a notice incorporating the terms of the order at all locations where notices to bargaining unit employees are customarily posted. 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 customarily used by the District to communicate with employees in SCTA's bargaining unit. (*City of Sacramento* (2013) PERB Decision No. 2351-M, pp. 45-46.) Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. Posting of such notice effectuates the policies of the EERA that employees be informed of the resolution of this matter and the District's readiness to comply with the ordered remedy. (*Placerville Union School District* (1978) PERB Decision No. 69, p. 12.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that Sacramento City Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c), by failing to timely respond to SCTA's January 23 and February 13, 2019, requests for information requests for information.

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. Failing to provide necessary and relevant information to SCTA pursuant to the requirements of EERA.

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

1. Provide, upon SCTA's request, any outstanding information responsive to SCTA's January 23, and February 13, 2019 requests for information.

2. Within 10 workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the certificated bargaining unit are customarily 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. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.[5]

[5] In light of the ongoing COVID-19 pandemic, the District shall notify the General Counsel of the Public Employment Relations Board (PERB) or the General Counsel's designee, if a majority of the bargaining unit employees are not physically reporting to work during the time the physical posting would commence. If the District so notifies OGC, or if SCTA requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing the District to commence posting within ten workdays after a majority of employees have resumed physically reporting on a regular basis; directing the District to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing the District to mail the Notice to those

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. The District shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on SCTA.

RIGHT TO APPEAL

A party may appeal this proposed decision by filing with the Board itself a statement of exceptions and supporting brief, within 20 days after the decision is served. (PERB Reg. 32300.) If a timely statement of exceptions is not filed, the proposed decision will become final. (PERB Reg. 32305, subd. (a).) The text of PERB's regulations may be found at PERB's website: www.perb.ca.gov/laws-and-regulations/.

A. Electronic Filing Requirements

Except as specified below, documents filed with the Board itself must be filed electronically. (PERB Regulation 32110(a).) Parties filing electronically must create an account and submit documents through the "ePERB Portal," accessible from PERB's website (www.perb.ca.gov). All electronically filed documents must be in PDF format and, to the extent possible, text searchable. (PERB Regulation 32110(d).) A document submitted through ePERB after 11:59 p.m. on a business day, or at any time on a non-business day, will be deemed filed the next regular PERB business

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employees with whom it does not customarily communicate through electronic means. (*City of Culver City* (2020) PERB Decision No. 2731-M, p. 29, fn. 13.)

day. (PERB Regulation 32110(f).) A filing party must adhere to the service requirements described below.

B. Filing Requirements for Unrepresented Individuals

Individuals not represented by an attorney or union representative, are encouraged to electronically file their documents as specified above; however, such individuals may submit their documents to PERB for filing via: in-person delivery, US Mail, or other delivery service. (PERB Regulation 32110(a) and (b).) All paper documents are considered "filed" when the originals, including proof of service (see below), are actually received by PERB's Headquarters during a regular PERB business day. (PERB Regulation 32135(a).) Documents may be double-sided, but must not be stapled or otherwise bound. (PERB Regulation 32135(b).)

The Board's mailing address and contact information is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
Telephone: (916) 322-8231

C. Service and Proof of Service

Concurrent service of documents on the other party and proof of service are required. (PERB Regulations 32635(a) and (c), 32140, & 32093.) Proof of service forms are located on PERB's website: www.perb.ca.gov. Electronic service of documents through ePERB or e-mail is authorized only when the party being served

has agreed to accept electronic service in this matter. (See PERB Regulations 32140(b) and 32093.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

APPENDIX

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. SA-CE-2961-E, *Sacramento City Teachers Association v. Sacramento City Unified School District*, in which all parties had the right to participate, it has been found that the Sacramento City Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq. by failing to provide necessary and relevant information to SCTA pursuant to the requirements of EERA.

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

A. CEASE AND DESIST FROM:

Failing to provide necessary and relevant information to SCTA pursuant to the requirements of EERA.

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

Provide, upon SCTA's request, any outstanding information responsive to SCTA's January 23, and February 13, 2019, requests for information.

Dated: _____ Sacramento City 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.