



STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION AND ITS CHAPTER 616,

Charging Party,

v.

SADDLEBACK VALLEY UNIFIED SCHOOL
DISTRICT,

Respondent.

Case No. LA-CE-5467-E

PERB Decision No. 2333

October 7, 2013

Appearances: Charmaine L. Huntting, Attorney, for California School Employees Association and its Chapter 616; Atkinson, Andelson, Loya, Ruud & Romo by Mark R. Bresee, Attorney, for Saddleback Valley Unified School District.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Saddleback Valley Unified School District (District) and cross-exceptions filed by the California School Employees Association and its Chapter 616 (CSEA) to the proposed decision (attached) of an administrative law judge (ALJ). CSEA alleged that the District violated the Educational Employment Relations Act (EERA)¹ by unilaterally implementing new terms and conditions of employment without bargaining with CSEA, that statements made by a District agent at a school board meeting interfered with employee rights and denied CSEA the right to represent its members, and that the District failed to meet and negotiate in good faith and interfered with the rights of CSEA's bargaining unit members when it failed to provide CSEA with relevant and necessary requested

¹ EERA is codified at Government Code section 3450 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

information. The ALJ concluded that the District did not fail or refuse to bargain in good faith and that the District agent's statements did not violate EERA. However, the ALJ did conclude that the District violated EERA by implementing a salary schedule reduction methodology not reasonably comprehended within its last, best and final offer and that the District violated EERA by failing to provide the information requested by CSEA in a timely manner.

The Board has reviewed the proposed decision and the District's exceptions and CSEA's cross-exceptions in light of the record and the relevant law. The ALJ's factual findings are supported by the record and we adopt them as the findings of the Board itself, except as noted below. The ALJ's conclusions with regard to CSEA's bad faith bargaining allegations, the District agent's statements and the District's failure to provide information in a timely manner are in accordance with relevant law and we adopt them except as noted below.

However, for the reasons set forth below, the Board reverses the ALJ's ruling that the District implemented a salary reduction methodology not reasonably comprehended within its last, best and final offer.

PROCEDURAL HISTORY

On July 6, 2010, CSEA filed an unfair practice charge with PERB alleging multiple violations of EERA by the District. CSEA subsequently amended its charge on September 15, 2010 and December 27, 2010. On March 8, 2011, CSEA withdrew all allegations except the claims that the District: (1) unilaterally adopted new terms and conditions of employment on August 31, 2010, without bargaining with CSEA; (2) failed to provide relevant and necessary information to CSEA between July 26, 2010 and December 27, 2010; and (3) interfered with employee rights through the statements of its agent at an August 31, 2010 school board meeting. Also on March 8, 2011, the PERB Office of the General Counsel issued a complaint on CSEA's three remaining allegations.

The parties met for an informal settlement conference on June 29, 2011, but the matter was not resolved. A formal hearing was scheduled for November 14-16, 2011. The District filed two motions for continuance and consolidation of its own unfair practice charge against CSEA. Both motions were denied and the hearing took place as scheduled on November 14-16, 2011. The parties filed closing briefs on March 29, 2012. The ALJ issued the proposed decision on April 26, 2012.

The District requested and was granted an extension of time to file its exceptions. The District filed its exceptions on July 5, 2012. CSEA requested and was granted an extension of time to file its response. CSEA filed its response and cross-exceptions on August 13, 2012. On September 26, 2012, the District filed its response and the matter was placed on the Board's docket.

FACTUAL SUMMARY

In the Summer of 2009, the District projected a budget shortfall of \$33 million due to declining enrollment and reduced funding from the State. The District reduced this budget shortfall by \$7 million through non-negotiated program cuts and sought the additional \$26 million through concessions from its three bargaining units. The District based the concessions it sought from each bargaining unit on that unit's percentage of the compensation budget. Since CSEA's members accounted for 17.59 percent of the District's compensation budget, it sought concessions worth 17.59 percent of the remaining \$26 million shortfall: \$4.57 million.

Between October and December of 2009, the parties met for nine bargaining sessions. The District made several different proposals, all of which represented different ways to reach the District's goal of \$4.57 million in concessions from CSEA. The parties did not reach an

agreement and CSEA declared impasse and requested an impasse determination from PERB on December 17, 2009. PERB certified the impasse on January 4, 2010, and assigned a mediator.

The parties met for four mediation sessions but were unable to reach an agreement. On May 20, 2010, the mediator advised PERB that the parties were unable to reach an agreement and that factfinding was appropriate. The District subsequently requested that PERB send the matter to a factfinding panel. The factfinding hearing was scheduled for July 7, 2010.

On June 25, 2010, the District sent its “last, best, and final offer” to CSEA. The proposal included a “Preamble” which stated:

From the outset of the current negotiations, the District has told CSEA that three factors may require modification of its proposals. . . . The final factor is that because proposed reductions continue to be time sensitive, ‘an additional equivalent percentage CSEA salary decrease per month will be applied to reflect the loss of savings.’

The District reiterates this language in “ARTICLE IV PAY PRACTICES” of its proposal:

An annual salary decrease of 7.39% . . . to all salary schedules effective July 1, 2010-June 30, 2012 for all salary schedules In the event a later effective date is implemented for a CSEA salary decrease, an additional equivalent percentage CSEA salary decrease per month will be applied to reflect the loss of savings.

The factfinding hearing was held on July 7, 2010, and the factfinder’s report was issued on or about August 15, 2010. The factfinder’s report recommended for both the 2010-2011 and 2011-2012 school years: (1) between 10 and 15 furlough days based on the number of months a bargaining unit member works; (2) a 20 percent reduction in the District’s contributions to health and welfare benefits for unit members working more than 30 hours per week; (3) freeze of all scheduled pay increases; and (4) a 2.8 percent reduction to all CSEA salary schedules. The factfinder’s report did not include a specific methodology for implementing the salary schedule reductions.

The parties met for their first post-factfinding bargaining session on August 19, 2010. CSEA presented a proposal which the District rejected after performing a cost calculation because it fell short of the District's concession goal. The District gave CSEA a written counter-proposal which stated, in its entirety:

The District continues to offer its last, best and final formal proposal of June 25, 2010 or the Fact Finding Report received on August 16, 2010.

Later that same day, CSEA sent its second post-factfinding proposal to the District. The District rejected CSEA's second proposal on the ground that it fell short of the District's concessions goal and reiterated its offer from the previous day. On August 24, 2010, CSEA submitted a third proposal which the District believed to be \$1.5 million short of its concessions goal.

On August 26, 2010, the District informed CSEA's president that the District believed the parties were still at impasse and that the District board would vote on imposing wages, hours and employment conditions implementing the terms of the factfinder's report: which the District referred to as an "MOU."² The District provided CSEA with a copy of the proposed "MOU." On August 30, 2010, at approximately 6:00 p.m., CSEA sent the District its fourth post-factfinding proposal. The District calculated that the fourth proposal still fell \$1.45 million short of its concessions goal. CSEA conceded that none of its proposals were designed to or did achieve the District's stated concessions goal.

On August 31, 2010, the District voted unanimously to impose the "MOU." The terms of the "MOU" were essentially the same as those contained in the factfinder's report. The

² The District's "MOU" may not have been a memorandum of understanding in the traditional sense in that it was a memorialization of the parties' agreement, but we nonetheless use the term because that was the name of the proposal voted on by the District board on August 31, 2010.

2.8 percent reduction in the salary scale was implemented retroactively to July 1, 2010: the start of the 2010-2011 school year.

PROPOSED DECISION

The ALJ's proposed decision concluded: (1) that the District did not engage in bad faith bargaining and was, therefore, free to implement the terms of its last, best and final offer to CSEA; (2) that the methodology for implementing a salary schedule decrease was not comprehended within the District's last, best and final offer and could not be unilaterally implemented without first bargaining with CSEA; (3) that the statements by a District board member did not interfere with employee rights or deny CSEA the right to represent its members CSEA's; and (4) that the District failed to provide CSEA with relevant and necessary requested information in a timely manner.

The parties have only excepted to the first two conclusions on appeal. Both arise from the first issue as determined by the ALJ:

Did the District violate [its] duty to negotiate in good faith by unilaterally implementing terms and conditions of employment on CSEA unit members post-factfinding?

(Proposed Dec., at p. 11.) The ALJ applied PERB's "per se" test to determine whether or not the District's August 31, 2010 imposition of the "MOU" violated EERA. (*Stockton Unified School District* (1980) PERB Decision No. 143.) Under the "per se" test, a violation is found if: (1) the employer breached or altered the parties' written agreement or past practice; (2) the action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the action is not merely an isolated incident, but amounts to a change in policy; and (4) the change in policy concerns a matter within the scope of representation. (See *Desert Sands Unified School District* (2010) PERB Decision No. 2092; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

According to the ALJ, there was no dispute whether the District implemented changes within the scope of representation on August 31, 2010, or that the implementation occurred after the parties had completed the factfinding process:

Thus, the primary issue in this claim is whether the District implemented new terms [and conditions] of employment prior to satisfying its remaining duty to bargain with CSEA after factfinding.

(Proposed Dec., at p 12.) The ALJ concluded that both parties had made post-factfinding concessions that incorporated elements of the factfinder's report and this imposed a mutual duty on the parties to consider those proposals in good faith to determine whether further bargaining would be fruitful. (See *Modesto City Schools* (1983) PERB Decision No. 291.)

Noting that there was a fundamental disagreement between the parties regarding both the level of financial reductions necessary to maintain the District's solvency and the urgency for implementing those reductions, the ALJ concluded that:

[J]ust as CSEA was not required to accept that the concessions sought by the District were necessary, the District was also entitled to maintain its position. That disagreement is not sufficient to demonstrate that the District failed to consider CSEA's proposals in good faith.

(Proposed Dec., at p. 16.)

Having determined that the District had satisfied its post-factfinding duty to bargain, the ALJ concluded that the District was free to unilaterally implement changes reasonably comprehended within the District's last, best and final offer, which the ALJ determined was "either the terms of its June 25, 2010 proposal or the recommended terms of the factfinder's report." (Proposed Dec., at p. 17.) The ALJ found that a 2.8 percent reduction to the salary scale for both the 2010-2011 and 2011-2012 school years was comprehended within the District's last, best and final offer, but the methodology for implementing it was not reasonably

comprehended. Thus, the ALJ concluded, the District could not implement the salary schedule decrease until it had given notice and an opportunity to bargain the methodology to CSEA.

POSITIONS OF THE PARTIES

The District takes three exceptions. The District's first exception regards the ALJ's finding that implementation methodology was not discussed in bargaining and that CSEA was not notified of the implementation methodology. The District argues that there was no evidentiary basis for the ALJ to conclude that although the District could impose a retroactive 2.8 percent salary decrease, it was a violation of EERA to implement it without giving CSEA notice and an opportunity to bargain the methodology. According to the District, no evidence or argument, either at hearing or in either party's post-hearing briefs, addressed this issue.

The District's second exception is to the ALJ's consideration of the 2.8 percent pay decrease either as arising under the existing allegations in the PERB complaint or, to the degree the issue is not covered in the PERB complaint as an unalleged violation under *Lake Elsinore Unified School District* (2012) PERB Decision No. 2241 (*Lake Elsinore*) (listing four criteria for the ALJ to consider unalleged violations). The District argues, first, that the allegations in the complaint do not cover the issue of the methodology of the implementation of the pay decrease. Secondly, the parties did not use the opportunity to litigate the issue at hearing and did not address the issue in their post-hearing briefs as required under *Lake Elsinore*. Moreover, argues the District, the ALJ did not articulate all of the *Lake Elsinore* criteria and failed to clearly articulate the reasons why he deemed the *Lake Elsinore* criteria were met. (See *County of Riverside* (2006) PERB Decision No. 1825-M [ALJ must clearly articulate the rationale for entertaining unalleged violations in the proposed decision].)

Lastly, the District's third exception is to the ALJ's decision not to address its business necessity defense to unilateral implementation. Since the ALJ determined that the District had satisfied its post-factfinding duty to bargain in good faith, he found that it was unnecessary to address its business necessity defense. The District contends that this was error because if PERB were to conclude that the District could impose but not implement the pay decrease, its business necessity defense still should have excused it from the duty to bargain.

CSEA filed five cross-exceptions. CSEA's first three cross-exceptions are to factual findings in the proposed decision. The ALJ determined that the District made some concessions post-factfinding, considered CSEA's post-factfinding proposals and admitted that CSEA's proposals did not meet the District's goal for financial reductions. CSEA claims that all of these determinations were erroneous.

CSEA's fourth exception was to the ALJ's conclusion that the District had satisfied its duty to bargain post-factfinding. CSEA claims that it made significant concessions in its final two proposals that restarted the duty to bargain on the part of the District. Since the District did not explore these proposals or schedule new bargaining sessions to discuss them, the District had not satisfied its post-factfinding bargaining obligation.

CSEA's fifth exception is to the part of the ALJ's remedy for the unilateral salary decrease which allows the District and CSEA to reach an agreement obviating the need for a return to the status quo. CSEA claims that this part of the remedy is inconsistent with the first part which orders that unit members be made whole for the 2.8 percent salary reduction.

DISCUSSION

We agree with the ALJ that a 2.8 percent reduction in the salary scale for the 2010-2011 school year was comprehended within the District's last, best and final offer. At issue, is whether or not the District's methodology for computing the reduction was also reasonably

comprehended. The ALJ relies on *Laguna Salada Union School District (1995) PERB Decision No. 1103 (Laguna Salada)* for the proposition that the methodology used to make adjustments to employee wages is a negotiable subject and must be reasonably comprehended within the last, best and final offer in order to be unilaterally implemented. In *Laguna Salada*, the key issue was a salary proposal contained in the parties' joint stipulation of facts and issues which stated:

5. On November 7, 1992 the District claimed that the District's financial situation had worsened, and proposed to reduce the 1991/92 salary schedule by 1.76%, to become effective July 1, 1992. The claim that the District's financial condition had worsened was disputed by the Charging Party.

[¶ . . . ¶]

8. The Respondent, on or about June 15, 1993, unilaterally implemented a 1.76% salary schedule reduction, retroactive to the beginning of the 1992 - 1993 school year by reducing the June 1993 warrants of charging party unit members by 17.6%.

(*Id.* at pp. 3-4.) As noted in *Laguna Salada*, "nothing in the parties' joint stipulation indicates that the methodology which the District apparently planned to utilize in implementing its proposal, was communicated to or negotiated with the Association." (*Id.* at p. 15, fn. 4.) Thus, in *Laguna Salada*, the methodology for adjusting wages was not reasonably comprehended in the district's proposal because it was not clear what action the district would take if implementation had occurred in any other month prior or subsequent to June 1993. (*Ibid.*)

In the case before us, however, the evidence shows that the methodology for implementing a retroactive salary schedule decrease had been presented in the District's last, best and final offer. In its June 25, 2010 proposal, the District proposed:

An annual salary decrease of 7.39% . . . to all salary schedules effective July 1, 2010-June 30, 2012 for all salary schedules
In the event a later effective date is implemented for a CSEA salary decrease, an additional equivalent percentage CSEA salary decrease per month will be applied to reflect the loss of savings.

(Emphasis added.) The preamble to the District's July 25, 2010 proposal also stated that it will apply an additional equivalent salary decrease for every month beyond July of 2010, that the parties go without having reached an agreement. We conclude, therefore, that CSEA had prior notice based on the District's last, best and final offer of the methodology for implementing a retroactive salary schedule decrease and that the District was free to implement that methodology when it imposed the terms of the factfinder report or its last, best and final offer on August 31, 2010. We therefore reverse the ALJ's determination that the District violated EERA when it implemented its salary schedule reduction methodology on August 31, 2010.

The District's second exception concerns whether or not the issue of methodology was even properly considered by the ALJ. The District's third exception is that the ALJ erred by not considering its business necessity defense. Since we are reversing the ALJ's decision on the basis that the methodology for implementing a salary schedule decrease was reasonably comprehended within the District's last, best and final offer, we do not need to address the merits of the District's second and third exceptions.

We turn now to CSEA's cross-exceptions. CSEA's first three cross-exceptions are to factual findings of the ALJ. The ALJ determined that the District made some concessions post-factfinding, considered CSEA's post-factfinding proposals and that CSEA admitted its proposals did not meet the District's goal for financial reductions. CSEA claims that all of these determinations were erroneous. After a careful review of the record, we conclude that there was a sufficient factual basis in the record for the ALJ to find that both parties made post-factfinding concessions, that the District considered CSEA's proposals in good faith and that CSEA acknowledged that its proposals did not meet the District's goal for concessions from CSEA. Therefore, CSEA's first three exceptions which maintain that there was an insufficient factual basis for the ALJ to make those findings lack merit.

CSEA's fourth exception was to the ALJ's conclusion that the District had satisfied its duty to bargain post-factfinding. Because we have affirmed the ALJ's conclusion that the District satisfied its post-factfinding bargaining obligation and was free to impose its last, best and final offer on CSEA, we also conclude that this exception lacks merit. As correctly noted by the ALJ, the duty to bargain in good faith does not require either party to retreat from its bargaining position and the District was not obligated to schedule new bargaining sessions after receiving post-factfinding proposals from CSEA after it considered them in good faith and found them unacceptable.

Lastly, although the "make-whole" portion of the ALJ's proposed order has been rendered moot by our decision, we shall address CSEA's fifth exception. CSEA takes exception to the ALJ's statement that:

[I]t may be in the parties' interest to negotiate an alternative to the remedy ordered on this salary scale issue. This Proposed Decision therefore does not preclude the parties from reaching an agreement that obviates the need for a direct return to the status quo.

(Proposed Dec., at p. 31.) In addition, the ALJ orders the District to:

Meet and confer in good faith with CSEA upon its request regarding the methodology for implementing its previously proposed salary scale reductions for the 2010-2011 and 2011-2012 school years.

(Emphasis added.)

According to CSEA, the two paragraphs cited above are inconsistent with the make-whole remedy ordered by the ALJ. We conclude that the ALJ's latter statement did not obligate CSEA to request bargaining on the matter or retreat from the position the ALJ's remedy placed it in. The statement was, therefore, not inconsistent with the ALJ's "make-whole" remedy. The ALJ merely suggested that the parties were free to find an alternative, negotiated agreement; he did not order the parties to meet or reach an alternative agreement

unless CSEA chose to negotiate instead of accepting the make-whole remedy. Nothing in that part of the ALJ's order obligated CSEA to request such a meeting, CSEA was free to forego such a meeting and accept the ALJ's make-whole remedy. As such, the ALJ's statements provide no basis for CSEA's fifth exception.

PERB hereby affirms the ALJ's determination that the District failed to provide CSEA with requested information relevant and necessary to its duties as an exclusive representative in a timely manner, and dismisses the remaining allegations.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Saddleback Valley Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c), by failing to timely respond to the California School Employees Association's and its Chapter 616 (CSEA) request for information necessary and relevant to its duties as an exclusive representative.

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

A. CEASE AND DESIST FROM:

Failing to timely respond to requests by CSEA for information necessary and relevant to its representation duties.

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

1. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the CSEA bargaining unit 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 thirty (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; and

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations 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 CSEA.

All other allegations in Case No. LA-CE-5467-E are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Banks joined in this Decision.



STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES
ASSOCIATION & ITS CHAPTER 616,

Charging Party,

v.

SADDLEBACK VALLEY UNIFIED SCHOOL
DISTRICT,

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CE-5467-E

PROPOSED DECISION
4/26/2012

Appearances: Charmaine Hunting, Staff Attorney, for California School Employees Association & its Chapter 616; Margaret A. Chidester & Associates by Margaret A. Chidester, Attorney, for Saddleback Valley Unified School District.

Before Eric J. Cu, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a public school employees union alleges that a public school district violated the Educational Employees Relations Act (EERA)¹ by negotiating in bad faith after participating in the factfinding process; failing to timely provide necessary and relevant information upon request; and making statements that interfere with protected rights. The employer denies any violation.

On July 6, 2010, California School Employees Association & its Chapter 616 (CSEA) filed an unfair practice charge with the Public Employment Relations Board (PERB or Board) against the Saddleback Valley Unified School District (District) alleging multiple violations of EERA. CSEA amended its charge on September 15, 2010, and again on December 27, 2010. On March 8, 2011, CSEA withdrew all allegations except the claims that: (1) on August 31, 2010, the District unilaterally adopted new terms and conditions of employment for CSEA unit

¹ EERA is codified at Government Code section 3540 et sequentes.

members; (2) the City failed to adequately respond to CSEA's July 26, 2010 information request; and (3) on August 31, 2010, a District representative made statements that interfered with CSEA and employee rights. That same day, the PERB Office of the General Counsel issued a complaint on the three remaining allegations in the charge.

The parties participated in an informal settlement conference on June 29, 2011, but the matter was not resolved and was scheduled for hearing. The District filed two motions to continue the formal hearing but both motions were denied. A formal hearing was held on November 14-16, 2011. The parties filed simultaneous closing briefs on March 29, 2012. At that point, the record was closed and the matter was submitted for decision.

FINDINGS OF FACT

I. The Parties

The District is a public school employer within the meaning of EERA section 3540.1(k). CSEA is an exclusive representative within the meaning of EERA section 3540.1(e), representing the District's classified bargaining unit. The parties were signatories to a Collective Bargaining Agreement (CBA) that expired by its own terms on June 30, 2010.

II. The Parties' Bargaining Conduct

In the summer of 2009, the District identified what it believed to be a significant budget shortfall for both the 2010-2011 and the 2011-2012 school years² due to a combination of projected enrollment declines and reduced funding from the State. The District estimated having a \$33 million deficit. Due to the District's depleted reserve funds, the Orange County Department of Education (OCDE) assigned an overseer to review the District's finances.

The District decided to obtain what it believed were necessary budget reductions by a combination of program cuts and negotiated concessions from its three bargaining units. The

² The District's school year runs from July 1 through June 30 of the following year.

District enacted \$7 million in non-negotiated program cuts (layoffs) and sought to negotiate for an additional \$26 million in reductions with its various bargaining units. The nature of the District's budget situation was discussed informally with bargaining representatives in or around the summer of 2009.

A. Pre-Factfinding Bargaining³

In October 2009, the District began formal negotiations with CSEA regarding the District's sought-after concessions. Prior to commencing negotiations, the District decided to seek concessions from each of its various employee groups based upon the percentage that group comprised of the District's overall compensation budget. For example, because certificated employees represented 71.01 percent of the District's compensation budget, the District pursued 71.01 percent of \$26 million, or \$18,462,600, in reductions from that unit. According to the same calculation process, CSEA's unit represented 17.59 percent of its compensation budget. The District accordingly sought \$4,573,400, i.e., 17.59 percent of \$26 million, in negotiated concessions from CSEA. CSEA's position was the District should seek lesser concessions from the classified unit because its members, on average, are the District's lowest income employees. CSEA also believed that the District's target amount in concessions should be offset by the already-enacted layoffs.

The parties met for nine bargaining sessions but did not reach agreement. On December 17, 2009, CSEA declared that negotiations had reached impasse and requested that PERB make an impasse determination. PERB approved CSEA's request on January 4, 2010 and a mediator was assigned to the parties. The parties met for four mediation sessions, but the parties again were unable to reach an agreement. During mediation, the District reduced its

³ Although both parties discuss the pre-impasse bargaining extensively in their closing briefs, the Proposed Decision will only address the parties' pre-impasse conduct briefly because there is no allegation in the PERB complaint that the District bargained in bad faith pre-impasse, nor is there cause to consider such allegations outside the scope of the complaint.

target amount of sought-after concessions by around \$700,000. On May 20, 2010, the mediator declared that factfinding was appropriate to resolve the parties' differences, pursuant to EERA section 3548.1.

B. The Factfinding Process

In or around June 2010, the District requested that the matter be submitted to a factfinding panel. After panel members were selected, a factfinding hearing was scheduled for July 7, 2010. In advance of the hearing, on June 11, 2010, CSEA sent the District an "Amended Proposal." CSEA's proposal included the following essential terms: (1) between 12 and 15 furlough days for the 2010-2011 and 2011-2012 school years, depending on the number of months the employee worked; (2) suspension of the reclassification fund provision in the CBA;⁴ and (3) the establishment of a custodial relief board to reemploy laid off unit members. CSEA specified that no changes were offered to the salary scale or to the District's contributions to health and welfare benefits.

On June 25, 2010, the District sent what it called its "last, best, and final offer" to CSEA. The District's proposal included: (1) a 7.39 percent salary reduction to all levels of the salary scale effective from July 1, 2010, through June 30, 2012; (2) 8 furlough days for each of the 2010-2011 and 2011-2012 school years; and (3) a 20 percent reduction in the District's contribution to the health benefits costs for members working more than 30 hours per week.

On July 28, 2010, the OCDE sent the District a letter explaining that the District's budget reserves were projected to fall below minimum requirements during the 2010-2011 school year. The OCDE requested that the District reduce its budget to account for this problem no later than September 8, 2010. The OCDE further stated that "if the reductions need to be negotiated with the bargaining units, we expect to see a [District] Board approved

⁴ The parties' CBA provided for the review of CSEA job classifications every two years. The parties estimated that the cost of this process was around \$50,000 per year.

contingency plan.” The District did not share this letter with CSEA, and CSEA did not request updates on the District’s communications with the OCDE.

The factfinding hearing was held as scheduled on July 7, 2010. The OCDE overseer attended the factfinding hearing. On or around August 15, 2010, the factfinding panel issued its decision and recommendations. The factfinder’s report was authored primarily by the factfinding chair, with the concurrence of the District’s representative. CSEA’s representative wrote a separate dissenting opinion. The report included the following recommendations for both the 2010-2011 and 2011-2012 school years: (1) between 10 and 15 furlough days depending on number of months worked; (2) a 20 percent reduction in the District’s contributions to the health and welfare benefits costs for members working more than 30 hours per week; (3) a freeze of all scheduled pay increases; and (4) a 2.8 percent reduction to all levels of the salary scale. The factfinder’s report did not include a specific methodology for achieving the salary scale reductions.

The factfinder’s report also recommended elimination of the reclassification fund, and directed the parties to discuss use of federal education relief funds⁵ and an early retirement incentive program. Concerning previously enacted layoffs of classified personnel, the report included the statement, “the Chair finds that this ongoing concession should be acknowledged with the minimum of a percent each year.”

The parties received the factfinder’s report on or around August 16, 2010, and agreed to meet for additional bargaining sessions on August 19 and 20, 2010, in the morning.

C. Post-Factfinding Bargaining

⁵ Around the time of the parties’ negotiations, the federal government passed two bills providing relief funding for public education. At the times relevant to this proceeding, the District had not received the funds pursuant to these two bills.

On August 19, 2010, the parties met for their first post-factfinding negotiation session. CSEA presented the District with its first post-factfinding proposal (Proposal #1) at the beginning of the session. The proposal included the following terms: (1) a 2.8 percent decrease in the salary schedule effective September 1, 2010 until June 30, 2012; (2) between 12 and 15 furlough days depending on hours worked; (3) an increase in unit members' contributions to medical benefits costs; (4) an agreement to use all received federal education relief funds to restore laid-off classified positions; and (5) temporary elimination of the reclassification fund.

Although, the parties dispute how much discussion took place during this meeting, there is no dispute over several key facts. First, the parties agree that the District rejected CSEA's Proposal #1 because it believed the proposal did not meet its projected target for savings. The District performed cost calculations of all CSEA proposals pre- and post-factfinding and calculated that Proposal #1 fell short of its target reductions by \$2.1 million. Second, there is no dispute that the District sought to discuss the contents of the factfinder's report but that CSEA did not believe such a discussion would be productive. Third, it is undisputed that the District offered the following as a counter-proposal: "The District continues to offer its last, best, and final formal proposal on June 25, 2010 or the Fact Finding Report received on August 16, 2010." Fourth, the meeting concluded at approximately 10:30 a.m., earlier than scheduled.

Later that day, at approximately 4:00 p.m., CSEA sent the District its second post-factfinding proposal (Proposal #2) via e-mail. The District confirms receiving Proposal #2 that day. Proposal #2 included additional increases to members' contributions to medical plan costs and withdrew its proposal for a custodial relief board.

The parties met again on the morning of August 20, 2010. The parties discussed CSEA's Proposal #2. The District expressed its opinion that Proposal #2 fell short of the District's projected target by \$1 million per year for both the 2010-2011 year and the 2011-2012 year, for a total of \$2 million. The District reiterated the offers it made the day before. CSEA stated that it was unable to make another proposal during the negotiation session because it did not have its full-bargaining team present.

On August 24, 2010, CSEA sent the District its third post-factfinding proposal (Proposal #3), which added a 12-month freeze to all scheduled salary increases, effective June 1, 2012, and an agreement to commit at least 70 percent of federal education relief funds to reemploy laid-off classified employees.

III. The District's Imposition of Terms

On August 26, 2010, District chief negotiator Margaret Lewis met with CSEA president Amanda Vega de Garcia. Lewis informed Vega de Garcia that the District believed that CSEA Proposal #3 fell short of the District's reductions goal by \$1.5 million for the 2010-2011 and 2011-2012 years and that the parties were "still at impasse." Lewis stated that she agendaized a proposal for the District Board of Education to implement the terms of the factfinder's report. Lewis provided Vega de Garcia with a Memorandum of Understanding (MOU), which specified the terms she was recommending to the District board.

The MOU included the following terms: (1) a 2.8 percent reduction in the salary scale, effective retroactively from July 1, 2010, until July 1, 2012; (2) a freeze to all scheduled salary increases, effective July 1, 2010, until July 1, 2012; (3) between 10 and 15 furlough days, depending on hours worked; and (4) elimination of the reclassification fund. The District also "acknowledged" that previously enacted layoffs continued to affect the classified unit and that it would discuss use of federal relief funds and early retirement incentives with CSEA.

The District expressed its interest in continuing negotiations if CSEA would make a proposal that met the District's target amount for reductions. The District board meeting was scheduled for the evening of August 31, 2010.

On August 30, 2010, CSEA sent the District its fourth post-factfinding proposal (Proposal #4). CSEA sent the District a revised Proposal #4 on August 31, 2010, at around 6:00 p.m. Proposal #4, as revised, included: (1) a 2.8 percent reduction to the salary scale, effective retroactive to July 1, 2010; and (2) a one-year freeze to all scheduled salary increases, effective November 15, 2010. The District calculated that the revised Proposal #4 was still \$1.45 million short of the District's target. CSEA admits that none of its proposals were designed to or did achieve the target level of reductions proposed by the District.

CSEA urged the District to take implementation of the MOU off the District board agenda and to hold a bargaining session before or after the scheduled District board meeting. The District responded to CSEA that there was insufficient time to prepare for a bargaining session and offered to meet on September 2, 2010. The District also declined to take the implementation of the MOU off the District board agenda, explaining its opinion that implementation could be retroactively rescinded if an agreement is later reached.

On August 31, 2010, at around 8:00 p.m., the District board held its meeting as scheduled. The implementation of the MOU was the only item on the agenda. According to CSEA witnesses, around 200 unit members and supporters attended the meeting. During the public comment portion of the meeting, multiple people, including CSEA negotiating team member Scott Bennett, expressed opposition to implementing the MOU.

At the end of the public comment period, District board president Don Sedgwick addressed the attendees. Four witnesses testified about Sedgwick's comments. CSEA representative Nathan Banditelli described Sedgwick's comments as follows:

He made a somewhat lengthy justification for what they felt was a necessity to make those cuts that evening, and he also said that, you know, CSEA did its members a disservice by entering the impasse factfinding process.

Vega de Garcia testified: “He’s the one that said that he thought that what was happening and what we were doing and how we got here was really CSEA was doing us a disservice by leading us in this path, you know, to what we ended up with and being implemented.” According to Bennett, Sedgwick “said CSEA members did our members a disservice by going through this process and waiting this long to get an agreement.”

CSEA representative Alan Aldrich recalled the event as being more hostile:

What I recall from the exchange was the board president saying “because you exercised your protected rights under the [EERA] to go to factfinding, you got a worse deal.” That’s what I heard in my mind, Counselor. That’s what I heard him saying. “Because your local chapter had the audacity to exercise their protected statutory right under the [EERA] to go to factfinding, you got a worse deal.” And that is fused in my mind. It’s like he’s saying it right now.

Sedgwick himself did not testify. Other District board members expressed their belief that negotiations should continue regardless of implementation. The District board then approved implementation of the MOU by unanimous vote. The next morning, Sedgwick contacted Vega de Garcia and apologized for his comments during the meeting. A written apology from Sedgwick was sent to CSEA members.

The parties continued to meet after the District implemented the terms of the MOU. As of the date of the hearing, no agreement had been reached.

IV. CSEA’s July 26, 2010 Information Request

On July 26, 2010, during the factfinding process, Banditelli sent an e-mail message to District Director of Classified Personnel Scott Wilcox seeking the following information:

1. The name and classification of each classified employee who took a non-compensated day off on any or all of the three certificated furlough days (June 7, 11, and 14, 2010).
2. The dollar amount that each employee would have been paid for the non-compensated days or days off.
3. The total dollar amount that the District saved through classified employees' use of non-compensated days off on June 7, 11, and 14, 2010.

CSEA requested a response by August 9, 2010. July 26, 2010 was a scheduled furlough day for District management employees, including Wilcox and Lewis. The District did not immediately respond to Banditelli's request.

On September 15, 2010, CSEA filed its first amended charge alleging, for the first time, that the District failed to respond to its July 26, 2010 information request. The amended charge was served on the District Superintendent on September 14, 2010. The District responded to this amended charge on November 16, 2010. Lewis signed the District's response in accordance with PERB Regulation 32620(c).⁶

On January 26, 2011, the parties met to discuss the information request. Lewis apologized for not responding sooner, explaining that she was unaware of the request until January 4, 2011. During the meeting, Banditelli clarified CSEA's request as follows:

We were asking for names of people who weren't paid on – basically who took the certificated furlough day in spite of the fact that we hadn't negotiated furlough days, because we believe there are classified employees who weren't paid, who stayed home at the direction of somebody in the District[.]

The District brought two sets of documents to the meeting. The first set comprised the District's records of all unit member absences during the three days identified by Banditelli. The second set included the District's records of all unit members that were docked pay due to

⁶ PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et sequentes.

unexcused absences in June 2010. Lewis stated that the District did not possess a single list cross-referencing these two sets of information. Lewis also explained that the District had no information that employees were instructed to take unpaid days off during the days in question. Lewis stated that if CSEA could identify members who claim to have been ordered to take an unpaid day off, the District would investigate the matter. Lewis did not offer and CSEA did not request the sets of information Lewis brought to the meeting. Lewis testified that she would have provided the information she brought had she understood that CSEA wanted it.

On February 4, 2011, Banditelli sent Lewis an e-mail message stating that CSEA did not abandon its request for information. CSEA also stated that the requested information could assist the parties in reaching an agreement in negotiations.

Unbeknownst to both parties, CSEA bargaining team member Deborah Taylor created her own chart cross-referencing the District's information. Taylor testified that she was unsure about the accuracy of her chart and that her chart did not specify whether CSEA members were ordered to take unpaid days off.

ISSUES

1. Did the District violate its duty to negotiate in good faith by unilaterally implementing terms and conditions of employment on CSEA unit members post-factfinding?
2. Did either the timing or the content of the District's response to CSEA's information request violate EERA?
3. Did the District, through the statements of Board of Education member Don Sedgwick, interfere with rights protected by EERA?

CONCLUSIONS OF LAW

I. The Bargaining Allegation

CSEA alleges that the District unilaterally implemented the terms of the MOU in violation of EERA because it did not fully exhaust its bargaining obligations. In determining whether a party has violated the duty to bargain under EERA section 3543.5(c), PERB utilizes either the “per se” or “totality of the conduct” test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. (*Stockton Unified School District* (1980) PERB Decision No. 143 (*Stockton USD*)). Unilateral changes are considered “per se” violations if certain criteria are met. Those criteria are: (1) the employer breached or altered the parties’ written agreement or past practice; (2) the action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the action is not merely an isolated incident, but amounts to a change of policy (i.e., having a generalized effect or continuing impact on terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Desert Sands Unified School District* (2010) PERB Decision No. 2092; *Grant Joint Union High School District* (1982) PERB Decision No. 196; *Walnut Valley Unified School District* (1981) PERB Decision No. 160.)

In this case, it is undisputed that the District implemented changes concerning matters within the scope of representation on August 31, 2010. It is further undisputed that implementation occurred after the parties completed the factfinding process described in EERA section 3548.1 et sequentes. Thus, the primary issue in this claim is whether the District implemented new terms of employment prior to satisfying its remaining duty to bargain with CSEA after factfinding.

A. The Parties’ Obligations After the Factfinder’s Report Issued

The “statutory impasse process procedures are exhausted only when the factfinder’s report has been considered in good faith, and then only if it fails to change the circumstances

and provides no basis for settlement or movement that could lead to settlement.” (*Modesto City Schools* (1983) PERB Decision No. 291 (*Modesto*)). After factfinding, the parties are obligated to determine whether the factfinder’s recommendations can form the basis for accommodations, concessions, or compromises that might lead to settlement. (*Ibid.*) If both parties believe that movement is possible and make concessions, “impasse is broken, and the parties must return to the bargaining table until they reach agreement or again reach impasse.” (*Id.*, citing *PERB v. Modesto City Schools District* (1982) 136 Cal.App.3d 881, 899.)

In addition, if one party makes a significant bargaining concession post-factfinding, the other party must make a good faith effort to determine whether the concessions have the potential for reaching agreement through further negotiation sessions. (*Modesto, supra*, PERB Decision No. 291, citing *NLRB v. Webb Furniture* (4th Cir. 1966) 366 F.2d 315.) However, “either party is free to conclude that it has made all the concessions it can and that further negotiations are futile. Where this determination is reached in good faith, NLRA-type impasse exists. The parties may decline further requests to bargain and may implement policies reasonably comprehended within previous offers made and negotiated.” (*Ibid.*) If the parties once again become deadlocked, the process is complete and “the Board cannot recertify impasse or reimpose the already exhausted impasse procedure.” (*Ibid.*)

In *Modesto, supra*, PERB Decision No. 291, the parties participated in the EERA factfinding process. After the factfinder’s report issued, the union proposed implementing the factfinder’s recommendations and made other significant concessions. Although the employer acknowledged that certain elements of the report were acceptable, it refused to engage in further formal negotiations. (*Ibid.*) The Board found that the union’s post-factfinding concessions were sufficient to break impasse and reinstate the duty to bargain. Although the

employer was entitled to claim that it had already made all possible concessions, it could not refuse to participate in post-factfinding bargaining sessions altogether. (*Ibid.*)

In *Charter Oak Unified School District* (1991) PERB Decision No. 873 (*Charter Oak USD*), the union proposed implementing the factfinder's recommendations, but the employer declined to do so and further declined to attend additional negotiations. The Board found that the employer had no duty to meet with the union because it had already expressed its opposition to the factfinder's report in a written dissent. As there was no other evidence that the parties were moving closer to agreement, the Board dismissed the complaint. (*Ibid.*)

In *Orange Unified School District* (2000) PERB Decision No. 1416, the charging party alleged that an employer unilaterally implemented terms of employment post-factfinding. The Board reversed the board agent's dismissal of the charge because, post-impasse, the employer made proposals concerning salary increases and health benefits that were more beneficial to unit members and it appeared that bargaining had not yet concluded. (*Ibid.*)

In this case, both parties made new proposals containing elements of the factfinder's report. The District offered as an alternative to its 7.39 percent across-the-board salary decrease a relatively less onerous 2.8 percent reduction, used in conjunction with a greater number of furlough days as well as a freeze to scheduled raises. CSEA had previously expressed its preference for furlough days over other types of salary cuts. CSEA offered for the first time salary reductions and changes to healthcare contributions.

The District contends that it had no additional duty to bargain post-factfinding because none of CSEA's August 2010 proposals met the District's target level of reductions. However, the obligations described in *Modesto, supra*, PERB Decision No. 291, and its progeny do not require one party to accede to the demands of the other. Rather, as explained above, the question is whether the factfinder's report gives rise to significant concessions that might lead

to agreement. (*Ibid.*) Because both parties made new concessions post-factfinding, the parties had a mutual duty to consider those proposals in good faith and decide whether further bargaining would be fruitful.

B. Lawfulness of the District's Post-Factfinding Bargaining Conduct

The next issue is whether the District bargained in bad faith by its conduct between August 16 and August 31, 2010. PERB generally resolves the question of good or bad faith bargaining by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (*Oakland Unified School District* (1982) PERB Decision No. 275.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain because it amounts to merely going through the motions of negotiations. (*General Electric Co.* (1964) 150 NLRB 192, 194, enf. 418 F.2d 736.) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (*Oakland Unified School District* (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (*Ibid.*) Other factors include: negotiator's lack of authority which delays and thwarts the bargaining process (*Stockton USD, supra*, PERB Decision No. 143); insistence on ground rules before negotiating substantive issues (*San Ysidro School District* (1980) PERB Decision No. 134); and reneging on tentative agreements the parties already have made (*Charter Oak USD, supra*, PERB Decision No. 873; *Placerville Union School District* (1978) PERB Decision No. 69).

However, adamant insistence on a bargaining position is not necessarily refusal to bargain in good faith. (*Oakland Unified School District, supra*, PERB Decision No. 275.)

“The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained.” (*NLRB v. Herman Sausage Co.* (5th Cir. 1960) 275 F.2d 229.)

It is clear from the record that the parties’ negotiations were extremely tumultuous, causing frustration for both sides. The genesis of these difficult negotiations appears to be a fundamental disagreement over what financial reductions were necessary as well as the urgency for implementing those reductions. However, the typical indicia of bad faith bargaining are not present in the District’s post-factfinding conduct. Bargaining sessions were scheduled promptly and began three days after the factfinder’s report issued. The District outlined its bargaining position during the first session and maintained that position consistently during negotiations. Furthermore, the District considered each of CSEA’s proposals and gave its opinion as to why those proposals were financially unacceptable.

Although it is true, as CSEA contends, that the District’s post-factfinding proposals included roughly the same level of reductions as did its pre-factfinding proposals, the duty to bargain in good faith does not require either party to retreat from its bargaining position. (See *Modesto, supra*, PERB Decision No. 291; *Oakland Unified School District, supra*, PERB Decision No. 275.) Thus, just as CSEA was not required to accept that the concessions sought by the District were necessary, the District was also entitled to maintain its position. That disagreement is not sufficient to demonstrate that the District failed to consider CSEA’s proposals in good faith.

CSEA also argues that the District was required to schedule additional meetings to discuss Proposal #3 and Proposal #4 prior to implementing the MOU. As explained above, the Board in *Modesto, supra*, PERB Decision No. 291, found that “either party is free to conclude that it has made all the concessions it can and that further negotiations are futile.” The Board applied this rule in *Charter Oak USD, supra*, PERB Decision No. 873, finding that an

employer was entitled to refuse further meetings with the union where its bargaining position was already clear. Otherwise, the Board found, an employer could theoretically be made to continue bargaining indefinitely. (*Ibid.*) The same is true in the present case. The District's bargaining position was expressed during the August 19 and 20, 2010 bargaining sessions. It is undisputed that the District did a cost analysis of each of CSEA's proposals and found them to be unacceptable. CSEA admits that Proposal #3 and Proposal #4 did not reach the District's target goal of financial reductions under these circumstances. The simple fact that the District did not schedule new meetings to discuss CSEA's additional proposals does not demonstrate bad faith. For these reasons, the District satisfied any remaining duty to consider CSEA's post-factfinding proposals and it was entitled to decline further bargaining.

C. The District's Authority to Implement the MOU

Once lawful impasse has been reached, the parties may refuse to negotiate further and the employer may implement changes that were reasonably comprehended to be within its last, best, and final offer. (*Rowland Unified School District* (1994) PERB Decision No. 1053.) PERB has found that "matters reasonably comprehended within pre-impasse negotiations include neither proposals better than the last best offer nor proposals less than the status quo which were not previously discussed at the table." (*County of Sonoma* (2010) PERB Decision No. 2100-M, citing *Modesto, supra*, PERB Decision No. 291.) This is because "[w]ithout offering proposals or bargaining at the table, an employer provides no notice that it is contemplating changes or positions less than the status quo." (*Modesto, supra*, PERB Decision No. 291.) Here, it is found that the District satisfied its remaining duty to bargain with CSEA after the issuance of the factfinder's report. Therefore, the District was free to impose terms reasonably comprehended within its last, best, and final offer, which in this case was either the terms of its June 25, 2010 proposal or the recommended terms of the factfinder's report. The

District elected to do the latter when it imposed the terms of the August 26, 2010 MOU. The remaining issue is whether the terms of the MOU were “reasonably comprehended” within the recommended terms of the factfinder’s report.⁷ CSEA contends that the MOU did not reflect the terms in the factfinder’s report in two areas. Each will be discussed below.

1. The 2.8 Percent Reduction to the Salary Scale

In *Laguna Salada Union School District* (1995) PERB Decision No. 1103 (*Laguna Salada USD*), PERB held that “the methodology used to make adjustments in employee wages is a negotiable subject, just as is the level to which wages are to be adjusted.” That case, like the present case, concerned the employer’s implementation of its last, best, and final offer post-impasse. That offer, made in November 1992, included a 1.76 percent reduction to the salary scale, retroactive to July 1, 1992. Bargaining concluded in June 1993 and the employer implemented what it perceived to be the cumulative effect of its last, best, and final offer, a 17.6 percent reduction from employees’ June 1993 paycheck. The Board held that the implemented terms were not reasonably comprehended within the employer’s last, best, and final offer because the employer had not previously discussed how it intended to apply its salary proposal retroactively. (*Ibid.*)

In this case, the factfinder’s report recommended a 2.8 percent reduction to the salary scale for both 2010-2011 and 2011-2012. The District implemented this reduction retroactive to July 1, 2010. However, the factfinder’s report did not include either the implementation date or the methodology for the salary reduction. Nor was this discussed in bargaining.

The parties now dispute whether the District has the authority to implement the salary reduction retroactive to July 1, 2010. According to CSEA, because the factfinder did not

⁷ Because it is found that the District satisfied its duty to bargain in good faith post-factfinding, it is unnecessary to address its claim that it was excused from the duty to bargain due to the immediate business necessity to address its financial shortfall.

include an application date, retroactive application is not appropriate. The District contends that the only way to achieve the savings proposed in the factfinder's report is to apply the salary reduction as of the beginning of the 2010-2011 school year.⁸

Both parties' interpretation of the factfinder's recommendations is flawed and is inconsistent with PERB's practice of relying primarily on the plain meaning of contract language to ascertain its meaning. (See *County of Sonoma* (2011) PERB Decision No. 2173-M, citing Civ. Code, § 1638, *Sierra Joint Union High School District* (1995) PERB Decision No. 1083.) It is unreasonable to insert a July 1, 2010 effective date for the salary reduction when that term was plainly not included in the report. Moreover, as the report issued *after* July 1, 2010, it is implausible that the factfinder intended the reduction be retroactive yet did not describe the process for retroactive implementation. Likewise, it is also inappropriate to infer a later implementation date because the factfinder clearly sought a specific level of savings during the 2010-2011 and 2011-2012 school years.

The most plausible interpretation of the factfinder's recommendation is actually the simplest. The factfinder's report recommended that the salary scale be reduced by 2.8 percent during the 2010-2011 and 2011-2012 school years, but made no recommendations regarding how to achieve those reductions. The recommended reductions can be accomplished in different ways, such as an equal parts reduction for every month of the relevant school years or, as the employer attempted in *Laguna Salada USD, supra*, PERB Decision No. 1103, a

⁸ On March 8, 2011, CSEA withdrew the claim that the District's implementation of the 2.8 percent salary reduction was an "independent violation of EERA[.]" It is nevertheless appropriate to address this issue here because the implementation of the reduction arises under the existing allegations in the PERB complaint, namely, whether "on or about August 31, 2010, Respondent unilaterally implemented new terms and conditions of employment without bargaining with Charging Party regarding new proposals." Furthermore, to the extent that this issue is not covered by the PERB complaint, consideration is appropriate because it is intimately related to the allegations in the complaint, both parties had and used the opportunity to litigate the issue during the formal hearing, and the issue was adequately addressed in closing briefs. (See *Lake Elsinore Unified School District* (2012) PERB Decision No. 2241.)

reduction that is greater in one month than it is in others. According to this understanding, the effective date of the reduction is not relevant as long as the salary scale is reduced by 2.8 percent over the course of the 2010-2011 and the 2011-2012 years. However, the District gave CSEA no prior notice of its methodology for reaching this reduction and the District was not authorized to adopt non-negotiated changes to the status quo. (See *County of Sonoma, supra*, PERB Decision No. 2100-M.)

Thus, although the District was entitled to implement the factfinder's recommendation, i.e., a 2.8 percent reduction in the salary scale for the 2010-2011 and the 2011-2012 years, the terms it actually implemented were not "reasonably comprehended" within its last, best, and final offer because the District never bargained with CSEA over the methodology for achieving the salary scale savings. (*Laguna Salada USD, supra*, PERB Decision No. 1103.) Accordingly, implementation of this salary proposal violated the duty to bargain in good faith.⁹

2. The Acknowledgement of Classified Layoffs

CSEA also contends that the District failed to implement the following language from the factfinder's report: "the Chair finds that this ongoing concession should be acknowledged with a minimum of a percent each year." CSEA argues that this language required the District to reduce the concessions sought from CSEA in bargaining by one percent for 2010-2011 and 2011-2012, amounting to \$309,665 each year. However, the language at issue is ambiguous because it does not describe how the afore-mentioned layoff should be "acknowledged," or from what number or figure "a percent" should be calculated. Other language in the report

⁹ It is acknowledged that CSEA shares some responsibility for not addressing this issue during bargaining because CSEA declined the District's request to review the factfinder's report. However, it cannot be said that CSEA waived its right to negotiate over this issue because the District never notified CSEA about its implementation methodology beforehand. (See *Sylvan Union Elementary School District* (1992) PERB Decision No. 919.) Moreover, the District did not raise waiver as an affirmative defense in this case. "Waiver is an affirmative defense that is itself waived if not raised by the respondent." (*Antelope Valley Union High School District* (1998) PERB Decision No. 1287, citations omitted.)

offers no further insight. CSEA’s factfinding panel member attempted to testify about the factfinding chair’s intent, but his uncorroborated hearsay testimony is insufficient to establish a factual finding. (PERB Regulation 32176; *Baker Valley Unified School District* (2008) PERB Decision No. 1993.)

More importantly, even if the term “acknowledgement” did mean that the District should reduce the total concessions sought from CSEA, CSEA fails to show that this “acknowledgement” was not already incorporated into the more specific recommendations in the report. For example, the report recommended a 2.8 percent reduction to the salary scale, which the factfinder notes is less than the reduction any other District bargaining units received and also less than what the District was proposing pre-impasse. Accordingly, CSEA does not demonstrate that the District failed to incorporate this aspect of the factfinder’s report.

II. The Information Request Allegation

CSEA alleges that the District violated EERA by failing to provide the information requested by Banditelli on July 26, 2010. The exclusive representative is entitled to all information that is “necessary and relevant” to the discharge of its duty of representation. (*Stockton USD, supra*, PERB Decision No. 143). Failure to provide such information upon appropriate request violates the duty to bargain in good faith under EERA section 3543.5(c). (*Ventura County Community College District* (1999) PERB Decision No. 1340 (*Ventura CCD*).)

PERB uses a liberal standard, similar to a discovery-type standard, to determine the relevance of the requested information. (*Trustees of the California State University* (1987) PERB Decision No. 613-H.) Notwithstanding the liberal standard, an employer can refuse to produce information that is otherwise “relevant and necessary” if, for example, it will impose burdensome costs on the employer, or the release will compromise employee privacy rights.

(*Los Rios Community College District* (1988) PERB Decision No. 670; *Modesto City Schools and High School District* (1985) PERB Decision No. 479.) The employer may not, however, simply ignore a union’s request for information. (*Chula Vista City School District* (1990) PERB Decision No. 834 (*Chula Vista CSD*).

It is undisputed that the information request in the present case concerns employee hours and wages which are both issues expressly within the scope of representation. (EERA 3543.2(a).) Requests concerning those subjects are presumptively relevant. (*Ventura CCCD, supra*, PERB Decision No. 1340.) The issue here is whether the District timely and appropriately responded to CSEA’s request.

A. Timeliness of the District’s Response

An employer’s response to a valid information request must be timely. (*Regents of the University of California* (1999) PERB Decision No. 1314-H.) In *Compton Community College District* (1990) PERB Decision No. 790, the Board found that a five-month delay in responding to an information request was untimely and violated the duty to negotiate in good faith. The Board also found that the union’s failure to voice its dissatisfaction at the employer’s inaction was not relevant to the issue of whether the employer’s response was timely. (*Ibid.*) A two-month delay may be untimely under certain circumstances. (*Regents of the University of California, supra*, PERB Decision No. 1314-H, citing *Colonial Press, Inc.* (1973) 204 NLRB No. 126.) In *City of Burbank* (2008) PERB Decision No. 1988-M (*Burbank*), the Board found an employer’s late response was a violation even if it eventually produced the requested information. The Board found the delay in that case would have been excused had it been “reasonable,” meaning justified under the circumstances and without prejudice to the union. (*Ibid.*)

In this case, it is undisputed that the District did not address CSEA's July 26, 2010 information request until around six months later, on January 26, 2011. This was not a timely response to CSEA's request unless the delay was "reasonable." (See *Burbank, supra*, PERB Decision No. 1988-M.) The District acknowledges receiving the request via e-mail but originally overlooked it because its management personnel were on work furlough. The District asserts that its delay should be excused because it was inadvertent, essentially arguing that the failure to timely answer an information request is only a violation when it is the product of unlawful intent. The District provides no legal authority supporting this position. A similar argument was rejected in *San Bernardino City Unified School District (1998)* PERB Decision No. 1270 (*San Bernardino City USD*). There, an employer refused to provide a union with employee contact information based on the mistaken belief that the employees objected to disclosure. The employer's good faith mistake did not prevent the Board from finding a violation. (*Ibid.*) Likewise in the present case, the District's mistake is not a defense for failing to timely respond to CSEA's request.

Moreover, even if the District was initially excused from responding, CSEA raised the information request issue in its first amended charge, filed September 15, 2010. The District does not dispute receiving and responding to the first amended charge.¹⁰ The District did not contact CSEA about its request until almost four months later, which is itself an untimely response. (See *Regents of the University of California, supra*, PERB Decision No. 1314-H.) Accordingly, because the District's delayed response was solely the product of its own inaction, the delay was not justified under the circumstances.

¹⁰ Lewis testified that she did not see CSEA's amended charge until January 4, 2011, but the District does not dispute receiving the amended charge in or around the date it was filed. In addition, Lewis signed the District's response to the amended charge on November 16, 2011. Based on this information, the District knew or should have known about the information request issue well before January 4, 2011.

The District's conduct was especially problematic in this case because it prejudiced CSEA's ability to represent some of its members. CSEA stated that it made the request because it believed that some members were ordered to take unpaid days off in June 2010. When the District finally responded, six months later, CSEA had difficulty identifying those members. This deprived CSEA of the opportunity to do a more contemporaneous investigation. In addition, CSEA requested the information right before the parties began post-factfinding bargaining. Information about any savings already achieved by involuntary unpaid days off (essentially furloughs) could have assisted the parties in reaching agreement. The District's six-month delay in responding to CSEA's information request was therefore not reasonable under the circumstances and violated the duty to bargain in good faith. (*Burbank, supra*, PERB Decision No. 1988-M; *Ventura CCD, supra*, PERB Decision No. 1340.)

B. Content of the District's Response

Timeliness aside, CSEA also contends that it never received an adequate response to its information request. An employer is not required to furnish information in a form that is more organized than its own records. (*State of California (Department of Corrections)* (2000) PERB Decision No. 1388-S (*Department of Corrections*), citing *NLRB v. Tex-Tan, Inc.* (1963) 318 F.2d 472.) On the other hand, "[t]he fact that the information may not have been conveniently available in a form that would accommodate both the interests of the [union] and the District does not automatically render the [union's] request unduly burdensome nor relieve the District of its duty to provide it." (*Chula Vista CSD, supra*, PERB Decision No. 834, citing *Stockton USD, supra*, PERB Decision No. 143.)

In *Department of Corrections, supra*, PERB Decision No. 1388-S, an employer did not timely respond to an information request about its operational reorganization arguing that the plans were not yet finalized. The Board found a violation of the duty to negotiate in good faith

stating that the employer should have provided the union with whatever information it had at the time. (*Ibid.*) In contrast, in *Trustees of the California State University (Sonoma)* (2005) PERB Decision No. 1755-H, the Board found no violation where the employer had no information responsive to the union's request.

Here, CSEA originally requested information about unit members that took unpaid days off on three days in June 2010. The District brought all of its records responsive to this request to the January 26, 2011 meeting, but CSEA apparently did not want the information in that format. The District was not, however, required to reorganize its records to meet CSEA's format demands. (See *Department of Corrections, supra*, PERB Decision No. 1388-S.) Moreover, just because someone else was able to produce a more usable list does not mean that the District was obligated to do so as well. Thus, the District's eventual response to CSEA's original request did not violate EERA.

During the January 26, 2011 meeting, CSEA also requested information about whether unit member were ordered to take unpaid days off in June 2010. The District responded that it had no information responsive to the updated request but that it would conduct an investigation if CSEA provided additional details. CSEA never did so. The District is not required to produce what it does not possess. (*Trustees of the California State University (Sonoma)*, *supra*, PERB Decision No. 1755-H.) Therefore, this response was also not a violation.

III. The Interference Allegation

CSEA also alleges that District board President Don Sedgwick interfered with EERA rights by his comments during the August 31, 2010 meeting. Because witnesses recounted the incident differently, this factual dispute must be resolved.

A. Resolution of Divergent Factual Accounts

The common thread between the different witnesses' accounts is that Sedgwick said that the CSEA's bargaining team did its members a "disservice" through its negotiating strategy, including using the impasse and factfinding process. According to Aldrich, Sedgwick strongly implied that the District implemented unfavorable terms on CSEA unit members in direct response to CSEA's decision to utilize the EERA factfinding process. Banditelli recalled that the "disservice" comment was part of a larger explanation of why the District board felt that implementation was necessary that evening. According to Banditelli, Sedgwick also discussed the District's overall economic plight and the need to prevent ceding control of its operations to the OCDE. Bennett and Vega de Garcia both testified that Sedgwick's comments were directed towards the amount of time taken in bargaining.

California Evidence Code 780 lists factors to consider in making witness credibility determinations. Relevant to this case are the witnesses' demeanor, capacity to perceive, character, bias, and attitude. (Cal. Evid. Code, § 780(a), (c), (e), (f), (j).) PERB considers those same factors when making credibility determinations. (*Sacramento City Teachers Association (Franz)* (2008) PERB Decision No. 1959.) In this case, Banditelli's description of Sedgwick's comments is credited over the more extreme testimony of Aldrich. During his testimony, Aldrich described a long and acrimonious history in dealing with the District's counsel. He was also admonished during the hearing that he was providing testimony on subjects without being prompted by a proper question. Regarding his recollection of

Sedgwick's specific comments, Aldrich described his recall as "paraphrasing" and "that's what I heard in my mind." These factors give rise to concerns about apparent bias in Aldrich's testimony as well as his ability to remember the incident in question clearly.

Banditelli's testimony, on the other hand, raised no concerns about bias or lack of memory. Moreover, Banditelli's testimony on this issue is more detailed than any other witness, including Aldrich, and is more consistent with the other witnesses. For all these reasons, Banditelli's testimony is credited over Aldrich's on this issue.

B. Employer Speech as Interference With Protected Rights

The test for whether a respondent has interfered with the rights of employees under the EERA does not require that unlawful motive be established, only that at least slight harm to employee rights results from the conduct. (*Carlsbad Unified School District* (1979) PERB Decision No. 89; *Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106.) In *Clovis Unified School District* (1984) PERB Decision No. 389, the Board held that a finding of coercion does not require evidence that the employee actually felt threatened or intimidated or was in fact discouraged from participating in protected activity.

In *Chula Vista CSD, supra*, PERB Decision No. 834, the Board held that employer speech causes no cognizable harm to employee rights unless it contains "threats of reprisal or force or promise of a benefit." PERB applies an objective standard to determine whether the employer's speech is protected or constitutes a proscribed threat or promise. (*Los Angeles Unified School District* (2005) PERB Decision No. 1791 (*LAUSD*)). In addition, an employer's statements are viewed in their overall context to determine whether there is any coercive meaning. (*Ibid.*) Thus, the charging party must demonstrate that the speech in question tends to coerce or interfere with a reasonable employee in the exercise of protected rights." (*Ibid.*; *Regents of the University of California* (1983) PERB Decision No. 366-H.)

The Board also places considerable weight on the accuracy of the content of the speech in determining whether the communication constitutes an unfair labor practice. (*LAUSD, supra*, PERB Decision No. 1791; *Muroc Unified School District* (1978) PERB Decision No. 80 (*Muroc USD*)). Thus, where employer speech accurately describes an event, and does not on its face carry the threat of reprisal or force, or promise of benefit, the Board will not find the speech unlawful. (*Chula Vista CSD, supra*, PERB Decision No. 834.)

Employers may communicate with its employees, in a non-coercive fashion, about ongoing negotiations. (*Muroc USD, supra*, PERB Decision No. 80, citing *NLRB v. General Electric Co.* (2nd Cir. 1969) 418 F.2d 736, 762, cert. den. (1970) 397 U.S. 965 and *Proctor & Gamble Mfg. Co.* (1966) 160 NLRB 334, 340.) However, the employer may not “engage in a campaign to disparage the exclusive representative’s negotiators so as to drive a wedge between union representation and the bargaining unit employees.” (*Trustees of the California State University* (2006) PERB Decision No. 1871-H (*CSU Trustees*), citing *Safeway Trails, Inc.* (1977) 233 NLRB 1078, 1081-1082.)

In *CSU Trustees, supra*, PERB Decision No. 1871-H, PERB considered an employer’s statements that, according to the charging party, misrepresented the charging party’s interest in commencing timely negotiations. The Board found that the statements did not cross the “fine line” between lawful expression of opinion and a “campaign to disparage” the union, instead describing the e-mail message as the employer’s “spin” on negotiations. (*Ibid.*) Notably, the Board saw no need to resolve the issue of whether the employer’s comments, in fact, misrepresented the truth. (*Ibid.*)

In *Temple City Unified School District* (1990) PERB Decision No. 841 (*Temple City USD*), a district superintendent described negotiations with other bargaining units as “cooperative” and “timely,” but that negotiations with the charging party union “have broken

down” and had “become so unpleasant, uncooperative and unproductive” that the employer was considering hiring a professional negotiating firm. The employer also stated that it could not agree to any financial terms in bargaining until all grievances were resolved. The Board held that the employer’s description of negotiations was a lawful expression of its opinion, but that statements about the grievance process constituted unlawful coercion. (*Ibid.*)

In *Coachella Valley Mosquito & Vector Control District* (2009) PERB Decision No. 2031-M (*Coachella Valley MVCD*), an employer’s representative informed employees that they were free to join the union, but that the costs associated with unionization would result in layoffs. The Board rejected the contention that the comments were merely an honest projection of the employer’s financial situation because the employer only mentioned costs associated with unionization and did not describe other causes for its budgetary shortfall such as increased operating expenses and decreased revenue. (*Ibid.*)

In this case, Sedgwick’s “disservice” comment was made in the context of a more detailed explanation of the District’s reasoning for implementing the MOU. As in the *CSU Trustees, supra*, PERB Decision No. 1871-H and *Temple City USD, supra*, PERB Decision No. 841 cases, these comments may accurately be described as the District’s “spin” on negotiations. In fact, Sedgwick’s comments were consistent with the way the District characterized its bargaining position all along. It is not a violation of EERA for the District to describe its bargaining position favorably and CSEA’s position unfavorably.

Furthermore, unlike in *Coachella Valley MVCD, supra*, PERB Decision No. 2031-M, Sedgwick did not intimate that CSEA’s bargaining strategy was the only cause for the District board’s decision. Rather, Sedgwick explained that the decision was also motivated by the District’s overall financial condition, its budget obligations, and the potential for intervention from the OCDE. When considered in the overall context, CSEA has not shown that

Sedgwick's comments were coercive or contained either a promise of benefit or a threat of reprisal. Therefore, the comments do not violate EERA.

CONCLUSION

The District unilaterally implemented a salary reduction that was not reasonably comprehended within its last, best, and final offer. The District also failed to timely respond to CSEA's July 26, 2010 information request. Each of these actions violate EERA section 3543.5(a), (b), and (c). All other allegations in the PERB complaint are hereby dismissed.

REMEDY

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

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.

In this case, it is appropriate to order the District to cease and desist from the conduct that violates EERA. (*Ibid.*; *San Bernardino City USD* (1998) PERB Decision No. 1270.) It is also appropriate for the District to take certain affirmative actions, specific to each violation.

I. Unilateral Change

In *California State Employees' Assn. v. PERB* (1996) 51 Cal.App.4th 923, 946, the court held:

Restoration of the status quo is the normal remedy for a unilateral change in working conditions or terms of employment without permitting bargaining members' exclusive representative an opportunity to meet and confer over the decision and its effects. This is usually accomplished by requiring the employer to rescind the unilateral change and make the employees "whole" from losses suffered as a result of the unlawful unilateral change.

(Citation omitted; see also *San Bernardino City USD, supra*, PERB Decision No. 1270.) In this case, the District was not entitled to reduce the classified unit salary scale by 2.8 percent for both the 2010-2011 and 2011-2012 years without first negotiating with CSEA over the methodology for achieving that reduction.

In *Davis Unified School District, et al.* (1980) PERB Decision No. 116 (*Davis*), the Board found that the appropriate remedy for a unilaterally implemented salary term was a rescission of the adopted policy and compensation to employees for any lost income. Therefore, the District is ordered to rescind the implementation of the 2010-2011 and 2011-2012 reductions to the salary scale and reinstate prior salary practices. The District is further ordered to make CSEA unit members whole for any financial losses resulting directly from its unilateral implementation, augmented at a rate of seven percent per annum. (*San Bernardino City USD, supra*, PERB Decision No. 1270; *Davis, supra*, PERB Decision No. 116.)

Given that the 2010-2011 school year was already over when this matter was submitted to PERB for decision and that nothing in this Proposed Decision precludes the District from implementing its previously proposed salary reductions after completing bargaining with CSEA over the methodology, it may be in the parties' interest to negotiate an alternative to the remedy ordered on this salary scale issue. This Proposed Decision therefore does not preclude the parties from reaching an agreement that obviates the need for a direct return to the status quo. (See *Laguna Salada USD, supra*, PERB Decision No. 1103, [holding that PERB may defer to the parties' agreement on a remedy if doing so effectuates the purposes of EERA].)

II. Failure to Timely Respond to CSEA's Information Request

In *Burbank, supra*, PERB Decision No. 1988-M, the Board considered the proper remedy where the employer responded to an exclusive representative's information request, but failed to do so in a timely manner. In that case, the Board found that an order to cease and

desist and to post notice of the violation was sufficient to effectuate the purposes of the applicable collective bargaining statute. (*Ibid.*) Such is the case here as well. Because the District eventually responded to the CSEA's information request, and there is no violation as to the content of that response, the appropriate remedy here is an order to cease and desist from the offending conduct and to post a notice that the District's failure to timely respond to CSEA's information request violated EERA.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Saddleback Valley Unified School District (District) violated the Educational Employment Relations Act (Act), Government Code section 3543.5(a), (b), and (c). The District violated the Act by (1) implementing a salary reduction that was not reasonably comprehended within its last, best, and final offer; and (2) failing to timely respond to California School Employees Association's (CSEA's) request for information necessary and relevant to its duties as an exclusive representative.

Pursuant to section 3541.5(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. Unilaterally implementing terms and conditions of employment without first providing CSEA with appropriate notice and opportunity to request negotiations; and
2. Failing to timely respond to requests by CSEA for information necessary and relevant to its representation duties.

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

1. Rescind the unilaterally implemented salary scale reductions for the 2010-2011 and 2011-2012 school years and restore the status quo ante, unless an alternative agreement with CSEA is reached;

2. Compensate any and all CSEA unit members for any financial losses incurred as a result the implementation of the above-described salary reduction with any financial losses augmented at a rate of seven percent per annum, unless an alternative agreement with CSEA is reached.

3. Meet and confer in good faith with CSEA upon its request regarding the methodology for implementing its previously proposed salary scale reductions for the 2010-2011 and 2011-2012 school years.

4. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the CSEA bargaining unit 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 thirty (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; and

5. 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. Respondent 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 CSEA.

Right to Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

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).)

Eric J. Cu
Administrative Law Judge