STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD TEACHERS ASSOCIATION, Charging Party, v. CHILDREN OF PROMISE PREPARATORY ACADEMY, Respondent.	Case No. LA-CE-5876-E LA-CE-6013-E PERB Decision No. 2558 March 27, 2018

Appearances: Bartsch & Haven by Duane Bartsch, Attorney, for Children of Promise Preparatory Academy; California Teachers Association by Jean Shin, Attorney, for Inglewood Teachers Association.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

WINSLOW, Member: These cases are before the Public Employment Relations Board (PERB or Board) on exceptions to proposed decisions by two PERB administrative law judges (ALJs) concluding that the Children of Promise Preparatory Academy (COPPA or Academy) violated the Educational Employment Relations Act (EERA)[1] by refusing to bargain in good faith. The complaints alleged that during two different school years the Academy engaged in surface bargaining and refused to provide relevant information to the Inglewood Teachers Association (Association or ITA) in violation of EERA section 3543.5, subdivision (c).

The Academy excepts to both proposed decisions on the merits, and also excepts to the ALJ's refusal to recuse himself from Case No. LA-CE-6013-E.

[1] EERA is codified at Government Code section 3540 et seq. All further undesignated code sections refer to the Government Code.

Although these cases were litigated separately, we have consolidated them for purposes of our decision. The Board has discretion to "consolidate charges as it deems appropriate." (PERB Reg. 32612, subd. (d).)[2] In determining whether to consolidate charges for disposition by a single decision, the Board considers both fairness and administrative economy (*Los Angeles Unified School District* (1984) PERB Decision No. 473), and whether the charges involve similar issues (see, e.g., *Los Angeles Community College District* (1981) PERB Decision No. 167). Because these cases involve the same parties and share many issues, we have consolidated them for this decision.

With respect to both cases, the Board has reviewed the hearing records in their entirety, including the hearing transcripts and exhibits, and the parties' briefs before the ALJs. The Board has considered the issues on appeal raised by the Academy in its exceptions and the Association's brief in opposition to those exceptions. Based on this review, the Board concludes that the proposed decisions are adequately supported by the evidentiary records, are well reasoned and consistent with all relevant legal principles. We therefore adopt and affirm the proposed decisions, including their findings of fact and conclusions of law, as the decision of the Board itself as supplemented by the following discussion of the Academy's exceptions.

PROCEDURAL HISTORY AND FACTUAL SUMMARY COMMON TO BOTH CASES[3]

The Association filed a petition to become the exclusive representative of the Academy's certificated employees in January 2013. Although PERB determined that the Association had adequate proof of support among those employees, COPPA refused to

[2] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[3] Some of the facts included in this summary were determined in previous Board decisions involving the same parties. PERB may take official notice of its own records. (*El Monte Union High School District* (1980) PERB Decision No. 142.)

voluntarily recognize the Association, asserting that the proposed bargaining unit was inappropriate because it contained alleged management employees, and that it doubted whether the Association had majority support. COPPA further argued that unionization would interfere with efficient operation of the school.

PERB investigated the petition pursuant to PERB Regulation 33230. During a settlement conference regarding the petition, COPPA asked the Board agent to recuse herself, and she did so. When a second Board agent was assigned and issued an Order to Show Cause why the Association should not be certified as the exclusive representative, COPPA requested that this Board agent be disqualified because COPPA had not consented to his assignment. (*Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402 (*Children of Promise I*).) The Board agent refused to recuse himself and issued an order certifying the Association as the exclusive representative. (*Ibid.*)

After the certification order issued on August 5, 2013, the Association asked to commence negotiations for a collective bargaining agreement (CBA). COPPA refused to negotiate because it had appealed the Board agent's certification order to the Board itself and had requested a stay of that order. PERB denied the stay request on October 4, 2013 (*Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-401) and affirmed the certification order on November 6, 2013 (*Children of Promise I, supra*, PERB Order No. Ad 402).

Facts of Case No. LA-CE-5876-E

On August 28, 2013, while COPPA's appeal from the Board agent's certification of ITA was pending, Jeffery Good (Good), a staff member of the California Teachers Association (CTA) responsible for advising ITA, wrote to Carleton Lincoln (Lincoln), the chief executive

officer of COPPA, demanding to bargain for an initial contract on behalf of ITA. Good offered several dates for that purpose. Lincoln did not reply until nearly a month later, stating that any meeting would be premature, given COPPA's appeal and request for stay.

Although COPPA's request for stay was denied on October 4, 2013, there is no evidence of any communication between ITA and COPPA until early November, when Good again e-mailed Lincoln asking for bargaining dates. The following day Duane Bartsch (Bartsch), COPPA's attorney, responded by offering Good several dates in December 2013. Those dates fell during the winter vacation period for COPPA employees and were therefore unacceptable to ITA, which Good conveyed to Bartsch on November 8, 2013. This commenced a series of e-mail exchanges between the two, including one in which Bartsch again offered the December dates previously rejected by Good. Bartsch suggested dates in February 2014. Good responded by asking to meet in January. Bartsch claimed the January dates "do not work for us."[4] The parties ultimately settled on February 14, 2014, to begin negotiations.

In the meantime, Good wrote to COPPA on December 18, 2013, asking for several categories of financial information, including State Department of Education P-1 and P-2 reports, adopted and revised 2013-2014 Form J-200 Series (all funds) Budget, 2012-2013 unaudited actuals, including exhibits, and the 2011-2012 audit. These documents were necessary, as explained by Good at the hearing, to establish COPPA's total revenue and operating expenses so that ITA could intelligently formulate its own bargaining proposals.

[4] At the hearing, COPPA offered evidence that Bartsch was involved in a civil trial in January, but he never explained that to Good while they were trying to schedule bargaining dates.

The Association also asked for copies of individual employment contracts for COPPA employees, including administrators and teachers, and for information regarding health and welfare benefits available to COPPA employees. The request cited both EERA and the California Public Records Act (CPRA)[5] as authority for ITA's entitlement for this information. ITA asked for a response by January 7, 2014.

On December 24, 2013, Bartsch responded on behalf of COPPA, stating that it was not required to provide this information to ITA. Bartsch asked that Good provide him with specific authority that would justify any future information requests. No information was provided before the parties' first bargaining session on February 14, 2014.

At the bargaining session Bartsch reiterated COPPA's position that EERA did not entitle ITA to the requested information, and again asked Good to provide him with legal authority for the request. Good responded by sending a copy of *Stockton Unified School District* (1980) PERB Decision No. 143 (*Stockton*). Bartsch expressed doubts about the applicability of *Stockton*, since it was 35 years old, and pre-dated the inception of charter schools.

COPPA eventually produced most of the requested documents around May 2, 2014.[6] By that time, the parties had held two bargaining sessions.

The February 14, 2014 Bargaining Session

Prior to this meeting Bartsch informed Good that the management team would consist of himself, Lincoln and Trena Thompson (Thompson), a COPPA manager, and "any staffer, teacher, or parent who wants to attend." Good responded that any decision to broaden the

[5] The CPRA is codified at Government Code section 6250, et seq.

[6] ITA did not receive any administrator employment contracts or plan summary information regarding health benefits.

process beyond management and bargaining unit representatives "should be made collaboratively at the table."

When the ITA bargaining team arrived at the agreed-upon venue, they learned it was in a church sanctuary, in the same church that shares space with one of COPPA's school sites. The non-bargaining team observers consisted of congregants of this church, one of whom was on COPPA's governing board. Good testified that the Association team was heckled by the observers and that Bartsch played to the crowd by disparaging the Association by launching into diatribes about how public employee unions have ruined public education and how ITA in particular had destroyed the Inglewood Unified School District.[7]

ITA began the bargaining session by proposing ground rules, including limiting the time period of caucuses, being on time for negotiations, providing 48-hour notice of guests who would be present, signing off on tentative agreements throughout the bargaining process, and focusing on issues, not personalities. Bartsch responded that ITA's proposal was "silly" and explained during the administrative hearing that the Association could not have taken its own proposal seriously because Peter Somberg (Somberg), ITA's president, admitted to being late on one occasion and had also admitted to referring to Bartsch by a profane epithet in an e-mail.[8] COPPA further argued in its closing brief to the ALJ and in its exceptions that it believed the proposal to be on time was insulting and racially insensitive, since COPPA is located in a predominantly African-American and Latino neighborhood. However, COPPA did not raise these concerns during negotiations with ITA.

[7] These findings were not excepted to.

[8] Somberg apologized to Bartsch when he learned his e-mail had been accidentally sent to Bartsch.

In addition to its ground rules proposal, ITA also presented a comprehensive initial package of proposals on subjects including work year, organizational security, Association rights, class size, grievance procedures, and salary. Good had to persuade the COPPA team to stay and listen to ITA's explanation of its proposals. COPPA did not present a formal proposal at this session, but its initial reaction, one repeated at subsequent sessions, was that COPPA would never give up its right to "act unilaterally with employees." Instead of a traditional proposal, COPPA presented written responses it had presumably gleaned from parents, community members and/or staff in response to its posed question: "How can the Union help COPPA?" These responses included such ideas as finding a new site, buying books for the students, renovating the teachers' lounge, and getting parents to attend more parent meetings.

The Second Session—March 5, 2014

In a self-described effort to build trust, ITA presented revised proposals on both ground rules and its substantive proposal. The new ground rules proposal omitted the item regarding signing off on tentative agreements throughout the bargaining process. The new substantive proposal was reduced from a comprehensive proposal for an entire collective bargaining agreement to five stand-alone subjects which Good testified he thought would be non-controversial, including term of agreement, definitions, organizational security, Association rights, and a savings clause.

COPPA did not have any initial proposal or a counterproposal to any of these proposals. Both Lincoln and Bartsch said COPPA would never agree to any type of dues deduction.[9] Bartsch again read aloud from the suggestion box, and would not commit to

[9] EERA section 3543.1, subdivision (d) establishes the right of the exclusive representative to have membership dues for bargaining unit members deducted from their

presenting any proposal or counterproposal at a future bargaining session, although COPPA informed ITA approximately a month later that it would have a proposal by April 21, 2014, the next agreed-upon meeting date.

Subsequent Meetings in the 2013-2014 School Year

At COPPA's request, the April session was re-scheduled for May 2, 2014, and COPPA presented its first substantive proposal. The highlights of this proposal include:

> The parties recognize that the COPPA teachers have signed documents seeking to de-certify [*sic*] the Union, and that August 5, 2014 will be the one year date of the Union certification, at which time the COPPA teachers may file their de-certifcation [*sic*] documents with the Public Employees Relations Board [*sic*] to de-certify [*sic*] the Union.[10]
>
> [¶. . . ¶]
>
> **3. <u>JOB DUTIES</u>**
>
> . . . COPPA, depends on employee cooperation, assistance and enthusiasm in performing . . . additional work, and reserves the right to alter or change job responsibilities, reassign or transfer job positions, or assign additional job responsibilities.
>
> [¶ . . . ¶]
>
> **4. <u>EMPLOYEE STATUS</u>**
>
> [¶ . . . ¶]
>
> . . . <u>Recognizing that no school ever terminated a good teacher</u>,[11] and that the sole purpose of COPPA is to educate children who have been failed by the existing public school system, all teacher

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paychecks. In addition, the exclusive representative may require the employer to deduct fair share service fees from unit members' paychecks. (§ 3546, subd. (a).)

[10] This was a prefatory paragraph preceding the substantive proposals.

[11] The underscored phrase also appeared in multiple other sections of COPPA's proposed CBA.

employment will be at-will and will be for one school year's duration. . . .

5. AT-WILL EMPLOYMENT POLICY

. . . COPPA reserves the right to change a teacher's position, title, job responsibilities, benefits, compensation level, or any other terms and conditions of employment at any time, within its sole discretion, with or without cause or advance notice. COPPA also reserves the right to impose discipline against a teacher of whatever type and for whatever reasons that COPPA, in its sole discretion, determines appropriate without compromising the at-will nature of employment.

[¶…¶]

14. SOLICITATIONS AND MEETINGS ON SCHOOL PREMISES

[¶…¶]

3. Teachers may not post notices on COPPA premises at any time.

4. Teachers may not hold meetings of non-school/COPPA related groups or organizations on COPPA premises at any time.

[¶…¶]

26. TEACHER SALARIES

COPPA and its teachers shall enter into individualized compensation agreements based solely on teacher merit and COPPA will have sole and absolute authority to set teachers' compensation. . . .

[¶…¶]

32. DURATION OF THE COLLECTIVE BARGAINING AGREEMENT

This Agreement is in effect until the teacher's [*sic*] vote to de-certify [*sic*] the Union, but in no event will this Agreement or any provisions of this Agreement be in effect later than September 1, 2014.

At the hearing, Good explained that the proposals' references to decertification demonstrated COPPA's contempt for ITA. According to Good, COPPA management solicited a teacher to collect teachers' signatures for a petition to decertify ITA, a point not disputed by COPPA. Good believed the teachers were intimidated into signing the petition because they were at-will employees and believed that if their signature was not on the petition, that fact would be quickly relayed to either Lincoln, Thompson, or Bartsch, and their employment would be at risk.

ITA did not agree to any of COPPA's proposals and did not submit any further proposals of its own. The parties agreed to meet in September 2014.

The administrative hearing in this case took place before the September 2014 bargaining session.

Facts of Case No. LA-CE-6013-E

Bargaining Conduct in 2014-2015

By September 2014, ITA was represented by a new CTA staff representative, Andrew Staiano (Staiano), who replaced Good. The parties met on September 29, 2014, and COPPA presented a proposal that was nearly identical to the one it presented at the May 2, 2014 bargaining session. As with the previous proposal, this one referred to a decertification petition that would be filed after August 5, 2014 and proposed a termination date of September 1, 2014, a date already passed. Other proposals would permit the Academy to change a teacher's title, pay, benefits "or any other terms and conditions of employment at any time, within its sole discretion, with or without cause or advance notice," and prohibit teachers from holding meetings with non-Academy related groups on Academy premises at any time.

After nearly six hours of bargaining that day, COPPA indicated that the proposal it had presented earlier was not its most recent proposal, and that changes would be forthcoming. However, it refused to inform ITA what those changes would be, or explain why it had failed to present its most recent proposal. The session ended when the Association determined it could not continue without the most recent proposal.

Over the course of the next two months, two sessions were held, resulting in an agreement in principle on just one subject: a recognition article. The Association submitted proposals on due process, discipline, and grievance procedures, and asked for counterproposals. COPPA failed to respond to those proposals. By December 17, 2014, the parties had agreed in principle to four articles: agreement and recognition, work year, workday, and class size. Following this bargaining session, ITA asked the Academy to sign off on each of these articles.[12] On January 12, 2015, Bartsch replied that he did not believe "we've quite reached an agreement," pleading the need to research a couple of issues but asserting the lack of time to do so due to other commitments. There was no follow up from the Academy, and no further bargaining sessions were held in 2014-2015.

Requests for Information

2014-2015 School Year

At the September 29, 2014 bargaining session, Staiano verbally asked that COPPA produce three categories of information: (1) teachers' names and contact information (i.e., their personal phone numbers, home mailing addresses, and e-mail addresses); (2) teachers' employment agreements; and (3) teachers' evaluation rubric. COPPA did not object to the

[12] Staiano testified that ITA agreed to COPPA's proposed language on recognition, work year, and class size.

latter two categories, but maintained that the ITA was not entitled to the teachers' contact information.

Several e-mail exchanges ensued regarding the employment contracts and evaluation rubric. COPPA provided these documents on November 6, 2014. However, COPPA refused to provide teachers' home addresses and telephone numbers, based on its assertion that CPRA does not permit disclosure of this information where the public employee has requested that it not be disclosed. On November 21, 2014, the Academy gave ITA the home addresses and personal phone numbers of two teachers who had not objected to disclosure. As the ALJ noted, it appeared that as of this date, only six teachers had objected to disclosure, leaving eight who did not object.[13] Thus, COPPA withheld contact information for six teachers who did not object to disclosure.

2015-2016 School Year

In August 2015 the Association renewed its request for teachers' names, addresses and telephone numbers. This request was amended on September 15, 2015 to include teachers' employment contracts and evaluation rubric, which COPPA provided on October 28.

On November 16, 2015, the Academy provided a list of teachers currently employed along with the home addresses and telephone numbers of two teachers who did not object to disclosure. This time the list omitted the contact information of at least one teacher who had not objected to disclosure.

[13] The record contains ten notes from teachers requesting non-disclosure. Two were dated October 28, 2014, five were dated November 7, 2014, and three were undated. One of the teachers who submitted an undated request testified that she submitted it sometime in November 2014.

Decertification Petition

On January 29, 2015, a group of COPPA employees filed a petition to decertify the Association. By March 16, 2015, a Board agent had determined that the petition was timely and accompanied by a sufficient showing of support. However, on March 25, 2015, the Association filed the charge in Case No. LA-CE-6013-E, and requested the decertification election be stayed pending resolution of the charge. This request was granted by the Board agent and later affirmed by the Board itself. (*Children of Promise Preparatory Academy* (2015) PERB Order No. Ad-428.)

PROPOSED DECISIONS

Case No. LA-CE-5876-E

The ALJ identified four issues for resolution in this case: Did COPPA fail and refuse to negotiate in good faith by (1) declining to schedule bargaining dates because of its pending appeal and request for stay in the representation case certifying ITA as exclusive representative, (2) failing to respond to ITA's request for information for five months, (3) refusing to consider ITA's proposal for ground rules, and (4) engaging in surface bargaining? Each of these was answered in the affirmative by the ALJ.

Regarding COPPA's refusal to meet until resolution of its appeal of the administrative determination, the ALJ noted that nothing in PERB Regulation 32370 permits a party to presume that the mere filing of an appeal and request for stay actually stays the effectiveness of the order. Administrative determinations are effective upon issuance, so ITA was the certified exclusive representative as of August 28, 2013. Because COPPA made no showing that ITA had lost the support of the bargaining unit, it had no justification to delay negotiations, according to the ALJ.

The ALJ also determined that ITA's request for information pertained to COPPA's budget and operating expenses and was presumptively relevant. The ALJ reviewed PERB's well-settled precedent on the duty to promptly provide information relevant to negotiations and then considered COPPA's defense, viz., that ITA did not provide "specific" authority for the employer's duty to turn over this financial information, and when it did provide such authority in the form of a copy of *Stockton*, *supra*, PERB Decision No. 143, Bartsch expressed doubts as to its continued viability because it pre-dated the advent of charter schools in California. The ALJ noted that there is no question that EERA applies to charter schools and that the duty to provide information is well settled. Consequently, the ALJ concluded that COPPA's delay of five months in responding to ITA's information request was unreasonable and unjustified, and a per se violation of the duty to bargain in good faith.

The ALJ also determined that COPPA had violated its duty to bargain in good faith by refusing to bargain over ground rules:

> COPPA did not show any willingness to engage in the process of determining procedural rules for negotiations by presenting a counter proposal on the subject, or seriously entertaining any facet of ITA's ground rule proposals. Saying that COPPA would only agree to "non-silly" items, without discussing what those might be, is insufficient to demonstrate an open mind on the subject of ground rules and demonstrates a flippant attitude toward the bargaining process. . . . [T]he conduct can only be described as the equivalent of a flat refusal to bargain, which violates the duty to negotiate in good faith.

Addressing COPPA's contention that it was excused from responding to the proposed ground rule to be on time, because it was culturally insensitive, the ALJ noted that this argument was raised in COPPA's closing brief, but not expressed to ITA at the bargaining table. She observed, "Had that happened, perhaps there could have been some progress made toward a mutual understanding."

Finally, the ALJ concluded that COPPA had engaged in surface bargaining and had no intent to reach agreement with ITA, based on the following findings:

> the initial delay in scheduling bargaining during the appeal of case number LA-RR-1213-E; the per se refusal to bargain over proposed ground rules; the failure and refusal to make counter-proposals and significant delay in presenting its own initial proposal; the unexcused delay of five months to provide necessary and relevant information to ITA; the obstructionist conduct and delay tactics employed by the chief negotiator during negotiations; and the statements about never giving up the right to act unilaterally coupled with the references to decertification in its only substantive proposal. Accordingly, the totality of circumstances show that COPPA engaged in sufficiently egregious conduct to frustrate negotiations.

In addition to PERB's customary cease-and-desist order, the ALJ ordered COPPA to meet and discuss with ITA whether there were any outstanding items from the December 2013 information request that exist but have not already been furnished to ITA.[14]

Case No. LA-CE-6013-E

Before addressing the merits of the complaint in this case, the ALJ noted that in its closing brief, the Academy renewed its motion—originally made on the first day of hearing—to disqualify the ALJ based on his prior employment in private practice advocating on behalf of unions generally and CTA in particular. He considered this renewed motion procedurally defective because it was not submitted under oath, as required by PERB Regulation 32155, subdivision (c), and denied it on that basis.[15] The ALJ nevertheless considered the motion on

[14] In the body of the proposed decision, the ALJ noted that in circumstances similar to this case, PERB has ordered the respondent to cease and desist from violating the law and "bargain with the charging party upon demand. . . . Those remedies are warranted here and are so ordered." However, the order to COPPA to bargain with ITA upon demand did not appear in the proposed order.

[15] This procedurally defective motion was made in February 2016, nearly two-and-a-half years after *Children of Promise I, supra*, PERB Order No. Ad-402 issued, clearly establishing that requests for disqualification must be made under oath.

its merits and determined that it still failed. The ALJ explained that he had never represented or advised a party to this case, i.e., ITA, and that although he had previously represented CTA, CTA was only an affiliate of ITA, and therefore not a party to this case.

As to the Academy's argument that the ALJ's past employment with a union-side law firm disqualified him, the ALJ noted that past employment alone is insufficient to justify a finding that a judge is prejudiced in favor of or against either party.

Information Requests

Based on PERB precedent holding that home addresses and telephone numbers of bargaining unit members are presumptively relevant (*Golden Empire Transit District* (2004) PERB Decision No. 1704-M, p. 8 (*Golden Empire*)), yet acknowledging that an employer may be excused from providing such information where it compromises employee privacy, the ALJ concluded that the Academy was required to provide the contact information of the employees who had not objected to its disclosure. With respect to the teachers who had objected, however, the ALJ determined that the balancing test articulated in *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905 (*County of Los Angeles*) tips in favor of non-disclosure. The ALJ distinguished *County of Los Angeles* and *Golden Empire*—in which the disclosure of contact information was required—on the grounds that the bargaining unit in this case is small, the teachers are not geographically dispersed, and they do not work different shifts from one another. The Association successfully contacted these employees in the past by using e-mails and on-campus meetings. There was nothing in the record showing these means of communication were inadequate. Consequently, the ALJ determined that COPPA violated EERA by refusing to furnish the

contact information for teachers who had not objected to disclosure, but not by refusing to divulge the home addresses and telephone numbers of those teachers who had objected.

Regarding the evaluation rubric and employment contracts, the ALJ noted that COPPA did not dispute the relevance of such documents and ultimately did provide them to ITA. But the delay of one month in 2014 and over two months in 2015 was unexplained and constituted an unreasonable delay, according to the ALJ.

Surface Bargaining

Viewing its bargaining conduct in its totality, the ALJ concluded that COPPA engaged in surface bargaining. He based this conclusion on several recognized indicia of surface bargaining, including engaging in dilatory tactics, making predictably unacceptable proposals, failing to make counterproposals, and reneging on previously agreed-upon terms.

COPPA's dilatory tactics, according to the ALJ, included notifying ITA on September 29, 2014, after nearly six hours of bargaining, that COPPA's proposal was not its most recent one, and then refusing to identify what changes it intended to make in the proposal.

The September 29, 2014 proposal was also predictably unacceptable for two reasons, according to the ALJ. It sought to retain managerial discretion on *all* mandatory subjects of bargaining and sought to prevent teachers from holding meetings with groups such as the Association on campus at any time. Given the Academy's refusal to provide the Association with teachers' contact information, the ALJ concluded that the Academy "should have known that the Association would not agree to a proposal extinguishing its right of access to the campus and the right of bargaining unit members to engage in concerted activity during non-work time."

Moreover, the ALJ determined, the Academy failed to offer counterproposals or explain why the Association's proposals were objectionable. When the Association asked the Academy to sign tentative agreements on the few subjects the parties had agreed to, the Academy denied there was agreement and delayed responding, supposedly to do further research. COPPA never did present revised proposals or explain its objections to the previously agreed-upon language.

Based on all of this conduct, the ALJ concluded:

> . . . the Academy's conduct shows it was merely going through the motions under the belief that the Association would be decertified once the certification bar in EERA section 3544.7, subdivision (b), had expired. In addition to the conduct described above, this is also evidenced by its insistence that the collective bargaining agreement reference a decertification petition that had yet to be filed (and would not be filed for months) and by its desire to have the collective bargaining agreement terminate no later than September 1, 2014—a month before the parties' bargaining session on September 29, 2014, and presumably by when the Academy believed the Association would be decertified.

The ALJ ordered COPPA to cease and desist negotiating in bad faith and to provide the Association with a current list of bargaining unit members, and with home addresses and telephone numbers for those members who had not objected to the disclosure of their home contact information. COPPA was also ordered to provide ITA with current copies of the teacher employment agreement and evaluation rubric.

DISCUSSION

Adequacy of COPPA's Exceptions

In both cases COPPA excepts to many of the ALJs' factual findings.[16] PERB Regulation 32300, subdivision (a)(3), requires an excepting party to "[d]esignate by page citation or exhibit number the portions of the record, if any, relied upon for each exception." Dozens of COPPA's exceptions are to findings of fact in the proposed decision. For example, the first three exceptions to the proposed decision in Case No. LA-CE-6013-E concern the interchange between the Association and COPPA regarding the Association's requests for information. Each of these exceptions asserts that the proposed findings do not "reflect the true facts." Yet COPPA fails to cite to any record evidence in support of these assertions.[17] We therefore reject and will not consider those exceptions to findings of fact that fail to comply with PERB Regulation 32300, subdivision (a)(3).

Turning now to COPPA's exceptions that do comply with our regulations, we explain below the basis for finding no merit in those exceptions.

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COPPA excepts to each of the legal conclusions in the proposed decision, but mainly repeats arguments made to the ALJ and provides no legal or factual basis for overturning the proposed decision.

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[16] The Association did not except to either of the proposed decisions and urged that each of COPPA's exceptions be rejected as baseless.

[17] In contrast, some exceptions are accompanied by citations to the hearing transcript and exhibits, e.g., exception numbers 8, 9, 11, 12, 14, etc., in Case No. LA-CE-6013-E.

Refusal to Negotiate

COPPA contends that the ALJ erred by failing to recognize that COPPA's appeal and request for stay of PERB's certification of the Association as exclusive representative excused the Academy from meeting promptly with the Association while the appeal and request were pending. We reject this exception.

It is well settled that a blanket refusal to bargain is a per se violation of the statutory duty to bargain in good faith (*Gonzales Union High School District* (1985) PERB Decision No. 480, proposed decision, pp. 39-40), and an unreasonable delay is treated as an outright refusal to bargain (*Fresno County In-Home Supportive Services Public Agency* (2015) PERB Decision No. 2418-M, p. 15). There is no basis to excuse COPPA's delay in bargaining based on its appeal of PERB's certification decision. As the ALJ correctly noted, an appeal from an administrative determination does not automatically stay that decision, which is considered final and effective upon issuance. (*Poway Unified School District* (2015) PERB Decision No. 2441, p. 8.)[18] Nor was the matter stayed while COPPA's request for a stay was pending before the Board.

COPPA also contends that it was excused from negotiating with ITA because it had a good faith doubt as to ITA's majority status. We reject this exception and conclude that such a doubt would not excuse COPPA's refusal to bargain in August 2013.

Although there is no PERB precedent directly on point, in the private sector there is a *conclusive* presumption that a newly-certified exclusive representative enjoys majority support

[18] Contrast administrative determinations with proposed decisions after a hearing. The latter are governed by PERB Regulation 32305, which provides in pertinent part: "Unless a party files a timely statement of exceptions to the proposed decision, the decision shall become final on the date specified therein." Thus, a proposed decision only becomes final if no exceptions are filed.

within the bargaining unit for a reasonable period of time, usually for a year after certification. This rule has long been applied by the National Labor Relations Board (NLRB) and approved by numerous federal courts.[19] (*Virginia Mason Medical Center v. NLRB* (9th Cir. 2009) 558 F.3d 891, 894; *Small v. Avanti Health Systems, LLP* (9th Cir. 2011) 661 F.3d 1180, 1195; *Brooks v. NLRB* (1954) 348 U.S. 96, 104; *Rocky Mountain Phosphates, Inc.* (1962) 138 NLRB 292.) As explained in *Auciello Iron Works v. NLRB* (1996) 517 U.S. 781, 786, the presumption is based on a need for stability in collective bargaining relationships. The presumption addresses:

> our fickle nature by "enabl[ing] a union to concentrate on obtaining and fairly administering a collective-bargaining agreement" without worrying about the immediate risk of decertification and by "remov[ing] any temptation on the part of the employer to avoid good-faith bargaining" in an effort to undermine union support."

(*Ibid.*, quoting *Fall River Dyeing & Finishing Corp. v. NLRB* (1987) 482 U.S. 27, 38, brackets in original.)

Balancing the need for stability in labor relations with honoring employee freedom to choose their exclusive representatives (or not), EERA establishes certain bars to elections or to employers' grant of voluntary recognition. For the 12 months following an employer's lawful recognition of an employee organization as the exclusive representative, an employer may not recognize another employee organization, and PERB may not hold a representation election. (§§ 3544.1, subd. (d), 3544.7, subd. (b)(2); PERB Reg. 32754, subd. (a) [requiring dismissal of a petition for a representation election if the result of another representation election has been

[19] When interpreting EERA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*McPherson v. Public Employment Relations Bd.* (1987) 189 Cal.App.3d 293, 306; see also *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

certified within the previous 12 months].) These recognition and election bars are primarily directed at attempts by competing organizations or by employees to dislodge the newly-established exclusive representative, and not at employer actions. Nevertheless, these bars reflect the same values articulated in the federal cases cited above, viz., the need to give the new exclusive representative "breathing room" to bargain an initial collective bargaining agreement. Consequently, we conclude that it is appropriate to follow this private sector law as consistent with the purposes of EERA. We hold that an employee organization recognized or certified as the exclusive representative enjoys a conclusive presumption of majority support for a one-year period following recognition or certification, and an employer may not refuse to bargain with an exclusive representative during that period of time.[20]

Even if this conclusive presumption did not apply, COPPA's reliance on *Levitz Furniture Company of the Pacific, Inc.* (2001) 333 NLRB 717 (*Levitz*) for its contention that it was excused from negotiating with ITA because it had a good faith doubt as to its majority status is misplaced. *Levitz* holds that an employer may withdraw recognition from an incumbent union only where the union has actually lost the support of the majority of employees. Good faith doubt is not sufficient.[21] The employer may defeat a post-withdrawal refusal-to-bargain allegation if it shows the union's actual loss of majority status. (*Id*. at

[20] We do not intend by this presumption to preclude the Board from extending the one-year period if the employer's unlawful conduct has denied the union a fair opportunity to bargain. (*Mar-Jac Poultry* (1962) 136 NLRB 785; *Lamar Hotel* (1962) 137 NLRB 1271. See also *Redondo Beach City School District* (1980) PERB Decision No. 140.)

[21] PERB's only decision touching on this issue, *Pittsburg Unified School District* (1983) PERB Decision No. 318, predates *Levitz*, *supra*, 333 NLRB 717 and follows the NLRB's prior rule that good faith doubt is a valid defense to a refusal to bargain. (*Pittsburg* at p. 24.) However, we need not decide whether to overrule *Pittsburg* and follow *Levitz*, especially in the absence of more comprehensive litigation of the issue, because neither case applies to the facts of this case.

p. 717.) *Levitz* is of no help to COPPA because there was no showing that ITA had actually lost majority support.[22] *Levitz* also made clear that the rule applied only in cases where there have been no unfair labor practices committed that tend to undermine employees' support for the representative, adhering to the NLRB's well-established policy that "employers may not withdraw recognition in a context of serious unremedied unfair labor practices tending to cause employees to become disaffected from the union." (*Id*. at p. 717, fn. 1.)[23]

It is uncontested that COPPA refused to bargain with ITA for approximately three months immediately following ITA's certification as exclusive representative.[24] For the reasons discussed above, COPPA's asserted doubt about ITA's majority status did not excuse its refusal to bargain. We therefore affirm the ALJ's conclusion that COPPA violated its duty to bargain by refusing to meet with the certified exclusive representative of its employees. (*Gonzales Union High School District*, *supra*, PERB Decision No. 480, proposed decision, pp. 39-40; *Fresno County In-Home Supportive Services Public Authority*, *supra*, PERB Decision No. 2418-M, p. 18.)

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[22] It is also unnecessary for us to consider COPPA's exception number 8, which asserts that "there was and is a showing that the Union did not have majority support of the unit." COPPA relies entirely on its assertion that the "Academy's teachers have been trying and are still trying to decertify the Union but the Union and PERB won't let them." (Exceptions, LA-CE-5876-E, p. 7.) However, COPPA provides no citation to the record for this claim, and we therefore deny this exception. Moreover, there was no evidence presented in Case No. LA-CE-5876-E that teachers were attempting to decertify ITA. The decertification petition was not filed until January 2015, well after the events of this case occurred. That petition could not justify the refusal to bargain in August 2013.

[23] We leave for another day to determine whether the unfair practices found in the two cases before us undermined employee support for ITA. But it certainly cannot be said that COPPA has not committed serious unfair practices.

[24] Lincoln initially explained to Good that bargaining would be "premature" while COPPA's appeal and request for a stay was pending before the Board itself. After the Board's decision denying COPPA's request for stay issued on October 4, 2013, COPPA made no effort to start negotiations. Good initiated contact in early November.

Requests for Financial Information

COPPA excepts to the ALJ's determination that it violated EERA by delaying five months in providing the requested information to ITA, claiming that the Association did not really want the documents, as evidenced by purported statements made by the Association in a PERB settlement conference. COPPA further asserts that it was not required to provide the requested information because Good did not provide Bartsch with *specific* legal authority to justify the request.

These exceptions are frivolous. The duty to provide relevant information was established under EERA as early as 1980 with *Stockton, supra*, PERB Decision No. 143. It is not incumbent on the Association to educate COPPA as to its basic, obvious and well-settled duty under EERA and private sector labor law to provide relevant information. To hold otherwise would effectively excuse an employer's ignorance of the law. (Cf. *Landmark Family Foods, Inc.* (2011) 356 NLRB 1357, 1365, fn. 28.) COPPA also cannot avail itself of a defense that the ITA spokesperson failed to cite to him precise legal authority for this duty, especially when COPPA discounted the valid authority—*Stockton*—that Good commended to Bartsch's attention. The ALJ correctly determined that a delay of five months in providing this information violated EERA, as an unreasonable delay is tantamount to a failure to provide information to which the requestor is entitled. (*Compton Community College District* (1990) PERB Decision No. 790, pp. 5-6; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 20.)[25]

[25] COPPA's exceptions in Case No. LA-CE-5876-E continue to assert that the CPRA, which the Association also cited as authority for its requests, does not apply to charter schools. The ALJ correctly concluded that the duty imposed by EERA to provide necessary and relevant information is not affected by the CPRA. COPPA offers no explanation for its

It is also well-established that statements made in settlement conferences, including those convened by PERB, are inadmissible as evidence in an administrative hearing. (PERB Reg. 32176.) Therefore COPPA's assertion regarding ITA's statements or conduct in a settlement conference cannot be a basis for an exception.

Refusal to Negotiate Ground Rules

The ALJ determined that COPPA flatly refused to negotiate over the Association's ground rules proposal. COPPA's exceptions acknowledge that it did not seriously consider the proposal. (Exceptions, p. 28 [". . . as to whether the Academy ever seriously entertained the Union's proposed ground rules—the answer is No" (emphasis in original)].) However, it argues that it was not required to do so, because one of the proposed ground rules—that the parties be on time to bargaining sessions—was demeaning and racially tinged, and because the proposed ground rule for a 15-minute mid-morning break was "silly."

These arguments are unavailing. COPPA did not raise its objection to the punctuality ground rule to ITA when the ground rules were proposed, or any other time during negotiations. Had it done so, ITA would have had the opportunity to alter its proposal, explain that a ground rule requiring punctuality is typical in labor negotiations, or provide other explanation for this facially neutral proposal that purportedly caused offense. Having foreclosed the possibility of such dialogue, COPPA cannot defend on the ground that the proposal was "silly" or "racially-tinged."

As for COPPA's objection to the 15-minute break ground rule, COPPA was free to propose an alternative rule or take the position that such a rule was unnecessary. So long as sincerely held and supported by "rational arguments that are communicated during

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contrary argument in Case No. LA-CE-6013-E that the CPRA does apply to charter schools to prevent disclosure of employee contact information to ITA.

bargaining," such a position would not be a refusal to bargain or evidence of bad faith. (*Fresno County In-Home Supportive Services Public Authority, supra*, PERB Decision No. 2418-M, p. 50; *County of San Luis Obispo* (2015) PERB Decision No. 2427-M, p. 29.) COPPA was not free, however, to ignore the proposals or reject them categorically as "silly." We join with the ALJ in concluding that COPPA's conduct regarding proposed ground rules was the equivalent of a flat refusal to bargain.

Surface Bargaining

In excepting to the ALJ's conclusion that COPPA's conduct evinced an intent to delay negotiations, COPPA repeats many of its objections to the ALJ's findings and conclusions regarding COPPA's per se violations of the duty to bargain: its delay in providing relevant information, its initial refusal to bargain, and its refusal to negotiate over ground rules. Having already rejected COPPA's exceptions to those findings and conclusions, we affirm the ALJ's conclusion that those per se violations are also evidence of bad faith. (*City of San Jose* (2013) PERB Decision No. 2341-M, p. 23.)

COPPA further objects to the ALJ's conclusion that its proposals taken from input from community members and parents were not legitimate proposals concerning negotiable terms and conditions of employment. COPPA argues that proposing that ITA contribute financially to employment conditions and the hiring of staff was a legitimate proposal, given that ITA had stated that its goals included helping students and being a partner with the Academy in its mission to educate students. None of COPPA's exceptions to the ALJ's factual findings which support her conclusion that it engaged in surface bargaining cite to the evidentiary record. We therefore deem any implicit exceptions to those factual findings to be waived. (PERB Reg. 32300, subd. (a)(3).)

Nor has COPPA asserted any legal reason to disturb the ALJ's conclusion that it engaged in surface bargaining. COPPA's conduct was a textbook example of an employer's concerted effort to thwart and delay negotiations. The ALJ surmised that some of COPPA's conduct was due to the inexperience of its negotiators and advisors. Whether this was so is irrelevant to what ensued—a pattern of delay and obstruction that frustrated good faith bargaining from the moment ITA requested to meet in August 2013 to the last meeting before this hearing occurred. We reject COPPA's contention that its proposals satisfied its duty to bargain. As described above, these proposals had nothing to do with matters within the scope of representation. Coupled with COPPA's refusal to make counterproposals to ITA's proposals on subjects such as class size, work year, and grievance procedures, there is no doubt that COPPA's proposals were interposed solely to avoid negotiations over those matters it had a duty to bargain about.

For all these reasons, we affirm the proposed decision in Case No. LA-CE-5876-E.

Case No. LA-CE-6013-E

Motion to Disqualify ALJ

COPPA excepts to the ALJ's refusal to disqualify himself, in response to COPPA's motion made at the beginning of the administrative hearing and renewed in COPPA's closing brief. The ALJ denied the motion on both procedural and substantive grounds.

PERB Regulation 32155, subdivision (c), governing motions to disqualify, permits any party to request a Board agent to disqualify himself "whenever it appears that it is probable that a fair and impartial hearing or investigation cannot be held by the Board agent to whom the matter is assigned." The request shall be written, or if oral, reduced to writing within 24 hours of the request. "The request shall be under oath and shall specifically set forth all

facts supporting it." Subdivision (d) of PERB Regulation 32155 sets forth procedures for an appeal of a Board agent's refusal to recuse himself. Within ten days of the Board agent's decision not to disqualify, the requesting party may file with the Board itself a request for special permission to appeal the ruling of the Board agent. If permission is not granted, the requesting party may file an appeal after the hearing and issuance of the Board agent's decision, "setting forth the grounds of the alleged disqualification along with any other exceptions to the decision on its merits." (PERB Reg. 32155, subd. (d).)

The ALJ was correct that COPPA failed to comply with the procedures governing requests for disqualification.[26] The initial motion was oral, but not followed by a written motion within 24 hours of the oral motion. The person asserting the facts purportedly in support of the motion was not under oath.[27]

The basis of COPPA's request for disqualification was the ALJ's previous employment at a law firm that represented labor unions, including CTA. According to COPPA, CTA was a party to this case. It also contends that the ALJ's bias was evidenced by an alleged webpage[28] describing the ALJ as "an advocate who is 'always on the side of the union.'" (Exceptions, p. 4.) The ALJ acknowledged that, while employed at his former firm, more than three years

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[26] COPPA argues that the ALJ's ruling that its request was procedurally defective demonstrates his bias. Because the ALJ's ruling was correct, as we explain below, we reject this argument. But we note that even if the ALJ had ruled incorrectly on this issue, this would not be evidence of bias. (*Coachella Valley Mosquito & Vector Control District* (2009) PERB Decision No. 2031-M, pp. 24-25.)

[27] Although COPPA did not seek special permission from the Board itself to appeal the ALJ's refusal to disqualify himself, it did set forth the grounds for the alleged disqualifications in its exceptions. The issue is therefore properly before us. (*Gonzales Union High School District* (1984) PERB Decision No. 379, pp. 2-3, fn. 3.)

[28] COPPA submitted into evidence a purported webpage from the ALJ's former law firm describing him as an advocate for unions. However, this document was not authenticated as to when it was retrieved and lacked a URL or a date.

before he presided over this hearing, he had represented members and affiliate chapters of CTA, as well as other unions.

PERB Regulation 32155, subdivision (a), sets forth several bases for disqualification of Board members or Board agents from deciding or otherwise participating in cases, the relevant ones to this case being:

> (3) When, in a case or proceeding, he or she has been attorney or counsel for any party; or when he or she has given advice to any party upon any matter involved in the proceeding before the Board; or when he or she has been retained or employed as attorney or counsel for any party within one year prior to the commencement of the case at the Board level.
>
> (4) When it is made to appear probable that, by reason of prejudice of such Board member or Board agent, a fair and impartial consideration of the case cannot be had before him or her.

There was no evidence supporting a claim that the ALJ should be disqualified under PERB Regulation 32155, subdivision (a)(3). He stated that he had never acted as counsel or advised the Association, and left his former law firm in 2013, when he began employment at PERB. COPPA asserts that the ALJ's former work on behalf of CTA disqualifies him from hearing this case because the Association is "the same as" CTA, pointing to the denomination of the charging party as "Inglewood Teachers Association, CTA/NEA." Although PERB has consistently held that CTA is not the same organization as its affiliates,[29] CTA's relationship

[29] When PERB has considered CTA's alleged liability for unfair practices by its affiliates, it has held that CTA is not the exclusive representative of the employees of a school district—its affiliate is. Therefore CTA is not the same organization as the exclusive representative. (*California Teachers Association (Bussman)*(2009) PERB Decision No. 2047, p. 4 and cases cited therein; see also *Fresno Unified School District* (1982) PERB Decision No. 208, pp. 23-24 [CTA has no obligation to bargain in good faith with a school district because it is not the exclusive representative of district employees].) This approach is consistent with California law, which generally recognizes that affiliate labor organizations are considered separate legal entities. (*Montaldo v. Hires Bottling Co.* (1943) 59 Cal.App.2d 642,

with the Association has no bearing on whether the ALJ should have been disqualified from presiding over this case because there was no evidence that he had served as an attorney or counsel for CTA or ITA in this case, had advised CTA or ITA "upon any matter involved in the proceeding before the Board," or that he had been retained as counsel for either CTA or ITA "within one year prior to the commencement of the case at the Board level."

The ALJ was therefore correct in noting that his prior representation of CTA does not require his disqualification in this case. (See *Pomona Valley Hosp. Med. Ctr*. (2010) 355 NLRB 234, 238 [denying motion for recusal of NLRB member who formerly worked for international union merely because the case involved a local chapter of the same union].)

COPPA additionally contends that the ALJ should have disqualified himself because of his prior employment as an advocate on behalf of unions in general. The ALJ correctly relied on a recent decision by this Board in which we considered a similar argument from a union attorney. In *County of Tulare* (2016) PERB Decision No. 2461a-M, we rejected the argument that a Board member who was previously employed by a management-side law firm was presumptively biased against the unions who were adversaries of the clients of that law firm. As the ALJ succinctly stated, *County of Tulare* stands for the following proposition: "Past employment alone is insufficient to justify a finding that a Board agent is prejudiced in favor of a client of his former employer or against an adversary of that client." *County of Tulare* remains good law, and on that basis, as well as the reasons articulated by the ALJ, we reject

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649 [unincorporated local union was "separate and distinct" from its affiliate, the American Federation of Labor]; see also *Killeen v. Hotel & Restaurant Emp. Intern. Alliance & Bartenders' Intern. League of America* (1948) 84 Cal.App.2d 87, 91 [by-laws and constitution of a parent association are binding on affiliated labor associations "in the nature of a contract"]; *Oil Workers Intern. Union, CIO v. Super. Ct.* (1951) 103 Cal.App.2d 512, 561 [international organization's power to authorize a strike did not make the organization "legally responsible and amendable for acts done by its members or by one of its Locals in contempt of the authority of a court"].)

COPPA's exceptions to the ALJ's refusal to disqualify himself. (See also *Children of Promise I, supra*, PERB Order No. Ad-402, p. 20; *Andrews v. Agricultural Labor Relations Bd.* (1981) 28 Cal.3d 781, 790 ["The right to an impartial trier of fact is not synonymous with the . . . right to a trier completely indifferent to the general subject matter of the claim before him. . . . This long established, practical rule is merely a recognition of the fact that anyone acting in a judicial role will have attitudes and preconceptions toward some of the legal and social issues that may come before him"].)

Requests for Information

Although the ALJ agreed with COPPA's claim that it lawfully withheld the personal contact information for those teachers who requested non-disclosure, COPPA excepts to the cases on which the ALJ relied to reach his conclusion. We reject these exceptions, as the ALJ correctly analyzed the issue: whether the employer was obligated to give the Association the home addresses, personal telephone numbers, and e-mail addresses of all bargaining unit members, regardless of personal requests for non-disclosure. After discussing PERB's decisions in *Golden Empire*, *supra*, PERB Decision No. 1704-M, p. 8 and *Bakersfield City School District* (1998) PERB Decision No. 1262, p. 19, as well as the California Supreme Court's treatment of the same issue in *County of Los Angeles*, *supra*, 56 Cal.4th 905, the ALJ balanced the interest of the Association with the privacy interests of the employees. Given the facts in this particular case, the ALJ determined that the balance weighed in favor of protecting the privacy of those employees who requested non-disclosure. The Association does not except to this finding, and we adopt it as our own, as it is limited to the facts of this case and is not a mistake of law that requires correction by the Board. (*City of Inglewood* (2015) PERB Decision No. 2424-M, p. 7, fn. 12.)

COPPA also excepts to the ALJ's conclusion that it unreasonably delayed providing the Association teachers' employment contracts and evaluation rubrics, noting that COPPA offered no justification for a delay of one month in 2014 and more than two months in 2015. This exception declares that it "is factually incorrect" that COPPA offered no justification for the delay, but then fails to cite to any portion of the record in support of this assertion. As discussed above, because this exception fails to comply with PERB Regulation 32300, we will not disturb the ALJ's findings and conclusions on this point.[30]

Surface Bargaining

COPPA takes issue with the ALJ's conclusion that it had no genuine desire to reach agreement with the Association and that it made predictably unacceptable proposals. In particular, COPPA asserts that its proposal to reserve the discretion to change a teacher's title, pay, benefits "or any other terms and conditions of employment at any time, within its sole discretion, with or without cause or advance notice," is permissible under *Los Angeles Unified School District* (2013) PERB Decision No. 2326 (*LAUSD*). We disagree with COPPA's reading of *LAUSD.*

In *LAUSD, supra*, PERB Decision No. 2326, the issue was whether the employer committed a per se violation of the duty to bargain by insisting to impasse and then imposing a proposal giving it unfettered discretion to reduce the length of employees' work days and work

[30] COPPA's exceptions regarding this issue also refer to the parties' discussions at a PERB settlement conference. No evidence of those discussions is in the record before us, and as explained above, such evidence is inadmissible under PERB Regulation 32176. Therefore, we reject COPPA's reliance on these discussions.

years. The Board determined that because the proposal concerned a mandatory subject of bargaining, it was not a per se violation to insist upon it to impasse.[31]

This case involves a different issue and a different type of violation. The issue is not whether COPPA's proposal was lawful per se, but whether it may be considered in an analysis of the totality of circumstances, as evidence that COPPA was simply "going through the motions" of bargaining without having a good faith intent to reach agreement with the Association. Making proposals that are predictably unacceptable to the other party is a well-established indicium of bad faith bargaining. (*San Bernardino City Unified School District* (1998) PERB Decision No. 1270 (*San Bernardino*), adopting proposed decision at pp. 83-84 [employer's opening proposal to eliminate longstanding organizational security provision was predictably unacceptable].) A proposal may be predictably unacceptable—and serve as evidence of surface bargaining—even if it is substantively lawful. (*Oakland Unified School District* (1983) PERB Decision No. 326 (*Oakland*), p. 38 [employer was "not required to offer more than demanded by the Education Code," but the fact that "counterproposals made little concession" to the union's demands, "when viewed in the context of the negotiating process, is one aspect demonstrating the District's bad faith"].)

We agree with the ALJ that COPPA's proposal was predictably unacceptable—and therefore evidence of surface bargaining—because it sought to arrogate to the employer unlimited discretion on virtually *all* mandatory subjects: benefits, compensation, job responsibilities, "or any other terms and conditions of employment." As the NLRB explained in finding a similar proposal to be evidence of surface bargaining, "[s]ince unions are

[31] However, because the proposal limited the union's right to bargain over mandatory subjects, it was a per se violation for the employer to impose it following the exhaustion of impasse procedures.

statutorily guaranteed the right to bargain over any change in any term or condition of employment, the Union could do just as well with no contract at all." (*Radisson Plaza Minneapolis* (1992) 307 NLRB 94, 95.) The fact that the proposal here, like the proposal considered in *LAUSD*, *supra*, PERB Decision No. 2326, was lawful to the extent it concerned a mandatory subject of bargaining does not alter the analysis.

Moreover, COPPA's proposal for unlimited discretion over teachers' terms and conditions of employment was only one of the proposals the ALJ determined was predictably unacceptable. COPPA also proposed that the Association forfeit its statutory right of access to the work place and teachers' statutory right to associate with their exclusive representative during non-working hours at the work place. (§§ 3543.1, subd. (b); 3543, subd. (a).) Coupled with COPPA's refusal to give the Association the personal contact information of bargaining unit members, it is apparent that a proposal banning the Association from the work site, the only remaining avenue of access to employees, would be predictably unacceptable.[32]

[32] Some PERB cases have declined to find a proposal predictably unacceptable on the grounds that there was no evidence establishing that the proposal was unacceptable (*City of Roseville* (2016) PERB Decision No. 2505-M (*Roseville*), pp. 32-33) or that the unacceptable nature of the proposal was not made clear at the table (*Redwood City School District* (1980) PERB Decision No. 115 (*Redwood*)). In *Roseville*, the employer proposed that employees begin paying the full "employee contribution" toward their pension benefits. The union claimed this was unacceptable because the employer was not proposing any offsetting financial incentive. In *Redwood*, the employer proposed a 5 percent shift differential. The union claimed this was unacceptable because it could not accept less than 6.25 percent.

Roseville and *Redwood* are distinguishable from this case. COPPA's proposals indicated not just disagreement over substantive terms, but an unwillingness to accept the Association's role as the bargaining representative of COPPA's employees.

In this regard, we are persuaded by *Oakland*, *supra*, PERB Decision No. 326, and *San Bernardino*, *supra*, PERB Decision No. 1270. In both cases, the proposals were determined to be predictably unacceptable on their face. And in fact, the proposals in those cases were far less egregious than COPPA's proposal in this one.

The ALJ also relied on several other facts, aside from the predictably unacceptable nature of the Academy's proposals, to conclude that the Academy was "weaving otherwise unobjectionable conduct into an entangling fabric to delay and prevent agreement." (*Muroc Unified School District* (1978) PERB Decision No. 80, p. 13.) As the ALJ found, the bargaining conduct was characterized by delays, refusals to make proposals or counterproposals, and reneging on tentative agreements. Although some of COPPA's exceptions challenge these findings, these exceptions are among those that do not comply with our regulations. Thus, there was ample evidence that COPPA had no intent to reach agreement with the Association and that it was in fact "running out the clock" until the Association could be decertified. We therefore reject these exceptions, and affirm the ALJ's conclusion that COPPA engaged in surface bargaining.

REMEDY

PERB has broad remedial powers to effectuate the purposes of the EERA. EERA section 3541.5, subdivision (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 both of these cases COPPA has been found to have engaged in an overall course of bad faith conduct in bargaining through both per se refusals to bargain and under a surface bargaining theory. In similar circumstances, PERB has ordered that the respondent cease and desist from violating the law and bargain with the charging party upon demand. (*Anaheim Union High School District* (2015) PERB Decision No. 2434, proposed decision, p. 100; *Stockton, supra*, PERB Decision No. 143, pp. 33-34.) This is especially appropriate here where the Association

was certified as the exclusive representative in August 2013 and the Board has determined that COPPA has failed to bargain in good faith over an initial collective bargaining agreement.

The existence of a decertification petition, which was stayed pending resolution of Case No. LA-CE-6013-E, does not counsel against a bargaining order here. The mere filing of a decertification petition, without more, does not excuse an employer from the duty to bargain in good faith. (*Pittsburg Unified School District* (1983) PERB Decision No. 318, p. 23.) As observed by the NLRB in *RCA del Caribe* (1982) 262 NLRB No. 116:

> While the filing of a valid [decertification] petition may raise a doubt as to majority status, the filing, in and of itself, should not overcome the strong presumption in favor of the continuing majority status of the incumbent and should not serve to strip it of the advantages and authority it could otherwise legitimately claim.[33]

To remedy COPPA's failure to timely provide relevant information to the Association, it is appropriate to order it to cease and desist from the offending conduct and provide ITA with an up-to-date list of bargaining unit members and the home addresses and telephone numbers for those who have not objected to such disclosure. (*City of Burbank* (2008) PERB Decision No. 1988-M.) COPPA is further ordered, within 10 days after this decision becomes final, to meet and discuss with ITA whether there are any outstanding items from the December 18, 2013 request that exist and therefore should be produced. Any item so identified must be promptly furnished to ITA upon request.

In addition, we order COPPA to post a notice to employees of its violations.

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[33] Although the Board has stayed the processing of the decertification petition filed by COPPA employees on January 29, 2015, pending resolution of Case No. LA-CE-6013-E, we make no determination as to that petition here, including whether COPPA's unfair practices tended to cause employees' disaffection with ITA, and, if so, at what point an election may be held after the unfair practices found here have been remedied.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that Children of Promise Preparatory Academy (Academy) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c), by refusing to provide the Inglewood Teachers Association (Association) with necessary and relevant information and by engaging in an overall course of bad faith conduct in bargaining with the Association.

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

A. CEASE AND DESIST FROM:

1. Failing to provide timely and complete responses to the Association's requests for necessary and relevant information

2. Negotiating with the Association in bad faith.

3. Interfering with employees' right to be represented by the Association.

4. Denying the Association the right to represent employees.

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

1. Within ten (10) workdays of a final decision in this matter, provide the Association with: (1) an up-to-date list of the names of bargaining unit members; (2) an up-to-date list of the home addresses and telephone numbers of bargaining unit members who have not objected to the disclosure of their home contact information; (3) an up-to-date copy of the teacher employment agreement; and (4) an up-to-date copy of the teacher evaluation rubric. The Academy shall also meet with the Association within ten (10) workdays and discuss

whether there are any outstanding items from the December 13, 2013 information request and produce any information that has not already been produced.

2. Upon request by the Association, commence negotiations in good faith for a collective bargaining agreement. Such request must be made within twenty (20) days of receipt of this decision.

3. Within ten (10) workdays of the service of a final decision in this matter, post copies of the Notice attached hereto as an Appendix at all work locations where notices to certificated employees are customarily posted. The Notice must be signed by an authorized agent of the Academy, indicating that the Academy will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means customarily used by the Academy to communicate with certificated employees. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.

4. 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 Academy 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 the Association.

Chair Gregersen and Member Banks joined in this Decision.

APPENDIX

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

After a hearing in Unfair Practice Case Nos. LA-CE-5876-E and LA-CE-6013-E, *Inglewood Teachers Association v. Children of Promise Preparatory Academy*, in which all parties had the right to participate, it has been found that the Children of Promise Preparatory Academy (Academy) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by refusing to provide the Inglewood Teachers Association (Association) with necessary and relevant information and by engaging in an overall course of bad faith conduct in bargaining with the Association.

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

A. CEASE AND DESIST FROM:

1. Failing to provide timely and complete responses to the Association's requests for necessary and relevant information.

2. Negotiating with the Association in bad faith.

3. Interfering with employees' right to be represented by the Association.

4. Denying the Association the right to represent employees.

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

1. Within ten (10) workdays of a final decision in this matter, provide the Association with: (1) an up-to-date list of the names of bargaining unit members; (2) an up-to-date list of the home addresses and telephone numbers of bargaining unit members who have not objected to the disclosure of their home contact information; (3) an up-to-date copy of the teacher employment agreement; and (4) an up-to-date copy of the teacher evaluation rubric. The Academy shall also meet with the Association within ten (10) workdays and discuss whether there are any outstanding items from the December 13, 2013 information request and produce such documents if they have not already been produced.

2. Upon request by the Association, commence negotiations in good faith for a collective bargaining agreement. Such request must be made within twenty (20) days of receipt of this decision.

Dated: _____

CHILDREN OF PROMISE PREPARATORY ACADEMY

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST THIRTY (30) CONSECUTIVE WORKDAYS FROM THE DATE OF POSTING AND MUST NOT BE REDUCED IN SIZE, DEFACED, ALTERED OR COVERED WITH ANY OTHER MATERIAL.