STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION & ITS CHAPTER 291, Charging Party,	Case No. LA-CE-6037-E
v.	PERB Decision No. 2599
SAN BERNARDINO COMMUNITY COLLEGE DISTRICT, Respondent.	December 5, 2018

Appearances: Andrew J. Kahn, Chief Counsel, and Sonja J. Woodward, Attorney, for California School Employees Association & its Chapter 291; Currier & Hudson, by Andrea Naested, Kendall C. Swanson, and Nicole M. Denow, Attorneys, for San Bernardino Community College District.

Before Winslow, Shiners, and Krantz, Members.

DECISION

WINSLOW, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by San Bernardino Community College District (District) and cross-exceptions by California School Employees Association & its Chapter 291 (CSEA) to the proposed decision of an administrative law judge (ALJ). The ALJ determined that the District violated the Educational Employment Relations Act (EERA)[1] by: (1) denying a CSEA-represented employee, Adam Lasad (Lasad), his right to be represented in an investigatory interview; and (2) unilaterally implementing a policy of using data collected by global positioning system (GPS) devices to assess employee misconduct.

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

The District's exceptions challenge some of the ALJ's factual findings and most of his legal conclusions. CSEA's cross-exception challenges one of the ALJ's factual findings. Having reviewed the proposed decision and the entire record in light of the parties' submissions, we adopt the ALJ's factual findings and affirm his legal conclusions that the District violated EERA as alleged in the complaint, for reasons discussed below.

BACKGROUND

The District is a "[p]ublic school employer" within the meaning of EERA section 3540.1, subdivision (k). CSEA is an "[e]xclusive representative," within the meaning of EERA section 3540.1, subdivision (e), of a unit of the District's classified employees.[2]

DISCUSSION

I. Denial of Representation

The ALJ found that the District unlawfully denied Lasad his right to union representation in an investigatory interview. The essential facts underlying this finding are largely undisputed.[3] Sergeant Chris Tamayo (Tamayo) supervises Lasad, a community services officer (CSO) in the District's police department. Tamayo began questioning Lasad regarding his whereabouts during his work shift. Lasad, after answering some of Tamayo's questions, requested a CSEA representative. Tamayo contacted his own boss, the District's police chief, Pierre Galvez (Galvez), about Lasad's request for representation. Galvez agreed that Lasad had a right to a representative, but directed Tamayo to have Lasad draft a written statement before he was relieved of duty. Tamayo then told Lasad, "[W]e're not going to

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[2] Because we adopt the ALJ's factual findings but do not attach the proposed decision, we summarize the factual findings relevant to each allegation in our discussion below.

[3] Because none of the District's factual exceptions would change the conclusion that the District unlawfully denied Lasad union representation, we do not address them. (*Hartnell Community College District* (2018) PERB Decision No. 2567, p. 3.)

question you anymore," but "I just need a memo from you explaining where you were." Lasad was then placed alone in an office to draft his statement. In the room, he had his personal cell phone and a landline phone, and the contact information of at least one CSEA representative, but he did not attempt to secure representation before drafting his statement.

The District does not except to the ALJ's conclusion that Lasad had a right to representation when he invoked it—in other words, that the District's conduct was investigatory and that Lasad reasonably believed that disciplinary action could result. (See, e.g., *Capistrano Unified School District* (2015) PERB Decision No. 2440, p. 16 (*Capistrano*).) The District argues, however, that there was no violation of Lasad's right to representation because the interview ended when Lasad was directed to memorialize in writing his responses to the earlier questioning.

To the extent the District claims that the right to representation attaches only when an employee is required to provide a verbal response, we disagree. The right to representation in an investigatory interview is based on the following rationale:

> A single employee confronted by an employer investigating whether certain conduct deserves discipline may be too fearful or inarticulate to relate accurately the incident being investigated, or too ignorant to raise extenuating factors. A knowledgeable union representative could assist the employer by eliciting favorable facts, and save the employer production time by getting to the bottom of the incident occasioning the interview.

(*NLRB v. J. Weingarten, Inc.* (1975) 420 U.S. 251, 262-263 (*Weingarten*).)[4] These concerns may be diminished slightly in the absence of direct face-to-face questioning and verbal responses, but they are present nevertheless. Employees may be more or less precise in their

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[4] The Board has held that EERA guarantees employees representational rights at least as broad those afforded private-sector employees under *Weingarten.* (*Rio Hondo Community College District* (1982) PERB Decision No. 260, pp. 16-18.)

written statements than in their oral ones, depending, among other things, on their facility with written language. The National Labor Relations Board (NLRB), for its part, has held that employees have a right to representation before submitting written statements as part of an investigatory interview. (See, e.g., *Bellagio, LLC* (2015) 362 NLRB No. 175, p. 2, fn. 10, enf. den. on other grounds 854 F.3d 703 [employer's request that employee "complete a statement relating to an incident that could lead to discipline was part of its investigatory interview"]; *Wynn Las Vegas, LLC* (2012) 358 NLRB 674, 688 [refusal to allow employee to consult a union representative before drafting a written statement disregarded employee's rights under *Weingarten*].)[5] Because Lasad reasonably believed that his written statement could be used for disciplinary purposes, the right to representation attached.

We also disagree with the District's claim that it was foreclosed only from seeking additional information beyond what Lasad had already provided. Once again, the policy concerns underlying the right to representation (see *Weingarten*, *supra*, 420 U.S. 251, 262-263) apply regardless of whether the employer is seeking additional information or merely attempting to confirm information the employee has already provided. A subsequent statement may contradict the earlier statement, or it may add or omit facts, thus opening up the employee to impeachment for inconsistency. Even if the subsequent statement mirrors exactly the earlier statement, confirming the information may further commit the employee to his or her previous answers, thereby making it more difficult to change or explain those answers later. Given these

[5] This rule has also been adopted by other states with collective bargaining laws. (*New Jersey Department of Corrections* (2012) 39 NJPER ¶ 53; *City of Reading* (1995) 26 PPER ¶ 26172.) Additionally, PERB has held that an employee has a right to consult a union representative before signing documents that are potentially adverse to his or her employment, particularly where the significance of the employee's signature is not adequately explained. (*California State University, Long Beach* (1991) PERB Decision No. 893-H, adopting proposed decision at pp. 22-23; *Placer Hills Union School District* (1984) PERB Decision No. 377, p. 37.)

possible outcomes, the assistance of a union representative would be no less valuable than if the employer were seeking only new information.

The District also argues there was no violation because Lasad's request for representation was never explicitly denied, and, moreover, he was not prevented from contacting a representative using either his cell phone or the land line in the office where he was writing his statement. As the ALJ explained, an employer faced with a valid request for representation has three options. It may: (1) grant the request; (2) discontinue the interview; or (3) offer the employee the choice of proceeding with the interview without union representation or having no interview at all. (*County of San Bernardino (Office of the Public Defender)* (2015) PERB Decision No. 2423-M, p. 38, fn. 20.) "The employer, however, may not continue the interview without granting the requested union representation unless the employee 'voluntarily agrees to remain unrepresented after having been presented by the employer with the choices' described above or 'is otherwise made aware of these choices.'" (*California State University, Long Beach*, *supra*, PERB Decision No. 893-H, adopting proposed decision at p. 20, quoting *U.S. Postal Service* (1979) 241 NLRB 141.) Based on these authorities, we agree with the ALJ's conclusion that "it was incumbent on Tamayo to act upon [Lasad's] request, either by granting it or terminating the interview unless it was clear that Lasad was waiving his right to union representation."

State of California (Department of Social Services) (2009) PERB Decision No. 2072-S (*Social Services*), cited by the District, is not to the contrary. The District correctly notes that no violation was found in that case "because, *inter alia*, [the employee's] supervisor did not 'explicitly deny the request.'" (Statement of Exceptions, p. 17, italics in original.) But, as the District acknowledges by using the phrase "inter alia," the Board in *Social Services* actually

relied on several factors to find no violation. More critical than the failure to explicitly deny the request was that the employer ceased questioning after confirming that the employee was refusing to provide any further information without a representative present. (*Social Services*, *supra*, adopting proposed decision at p. 31.) Here, by contrast, Tamayo's demand for a written statement was a continuation of the interview by other means. (See *Capistrano*, *supra*, PERB Decision No. 2440, p. 20 ["regardless of how a meeting may be characterized or envisioned by management, if it serves to elicit incriminating evidence with the potential to impact the employment relationship, then it is 'investigatory'"].) As a result, Tamayo's failure to explicitly deny the request for representation is not dispositive.[6]

Nor does Lasad's obedience to Tamayo's directive absolve the District. Although the refusal to obey a rule or directive that unlawfully infringes on employee or union rights is generally protected (see, e.g., *Omnitrans* (2009) PERB Decision No. 2030-M, p. 30), we do not require employees to risk discipline in order to preserve their rights to challenge unlawful action (*Long Beach Unified School District* (1987) PERB Decision No. 608, p. 12 [charging party "need not demonstrate an attempt to violate [allegedly unlawful] regulation in order to show that the [employer] would enforce it"]). We therefore will not penalize Lasad for complying with Tamayo's directive, which in no way authorized Lasad to contact a union representative. (*Capistrano*, *supra*, PERB Decision No. 2440, p. 41 [employer effectively denied request by continuing interrogation after employee requested representation].)

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[6] CSEA's lone exception concerns the ALJ's conclusion that Tamayo did not explicitly deny Lasad's request for representation. There was conflicting testimony on this point. Lasad testified that Tamayo denied the request; Tamayo denied having done so. Because we have rejected the District's argument concerning the failure to deny the request, we need not resolve CSEA's exception.

In sum, we affirm the ALJ's finding that the District denied Lasad his right to a union representative, and CSEA its right to represent Lasad.

II. Unilateral Change

The ALJ also found that the District unilaterally implemented a policy of using GPS tracking device data to assess employee misconduct. Once again, the underlying facts are not seriously disputed. The District originally installed a tracking device on the work vehicle of a probationary CSO assigned to an unsupervised overnight shift at the District's Crafton Hills College, after receiving reports that the CSO was leaving his assigned patrol area without authorization. After the data from the device confirmed that the CSO was in fact leaving his patrol area, he was released on probation. The shift was then assigned to Lasad, along with the same work vehicle with the tracking device. After data from the device reported that Lasad, too, had been leaving his patrol area, Tamayo initiated the investigatory interview discussed above. Lasad was ultimately terminated, based on information obtained from the tracking device as well as Lasad's verbal statements during the interview.[7] The District discontinued the overnight CSO shift a few months later, and with it, the use of the tracking device. There is no evidence that the District has otherwise used GPS tracking devices or data to monitor employees.

The District excepts to the ALJ's determination that the District implemented a policy with a generalized effect or continuing impact on employees. Characterizing its actions as "limited" and "narrowly tailored," the District relies heavily on the fact that it used the device to address the lack of supervision on a single, temporary work shift, and only in response to "credible" reports that the assigned CSO was leaving his assigned patrol area. But, as the ALJ

[7] District witnesses testified that the District did not rely on Lasad's written statement due to concerns about his intervening request for representation.

noted, the District demonstrates a sufficiently generalized effect or continuing impact by defending its conduct as authorized by the management rights clause of its collective bargaining agreement (CBA) with CSEA. (*City of Davis* (2016) PERB Decision No. 2494-M, p. 24; *County of Santa Clara* (2015) PERB Decision No. 2431-M, p. 19.) Even temporary employer conduct having an immediate effect on one employee can meet this standard. (*City of Davis*, *supra*, at pp. 24-25.) Thus, regardless of how narrowly the District attempts to define its conduct in this case, we agree with the ALJ that the District implemented a change in policy with a generalized effect or continuing impact.

The District also excepts to the ALJ's conclusion that the District's actions were within the scope of representation. The ALJ thoroughly analyzed this question under *Anaheim Union High School District* (1981) PERB Decision No. 177 (*Anaheim*), which held that a subject not enumerated under EERA section 3543.2 is negotiable if:

> (1) it is logically and reasonably related to hours, wages or an enumerated term and condition of employment, (2) the subject is of such concern to both management and employees that conflict is likely to occur and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict, and (3) the employer's obligation to negotiate would not significantly abridge [its] freedom to exercise those managerial prerogatives (including matters of fundamental policy) essential to the achievement of [its] mission.

(*Anaheim*, *supra*, PERB Decision No. 177, pp. 4-5.) In applying this test, the ALJ noted the parallels between the use of GPS tracking and video surveillance for the purpose of gleaning evidence of employee misconduct, the latter of which we found to be within the scope of representation in *Rio Hondo Community College District* (2013) PERB Decision No. 2313 (*Rio Hondo*).

The District does not dispute the ALJ's conclusions that the use of GPS for assessing employee misconduct is: (1) logically and reasonably related to evaluation procedures, an enumerated term and condition of employment (see EERA, § 3543.2, subd. (a)); and (2) of such concern to management and employees that conflict is likely to occur, and the mediatory influence of collective negotiations is the appropriate means of resolving the conflict. Rather, the District's exceptions focus on the third prong of *Anaheim*, and the District attempts to distinguish *Rio Hondo* based on two arguments: (1) it claims a narrower right to use GPS tracking data than the *Rio Hondo* employer did to use video surveillance; and (2) the use of GPS data, unlike video surveillance, is a fundamental managerial prerogative that concerns the nature and quality of public services. The District's arguments are unavailing.

Contrary to the District's argument, the negotiability of video surveillance of employees in *Rio Hondo* did not turn on the breadth of the employer's claimed discretion to use video surveillance. *Rio Hondo* rejected the employer's claim that its "unfettered discretion" would be significantly abridged by a duty to negotiate, noting that if "good faith efforts produced no agreement, the [employer] would retain discretion to implement its last, best and final offer regarding the use of video records for discipline and evaluation of employees to the extent otherwise permitted by law." (*Rio Hondo*, *supra*, PERB Decision No. 2313, pp. 16-17.) It would be anomalous, however, to conclude that the District need not negotiate here merely because it claims only narrow discretion to employ GPS tracking data.

We also reject the District's argument that the use of GPS tracking data for disciplinary or other employee evaluation purposes is a fundamental managerial prerogative. We explained in *Rio Hondo* that fundamental managerial prerogatives include such matters as layoffs, statutorily required background investigations, police use-of-force polices, and police review

procedures. (*Rio Hondo*, *supra*, PERB Decision No. 2313 at p. 16.) "In contrast, making and using video recordings of employees for purposes of disciplining them and/or evaluating their work performance affects wages, hours and other terms and conditions of employment within the scope of representation, not fundamental managerial or policy matters concerning the nature and quality of public services." (*Id.* at p. 16.) This rationale applies to the use of GPS data for purposes of assessing employee misconduct.

The District seems to argue, to the contrary, that any information used to assess how well a public safety employee is doing his or her job ultimately relates to the employer's core functions. This argument is defeated by the statutory text and by our precedent. As noted, EERA expressly places evaluation procedures within the scope of negotiations. (EERA, § 3543.2, subd. (a).) The Board has "broadly and liberally construed the duty to bargain over evaluation procedures" to include evaluation criteria, methods, and systems, as well as the type of evidence an employer may use to evaluate performance or take disciplinary action. (*Los Angeles Unified School District* (2017) PERB Decision No. 2518, pp. 14-28.) This is true even where an employer wishes to implement or change evaluation policies in order to improve its services to the public. (*Ibid.*) Thus, as the ALJ correctly concluded, "surveillance of employees is not a function of the District's core mission." (Cf. *Sutter County In-Home Supportive Services Public Authority* (2007) PERB Decision No. 1900-M [determining that background check policy for in-home care providers is not within the scope of representation because of employer's specific statutory duty to screen providers "based upon their background and qualifications"].)[8]

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[8] We acknowledge that, as the District points out, "a core function of the campus police is to protect District property and to keep students, staff and visitors safe." We also acknowledge that there may be circumstances in which an employer decides to use technology

The District further argues that the ALJ failed to analyze whether the benefit to employer-employee relations outweighed the District's need for unencumbered decision-making, citing *Claremont Police Officers Association v. City of Claremont* (2006) 39 Cal.4th 623 (*Claremont*). We reject this argument for two reasons. First, *Claremont* interprets the scope of representation under a different statutory scheme, the Meyers-Milias-Brown Act (MMBA),[9] and prescribes a three-step balancing test "to determine whether management must meet and confer with a recognized employee organization . . . when the implementation of a fundamental managerial or policy decision significantly and adversely affects a bargaining unit's wages, hours, or working conditions." (*Claremont*, *supra*, 39 Cal.4th 623, 637.) The District's argument here refers to the third step of that test. But the scope of representation under EERA is determined under *Anaheim*, *supra*, PERB Decision No. 177, which was approved by the Supreme Court in *San Mateo City School District v. Public Employment*

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primarily to further those safety interests or other core managerial interests, and not simply to monitor employees while they perform public services. For instance, an employer has a fundamental management prerogative to install video surveillance equipment if its decision is not primarily about monitoring employees while they provide public services, and is instead installed, for instance, to deter members of the public from committing crimes, to apprehend such persons who do perpetrate crimes, to protect public property, or to keep staff and members of the public safe. (*Rio Hondo*, *supra*, PERB Decision No. 2313, pp. 13-17.) In those circumstances, the employer must provide notice and an opportunity to bargain over negotiable effects, including whether and how such surveillance might be used in relation to evaluating or disciplining employees. (*Ibid.*) It is conceivable that this approach might apply in some cases involving GPS.

But here, the District did not act in furtherance of any legitimate managerial interests. It installed GPS tracking equipment on its patrol car only to surveil an employee suspected of leaving his designated patrol area. Thus, the District's decision pertained solely to the monitoring of the CSO's activities on patrol and potentially using the surveillance data in disciplinary proceedings. Because the District's decision to install a GPS device was not moored in any property protection or campus safety interest beyond monitoring an employee's performance, the District's decision fell within the scope of representation. (See *Colgate-Palmolive Co.* (1997) 323 NLRB 515, 518-519.)

[9] The MMBA is codified at Government Code section 3500 et seq.

Relations Board (1983) 33 Cal.3d 850 (*San Mateo*). Nothing in *Anaheim* or *San Mateo* supports the application of the *Claremont* test to determine the scope of representation under EERA, and nothing in *Claremont* casts doubt on the validity of the *Anaheim* test. Therefore, we decline to apply *Claremont* to assess the scope of bargaining under EERA.

Second, even if *Claremont* were applicable to EERA, this case would not trigger *Claremont*'s balancing test. That test applies to "'decisions that directly affect employment, such as eliminating jobs, but nonetheless may not be mandatory subjects of bargaining because they involve 'a change in the scope and direction of the enterprise' or, in other words, the employer's 'retained freedom to manage its affairs unrelated to employment'"; it does not apply to "'decisions directly defining the employment relationship, such as wages, workplace rules, and the order of succession of layoffs and recalls.'" (*County of Orange* (2018) PERB Decision No. 2594-M, pp. 18-20, quoting *International Assn. of Fire Fighters, Local 188, AFL-CIO v. PERB* (2011) 51 Cal.4th 259, 272-273.) As noted above, we have long held that the information an employer may utilize in evaluating and disciplining employees is within the scope of representation because it is directly related to the employment relationship. Therefore, it would be improper to apply the *Claremont* balancing test in this case.

The District's final argument is that CSEA waived its right to negotiate by agreeing to a management rights clause giving the District the right to "direct, manage, and control its operations," including to "hire, classify, evaluate, promote, layoff, terminate, and discipline employees," and that "the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement." The ALJ rejected this argument for two reasons: (1) the District did not establish that the CBA was in effect at the

time the District took its action; and (2) the clause was not specific enough to show that CSEA waived its right to bargain. We agree with the ALJ on both points.

The management rights clause entered in the record states that it was approved by the District's Board of Trustees on December 11, 2014; the ALJ found no evidence that it was effective retroactively to the date of the District's actions here. In its exceptions, the District argues that "the District's Position Statement contained an Internet link to the complete CBA located on the District's website." But the ALJ refused to rely on the document accessible by that link because there was "no non-hearsay representation that the document in the link is a complete and accurate version of the CBA that was in effect at the times relevant to this case," no "representation, hearsay or otherwise, about whether the document in that link has been changed or altered since the date of the position statement," and "no representation that the parties' CBA is on file at PERB, pursuant to PERB Regulation 32120."[10] The District's exceptions and supporting brief fail to address these grounds for the ALJ's decision, and we therefore affirm them without further discussion. (See *City of Calexico* (2017) PERB Decision No. 2541-M, p. 1 [the Board need not address arguments adequately addressed by the ALJ].)[11]

We also affirm the ALJ's conclusion that, even assuming the management rights clause was in effect, CSEA did not waive its right to negotiate. A waiver of the right to bargain must be clear and unmistakable; a "generally-worded management rights clause" does not suffice. (*Los Angeles Unified School District*, *supra*, PERB Decision No. 2518, pp. 39-40.) Rather, the

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

[11] PERB Regulation 32120 requires employers, upon request by the Board, to file a written agreement or memorandum of understanding with the Board. Since the CBA was not on file with the Board, we need not determine whether the ALJ could have considered it regardless of whether it was properly introduced at the hearing.

evidence must "reflect[] a conscious abandonment of the right to bargain over a particular subject." (*Placentia Unified School District* (1986) PERB Decision No. 595, p. 4.) In this case, the management rights clause's reference to discipline and evaluation of employees is silent as to the types of evidence that may be used for evaluating and disciplining employees. It therefore is not a clear and unmistakable waiver of CSEA's right to bargain over the use of GPS tracking data for evaluations and discipline.

Because we have rejected the District's exceptions, and neither party excepted to the proposed order, we affirm the proposed decision and adopt the proposed order.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the San Bernardino Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c) by denying a represented employee's request for union representation during an investigatory interview and by using data collected by a Global Position System (GPS) device in assessing potential employee misconduct without providing California School Employees Association & its Chapter 291 (CSEA) with notice and the opportunity for bargaining.

Pursuant to EERA section 3541.5, it hereby is ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with employees' right to be represented by CSEA.

2. Interfering with CSEA's right to represent its employees.

3. Establishing policies within the scope of representation without providing CSEA with notice and the opportunity to request negotiations.

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

1. Rescind the policy of using data collected by GPS devices in assessing employees represented by CSEA for misconduct.

2. Within thirty (30) days after this decision is no longer subject to appeal, (a) rescind any discipline issued to Adam Lasad (Lasad) that was based on data from a GPS device; (b) offer Lasad immediate and unconditional reinstatement to either his former position or a substantially equivalent position; and (c) reimburse Lasad for all salary and benefits lost because of his termination, with interest, at a rate of 7 percent per annum, from the date he is reinstated or declines the offer of reinstatement.

3. Within ten (10) workdays after this decision is no longer subject to appeal, post at all work locations where notices to employees in CSEA's 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. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means customarily used by the District to communicate with its 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 (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.

Members Shiners and Krantz 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 No. LA-CE-6037-E, *California School Employees Association, & its Chapter 291 v. San Bernardino Community College District*, in which all parties had the right to participate, it has been found that the San Bernardino Community College District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by denying a represented employee's request for union representation during an investigatory interview and by using data collected by a Global Position System (GPS) device in assessing potential employee misconduct without providing California School Employees Association & its Chapter 291 (CSEA) with notice and the opportunity for bargaining.

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

A. CEASE AND DESIST FROM:

1. Interfering with employees' right to be represented by CSEA.

2. Interfering with CSEA's right to represent its employees.

3. Establishing policies within the scope of representation without providing CSEA with notice and the opportunity for negotiations.

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

1. Rescind the policy of using data collected by GPS devices in assessing employees represented by CSEA for misconduct.

2. Within 30 days after this decision is no longer subject to appeal, (a) rescind any discipline issued to Adam Lasad (Lasad) that was based on data from a GPS device; (b) offer Lasad immediate and unconditional reinstatement to either his former position or a substantially equivalent position; and (c) reimburse Lasad for all salary and benefits lost because of his termination, with interest, at a rate of 7 percent per annum, from the date he is reinstated or declines the offer of reinstatement.

Dated: _____________________ SAN BERNARDINO COMMUNITY COLLEGE DISTRICT

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.