STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BELLFLOWER CITY EMPLOYEES ASSOCIATION, Charging Party, v. CITY OF BELLFLOWER, Respondent.	Case No. LA-CE-1458-M PERB Decision No. 2770-M June 8, 2021
AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, LOCAL 3745, Joined Party.	

Appearances: City Employees Associates by Jeffrey W. Natke, General Manager, for Bellflower City Employees Association; Liebert Cassidy Whitmore by Jeffrey C. Freedman and Viddell Lee Heard, Attorneys, for City of Bellflower; Rothner, Segall & Greenstone by Glenn Rothner, Hannah S. Weinstein, and Carlos Coye, Attorneys, for American Federation of State, County, and Municipal Employees, Local 3745.

Before Shiners, Krantz, and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by the City of Bellflower to a proposed decision by an administrative law judge (ALJ). The complaint in this matter alleged that the City violated the Meyers-Milias-Brown Act (MMBA) and PERB Regulations by: (1) failing to comply with the timelines in its employer-employee relations resolution (EERR) while processing a decertification petition (Petition) that Bellflower City Employees

Association (BCEA) filed in an effort to decertify and replace American Federation of State, County, and Municipal Employees, Local 3745 (AFSCME) as the incumbent exclusive representative of three City bargaining units; and (2) maintaining an EERR that did not treat employee proof of support documents as confidential and failing to treat as confidential the proof of support documents BCEA submitted with its Petition.[1]

The ALJ found the City liable for both alleged violations.[2] The proposed decision ordered the City to process the Petition consistent with the timelines in its EERR and to demand that AFSCME return the signed BCEA authorization forms that it received from the City.[3] The proposed decision also ordered AFSCME, a joined party, to comply with the City's demand. While the City excepts to these findings and

---

[1] The MMBA is codified at Government Code section 3500 et seq. All statutory references are to the Government Code, unless otherwise specified. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[2] The proposed decision also dismissed a complaint and unfair practice charge in a companion case, PERB Case No. LA-CE-1456-M, in which AFSCME was the charging party, the City was the respondent, and BCEA was a joined party. In that case, AFSCME alleged that the City violated the MMBA and PERB Regulations in processing BCEA's Petition. Although the ALJ consolidated the two cases and issued a single, combined proposed decision, we issue separate, simultaneous decisions resolving the exceptions before us in the two cases. The instant decision resolves the City's exceptions concerning PERB Case No. LA-CE-1458-M, and in *City of Bellflower* (2021) PERB Decision No. 2769-M, we resolve AFSCME's exceptions regarding PERB Case No. LA-CE-1456-M.

[3] We intend the following terms to have the same meaning: "proof of support," "proof of employee support," "proof of support documents," "authorization forms," and "authorization cards." Furthermore, while this case does not involve electronic proof of support records, our confidentiality discussion applies equally to such electronic records. Also, we use the term "union" interchangeably with "employee organization."

directives, AFSCME does not challenge the ALJ's directive to return BCEA authorization forms within its possession. BCEA filed no exceptions and urges us to deny the City's exceptions.

We have reviewed the record and considered the parties' arguments. For the following reasons, we agree with the ALJ that the City unlawfully failed and refused to treat BCEA's authorization forms as confidential. In light of our conclusion in *City of Bellflower*, *supra*, PERB Decision No. 2769-M that the City cannot process BCEA's Petition as presently written, we dismiss as moot the complaint allegations that the City failed to comply with its EERR timelines.

PROCEDURAL BACKGROUND

BCEA filed its initial Petition in February 2020 and its revised Petition on March 2, 2020.[4] On June 16, AFSCME filed the charge in Case No. LA-CE-1456-M. AFSCME also filed a request for injunctive relief and a request to stay the City's pending election proceedings. On June 22, PERB's Office of the General Counsel (OGC) issued a complaint alleging that the City violated or unreasonably applied its local rules by accepting the Petition. On the same day, OGC issued an administrative determination staying the election pending a final determination in Case No. LA-CE-1456-M. Having obtained a stay of election proceedings, AFSCME withdrew its request for injunctive relief. Thereafter, the Board granted BCEA's request to be joined as a party in Case No. LA-CE-1456-M.

[4] All dates refer to 2020, unless otherwise specified.

On June 23, BCEA filed the instant charge, and on August 3, OGC issued a complaint containing the allegations described *ante*. On August 24, the City answered the complaint.

On September 7, the ALJ granted AFSCME's request to be joined as a party in the instant case. On September 10, the ALJ held a single hearing on the two related charges. On September 23, the Board affirmed OGC's determination to stay the decertification election. (*City of Bellflower* (2020) PERB Order No. Ad-480-M.) On October 30, the ALJ issued his proposed decision.[5]

FACTUAL BACKGROUND

1. The Parties

The City is a public agency within the meaning of MMBA section 3501, subdivision (c), and PERB Regulation 32016, subdivision (a). AFSCME is an exclusive representative within the meaning of PERB Regulation 32016, subdivision (b) and a recognized employee organization within the meaning of the City's EERR and MMBA section 3501, subdivision (b). BCEA is an employee organization within the meaning of the EERR and MMBA section 3501, subdivision (a).

2. Proof of Support Requirements Under the EERR

In 1990, the Bellflower City Council adopted the City's EERR, which is a set of "rules and regulations" within the meaning of MMBA section 3507, subdivision (a) and

[5] During the formal hearing, the ALJ ordered employee names on proof of support documents redacted from hearing exhibits and case filings, pursuant to Government Code section 11425.20, subdivision (a), and the ALJ sealed from public inspection certain already-filed documents containing unredacted proof of support documents. No party objected to these orders.

a set of "local rules" within the meaning of PERB Regulation 32016, subdivision (c). One of the EERR's purposes is "to provide a uniform basis for recognizing the right of City employees to join or not join organizations of their own choice and to be represented or not to be represented by such organizations in their employment relationships with the City pursuant to [MMBA] Section 3507."

EERR Section 8, which sets out decertification procedures, requires that an employee or union seeking to initiate decertification proceedings must file a petition alleging that the incumbent union no longer represents a majority of the employees in "an established appropriate unit." Section 8 specifies that proof of support documents required to support a decertification procedure may differ depending on whether employees seek to file a simple decertification petition to become unrepresented or a combination decertification-recognition petition to change their exclusive representative. For a simple decertification petition, Section 8.A.4 requires that the decertification petition include:

> "Proof of employee support that at least thirty (30%) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually-agreed upon disinterested third party."

In contrast, for a combination decertification-recognition petition, Section 8.B allows a petitioning union to file a representation petition under Section 4, as if it was seeking to represent a group of unrepresented employees:

> "An employee organization may file a Petition under this Section in the form of a Recognition Petition that conforms to the requirements of Section 4 of this Resolution in

> satisfaction of the Decertification Petition requirements hereunder."

EERR Section 4.A.11, in turn, requires a petition to include:

> "A statement that the employee organization has in its possession written proof, dated by the signer within six months of the date upon which the petition is filed, to establish that at least thirty (30%) percent of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be made in such language and form as the Employee Relations Officer shall prescribe and shall be submitted for confirmation to the Employee Relations Officer or to a mutually-agreed upon disinterested third party."

If the City's Employee Relations Officer (ERO) determines that a petition complies with the EERR, then the ERO must give written notice of the decertification petition to the incumbent organization and to the affected unit members.

3. BCEA's Petition and Accompanying Authorization Forms

On February 6, BCEA representative Jeffrey Natke e-mailed the City's ERO, Susan Crumly, the initial version of BCEA's Petition seeking recognition as the exclusive representative of employees in three bargaining units exclusively represented by AFSCME, together with BCEA's proof of employee support.[6] BCEA submitted its proof of support on forms entitled "Authorization for Recognition Petition." Each form was signed by multiple employees. The authorization forms included

---

[6] Crumly acted at all relevant times as the City's principal representative for employer-employee relations. Natke, a licensed California attorney, is the General Manager of City Employees Associates, which provides labor relations services to independent public sector unions, including BCEA.

columns for all signing employees to include their names, job titles, signatures, and signature dates. The top of each authorization form included the following language:

> "We, the undersigned employees of the City of Bellflower hereby authorize the Bellflower City Employees Association to be our representative for purposes of meeting and conferring/negotiating with the employer on wages, hours and other terms and conditions of employment."

BCEA's six authorization forms contained, in total, 29 employee signatures.

Crumly determined that BCEA's initial Petition did not comply with the EERR and requested that BCEA amend the Petition. On March 2, BCEA filed its revised Petition, together with three additional authorization forms signed by 12 more employees.

On or about March 3, AFSCME requested that the City provide it with copies of BCEA's authorization forms. In response, the City provided AFSCME with unredacted copies of the authorization forms that BCEA submitted with its initial and revised Petitions. The City did so without notifying BCEA or receiving its consent.

4. Relevant Deadlines Under the EERR

Under EERR Section 5, the ERO has 45 days to determine whether a petition proposes an appropriate unit and complies with the EERR's requirements. If the petition has deficiencies, the ERO must offer to consult with the petitioner about the defects. If the non-compliant petition is not perfected, the ERO must return the petition to the petitioner with a written explanation of the imperfections. If the ERO concludes that the petition complies with the EERR, then the ERO:

> "shall within thirty (30) days after making said determination, (1) inform the petitioning employee organization, (2) shall give written notice of such request for

> recognition to the employees in the unit, and (3) he or she shall take no action on said request for thirty (30) days thereafter."

Under Section 8.B, the ERO must then "arrange for a secret ballot election to be held on or about forty-five (45) days after such notice." The election must be conducted by the State Mediation and Conciliation Service (SMCS).

5. The City's Processing of BCEA's Petition

On April 21, Natke e-mailed Crumly to inquire when BCEA could expect a response to its revised Petition. Natke acknowledged the challenges the City undoubtedly faced at the time, presumably referring to the COVID-19 pandemic and statewide shelter-at-home mandate. Crumly responded on April 23, stating, "I apologize for the delay in responding. The City accepts the decertification petition and will begin to notify all union members in writing hopefully next week."

On April 30, Crumly provided BCEA an advance copy of a letter that the City would send that day to all employees in the AFSCME-represented bargaining units to inform them of BCEA's Petition.[7] The letter also informed employees that pursuant to EERR Sections 5 and 7, the City would take no action on the Petition for 30 days, after which the City would arrange for a secret ballot election to be conducted by SMCS.

On May 29, Natke contacted SMCS requesting assistance to run a decertification election. Natke copied Crumly and the AFSCME representative on his e-mail. An SMCS mediator responded on June 5, offering June 12, 15, or 17 as

[7] The letter to AFSCME-represented employees was dated April 28, but it is undisputed that Crumly did not send it until April 30.

possible dates for a pre-election conference call. The AFSCME representative responded that he was unavailable on those dates, but he offered other possible dates. Although Natke objected to delays beyond the deadlines set forth in EERR Section 8.B, all parties ultimately agreed to hold the pre-election conference on June 24, the first date everyone was available.

On June 22, OGC issued its administrative determination in Case No. LA-CE-1456-M, staying the pending election. As a result, SMCS indefinitely postponed the pre-election conference.

DISCUSSION

The Board reviews exceptions to a proposed decision using a de novo standard of review. (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 6.) The City's exceptions fall into two main categories: (1) those pertaining to the EERR timelines; and (2) those pertaining to the City providing AFSCME with unredacted copies of BCEA's authorization forms. We address each topic in turn.

I. The EERR Timelines

The parties' arguments present several issues regarding the EERR timelines, including: (1) whether the ALJ properly inferred, from a largely silent record, that the City took longer than 45 days to assess whether BCEA's revised Petition complied with the EERR; and (2) whether the City complied with the EERR's requirement to "arrange for a secret ballot election to be held on or about forty-five (45) days after" providing notice of a compliant petition, or sufficiently complied therewith given the COVID-19 pandemic and the fact that SMCS had difficulty finding dates on which all parties were available for a pre-election conference.

We do not reach the parties' arguments on these unique issues because, in *City of Bellflower*, *supra*, PERB Decision No. 2769-M, we find that the City cannot process BCEA's petition as currently written, and we direct the City to follow the EERR as to any new or revised representation petition BCEA may file in the future. Having already ordered the City to comply with the EERR, the issues at stake in this set of exceptions would not impact our remedial order and we need not resolve them. (*City of Glendale* (2020) PERB Decision No. 2694-M, pp. 58-59 [judicial appeal pending].) Moreover, the parties' dispute about timing involves at most minor deviations from the EERR during the initial months of the COVID-19 pandemic, which we find unlikely to recur. (See *Gompers Preparatory Academy* (2021) PERB Decision No. 2765, p. 14 [discussing the pandemic's severe and unusual disruptions to all aspects of life, including labor relations proceedings].)

II. The City's Conduct in Providing AFSCME with BCEA's Proof of Support

The MMBA grants local public agencies authority to adopt reasonable rules concerning union recognition, elections, and specified other topics, "after consultation in good faith with representatives of a recognized employee organization or organizations." (MMBA, § 3507, subd. (a).) However, such rules and regulations may not undercut or frustrate the MMBA's policies and purposes. (*International Federation of Prof. & Technical Engineers v. City & County of San Francisco* (2000) 79 Cal.App.4th 1300, 1306; *Huntington Beach Police Officers' Assn. v. City of Huntington Beach* (1976) 58 Cal.App.3d 492, 500-502.)

The EERR is silent on the extent to which proof of support documents are confidential. Although the complaint asserted a facial challenge to this absence of an

applicable rule, neither party provided substantive briefing under the standard for facial challenges. (See *City and County of San Francisco* (2020) PERB Decision No. 2691-M, pp. 21-22 [distinguishing facial and as-applied challenges] (judicial appeal pending).) We therefore focus on the complaint's as-applied allegation and determine whether the City, by providing AFSCME with unredacted copies of BCEA's authorization forms, enforced its EERR in a manner that interferes with protected rights.

To establish a prima facie interference case, a charging party must show that an employer's conduct tends to or does result in some harm to union and/or employee rights protected under the statutes we enforce. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 36 (*San Diego*).) A charging party need not establish that the employer held an unlawful motive. (*Ibid*.) Once a charging party has established a prima facie case, the burden shifts to the employer. (*Ibid*.) The degree of harm dictates the employer's burden. (*Ibid*.) If the harm is "inherently destructive" of protected rights, the employer must show that the interference results from circumstances beyond its control and that no alternative course of action was available. (*Ibid*.) For conduct that is not inherently destructive (which we sometimes label "comparatively slight"), the respondent may attempt to justify its actions based on business necessity. (*Ibid*.) In such cases, we balance the asserted business necessity against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, we find a violation. (*Ibid*.) Within the category of actions or rules that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its business necessity was important and that it narrowly

tailored its actions or rules to attain that purpose while limiting harm to protected rights as much as possible. (*Id*. at p. 36, fn. 19.)[8]

The City argues, first, that its conduct did not tend to harm protected rights. In support of this argument, the City primarily notes that two labor relations statutes under PERB's jurisdiction explicitly make proof of support documents confidential, but the MMBA does not. The City also argues a business necessity defense, asserting that the MMBA required it to provide AFSCME information sufficient to verify that BCEA's Petition met the EERR's requirements. Finally, the City asks us to overturn the ALJ's secondary finding that the City improperly favored AFSCME over BCEA, which would violate the City's duty not to support one union over the other. For the following reasons, we find the City's arguments unavailing.

A. <u>The Statutory Frameworks Under PERB's Jurisdiction Do Not Demonstrate That the Legislature Intended to Protect Proof of Support Confidentiality to a Greater Extent Under Some Labor Relations Laws as Compared to Others</u>.

Under six of California's public sector labor relations statutes, employers are not permitted to adopt local rules regarding representation petitions, and parties must file such petitions with PERB.[9] In contrast, the MMBA and two statutes governing trial

---

[8] For the reasons stated in his dissent in *Contra Costa County Fire Protection District* (2019) PERB Decision No. 2632-M, Member Shiners disagrees that the concept of "inherently destructive conduct" should be part of PERB's interference standard. (*Id*. at pp. 72-76.) Instead, he would simply "balance the harm to protected rights against the employer's asserted justification for its conduct." (*Id*. at p. 75.) Nevertheless, he recognizes that extant Board law continues to include the concept of "inherently destructive conduct" in its interference test, and thus concurs in its application here for institutional reasons.

[9] These six statutes are: the Educational Employment Relations Act (EERA; § 3540 et seq.); the Higher Education Employer-Employee Relations Act (HEERA; § 3560 et seq.); the Ralph C. Dills Act (§ 3512 et seq.); the Judicial Council Employer-

court labor relations allow employers to establish local rules regarding representation petitions, and parties therefore may only file such petitions with PERB if directed to do so under the local rules or if there is no reasonable local rule that governs the petition in question. (*Central Basin Municipal Water District* (2021) PERB Order No. Ad-486-M, pp. 8-9 (*Central Basin*).)[10]

Among the above statutes, only EERA and CCPA explicitly provide that proof of support documents are confidential. (EERA, § 3544, subd. (b); Educ. Code, § 8434, subd. (c)(3) [CCPA].) Nonetheless, through rulemaking PERB has interpreted all nine statutes as requiring that proof of support documents filed with PERB are confidential. Specifically, under PERB Regulation 32700, all documents submitted to the Board as proof of employee support "shall remain confidential and not be disclosed by the Board to any party other than the petitioner," and shall be used "only to indicate whether the proof of support is sufficient." (PERB Reg. 32700, subd. (e).)[11]

Employee Relations Act (§ 3524.50 et seq.); the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act (Pub. Util. Code, § 99560 et seq.); and the Childcare Provider Act (CCPA; Educ. Code, § 8430 et seq.).

[10] The two statutes governing trial court employees are the Trial Court Employment Protection and Governance Act (Trial Court Act; § 71600 et seq.) and the Trial Court Interpreter Employment and Labor Relations Act (Court Interpreter Act; § 71800 et seq.).

[11] Prior to February 15, 2021, PERB Regulations governing proof of support were dispersed in multiple chapters, with largely similar language appearing in disparate provisions applicable to the various labor relations acts we enforce. (*Central Basin*, *supra*, PERB Order No. Ad-486-M, p. 10.) Former PERB Regulation 61020 was among those dispersed regulations and applied to MMBA petitions for recognition in the absence of a reasonable local rule. (*Ibid*.) Subdivision (e) of former PERB Regulation 61020 mirrored current PERB Regulation 32700, subdivision (e), in making proof of support documents filed with the Board confidential.

By its terms, PERB Regulation 32700 applies to proof of support documents submitted to the Board. Thus, the regulation does not by itself resolve whether the City violated the MMBA by failing to keep BCEA's authorization forms confidential. (See PERB Reg. 32700, subd. (a)(3) [providing that PERB Regulation 32700 "governs proof of employee support under all statutes that the Board enforces, except to the extent that an MMBA, Trial Court Act, or Court Interpreter Act employer has promulgated differing reasonable rules regarding proof of employee support"].)

While the confidentiality protection found in PERB Regulation 32700 is not fully dispositive, it substantially undercuts the City's argument that PERB must find EERA and CCPA to provide greater confidentiality protection than the other statutes we enforce. We proceed to explain the basis for our interpretation that all California labor relations statutes provide the same level of confidentiality for proof of support documents, and that an employer may not apply its local rules in a contrary manner.

To determine whether the differences in statutory wording here reflect legislative intent to prescribe differing rules or instead require harmonization, we begin with the California Supreme Court's analysis in *Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072 (*Coachella*). The Supreme Court was tasked with determining legislative intent regarding the appropriate statute of limitations for filing an MMBA unfair practice charge. The MMBA prescribed no limitations period, leading multiple courts over several decades to apply California's standard three-year limitations period for statutory claims, and PERB continued to apply the three-year limitations period after the Legislature vested PERB with authority to enforce the MMBA beginning in 2001. (*Id*. at pp. 1084-1087.) At the time, the MMBA was the only statutory scheme under

PERB's jurisdiction that did not include a six-month statute of limitations period for filing charges. (*Id*. at p. 1086.) The court found that this statutory difference did not reflect legislative intent to create differing terms, noting that the MMBA "is part of a larger system of law for the regulation of public employment relations," and the court therefore concluded that the Legislature intended to establish "a coherent and harmonious system of public employment relations laws in which all unfair practice charges filed with the PERB are subject to the same six-month limitations period." (*Id*. at pp. 1089-1090.) The statutory difference was incidental rather than intentional, particularly given that unfair practice charges play the same role under the MMBA as under California's other labor relations laws. (*Ibid*.)

Coachella specifically addressed the statutory construction principle on which the City relies, viz. that when the Legislature includes a provision in one statute, the omission of that provision in another statute dealing with the same general subject typically shows a different legislative intent. (*Coachella*, *supra*, 35 Cal.4th at p. 1090.) The court found that the principle applies "generally but not universally," and did not find it helpful or controlling given that it would create an "inexplicable anomaly" between the MMBA and the other laws that PERB enforces. (*Ibid*.)

In *Omnitrans* (2009) PERB Decision No. 2030-M, the Board followed *Coachella* to interpret union access rights under the MMBA. The Board noted that EERA and HEERA explicitly grant unions access rights to employer facilities, subject to reasonable employer regulation. (*Id*. at pp. 13-14, citing EERA, § 3543.1, subd. (b), HEERA, § 3568.) Even though the MMBA has no explicit access rights language, the Board found no basis for finding an intentional statutory difference and therefore found that comparable access rights are implicit under the MMBA, grounded in employees'

right to form, join, and participate in union activities without interference. (*Id*. at pp. 14-15, citing MMBA, §§ 3502, 3506.)

These principles inform the present inquiry. Given that relevant protected rights are substantially the same under EERA and the MMBA, we do not discern a plausible basis for the Legislature to believe that in one instance proof of support may not be shared with a competing union while in the other instance such sharing is permissible.

Moreover, while the MMBA and the trial court statutes allow an employer to adopt reasonable local rules, this does not suggest that the Legislature intended those employers to have discretion whether to treat proof of support documents as confidential. Indeed, while the City relies on the absence of confidentiality language in the MMBA, as noted above only EERA and CCPA contain such explicit language. Accordingly, the statutory difference the City cites does not cleanly distinguish labor relations statutes allowing reasonable local rules on representation (the MMBA and trial court statutes) from the other six statutes disallowing such rules. Rather, among the seven labor relations statutes that are silent on confidentiality, three allow an employer to adopt reasonable local rules on representation and four disallow such local rules. Every indication is that the absence of confidentiality language in seven statutes is incidental—like the absence of access language in the MMBA—meaning that confidentiality is required if, as we find below, it is necessary to protect other rights in the statute.

In reaching this conclusion, we are cognizant that under federal labor law proof of support is filed with the National Labor Relations Board (NLRB) and is not subject to disclosure to any party to the petition. (29 C.F.R. § 102.61, subds. (a)(7), (c)(8), and

(f).)[12] Indeed, federal precedent not only holds that private sector authorization cards are confidential (see, e.g., *National Telephone Directory Corp.* (1995) 319 NLRB 420, 421), but also explains the critical employee rights underlying this confidentiality: employees inclined to sign authorization cards may be chilled from doing so if they knew that their support could be disclosed to others. (*Id*., citing *Committee on Masonic Homes of R. W. Grand Lodge, F. and A.M. v. NLRB* (3d Cir. 1977) 556 F.2d 214, 221; see also *Wright Electric, Inc.* (1999) 327 NLRB 1194, 1195, enf'd, (8th Cir. 2000) 200 F.3d 1162 ["The [NLRB] zealously seeks to protect the confidentiality interests of employees because of the possibility of intimidation by [those] who obtain the identity of employees engaged in organizing"].)

We find this reasoning persuasive and require confidentiality to the extent needed to enforce the MMBA's broad protection of employee and union rights, much as the Board did in *Omnitrans*, *supra*, PERB Decision No. 2030-M, in delineating access rights under the MMBA. Most significantly among the MMBA's broad protections, section 3502 guarantees that "public employees shall have the right to form, join, and participate in the activities of employee organizations of their own

---

[12] Although California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent, where California statutory provisions are akin to those found in federal law, we consider federal precedent for its potential persuasive value. (*City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 47, fn. 16; *Contra Costa Community College District* (2019) PERB Decision No. 2652, p. 27, fn. 17; see also *Social Workers' Union, Local 535 v. Alameda County Welfare Dept.* (1974) 11 Cal.3d 382, 391 [when interpreting California public sector labor relations laws, federal precedent is a "useful starting point," but it does "not necessarily establish the limits of California public employees' representational rights"].)

choosing for the purpose of representation on all matters of employer-employee relations." Any conduct tending to harm such rights must be narrowly tailored to a business necessity such that the employer's necessity outweighs the tendency to harm. (*City of San Diego*, *supra*, PERB Decision No. 2747-M, p. 36, fn. 19.) Given our agreement with the NLRB that employees may be chilled if they know that their proof of support authorizations could be disclosed to others, we hold that such proof of support documents may be shared only to the extent that the requesting party demonstrates a compelling need for them.

It is also instructive to review the legislative history that led to the current circumstance in which EERA came to include a provision explicitly making proof of support documents confidential. In *San Juan Unified School District* (1977) EERB Decision No. 12 (*San Juan*),[13] two unions were competing to represent the same group of employees. At the time, EERA did not provide that proof of support should be submitted to PERB and thereafter remain confidential, as is now mandated under Government Code section 3544, subdivision (b). Rather, EERA required petitioning organizations to submit their requests for recognition and accompanying proof of support directly to the employer. (*San Juan*, *supra*, EERB Decision No. 12, p. 4.) At issue was whether the employer committed an unfair practice by providing one organization's proof of support to the other organization, as the City did here. (*Id*. at pp. 2-3.) The Board found federal law unpersuasive given that it required proof of support to be provided to the NLRB, and the Board also found that in cases where

[13] At the time, PERB was known as the Educational Employment Relations Board (EERB).

multiple organizations have petitioned to represent the same employees, each petitioner has an interest in the proof of support submitted by the other. (*Id*. at pp. 5-6.) In the face of legislative silence on the issue of confidentiality, the Board held that the employer was required to provide one union's proof of support documents to the other union. (*Id*. at p. 8.)

The Legislature promptly responded, reversing *San Juan* by amending Government Code section 3544, subdivision (b) to require that proof of support be submitted directly to the Board and be kept confidential. (Assem. Bill No. 247 (1977-1978 Reg. Sess.) ch. 1084, § 1.)[14] According to the bill's author, then-Assembly Member Howard Berman, EERA's then-existing recognition process "has led to some difficulties because competing employee organizations have used [publicly available proof of support] information to 'raid' and harass employees." (See Berman Letter to Governor Brown in support of Assem. Bill No. 247 (1977-1978 Reg. Sess.), September 15, 1977.) Berman further stated that amending EERA to require that proof of support be kept confidential would bring the EERA recognition process into alignment with federal precedent and "eliminates this potential harassment, protects the employees' privacy and ensures that they will be able to freely exercise their choice without fear of reprisal." (*Id*.; see also Berman Floor Statement (1977-1978

[14] AB 247 was sponsored by the American Federation of Teachers (AFT). An AFT local affiliate was the charging party in *San Juan*, *supra*, EERB Decision No. 12. AFT referenced the problems created by that decision as one justification for the legislation. (Mary Bergan Letter in support of Assem. Bill No. 247 (1977-1978 Reg. Sess.), April 4, 1977.)

Reg. Sess.).) After the Legislature enacted AB 247, PERB amended its regulations to make proof of support confidential.

In our view, this legislative history does not support the City's argument. First, the City argues that the MMBA is akin to EERA before AB 247 was enacted, and therefore part of *San Juan*'s reasoning survives AB 247 and supports the notion that proof of support is not necessarily confidential. One problem with the City's analogy is that before the Legislature enacted AB 247, EERA required unions to submit proof of support to the employer. Here, in contrast, the City's EERR permitted a union to choose either the employer or a third party neutral to assess proof of support, and BCEA chose to submit its proof of support to the City.[15]

But our main disagreement with the City's argument stems from the fact that we draw a different inference from the legislative history. After the Board issued *San Juan*, the Legislature acted swiftly to reverse the decision and protect proof of support confidentiality. We consider what the Legislature did with respect to EERA more informative than the fact that the Legislature has not similarly amended the MMBA, as the Legislature was faced with a particularized problem arising under EERA, and it acted to address that issue. (See *Coachella*, *supra*, 35 Cal.4th at p. 1089 [in construing a statute, the "more fruitful inquiry" is generally to examine "what the Legislature has done (as opposed to what it has left undone)"].)

---

[15] We express no opinion regarding whether the MMBA permits a local rule in which a union must submit its proof of support to the employer, without an option to submit it to a neutral third party. Similarly, in the absence of any challenge in this case, we express no opinion on the EERR's provision allowing the ERO to "prescribe" the language that must appear in proof of support documents.

We agree with the ALJ that the Legislature's response to *San Juan*, including the legislative history and even more so the eventual enactment of AB 247, indicated legislative support for a confidentiality right that should be the same across all the statutory schemes that PERB administers. Because employees covered by EERA and the MMBA have nearly identical rights to form, join, and participate in union activities without interference (compare MMBA, §§ 3502 and 3506 with EERA, § 3543), we find no adequate basis for distinguishing the need for confidentiality under the two statutes. We also agree with the ALJ that disclosing proof of support documents has the same tendency to harm protected rights under the MMBA as it does under EERA and the other statutes we enforce. Accordingly, we turn to the City's affirmative defense.

B. AFSCME's Request Does Not Constitute a Valid Affirmative Defense.

The City asserts that AFSCME required "a copy of the petition package, including the proof of support, for the obvious purpose of verifying for itself whether BCEA's petition met the EERR's requirements." As an initial matter, however, the EERR includes no such requirement. Rather, EERR Section 8.B required the City to provide "written notice of [a valid] Decertification of Recognition Petition to the incumbent Recognized Employee Organization and to unit employees." More generally, as we proceed to explain, the City misses the mark in asserting that AFSCME's request for information constitutes a defense to BCEA's unfair practice charge.

While nothing prevented AFSCME from submitting its request to the City, doing so did not establish AFSCME's ultimate right to the requested documents. Instead, it triggered a duty for the City to assess the request and respond lawfully. A union is

presumptively entitled to information that is necessary and relevant in exercising its right to represent bargaining unit employees regarding mandatory subjects of bargaining. (*County of Tulare* (2020) PERB Decision No. 2697-M, p. 12 (*Tulare*).) Where a union's request is presumptively relevant but would invade legally protected confidentiality or privacy interests, the responding employer must bargain with the requesting union to accommodate the union's interest in the information and the legally protected privacy right. (*Id*. at p. 13.) In such negotiations, narrowly tailored redactions can be an appropriate solution, if privacy rights outweigh the union's need for the redacted information. (*Ibid*.) Here, the City did not engage in discussions with either union over AFSCME's request for proof of support documents, and the record does not reveal that the City attempted to weigh countervailing interests. We do not find that AFSCME had a need for the documents that outweighed employee confidentiality interests. First, AFSCME has now abandoned any effort to defend its entitlement to the documents. Moreover, as discussed above, proof of support is a unique type of statement supporting a union, which labor law principles have long protected, both in the private sector and in the California public sector since the Legislature responded to *San Juan*, *supra*, EERB Decision No. 12.[16]

---

[16] We decline to rule, sua sponte, on potential accommodations that the parties did not brief. Thus, for example, the City could have consulted with both unions and provided AFSCME with the total number of employees who signed proofs of support as well as the language that they signed, while replacing identifying information with deidentified placeholders. (*Tulare*, *supra*, PERB Decision No. 2697-M, p. 14.) While such an approach would have allowed AFSCME to review the proof of support language to determine what signatories were agreeing to and whether it comported with the MMBA and EERR, we do not determine in this decision what circumstances, if any, would make that approach the appropriate path forward. We similarly express no

For the foregoing reasons, the City has failed to assert a valid business necessity. We affirm the ALJ's finding that the City violated the MMBA by interfering with protected rights when it shared unredacted proof of support documents with AFSCME.

C. The City Violated its Duty of Strict Neutrality.

MMBA section 3506.5, subdivision (d) consists of three clauses, providing that public agencies shall not: (1) "dominate or interfere with the formation or administration of any employee organization," (2) "contribute financial or other support to any employee organization," or (3) "in any way encourage employees to join any organization in preference to another." PERB has consistently held that this provision requires an employer to remain strictly neutral when two unions are in competition with one another. (*County of Monterey* (2004) PERB Decision No. 1663-M, adopting proposed decision at p. 18, citing *Santa Monica Community College District* (1979) PERB Decision No. 103, p. 22.) The test is "whether the employer's conduct tends to influence free choice or provide stimulus in one direction or the other." (*Ibid.*, internal brackets omitted.) Thus, a strict neutrality violation requires neither proof of the employer's motive nor proof that the employer conduct did, in fact, influence employees. (*County of San Bernardino* (2018) PERB Decision No. 2556-M, adopting proposed decision at p. 22.)

The instant case illustrates how responding to an information request can violate the duty of strict neutrality. An employer does not tend to tilt the scales toward

---

opinion as to how the balance of interests may differ where a union requests documents that do not constitute proof of support for a representation petition.

or away from a union if it merely complies with its legal duty to provide information, or, conversely, honors legally protected privacy rights by instead negotiating an appropriate accommodation of privacy and the union's need for the information. Here, however, as discussed above, the City deviated from such an approach and thereby tilted the scales toward AFSCME.

The City's conduct is therefore also unlawful under MMBA section 3506.5, subdivision (d), and PERB Regulation 32603, subdivision (d).

ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in the case, the Public Employment Relations Board (PERB) finds that the City of Bellflower violated PERB Regulations and the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. Specifically, the City violated MMBA sections 3506, 3506.5, subdivisions (a), (b), and (d), 3507, and 3509, subdivision (b), and PERB Regulation 32603, subdivisions (a), (b), (d), (f), and (g) by applying its employer-employee relations resolution (EERR) in a manner that failed to protect the confidentiality of employee proof of support and by violating its duty of strict neutrality in representation matters. All other allegations are dismissed.

It hereby is ORDERED that the City, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unreasonably applying its EERR to provide copies of proof of employee support to a competing employee organization (where proof of support is submitted directly to the City), without adequately preserving the confidentiality of the signatories.

2. Failing or refusing to remain strictly neutral in representation matters involving multiple unions.

3. Interfering with union or employee rights protected under the MMBA.

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

1. Demand that the American Federation of State, County, and Municipal Employees, Local 3745 (AFSCME Local 3745), return the signed Bellflower City Employees Association authorization forms that it received from the City and destroy all additional copies in its possession. AFSCME Local 3745 shall comply with this demand.

2. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to employees in the City bargaining units represented by AFSCME Local 3745 customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the City, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means customarily used by the City to communicate with its AFSCME Local 3745-represented employees. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.[17]

---

[17] In light of the ongoing COVID-19 pandemic, the City shall notify PERB's Office of the General Counsel in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If the City so notifies the General

3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. The City 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 all parties to this matter.

Member Paulson joined in this Decision.

Member Shiners' concurrence begins on page 27.

Counsel's Office, or if any party requests in writing that the General Counsel alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, the General Counsel's Office shall investigate and solicit input from all parties. It shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing the City to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing the City to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing the City to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

SHINERS, Member, concurring: The complaint alleges, in relevant part, that the City of Bellflower violated the MMBA by providing copies of the proof of support materials submitted by Bellflower City Employees Association (BCEA) as part of its March 2, 2020 decertification petition to the incumbent exclusive representative, American Federation of State, County, and Municipal Employees, Local 3745 (AFSCME). The City argues it was obliged to provide the proof of support materials in response to AFSCME's request for them. I agree with my colleagues that AFSCME's information request does not provide the City with a business necessity defense, but I reach that conclusion for different reasons.

In assessing the City's argument, the majority applies our traditional standard for determining whether a public employer must provide an exclusive representative with requested information that implicates employees' privacy or confidentiality interests. The majority finds that although BCEA's proof of support materials are presumptively relevant to AFSCME's right to represent bargaining unit employees, AFSCME did not establish that its need for the materials outweighed employees' confidentiality interests.

I would not reach the issue of whether AFSCME's interest in obtaining the proof of support materials outweighed employees' confidentiality interests for two reasons. First, the information request paradigm should not apply to proof of support materials. Despite acknowledging that proof of support is "a unique type" of information, the majority treats it like any other confidential information by subjecting it to the same balancing test as, for example, an agreement settling a disciplinary grievance (*Sacramento City Unified School District* (2018) PERB Decision No. 2597, p. 3) or rating sheets used to award promotions or transfers (*Modesto City Schools and High*

School District (1985) PERB Decision No. 479, p. 11). Unlike those materials, proof of support is treated as confidential to protect employee free choice—a right at the very core of labor relations. Employees may be chilled from signing an authorization card or other proof of support if they know their support could be disclosed to others. (*Wright Electric, Inc.* (1999) 327 NLRB 1194, 1195; *National Telephone Directory Corp.* (1995) 319 NLRB 420, 421.) When a union obtains its rival's proof of support, that information can be used "to 'raid' and harass employees." (See Berman Letter to Governor Brown in support of Assem. Bill No. 247 (1977-1978 Reg. Sess., September 15, 1977.) Keeping proof of support confidential "eliminates this potential harassment, protects the employees' privacy and ensures that they will be able to freely exercise their choice without fear of reprisal." (*Id*.) Employee free choice is undermined by subjecting proof of support materials to the traditional information request paradigm because the possibility that an employee's proof of support could be disclosed to the incumbent union may chill employees from signing such materials in the first place.

In addition to the potential for chilling employee free choice, allowing an incumbent exclusive representative to obtain proof of support materials via an information request creates exactly the type of "inexplicable anomaly" in California's system of public sector labor relations laws that the California Supreme Court has discouraged. (*Coachella Valley Mosquito & Vector Control Dist. v. California Public Employment Relations Bd.* (2005) 35 Cal.4th 1072, 1090 (*Coachella*).) In situations where proof of support must be submitted to PERB, an incumbent union cannot obtain proof of support materials via an information request. (See PERB Reg. 32700, subd. (e) [proof of employee support "shall remain confidential and not be disclosed by the Board to any party other than the petitioner"].) But the majority would allow an

incumbent union subject to an employer's local rules under the MMBA (and presumably the two statutes governing trial court labor relations) to obtain proof of support materials via an information request if it can demonstrate a need for the information that outweighs employees' confidentiality interests. As a result, employees in jurisdictions with local rules who wish to replace their current union with another or with no representation at all risk disclosure of their support to the incumbent union while their counterparts subject to PERB Regulations do not. This is contrary to our general rule, derived from *Coachella*, that we do not treat similar situations "differently based on the particular statute [that applies], especially when doing so would put parties governed by certain statutes at a disadvantage." (*County of Santa Clara* (2020) PERB Order No. Ad-482-M, p. 10.) To avoid such differential treatment, proof of support materials should not be subject to disclosure in response to an information request when representation matters are governed by a public agency's local rules.[18]

Second, even if it were proper to apply the information request paradigm to proof of support materials, I would not reach the balancing test in this case because the record does not show that obtaining BCEA's proof of support was necessary for AFSCME to fulfill its representational duties. It is well-established that "an exclusive representative is entitled to all information that is necessary and relevant to discharge

[18] Such a bar to disclosure is consistent with private sector authority barring use of the Freedom of Information Act (FOIA) and litigation discovery procedures to obtain the identity of employees who signed union authorization cards. (E.g., *Madeira Nursing Center, Inc. v. NLRB, Region No. 9* (6th Cir. 1980) 615 F.2d 728, 731 [FOIA]; *Wright Elec., Inc. v. NLRB* (8th Cir. 2000) 200 F.3d 1162, 1167 [state court discovery]; *United Nurses Associations of California v. NLRB* (9th Cir. 2017) 871 F.3d 767, 785-787 [administrative subpoenas].)

its representational duties." (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2597, p. 8; *County of San Joaquin* (2016) PERB Decision No. 2490-M, p. 8; *Stockton Unified School District* (1980) PERB Decision No. 143, p. 13.)[19] The exclusive representative's representational duty applies to contract negotiations, as well as to administration and enforcement of the contract. (*Cal Fire Local 2881 (Tobin)* (2018) PERB Decision No. 2580-S, p. 3; *United Teachers Los Angeles (Raines, et al.)* (2016) PERB Decision No. 2475, p. 70.) Correspondingly, PERB has long held that the exclusive representative's right to information applies during both contract negotiations and contract administration, including grievance processing. (*City of Burbank* (2008) PERB Decision No. 1988-M, p. 9; *Chula Vista City School District* (1990) PERB Decision No. 834, pp. 50-51.)

The City contends, and the majority appears to accept, that obtaining BCEA's proof of support was necessary for AFSCME to verify whether BCEA's petition complied with the City's employer-employee relations resolution (EERR). If AFSCME believed BCEA's petition was noncompliant, the only way for AFSCME to challenge the petition was by filing an unfair practice charge.[20] The majority's finding that the

---

[19] In *Contra Costa Community College District* (2019) PERB Decision No. 2652, I declined to join my colleagues' expansion of the statutory right to obtain information to any situation in which the exclusive representative is exercising its right to represent employees. Instead, I would continue to follow decades of precedent limiting the right to information to situations where the exclusive representative has a duty to represent employees. (*Id*. at p. 34 (conc. opn. of Shiners, M.).)

[20] EERR Section 10 allows an employee organization or employees "aggrieved by a determination of the Employee Relations Officer [ERO]" that a petition does not comply with the EERR to appeal that determination to the City Administrator. The

proof of support was presumptively relevant thus appears to be based on AFSCME's purported need to use it in an extra-contractual forum, i.e., PERB. As stated in my concurrence in *Contra Costa Community College District*, *supra*, PERB Decision No. 2652, I disagree that an exclusive representative is entitled to "information for use solely in an extra-contractual proceeding." (*Id*. at p. 39.) AFSCME thus was not presumptively entitled to BCEA's proof of support materials simply because they would be useful in filing and prosecuting an unfair practice charge.[21]

Nor is BCEA's proof of support subject to disclosure under the dual purpose rule, where information must be produced if it is necessary and relevant to fulfilling a simultaneous representational duty, notwithstanding that it also could be used in an extra-contractual proceeding. (*Santa Monica Community College District* (2012) PERB Decision No. 2303, p. 2, fn. 2; *Los Angeles Unified School District* (1994) PERB Decision No. 1061, p. 12, fn. 9.) It is not apparent—and neither the City nor AFSCME even tries to explain—how BCEA's proof of support was relevant to AFSCME's duty to represent employees in contract negotiations or contract administration. Indeed, it is

---

EERR does not allow the incumbent exclusive representative to appeal the ERO's determination that a petition complies with the EERR.

[21] To the extent my colleagues suggest that potential disclosure of proof of support materials via an information request is necessary to ensure employee organizations may file unfair practice charges challenging the validity of proof of support or representation petitions in general, I disagree. Parties whose representation matters are governed by PERB Regulations, which prohibit disclosure of proof of support, can challenge proof of support without obtaining the proof of support materials themselves. (See, e.g., *Central Basin Municipal Water District* (2021) PERB Order No. Ad-486-M, pp. 15-16; *Morongo Basin Transit Authority* (2015) PERB Order No. Ad-430-M, pp. 9-10; *Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402, pp. 13-15.)

difficult to see how employees' expression of support for a particular union (or for no representation) is related to "wages, hours, and other terms and conditions of employment." (MMBA, § 3504.) And while proof of support arguably is related to employer-employee relations (which is also within the MMBA's scope of representation), there is no evidence that AFSCME needed it to formulate or respond to a bargaining proposal or to investigate, file, or prosecute a grievance. Because BCEA's proof of support materials were not necessary or relevant to AFSCME's fulfillment of its representational duties, there is no need to balance AFSCME's interests against the employees'.

In sum, I wholeheartedly agree that employees' proof of support should be kept confidential. Unlike my colleagues, I would not create a less protective rule for disclosure of proof of support in jurisdictions where representation matters are governed by a public employer's local rules. Nor would I find BCEA's proof of support materials presumptively relevant here, as the only legitimate use of the information was in an extra-contractual unfair practice proceeding. For these reasons, I agree that the fact that the City disclosed BCEA's proof of support materials in response to AFSCME's information request provides no defense to the allegation that the City violated the MMBA by failing to keep those materials confidential.

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-1458-M, *Bellflower City Employees Association v. City of Bellflower; American Federation of State, County and Municipal Employees, Local 3745*, in which all parties had the right to participate, it has been found that the City of Bellflower violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq., by applying its employer-employee relations resolution (EERR) in a manner that failed to protect the confidentiality of employee proof of support and by violating its duty of strict neutrality in representation matters.

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

A. CEASE AND DESIST FROM:

1. Unreasonably applying our EERR to provide copies of proof of employee support to a competing employee organization (where proof of support is submitted directly to the City), without adequately preserving the confidentiality of the signatories.

2. Failing or refusing to remain strictly neutral in representation matters involving multiple unions.

3. Interfering with union or employee rights protected under the MMBA.

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

1. Demand that the American Federation of State, County, and Municipal Employees, Local 3745 (AFSCME Local 3745), return the signed Bellflower City Employees Association authorization forms that it received from the City and destroy all additional copies in its possession. AFSCME Local 3745 has been ordered to comply with this demand.

Dated: _____________________ CITY OF BELLFLOWER

By: _________________________________
Authorized Agent

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