STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNIVERSITY PROFESSIONAL AND TECHNICAL EMPLOYEES, COMMUNICATION WORKERS OF AMERICA LOCAL 9119, Charging Party, v. BUTTE-GLENN COMMUNITY COLLEGE DISTRICT, Respondent.	Case No. SA-CE-2996-E PERB Decision No. 2834 October 7, 2022

Appearances: Jason Rosenbury, Steward, for University Professional and Technical Employees, Communication Workers of America Local 9119; Lozano Smith by Thomas Gauthier and Allison Hernandez, Attorneys, for Butte-Glenn Community College District.

Before Banks, Chair; Shiners and Krantz, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Butte-Glenn Community College District to a proposed decision of an administrative law judge (ALJ). The proposed decision considered three claims arising under the Educational Employment Relations Act (EERA).[1] First, the ALJ found that the District did not retaliate against protected activity when it canceled three courses assigned to Stacey Burks, a part-time District

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

faculty member holding several positions in the Part-Time Faculty Association (PFA), which is affiliated with Charging Party University Professional and Technical Employees, Communication Workers of America Local 9119 (UPTE). Second, the ALJ rejected UPTE's claim that the District unilaterally changed polices related to course assignments and grievances without affording UPTE adequate notice and an opportunity to meet and negotiate.

Finally, the ALJ sustained UPTE's third claim, finding that the District failed to respond adequately to a request for information (RFI). Specifically, the ALJ found that the District assessed and answered the RFI as if it arose under the California Public Records Act (CPRA),[2] and consequently failed to explore means of obtaining requested information that was not in its class enrollment database, as required under EERA. The ALJ ordered the District to provide, upon UPTE's request, all outstanding information responsive to the RFI.

The District excepted to some of the ALJ's conclusions on information request issues. UPTE filed no exceptions. Having reviewed the proposed decision, the parties' arguments, and the record, we affirm the proposed decision.[3]

FACTUAL AND PROCEDURAL BACKGROUND

We summarize the background pertaining to the District's response to UPTE's RFI. The relevant background includes certain facts related to the District's decision to

[2] The CPRA is codified at section 6250 et seq.

[3] Neither party filed exceptions regarding the retaliation and unilateral change claims, and we express no opinion on them. The ALJ's conclusions about these claims are therefore non-precedential and are final and binding only on the parties to this case. (*County of Santa Clara* (2021) PERB Decision No. 2799-M, p. 3, fn. 4.)

cancel Burks' classes, as UPTE sought information largely to assess whether the District's decision was lawful.

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k). UPTE is an employee organization within the meaning of EERA section 3540.1, subdivision (d). Through the PFA, it exclusively represents the District's associate faculty.[4]

The following District employees played the most important roles in the parties' dispute:

Burks was an associate faculty member in the Philosophy Department. She served as PFA's President, Chief Steward, and Bargaining Chief.

Virginia Guleff served as the District's Vice President of Instruction. One of her duties was to oversee course offerings and schedules. In this role, Guleff collaborated with multiple administrators whom she supervised, including three scheduling and curriculum analysts, five Deans of Instruction, and four Directors of Instruction. The Deans of Instruction, in turn, worked with Department Chairs within their divisions to schedule courses in advance of each academic year. The Deans were also responsible for enrollment management, including exercising the authority to cancel scheduled courses due to low enrollment, departure or unavailability of instructors, curriculum changes, or overscheduling, among other reasons.

Carrie Monlux was one of five Deans of Instruction reporting to Guleff. She oversaw the division that included Social and Behavioral Studies, including the

[4] Like the parties, we use the phrase "associate faculty" to mean the same as "part-time faculty."

Philosophy Department. Between July 2019 and the Spring 2020 semester, Monlux also oversaw the division that included the Physical Sciences, including the Physics Department.

Linda Johnson served as Chair of Social and Behavioral Sciences until June 30, 2019. Thereafter, she continued to perform the Chair's duties until Heather Valle became the new Chair as of Fall 2019.

I. Fall 2019 Course Scheduling and Cancellations

In February 2019, the District assigned Burks to teach three Fall 2019 sections of Philosophy 6 (Introduction to Logic).[5] Leading up to this assignment, Monlux and Johnson had worked together to develop the Fall course schedule and faculty assignments. They first made sure that full-time faculty satisfied their contractual load obligations. After assigning courses to full-time faculty, Monlux and Johnson assigned remaining courses to associate faculty. The Philosophy Department had one full-time faculty member (Dan Barnett) and four associate faculty, including Burks. Monlux and Johnson initially scheduled ten sections of Philosophy 6, but thereafter they reduced the number to nine, three of which they assigned to Burks.

At all relevant times, Monlux tracked enrollment numbers using a software system known as Colleague. Monlux would download daily enrollment reports showing course section fill rates and wait lists. Monlux would also track information by referring to live dashboards on the District's planning, budget, and research website. Monlux sometimes asked her secretary to e-mail Department Chairs with enrollment data,

[5] All further dates are in 2019 unless otherwise indicated.

including reports downloaded from Colleague. Monlux would periodically discuss such data with Department Chairs, either by telephone or in person.

In the continuing aftermath of an unusually destructive fire in Butte County, the District experienced declining enrollment and funding. In advance of the Fall 2019 semester, the District began cancelling more courses than it had before.

On or around July 17, Monlux notified Johnson, Valle, and Barnett by e-mail that, due to low enrollment, the District would need to cancel certain Fall 2019 Philosophy sections. The e-mail named Burks' three Philosophy 6 courses (with eight, nine, and nine students enrolled, respectively), a Philosophy 16 course with five students enrolled, and a Psychology 41 course with seven students enrolled. The e-mail also identified an unstaffed Philosophy 6 course, noting that while only 12 students were enrolled, the section could potentially be preserved if Barnett needed it to meet his required course load. The next day, Johnson e-mailed the District Scheduling Center to cancel Burks' three Philosophy 6 sections and the Philosophy 16 course. Monlux responded, confirming her approval. These e-mail messages included the number of students enrolled in the courses at the time.

Between June 20 and August 19, Monlux canceled at least 14 course sections due to low enrollment and other issues, including Burks' three Philosophy 6 courses, the Philosophy 16 and Psychology 41 courses noted above, and other Social and Behavioral Sciences courses. Of these 14 canceled course sections, Monlux canceled eight sections between June 20 and July 18, three more by July 29, and the last three by August 16.

Other District staff also e-mailed the District Scheduling Center to cancel

Fall 2019 courses. For instance, in August, Physical Sciences Chair Jason Trento e-mailed the District Scheduling Center to cancel all four Fall 2019 sections of Physics 11. This e-mail contained student enrollment numbers for each section.

Although Burks was aware the District had canceled classes in the past, she had never had her entire course load canceled before the start of a semester. She believed more students might have enrolled in her sections had the District waited longer before deciding whether to cancel them. Burks also believed that the District could have taken a lesser step by combining her sections instead of cancelling them all. On August 13, UPTE filed a grievance alleging that the District violated the parties' collective bargaining agreement when it canceled Burks' sections.

On August 24, the District canceled a Philosophy 6 section with 34 enrolled students, due to a staffing issue. The District did not offer Burks the opportunity to teach this unstaffed, fully enrolled course, adding to Burks' concern that the District was treating her dissimilarly from other associate faculty members.

II. UPTE's Information Request

On October 1, UPTE e-mailed Chris Little, the District's Executive Director of Human Resources, seeking information related to the cancellation of Burks' sections. The e-mail stated that it was an official request for information, explained that UPTE was seeking information as an exclusive representative, and specifically sought the following items: (1) five years of information regarding the number of associate faculty whose entire course loads were canceled due to low enrollment; (2) information related to the number of associate faculty whose entire course loads were canceled due to low enrollment for the Fall 2019 semester; (3) a list of all classes canceled for

the Fall 2019 semester, including the discipline, division, class title, faculty member's name, cancellation date, Dean responsible for the cancellation, and number of enrollees at the time of cancellation; (4) District communications regarding the cancellation of Burks' Fall 2019 course sections; (5) District communications regarding the cancellation of the unstaffed Philosophy 6 course section; and (6) District communications regarding Burks' Spring 2020 course sections.

On October 15, Shannon McCollum, the District's Custodian of Records and Executive Assistant to the President of the District Board of Trustees, responded to UPTE's October 1 RFI. McCollum referenced the CPRA three times in her short e-mail and asserted that the District would respond only to the extent the CPRA required it to do so. McCollum further explained that, because the CPRA only requires public agencies to produce records existing at the time of a request and imposes no duty to create new records, the District would not create summary data beyond any preexisting records. McCollum sent UPTE a partial response to its third request, supplying a spreadsheet listing all courses canceled for Fall 2019, but including no information on faculty members assigned to the courses or the number of students enrolled at the time of cancellation. With respect to UPTE's third request, McCollum stated: "This is the data that is obtainable."

On November 6, McCollum wrote to UPTE again. She explained that when the District cancels a class, the instructor's name and information about the number of students enrolled is deleted from the Colleague database, and thereafter the District cannot recover such information. McCollum asserted that this software limitation prevented the District from running "historical reports," which limited the extent to

which it could respond to UPTE's requests. McCollum specifically claimed that, because of the deletions required by Colleague when cancelling a class, information responsive to UPTE's first and second requests "does not exist."

As part of its November 6 response, the District supplied records responsive to UPTE's fourth, fifth, and sixth requests. Specifically, after the District's Information Technology Department collected thousands of e-mails potentially responsive to those requests, McCollum sent UPTE those she found to be responsive.

UPTE did not follow up further with McCollum after her November 6 response.

III. UPTE's Unfair Practice Charge

UPTE filed this charge in January 2020. The District responded in March 2020, asserting that it had "provided all relevant information in its possession" and that "some of the requested information does not exist." (Original underscore.) PERB's Office of the General Counsel issued a complaint. As relevant here, the complaint alleged that the District failed and refused to provide UPTE with requested information that is necessary and relevant to its representational duties. In answering the complaint, the District denied that its RFI response was incomplete or inaccurate, and affirmatively stated that it "provided all information requested" and that "some information requested does not and did not exist." The ALJ held a formal evidentiary hearing in June 2021 and issued the proposed decision in April 2022.

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) We review the entire record and are free to make different factual findings and reach

different legal conclusions than those in the proposed decision. (*County of Sacramento* (2020) PERB Decision No. 2745-M, p. 10.)

The sole exceptions before us relate to the District's responses to UPTE's RFI. An employer must normally provide an exclusive representative with all information that is necessary and relevant to its right to represent bargaining unit employees regarding mandatory subjects of bargaining. (*State of California (State Water Resources Control Board)* (2022) PERB Decision No. 2830-S, pp. 9-10; *City and County of San Francisco* (2020) PERB Decision No. 2698-M, p. 6.) This is a liberal, discovery-type standard akin to the standard California courts use to determine relevance, and, notably, "necessary" and "relevant" are interchangeable terms that do not have separate meanings. (*Sacramento City Unified School District* (2018) PERB Decision No. 2597, p. 8 (*Sacramento*).) Here, UPTE requested information relevant to investigating whether the District treated Burks dissimilarly from other associate faculty and/or unilaterally changed the status quo without bargaining. The District does not contest that the information is necessary and relevant.[6]

Once a party receives a request for relevant information, it must either promptly

[6] As stated in his concurrence in *Contra Costa Community College District* (2019) PERB Decision No. 2652, Member Shiners disagrees that an exclusive representative has a statutory right to request and receive information from the employer when exercising its right to represent an employee in a proceeding where the representative is not bound by the duty of fair representation. (*Id*. at pp. 34-35 (conc. opn. of Shiners, M.).) Here, however, he agrees with his colleagues that the District had an obligation to provide the information UPTE requested on October 1 because it was relevant to UPTE's August 13 grievance over Burks' class cancellations. (*Id*. at pp. 39-40; *Hacienda La Puente Unified School District* (1997) PERB Decision No. 1184, p. 4.)

and fully supply the information, or timely and adequately explain its reasons for not doing so. (*Sacramento*, *supra*, PERB Decision No. 2597, p. 8.) The responding party bears the burden of proof as to any defense, limitation, or condition that it asserts. (*Ibid*.) If the responding party believes that a request is unduly burdensome, seeks confidential information, or is otherwise overbroad, the responding party must affirmatively assert its concerns and offer to bargain over those concerns with the requesting party. (*Id*. at pp. 12-13; *State of California (Department of State Hospitals)* (2018) PERB Decision No. 2568-S, pp. 15-16 (*Department of State Hospitals*) [assertion that an information request is unduly burdensome must be timely raised so the parties can negotiate over eliminating or reducing the responding party's burden]; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 19 (*Petaluma*) ["Even where a request is arguably ambiguous or overly broad, the employer . . . must seek clarification [or] comply to the extent the request seeks relevant information"].)

A responding party must exercise the same diligence and thoroughness as it would in other business affairs of importance, and a charging party need not show that a responding party's lack of care caused harm. (*Sacramento*, *supra*, PERB Decision No. 2597, pp. 8-9; *Petaluma*, *supra*, PERB Decision No. 2485, p. 19.) Thus, a responding party violates its bargaining duty if it unreasonably delays its response, even if the delay did not prejudice the requesting party. (*Sacramento*, *supra*, PERB Decision No. 2597, p. 9; *Petaluma*, *supra*, PERB Decision No. 2485, p. 20.)

The ALJ concluded that the District violated EERA when it responded to UPTE's request under the CPRA, and consequently failed to explore means of

obtaining requested information that was not in its Colleague class enrollment database. The District does not except to the finding that it responded under the CPRA. Rather, the District claims no violation can be found because UPTE did not follow up with McCollum, and further claims that it produced all responsive information that existed. We address each argument in turn.

I. UPTE's Failure to Reassert its Requests

The District, citing *Oakland Unified School District* (1983) PERB Decision No. 367 (*Oakland*) and *Trustees of the California State University* (2004) PERB Decision No. 1732-H (*Trustees*), argues that because UPTE did not reassert or clarify its information request after receiving McCollum's responses, it cannot establish that the District acted unlawfully. We reject this exception.

Initially, we note that at no time in this case prior to its exceptions did the District argue that the information request allegation should be dismissed because UPTE did not reassert or clarify its RFI after McCollum's November 6 response. The Board generally "decline[s] to review an exception raising an issue that was not presented to the ALJ." (*Los Angeles County Superior Court* (2018) PERB Decision No. 2566-C, p. 12; *Colusa Unified School District* (1983) PERB Decision No. 296, p. 4.) Nevertheless, the District's exception raises an important issue concerning when an exclusive representative must reassert its information request upon receiving a less-than-complete response from the employer. We accordingly exercise our discretion to consider the District's exception. (*Los Angeles County Superior Court*, *supra*, PERB Decision No. 2566-C, p. 13

In *Oakland*, *supra*, PERB Decision No. 367, the Board adjudicated a complaint

alleging, among other things, that an employer failed or refused to provide requested information. While the Board ordered the employer to supply one category of requested information (*id*. at p. 43), the Board dismissed a separate information request claim (*id*. at pp. 27-28). In support of the dismissal, the Board explained only that the employer answered the union's request in a manner that "might not have been fully responsive," but the union "never reasserted or clarified its request." (*Ibid*.) Although the Board's decision describes neither what specific information the union sought nor how the employer responded, the Board's brief analysis turns on the fact that the employer *might* not have fully responded. Thus, it was unclear whether the employer supplied all requested items, meaning the union had the burden to say something if it in fact had intended to ask for more than it received.

In *Los Angeles Unified School District* (2015) PERB Decision No. 2438 (*LAUSD*), the employer partially complied with the union's information request but withheld employee names pending completion of a process allowing employees to opt out of having their names disclosed to the union. At the time of its request, the union explained that it was concerned about reported violations of the employer's reassignment policies, as well as alleged age discrimination. (*Id*., adopting proposed decision at pp. 11-12.) The union also had clearly expressed its strong opposition to the opt-out procedure before receiving the partial response. (*Id*., adopting proposed decision at p. 12.) On these facts, the Board held the union was not obligated to reassert its request because it was "already sufficiently clear" that the response did not fully satisfy the union's request. (*Id*. at p. 16 & adopting proposed decision at p. 11.)

In finding the union had no obligation to reassert or clarify its information request, *LAUSD* distinguished its facts from both *Oakland*, *supra*, PERB Decision No. 367 and *Trustees*, *supra*, PERB Decision No. 1732-H, asserting those cases were factually similar to one another. (*LAUSD*, *supra*, PERB Decision No. 2438, p. 18, fn. 10.) However, *Trustees* recounts facts that are significantly more detailed, and more variegated, than the skeletal facts in *Oakland*. The union in *Trustees* requested seven items. (*Trustees*, *supra*, PERB Decision No. 1732-H, pp. 3-4.) For five of these items, the Board found no evidence the employer withheld any responsive information, nor any evidence that the union thereafter followed up, which combined to mean that *Oakland* foreclosed any claim as to those five items. (*Trustees*, *supra*, PERB Decision No. 1732-H, p. 6 & adopting proposed decision at p. 9.) With respect to the two other requested items, the *Trustees* ALJ found the employer violated HEERA when it neither supplied the information nor substantiated a valid defense. (*Id*., adopting proposed decision at p. 10.) But the *Trustees* Board disagreed with the ALJ, concluding that the union could not prevail given it did not reassert the outstanding requests. (*Id*. at p. 6.)

We find *Trustees* inconsistent with both *Oakland*, *supra*, PERB Decision No. 367 and *LAUSD*, *supra*, PERB Decision No. 2438. In *Oakland*, it was unclear whether the employer fully responded to the information request, and the Board was unwilling to impose liability on the employer in the absence of any notice from the union that the response was incomplete. (*Oakland*, *supra*, PERB Decision No. 367, pp. 27-28.) In *LAUSD*, on the other hand, the Board found the scope of the union's request, and the fact that the employer did not fully satisfy it, were sufficiently clear that the union did not need to follow up before filing a charge. (*LAUSD*, *supra*, PERB

Decision No. 2438, pp. 16-17 & adopting proposed decision at p. 11.) *Trustees* did not address whether it was sufficiently clear that the employer did not fully respond to the union's information request. As a result, *Trustees* suggests that an exclusive representative's failure to reassert or clarify its information request upon receiving a partial response from the employer always bars finding a violation of the duty to bargain in good faith, regardless of whether it was sufficiently clear that the response was incomplete. (*Trustees*, *supra*, PERB Decision No. 1732-H, p. 6.) Because *Trustees* conflicts with *LAUSD* and *Oakland* on this point, we partially overrule *Trustees* and reaffirm that an exclusive representative need not reassert or clarify its information request upon receiving a partial response from the employer where it is sufficiently clear that the response did not fully satisfy the request.

Here, the record satisfies the "sufficiently clear" standard. UPTE's October 1 RFI requested six specific categories of information. McCollum's November 6 response said that the District had provided all the requested information it could obtain and that the remaining information "does not exist." The District explicitly rooted this position in its incorrect belief that it could analyze UPTE's request solely under CPRA standards and thereby conclude that it had no duty to compile information contained in multiple sources, including employees' memories. The District's mistake of law does not change the fact that it was sufficiently clear the District failed to seek information beyond preexisting records. This prevented UPTE from "investigating the full breadth of [alleged] policy violations." (*LAUSD*, *supra*, PERB Decision No. 2438, p. 16, internal quotations omitted.) In the face of the District's unequivocal statement that no more information would be forthcoming, UPTE was not obligated to reassert its

request.[7] Consequently, the District cannot rely on UPTE's failure to reassert or clarify its RFI to escape liability; it may only do so by establishing a valid defense to production of the remaining information, which we turn to next.

II. The District's Claim that No Further Information Existed

In *Sacramento*, *supra*, PERB Decision No. 2597, we explained that while the CPRA provides unions with the same right to public records as any person or organization, the statutes we administer confer upon an exclusive representative, as part of its representational rights and duties, a separate, broader right to information.[8] (*Id*. at pp. 10-12.) For example, *Sacramento* notes that the CPRA may not require an employer to "create a new set of public records," but a union's information request "may cover both public records and information that may not be found in any existing record," meaning that "an employer responding to an RFI may be required to compile information from multiple records, management agents, and other sources, unless it can prove that doing so would be unduly burdensome." (*Id*. at p. 11.)[9]

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[7] While the District points to the fact that it closed its two responses by inviting UPTE to raise any questions or concerns, these standard invitations do not change the substance of the District's responses, which fall under the "sufficiently clear" standard. As we cautioned in *LAUSD*, *supra*, PERB Decision No. 2438, it is important not to elevate form over substance in deciding whether a union must reassert an information request or else lose the right to litigate over the employer's allegedly inadequate responses. (*Id*. at pp. 17-18.)

[8] Because UPTE served as an exclusive representative, we have no cause in this case to consider the rights of a non-exclusive representative.

[9] Furthermore, a responding party cannot rely on CPRA exemptions when responding to an information request arising under a labor relations statute. (*Sacramento*, *supra*, PERB Decision No. 2597, p. 10; see also *County of Tulare* (2019) PERB Decision No. 2697-M, pp. 14-15, fn. 9 [party responding to information request under labor relations statute may interpose defense to protect internal

In *Regents of the University of California (Davis)* (2010) PERB Decision No. 2101-H (*Regents*), we held that an employer cannot deny an RFI merely because compiling the requested information would require consulting employee memories in combination with records. *Regents* involved two RFIs intended to help a union assess whether a university was reclassifying bargaining unit clerical positions into non-clerical positions outside the unit. First, the union asked one campus for the "classification history" of each open administrative analyst position posted over two years, including the posted job description and the prior job description of any predecessor position. (*Id*. at p. 12.) Management "concluded the only way to gather the information was through a search of the institutional memory of the various departments." (*Id*. at pp. 12–13.) Second, the union asked each campus to search for instances in which it largely replaced a clerical position with a non-clerical position, and provide "the title of the position when it was in the clerical bargaining unit, the title once the position was removed . . . or replaced in large part . . . and job descriptions for both positions." (*Id*. at p. 14.) The university asserted it did not have "a system of recording and tracking filled and vacant positions." (*Ibid*.) The university recognized that responsive information existed but argued that collecting it would be unduly burdensome because it would require tapping individuals' memories. (*Id*. at p. 33.) We concluded the university did not prove that supplying the information would have been unduly burdensome. (*Id*. at pp. 33–34.) The university's "lack of a database with position control" did not establish an undue burden because "the record suggested

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collective bargaining strategy but may not assert the broader deliberative process privilege applicable under the CPRA].)

manageable steps the university could have taken" to provide that information. (*Id*. at p. 34.) For example, the university could have created an electronic list of postings and then "sought the requested information regarding those jobs from the individual departments." (*Ibid*.)

In sum, while it is tautological that an employer need not provide information that does not exist, "when the requested information does exist in some form, the fact that the employer may have to compile it from various sources does not excuse the employer from producing it unless the employer can prove doing so would be unduly burdensome." (*Department of State Hospitals*, *supra*, PERB Decision No. 2568-S, p. 15.) Moreover, an employer must raise any such burden contemporaneously with the requesting union "so the parties can negotiate over eliminating or reducing the employer's burden." (*Id*. at p. 16.) Otherwise, the employer forfeits the defense and PERB will order the employer to supply the information despite any burden it may impose. (*Ibid*.)

Here, the District did not notify UPTE that its request was unduly burdensome, thereby waiving any such argument. (*Sacramento*, *supra*, PERB Decision No. 2597, p. 12; *Department of State Hospitals*, *supra*, PERB Decision No. 2568-S, pp. 15-16; *Petaluma*, *supra*, PERB Decision No. 2485, p. 19.) The District instead asserted that significant parts of the requested information did not exist. As the record demonstrates, that statement was inaccurate because the District could have tapped individuals' memories, as well as their e-mails, to inquire about information responsive to UPTE's first three requests. For instance, McCollum could have contacted the Scheduling Center, the Deans and Directors of Instruction, the Chairs, and other

similarly situated personnel to ask that they and their support staff search their memories, computers, servers, and e-mails, while consulting the partial spreadsheet that featured certain blank columns.[10] Monlux and her secretary often downloaded student enrollment reports and shared such reports with Department Chairs and other District employees via e-mail, and thus the requested information may still exist in some form—including even some forms that could be public records within the meaning of the CPRA. Indeed, the record contains three e-mails that include the number of students enrolled at the time a Fall 2019 course was cancelled. The District almost certainly would have found further such information upon inquiry.

Instead of doing what it could to gather all existing responsive information or raising the burden of doing so and offering to bargain with UPTE, the District stopped after finding that much of the information did not exist within its central database. As noted above, an employer normally must supply responsive information even when the employer cannot retrieve it from a centralized database.[11]

For the foregoing reasons, we affirm the ALJ's conclusion that the District violated EERA when it illegally applied CPRA standards to UPTE's RFI and thus did not attempt to gather all responsive information within its possession or control.

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[10] If certain responsive information existed mainly in individuals' memories, such information was not a public record within the meaning of the CPRA. A union's right to obtain that type of information illustrates one of the most salient respects in which EERA confers broader rights than the CPRA. (*Sacramento*, *supra*, PERB Decision No. 2597, pp. 10-11.)

[11] Notably, it is not a charging party's burden to prove exactly what further information a respondent would have found by conducting a proper, diligent search.

III. Remedy

The appropriate remedy in cases involving a failure to provide information typically includes a cease-and-desist order and an order to provide the requested information upon the charging party's request. (*Department of State Hospitals*, *supra*, PERB Decision No. 2568-S, pp. 16-18; *Regents*, *supra*, PERB Decision No. 2101-H, p. 37; see also *Children of Promise Preparatory Academy* (2019) PERB Order No. Ad-473, pp. 4-5 [responding party must provide requested information based upon its duties when its obligation first arose, irrespective of whether intervening events may have created new potential defenses to providing the requested information].)

In challenging the ALJ's proposed remedy, the District first reprises its argument that the requested information does not exist. We reject this argument for reasons already explained. Alternatively, the District asks us to order the parties to negotiate over the cost of compiling the information. However, as noted above, the District waived this argument when it neither raised the alleged undue burden contemporaneously nor offered to bargain with UPTE about it. (*Department of State Hospitals*, *supra*, PERB Decision No. 2568-S, p. 16.) We therefore will order the District to provide further information responsive to the October 1 RFI upon UPTE's request.

ORDER

Based on the foregoing and the entire record in this case, the Public Employment Relations Board (PERB) finds that Butte-Glenn Community College District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivision (c), and derivatively violated subdivisions (a)

and (b), by failing to adequately respond to an information request from University Professional and Technical Employees, Communication Workers of America Local 9119 (UPTE).

Pursuant to EERA section 3541.5, subdivision (c), it is ORDERED that the District, its governing board, and its representatives shall:

A. CEASE AND DESIST from failing or refusing to provide necessary and relevant information to UPTE pursuant to the requirements of EERA.

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

1. Upon UPTE's request, supply all information in the District's possession or control that is responsive to UPTE's information request dated October 1, 2019.

2. Within 10 workdays following the date this Decision is no longer subject to appeal, post at all locations where it posts notices to District employees represented by UPTE, copies of the Notice attached hereto as an Appendix. An authorized agent of the District must sign the Notice, indicating that the District will follow the terms of this Order. The District shall maintain the posting for a period of 30 consecutive workdays and shall also post it by electronic message, intranet, internet site, and other electronic means the District uses to communicate with employees in UPTE's bargaining unit. The District shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material.[12]

[12] In light of the ongoing COVID-19 pandemic, Respondent shall notify PERB's Office of the General Counsel (OGC) 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

3. Within 30 workdays after this decision is no longer subject to appeal, provide PERB's General Counsel, or the General Counsel's designee, with written notification of all actions taken to comply with this Order; thereafter continue to report in writing to the General Counsel, or designee, periodically as directed; and concurrently serve UPTE with all such notifications and reports.

Chair Banks and Member Shiners joined in this Decision.

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location as of the time the physical posting would otherwise commence. If Respondent so notifies OGC, or if Charging Party requests in writing that OGC alter or extend the posting period, require more notice methods, or otherwise adjust the way employees receive notice, OGC shall investigate and ask for input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing Respondent to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing Respondent 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 Respondent to mail the Notice to employees with whom it does not communicate through electronic means.

APPENDIX

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

After a hearing in Unfair Practice Case No. SA-CE-2996-E, *University Professional and Technical Employees, Communication Workers of America Local 9119 v. Butte-Glenn Community College District*, in which all parties had the right to participate, the Public Employment Relations Board found that Butte-Glenn Community College District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivision (c), and derivatively violated subdivisions (a) and (b), by failing to adequately respond to an information request from University Professional and Technical Employees, Communication Workers of America Local 9119 (UPTE).

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

A. CEASE AND DESIST from failing or refusing to provide necessary and relevant information to UPTE pursuant to the requirements of EERA.

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

1. Upon UPTE's request, supply all information in our possession or control that is responsive to UPTE's information request dated October 1, 2019.

Dated: _____

BUTTE-GLENN COMMUNITY COLLEGE DISTRICT

By: _____
Authorized Agent

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