STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ASSOCIATION OF CLOVIS EDUCATORS, CTA/NEA, Charging Party, v. CLOVIS UNIFIED SCHOOL DISTRICT, Respondent.	Case Nos. SA-CE-3040-E SA-CE-3047-E SA-CE-3051-E
CLOVIS UNIFIED FACULTY SENATE, Joined Party.	
ASSOCIATION OF CLOVIS EDUCATORS, CTA/NEA, Charging Party, v. CLOVIS UNIFIED FACULTY SENATE; CLOVIS TEACHERS ORGANIZATION, Respondent.	Case No. SA-CO-655-E PERB Decision No. 2904 June 20, 2024
CLOVIS UNIFIED SCHOOL DISTRICT, Joined Party.	

Appearances: Bush Gottlieb by Erica Deutsch and Michael E. Plank, Attorneys, and California Teachers Association by Megan Degeneffe, Staff Counsel, for Association of Clovis Educators, CTA/NEA; Fagan Friedman & Fulfrost by David A. Moreno, Lynn Beekman, Katy McCully Merrill, and Brandon A. Lallande, Attorneys, for Clovis Unified School District; Stacey Schiro and Bill Buettner for Clovis Unified Faculty Senate.

Before Banks, Chair; Krantz and Nazarian, Members.

DECISION

KRANTZ, Member: The above-captioned four consolidated unfair practice cases are before the Public Employment Relations Board (PERB) on exceptions by Charging Party Association of Clovis Educators (ACE) to a proposed decision of an administrative law judge (ALJ). All four cases relate to ACE's campaign to become the exclusive representative of certificated employees employed by Clovis Unified School District.

ACE filed its first three charges (Case Nos. SA-CE-3040-E, SA-CE-3047-E, and SA-CE-3051-E) against the District. The complaints in those cases allege that the District violated the Educational Employment Relations Act (EERA) and the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD) by, among other conduct: (1) dominating and interfering with the administration of the Clovis Unified Faculty Senate, an employee organization that is a joined party in all three charges against the District; (2) providing the Senate with preferential treatment and extensive, unequal support; (3) encouraging employees to support the Senate while deterring or discouraging them from joining ACE and from authorizing ACE to represent them; (4) surveilling employees engaged in protected activities and otherwise interfering with such activities; and (5) retaliating against employees for their protected activities.[1]

[1] EERA is codified at Government Code section 3540 et seq., while the PEDD is codified at Government Code section 3550 et seq. All statutory further references are to the Government Code unless otherwise indicated.

ACE filed its fourth charge (Case No. SA-CO-655-E) against the Senate and Clovis Teachers Organization (CTO). The complaint in that case alleges that CTO is the Senate's "alter ego and/or successor," and that the two respondents violated EERA by, among other conduct: (1) soliciting and/or accepting unlawful support from the District; (2) causing or attempting to cause the District to violate EERA; and (3) otherwise interfering with teachers' protected activity.[2]

The proposed decision found in ACE's favor as to most allegations in all four cases, while dismissing other allegations. The ALJ's proposed remedial order would require the District, among other acts, to rescind unlawful communications and policies and honor its duty under EERA section 3543.5, subdivision (d) to refrain from dominating, interfering with the administration of, or unlawfully supporting an employee organization, or encouraging employees to join one organization over another. The proposed remedial order against the Senate would prohibit it from accepting unlawful support, interfering with protected activity, and attempting to cause the District to violate EERA.

ACE was the only party to file exceptions to the proposed decision. In its exceptions, ACE seeks reversal on the claims the ALJ dismissed and argues in favor of augmenting and modifying the ALJ's proposed remedy. The main additional remedy ACE seeks is to disestablish all relationships between the Senate and the District having to do with teachers' terms or conditions of employment. ACE's proposed

[2] We use the term "teachers" as a shorthand to include teachers, mental health professionals, and other certificated educational employees at the District.

remedy turns, in part, on assessing the nature of the District's violation of EERA section 3543.5, subdivision (d), meaning that certain liability issues are also before us.

The Senate did not respond to ACE's exceptions. The District did file a response, arguing that we should make no changes to the ALJ's conclusions and proposed remedial order.

For the reasons explained below, we sustain certain exceptions and reject others. As in the parties' briefs, a significant portion of our decision is devoted to the remedy of "disestablishment," a term of art that generally refers to "a complete and permanent termination of all relationships between an employer and the affected labor organization, and any successor[,] having to do with wages, hours, and working conditions," but "does not necessarily mean complete dissolution of the organization." (See, e.g., National Labor Relations Board (NLRB) Compliance Manual, § 10528.6, https://www.nlrb.gov/sites/default/files/attachments/pages/node-174/compliance-manual-october-2020.pdf [last accessed June 20, 2024].)

We conclude the ALJ erred in failing to order disestablishment. The first reason is that ACE proved the District dominated the Senate, and disestablishment is the standard remedy in the infrequent cases involving domination. In the alternative, this case requires disestablishment because other violations were egregious, recurrent, and persistent. Indeed, this case does not stand in isolation. Forty years ago, PERB found that similar District conduct, vis-à-vis the Senate, violated EERA section 3543.5, subdivision (d). (*Clovis Unified School District* (1984) PERB Decision No. 389, adopting proposed decision at pp. 19-22 (*Clovis I*).) The remedial order in *Clovis I* did not order disestablishment, and instead sought to quell and remedy significant illegal

conduct via lesser measures. Unfortunately, those measures proved ineffective in preventing recurrence. As detailed below, to refrain from ordering disestablishment in this case would be contrary to law and would abdicate our enforcement responsibility. We therefore rule in ACE's favor on this central issue.[3]

PROCEDURAL HISTORY

On June 1, 2021, ACE filed its first charge against the District. The gravamen of the charge was that the District had violated EERA section 3543.5, subdivision (d) by dominating and interfering with the administration of the Senate, providing unlawful support to the Senate, and encouraging employees to support the Senate over ACE. After ACE amended the charge and filed a request for injunctive relief, PERB's Office of the General Counsel (OGC) reviewed both parties' positions and issued a complaint.

ACE and the District filed multiple declarations and briefs concerning whether the Board should authorize OGC to seek temporary injunctive relief to prevent irreparable harm that might occur during PERB's unfair practice proceedings. We decided it was appropriate to seek such relief for the reasons explained in *Clovis Unified School District* (2021) PERB Order No. IR-63 (*Clovis II*). OGC sought temporary injunctive relief in the Superior Court of Fresno County over the ensuing months, but the court denied both PERB's application for a temporary restraining order and PERB's later motion for a preliminary injunction.

[3] While ACE has moved to reopen the record to submit more evidence supporting disestablishment, we deny that motion as moot given that we order disestablishment based on the existing record.

Meanwhile, ACE filed its second charge against the District, which made multiple claims. To begin, ACE alleged that the District surveilled employees engaged in protected activities. Next, ACE claimed that the District retaliated against ACE supporter Amy Kilburn by presenting her with a less desirable option if she wished to continue earning a stipend for teaching an extra class. Lastly, ACE asserted that the District violated its duty to meet and discuss with ACE as a "nonexclusive representative," viz., an employee organization that represents certain employees but is not an exclusive representative within the meaning of EERA section 3540.1, subdivision (e). (*Clovis II*, *supra*, PERB Order No. IR-63, p. 3, fn. 3.)

The latter allegation relied on the principle that a nonexclusive representative, whether or not it is seeking to ultimately be certified as an exclusive representative, has the right to receive advance notice of contemplated changes in fundamental employment terms or conditions, as well as the right to meet and discuss with the employer before it reaches a decision on such matters. (*Alliance College-Ready Public Schools, et al.* (2020) PERB Decision No. 2716, p. 20.) In such discussions, the employer need not engage in the full breadth of bargaining as it must with an exclusive representative, but it must listen and consider proposals in good faith. (*Id*. at pp. 23-24.) Furthermore, a nonexclusive representative has the right to information it needs to meet and discuss in good faith, to evaluate grievances, or to pursue administrative or legal remedies on behalf of employees. (*Regents of the University of California* (1999) PERB Decision No. 1354-H, adopting proposed decision, pp. 45-48; *Santa Monica Community College District* (1979) PERB Decision No. 103, p. 15 (*Santa Monica*).)

In September 2021, ACE filed its third charge against the District, adding more allegations that the District had interfered with protected activity, violated EERA section 3543.5, subdivision (d), and violated the PEDD. Among other bases for the new allegations, the third charge alleged that the District was liable for a supervisor in the District's police force e-mailing ACE supporter Kristin Heimerdinger "I hope you're putting our kids first," and/or the District violated the law by taking insufficient action when Heimerdinger complained about this e-mail.

Thereafter, PERB proceedings continued apace, as follows: ACE filed its charge against the Senate and CTO; OGC issued complaints in the remaining cases, two of which were subsequently amended; the District and the Senate answered the complaints pending against them; the ALJ added the Senate as a joined party in the first three cases and the District as a joined party in the fourth case; and the ALJ consolidated the four cases.

Furthermore, in a letter dated November 10, 2021, PERB's Appeals Assistant wrote the parties as follows:

> "[T]he Board unanimously requests that, as part of providing evidence and argument on both liability and remedy issues, you address the following two questions:
>
> "(1) Would any of the alleged violations in this matter, if proven, more likely than not have sufficiently long-lasting impacts that traditional remedies may be inadequate to restore employee free choice? (See *Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470, p. 6 & adopting administrative determination at p. 4 [discussing extent to which PERB remedies, combined with passage of time, may restore employee free choice]; see *also Regents of the University of California* (2021) PERB Decision No. 2755-H, pp. 55-56, citing *Alliance College-Ready Public Schools et. al.* (2017) PERB Decision

No. 2545, pp. 16-18 [listing circumstances potentially warranting non-traditional remedies].)

"(2) Assuming for the sake of argument that the answer to [Question No. 1] is 'yes,' which specific non-traditional remedies may be appropriate in this case, including but not limited to disestablishment of the Faculty Senate (see *Redwoods Community College District* (1987) PERB Decision No. 650, adopting proposed decision at pp. 63-68) and/or a non-majority bargaining order? (See *Harry Carian Sales v. ALRB* (1985) 39 Cal.3d 209, 221 [non-majority bargaining order may be necessary or appropriate 'in 'exceptional' cases marked by 'outrageous' and 'pervasive' unfair labor practices'].)"[4]

The ALJ held 33 formal hearings days from December 13, 2021, through November 15, 2022. The parties then submitted post-hearing briefs, and on December 7, 2023, the ALJ issued the proposed decision that is now before us on appeal.

FACTUAL BACKGROUND

I. The Parties

The District is a public school employer within the meaning of EERA section 3540.1, subdivision (k), and it is a public employer within the meaning of PEDD section 3552, subdivision (c). The District provides public education to approximately 43,000 students and employs more than 2,000 certificated employees.

ACE is an employee organization within the meaning of EERA section 3540.1, subdivision (d) and PEDD section 3552, subdivision (a). ACE began organizing District teachers in July 2020 and announced its campaign on April 5, 2021.

[4] ACE has specifically disclaimed interest in a non-majority bargaining order. We therefore express no opinion on that issue.

It is undisputed that the Senate is an employee organization within the meaning of EERA section 3540.1, subdivision (d) and PEDD section 3552, subdivision (a). The record leaves no serious doubt that CTO has at all relevant times served as an alias of the Senate. For instance, the Senate president signed the Senate's post-hearing brief to the ALJ on behalf of "Clovis Unified Faculty Senate aka Clovis Teachers Organization." Moreover, in answering the complaint in Case No. SA-CO-655-E, the Senate stated that it and CTO were "interchangeable" during the period of October 11, 2021, through November 15, 2021. We infer that this statement did not suggest that CTO ever existed as a separate entity, but rather meant that October and November 2021 were the only months in which CTO was active.

II. District Policy 0100

The policies of the District's Board of Education (District Board) include Policy 0100, entitled "District Philosophy." Policy 0100 states that "the District believes in the foundational values established by our first Superintendent, Dr. Floyd B. Buchanan, who served the District from 1960 to 1991. Those values, as stated by Dr. Buchanan, continue throughout the District and are set forth in Exhibit No. 0100." The exhibit to Policy 0100 is widely known within the District as "Doc's Charge," based on Buchanan's nickname. District employees understand it as a statement of the District's values. Indeed, the District distributed Doc's Charge to all newly hired teachers for many years. Doc's Charge provides, in part, that "professionals who work in our district are proud that we do not have collective bargaining." In its concluding paragraph, Doc's charge states: "If you are still interested in working at Clovis under those conditions, we'd like to offer you a contract."

While litigating the charges at issue here, the District removed Doc's Charge as the exhibit to Policy 0100 and stopped distributing it to new employees at orientation and training. The District also removed Doc's Charge from its website. However, when the record closed in this matter, the District still displayed Doc's Charge in the District boardroom, the Superintendent's office, and other District work sites.

III. The Senate's Genesis

Clovis I, *supra*, PERB Decision No. 389 recounted the Senate's origin in the context of two successive campaigns to organize District teachers in the years following EERA's enactment. The first organizing effort took place in 1977. Unions affiliated with the California Teachers Association (CTA) and the California Federation of Teachers vied to exclusively represent District teachers, while the District urged teachers to vote for no union. (*Id*., adopting proposed decision at p. 31.) During that campaign, "a proposal for the formation of a Faculty Senate was raised as an alternative to exclusive representation and collective bargaining." (*Id*., adopting proposed decision at pp. 31-32.) "The concept of a Faculty Senate was endorsed by" the District's then-Superintendent, Dr. Floyd Buchanan, "in a March 11, 1977, letter to the faculty." (*Id*., adopting proposed decision at p. 32.) Buchanan, who was known as "Doc," disapproved of EERA and collective bargaining, as noted in an earlier PERB decision finding that Buchanan made anti-union statements that did not amount to unlawful interference. (*Clovis Unified School District* (1978) PERB Decision No. 61, p. 2 and adopting proposed decision at pp. 9-11.)

The Senate formed after the District had convinced its teachers to vote for no union in the 1977 election. (*Clovis I*, *supra*, PERB Decision No. 389, adopting

proposed decision at p. 32.) In the years following its formation, "the District exercised significant influence upon and involvement in the operations of the senate." (*Ibid*.)

The second organizing campaign took place in 1983. A CTA affiliate known as the Clovis Unified Teachers Association (CUTA) filed a representation petition, and the District again "actively urged employees to vote for no representation." (*Clovis I*, *supra*, PERB Decision No. 389, adopting proposed decision at p. 7.) For example, "Buchanan wrote and distributed among employees seven letters stating the District's opposition to collective bargaining." (*Ibid*.) The District's persuasion was successful a second time, as teachers again rejected exclusive representation. (*Ibid*.)

CUTA challenged the 1983 election result, pursuing a charge and consolidated election objections. That case culminated in *Clovis I*, *supra*, PERB Decision No. 389, which found the District violated EERA in multiple respects. Among other violations, the District provided the Senate with unlawful support and favored the Senate over CUTA by crediting the Senate with improved grievance procedures, relieving teachers from having to work on the final Saturday of the school year, and a salary increase proposal. (*Id*. at pp. 8-10.) The decision summarized these findings as follows:

> "Initially, the District established a relationship of support for the Faculty Senate which not only exceeded its statutory obligations, but tended to create the appearance, if not the fact, of an 'in-house' or 'company' union. It provided the Senate with financial support, typing and distribution of its minutes, stationery and release time, which was not made equally available to [CUTA], thereby facilitating the Senate's operation and its ability to communicate with employees. . . .Most egregiously, by meeting and conferring exclusively with the Faculty Senate about the Saturday workday, then eliminating that required workday, long a matter of keen employee interest, the District clearly encouraged employees to stay with the Senate and reject

> [CUTA]. Then, if any employee had missed the point, the District expressly credited the Senate with having eliminated the Saturday workday -- both in a mandatory meeting ten days before the election and in a mailing to teachers two weeks before the election. Finally, the morning before the election, [a District Principal] conducted a mandatory faculty meeting in which he urged the teachers to vote for no representation."

(*Clovis I*, *supra*, PERB Decision No. 389, pp. 19-20.)

The decision in *Clovis I*, *supra*, PERB Decision No. 389 also noted that it was infeasible to remedy the District's violations, as it would not effectuate the purposes of EERA to order the District to withdraw the beneficial employment terms that the District had strategically implemented and attributed to the Senate. (*Id*. at p. 20.) Instead, the *Clovis I* remedial order focused on barring the District from providing further preferences or uneven support to the Senate, crediting it with improvements, or otherwise endorsing the Senate. (*Id*. at pp. 21-22.) *Clovis I* also directed a rerun election. (*Id*. at p. 20.) There is no PERB decision recounting the result of the rerun election, but it is undisputed that no union has ever become certified as the exclusive representative of District teachers.

IV. The Senate's Relationship with the District

A. The Senate's Privileged Status Under District Policy 4118

Until October 2021, District Board Policy 4118 provided as follows:

> "The Clovis Unified School District Faculty Senate is the representative body for teachers of the District. When a teacher is called to a meeting with his/her administrator(s), irrespective of the purpose of the meeting, the teacher may request to have a Faculty Senate representative or other person of his/her choosing present at the meeting."

On October 6, 2021, four months after ACE filed its initial charge, the District Board revised Policy 4118, removing the Senate's privileged status as the sole representative of teachers by rewriting the provision as follows:

> "When a teacher is called to a meeting with his/her administrator(s), irrespective of the meeting, the teacher may request to have a representative or other person of his/her choosing present at the meeting."

B. Senate Bylaw Provisions Regarding its Partnership with the District

The Senate's bylaws, as last amended in 2008, provide that its overall mission is "to be an effective advocate for teachers at all levels of policy making, procedures, and expenditures, in partnership with our administrators, fellow employees, and community as a quality educational team." Moreover, the bylaws define the Senate's core beliefs as follows:

> "Chapter 2. Beliefs:
>
> "[¶] . . . [¶]
>
> "● We represent the voice of the teaching staff individually and collectively and will serve as their advocate.
>
> "● We are valued partners in the vision and operation of the district with the school board, district administrators, principals, parents, community members, and students through support and maintenance of district beliefs and goals."

Next, the bylaws state that the Senate's objective is to "represent all faculty interests on matters pertaining to the performance, growth, development, and welfare of its members."

Senators include school site representatives elected every two years by teachers from District schools, as well as representatives from various District

educational departments such as music and special education. According to the bylaws, senators' duties include "gathering of data on issues of interest to the Faculty Senate or District," and administering an "annual Climate Assessment" at their school sites, as discussed further *post*.

The Senate holds nine to twelve meetings a year. If meetings begin during senators' workday, they receive paid release time to attend, leaving their regular duties before the end of their shifts.

Every two years, senators elect an executive board consisting of a president, vice president, parliamentarian, secretary, and two communication positions. The bylaws provide that these officers shall "meet and confer on a regular basis as a group, and with the District Administration." All Senate elected officers are subject to the District's Professional Conduct clause.

Under the bylaws, the Senate president's role is to "attend all District level meetings," "make the initial attempt to intercede in any teacher's job concerns," and "work closely with the District Administration to promote a productive working relationship."

C. The District's Entanglement with Internal Senate Affairs

The District has had significant involvement in important internal Senate affairs, including Senate elections, efforts to revise Senate bylaws, and misconduct complaints against Senate officers. For example, beginning in September 2020, District administrators investigated and took remedial actions based on two complaints that District teacher Kristin Heimerdinger filed—one regarding conduct by the Senate's communications officer, and a second regarding the Senate's decision to block

Heimerdinger from logging into a remote Senate meeting. Regarding the first complaint, the District investigated internal Senate practices and concluded that the Senate's communications officer had not met the District's professionalism expectations. With respect to the second complaint, the District responded to Heimerdinger by indicating that: the Senate would establish policies and procedures regarding attendance at Senate meetings; the District "places high expectations" on the Senate executive board's professionalism; the Senate treated Heimerdinger in a manner that did not meet the District's expectations; and as a result, the District had addressed its expectations with Senate officers.

Soon after Heimerdinger's initial complaint, Senator Stacey Schiro complained to the District about internal Senate election procedures—specifically whether a recent election for Senate vice president had been fair—and regarding the Senate president's communications with teachers, as well as problems with Senate bylaws that Schiro believed warranted revision. The District began investigating Schiro's complaint. Even before the District finished its investigation, the Senate asked Barry Jager, the District's Associate Superintendent of Human Resources and Employee Relations, to help rerun the election for Senate vice president. Jager, in turn, enlisted Chris Edmondson, the District's Director of Educational Technology, to use District software to rerun the election electronically. On October 6, 2020, Jager sent an e-mail to senators entitled "Faculty Senate Voting," to which he attached a link allowing senators to vote for vice president. In the e-mail, Jager identified himself by his District title, thanked senators for their participation, and noted: "We value integrity and morality with this very important process." The District tabulated the election results

and Jager announced them. Schiro prevailed in the election, becoming the Senate vice president. Later, Schiro became the Senate president, in another Senate election the District ran. (See *post* at pp. 17-18.)

In November 2020, the District finished investigating Schiro's complaint and issued a formal response that included the following conclusions (in which "FS" denotes the Senate):

> "• The District's expectation for professionalism will be thoroughly reviewed and addressed with the FS President . . . [and] all members of the FS Executive Board as well.
>
> "• The position of the FS President, and the important support this person provides, would be better served by centrally locating the President in the Human Resources office at the District Office East building that will enable more accountability and support for the position and other Executive Board members with release time.
>
> "• Clear expectations for prompt responses from the FS President to those with inquiries will be communicated. An expectation of a response within 24 hours should be reasonable.
>
> "• A thorough revision of the FS Bylaws should occur. This should be led by the FS Vice-President, per the existing bylaws. The process for this should be fully transparent and include members from all Areas and teaching levels of the District. If all Areas and levels are not represented, then district administration can help recruit members. In addition, the FS will have the full support of our Human Resources Department and legal resources to assist, as needed . . .
>
> "• Prior to the next round of elections, FS Executive Board will work in conjunction with the Human Resources Department to create a standard operating procedure for elections at the site and district level.

> "• The FS Executive Board Members should thoroughly review the procedures for District-level FS meetings. I would encourage a committee be created of existing FS members to provide insights on how to increase the effectiveness and organization of these meetings from the initial planning to the subsequent dissemination of notes from the meeting. The FS will have the full support of our Human Resources Department and Deputy Superintendent's Office to assist as needed.
>
> "• Information shared at the Clovis Unified Governing Board Meeting by the FS President, or any member of the Executive Board, should reflect the viewpoints of all teachers as best as possible. If teachers are invited to speak on an issue, all teachers even with differing opinions, should be extended the same privilege to speak.
>
> "• Area Superintendents and site Principals will be thoroughly informed of the current concerns and plans of action. They will work diligently in their site FS meetings and Area FS meetings to address any concerns and insights.
>
> "• I will arrange for a joint meeting between the FS Executive Board and the Superintendent's Executive Cabinet to review processes and procedures of FS and how we can best support the FS moving forward. Concerns regarding processes outlined in the complaint will be addressed in this and future meetings."

In February 2021, multiple Senate officers resigned, including its president. The District once again ran the ensuing Senate election. Jager sent an e-mail announcing and describing the nomination process, the timeline, and the election procedures, while assuring senators that voting "will be completed with support from Technology and Human Resources to ensure a fair and transparent election process." The District ran every part of the process, from the announcement forward. For instance, senators

could only nominate a candidate by sending such a nomination to the District. Furthermore, the District tabulated and announced the election results.

Soon thereafter, the District became involved in a third Senate election. On April 28, 2021, at the request of a Senate executive board member, Jager arranged for the Senate to use the District's software account to run an election for senators. The Senate's notice of nominations and election used the District's logo and included the following quote from Doc's Charge: "The professionals who work in our district are proud that we do not have collective bargaining."

Jager similarly offered or provided other support to the Senate in this timeframe, such as responding to the Senate parliamentarian's e-mail inquiry about how to run Senate meetings.

D. Senate Collaboration with the District on an Annual Survey

Each year, senators work with the District to develop and administer a survey intended to solicit teacher input about their working conditions and views on representation, among other issues. Indeed, as noted above, the Senate bylaws specifically state that senators "are responsible for the administration of the annual Climate Assessment at their respective school sites." The District works hand in hand with the Senate to obtain teacher responses, tracking which employees have returned the survey and periodically prompting those who fail to do so. District information technology staff retain the anonymous results but will release them to District administrators upon request.

The Senate receives certain results from the annual Climate Assessment. Senate officers review the results with senators, who then meet with their school

principals to go over the results. Thereafter, senators discuss the results with teachers. Senators next form Quality Improvement Teams (QIT) at each site to address the results, especially deficiencies. From these sessions, senators bring proposals to District administrators, and they jointly develop an action plan. In the last step of the QIT process, the District confirms implementation of the action plan submitted by the Senate's executive board.

Beginning by at least the 2017-2018 school year, the survey included the following five questions asking teachers to provide their views and opinions regarding the Senate and how it represents teachers:

> "1. Does Faculty Senate support teachers?
>
> "2. Do I have access to Faculty Senate through my Senator?
>
> "3. Does my Senator represent our staff without personal bias?
>
> "4. Does my Senator keep our staff informed?
>
> "5. Do I want Faculty Senate to continue as my representative group?"

The survey asked teachers to answer to these Senate-specific questions by selecting one of the following responses: "a great deal," "quite a bit," "sometimes somewhat," "very little seldom," "none never," and "not applicable."

The five Senate-focused questions appeared on the 2020-2021 Climate Assessment, which the District and the Senate administered in March and April of 2021. After ACE filed its charges, the District removed questions regarding the Senate from the 2021-2022 school year Climate Assessment.

E. The District's Monetary and Non-Monetary Support of the Senate

While the above findings already describe extensive in-kind support from the District to the Senate—including investigative services, elections management, and other services to bring Senate practices into conformance with District policies—the District's support and assistance to the Senate has included other significant elements. The District tracks certain categories of its support for the Senate—but not all types of support—in the District's accounting spreadsheets.

In section 1 below, we discuss the categories of support that the District does track in its accounting spreadsheets. Notably, the District places such costs under an accounting category labeled "0400 Superintendent."

In section 2 below, we discuss multiple forms of in-kind support not shown under the "0400 Superintendent" accounting category. As noted, these forms of assistance are in addition to the above-described investigative services, elections management, and other services to bring Senate practices into conformance with District policies.

For all forms of support and assistance detailed in this decision, the District has never offered to provide such support and assistance to ACE or any organization representing teachers, other than the Senate. Nor has the Senate reimbursed the District for any such support or assistance.

1. Support Shown in Accounting Category 0400

For the year spanning July 1, 2020, through June 30, 2021, the District's accounting shows it supported the Senate by spending $330,930. Based on the testimony of multiple witnesses, we infer that this was consistent with District practice

in prior years going back a significant period. Indeed, as discussed further below, the largest expense had been ongoing for twenty years. The last year of accounting spreadsheets shown in the record spanned July 1, 2021, through June 30, 2022, which postdated ACE filing its first unfair practice charge on June 1, 2021. In that year, the District's accounting shows that it supported the Senate by spending $280,052. We discuss below the reasons for this modest year-over-year decline in support.

The District's biggest expenditure under accounting category 0400 is "release time," viz., paying teachers' salaries and benefits even when they work for the Senate in lieu of working for the District. That practice has been ongoing since approximately 2000. In 2020-2021, the Senate president was on full release time with no classroom responsibilities, while the vice president and secretary were part-time teachers and part-time Senate officers, receiving 40 percent release time from their teaching duties. The District designates such Senate officers on release time as "teachers on special assignment." For the 2020-2021 school year, salary and benefits for released teachers constituted well over half of the $330,930 shown under accounting category 0400.

After ACE filed its charges, the Senate president continued serving on full release time. However, at one or more points during 2021-2022, the Senate vice president and secretary made the personal choice to resume working full time in the classroom and thereby cease accepting release time payments from the District. These personal choices were the biggest reason the District expended less in accounting category 0400 in 2021-2022. A District witness, analyzing the District's year-end statement for that year, estimated that the District paid release time for about

1.33 full-time equivalent teachers. That represents a reduction from the previous year, when the District paid release time for 1.8 full-time equivalent teachers.

The District's second biggest expenditure under accounting category 0400 is stipends. Each year on June 30—the last day of the year—the District pays an annual stipend to all senators and Senate executive board members. At the end of 2020-2021, the District paid senators $889 and Senate executive board members $1,538, amounting to a total payment of $82,780.40. In 2021-2022, the District increased its stipend payments to $938 for senators and $1,623 for Senate executive board members, though the District's total expenditure on stipends reduced slightly to $79,835.00, suggesting that there may have been fewer active senators that year. As of the close of hearing, there was no evidence that the District had changed its practice with respect to paying annual stipends.

The District's accounting shows miscellaneous other expenses supporting the Senate, including a cell phone allowance for the Senate president, food for Senate meetings, and costs associated with copying, printing, or scanning. For both years reflected in the record (2020-2021 and 2021-2022), the District paid the Senate president an annual cell phone allowance of $1,080. Two other costs were lower in 2021-2022 compared to the prior year: (1) the District paid a lower amount for Senate copying, printing, and scanning in 2021-2022; and (2) the Senate did not seek reimbursement for food that year, though District Associate Superintendent Michael Johnston noted this was the Senate's choice and that the District had not changed the Senate's right to such reimbursement.

2. Support Not Reflected in Accounting Category 0400

The most significant examples of in-kind support from the District to the Senate, other than those described above, are as follows.

Beginning in about 2008 and continuing through 2020-2021, the District provided the Senate president with a District vehicle, maintenance, insurance, and gas. The District discontinued this practice in the 2021-2022 school year.

Since at least 2000, the District has provided the Senate president with furnished office space and phone service. Near the end of 2020, the District moved the Senate president's office to the District's administration building, in the human resources department, to improve collaboration between the Senate and District human resources staff. At the beginning of the 2021-2022 school year, however, the District moved the Senate president's designated space to a classroom.

The District has also provided the Senate with extensive in-kind services related to web hosting, e-mail, and information technology. For instance, the District maintains a website at www.cusd.com, and through the close of the hearing, the District's website hosted the Senate's web page (www.cusd.com/FacultySenate.aspx). To access the Senate's web page from the District's website, a user would click on the "Employee Representation" tab. After the close of hearing, the District replaced the content of the Senate's web page with a short message noting: "This page is currently not available." The Senate has also used District laptops, videoconference software, and videoconference accounts to conduct and attend virtual Senate meetings. And the District has allowed the Senate president, while on full release time and relieved of teaching duties, to use a District-assigned laptop to conduct Senate duties.

The District created a Senate e-mail address, FacultySenate@cusd.com. Using this address, the Senate had access to a District e-mail function allowing it to send e-mails to a listserv of all senators, or to a listserv of all teachers. After ACE requested such access in August 2021, the District provided ACE comparable access.

F. Further Evidence of the Senate's Interdependence with the District

Beyond the extensive facts described above showing that the Senate has not operated at arm's length from the District, there is still more evidence of interdependence. First, District organizational charts show the Senate president reporting to the District superintendent, and the Senate president has, indeed, consulted the District and taken direction from the District on questions about Senate matters.

Furthermore, Senate leaders share drafts of their meeting minutes with District administrators. Indeed, before the Senate distributes such minutes to teachers, the District makes corrections regarding District statements as well as regarding policies and laws. The Senate also shares its weekly updates with the District.

The Senate president, vice president, and secretary have regular access to District administrators individually and through attendance at the following standing meetings: (1) Executive Cabinet meetings;[5] (2) superintendent staff meetings; (3) area superintendent meetings; and (4) monthly school site meetings with principals. No other organization enjoyed access to these meetings until the 2021-2022 school year.

[5] The Executive Cabinet, also known as the Superintendent's Cabinet, includes the District's superintendent, deputy superintendent, and associate superintendents of administrative services, school leadership, instructional services, human resources, and business services.

In that year, the District for the first time opened such meetings to any other nonexclusive representative of District teachers.

The Senate also has individual access to high-level District administrators outside of formal meetings. During these informal meetings, the Senate has periodically shared internal Senate information with District administration, including upcoming internal elections, officer and senator resignations, and efforts to revise the Senate's bylaws. As part of these consultations, the Senate has sought permission or advice from the District on internal Senate matters, such as surveying certificated employees about employment issues, and whether it could discuss the topic of unionization at its meetings. In addition, Senate members sought District administrators' assistance to resolve internal dissension and organizational reform. Indeed, Associate Superintendent of Human Resources Jager advised the Senate on myriad internal Senate issues, such as conduct of Senate meetings, bylaws and elections questions, and whether ACE membership disqualified a teacher from Senate membership.

Moreover, changes to California law prior to 2014 created a strong incentive for the District to sign a memorandum of understanding (MOU) regarding average class size. Specifically, to receive additional funding, the District either needed to reduce its average class size to 24 students in early grades, or it needed to have a "collectively bargained alternative ratio." Responding to this funding opportunity, the District and Senate signed an MOU on average class size, a topic that EERA explicitly identifies as a mandatory subject of collective bargaining. (§ 3543.2, subd. (a)(1).) This MOU—which the record shows was the only historical MOU between the District and the

Senate—stated that the District "works collectively with the Faculty Senate which represents the interests of the District's teaching staff." The MOU established a purported "collectively bargained alternative ratio" of 27 students per class.

The Senate has also sent representatives to District committees that receive input from multiple stakeholders. These committees, which recommend actions to the District Board, include the employee compensation committee (ECC), the employee health benefits committee (EBC), and the calendar committee. Before ACE filed its charges, the committee meetings involved District administrators, individual employees, Senate representatives, and representatives from two organizations representing non-certificated staff: the California School Employees Association (CSEA), which exclusively represents District classified employees in the Operational Support Unit, and the Classified Unit/Business Support (CUBS) Senate, a nonexclusive representative of classified employees falling outside that unit.

Even after ACE announced its organizing campaign on April 5, 2021, the District did not immediately place ACE representatives on any of the above committees or include ACE in committee meetings. For instance, the District invited the Senate, CUBS Senate, and CSEA to discuss a learning recovery program at a Local Control and Accountability meeting on April 12, 2021, and the District consulted with those groups regarding the program. The District did not consult ACE. However, after ACE filed its charges, starting in the 2021-2022 school year, the District allowed other nonexclusive representatives at these meetings.

In the 2020-2021 school year, the District reserved time on the District Board's agenda (during the COVID-19 staff report) for the Senate and other employee groups

to address the school board. On April 7, 2021, the District did not afford this opportunity to an ACE representative, who instead spoke during the public comment period. During the 2021-2022 school year, the District discontinued the practice of scheduling an agenda item where employee groups could report to the school board.

V. ACE's Organizing Campaign and the District's Response

ACE began organizing District teachers in July 2020 but did not officially notify the District of its efforts at that time. On April 5, 2021, more than 70 teachers sent an open letter to the District and the broader community in which they formally announced they had created ACE and identified themselves as the ACE Organizing Committee.[6] The letter stated that as the District had learned of their efforts to organize teachers over the preceding months, discussion of bonuses and other monetary improvements for teachers had begun. The letter also asked the District to respect their "legally protected, collective decision to unionize and to not exercise influence, interference or intimidation around [their] efforts."

The same day ACE announced its campaign, Schiro, who was by then the Senate president, e-mailed Jager noting the number of teachers supporting ACE. Jager responded one minute later to confirm receipt.

Also in April, at the Senate's request, the District created a new e-mail list that improved the Senate's ability to send targeted e-mails to teachers on a regular basis, including weekly updates. On April 16, the Senate sent a weekly wrap up to all teachers, which informed teachers of: (1) the ECC's recommendation that the District

[6] All further dates refer to 2021, unless otherwise noted.

Board provide teachers with a one-time $4,000 bonus; (2) the annual stipends paid to Senate officers and senators; (3) the fact that the Senate president had use of a District vehicle and the District hosted the Senate webpage; and (4) the dates when Senate officers would attend meetings with District administrators.

The Senate's April 30, weekly wrap-up stated that ECC was actively working on increasing teacher salaries. This e-mail also listed the numerous committees and meetings attended by Senate officers and stated that the Senate was advocating for class size reduction in upper and lower grades.

The Senate's May 7 weekly wrap-up announced that teachers would receive the $4,000 one-time bonus at the end of that month.

Meanwhile, on April 30, ACE wrote to the District that it intended to gather support to petition PERB to become teachers' exclusive representative. ACE also reminded the District of its obligation to meet and discuss with ACE—as a nonexclusive representative—contemplated changes to fundamental employment terms and conditions prior to reaching a final decision. And ACE expressed its concerns about the District incorrectly representing that the Senate was the representative of Clovis educators, showing "clear favoritism" toward the Senate, and using District resources to oppose ACE. Jager responded on May 14, stating that the District intended to adhere to its legal obligations under EERA and that it wished to correct the impression that it practiced "clear favoritism." Jager stated that the Senate "has served as advocates and representatives for teachers as a non-exclusive representative." Jager wrote that the District has "worked collaboratively" with the

Senate, just as it has with other employee organizations, and that is "simply a fact of how business has been conducted."

On May 19, the Senate released a public announcement stating, among other things, that the Senate believed that it should "remain the sole representative and negotiating body of the teachers of Clovis Unified School District."

On May 27, District Superintendent Eimear O'Brien e-mailed all employees announcing that they would receive a $4,000 one-time bonus.[7] She also stated that the ECC, which includes Senate representatives, was recommending a 5.5 percent increase to salary schedules, a two-day decrease in duty days for the 2021-2022 school year, and an increase in the District's contribution to its health benefits fund. O'Brien credited these recommendations to the priorities identified on behalf of "employee groups" including the "Faculty Senate, Classified Unit Business Support Senate, and CSEA Chapter 250."

On June 1, after ACE alleged in its initial charge that the District had unlawfully failed to give ACE notice of the changes outlined in O'Brien's May 27 e-mail, the District offered to meet and discuss these changes with ACE. On June 4, ACE responded with its meeting availability and requested that the District provide it with "any financial information shared with the ECC and EBC that was used to develop the recommendations" listed in O'Brien's May 27 e-mail. On June 7, the parties met to discuss the recommendations, including the proposed increased compensation and teacher duty days, which were on the District Board's June 9 meeting agenda. ACE

[7] The superintendent changed her last name while this case was pending. We refer to her as O'Brien, which was her name by the time of the hearing.

expressed concern that the District, having failed to comply with ACE's earlier demand to meet and discuss, was already far along in its process and had promoted the Senate by crediting it (but not ACE) as having prompted the improvements. ACE also reiterated its request for financial information shared with other employee groups. However, the District never provided ACE with this requested information.

On June 9, the District Board approved the improvements outlined in O'Brien's May 27 e-mail.

Beginning on June 11, ACE sent Jager a series of e-mails to follow up on the June 7 meeting. ACE reiterated its expectation that the District act neutrally vis-a-vis the Senate and ACE, including providing ACE with sufficient advance notice of proposed changes to employment terms, as well as equal representation on committees. On June 23, Jager responded that "[t]he District plans to give ACE and Faculty Senate the same representation at meetings once they resume," after summer recess.

On July 7, in preparation for a July 13 meeting with the District, ACE e-mailed Jager. In this email, ACE sought confirmation that the District would rescind portions of Board Policies 0100 and 4118 that violated EERA, cease providing material support for the Senate, provide ACE equal access to District and committee meetings, and produce the previously requested financial information. At the July 13 meeting, Jager stated that Policies 0100 and 4118 were under review, and that the District Board would have to approve any changes to those policies. The District also informed ACE that it no longer provided Doc's Charge to new employees and no longer told them that the Senate was the sole representative of teachers. And the District agreed to

invite ACE to participate in committees and meetings where Senate representatives are present, or to provide ACE with alternate meetings.[8]

On July 16, ACE countered the District's positions on multiple items. With respect to meeting access, ACE asserted that the District should not limit it to attending only those meetings the Senate had already decided to attend, but rather must issue simultaneous invitations to both ACE and the Senate. ACE explained that it may be interested in attending types of meetings that the Senate had attended in the past but had stopped attending. ACE also raised concerns over the unequal support the District was providing the Senate, District statements that it had reached agreements with the Senate, and the absence of clarity about changing District Policies 0100 and 4118.

On August 11, the Senate president stated at a public meeting that "until a majority of [District] teachers determine otherwise, we will continue to BE the legitimate representative body for [District] teachers." (Emphasis in original.)

On August 22, the Senate president sent senators an e-mail that, among other things, criticized ACE for working to have "stipends taken away and the release time of the Faculty Senate Executive Board revoked." The e-mail also stated: "Now ACE

[8] The District had not invited ACE to participate in committees and meetings in the first three months after ACE announced its campaign. For instance, on June 15, when the District convened an interview panel to select a new Learning Director for one of the District's high schools, the District designated two Senate representatives—but no ACE representatives—to serve on the panel. Moreover, the panel used an interview question that highlighted the Senate's "significant role" and rated applicants on how they would work with the Senate. The District had included a version of this question in past interviews too. After June 15, the District stopped using the question and included ACE representatives on at least one interview panel, together with Senate representatives.

wants to have Doc's Charge removed from all of our walls" and "stipends taken away from our elected teacher representatives."

On August 27, the District sent teachers an e-mail message that provided in pertinent part:

> "Earlier this year, the [CTA], on behalf of ACE, filed an unfair labor practice charge with [PERB] that, in part, challenged the District [for]:
>
> "● Providing Faculty Senate resources, at its request, since our teachers' last vote to remain self-represented,
>
> "● Funding stipends for teachers serving on Faculty Senate,
>
> "● Providing the Faculty Senate President, Vice-President, and Secretary release from full-time teaching schedules to serve teachers, and
>
> "● Displaying Doc's Charge on the walls of learning spaces in the District.
>
> "ACE has asked PERB to get an injunction in Fresno County Superior Court to stop the District from providing such support to our teachers. The District believes this action disturbs the status quo and threatens the existence of Faculty Senate before teachers have had a full say on whether they want to unionize.
>
> "We understand employees have the right to seek union representation if they have enough support. We also understand many teachers have stated they do not support a CTA backed union. Legally, the District is required to remain neutral during union organizing activities. Since CTA and ACE came forward, we have met with their representatives and included them in meetings where other employee groups are represented. We are doing our best to meet our legal obligation.

> "However, we also believe that until the issue of representation is resolved, the status quo should remain in place. The District has a legal right to defend itself against unfair practice charges and to oppose CTA's and ACE's efforts to shut down [the] Faculty Senate. In the coming weeks and months, the District will exercise those rights."

VI. CTO's Brief History

At a Senate meeting on October 11, the Senate decided to create CTO as an alias, successor, or alter ego that would compete with ACE in seeking certification as an exclusive representative. The Senate issued a bulletin explaining that CTO would be the teachers' sole representative and function "exactly how" the Senate functioned, including in receiving stipends from the District.

The next day, the Senate began asking teachers to sign a petition authorizing CTO to serve as teachers' exclusive representative. Senators sent a series of e-mails asking teachers to sign the petition. One such e-mail, which Senator Cassidy Salinas sent teachers on October 13, claimed that the plan was for CTO to succeed the Senate and "continue to be the sole representative body that represents" District teachers.

On November 15, the Senate voted unanimously to stop obtaining authorizations for CTO, and at that point CTO's brief history ended.

VII. Formation of Independent Clovis Unified Educators

After CTO disbanded, certain teachers opposed to ACE's organizing effort formed an employee organization called Independent Clovis Unified Educators (ICUE). In or around December, ICUE informed the District of its formation.

DISCUSSION

When resolving exceptions to a proposed decision, we apply a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) However, we need not address arguments that the ALJ sufficiently addressed. (*Ibid*.)

Here, we begin by noting three claims that the ALJ dismissed and which ACE asks us to sustain: the District's alleged surveillance and its alleged violations involving activists Amy Kilburn and Kristin Heimerdinger. The ALJ adequately addressed the arguments that ACE raises in these exceptions. We therefore do not further address the exceptions, and we affirm the ALJ's conclusions on those issues.[9]

As to the claims against the District that the ALJ sustained, the central ones were the District's extensive violations of EERA section 3543.5, subdivision (d). The ALJ also found that the same conduct violated EERA section 3543.5, subdivisions (a) and (b) by interfering with protected employee rights and interfering with and/or denying ACE its organizational rights.

The District now concedes these violations. However, we nonetheless analyze those claims at length (see *post* at pages 36-48) while clarifying, adjusting, and supplementing the ALJ's findings. We do because understanding the nature of these violations is critical to assessing the appropriate remedy.

In contrast, there is no cause for us to extensively consider another conclusion that the District now concedes—that it violated PEDD section 3550. The record

[9] ACE proved the factual allegations underlying its surveillance claim. While those facts do not amount to a surveillance violation, the fact that the Senate apprised the District how many teachers engaged in protected activity for ACE further illustrates that the Senate did not have an arm's length relationship with the District.

supports this conclusion because: (1) the District's conduct tended to deter or discourage employees from exercising free choice in deciding whether to become or remain members of an employee organization or authorize representation by an employee organization; and (2) the District failed to narrowly tailor its conduct to a business necessity and did not minimize the tendency to influence employee free choice to such a degree that the importance of the business necessity outweighed the likelihood of such influence. (See *Regents of the University of California* (2021) PERB Decision No. 2755-H, pp. 21-25 & 34-36.)

With respect to ACE's charge against the Senate, the ALJ sustained the central claims but dismissed the complaint allegations regarding five communications alleged to interfere with protected rights. We reverse the proposed decision as to four of these allegations. We also discuss the allegations against the Senate that the ALJ upheld (which the Senate has not appealed), because they are relevant to discerning the proper remedy.

Accordingly, the below legal discussion has three parts. Part I discusses the District's central violations, which are critical background for discerning the appropriate remedy. Part II covers two sets of claims against the Senate: violations that the Senate now admits, plus violations that the ALJ dismissed, which ACE asks us to sustain. Finally, Part III analyzes critical remedy issues that were the focus of the briefs we received from ACE and the District. We issue a comprehensive remedy that addresses the violations that the ALJ found (which the District and the Senate now concede), as well as the additional violations found in this decision.

I. The District's Violations of EERA Section 3543.5, Subdivision (d)

EERA section 3543.5, subdivision (d) makes it unlawful for an employer to "[d]ominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another." There are three ways an employer may violate this subdivision. As discussed below, different standards apply depending on whether a charging party alleges that an employer has: (1) dominated or interfered with the formation or administration of an employee organization; (2) unlawfully contributed financial or other support to an employee organization; or (3) in any way encouraged employees to join any organization in preference to another. As a threshold matter, however, it is important to note that the employer's intent is irrelevant to each of these three types of claims. (*Clovis II*, *supra*, PERB Decision No. IR-63, p. 18; *City of Arcadia* (2019) PERB Decision No. 2648-M, pp. 24-25 (*Arcadia*); *West Contra Costa County Healthcare District* (2011) PERB Decision No. 2164-M, p. 6; *Redwoods Community College District* (1987) PERB Decision No. 650, adopting proposed decision at pp. 53 & 56-57 (*Redwoods*); *Santa Monica*, *supra*, PERB Decision No. 103, p. 22.)

The District does not dispute the ALJ's finding that it violated EERA section 3543.5, subdivision (d) in all three ways noted above. Still, because these claims are particularly relevant to the disputed remedy issues, we have independently assessed the evidence relevant to each type of claim under section 3543.5, subdivision (d). None of these claims presents a close question, as there is overwhelming proof supporting each type of violation, and the three violations reinforce one another. For

the sake of brevity, we do not repeat all the findings noted in the Factual Background above, much less the ALJ's even more extensive factual findings that the District does not dispute, and we instead explain how the law applies to those findings.

A. Domination of and Interference with the Senate

As described *ante* at pages 10-11, in advance of a 1977 representation election, the District urged employees to vote against exclusive representation, and it was in that context that Buchanan endorsed the Senate concept as an alternative to exclusive representation and collective bargaining. Beyond those established facts, the passage of time prevented the ALJ from developing a record as to the details of the Senate's formation. But this factual gap is of no import. Even assuming for the sake of argument that the District was not overly involved in forming the Senate, EERA section 3543.5, subdivision (d) equally bars domination and interference with the administration of an employee organization, and the District certainly has dominated and interfered with the Senate's administration.

In assessing such claims, we consider whether the employer's conduct tends to interfere with the employee organization's ability to maintain an arm's length relationship with the employer. (*Clovis II*, *supra*, PERB Order No. IR-63, pp. 18-19; *Arcadia*, *supra*, PERB Decision No. 2648-M, pp. 24-25; *Azusa Unified School District* (1977) EERB[10] Decision No. 38, adopting recommended decision at p. 6, fn. 3 (*Azusa*).) The level of the employer's involvement in the employee organization's internal affairs is relevant, particularly in determining whether the conduct rises to the

[10] Prior to January 1, 1978, PERB was known as the Educational Employment Relations Board or EERB.

level of domination or merely constitutes unlawful support or interference with internal affairs. (*Arcadia*, *supra*, PERB Decision No. 2648-M, p. 23; *Redwoods*, *supra*, PERB Decision No. 650, adopting proposed decision at p. 62.)

Here, even before the parties litigated this case, there was no dispute that "the District exercised significant influence upon and involvement in the operations of the senate" after its formation. (*Clovis I*, *supra*, PERB Decision No. 389, adopting proposed decision at p. 32.) Four decades later, the District's domination of the Senate and interference with the Senate's administration has grown, preventing anything resembling an arm's length relationship between the Senate and the District. We highlight a handful of the bases for finding domination.

First, until October 2021, District Policy 4118 identified the Senate as the de facto official representative for teachers, thereby giving it the District's endorsement. To state the obvious, teachers never chose the Senate to be their exclusive representative, meaning as a matter of law this District dictate was wrong, as ACE had equal legal rights as the Senate to represent employees.

Second, the District's organizational chart shows that the Senate president reports to the District superintendent. This reporting relationship would be enough, even by itself, to prove domination, particularly because it was not just on paper. Rather, the record reflects that the Senate president repeatedly consulted the District on questions that arose in running the Senate and would take direction from the District about Senate matters, including, but not limited to, proper procedures and practices, interpreting bylaws, and acceptable discussion topics at Senate meetings.

Moreover, District administrators regularly attend Senate meetings, and the District approves Senate meeting minutes before the Senate shares them with teachers.

Third, as described in detail *ante* at pages 14-18, the Senate repeatedly invited the District to become enmeshed in Senate internal elections, and the District accepted this invitation each time. This is yet another set of facts that, even if it stood alone, would show unlawful domination and interference with the Senate's administration. (See *Poway Unified School District* (2015) PERB Decision No. 2441, adopting proposed decision at p. 45 ["an employer must not intervene to address the lawfulness of a union's internal procedures affecting voting or to police the union's actions, lest it be held liable for interfering in the administration of the union"].)

Fourth, the District has reviewed employee complaints and conducted investigations filed by and against senators and Senate officers in those capacities. After investigating Heimerdinger's complaints regarding the Senate, the District concluded that it "places high expectations" on Senate officers, and they failed to meet these expectations. The District noted that, as a result, it had addressed its expectations with Senate officers. Moreover, the District promised that the Senate would establish policies and procedures regarding attendance at Senate meetings, thereby further underscoring the lack of an arm's length relationship.

Then, in response to Schiro's complaint, the District reached more than a dozen conclusions, almost any one of which would, by itself, show domination and interference with Senate administration. (See *ante* at pp. 16-17.) Among the most egregious of these conclusions was the District's decision to move the Senate president's office closer to the District's human resources department, as well as the

District's promises that: (1) "Clear expectations for prompt responses from the [Senate] President to those with inquiries will be communicated. An expectation of a response within 24 hours should be reasonable"; (2) "Prior to the next round of elections, [the Senate] Executive Board will work in conjunction with the Human Resources Department to create a standard operating procedure for elections at the site and district level"; and (3) "Area Superintendents and site Principals will be thoroughly informed of the current concerns and plans of action. They will work diligently in their site [Senate] meetings and Area [Senate] meetings to address any concerns and insights." Taken together, the District's November 2020 conclusions in response to Schiro's complaint illustrate a shocking level of domination.

The lack of an arm's length relationship was also quite evident when the District learned it could obtain more state funding by signing an MOU with the Senate so that it could claim a collectively bargained class-size ratio, in lieu of having to reduce its class size to 24. (See *ante* at pp. 25-26.) That this was the only MOU the District and the Senate ever signed shows the degree to which the Senate was a quintessential employer-dominated organization, signing a binding agreement only when useful to the employer.

Finally, while we primarily discuss the District's support for the Senate in reference to another category under EERA section 3543.5, subdivision (d) (see *post* at pp. 42-44), that support constitutes strong confirming evidence of employer domination. Similarly, we save for later discussion below the District's August 27

e-mail defending its support of the Senate and castigating ACE for trying to enforce the law (see *post* at pp. 44 & 52). This evidence also supports the conclusion that the Senate was, at all relevant times, an employer-dominated organization.

In sum, the record here reflects one of the two most extensive instances of domination to ever come before PERB, on par with the evidence in *Redwoods*, *supra*, PERB Decision No. 650. While there are facts in this case that are both more and less egregious than those in *Redwoods*, the overall weight of evidence amounts to a similar level of domination. Indeed, the evidence in this case is more extensive than that recounted in *Clovis I*, *supra*, PERB Decision No. 389, where the Board warned that providing release time and several other types of preferential support not provided other entities created "the appearance, if not the fact, of an 'in-house' or 'company union.'" (*Id*. at p. 19.)

B. Unlawful Support

EERA section 3543.5, subdivision (d) bars an employer from contributing "financial or other support" to an employee organization. To effectuate EERA's purposes, this provision allows an employer to "extend benefits to a labor organization in a spirit of cooperation," provided it does not "lend so much assistance that the employee organization appears to become a 'company union.'" (*Arcadia*, *supra*, PERB Decision No. 2648-M, p. 24.)

In applying this standard, we examine the totality of an employer's conduct to determine whether its support for an organization would tend to inhibit employees in their free choice regarding a bargaining representative or interfere with the representative's maintenance of an arm's length relationship with the employer.

(*Clovis II*, *supra*, PERB Order No. IR-63, pp. 21-22, citing *Arcadia*, *supra*, PERB Decision No. 2648-M, pp. 24-25.) This is an objective test. (*Clovis II*, *supra*, PERB Order No. IR-63, p. 22.) The key question is whether the employer provides support while engaging in preferential treatment, domination, or interference. (*Id*. at pp. 22-25 [explaining that EERA section 3543.5, subdivision (d) is not a flat ban on financial or other support to an employee organization, but rather a nuanced one that depends on the circumstances].)

It is helpful to consider examples. To begin, an employer offering release time to one nonexclusive representative must offer it equally to all nonexclusive representatives. (*Clovis II*, *supra*, PERB Order No. IR-63, pp. 25.) As another example, employer support is more likely to make an organization appear to be a company union (and therefore be unlawful) if the organization primarily draws its financial support from the employer rather than from its members. (*Id*. at p. 24, fn. 15.) In contrast, it is typically lawful for an employer to bargain release time or other support with an exclusive representative that also has substantial other resources, though the employer may not otherwise interfere with or dominate the organization. And an employer that does reach such a deal with an exclusive representative typically need not provide equal support to a nonexclusive representative seeking to decertify the exclusive representative, as a nonexclusive representative is definitionally not comparable to an exclusive representative. (*Id*. at p. 25; see also *post* at p. 44 & fn. 11.) Finally, it is important to note that employer payments to a union do not create the impression of a company union, and therefore are lawful, if a court or governmental agency orders them to remedy legal violations.

Here, the District's support to the Senate was unlawful for three independent reasons. First, the Senate has no other source of revenue. As the ALJ found, "the Faculty Senate is literally dependent on the District's support and does not collect dues." The Senate's lack of other resources alone defeats any defense the District and the Senate could otherwise attempt. (*Clovis II*, *supra*, PERB Order No. IR-63, p. 24.) Significantly, this was true even without any competing organization present, meaning it was true in the intervening decades between *Clovis I* and *Clovis II*, in which there was no competing organization such as CUTA or ACE. Indeed, as we noted in *Clovis II*, *supra*, PERB Order No. IR-63, "it may be an unfair practice to render assistance to an employee organization even if there is no other organization in competition with it." (*Id*. at p. 22, fn. 14, quoting *Azusa*, *supra*, EERB Decision No. 38, adopting recommended decision at pp. 6-7.)

Second, even if member dues were the predominant source of the Senate's resources, the District's support would still be unlawful because it occurred in the context of pervasive domination and interference with Senate administration. This is a further reason that, even assuming there was a substantial period between 1984 and 2021 in which the Senate was the only organization serving as a non-exclusive representative of teachers, the District's support in that period was unlawful. Indeed, the District ignores that such conduct is inherently destructive of protected rights because it tends to chill employees from creating competing organizations.

Finally, the District's support was unlawful because it was unequal. Every organization at issue in this case was a nonexclusive representative, and the District

had to treat them equally. Yet, the District never offered ACE the support it offered the Senate, mirroring the District's conduct in *Clovis I*, *supra*, PERB Decision No. 389.

Even after ACE announced its organizing drive and challenged the support the District provided the Senate, the District doubled down on the largest sources of its unlawful support: stipends and release time. Indeed, on August 27—five months after ACE announced its organizing drive and three months after ACE's initial charge—the District wrote teachers that the stipends and release time were lawful and would continue. While the District argued this was proper because teachers had not chosen an exclusive representative, that contravenes EERA. Indeed, the District's unequal support to the Senate strongly tilted employees against supporting ACE, including by paying for a full-time Senate president to help convince employees not to authorize ACE as an exclusive representative. Thus, the District had the law exactly backward: while an employer typically need not provide a nonexclusive representative with the same support it has bargained with an exclusive representative, if there are only competing nonexclusive representatives, the employer must treat them equally.

C. Encouraging Employees to Join One Organization Over Another

The third way an employer can violate EERA section 3543.5, subdivision (d) is to "in any way encourage employees to join any organization in preference to another." Therefore, whenever two employee organizations are competing for the right to represent the same employees, and neither organization is certified as the employees' exclusive representative, the employer must remain strictly neutral. (*County of Monterey* (2004) PERB Decision No. 1663-M, adopting proposed decision at pp. 17-18; *Clovis I*, *supra*, PERB Decision No. 389, p. 7 [the appearance of a

competing employee organization imposes on the employer an additional affirmative obligation of strict neutrality].)[11] To establish a prima facie case that an employer violated this duty of strict neutrality, the test is "whether the employer's conduct tends to influence [free] choice or provide stimulus in one direction or the other." (*Santa Monica*, *supra*, PERB Decision No. 103, p. 22.)

As we concluded in *Clovis II*, *supra*, PERB Order No. IR-63:

> "An employer that does not maintain strict neutrality in the face of competing employee organizations is deemed to encourage employees to prefer one organization over another, in violation of employees' right to choose an organization free of employer interference. (*Azusa*, *supra*, EERB Decision No. 38, pp. 7-8.) Here, it is undisputed that the District continues to provide financial support and other assistance to the Senate and is not offering the same level of support to ACE."

(*Id*. at pp. 28-29.)

Indeed, *Clovis II* noted that the *Clovis I* Board had previously explained these principles:

> "'[S]trict neutrality clearly required the District either to discontinue these practices, . . . or, to the extent that its conduct constituted 'permissible cooperation,' to affirmatively make similar assistance available to all employee organizations.'" Its failure to do either sends the message that it favors the Senate over ACE, thereby

[11] Because an employer has greater legal obligations to an exclusive representative than to a nonexclusive representative, the duty of strict neutrality does not always require an employer to afford the latter type of organization all the same privileges as the former. (*Clovis II*, *supra*, PERB Order No. IR-63, pp. 22-23, fn. 14; *County of San Bernardino* (2018) PERB Decision No. 2556-M, p. 10, fn. 11 & pp. 18-19; *West Contra Costa Healthcare District* (2010) PERB Decision No. 2145-M, p. 22.)

> unlawfully tending to influence employee choice between the two organizations."

(*Clovis II*, *supra*, PERB Order No. IR-63, pp. 28-29, quoting *Clovis I*, *supra*, PERB Decision No. 389, p. 9.)

The record in this case shows an uneven playing field akin to the one described in *Clovis* I, *supra*, PERB Decision No. 389. Forty years later, despite the lessons of *Clovis I*, the District once again did not act in a neutral manner, even after ACE notified the District that it was an employee organization that represented certain District teachers.

For example, even after ACE provided such notification, the District continued to provide stipends and full-time paid release salary and benefits to the Senate president. The Senate used these resources to oppose ACE, which did not receive such benefits and therefore competed at a significant disadvantage. As the ALJ concluded: "Both the stipend and the unreimbursed full release time guaranteed that the Faculty Senate had a paid staff member ready to represent the Faculty Senate and a corps of job stewards (Faculty Senators) ready to carry out its duties, while ACE would be dependent upon volunteers and dues." Neither the District nor the Senate contest the ALJ's conclusion.

While the District stopped or decreased certain monetary and in-kind support, these adjustments did not even amount to half measures. For instance, according to the District's own accounting, its monetary support for the Senate decreased from $330,930 in 2020-2021 to $280,052 in 2021-2022. And the District continued substantial in-kind support as well, including use of District technology to perform Senate duties.

In addition, after ACE's April 5 announcement, the District failed to afford ACE its right to receive advance notice and the opportunity to meet and discuss fundamental employment-related changes, even as it afforded that right to the Senate. For instance, District representatives continued to meet with the Senate about ECC recommendations on significant changes to salaries, benefits, and schedule. While Senate representatives participated in these decisions, the District failed to afford ACE notice or the opportunity to participate until after the District's May 27 announcement that teachers would receive a $4,000 one-time bonus and that the District Board would soon vote on the ECC's recommended 5.5 percent increase to salaries, two-day decrease in duty days, and increase in the District's contribution to health benefits. Making the District's non-neutrality even more blatant, it explicitly credited these advances to the priorities identified by the "Faculty Senate, Classified Unit Business Support Senate, and CSEA Chapter 250," but not ACE.

Furthermore, when the District did subsequently meet with ACE, it was not only too late, but the District refused to provide ACE with the financial information provided to other employee groups and which were fundamental to developing the improvements listed in the District's May 27 e-mail. The District has never backed down from this refusal, despite ACE's repeated requests.

Moreover, the District did not include ACE in its June 15 interview panel for an administrator position or meetings to discuss the implementation of a learning recovery program. Nor did it provide ACE with reserved time on the District Board's agenda comparable to the time allotted the Senate and other employee groups.

The District also did not move promptly to reconsider its Policies 0100 and 4118. It thus continued to declare that the Senate is the representative of teachers, including for disciplinary matters, and that District professionals are proud to be non-union. By the 2021-2022 school year, the District stopped providing Doc's Charge to new employees. But it was not until October 2021 that the District revised its policy providing the Senate with exclusive authority to represent teachers in disciplinary matters, and even then, the District continued displaying Doc's Charge in the District boardroom, the superintendent's office, and other locations throughout the District.

Other evidence similarly shows how, in the 2021-2022 school year, the District continued acting in a manner that would encourage teachers to support the Senate over ACE, though the District moderated this conduct to a degree. For instance, while the District began providing ACE access to the same committee meetings as the Senate, and it canceled the allotted time at District Board meetings that the Senate and other groups had previously enjoyed, the District publicly defended its unequal treatment of the Senate and ACE. Indeed, in August, more than four months after ACE announced its campaign, the District sent all teachers O'Brien's August 27 e-mail. This message stated that the "status quo" should remain in place, criticized ACE for enforcing the law, and vowed to oppose ACE's efforts to bring the District in compliance with its duty of strict neutrality. The e-mail chilled ACE's protected activity and reiterated the District's support for the Senate. As in *Clovis I*, *supra*, PERB Decision No. 389, the District's "support for the Faculty Senate would have been obvious even to the most casual observer." (*Id*., adopting proposed decision at p. 67.)

II. Violations by the Senate

EERA section 3543.6, subdivision (a) bars an employee organization from causing or attempting to cause an employer to commit an unfair practice, while subdivision (b) bars an employee organization from interfering with rights that EERA protects. The test for alleged interference by an employee organization is the same as the test for alleged interference by an employer (*Service Employees International Union, Local 99 (Kimmett)* (1979) PERB Decision No. 106, p. 13), except that in cases involving alleged threats or coercion, we recognize that an employee organization does not have the same power over employees as an employer (*San Jose/Evergreen Federation of Teachers, AFT Local 6157, and American Federation of Teachers, AFL-CIO (Crawford et al.)* (2020) PERB Decision No. 2744, p. 23).

To establish a prima facie interference case, a charging party must show that the respondent's conduct tends to or does result in some harm to protected rights. (*County of San Joaquin* (2021) PERB Decision No. 2761-M, p. 23.) A charging party need not establish that the respondent had an unlawful motive. (*Ibid*.) If the charging party establishes a prima facie case, the burden shifts to the respondent. (*Ibid*.) The degree of harm dictates the respondent's burden. (*Ibid*.) If the harm is "inherently destructive" of protected rights, the respondent 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, the respondent may attempt to justify its actions based on operational necessity. (*Ibid*.) In such cases, PERB balances the asserted business need against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, PERB finds a violation. (*Ibid*.)

Within the category of actions that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its business need 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. (*Ibid*.)

The ALJ found—and the Senate no longer contests—that the Senate violated EERA by: (1) accepting unlawful support and assistance from the District as set forth in detail above; and (2) creating CTO and gathering signatures in support of a petition to have it recognized as the teachers' exclusive representative, thereby intending to replicate itself or replace itself with an alias that would serve as an exclusive representative but while still being funded and dominated by the District.

The ALJ made no finding as to whether the Senate's acceptance of unlawful support and its sponsorship of CTO was "inherently destructive" of employee rights. We find that it was, as the Senate was complicit with the District in a transparently unlawful scheme to continue using the Senate as a means of discouraging unionization by occupying the field with an employer-funded, employer-dominated organization. In the alternative, even if the Senate's conduct were not inherently destructive, there is no operational necessity that could justify an employee organization in serving as an employer-dominated employee organization.

The ALJ dismissed allegations that the Senate violated EERA section 3543.6, subdivision (b) via five statements in which the Senate held itself out as the teachers' sole representative, even though it was not an exclusive representative. We affirm in part and reverse in part, finding one of the statements to have been lawful and four to

have interfered with protected employee rights in violation of EERA section 3543.6, subdivision (b).

The challenged statement we find lawful appears in Article II, Chapter 2 of the Senate Bylaws: "We represent the voice of the teaching staff individually and collectively and will serve as their advocate." This was merely an aspirational statement of goals and beliefs, rather than an unlawful declaration that the Senate constitutes the sole representative of District teachers, and we therefore distinguish it from the following four unlawful statements:

(1) On May 19, the Senate released a public announcement stating, among other things, that the Senate should "*remain* the sole representative and negotiating body of the teachers of Clovis Unified School District." (Emphasis supplied.) By use of the word "remain" the statement falsely stated that the Senate was at that time the sole representative of District teachers, when in fact there were two nonexclusive representatives (ACE and the Senate), each with equal rights under the law.

(2) On August 11, the Senate president stated at a public meeting that "until a majority of [District] teachers determine otherwise, we will continue to BE the legitimate representative body for [District] teachers." (Emphasis in original.) This statement was false as well, and it illustrated how the Senate's untruthfulness parroted the District's illegal position vis-à-vis the Senate and ACE. Specifically, according to the District's approach, unless and until teachers established an exclusive representative through PERB procedures, the District would continue discouraging such activity via a wide range of one-sided support and preferential treatment toward the Senate, an employer-dominated nonexclusive representative.

(3) On August 22, the Senate president sent senators an e-mail that, among other things, criticized ACE for working to have "stipends taken away from our elected teacher representatives" and "the release time of the Faculty Senate Executive Board revoked." The e-mail also stated: "Now ACE wants to have Doc's Charge removed from all of our walls." While this statement ignored that another way for the District to equalize support would be to offer support to ACE rather than remove it from the Senate, the e-mail was unlawful primarily for its other pernicious elements. Indeed, by publicly denigrating ACE for insisting on equal treatment as the law requires, the Senate added to the District's campaign to discourage union activity, preserve an employer-dominated employee organization, and maintain the lie that this was a lawful status quo unless and until employees chose an exclusive representative. Indeed, just five days later, on August 27, the District borrowed this line of attack against ACE, in an e-mail that castigated ACE for "threaten[ing] the existence" of the Senate through its unfair practice charge.

(4) On October 13, a Senator e-mailed teachers urging them to support CTO to succeed the Senate and "continue to be the sole representative body that represents" District teachers. Like the Senate's May 19 public announcement, this e-mail falsely asserted to teachers that the Senate was the sole representative of teachers, again matching the District's approach.

While the falsity of the above statements is one factor to consider in our interference analysis (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 37), the most important reason we find the statements unlawful is that they were far from isolated falsehoods. Rather, they were part and parcel of a synergistic effort by the

District and the Senate, spanning many years but accelerated once ACE began organizing, to: (a) create the perception of a single, exclusive employer-dominated employee organization, without being certified or recognized as an exclusive representative; and (b) grant that body preferential rights and support that would forestall unionization. This effort became a reality not only through the preferential treatment and employer domination, interference, and support discussed *ante*, but through repeated false statements to teachers and attacks on ACE for pointing out the illegality of the scheme. The entire stratagem was inherently destructive of protected rights, and, in the alternative, there was no operational necessity justifying it.

III. Remedy

The Legislature has vested PERB with broad authority to decide what remedies are necessary to effectuate the purposes and policies of EERA and to take any action the Board deems necessary to effectuate the Act's purposes. (EERA, § 3541.5, 1st par. & subd. (c); *City of San Diego* (2015) PERB Decision No. 2464-M, p. 42, affd. *sub nom. Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 920; *Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178, 189.) A "properly designed remedial order seeks a restoration of the situation as nearly as possible to that which would have obtained but for the unfair labor practice." (*Modesto City Schools* (1983) PERB Decision No. 291, pp. 67-68.) An appropriate remedy therefore should make whole all injured persons or organizations for the full amount of their losses and should withhold from the wrongdoer the fruits of its violation. (*City of Pasadena* (2014) PERB Order No. Ad-406-M, p. 13.) In addition to serving restorative and compensatory functions, a Board-ordered remedy should

also deter misconduct, so long as the order is not a patent attempt to achieve ends beyond the law's purposes. (*State of California (Correctional Health Care Services)* (2021) PERB Decision No. 2760-S, p. 35; *Sacramento City Unified School District* (2020) PERB Decision No. 2749, pp. 10-11; *City of Palo Alto* (2019) PERB Decision No. 2664-M, p. 3.)

Non-customary remedies are appropriate in a variety of circumstances, including where conduct was egregious, intentional, systematic, or repeated; or whenever customary remedies are insufficient, including but not limited due to the nature or duration of the conduct. (*Regents of the University of California*, *supra*, PERB Decision No. 2755-H, pp. 55-56.) Such circumstances notably include PEDD and EERA violations that have such long-lasting impacts on employee free choice that traditional remedies may be inadequate to restore such free choice. (*Ibid*.; *Children of Promise Preparatory Academy* (2018) PERB Order No. Ad-470, p. 6 & adopting administrative determination at p. 4.)

Here, the District and the Senate accede to the proposed remedial order, while ACE asks us to augment and modify it in three ways. First, ACE challenges the ALJ's refusal to disestablish all relationships between the Senate and the District having to do with matters related to terms and conditions of employment of the District's teachers within the meaning of EERA section 3543.2. Second, ACE asks us to modify the ALJ's order that the District "authorize and support" an extended period for ACE and ICUE to obtain sufficient proof of support. Specifically, ACE excepts to the provision of this remedy to ICUE, a non-party. Third, ACE asks us to modify the ALJ's order that the District conduct three spoken notice readings of the Appendix to this

decision. ACE requests that we provide more specific instructions regarding the spoken notice readings and direct the Senate to conduct spoken notice readings as well. We address each issue in turn.

A. Disestablishment

Thirty-seven years ago, PERB established the standard for when disestablishment is proper, in part based on federal law governing private sector labor relations.[12] Specifically, in *Redwoods*, *supra*, PERB Decision No. 650, PERB held that disestablishment is the appropriate remedy if a school district dominated a nonexclusive representative, whereas a cease-and-desist order is sufficient if the school district provided the nonexclusive representative with unlawful support or interfered with its formation or administration. (*Id*., adopting proposed decision at p. 62; cf. *Ventura Community College District* (1994) PERB Decision No. 1073, adopting proposed decision at pp. 31-32 [cease and desist order appropriate where employer provided unlawful support, but domination not proven].) Because the school district's conduct in *Redwoods* amounted to domination of a nonexclusive representative (the Classified Employees Council), PERB disestablished the Council as a representative of employees while leaving it free to engage in social, recreational,

[12] California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, and we accordingly consider federal precedent only for its potential persuasive value. (*The Accelerated Schools* (2023) PERB Decision No. 2855, pp. 20-31; *Operating Engineers Local Union No. 3 (Wagner et al.)* (2021) PERB Decision No. 2782-M, p. 9, fn. 10; accord *County of San Joaquin v. Public Employment Relations Bd.* (2022) 82 Cal.App.5th 1053, 1073; *Social Workers' Union, Local 535 v. Alameda County Welfare Dept.* (1974) 11 Cal.3d 382, 391.)

or other non-representative functions. (*Id*. at p. 5 & adopting proposed decision at p. 66.) Thus, disestablishment is a customary remedy for domination in the public sector, but it is very uncommon, because it is almost unheard of for a California public entity to engage in such conduct.[13]

Cases involving employer domination arise more commonly in the private sector, and disestablishment remains the NLRB's customary remedy for such a violation. In fact, earlier this year, a federal appellate court affirmed an NLRB decision ordering disestablishment. (*T-Mobile USA, Inc.* (2022) 372 NLRB No. 4, at p. 9, enfd. *T-Mobile USA, Inc. v. NLRB* (D.C. Cir. 2024) 90 F.4th 564 (*T-Mobile*).) There, the NLRB ordered disestablishment even though the labor organization, called T-Voice, looked less like a labor organization than the Senate in this case, since T-Voice did not deal with the employer on core issues such as wages, health care, or retirement benefits. Rather, T-Voice solicited customer service representatives to raise customer or employee concerns and discuss potential solutions with management. (*T-Mobile*, *supra*, 372 NLRB No. 4, at pp. 1-2.) Notably, when the employer (T-Mobile) took exceptions to the NLRB ALJ's proposed decision, it did not contest the determination that it had engaged in unlawful domination. This left T-Mobile little basis to contest the need for disestablishment. (*Ibid*. ["Respondent does not contest, and we adopt, the

[13] The support the employer provided in *Redwoods*, *supra*, PERB Decision No. 650 was less than the support at issue here, yet it was nonetheless robust evidence of domination. (*Id*., adopting proposed decision at p. 65 [noting that "assistance in conducting elections, and in providing photocopying, stationery, mail service, release time, meeting rooms and even money points to domination" and that "one gets the definite impression that, but for this considerable amount of support at almost every level of operation," the Council would not have "the necessary machinery to operate"].)

judge's determination that the Respondent dominated T-Voice. Accordingly, we will follow more than 70 years of [NLRB] precedent and order [disestablishment]."])

Here, the procedural posture resembles, to a degree, that in *T-Mobile*. Neither the District nor the Senate filed exceptions, thereby acceding to the ALJ's findings. This includes the ALJ's conclusions that the District's violations were "extensive," that the Faculty Senate "is literally dependent on the District's support," and that paying senators a stipend—just one among many violations—"is antithetical to the socio-economic construct of EERA." These concessions leave at most a narrow path for arguing against disestablishment, as the District and/or the Senate must claim that the now-conceded violations did not amount to domination. The Senate makes no such argument, as it has failed to respond to ACE's exceptions. Instead, the Senate relies on the District to do so. The District takes on this role—in keeping with its close partnership with the Senate—but its argument is untenable.

To oppose a disestablishment order, the District argues that "although Charging Party's blunderbuss argument refers to its evidence of the District's dominance and support as 'extensive' [citation omitted], many of these so-called categories of support have very limited evidence that was supported at hearing; most amount to nothing more than anecdotal one-time examples which were refuted by the District as much as they were supported by Charging Party at hearing." The District ignores that the ALJ twice found the violations to be "extensive" and that the District filed no exceptions and therefore waived any challenge to those findings. But even were the argument not waived, the record overwhelmingly shows extensive domination and interference for the reasons analyzed at length above.

Along the same lines, the District's argument against a disestablishment order asserts: "As presented during legal arguments related to Charging Party's request for injunctive relief, as well as throughout the hearing in this matter, the District repeatedly demonstrated that it had ceased many of the activities raised by Charging Party as violative of the law. There is absolutely no evidence that the District intends to re-initiate any of the actions identified by Charging Party as problematic." Our above discussion again illustrates that this is simply not true. The District ceased certain violations while continuing other, significant ones, including stipends and release time that together amount to the largest share of its financial support for the Senate. And rather than ceasing all "activities raised by [ACE] as violative of the law," the District wrote to teachers defending its continued preferential treatment toward the Senate and pointing the finger at ACE as the reason that preferential treatment and support was in jeopardy.

Moreover, these arguments miss the point of a disestablishment order. Such an order is proper when a cease-and-desist order—even assuming the respondents would honor it—would be insufficient to overcome years (or in this case decades) of advantages given to an employer-dominated organization. This is exactly such a case.

The ALJ nonetheless postulated that a "surgical" prohibition on illegal support would be sufficient to restore employee free choice and "healthy competition among nonexclusive representatives." This amounts to a suggestion that we should modify *Redwoods* and find that it is possible to remedy domination, in certain cases, without disestablishment. To the contrary, however, this case further illustrates why the NLRB and PERB long ago concluded that disestablishment is the only means to effectively

remedy domination. (See, e.g., *Jack Smith Beverages, Inc.* (6th Cir. 1953) 94 NLRB 1401, 1404 (1951), enfd. 202 F.2d 100, 101 ["The [NLRB] continues to be of the opinion that the only effective remedy for a situation in which an employer is found to have unlawfully dominated a labor organization is to order the employer to disestablish the union."])

Absent disestablishment, to place ACE on an equal footing with the Senate would require providing ACE with "company union" benefits equivalent to what the Senate received, including hundreds of thousands of dollars in public taxpayer money each year for decades and equally critical in-kind support, policy choices, and favorable communications. To do so would simply replace one employer-dominated employee organization with another. Indeed, doing so would not only deprive employees of free choice, but would prejudice ICUE or any other future organization seeking to compete with ACE. Thus, while support ordered by PERB does not constitute unlawful support, ordering massive support to ACE to level the playing field would not effectuate EERA's purposes in this case.[14]

The ALJ noted that the Senate's current leadership "inherited a culture violative of EERA," a point which, if anything, shows how engrained the long-standing District preference, domination, and illegal support for the Senate had become, further confirming why disestablishment is proper in cases involving domination. In this regard, we clarify one point in *Redwoods*, *supra*, PERB Decision No. 650, which noted

[14] ACE has not requested any financial remedy, waiving any of the monetary remedies that might otherwise be available. (See *County of Santa Clara* (2024) PERB Decision No. 2900-M, pp. 27-36 [reviewing monetary remedy principles], judicial appeal pending on other grounds.)

in passing that disestablishment may be less disruptive if the dominated organization is a "young" one without "stronger historical ties to employees or the [employer]." (*Id.*, adopting proposed decision at p. 66.) That statement, while tautological, does not mean that disestablishment and the attendant disruption becomes improper if the dominated organization is more established, with stronger ties. We find quite the opposite to be true and clarify *Redwoods* to the extent it suggests otherwise.

While the ALJ found that the long-standing culture excused the current Senate leadership—by leading them to misunderstand the magnitude of their violations—benign or malevolent intent is irrelevant to remedying employer domination. (*Redwoods*, *supra*, PERB Decision No. 650, adopting proposed decision at p. 61 ["Section 3543.5(d) unqualifiedly forbids unlawful support, interference and the kinds of actions taken by the [employer] which otherwise tend to influence employee choice, be they benevolent or malevolent"].)

Even if intent were relevant, it would help neither the District nor the Senate. Over decades, the District and the Senate created a system of domination, unlawful support, and interference with the Senate's administration, built on the foundation of the District's explicitly anti-union policies that established the Senate as teachers' sole representative, even though the teachers were not, as a matter of law, exclusively represented by any entity. The District incorporated the Senate into its administrative structure, with the Senate president reporting to the District's superintendent. When teacher dissatisfaction and problems in the Senate arose, the District responded by, among other things, running the Senate's elections, moving the president's office

closer to human resources, and promising to make sure the Senate complied with the District's expectations, as well as to clean up the Senate's rules and practices.

When ACE came on the scene, the District promptly credited the Senate for improvements in employment terms while leaving ACE out of the process, much as it had done in *Clovis* I, *supra*, PERB Decision No. 389. While the District cites changes it made after ACE filed its first charge on June 1, these were half measures. For example, as discussed above, the District continued to provide hundreds of thousands of dollars annually in stipends and release time, and publicly attacked ACE for filing charges that threatened the District's preferential support for the Senate. The Senate followed a similar playbook in attacking ACE for enforcing the law. In August 2021, the Senate president decried, in an e-mail to all teachers, that through the PERB process, ACE was trying to take away senators' stipends and have release time for Senate officers revoked. In short, even if PERB's analysis of domination cases turned on benign or malevolent intent—a factor that, to be clear, remains irrelevant—the outcome would be the same.

Accordingly, the "good faith" arguments upon which the ALJ relied are untenable. As a factual matter, the District and the Senate, far from fully complying with the law after April 5, continued to violate EERA and attacked ACE for asking PERB to enforce the law. Legally, intent is irrelevant to the violations at issue. And realistically, compliance after April 5 would not have erased decades of entrenched favoritism and the resulting severely tilted playing field.

The ALJ therefore erred in finding there could be fair competition between an organization that was employer-funded and employer-dominated for decades and a

nonexclusive representative such as ACE that has maintained lawfully required separation from the District. As the NLRB noted in *Electromation, Inc.* (1992) 309 NLRB 990, disestablishment is proper "even if a concededly employer-dominated organization were altered to remove the elements of unlawful domination," because removing such ongoing illegality does not transform the organization into a lawful one. (*Id*. at pp. 995-996, fn. 24, citing *National Labor Relations Bd. v. Newport News Shipbuilding & Dry Dock Co.* (1939) 308 U.S. 241.) Thus, to secure free choice in the District for the first time since EERA's passage almost five decades ago, we must break the ties between the District and the Senate. (*Redwoods*, *supra*, PERB Decision No. 650, adopting proposed decision at pp. 63-64.)[15]

Disestablishment does not clear the field for ACE, as employees are free to establish, on their own initiative, organizations which function as nonexclusive representatives, and/or to seek to establish such an organization as an exclusive representative. ACE and ICUE are two such organizations. And as discussed below, contrary to ACE's exception, we afford ICUE the same prospective rights as ACE.

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[15] In *Antelope Valley Community College District* (1979) PERB Decision No. 97 (*Antelope*), the ALJ may have partially misunderstood the meaning of disestablishment, believing it was impossible to issue such an order if the employee organization was not a party. (*Id*., attached proposed decision at p. 25.) Any such notion would be error, because it is possible to break the ties between two organizations by ordering one of them to break off ties. Indeed, both the Board and the ALJ in *Antelope* took steps toward doing so. (*Id*. at p. 27 & attached proposed decision at p. 25 [noting that disestablishment was "essentially accomplished" by ordering employer to cease dealing with dominated organization on matters within the scope of representation].) Here, where both the District and the Senate are parties, we order both parties to break off ties.

For the foregoing reasons, we disestablish all relationships between the Senate and the District having to do with District teachers' terms and conditions of employment within the meaning of EERA section 3543.2., and we extend that remedy to any successor, alias, or alter ego of the Senate, including CTO to the extent that CTO still exists or resumes activity. (*Redwoods*, *supra*, PERB Decision No. 650, pp. 4-5; see also *Phillips Petroleum Co. (Kansas City)* (1942) 45 NLRB 1318, 1359 [for those employer-dominated organizations no longer active, NLRB orders employer to refrain from recognizing organizations should they return to active existence].)

B. Extended Validity for Proof of Support

The ALJ appropriately ordered that proof of support obtained by ACE and ICUE remain valid for longer than normal given the egregious nature of the District's violations. Pursuant to PERB Regulation 32700, subdivision (b) proof of support for a recognition request or certification petition under EERA normally remains valid for one year.[16] The proposed decision extended that period to one year from the date this decision becomes final, analogizing to PERB decisions extending the certification bar as a remedy for unfair practices. (See, e.g., *St. HOPE Public Schools* (2024) PERB Order No. Ad-511, p. 4, fn. 6.) No party has challenged this remedy as it applies to ACE, and we affirm it as a proper means to address the District's domination, interference, and PEDD violations.

ACE argues that this remedy should not benefit ICUE, a nonparty. We disagree and affirm the ALJ's approach. Egregious violations by the District and the Senate

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

made organizing difficult for both ACE and ICUE. While it is true that Respondents' unlawful statements targeted exclusively ACE and never ICUE, other violations impacted both organizations, making it impracticable to obtain sufficient proof of support within a one-year period. Accordingly, for ACE, ICUE, or any other employee organization that may petition to exclusively represent teachers (not including the Senate, CTO, or their successors, aliases, or alter egos), we order that proof of support collected on or after July 1, 2020 shall remain valid until one year following the date this decision becomes final.[17]

C. Spoken Notice

The proposed order requires the District to conduct three spoken notice readings, but permits such readings to be in-person, by videoconference, in a hybrid format, "or in any other manner designed to reach the greatest number of certificated employees at the District." The proposed order further provides that the District and ACE mutually agree on scheduling the notice readings, and that the District provide ACE reasonable notice of and access to the readings.

While the District accedes to this remedy, ACE seeks an order requiring that: (1) the notice be read by the District's superintendent and videotaped; (2) the videotape be played at staff meetings at each school site; and (3) ACE receive a copy of the videotape, as well as notice of and access to all school site meetings at which the videotape is shown. ACE also asks the Board to order that the Senate conduct a spoken notice reading, with the notice to be read by the Senate president (either live

[17] As always, for proof of support from an employee to be valid, the employee must still be employed as a District teacher on the petition's filing date.

or via videotape) at a regularly scheduled meeting open to all bargaining unit members, with ACE to receive notice of and access to the meeting and a copy of the videotape.

PERB orders spoken notice if customary notice methods, in combination with other remedies, are insufficient. (*Mt. San Jacinto Community College District* (2023) PERB Decision No. 2865, p. 42.) We agree with the ALJ that such a remedy is necessary here given the egregious violations. However, we modify the order to increase the likelihood that the spoken notice will reach "the greatest number of certificated employees at the District" as the ALJ envisioned, while reducing the likelihood of ancillary litigation over the meaning of that phrase, which is potentially susceptible to dispute. We do not, however, order the Senate to engage in a spoken notice reading. It is doubtful that the Senate could accomplish such a task without assistance from the District, and our order prohibits the two entities from having any relationship regarding District teachers' terms and conditions of employment. This means that ACE's request is impracticable.

Accordingly, we will require the District to: (1) make a video recording in which the District superintendent reads the Appendix to this decision, verbatim, with no other statement of any kind, and provide ACE with a true, unedited copy of the video; (2) show the video at a regular staff meeting of certificated employees at each school site (or at a special meeting, if and only if ACE and the District agree); and (3) provide ACE with at least 10 days' notice as to when the District will show the video at each school site, and an opportunity to attend each viewing.

ORDER

Based upon the foregoing and the entire record in the case, the Public Employment Relations Board (PERB) finds that Clovis Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3540, et seq., and the Prohibition on Public Employers Deterring or Discouraging Union Membership chapter (PEDD), Government Code section 3550, et seq., including by: (1) dominating and interfering with the administration of the Clovis Unified Faculty Senate; (2) providing unlawful support and assistance to the Senate; (3) favoring the Senate over the Association of Clovis Educators (ACE) and encouraging employees to join the Senate over ACE, thereby violating the District's duty of strict neutrality; (4) interfering with protected employee rights; (5) deterring or discouraging employees from exercising free choice whether to join ACE or to authorize ACE to represent them; and (6) interfering with and/or denying ACE its rights, including the right to seek to become an exclusive representative, access rights guaranteed under EERA section 3543.1, subdivision (b), and the right to nonexclusively represent employees, which includes the right to receive advance notice and the opportunity to meet and discuss with the District over changes to fundamental conditions of employment before the District reaches a firm decision about such changes.

PERB further finds that the Senate violated EERA section 3543.6, subdivisions (a) and (b), including by: (1) claiming to be the sole and/or official and/or de facto bargaining representative of certificated staff at the District when there was no exclusive representative; (2) actively encouraging and assisting in the District's unlawful domination and interference with the Senate's internal affairs such that it

became an employer-dominated representative that interfered with employee free choice; (3) creating the Clovis Teachers Organization (CTO) as an alias, alter ego, or successor and gathering proof of support for a representation petition to establish CTO as an employer-funded and employer-dominated exclusive representative; and (4) making statements that interfered with protected rights.

Pursuant to Government Code sections 3543.1, subdivisions (i) and (n), 3541.5, subdivision (c), and 3551, subdivision (a), we order as follows:

I. The District, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Dominating, or interfering with the formation or administration of, any employee organization.

2. Providing support or assistance to an employee organization that is inconsistent with the principles explained in this decision.

3. Issuing any communication, or engaging in any conduct, that tends to deter or discourage employees or applicants from exercising free choice whether to join ACE or authorize ACE to represent them, unless the communication or conduct is narrowly tailored to a business necessity so as to minimize the tendency to influence employee free choice to such a degree that the importance of the business necessity outweighs the remaining likelihood of such influence.

4. Interfering with or denying ACE its rights, including the right to seek to become an exclusive representative, access rights guaranteed under EERA section 3543.1, subdivision (b), and the right to nonexclusively represent employees, which includes the right to receive advance notice and the opportunity to meet and

discuss with the District over changes to fundamental conditions of employment before the District reaches a firm decision about such changes.

5. Meeting or corresponding with Senate representatives on matters related to terms and conditions of employment within the meaning of EERA section 3543.2, or otherwise recognizing the Senate (or any successor, alias, or alter ego, including CTO) as an employee organization representing certificated employees regarding any such issues.

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

1. Disestablish all relationships with the Senate (or any of its successors, aliases, or alter egos, including CTO) having to do with matters related to terms and conditions of employment of the District's certificated employees within the meaning of EERA section 3543.2.

2. Cease providing any monetary, non-monetary, or in-kind support or assistance to the Senate.

3. Remove from all sites of operation, and from all District postings or documents (whether paper, digital, or electronic, on the internet or on any computer, but excluding litigation documents or historical records necessary to show the evolution of District Board policy) the portion of Doc's Charge stating that "professionals who work in our district are proud that we do not have collective bargaining."

4. Rescind the e-mail from Superintendent O'Brien to all certificated employees dated August 27, 2021.

5. Treat all nonexclusive representatives other than the Senate equally in all respects.

6. Provide statutory access rights guaranteed under EERA section 3543.1, subdivision (b).

7. Refrain from asserting that proof of support was not timely collected if, within one year from the date this Order becomes final, ACE, Independent Clovis Unified Educators (ICUE), or another employee organization (except for the Senate, CTO, or their successors, aliases, or alter egos) presents proof of support collected on or after July 1, 2020.

8. Provide ACE with the information it requested on June 4, 2021, and on June 7, 2021.

9. Within 30 teacher workdays after this decision is no longer subject to appeal, post at all locations where the District posts employee notices, copies of the Notice attached as the Appendix to this decision. An authorized agent of the District shall sign the Notice, indicating that the District will follow the terms of this Order, and the District shall maintain such postings for a period of 30 consecutive teacher workdays. The District shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. In addition to physically posting the Notice, the District shall communicate it by electronic message, intranet, internet site, and other electronic means the District uses to communicate with certificated employees.[18]

[18] Any party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC

10. (a) Make a video recording in which the District superintendent reads the Appendix to this decision, verbatim, with no other statement of any kind, within 15 days after this decision is no longer subject to appeal.

(b) Provide ACE with a true, unedited copy of the video within 24 hours of its recording.

(c) Show the video at a regular staff meeting of certificated employees at each school site (or at a special staff meeting, if and only if ACE and the District agree). Such viewings shall be at the first regular staff meeting of certificated employees at each school site scheduled for 25 or more days after this decision is no longer subject to appeal, unless ACE and the District agree otherwise.

(d) Provide ACE with at least 10 days' notice of each viewing and an opportunity to attend each viewing.

11. Notify OGC of the actions the District has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on ACE.

II. The Senate, its governing board, and its representatives, as well as CTO, shall:

A. CEASE AND DESIST FROM:

1. Acting as an employee organization having as a purpose the representation of District certificated employees on matters related to terms and conditions of employment within the meaning of EERA section 3543.2.

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shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

2. Accepting any monetary, non-monetary, or in-kind support or assistance from the District.

3. Causing or attempting to cause the District to violate EERA.

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

1. Disestablish all relationships with the District having to do with matters related to terms and conditions of employment of the District's certificated employees within the meaning of EERA section 3543.2.

2 Notify OGC of the actions the Senate has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on ACE and the District.

Chair Banks and Member Nazarian joined in this Decision.

APPENDIX

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

After a hearing before the Public Employment Relations Board (PERB), in which all parties had the right to participate, PERB found that Clovis Unified School District violated the Educational Employment Relations Act and the Prohibition on Public Employers Deterring or Discouraging Union Membership chapter by: (1) dominating and interfering with the administration of the Clovis Unified Faculty Senate; (2) providing unlawful support and assistance to the Senate; (3) favoring the Senate over the Association of Clovis Educators (ACE), and encouraging employees to join the Senate over ACE, thereby violating the District's duty of strict neutrality; (4) interfering with protected employee rights; (5) deterring or discouraging employees from exercising free choice whether to join ACE or to authorize ACE to represent them; and (6) interfering with and/or denying ACE its representational rights and access rights guaranteed by law.

PERB also found that the Clovis Unified Faculty Senate violated the law by: (1) claiming to be the sole and/or official and/or de facto bargaining representative of certificated staff at the District when there was no exclusive representative; (2) actively encouraging and assisting in the District's unlawful domination and interference with the Senate's internal affairs such that it became an employer-dominated representative that interfered with employee free choice; (3) creating Clovis Teachers Organization (CTO) as an alias, alter ego, or successor and gathering proof of support for a representation petition to establish CTO as an employer-funded and employer-dominated exclusive representative; and (4) making statements that interfered with protected rights.

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

A. CEASE AND DESIST FROM:

1. Dominating, or interfering with the formation or administration of, any employee organization.

2. Providing support or assistance to an employee organization that is inconsistent with the principles PERB explained in its decision.

3. Issuing any communication, or engaging in any conduct, that tends to deter or discourage employees or applicants from exercising free choice whether to join ACE and whether to authorize ACE to represent them, unless the

communication or conduct is narrowly tailored to a business necessity while minimizing the tendency to influence employee free choice to the greatest degree possible.

4. Interfering with or denying ACE the right to seek to become an exclusive representative, access rights guaranteed by law, or the right to represent employees, which includes the right to receive advance notice and the opportunity to meet with us to discuss changes to fundamental conditions of employment before we reach a firm decision about such changes.

5. Meeting or corresponding with Senate representatives on matters related to terms and conditions of employment, or otherwise recognizing the Senate (or any successor, alias, or alter ego, including CTO) as an employee organization representing certificated employees regarding any such issues.

B. TAKE THE FOLLOWING ACTIONS:

1. Disestablish all relationships with the Senate (or any of its successors, aliases, or alter egos) having to do with matters related to terms and conditions of employment of our certificated employees.

2. Cease providing any monetary, non-monetary, or in-kind support or assistance to the Senate.

3. Remove from all our sites of operation, and from all our postings or documents (whether paper, digital, or electronic, on the internet or on any computer, but excluding litigation documents or historical records) an illegal portion of Doc's Charge.

4. Rescind entirely an August 2021 e-mail from Superintendent Eimear O'Brien to all certificated employees that criticized ACE for attempting to enforce the law.

5. Treat employee organizations as specified in PERB's decision.

6. Provide employees, employee organizations, and organizational representatives with access rights guaranteed by law.

7. Honor employee authorizations as specified in PERB's decision.

8. Provide ACE with the information it requested from us in June 2021.

Dated: _____ CLOVIS UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

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