STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNIVERSITY COUNCIL-AMERICAN FEDERATION OF TEACHERS, Charging Party, v. REGENTS OF THE UNIVERSITY OF CALIFORNIA (LOS ANGELES), Respondent.	Case No. LA-CE-1384-H PERB Decision No. 2942-H February 10, 2025

Appearances: Leonard Carder by Jennifer Keating, Attorney, for University Council-American Federation of Teachers; Quarles & Brady by Sandra McDonough and Adrielli Ferrer, Attorneys, for Regents of the University of California (Los Angeles).

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Respondent Regents of the University of California, Los Angeles (UCLA or University) and Charging Party University Council-American Federation of Teachers (UC-AFT) to the proposed decision of an administrative law judge (ALJ). The complaint alleges that the University began employing a new classification (Teacher Apprentice) at the UCLA Lab School, and in doing so violated the Higher Education Employer-Employee Relations Act (HEERA) in two respects.[1]

[1] HEERA is codified at Government Code section 3560 et seq. Undesignated statutory references are to the Government Code.

First, the complaint alleges that the University transferred job duties from UC-AFT represented Development Teachers to the new, unrepresented Teacher Apprentice classification, without affording UC-AFT advance notice and an opportunity to bargain. Second, the complaint alleges that the University assigned Development Teachers a new duty—mentoring Teacher Apprentices—again without affording UC-AFT advance notice and an opportunity to bargain. Although the complaint originally included a third claim, UC-AFT withdrew that claim during the hearing before the ALJ.

After the record closed, the ALJ found in favor of UC-AFT on both claims. The University filed exceptions asking us to reverse the proposed decision, while UC-AFT filed cross-exceptions seeking adjustments to the ALJ's proposed remedy. Having reviewed the proposed decision, the record, and the parties' arguments, we affirm the ALJ's liability conclusions and adjust the proposed remedial order to better effectuate HEERA's purposes.

FACTUAL BACKGROUND

The University and UC-AFT are parties to a Memorandum of Understanding (MOU) governing the University's Unit 18, effective December 3, 2021, through June 30, 2026. Unit 18 includes Demonstration Teachers at the Lab School, which serves about 450 students from pre-kindergarten through sixth grade.

I. The Status Quo as of Summer 2022

The Lab School uses a team teacher model, meaning a team of Demonstration Teachers provides instruction to one or more classrooms. Specifically, the Lab School normally assigns either three co-teachers to two classrooms, or two co-teachers to a

single classroom. The following summary describes Demonstration Teachers' duties as of the summer of 2022, before the events at issue in this case took place.

Demonstration Teachers collaborate with their co-teachers to discuss or refine lesson plans, but all teachers are primarily responsible for their own lesson plans. Demonstration Teachers normally create their own assessments for students, though there are certain schoolwide assessments as well.

The Lab School assigns a Teaching Assistant to each classroom. Teaching Assistants perform clerical work, may supervise students outside the classroom or during lunch and breaks, and may help support individual students based on instruction given by the Demonstration Teachers. Teaching Assistants also occasionally administer make-up exams to students who miss an initial exam or grade objective assessments such as spelling tests. Teaching Assistants do not create lesson plans or teach lessons. Demonstration Teachers mentor Teaching Assistants, which includes providing feedback on their ideas.

Demonstration Teachers sometimes teach and mentor UCLA undergraduate students as part of a course called CalTeach. These undergraduate students have a math or science background and are exploring teaching careers. They are not UCLA employees. While participating in CalTeach, Demonstration Teachers help the undergraduates develop lesson plans and teach lessons. Such work occurs, in part, outside regular school hours, and Demonstration Teachers receive additional compensation for participating in CalTeach.

When Demonstration Teachers are absent, other Demonstration Teachers typically substitute for them and teach their classes according to the pre-written lesson

plans. School administrators such as the Director of Curriculum sometimes cover a class for short periods when a substitute teacher is not available, typically monitoring the classroom rather than creating lesson plans or providing instruction.

Demonstration Teachers are expected, but not required, to participate in research for the Lab School. Research typically involves studies of participating Lab School students and may be conducted by Lab School teachers and/or outside teachers. About once a month, teachers from other schools or other outside visitors observe Lab School lessons. Observations usually last about 45 minutes, followed by debrief sessions between the visitor and the Demonstration Teacher.

Demonstration Teachers also serve on school committees. The Lab School assigns each committee a value ranging from one to three points, depending on the level of work required. Demonstration Teachers normally must commit to at least three points' worth of committees each year.

Thus, prior to the events giving rise to this case, Demonstration Teachers' job duties comprised: creating lesson plans; providing instruction; assessing student performance; communicating with parents and guardians; mentoring other Demonstration Teachers, Teaching Assistants, and outside teachers visiting and observing instruction at the Lab School; participating in CalTeach for additional pay; and participating in committees, research, and public outreach.

An undated job description for Demonstration Teachers references mentorship, stating that "Demonstration Teachers are expected to collaborate, engage in research, and share their practices with others by participation in public engagement and mentorship" and as part of "Public Engagement and Outreach," "[m]entor and support

educators and peers to foster the sharing of knowledge and experiences to create a co-collaborative environment." Another undated job posting for Demonstration Teachers does not reference mentorship or training at all, simply stating that Demonstration Teachers "are expected to collaborate, engage in research and share their practices with others by participating in public engagement."

II. The Teacher Apprentice Program

In 2022, the Lab School had multiple vacant positions, which it attributed to difficulty hiring qualified Demonstration Teachers. In part to address this deficit, the Lab School established an apprenticeship program, and created a new, unrepresented Teacher Apprentice classification.

In certain instances, apprentices replaced Demonstration Teachers to round out the Lab School's normal staffing levels. Thus, while the Lab School had previously assigned either three Demonstration Teachers to two classrooms or two Demonstration teachers to a single classroom, in multiple instances the Lab School reduced the number of Demonstration Teachers on a team, using apprentices to replace the missing Demonstration Teacher. In one such example, the Lab School assigned just two Demonstration Teachers to teach two classrooms, while offering the two-person team the option of adding a Teacher Apprentice to round out their short-staffed team, and they agreed. Irrespective of whether an apprentice supplemented normal staffing or joined a team with a vacancy, the Lab School awarded Demonstration Teachers who mentored a Teacher Apprentice one point toward their required committee responsibilities.

UC-AFT's Executive Director first learned about the apprenticeship program on June 24, 2022, when a parent forwarded him an e-mail from the Lab School's principal, Georgia Lazo, stating that the School would be "implementing a program for apprentice educators." The University did not notify UC-AFT about its decision to create or implement the program, either before or after Lazo's June 2022 e-mail to Lab School families.

On October 21, 2022, Lazo sent a further e-mail to families, entitled "Principal's Message | New Teacher Training Initiative." In the e-mail, Lazo described a "new initiative to reconnect with our teacher training mission," which included adding six new teacher apprentices to the teaching teams. The e-mail informed families that Teacher Apprentices "provide direct instruction to the children with mentorship from the demonstration teacher" and that Teacher Apprentices "are co-planning lessons and working with teachers to maximize student engagement." The e-mail then referenced the Lab School's "history as a teacher-training ground," and stated "now is the time to renew our commitment" to training teachers.

Over the course of their two-year apprenticeships, Teacher Apprentices gradually increase their duties and responsibilities. Initially, Teacher Apprentices observe the classroom, then progress to co-creating lesson plans, and from there, begin creating lesson plans on their own and ultimately plan and teach their own units. One example in the record showed a Teacher Apprentice teaching lessons once or twice a week and substituting for absent Development Teachers.

In winter of an apprentice's first year, the supervising Demonstration Teacher must co-plan biweekly lessons for the apprentice to teach, as well as co-teach lessons

with the apprentice. In the spring of that year, the supervising Demonstration Teacher must observe the apprentice's classroom lessons at least weekly and provide feedback. And in the second year, the Lab School's written expectations show that the apprentice should "[b]ecome a 4th teacher in the classroom," which includes giving assessments and "[t]eaching Full-time in certain subject areas," as well as co-leading parent-teacher conferences and "writ[ing] multiple sections of the weekly newsletter."

Demonstration Teachers serving as mentors must work to support apprentices almost daily. In addition to co-planning and co-teaching with Teacher Apprentices, Demonstration Teachers serving as mentors must consistently observe them and provide them with feedback on their lesson plans and instruction. We credit testimony from Demonstration Teacher Kimberly Morchower, who characterized mentoring a Teacher Apprentice as "a lot of work." For instance, she explained the work involved in co-planning a lesson, which includes teaching how to create a lesson plan, breaking down parts of the lesson, helping the apprentice create each lesson, discussing the rationale behind necessary items, and providing daily support. After an apprentice teaches a lesson, there is also significant post-lesson work. Unlike the collaboration Morchower might have with fellow Demonstration Teachers, mentoring a Teacher Apprentice involves more detailed feedback to a novice with much less experience and training. Another Demonstration Teacher, Lorrie Cariaga, similarly explained that she had to teach her apprentice mentee how to implement inquiry-based learning and project-based learning, provided ongoing feedback, and debriefed with her every time she taught a lesson.

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) However, the Board need not address alleged errors that would not affect the outcome, nor issues that the proposed decision adequately addressed. (*Ibid*.) Here, the proposed decision adequately addressed all issues. Nonetheless, we explain the primary reasons we affirm the proposed decision's liability analysis, as well as our reasons for adjusting the ALJ's proposed remedy.

I. Liability

HEERA section 3570 requires the University to meet and confer in good faith on all matters within the scope of representation. Failure or refusal to meet and confer as required by section 3570 is an unfair practice. (HEERA, § 3571, subd. (c).) To "meet and confer" means to bargain. (Cal. Code Regs., tit. 8, § 32096.)

To establish a prima facie case that a respondent employer violated its bargaining duty via a unilateral change, a charging party union that exclusively represents a bargaining unit must prove that (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*Regents of the University of California* (2023) PERB Decision No. 2884-H, p. 9.) Absent a valid

defense, an employer's unilateral change affecting negotiable matters is a per se refusal to meet and confer. (*Regents of the University of California* (2021) PERB Decision No. 2783-H, p. 18.)

This case involves two unilateral change claims. We first consider the allegation that the University violated HEERA by failing to afford UC-AFT advance notice and an opportunity to bargain before assigning Demonstration Teachers a material new duty—mentoring Teacher Apprentices. We then consider the allegation that the University violated HEERA by failing to afford UC-AFT advance notice and an opportunity to bargain before assigning lesson planning and instruction duties to Teacher Apprentices, thereby transferring Unit 18 work outside the bargaining unit.

A. New Mentoring Duties

Assigning represented employees a material new job duty normally falls within the scope of representation, meaning an employer normally has a duty to provide notice and offer bargaining before it does so, unless the employer satisfied its bargaining duty in advance by negotiating a contractual waiver that allows it to add new duties during a the term of an MOU, without further bargaining. (*County of Santa Clara* (2022) PERB Decision No. 2820-M, pp. 5-10 & fn. 7; *Cerritos Community College District* (2022) PERB Decision No. 2819, p. 30 (*Cerritos*).)[2]

[2] No waiver defense is currently before us. At prior stages of this case, the University asserted a waiver defense as to UC-AFT's claim for unilateral assignment of new duties, relying on language in MOU Article 28 stating that: "the University has the right to establish, plan, direct, and control the University's missions, programs, objectives, activities, resources, and priorities." The ALJ rejected that defense, finding such language to be too general and vague to establish a clear and unmistakable waiver, and citing *Regents of the University of California* (1998) PERB Decision No. 1255-H, p. 2 & adopting proposed dec. at pp. 39-41, which found similar MOU

To prove that a change is material enough to trigger a bargaining obligation, the charging party may, but need not, establish that a new duty increases employees' workload. (*State of California (California Correctional Health Care Services)* (2022) PERB Decision No. 2823-S, p. 11 (*CCHCS*) [changes to workload and assignment of new duties often go hand in hand, but it is possible to establish one type of unilateral change without the other]; accord *County of Santa Clara*, *supra*, PERB Decision No. 2820, pp. 5-6 & fn. 4.) For a claim premised on a new job duty or assignment rather than a change in workload, then to establish a material deviation from the status quo, the charging party must prove that the new duty or assignment was not "reasonably comprehended" within bargaining unit employees' prior duties or assignments. (*CCHCS*, *supra*, pp. 10-11; *County of Santa Clara*, *supra*, p. 7; *Cerritos*, *supra*, PERB Decision No. 2819, p. 30.)

This "reasonably comprehended" standard is an objective test that analyzes what a reasonable employee would comprehend based on all relevant circumstances, including, but not limited to, past practice, training, and job descriptions. (*CCHCS*, *supra*, PERB Decision No. 2823-S, p. 10; *County of Santa Clara*, *supra*, PERB Decision No. 2820, p. 6, citing *Rio Hondo Community College District* (1982) PERB Decision No. 279, pp. 17-18 [while catchall language in job description does not

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language did not authorize the University to unilaterally change or transfer bargaining unit work. The ALJ also found that, had the University asserted a waiver defense with respect to UC-AFT's claim for unilateral transfer of work, such a defense would fail for the same reasons. The University filed no exceptions regarding contractual waiver, and we express no opinion on such issues, other to caution that parties applying this precedent must examine the specific language of any MOU in effect at the time of an employer's alleged unilateral change.

overcome evidence of contrary past practice, PERB interprets job descriptions in the context of employees' overall role].) Thus, to apply the "reasonably comprehended" standard, we compare past duties or assignments to new duties or assignments, through the eyes of a reasonable employee. (*County of Santa Clara*, *supra*, p. 8.)

The University contends that mentoring Teacher Apprentices cannot constitute "an extra responsibility for Demonstration Teachers" because "Demonstration Teachers are expected to engage in mentorship" and Teacher Apprentices "simply absorb information by observing what the Demonstration Teacher was doing already." However, the record shows that mentoring Teacher Apprentices was not reasonably comprehended within Development Teachers' previous duties or assignments. Indeed, prior to the Teacher Apprentice program, Demonstration Teachers mentored Teaching Assistants, CalTeach undergraduate students, and to some degree other Demonstration Teachers and outside visitors to the Lab School. We affirm the ALJ's conclusion that these prior mentorship duties were "relatively limited or sporadic," such as ad-hoc interactions with other Demonstration Teachers or Teaching Assistants, and once-a-month 45-minute observations by outside visitors followed by "debriefs."

In arguing that Demonstration Teachers' mentoring of apprentices "is precisely the same" type of limited and sporadic mentorship they previously performed, the University ignores that the apprenticeship program engendered significant changes in the nature and extent of Demonstration Teachers' mentoring responsibilities. Notwithstanding its sweeping assertion, the University did not establish that mentoring Teacher Apprentices was not a material change. Indeed, UC-AFT established just the opposite. Demonstration Teachers' mentorship of Teacher Apprentices is an iterative

process of regular observation, feedback, and discussion with their Teacher Apprentices over the two years of the apprenticeship. As Teacher Apprentices teach more lessons, Demonstration Teachers have a corresponding increase in the amount of observation and feedback they must provide. And while Teacher Apprentices undoubtedly do absorb certain knowledge merely by observing Demonstration Teachers, the University discounts Demonstration Teachers' substantial pedagogical efforts to co-create lesson plans, observe lessons with increasing frequency, and provide feedback.

The University alternately contends that even if Demonstration Teachers' past mentoring was more limited or sporadic than the daily work required to mentor an apprentice, mentoring nonetheless has long been an integral Demonstration Teacher job duty. This argument fails to recognize that we determine whether there is a material change from the viewpoint of a reasonable employee. There is little question that reasonable Demonstration Teachers would see a material change in mentoring Teacher Apprentices on a regular, almost daily basis. For this reason, we cannot find that the sharp upward increase in mentorship duties for Demonstration Teachers mentoring apprentices merely continues the status quo. (See *County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 8 [in applying "reasonably comprehended" standard, a temporary or intermittent past practice like nurses filling in for sick technicians does not necessarily provide the employer with a defense if it begins issuing assignments to nurses to fill shifts on a regular basis, i.e. even when the technicians are not on breaks or out sick].)

Nor can the University avoid its bargaining duty by pointing to the pre-existing CalTeach program. Not only did Demonstration Teachers choosing to participate in CalTeach receive extra pay, but, in any event, the intensive time and effort Demonstration Teachers devote to mentoring Teacher Apprentices over a two-year period far exceeds Demonstration Teachers' less significant involvement with the revolving cadre of CalTeach undergraduates.

Demonstration Teachers' job descriptions also are insufficient to show that a reasonable employee would perceive only immaterial changes in duties once they began mentoring a Teacher Apprentice. One job description refers to mentoring and supporting "educators and peers" as a means of public engagement and outreach, while the other does not mention mentorship at all. These are not sufficient to counter the above facts. (*CCHCS*, *supra*, PERB Decision No. 2823-S, pp. 17-18 [past practice even more relevant where job descriptions do not attempt to deal with alleged new practice]; *County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 6 [catchall language in a job description does not outweigh a contrary past practice].)

Nor does it matter that the University afforded Demonstration Teachers certain latitude in deciding whether to mentor apprentices. As noted above, in at least one instance the Lab School assigned just two Demonstration Teachers, rather than the full complement of three, to teach two classrooms, before giving the two-person Development Teacher team a choice whether to add a Teacher Apprentice to round out their short-staffed team. The structure of this choice—take on more work either by enduring mandated lower staffing or else by taking on a mentoring role—belies the argument that the choice to mentor was always purely volitional. There were other,

similar circumstances where the Lab School used Teacher Apprentices to round out a team, deeming the apprentice the equivalent of a teacher in its staffing plan.

These facts reveal that the Lab School sometimes offered Demonstration Teachers a Hobson's choice, in which they would experience an even greater workload increase if they declined to become mentors. But even if the Lab School had never done so, that would not end our inquiry, as a union has the right to bargain collectively and propose extra compensation and/or workload offsets for employees who voluntarily agree to take on an extra duty. (*American Federation of State, County and Municipal Employees v. City of Santa Clara* (1984) 160 Cal.App.3d 1006, 1010; but cf. *Poway Unified School District* (1988) PERB Decision No. 680, pp. 11-15 [school district need not bargain before offering teachers a purely voluntary opportunity to build their skills by attending a training].) Here, the Lab School unilaterally decided to give mentors limited credit toward committee assignments for their mentorship work, in lieu of monetary compensation. UC-AFT had the right to propose greater workload offsets and/or monetary compensation. Thus, even had the Lab School shown that mentorship duties were purely voluntary, such proof would not have changed the outcome of this case.

The record also shows that the University's unilateral decision to add new mentoring duties has a generalized effect or continuing impact on Demonstration Teachers. A charging party satisfies this element if the challenged decision or action alters a term or condition of employment on a prospective basis or if the respondent asserts a non-existent right to continue or repeat the action in the future. (*West Contra Costa Unified School District* (2023) PERB Decision No. 2881, pp. 15-16.) Here, both

circumstances exist. The permanent nature of the apprenticeship program, and the fact that apprentices stay in the program for two years, easily establishes that mentoring is a working condition with a continuing impact. Moreover, the University's conduct and arguments show there is a substantial risk it may continue and/or repeat the same or similar conduct. (*Regents of the University of California* (2023) PERB Decision No. 2852-H, p. 17.)

There is no evidence that the University afforded UC-AFT advance notice and an opportunity to bargain before assigning new mentoring duties to Demonstration Teachers. Because the University's unilateral change was a fait accompli by the time UC-AFT learned of it, the union had no duty to demand bargaining. (*County of Merced* (2020) PERB Decision No. 2740-M, p. 20.) Accordingly, we affirm the proposed decision's conclusion that by unilaterally assigning Demonstration Teachers to mentor Teacher Apprentices, the University violated its obligation to meet and confer in good faith with UC-AFT.

B. Transfer of Unit 18 Work Outside the Bargaining Unit

The proposed decision found that the University committed a second HEERA violation in that it failed to afford UC-AFT advance notice and opportunity to bargain before it assigned bargaining unit work—lesson planning and instruction—to non-bargaining unit employees, viz., Teacher Apprentices. For the following reasons, we affirm this conclusion.

1. Governing Legal Principles

As discussed above, job duties normally fall within the scope of representation, and a claim alleging that an employer unilaterally added a job duty or assignment

normally turns on whether the change was material under the "reasonably comprehended" test, or whether the employer can establish a contractual waiver or other defense. We now turn to the standard for assessing materiality when an exclusive representative claims that an employer has unilaterally transferred a job duty away from an exclusively represented bargaining unit.

A transfer of a job duty from bargaining unit employees to employees outside the unit is material, and thus bargainable, if the transfer either: (1) causes unit employees to cease performing a duty entirely, when previously unit employees shared the duty with non-unit personnel; or (2) causes non-unit employees to begin performing a duty that only unit employees had previously performed. (*City of Glendale* (2020) PERB Decision No. 2694-M, pp. 38-39, fn. 19; *City of Sacramento* (2013) PERB Decision No. 2351-M, p. 16; *Desert Sands Unified School District* (2010) PERB Decision No. 2092, p. 20; *Calistoga Joint Unified School District* (1989) PERB Decision No. 744, p. 9; *Eureka City School District* (1985) PERB Decision No. 481, p. 15 (*Eureka*).) We commonly refer to this as the *Eureka* standard.[3]

While precedent sometimes characterizes the *Eureka* standard as defining whether a decision is within the scope of representation, in fact there is no question that job duties are a mandatory bargaining topic. Thus, as an analytic matter, the

[3] The *Eureka* standard defines the two clearest ways of showing a material transfer of work, but we do not rule out that other circumstances could constitute a material change. For instance, while there normally is no decision bargaining duty when an employer decides to lay off employees due to lack of work, the opposite is true if the employer continues to perform the work of the laid off employees, using non-unit employees. (*City of Glendale*, *supra*, PERB Decision No. 2697-M, p. 17, fn. 9, citing *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 621.)

Eureka standard truly measures whether a deviation from the status quo is sufficiently material to trigger bargaining.

The outcome of applying the *Eureka* standard in a unilateral change case is the same, irrespective of whether PERB considers it under the scope of representation element or as part of determining if a material change occurred. But this analytic clarification is equivalent to the one we made in *County of Santa Clara*, *supra*, PERB Decision No. 2820-M, where we explained that the "reasonably comprehended" standard for new job duties measures whether a deviation from the status quo is material. (*Id*. at pp. 6-7.) We explained that past precedent treating the "reasonably comprehended" standard as defining the scope of representation was an historical artifact. (*Id*. at p. 7.) Specifically, for much of PERB's history, precedent consolidated the unilateral change test into just two elements. (*Ibid*.) The first element was whether the employer implemented a change concerning a matter within the scope of representation, thereby simultaneously asking whether the employer made a change and, if so, whether it fell within the scope of representation. (*Ibid*., citing *Oakland Unified School District* (2003) PERB Decision No. 1544, p. 5 & adopting warning letter at p. 2; see also *Desert Sands Unified School District* (2001) PERB Decision No. 1468, p. 3 [using two elements in a transfer of work context].) The Board later split up the two elements into the four-part test set forth *ante* at p. 8. Accordingly, PERB now separately analyzes change to status quo and scope of representation. Under the revised framework, it makes sense that the *Eureka* standard, like the "reasonably comprehended" test, will normally be more integral to determining whether the

employer materially changed the status quo than to determining whether job duties constitute a mandatory bargaining topic.

In sum, *Santa Clara*, *supra*, PERB Decision No. 2820-M explained that while job duties and assignments normally fall within the scope of representation, the "reasonably comprehended" test helps to assess whether adding job duties or assignments constitutes a material change. (*Id*. at pp. 5-7.) By the same logic, the *Eureka* standard helps to assess whether an employer materially changed the status quo by subtracting job duties from a bargaining unit.

2. Application to the Record

The ALJ found, and we affirm, that by creating a new apprenticeship program, the University caused non-unit employees to begin performing a duty that only unit employees had previously performed. In its arguments to the Board, the University admits that apprentices teach up to one or two lessons per week but claims that it transferred no material duties because the Demonstration Teachers "continue to perform lesson planning and classroom instruction alongside Teacher Apprentices and retain ultimate control over the curriculum."

It is beside the point that Demonstration Teachers continue to lesson plan and teach, for there is no allegation that the University removed teaching and lesson planning duties entirely from the bargaining unit. (*City of Glendale*, *supra*, PERB Decision No. 2694-M, pp. 38-39, fn. 19.) And the University concedes that Teacher Apprentices do some amount of teaching and lesson planning, in conjunction with Demonstration Teachers; indeed, that is the purpose of the Teacher Apprentice program. That constitutes a material change under the *Eureka* standard, even if

Demonstration Teachers still have a supervisory role as to apprentices' work, because Demonstration Teachers had not historically shared lesson planning and instruction with employees outside the bargaining unit.

The University explicitly "does not deny that before the Teacher Apprentice program came to be, Demonstration Teachers planned their own lessons, and then taught their respective subjects, to a classroom run by a group of Demonstration Teachers, under the collaborative team-teaching model." While the University suggests that the pre-existing collaborative team-teaching model helps to show there was no transfer of work, this argument misses the mark. Under the collaborative model, Demonstration Teachers collaborated with one another, rather than with employees outside the bargaining unit, in their lesson planning and instruction.[4]

Finally, there is no question that the transfer of work to Teacher Apprentices has a generalized effect or continuing impact, because Teacher Apprentices continue to create lesson plans and teach classes on an ongoing basis, and the University's position in this case indicates its continuing belief that it has the right to transfer duties freely without bargaining. Although the University challenges the ALJ's finding that

[4] The University's citation to *Allan Hancock Joint Community College District* (2004) PERB Decision No. 1685 (*Allan Hancock*) does not help its argument, as the record does not show that Lab School administrators previously engaged in even "sporadic" lesson planning and instruction duties, much less that these were true "overlapping" duties shared by two classifications. (*Id*. at p. 2 [finding overlapping duties where union argued, but could not prove, that administrators' prior teaching was merely sporadic].) For this reason, we need not decide the issue left open in *Allan Hancock*—whether a sporadic history of non-bargaining unit employees performing the same work could be sufficient to support a finding of historically shared work.

Teacher Apprentices "continue to create lesson plans and teach classes," the record evidence supports this inference.

While UC-AFT need not show actual diminution in work opportunities or collective bargaining strength, here there is at least minimal evidence of such an impact. In at least one instance, a Teacher Apprentice filled in where there were not enough Demonstration Teachers, a condition that could either suppress the urgency to hire more teachers or decrease bargaining power by giving the University alternative teaching options in the event of a strike. Indeed, longstanding precedent recognizes that the "diminution of unit work by transferring functions weakens the collective strength of employees in the unit and their ability to deal effectively with the employer and can affect the viability of the unit itself." (*Rialto Unified School District* (1982) PERB Decision No. 209, pp. 6-7.) These potential impacts are among the reasons why a bargaining duty attaches before an employer can unilaterally assign bargaining unit duties to non-bargaining unit employees. The University offers no precedent to support its position that a union must show a loss of employment or income, nor does it grapple with or attempt to distinguish the relevant authority cited in the proposed decision. (See *Arcohe Union School District* (1983) PERB Decision No. 360, p. 6 [diminution of unit work impacts collective strength of employees in the unit].)

Accordingly, we affirm the ALJ's conclusion that the University unlawfully failed to afford UC-AFT advance notice and an opportunity to bargain before unilaterally assigning non-shared, bargaining unit duties (lesson planning and instruction) to Teacher Apprentices.

II. Remedy

HEERA grants PERB broad remedial powers, including the authority to issue cease-and-desist orders and to require such affirmative action as PERB deems necessary to effectuate HEERA's policies and purposes. (HEERA, § 3563.3.) 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.) PERB's standard remedy for an employer's unlawful unilateral change is a cease-and-desist order, a notice posting, restoration of the status quo ante, appropriate make-whole relief including back pay and benefits with interest, and an order to bargain with the union upon request. (*Regents of the University of California*, *supra*, PERB Decision No. 2852-H, p. 21; *Regents of the University of California (Berkeley)* (2018) PERB Decision No. 2610-H, pp. 94-96.)

Those remedies are appropriate here. Thus, among other remedies, we will order the University to rescind its transfer of bargaining unit work and material changes to job duties, cease and desist from failing to bargain in good faith over negotiable matters, and provide make-whole relief for harms (if any) established in compliance proceedings. We note that where a charging party establishes an unlawful unilateral change, potential make-whole relief encompasses the scope of harms discussed in *County of Santa Clara* (2024) PERB Decision No. 2900-M, pp. 27-38 [judicial appeal pending on other grounds].

Because the classifications at issue provide educational instruction, the proposed decision found that an order to immediately return to the status quo ante

could disrupt the operation of the Lab School or interfere with student instruction. On that basis, the ALJ proposed to delay restoration of the status quo, and, citing *Antelope Valley Community College District* (2023) PERB Decision No. 2854, pp. 6-7 (*Antelope Valley*), ordered the University to rescind the unilaterally adopted changes no later than the beginning of the next academic year following the date the proposed decision becomes final. UC-AFT concedes that it is within our discretion to delay restoring the status quo in this manner but argues for a shorter delay.

In *Antelope Valley*, *supra*, PERB Decision No. 2854, as in other cases where an employer fails to fulfill its bargaining duty before altering instructors' work calendar as part of adjusting the student academic calendar, PERB has delayed its requirement to restore the status quo when necessary to prevent unwarranted disruption or interference with student instruction or district operations. (*Id*. at pp. 6-7; *Pasadena Area Community College District* (2015) PERB Decision No. 2444, p. 34 [forcing parties to change academic calendar part way through an academic year could disrupt unreasonably plans and schedules of students, faculty, and staff].) UC-AFT asserts that this case is more akin to *Ventura County Community College District* (2003) PERB Decision No. 1547, a transfer of work case where the Board stayed restoration of the status quo for 120 days to allow the parties to complete negotiations over how instruction should occur going forward. (*Id*. at pp. 30-31 & fn. 10.) The University responds that should we order restoration of the status quo, the ALJ's proposed delay was proper.

Like the ALJ, we find that the educational setting warrants a delay, both to protect student education and Teacher Apprentices' training. However, we are also

mindful that the Demonstration Teachers continue to bear the burden attendant in losing bargaining unit work and in performing additional job duties. Under these unique circumstances, we find it appropriate to modify the ALJ's proposed order by requiring restoration of the status quo by the beginning of the next Lab School academic term following the date when this decision becomes final. The parties may also modify the rescission order by mutual agreement.

Finally, we adjust the prohibitory and mandatory orders regarding bargaining over future changes, clarifying that before making such changes the University must first provide notice of a proposed change, and then bargain in good faith upon request.

ORDER

Based on the foregoing and the entire record in the case, the Public Employment Relations Board (PERB) finds that the Regents of the University of California, Los Angeles (UCLA or University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571, subdivision (c) when it failed to afford University Council-American Federation of Teachers (UC-AFT) notice and an opportunity to bargain before: (1) assigning Unit 18 work at UCLA Lab School to Teacher Apprentices outside the bargaining unit; and (2) assigning Demonstration Teachers at UCLA Lab School to mentor Teacher Apprentices.

Pursuant to Government Code section 3563, subdivisions (h) and (m), it is hereby ORDERED that the Regents of the University of California, Los Angeles and its representatives shall:

A. CEASE AND DESIST FROM:

1. Assigning Unit 18 work at UCLA Lab School to non-bargaining unit employees without first affording UC-AFT adequate notice and an opportunity to bargain in good faith.

2. Assigning Unit 18 members at UCLA Lab School job duties that are not reasonably comprehended within their existing job duties, without affording UC-AFT adequate notice and an opportunity to bargain in good faith.

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

1. No later than the beginning of the next UCLA Lab School academic term following the date this decision is no longer subject to appeal, rescind the unlawfully implemented transfer of work and the unlawful changes to Demonstration Teachers' job duties explained in this decision. The parties may mutually agree to modify this order.

2. Compensate UC-AFT and Unit 18 members for harm (if any) resulting in material part from the University's unilateral assignment of mentoring duties to Demonstration Teachers and/or from its unilateral assignment of lesson planning and teaching duties to Teacher Apprentices, with payments augmented by 7 percent daily compounded interest.

3. Before changing compensation, hours, job duties, or other terms and conditions of employment of Unit 18 employees at UCLA Lab School, notify and, on request, complete good faith negotiations with UC-AFT.

4. Within 10 workdays after this decision is no longer subject to appeal, post at all work locations where notices to UCLA Lab School employees in Unit 18 are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the University must sign the Notice, indicating that the University will comply with the terms of this Order. The University shall maintain the posting for a period of 30 consecutive workdays. The University 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 this Notice, the University shall communicate it by electronic message, intranet, internet site, and other electronic means the University uses to communicate with employees in the bargaining unit UC-AFT represents.[5]

5. Notify OGC of the actions the University has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on UC-AFT.

Chair Banks and Member Paulson joined in this Decision.

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

APPENDIX

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

After a hearing in Unfair Practice Case No. LA-CE-1384-H, *University Council-American Federation of Teachers v. Regents of the University of California (Los Angeles)*, in which all parties had the right to participate, the Public Employment Relations Board (PERB) found that the Regents of the University of California, Los Angeles (UCLA or University) violated the Higher Education Employer-Employee Relations Act (HEERA), Government Code section 3571, subdivision (c), when it failed to afford University Council-American Federation of Teachers (UC-AFT) notice and an opportunity to bargain before: (1) assigning Unit 18 work at UCLA Lab School to Teacher Apprentices outside the bargaining unit; and (2) assigning Demonstration Teachers at UCLA Lab School to mentor Teacher Apprentices.

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

A. CEASE AND DESIST FROM:

1. Assigning Unit 18 work at UCLA Lab School to non-bargaining unit employees without first affording UC-AFT adequate notice and an opportunity to bargain in good faith.

2. Assigning Unit 18 members at UCLA Lab School job duties that are not reasonably comprehended within their existing job duties, without affording UC-AFT adequate notice and an opportunity to bargain in good faith.

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

1. Unless otherwise agreed upon by the parties, no later than the beginning of the next UCLA Lab School academic term following the date this decision is no longer subject to appeal, rescind the unlawfully implemented transfer of work and the unlawful changes to Demonstration Teachers' job duties explained in PERB's decision.

2. Compensate UC-AFT and Unit 18 members for harm (if any) resulting in material part from the University's unilateral assignment of mentoring duties to Demonstration Teachers and/or from its unilateral assignment of lesson planning and teaching duties to Teacher Apprentices, with payments augmented by 7 percent daily compounded interest.

3. Before changing compensation, hours, job duties, or other terms and conditions of employment of Unit 18 employees at UCLA Lab School, notify and, on request, complete good faith negotiations with UC-AFT.

Dated: _____

Regents of the University of California (Los Angeles)

By: _____
Authorized Agent

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