STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

BAY AREA AIR QUALITY MANAGEMENT DISTRICT EMPLOYEES' ASSOCIATION, Charging Party, v. BAY AREA AIR QUALITY MANAGEMENT DISTRICT, Respondent.	Case No. SF-CE-2243-M PERB Decision No. 3074-M November 10, 2026

Appearances: McCracken, Stemerman & Holsberry by Luke Dowling, Attorney, for Bay Area Air Quality Management District Employees' Association; Atkinson, Andelson, Loya, Rudd & Romo by Ruth M. Bond and Eric T. Riss, Attorneys, for Bay Area Air Quality Management District.

Before Krantz, Paulson, and Ortega, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on both parties' exceptions to a proposed decision issued by an administrative law judge (ALJ). The dispute arose after Respondent Bay Area Air Quality Management District completed a District-wide classification and compensation study. Charging Party Bay Area Air Quality Management District Employees' Association submitted a request for information (RFI) seeking records relevant to the study's recommendations. The District refused to provide the requested records, leading the Association to file this charge.

The complaint, as amended, alleged that the District violated the Meyers-Milias-Brown Act (MMBA) when it refused to provide: (1) Position Description Questionnaires (PDQs) completed by employees as part of the District's classification and compensation study; and (2) an "outlier list" identifying employees allegedly working outside their classifications.[1]

Prior to the start of the formal hearing, the District produced the outlier list, albeit ten months after the Association first requested it. The ALJ concluded that the District's delay in producing the outlier list was unreasonable and therefore violated the MMBA. The District took no exceptions to the ALJ's conclusions regarding the outlier list, and we therefore do not address them.[2]

As to the remaining records still in dispute (the PDQs), the ALJ first rejected the District's argument that the Association waived its right to these records. Next, the ALJ found that the District had a legitimate privacy interest in the PDQs but had violated the MMBA by failing to bargain with the Association over potential accommodations. Accordingly, the proposed decision ordered the District to produce the PDQs with confidentiality protections to be bargained or, absent agreement, ordered by PERB's Office of the General Counsel during compliance proceedings.

Each party raises multiple exceptions. The District primarily asserts that: (1) the ALJ should have found that the Association waived any right to the PDQs; and (2) the

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[1] The MMBA is codified at Government Code section 3500 et seq. All undesignated statutory references are to the Government Code.

[2] The ALJ's conclusions about the outlier list are final and binding only on the parties to this case; they are otherwise non-precedential. (*City and County of San Francisco* (2024) PERB Decision No. 2891-M, p. 2, fn. 2.)

ALJ erred in requiring the District to provide the PDQs in any form. For its part, the Association contends that: (1) the ALJ erred in ordering confidentiality protections, because the District waived its privacy defense and, in any event, failed to establish a legitimate privacy interest; and (2) the ALJ should have awarded make-whole costs and litigation sanctions.

For the reasons explained below, the District's exceptions lack merit, while the Association's exceptions are partially meritorious and lead us to adjust the ALJ's proposed remedial order.

FACTUAL AND PROCEDURAL BACKGROUND

The District is an independent regional governmental agency created by state statute to monitor and improve air quality in nine San Francisco Bay Area counties. The Association represents a unit of District employees that includes all technical, professional, and clerical positions. Professional positions include chemists and engineers, while technical positions include air quality specialists, meteorologists, and advanced project advisors. At all relevant times, the District and the Association have been parties to a series of Memoranda of Understanding (MOUs).

I. The Negotiated Classification Specifications

For each bargaining unit position, a classification specification describes the position's duties and establishes its minimum qualifications, including the knowledge, skills, and abilities required to perform the work. Classifications are organized into series, generally progressing from entry-level positions through journey-level, senior, principal, and supervisory positions. Each successive level carries increased responsibilities and higher compensation. Accordingly, the classification specifications

are central to employee duties, wages, and promotional opportunities. At all relevant times, the District and the Association have negotiated any new classification specifications, as well as revisions to existing classifications. These negotiations cover job duties, qualifications, and compensation.

II. The Parties' 2023 MOU Negotiations

Article VI of the parties' MOU is entitled "Classification Studies." In the 2021-2023 MOU, Article VI provided as follows:

> "1. Up to 6 classifications will be reviewed in each of the remaining years of the current MOU. The [Association] and the District will each select up to three classification series.
>
> "2. Bargaining unit positions in selected job classifications will be audited to determine whether the positions are correctly classified.
>
> "3. Job classification descriptions will be thoroughly reviewed to determine whether they need to be updated to reflect changes to the work being performed in the positions assigned to those classifications, including the knowledge, skills and abilities, examples of duties, and qualifications required to perform the work.
>
> "4. Review of classifications may include a compensation analysis to determine if adjustment to the rate of pay for a classification is warranted based on external comparators and/or internal equity considerations.
>
> "5. No bargaining unit employee will be subject to a reduction in force, demoted, y-rated, or suffer a reduction in salary or benefits based on the results of an audit of his/her position, a review of the job classification description assigned to their position, or a compensation analysis.
>
> "6. In the event that a compensation analysis conducted pursuant to this Side Letter of Agreement indicates that an adjustment to pay rates is warranted, the Human Resources Officer shall prepare a report and

recommendation for consideration by the Board of Directors as part of the annual budget preparation process.

"7. All position audits, job classification description reviews, and compensation analyses conducted pursuant to this Side Letter of Agreement shall be performed by an external consulting firm mutually agreed upon by the parties.

"8. The cost of any work performed pursuant to #7 shall be borne equally by the District and the Association, except that the Association's costs for such work shall not exceed $15,000 per year.

"9. However, neither party is required to designate classes in any year.

"10. Aside [from] mutual agreement in the form of a side letter, existing represented classifications shall remain in full force and effect without modification for the term of this MOU."

In the 2023-2025 MOU, the parties retained the above language, but placed it in Article VI(B) and agreed that it would remain dormant for the MOU's duration given that Article VI(A) contained the following language mandating a comprehensive classification and compensation study:

"A. Upcoming Classification Study and Compensation Survey

"During the term of this MOU, the District agrees to have both a comprehensive classification study and compensation survey conducted by an outside vendor(s). The District agrees to complete the classification study and compensation survey prior to the parties commencing bargaining for a successor MOU.

"1. Job classifications will be thoroughly reviewed to determine whether they need to be updated to reflect the work being performed in the bargaining unit positions assigned to those classifications, including the knowledge,

skills and abilities, examples of duties, and qualifications required to perform the work.

"2. The District agrees to discuss and receive the [Association]'s input regarding appropriate comparators prior to making the final determination regarding comparators to be utilized.

"3. Compensation will be thoroughly reviewed to determine if the adjustment to the rate of pay for a classification is warranted based on external comparators and/or internal equity considerations.

"4. During the term of this MOU, no bargaining unit employee will be subject to a reduction in force, demoted, y-rated, or suffer a reduction in salary or benefits related to the classification study or compensation survey. Thereafter, depending upon the results of the classification study/compensation survey, such reductions/y-rating may occur pursuant to the meet and confer process for the successor MOU.

"5. Aside from mutual agreement in the form of a side letter (for existing classifications) or as implemented pursuant to the MMBA meet and confer process (for new classifications), Appendix A shall remain in full force and effect without modification during the term of this MOU.

"6. The District agrees to provide the Association with final copies of both the classification study and compensation survey, and final recommendations, if any, within ten (10) business days following their completion."

When the District first proposed language calling for a comprehensive classification study in the 2023-2025 MOU, Association lead negotiator Will Saltz explained to the District that the Association generally supported the idea. However, Saltz noted that the Association had a "trust issue" because of an earlier classification survey that the District had thrown out after the Association alleged the District

inappropriately influenced the contractor's recommendations. For that reason, and to allow the Association to begin preparing for subsequent negotiations as early as possible, the Association sought quick access to the study's results and recommendations.

The District responded to the Association's concern by proposing to provide the union with a copy of the compensation survey "within a reasonable time following its completion." In a counterproposal dated June 6, 2023, the Association proposed that the District would provide it with copies of both the classification study and compensation survey within 10 business days following its completion.

The parties continued to bargain over Article VI on July 18, 2023. At that session, Saltz explained that the Association's proposal required the District to provide "final copies and copies of vendor recommendations." We credit the Association's bargaining notes, as well as testimony from Saltz, that District negotiator Laura Izon responded as follows:

> "'I assume you mean final recommendations? As written, we would be duty bound to provide all recommendations throughout the course of the survey. I don't know if the recommendation is even part of the actual survey. Can you clarify that what you mean is 'final recommendations?'"

Saltz then answered Izon: "Correct. We are not aware of the other recommendations." Izon responded: "Can you please add the word 'final' before you send?" The Association agreed to add the word "final" before "copies of both the classification study and compensation survey, including the vendor's recommendations", and the parties moved on to discuss other topics. The parties

ultimately incorporated that language into their eventual agreement (see *ante* at p. 6), with only minor additional adjustments.

III. The 2024 Classification and Compensation Study

As contemplated by Article VI of the parties' 2023-2025 MOU, the District retained an outside consultant to conduct a District-wide classification and compensation study. The study, which commenced in early 2024, aimed to evaluate existing classifications, determine whether classification specifications accurately reflected the work being performed, and assess employee compensation.

The District held informational meetings for employees subject to the classification study. The District instructed them to complete PDQs, which required describing their duties, the knowledge, skills, and abilities required to perform their positions, the physical demands of their work, and other information concerning their job responsibilities. Then, the employees' supervisors would review the PDQs, indicate whether they agreed with the employees' assessment, and potentially provide further information, clarifications, or corrections. The District provided the completed PDQs to the contractor and retained copies for its own use evaluating the study.

During each informational meeting for employees subject to the classification study, District Human Resources Director Lisa Baker assured employees that their PDQs would remain confidential. Baker offered similar assurances to supervisors to encourage their candor.

As part of the study, the District's consultant identified positions that warranted further review because assigned duties appeared not to align with employees'

classifications. Baker referred to those potentially out-of-class positions as “outliers” and maintained an outlier list identifying them.

IV. The Association's RFI and the District’s Response

On August 2, 2024, Saltz e-mailed Baker to request copies of the outlier list and PDQs associated with two classifications. Saltz explained that the requested information was relevant to the Association’s representational duties.

On August 8, Baker denied the Association’s RFI. Baker asserted that the PDQs “contain a variety of information, some of which may be confidential,” and that the requested information was work product and part of the District’s deliberative process. The District did not produce the PDQs and did not offer to bargain over its confidentiality concerns.

The Association renewed its RFI on August 8 and again on September 11, expanding the request to cover all PDQs. Baker responded on September 12, asserting that pursuant to Article VI.A.6 of the parties’ MOU, the District “is only required to give you the final copies and recommendations.” In her testimony, Baker explained that she denied the RFI based on her stated commitment that the PDQs would only be shared with the consultant, and her perception that Article VI was “prescriptive about what [the Association] wanted and that was that they were asking for the final recommendations and copies of the report within a very specific time frame prior to beginning negotiations.”

The District ultimately provided the outlier list in July 2025. However, it never produced the PDQs.

DISCUSSION

When resolving exceptions to a proposed decision, we apply a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) However, to the extent that a proposed decision adequately addresses issues raised by certain exceptions, the Board need not further analyze those exceptions. (*City of Culver City* (2020) PERB Decision No. 2731-M, p. 10.) The Board also need not address alleged errors that would not affect the outcome. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.)

Part I sets forth the legal framework governing the Association's RFI. Part II addresses the District's defenses. Part III analyzes remedial issues.

I. Legal Framework

The statutes we administer grant an exclusive representative, as part of its representational rights and duties, a right to information that is broader than the public's right to review public records. (*Regents of the University of California* (2026) PERB Decision No. 3034-H, pp. 7-8 (*Regents*); *Butte-Glenn Community College District* (2022) PERB Decision No. 2834, p. 15 (*Butte-Glenn*).) An employer must normally provide an exclusive representative with all information that is necessary and relevant to its right to represent bargaining unit employees. (*Regents*, *supra*, p. 8; *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 7-8; *Butte-Glenn*, *supra*, p. 9; *Contra Costa Community College District* (2019) PERB Decision No. 2652, pp. 5, 16-17 (*Contra Costa*); *Sacramento City Unified School District* (2018) PERB Decision No. 2597, p. 8 (*Sacramento*).) This is a liberal, discovery-type standard akin to the standard California courts use to determine

relevance, and, notably, "necessary" and "relevant" are interchangeable terms that do not have separate meanings. (*Regents*, *supra*, p. 8; *City and County of San Francisco*, *supra*, p. 8; *Butte-Glenn*, *supra*, p. 9; *Contra Costa*, *supra*, pp. 5-6; *Sacramento*, *supra*, p. 8.)[3]

Where a union requests information that is relevant and necessary to its representational responsibilities, the employer's unjustified failure to provide that information is a per se violation of its bargaining duty, and a charging party is not required to show harm or prejudice as part of its prima facie case. (*Regents*, *supra*, PERB Decision No. 3034-H, p. 9; *Butte-Glenn*, *supra*, PERB Decision No. 2834, pp. 9-10.) The employer must exercise the same diligence and thoroughness as it would in other business affairs of importance. (*Regents*, *supra*, p. 8; *Imperial Irrigation District* (2023) PERB Decision No. 2861-M, p. 46 (*Imperial Irrigation*); *Butte-Glenn*, *supra*, p. 10; *Sacramento*, *supra*, PERB Decision No. 2597, pp. 8-9.) An unreasonable delay in providing information constitutes as much of a violation as an outright refusal. (*Regents*, *supra*, p. 8; *Imperial Irrigation*, *supra*, p. 46; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 20 (*Petaluma*).) Thus, once a party receives a request for relevant information, it must either promptly and fully supply the information or timely and adequately explain its

[3] The District concedes that the PDQs contain necessary and relevant information. Nor could there be any serious dispute as to that issue. The PDQs are relevant to bargaining over mandatory subjects—appropriate classification titles, assignment of job duties, employee placement, and compensation—and to enforcing MOU provisions regarding out-of-class work. (See, e.g., *County of Santa Clara* (2022) PERB Decision No. 2820-M, p. 7 [job duties and assignments]; *Alum Rock Union Elementary School District* (1983) PERB Decision No. 322, pp. 9-15 [classification].)

reasons for not doing so. (*Regents*, *supra*, p. 9; *Butte-Glenn*, *supra*, pp. 9-10; *Sacramento*, *supra*, p. 8.)

An employer's primary defenses to producing relevant information are waiver, privacy, undue burden, an absolute or qualified privilege, or that a request seeks information that does not exist. (*Regents*, *supra*, PERB Decision No. 3034-H, p. 9; *Imperial Irrigation*, *supra*, PERB Decision No. 2861-M, p. 46; *Butte-Glenn*, *supra*, PERB Decision No. 2834, p.10; *County of Tulare* (2020) PERB Decision No. 2697-M, p. 14 (*Tulare*).) The employer bears the burden of proving any defenses, limitations, or conditions on the disclosure of relevant information. (*Regents*, *supra*, p. 9; *Butte-Glenn*, *supra*, p. 10; *Sacramento*, *supra*, PERB Decision No. 2597, p. 8; *Petaluma*, *supra*, PERB Decision No. 2485, p. 23.) Moreover, the employer waives any defenses that it does not address with the union contemporaneously after receiving the RFI. (*Regents*, *supra*, p. 10; *Imperial Irrigation*, *supra*, p. 46; *Tulare*, *supra*, p. 14.) If the employer believes that the RFI requires clarification, is unduly burdensome, or seeks private information, the employer cannot deny the request outright and must instead offer to bargain in good faith regarding appropriate accommodations. (*Regents*, *supra*, p. 10; *Imperial Irrigation*, *supra*, p. 46; *Butte-Glenn*, *supra*, p. 10; *Tulare*, *supra*, p. 14; *Sacramento*, *supra*, pp. 11-12.)

II. The District's Defenses

The District claims the Association waived its right to the PDQs and that, in any event, the PDQs are confidential. We consider each defense in turn.

A. Waiver

Waiver is an affirmative defense, and an asserted waiver of a statutory right "must be evidenced by clear and unmistakable contract language or demonstrable conduct indicating that the union knowingly and voluntarily relinquished its interest in the matter." (*Kern County Hospital Authority v. Public Employment Relations Bd.* (2024) 100 Cal.App.5th 860, 885.) Any doubts must therefore be resolved against finding waiver. (*Id*. at p. 884.) This rule applies equally when the statutory right at issue is the right to information. (*Modesto City Schools and High School District* (1985) PERB Decision No. 479, p. 6 (*Modesto*).)

The District relies on the following language in MOU Article VI.A.6: "The District agrees to provide the Association with final copies of both the classification study and compensation survey, and final recommendations, if any, within ten (10) business days following their completion." The District contends that through this language, the Association gave up any right to records that are not a final classification study, final compensation survey, or final recommendations. However, that is not what the provision states, much less in a clear and unmistakable manner. Indeed, as the ALJ noted, the contract language does not mention giving up any rights of any kind, does not reference statutory rights under the MMBA, and certainly does not exclude requests for the PDQs or other supporting materials. Rather, it provided a prompt deadline for the District to provide certain key records, without the need for a request.

A contractual provision requiring the employer to provide certain information does not waive existing statutory information rights, absent evidence that the parties agreed to the provision in exchange for such a waiver. (*Modesto*, *supra*, PERB

Decision No. 479, pp. 6-7 [contract providing employees with right to receive explanation of their non-selection did not waive union's statutory right to request copies of rating sheets used in selection process]; see also *City of Burbank* (2008) PERB Decision No. 1988-M, p. 13, fn. 8 [a contract containing provisions for certain discovery in arbitration would not waive the right to other information].) Thus, the contract provision affording the Association a contractual right to certain records within 10 business days does not clearly and unmistakably relinquish the independent statutory right to request other relevant records. To effectuate a waiver or partial waiver of that statutory right, the contract would need to clearly state the categories of waived records or information. Instead, Article VI is silent regarding requests for underlying information, including completed PDQs.

While we find that Article VI contains no waiver of the right to information, it bears noting that even had we found that the article contained a clear and unmistakable waiver, that waiver could not extend to the PDQs. Article VI sets forth an obligation to promptly provide final versions of the compensation survey, classification study, and recommendations. The PDQs are not one of the three documents referenced. Thus, even if the provision could somehow meet the clear and unmistakable waiver standard without mentioning the Association giving up any rights to any record, it would at most suggest that the Association gave up any MMBA right that it had to request draft or interim versions of those documents—not the PDQs.

We next assess the parties' bargaining history. Such history normally cannot support a contractual waiver theory because bargaining history is relevant to contract interpretation only where a contract provision is silent or ambiguous, and ambiguity is

inconsistent with a clear and unmistakable waiver. (*County of Merced* (2020) PERB Decision No. 2740-M, adopted proposed decision at p. 15.) However, bargaining history is relevant to a different prong of the waiver doctrine—waiver by negotiations history. (*City and County of San Francisco* (2023) PERB Decision No. 2867-M, pp. 49-50.) Precedent dictates that negotiation history can constitute a waiver only if the parties "fully discussed" or "consciously explored" the subject, and one party intentionally yielded its interest in the matter, thereby consciously abandoning the right in question. (*Id*. at p. 50.)

Here, the Association agreed to add the modifier "final" in response to the District's concern that it otherwise would be contractually obligated to promptly provide interim or draft recommendations. In the absence of any evidence clearly establishing that the Association waived its broader statutory right to relevant information, the only clear aspect of this history is that the District agreed to a prompt contractual disclosure obligation as to certain records. Moreover, as above, even if we were to infer that the Association consciously abandoned a statutory right, the right it allegedly abandoned would at most be the right to earlier drafts. The parties did not discuss PDQs, let alone whether the Association would relinquish its independent statutory right under the MMBA to request completed PDQs. This absence of discussion does not come close to meeting the exacting waiver standard.[4]

[4] The Association successfully admitted into evidence its bargaining notes, while the District did not. Moreover, the Association called its chief negotiator to testify while the District did not do so. District bargaining team member John Chiladakis testified, but his memory was incomplete, he did not take notes during bargaining, and he did not review the District's bargaining notes prior to his testimony. His hazy recollection does not help the District. First, Chiladakis testified that District

Finally, a separate MOU provision further undercuts any theory that the Association waived its right to the PDQs by contract or negotiations history. Specifically, Article III, section 3.10 expressly preserves the Association's MMBA rights.

In sum, while the record may demonstrate differing understandings of Article VI, that does not amount to a clear and unmistakable agreement to waive the Association's statutory right to request the PDQs. The District has therefore not established its waiver defense.

B. Privacy

A union's unique representational function affords it a greater right than the public possesses to access sensitive or confidential records and information. (*Regents*, *supra*, PERB Decision No. 3034-H, p. 10; *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, p. 8; *Contra Costa*, *supra*, PERB Decision No. 2652, p. 18; *Sacramento*, *supra*, PERB Decision No. 2597, p. 11.) When an employer believes that a union has nonetheless sought confidential information beyond that to which it is entitled, the employer must offer to negotiate in good faith over potential accommodations. (*Regents*, *supra*, pp. 10-11; *City and County of San Francisco*, *supra*, pp. 8-9.) If the employer instead refuses to provide allegedly

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representatives indicated that the District would "provide the final report -- recommendation, report, and materials." This phrasing suggests that the District would provide the PDQs, as they qualify as "materials." Later in his testimony, Chiladakis opined: "Final reports often refer to supporting materials and don't necessarily include them." But when the Association's attorney asked Chiladakis if the District shared this notion with the Association, Chiladakis stated: "I don't remember, Counselor. It's been two years. I just don't remember that explicit conversation."

confidential information without offering to bargain, the employer is liable for a violation. (*Regents*, *supra*, pp. 10-11; *City and County of San Francisco*, *supra*, p. 9; *Tulare*, *supra*, PERB Decision No. 2697-M, pp. 13-14; *Contra Costa*, *supra*, pp. 18-20; *Sacramento*, *supra*, pp. 12-14.)

Established substantive standards govern the types of accommodation that are available through negotiation or, absent agreement, by order of PERB in an unfair practice case. These options include redactions, as well as confidentiality agreements or orders pursuant to which the union must limit its use of the information to a particular purpose, disclosing such information to union employees or attorneys only if necessary for that purpose. (*Regents*, *supra*, PERB Decision No. 3034-H, pp. 11-12; *Tulare*, *supra*, PERB Decision No. 2697-M, pp. 13-14; *Contra Costa*, PERB Decision No. 2652, *supra*, p. 19.)

Thus, if the employer offers to bargain over privacy concerns but the parties fail to reach an agreement despite good faith negotiations, the union can file an unfair practice charge asking PERB to evaluate the substantive merits of the union's information request and the employer's privacy defense. (*Regents*, *supra*, PERB Decision No. 3034-H, p. 11; *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, p. 9.) Where the employer raises a significant privacy interest—meaning a legally protected interest that the information request invades in a manner that is serious in both its nature and its scope—then a balancing test applies. (*Regents*, *supra*, p. 11; *City and County of San Francisco*, *supra*, p. 9; *Tulare*, *supra*, PERB Decision No. 2697-M, p. 13; *Contra Costa*, *supra*, PERB Decision No. 2652, p. 18.) Under this test, an employer has the burden to show that the privacy interest

outweighs the union's informational need. (*Regents*, *supra*, p. 11; *City and County of San Francisco*, *supra*, p. 10.) In close cases, PERB may tip the balance (or strengthen the balance in the union's favor) by directing the union to refrain from releasing the information other than as needed for specific purposes. (*Regents*, *supra*, p. 11; *City and County of San Francisco*, *supra*, p. 21.) Where privacy rights outweigh a requesting party's need for information, resulting redactions should be narrowly tailored to address the privacy rights at issue, and the redacting party should use de-identified placeholders to make the redacted information as useful as possible. (*Regents*, *supra*, p. 12; *City and County of San Francisco*, *supra*, p. 16; *Tulare*, *supra*, p. 14; *Sacramento*, *supra*, PERB Decision No. 2597, p. 13, fn. 7.)

Here, there are two independent reasons why the District's privacy defense fails. First, the District flatly denied the Association's RFI without offering to bargain over alleged confidentiality issues. This violates the MMBA "by converting the applicable procedure from a two-way negotiation to a unilateral decision." (*Tulare*, *supra*, PERB Decision No. 2697-M, p. 14; *Contra Costa*, *supra*, PERB Decision No. 2652, p. 19; S*acramento*, *supra*, PERB Decision No. 2597, p. 13; accord *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 9 & 13 [when an employer unilaterally states such a position without offering to bargain in good faith over accommodating all relevant interests, the employer violates its duty to bargain in good faith and no further analysis is necessary to establish liability].)

Second, there is no legal basis for concluding that the PDQs contain information that would be private even vis-à-vis the public; the information contained therein is not sensitive. This reality is all the more true when the requesting party is

the employees' exclusive representative, which has a broader right to the information than the public (see *ante* at p. 16), and which intends to use the information to aid the employees in question. (Cf. *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 15-16 ["[A]n employer interposing employees' alleged privacy interests is a particularly weak argument when it hinders the same employees from receiving assistance"].)

We place little weight on the fact that the District sought to encourage candid answers by promising employees and supervisors that their responses would be confidential. An employer normally does not create an RFI defense solely via the employer's own act. (*City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 11, 20.) Rather, an employer's promise of confidentiality typically becomes relevant only if grounded in a privacy right that already has a valid basis. (*Ibid*.) The District has not identified any such right, nor have we identified one.

There is no cause for us to apply the balancing test, both because the District did not offer to bargain over its asserted confidentiality concerns and because it failed to identify any privacy interest with a valid basis in law. And were we to reach that test, the outcome would be no different. The PDQs describe how public employees perform public work—their duties and the knowledge, skills, and abilities their positions require. Any privacy interest in that information is slight, and it is readily outweighed by the Association's substantial need for the PDQs to represent the very employees who completed them. (See *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 15-16.) Accordingly, the record cannot support any redaction; the Association is entitled to the PDQs in full.

For the foregoing reasons, the District violated the MMBA by failing to provide the requested PDQs.

III. Remedy

In cases involving failure to provide information, available remedies include a cease-and-desist order and an order to provide the requested information, as well as one or both of the following additional remedies that can be necessary to provide effective relief: (1) an order to provide an updated response to the requested information or records, upon request, given the passage of time; and (2) make-whole relief for wasted or diverted resources (if any) resulting from the violation, other than litigation expenses in the unfair practice case. (*City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 23-27.)

In this case, there is no cause to order an updated response to the Association's RFI, because there is no evidence of later classification studies, PDQs, or outlier lists. However, the other remedies noted above are appropriate. Three issues the Association raised in its exceptions warrant further discussion.

First, the Association is correct that the District should provide the full PDQs, without confidentiality protection. In those cases where an employer waives any privacy defense, but a valid third-party privacy interest nonetheless exists, we have remedial discretion to order accommodations that protect such legitimate third-party privacy interests. (See, e.g., *Regents*, *supra*, PERB Decision No. 3034-H, p. 15; *Tulare*, *supra*, PERB Decision No. 2697-M, p. 15; *Contra Costa*, *supra*, PERB Decision No. 2652, p. 20.) The ALJ invoked this principle in crafting the proposed

remedial order, but the principle has no bearing where, as here, there is no valid third-party privacy interest.

Second, we agree with the Association that the ALJ should have awarded make-whole relief. Such a remedy is typically appropriate if the charging party can prove that a statutory violation caused harm and it is reasonably feasible to estimate the monetary impact thereof. (*Palomar Health* (2024) PERB Decision No. 2895-M, pp. 65-66; *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 24-27; *City and County of San Francisco* (2023) PERB Decision No. 2858-M, pp. 15-17; *Alliance Judy Ivie Burton Technology Academy High School et al.* (2022) PERB Decision No. 2809, pp. 14, 31-32.) Accordingly, it is appropriate to order compensation to the extent a charging party can prove in compliance proceedings that it used more staff time or expended other resources because of an employer's refusal to provide information (excepting the expense of litigating the unfair practice case, which is a separate category discussed below). (*City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, p. 26.)

While a union has no duty to present such evidence prior to compliance proceedings, the Association has already presented evidence that it devoted staff time to gathering information from a significant number of bargaining unit members after the District refused to produce the PDQs. Compensating the Association for such staff time will help to dissipate the impact of the MMBA violation, which frustrated the Association's efforts to fulfill its representational duties. (*City and County of San Francisco*, *supra*, PERB Decision No. 2858-M, p. 17). In compliance proceedings, the Association will have the opportunity to present competent evidence allowing a

reasonable estimate of these damages. (*City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, pp. 25-26; *City and County of San Francisco*, *supra*, PERB Decision No. 2858-M, p. 17.)

Finally, we do not sustain the Association's claim for attorney fees and costs. Such an award is normally appropriate based upon proof that the opposing party submitted a brief, claim, argument, or defense that was without arguable merit and pursued in bad faith. (See *City and County of San Francisco*, *supra*, PERB Decision No. 2891-M, p. 24; *Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 11.) The Association cannot meet that standard, as the District's positions had arguable merit even though they were ultimately unsuccessful.

ORDER

Based upon the foregoing and the entire record in the case, the Public Employment Relations Board (PERB) finds that the Bay Area Air Quality Management District violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505, 3506, and 3506.5(a), (b) and (c), by failing and refusing to respond adequately to an information request from the Bay Area Air Quality Management District Employees' Association.

Pursuant to MMBA section 3509(b), we order that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing or refusing to provide the Bay Area Air Quality Management District Employees' Association with information that is relevant and necessary to the Associations representational responsibilities under the MMBA.

2. Interfering with protected rights of employees and the Association.

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

1. Provide the Association with the Position Description Questionnaires it requested in its information requests in August and September 2024.

2. Post at all locations where the District posts notices to employees represented by the Association copies of the Notice attached hereto as an Appendix. 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 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 used by the District to communicate with Association-represented employees.[5]

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

Members Paulson and Ortega joined in this Decision.

[5] 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 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. SF-CE-2243-M, *Bay Area Air Quality Management District Employees' Association v. Bay Area Air Quality Management District*, in which all parties had the right to participate, the Public Employment Relations Board (PERB) has found that the Bay Area Air Quality Management District violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by failing and refusing to respond adequately to an information request from the Bay Area Air Quality Management District Employees' Association.

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

A. CEASE AND DESIST FROM:

1. Failing or refusing to provide the Bay Area Air Quality Management District Employees' Association with information that is relevant and necessary to the Association's representational responsibilities under the MMBA.

2. Interfering with protected rights of employees and the Association.

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

Provide the Association with the Position Description Questionnaires it requested in its information requests in August and September 2024.

Dated: _____ Bay Area Air Quality Management District

By: _____
Authorized Agent

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