STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

INGLEWOOD TEACHERS ASSOCIATION, Charging Party, v. CHILDREN OF PROMISE PREPARATORY ACADEMY, Respondent.	Case Nos. LA-CE-5876-E LA-CE-6013-E PERB Order No. Ad-473 May 14, 2019

Appearance: Bartsch Law Group by Duane Bartsch, Attorney, for Children of Promise Preparatory Academy.

Before Banks, Shiners, and Krantz, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Children of Promise Preparatory Academy (COPPA) of an administrative determination (AD) of the Office of the General Counsel (OGC). The AD concluded that COPPA had not complied with the Board's order in *Children of Promise Preparatory Academy* (2018) PERB Decision No. 2558 (*Children of Promise*) because it refused to provide the Inglewood Teachers Association (ITA) with the home address and telephone number of all bargaining unit employees who had not filed an objection to the disclosure of such information prior to the date of the Board's decision on March 27, 2018. According to COPPA, it received a number of additional objections to disclosure of such personal information from bargaining unit members in the days immediately following the Board's decision. On this basis, COPPA contends it should not be required to furnish the

objectors' personal contact information to ITA. COPPA's premise is misplaced. As explained below, an unsolicited employee objection is valid on a prospective basis once submitted, but it cannot retroactively relieve an employer of its obligation to provide information in response to a request that pre-dated submission of the employee's objection. We therefore agree with the AD that COPPA has not complied with the Board's order.

PROCEDURAL AND FACTUAL HISTORY

The Board issued *Children of Promise* on March 27, 2018.[1] In pertinent part, we found that COPPA violated Educational Employment Relations Act (EERA)[2] section 3543.5 by failing to provide ITA with the personal contact information of bargaining unit members who had not objected to the disclosure of such information. Applying the balancing test laid out in our case law and affirmed by the California Supreme Court in *County of Los Angeles v. Los Angeles County Employee Relations Commission* (2013) 56 Cal.4th 905, we agreed with the proposed decision's conclusion (to which no party excepted) that ITA had a presumptive right to the personal contact information of bargaining unit members, but that "the balance [of the relevant interests] weighed in favor of protecting the privacy of those employees who requested non-disclosure." (*Children of Promise, supra*, PERB Decision No. 2558, p. 31.) As a remedy, the Board ordered COPPA to furnish ITA with "an up-to-date list of the home addresses and telephone numbers of bargaining unit members who have not objected to the disclosure of their home contact information." (*Id.* at p. 37.)

After the time for appeal of the Board's decision and order expired, this matter was remanded to OGC for compliance proceedings. On July 23, OGC requested that COPPA

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[1] All additional dates refer to 2018 unless otherwise noted.

[2] EERA is codified at Government Code section 3540 et seq.

provide a statement of compliance certifying that it had furnished to ITA the information specified in the Board's order. In its August 2 response, COPPA provided OGC with a copy of a letter it sent to ITA on April 6, containing the names of 15 bargaining unit members and stating that "each of the above-named [unit members] have [sic] objected in writing to the disclosure of their home addresses and telephone numbers." COPPA included copies of the bargaining unit members' written objections. Some were handwritten and some were typed. Nine objections were dated April 6, one was dated April 5, and four were undated. The handwritten statements contained language such as, "I do not authorize my address or phone number to be released," "Please do not release my personal information," "Please do not disclose my information to the Inglewood Teachers Union," or words to similar effect. The typed statements contained the following:

> This is to inform you that I, [first and last name] do not allow Children of Promise Preparatory Academy Charter School to disclose my personal information to the Inglewood Teacher Association Union and or its representatives.

ITA filed a responsive position statement on August 29, in which it claimed COPPA had "apparently solicited from each of its employees" an objection to the release of personal information, and further that ITA had no way to contact these unit members without this information. ITA furnished no evidence in support of these contentions.

After further communications with COPPA's counsel, OGC issued the AD on January 14, 2019, concluding that the Board's decision and order in *Children of Promise* permitted COPPA to withhold only the personal contact information of those bargaining unit employees who had filed written objections before March 27, 2018. Finding none of the 15 written objections "demonstrate[d] that any of the [bargaining unit members] *had objected* to

the disclosure of their home contact information prior to" that date, OGC determined that COPPA had failed to comply with the Board's order.

COPPA filed this appeal on January 23, 2019. ITA did not file a response.

DISCUSSION

The Board's remedial order in *Children of Promise* required COPPA to provide ITA with "an up-to-date list of the home addresses and telephone numbers of bargaining unit members who have not objected to the disclosure of their home contact information." (*Children of Promise, supra*, PERB Decision No. 2558, p. 37.) This order resulted from our determination that, on the facts of this case, the balance of interests weighed in favor of protecting the privacy of bargaining unit employees who had objected to the release of their personal information to ITA.

After issuance of the Board's decision, additional bargaining unit members filed objections to the release of their personal information. There is no evidence that COPPA solicited these objections, asked employees if they preferred to share or shield their contact information, or otherwise took actions to interfere with or undermine ITA's right to obtain unit members' personal contact information. In the absence of such evidence, the only question presented is whether to give effect to unsolicited employee objections submitted *after* COPPA already had an obligation to provide the information. Giving effect to such objections would allow an employer's unlawful delay in providing information–in this case for multiple years–to lawfully prejudice the requesting union. COPPA's position therefore contravenes the principle that when we find an employer has unlawfully refused to provide requested information, we order the employer to provide the requested information based upon its duties as of the time its obligation to provide the information arose, irrespective of whether intervening events may

have created new potential defenses to providing the requested information. (*State of California (Department of State Hospitals)* (2018) PERB Decision No. 2568-S, pp. 14-17 [judicial appeal pending]; *Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 23; *Trustees of the California State University* (1987) PERB Decision No. 613-H, p. 22.) Accordingly, we decline to give effect to the objections attached to COPPA's August 2, 2018 response to the OGC's request for a statement of compliance.

To effectuate the purposes of EERA and avoid ITA suffering prejudice from COPPA's EERA violation, particularly in light of the delay inherent in litigation, we clarify our prior order as follows. COPPA must honor objections from bargaining unit members who were employed when ITA made its requests only if such objections were submitted prior to ITA's requests. In contrast, for bargaining unit members hired after ITA's requests, COPPA's duty to provide personal contact information arose for the first time on March 27, 2018,[3] meaning that for this subgroup of employees COPPA must honor any objections submitted at any time prior to March 27, 2018, but not objections submitted thereafter.[4]

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[3] Government Code section 3558, which took effect on June 27, 2017, imposed new disclosure obligations on COPPA with respect to employees' personal contact information. However, our March 27, 2018 order was narrowly tailored to remedy only the unlawful conduct in this case, all of which occurred prior to section 3558's effective date. Nothing in either of our decisions in this case is intended to add to, or subtract from, the parties' entirely separate rights and obligations under section 3558.

[4] It is of no moment to what extent particular employees may or may not have been familiar with their right to submit objections, as ignorance of the law is not a relevant factor. (*Children of Promise, supra,* PERB Decision No. 2558, p. 25.) Moreover, some bargaining unit employees were aware of their right to submit objections prior to ITA's requests, as shown by the objections they submitted in that timeframe. For these reasons, the AD correctly rejected COPPA's argument that employees could not object to disclosure until after we issued our March 27, 2018 order.

ORDER

The appeal filed by Children of Promise Preparatory Academy to the January 17, 2019 administrative determination is DENIED. The Board REMANDS this matter to the Office of the General Counsel for further compliance proceedings consistent with this Decision.

Members Shiners and Krantz joined in this Decision.