STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CHILDREN OF PROMISE PREPARATORY ACADEMY, Employer, and GROUP OF EMPLOYEES, Petitioner, and INGLEWOOD TEACHERS ASSOCIATION, Exclusive Representative.	Case Nos. LA-DP-403-E LA-CE-6013-E PERB Order No. Ad-428 June 29, 2015

Appearances: Bartsch & Haven by Duane L. Bartsch, Attorney, for Children of Promise Preparatory Academy; Stephanie J. Moore, Lead Petitioner, for Group of Employees; California Teachers Association by Jean Shin, Attorney, for Inglewood Teachers Association.

Before Huguenin, Winslow and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by a Group of Employees (Petitioners) and the Children of Promise Preparatory Academy (Academy) of an administrative determination (attached) by a PERB Board agent staying a decertification election challenging the status of the Inglewood Teachers Association (Association) as the exclusive representative of the Academy's certificated personnel.

We have reviewed the entire record in this matter and find the Board agent's administrative determination to be well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, we adopt the Board agent's administrative

determination as the decision of the Board itself, subject to our discussion below of the issues raised on appeal.

FACTUAL BACKGROUND

The Academy is a public school employer within the meaning of section 3540.1(d) of the Educational Employment Relations Act (EERA).[1] The Association is an "employee organization" within the meaning of EERA section 3540.1(k). The Petitioners are a "group of employees" within the meaning of PERB Regulation 32770(a).[2]

On November 6, 2013, the Board issued its decision in *Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402 affirming a Board agent's determination in Case No. LA-RR-1213-E certifying the Association as the exclusive representative of the Academy's non-managerial, non-supervisory, and non-confidential certificated personnel.

On December 11, 2013, the Association filed an unfair practice charge against the Academy. The Association's unfair practice charge alleges that the Academy has failed and refused to bargain in good faith in violation of EERA section 3543.5(c).[3] Specifically, the Association alleges that the Academy refused to provide employee contact information, copies of certificated employee contracts and certificated employee evaluation rubrics. The Association also alleges that the Academy proposed presumptively unacceptable terms, submitted proposals it did not intend to agree to and focused bargaining discussion on far-fetched hypotheticals rather than generally applicable terms or policies.

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[1] EERA is codified at Government Code section 3450 et seq.

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

[3] As of the date of this decision, Case No. LA-CE-5876-E is pending before a PERB administrative law judge.

On January 29, 2015, Petitioners filed a decertification petition seeking to remove the Association as the exclusive bargaining representative of the Academy's certificated personnel. On March 16, 2015, a PERB Board agent informed the parties that the decertification petition was timely filed, that Petitioners had submitted sufficient proof of support and that the parties would be contacted to discuss the mechanics of a decertification election.

On March 25, 2015, the Association filed another unfair practice charge and requested a stay of the decertification election. The Association's charge alleges that the Academy has failed and refused to provide employee contact information and information necessary to bargaining, and refused to negotiate in good faith with the Association. Additionally, the Association asserts that the allegations of bad faith in its prior and now pending unfair practice charge also provide reasons to stay the decertification election.

Stay Order

On May 12, 2015, a Board agent issued an administrative determination granting the Association's request to stay the decertification election. In doing so, the Board agent considered the Association's unfair practice allegations against the Academy and the three parties' positions regarding the Association's request for stay.

The Board agent noted that the issue was whether the unfair practices alleged by the Association were such that, if true, the unlawful conduct would so affect the election process as to prevent employees from freely selecting their exclusive representative.[4] As the Board agent noted, PERB's blocking charge rule is not applied mechanically, but determined on a

[4] Under PERB Regulation 32752:

> The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. . . .

case-by-case basis (*Pleasant Valley Elementary School District* (1984) PERB Decision No. 380 (*Pleasant Valley*)); a primary goal of EERA is to provide a uniform basis for recognizing the right of employees to join organizations of their own choice, free from the possible taint of an employer's unfair practices (*Jefferson School District* (1979) PERB Order No. Ad-66); and the role of the Board agent is to determine whether the facts alleged in the charge, if true, would likely have an effect on the vote of the employees and, therefore, influence the outcome of the election (*Pleasant Valley*, *supra*, PERB Decision No. 380, p. 5). (Administrative Determination, p. 15.)

The Board agent next examined the Association's primary allegations, viz., the Academy: (1) refused to provide requested contact information for its bargaining unit members; (2) refused to provide information relevant to bargaining; and (3) refused to bargain in good faith. The Board agent determined that a refusal to provide contact information could alert employees to a contentious relationship between the employer and the exclusive representative which, in turn, could disrupt employee morale and deter employees from participating in union activity. Moreover, the lack of traditional contact information could force the union to attempt other, more intrusive, means of communication with its bargaining unit members which could negatively impact the relationship between the Association and its members. (Administrative Determination, p. 20.)

The Board agent also determined that a refusal to provide copies of the performance evaluation rubric used by the Academy and copies of current employee contracts would impede the Association's ability to negotiate effectively which would make the Association appear weak and ineffective and thereby affect the employees' exercise of free choice. The Board agent also determined that it was appropriate to stay a decertification election where there is an allegation that the employer refused to bargain in good faith, "since that conduct by

its very nature undercuts support for an individual union or unions in general, and renders a fair election impossible." (*Grenada Elementary School District* (1984) PERB Decision No. 387, p. 9 (*Grenada*); Administrative Determination, pp. 21-22.)

Finally, the Board agent addressed opposition to the Association's stay request. The lead petitioner opposed the stay request arguing that the Association had engaged in regressive bargaining and had sufficient access to bargaining unit members. The lead petitioner also asserted that the decertification vote should not be linked to the pending unfair practice litigation between the Association and the Academy. The Board agent rejected both arguments on the basis that a petitioner's motivation in seeking decertification is not determinative "because the relevant question is not the reasons the petition was filed, but whether the alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice." (Administrative Determination, p. 23, citing *Regents of the University of California* (1984) PERB Decision No. 381-H (*Regents*) and *Grenada, supra*, PERB Decision No. 387.)

The Academy opposed the blocking charge on the grounds that the Association's allegations were pretextual and false. The Board agent rejected the Academy's assertion that the blocking charge was pretextual because PERB regulations specifically allow an election to be stayed based on a finding that alleged unlawful conduct would prevent employees from exercising free choice. The Board agent also rejected the Academy's assertion that the Association's claims were false on the basis that her role was not to resolve factual disputes and she was bound to accept the charging party's allegations as true for the purpose of assessing the likely impact on employee free choice. (Administrative Determination, p. 24, citing *Golden Plains Unified School District* (2002) PERB Decision No. 1489 (*Golden Plains*).)

The Board agent thus applied PERB's blocking charge rule and granted the Association's request for a stay of the decertification election pending resolution of the unfair practice charge. (Administrative Determination, p. 26.)

Appeals

The Petitioners seeking decertification and the Academy both have filed appeals of the Board agent's determination.

The Petitioners request that the Board rescind the stay of the decertification vote on the basis that: (1) the decertification vote is a separate issue from the pending litigation between the Association and the Academy; (2) the Association has been able to contact the bargaining unit members; (3) staff turnover at the Academy had brought support for the Association into question; (4) the Association has created a contentious atmosphere at the Academy; and (5) union presence has been costly and shifted focus away from education.

In its appeal the Academy challenges the Board agent's reasoning. The Academy alleges that the Association has engaged in hostile behavior during negotiations which the Board agent determined was

> not necessarily indicative of bad faith because "'disputes over wages, hours, and working conditions are among the disputes most likely to engender ill feelings and strong responses' [and] the parties are afforded wide latitude to engage in 'uninhibited, robust, and wide-open debate' in the course of those disputes."

(Administrative Determination, p. 25, quoting *City of Oakland (Lewis)* (2014) PERB Decision No. 2387-M.)

The Academy also asserts that the Board agent had determined that the Academy had engaged in bad faith bargaining when it was seeking clarification of the Association's position on bypassing disciplinary proceedings to allow immediate termination under certain circumstances.

Further, the Academy asserts that it did not impede Association access to bargaining unit members and was prohibited from supplying addresses and phone numbers for many bargaining unit members under Government Code section 6254.3(b) because those employees had submitted written requests that such contact information not be divulged to the Association.

Lastly, the Academy asserts that it provided the Association with the contract and evaluation information it requested, and therefore the Board agent had no basis for determining that a stay of the decertification election was proper based on the Academy's refusal to provide such information.

Association's Response

The Association filed a response to the appeals taken by Petitioners and the Academy and urges that none of the claims asserted by either of the two appellants provides a basis for reversing the administrative decision. First, the Association urges that even if the Academy's allegation that the Association engaged in hostile behavior during negotiations were true, this would not justify the Academy's own refusal to bargain. The Association also points out that the Academy never brought an unfair practice charge against the Association over the allegedly hostile behavior.

Second, urges the Association, the Academy's assertions in defense of its failure to supply the Association unit member contact information and information relevant to bargaining do not justify the Academy's failure and refusal to supply that information, nor do the Academy's assertions provide a basis to rescind the stay of the decertification election. As to the teacher contact information, the Association notes that the teachers' requests that the contact information not be divulged were first submitted along with the Academy's response to the unfair practice charge. Since the Association's request for the contact information

preceded the unfair practice charge by nearly two months, the teachers' requests that the information not be divulged provided no justification for the Academy's failure to respond to the request during the intervening period. Evidence submitted by the Academy in its opposition to the Association's request for a stay indicated that the earliest requests from certificated personnel that their contact information not be divulged to the Association were dated in early November of 2014 whereas the Association alleges that it requested the contact information in late September of 2014. Moreover, adds the Association, the Academy's contentions regarding the Association's information requests present disputed facts or conflicting theories of law which may not be resolved at this stage in the proceedings.

Citing *Grenada, supra*, PERB Decision No. 387, p. 9, the Association asserts that the request that the decertification petition be evaluated without regard to the pending unfair practice charges contravenes the law. Moreover, the Association contends that Petitioners' factual disputes do not provide a basis for rescinding the stay of election because a charging party's factual allegations must be assumed as true at this stage in the proceedings. Lastly, the Association contends that Petitioners failed to identify any mistake of law or reasoning in the administrative determination that would justify a reversal of that determination.

Therefore, the Association asks that we affirm the Board agent's determination.

DISCUSSION

Standard of Review

When reviewing a Board agent's determination to stay or conduct a decertification election, the proper inquiry on appeal is whether the Board agent abused his or her discretion. (*Jefferson School District* (1980) PERB Order No. Ad-82, p. 8.) The Board will generally defer to the conclusions reached by its agent if it finds the conclusions supported by facts developed during the course of a properly conducted investigation. (*Pleasant Valley, supra,*

PERB Decision No. 380.) The Board agent's determination should be the result of sufficient investigation and analysis of the allegations and the potential impact on the employees in the unit. (*Regents, supra,* PERB Decision No. 381-H.)

Stay Requests

As noted above, PERB Regulation 32752 allows the Board to stay a representation election pending the resolution of an unfair practice charge and a finding that the alleged unlawful conduct could prevent the employees from exercising free choice. In making this determination, the Board does not resolve factual disputes. Factual disputes and competing legal theories are resolved through the hearing process after issuance of a complaint. (*Eastside Union School District* (1984) PERB Decision No. 466, pp. 6-7.) Rather, at this stage in the proceedings and for the purpose of making our determination, the Board assumes that the essential facts alleged in the charge are true. (*Golden Plains, supra,* PERB Decision No. 1489, p. 6; *Grenada, supra,* PERB Decision No. 387, p. 14.) The relevant inquiry for determining whether to grant a stay of a representation election is whether the facts alleged in the unfair practice charge, if true, would likely affect the vote of employees, and, thus, the outcome of the election. (*Pleasant Valley, supra,* PERB Decision No. 380, p. 5.) The Board's analysis must examine the conduct alleged and determine whether it is "of such character and seriousness that, if it were proven to have occurred, it would be reasonable to infer that it would contribute to employee dissatisfaction and hence prevent a fair election." (*Regents, supra,* PERB Decision No. 381-H, p. 6.)

Applying the above standards to the present case, we affirm the Board agent's determination to stay the decertification election. In conducting her investigation the Board agent received written responses from all concerned parties on whether the election should be stayed. Following the responses submitted by the interested parties, the Board agent prepared

a thorough and detailed analysis of the allegations in the underlying unfair practice charge, the additional evidence supplied by the parties in their responses to the request for stay and the impact of the Academy's alleged misconduct on the Association's bargaining unit members.

While Petitioners and the Academy dispute some of the facts relied on by the Board agent, those facts were provided by the Association primarily through its unfair practice charge. Board precedent is very clear that the Board agent must assume that the essential facts alleged in the charge are true. If the Board agent's investigation reveals conflicting issues of material fact, the conflict must be resolved via PERB's hearing process; the Board agent may not resolve the conflict at the investigation stage. (*Sacramento City Unified School District* (2010) PERB Decision No. 2129.)

While the Academy contends that the Board agent's reasoning was "faulty" regarding allegedly hostile behavior engaged in by the Association, the Academy did not explain how that behavior justified its own allegedly unlawful behavior or why the Board agent's reasoning on that point is sufficient to reverse her decision that the decertification election should be stayed.

Neither the Petitioners nor the Academy has identified an error of law in the Board agent's determination. We conclude that the Board agent correctly stated the law, cited to appropriate PERB precedent and properly applied the law. Her conclusions are supported by the record. Therefore, we decline to set aside the Board agent's determination and, instead, adopt it as the decision of the Board itself.

ORDER

The Board agent's administrative determination in Case Nos. LA-DP-403-E and LA-CE-6013-E is hereby AFFIRMED.

Members Winslow and Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

CHILDREN OF PROMISE PREPARATORY ACADEMY, Employer, and GROUP OF EMPLOYEES, Petitioner, and INGLEWOOD TEACHERS ASSOCIATION, Exclusive Representative.	REPRESENTATION CASE NO. LA-DP-403-E UNFAIR PRACTICE CHARGE NO. LA-CE-6013-E ADMINISTRATIVE DETERMINATION (May 12, 2015)

Appearances: Stephanie J. Moore, Teacher, for the Group of Employees; Duane Bartsch, Attorney, for the Children of Promise Preparatory Academy; Jean Shin, Attorney, for the Inglewood Teachers Association.

Before Mary Weiss, Senior Regional Attorney.

INTRODUCTION

This is the administrative determination of an election stay request by the Inglewood Teachers Association (Association) in the pending decertification petition filed by a Group of Employees (Petitioner) on January 29, 2015. This Determination sets forth background information, a description of the unfair practice charge seeking to block the decertification petition, the parties' positions concerning the blocking charge, the applicable law for evaluating a blocking charge, application of the law to the allegations contained in the blocking charge and consideration of the parties' positions, and the resultant determination that the request to stay the decertification election is GRANTED.

BACKGROUND[1]

On January 18, 2013, the Association filed representation petition LA-RR-1213-E, seeking certification of a unit of certificated teachers employed at the Children of Promise Preparatory Academy (Academy). The Academy denied the representation petition on the ground that the unit was inappropriate. PERB issued an Order to Show Cause (OSC), which included an explanation that the proposed unit of certificated teachers is presumed appropriate under relevant caselaw. The OSC provided the Academy with the opportunity to show cause as to the reasons why PERB should not certify the Association as the exclusive representative of the proposed unit. Upon submission of briefs by both the Academy and the Association in response to the OSC, the Board agent determined that a formal hearing was unnecessary because the Academy failed to overcome the presumption that the petitioned for unit was appropriate. On August 5, 2013, the Board agent rendered an administrative determination finding that the petitioned for unit was appropriate and certifying the Association as the exclusive representative of certificated Academy employees, effective August 5, 2013.

The Academy appealed the Board agent's administrative determination on several grounds and also requested a stay. On October 4, 2013, the Board denied the Academy's request for a stay. (*Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-401.) On November 6, 2013, the Board issued *Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402, affirming the Board agent's administrative determination certifying the Association, effective August 5, 2013.

On December 11, 2013, the Association filed Unfair Practice Charge No. LA-CE-5876-E, alleging that the Academy had engaged in bad faith bargaining by refusing to bargain and

[1] Many of the background facts summarized herein are found in *Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402.

by refusing to provide requested information. PERB issued a complaint and the matter proceeded to a hearing before a PERB Administrative Law Judge (ALJ).[2] The matter has been fully briefed and submitted to the ALJ for a decision.

On January 29, 2015, the Petitioner—a group of employees—filed the decertification petition that is at issue here; the petition contends there was no agreement in effect between the

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[2] The complaint issued in LA-CE-5876-E is a public record and PERB may take notice of its contents. (*County of Riverside* (2012) PERB Decision No. 2280-M.) The complaint alleges the following:

> 3. On August 28, 2013 and September 19, 2013, Charging Party sun shined an initial proposal and requested that Respondent meet with Charging Party to negotiate an initial contract.
>
> 4. On September 23, 2013, Respondent, acting through its agent Carleton Lincoln, stated it was "premature" to bargain "[g]iven the outstanding appeal."
>
> 5. By the acts and conduct described in paragraph 4, Respondent failed and refused to bargain in good faith with Charging Party in violation of Government Code section 3543.5(c).
>
> [¶ . . . ¶]
>
> 9. On or about December 18, 2013, Charging Party requested [enumerated] information that is relevant and necessary to Charging Party's discharge of its duty to represent employees[.]
>
> 10. On or about December 24, 2013, Respondent, acting through its legal counsel Duane Bartsch, asserted "[t]he Education Employment Act applies to charter schools such as the Academy, but does not require disclosure of the information you seek." Respondent has failed to provide Charging Party with any of the information it had requested.
>
> 11. By the conduct described in paragraph 10, Respondent failed and refused to meet and negotiate in good faith with Charging Party in violation of Government Code section 3543.5(c).

Association and the Academy. On February 9, 2015, the Academy filed a letter confirming there is no agreement between the employer and the exclusive representative, and provided a list of all twelve bargaining unit employees. On March 11, 2015, the Association filed a letter asserting that the Academy had "engaged in persistent and egregious unlawful behavior" from the date of "certification of the Association and continuing to the [present] day" by refusing to provide the names and contact information of unit members to the Association, and by refusing to meet and confer in good faith.

On March 16, 2015, the undersigned Board agent issued a letter to the parties informing them that the decertification petition was timely filed, that the proof of support submitted by the Petitioner was sufficient and that the parties would soon be contacted to discuss the mechanics of an election. (PERB Regulations 32776, subd. (c), 32770, subd. (b)(1).)[3]

BLOCKING CHARGE

On March 25, 2015, the Association filed Unfair Practice Charge No. LA-CE-6013-E seeking a stay of the decertification election. The charge contends that the Academy refused to provide employee contact information, refused to provide information necessary to bargaining and refused to negotiate in good faith with the Association. The Association asserts that earlier allegations of bad faith contained in Unfair Practice Charge No. LA-CE-5876-E also provide reasons to stay the decertification election.

Refusal to Provide Employee Contact Information and Bargaining Information

[3] PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq. The text of PERB's Regulations may be found at www.perb.ca.gov.

The Association states that on or about September 29, 2014,[4] Association Representative Andrew Staiano (Staiano) met with Academy Chief Executive Officer Carleton Lincoln (Lincoln), Academy Administrator Trena Thompson (Thompson) and Academy legal representative Duane Bartsch (Bartsch). Staiano requested the names, home addresses, and telephone numbers for all bargaining unit members. Lincoln and Thompson agreed to provide the information. During the same meeting, Staiano requested a copy of the employee performance evaluation currently in use by the Academy and a copy of any current employment agreements in use by the Academy. The Academy did not provide any of the requested information.

The Association states that on October 6, and again on October 22, Staiano sent an electronic mail (e-mail) message to Lincoln and Thompson reiterating his request for a copy of the employee performance evaluation form and employment agreements currently in use by the Academy. The Academy did not respond to the email, nor did it provide the requested documents.

The Association asserts that on October 28, Staiano sent an e-mail message to Bartsch, Lincoln, and Thompson reiterating the request for contact information and requesting a copy of the employment agreements currently in use by the Academy. There was no response to Staiano's e-mail message.

The Association contends that on November 5, Staiano sent another e-mail message to Bartsch, Lincoln, and Thompson and reiterated the request for contact information and the employment agreements. There was no response to Staiano's e-mail message.

[4] All subsequent dates refer to 2014 unless otherwise specified.

The Association states that the parties met on November 6, and Bartsch stated that the Academy would not provide mailing addresses or phone numbers of bargaining unit employees because the Academy already produced e-mail addresses for some bargaining unit members in August, and the Academy had no obligation to provide mailing addresses or phone numbers. The Association further contends that Staiano responded that the list of names and e-mail addresses was incomplete and that the Association was entitled to phone numbers and mailing addresses. According to the Association, Lincoln stated that the Academy would provide the requested information.

The Association alleges that on November 11, Bartsch sent an e-mail message to Staiano stating that he believed that the Academy did not have an obligation to provide bargaining unit members' mailing addresses and phone numbers to the Association. Bartsch cited Government Code section 6254.3 and the provisions prohibiting a school district from disclosing an employee's home address or home telephone number upon written request of any employee.

According to the charge, Staiano responded to Bartsch on November 13, and asserted that the Association was entitled to the mailing addresses and telephone numbers of bargaining unit members.

The charge further states that on November 21, Bartsch sent an e-mail message to Staiano, which included the mailing addresses and phone numbers of two bargaining unit members. The charge further contends that Bartsch had not asserted that the other employees had provided written requests not to disclose contact information.

Refusal to Negotiate in Good Faith

The Association asserts that during the parties' meeting on September 29, the parties discussed the Academy's bargaining proposal. The Association further contends that the Academy "proposed presumptively unacceptable terms, including numerous terms that waived the Association's right to bargain over matters within the scope of representation." The Association further states that the Academy's bargaining proposal "referenced decertification of the Association" and was "insulting or hostile to the Association." The Association also contends that part of the Academy's September 29 proposal were terms governing the work calendar for bargaining unit employees and that the Association considered the calendar proposal in good faith, and the parties discussed the calendar for several hours. The Association further claims that "[a]bout four hours after negotiations on this proposal had begun, [the Academy] revealed that the written terms under discussion did not reflect [the Academy's] actual intentions. In other words, [the Academy] revealed that it would not agree to its own proposal regarding the work year for bargaining unit employees. [The Academy's] retraction of its own proposal derailed negotiations and wasted time."

The Association asserts that during the parties' meeting on November 6, it attempted to discuss its proposals for grievances and discipline, but the Academy bargaining team refused to discuss generally-applicable terms or policies and "[i]nstead" "repeatedly brought up highly specific, far-fetched hypotheticals and insisted on discussing them individually. For example, the [Academy] bargaining team insisted on discussing how the [Academy] should handle . . . scenarios, such as 'if a teacher walks into my office and shows me pictures of child porn on her phone' or 'if a teacher shoots another teacher in the face in the school parking lot.' This had

the effect of derailing the discussion, and made it impossible for the parties to negotiate a generally-applicable disciplinary policy."

The Association further contends that at the November 6 meeting, the parties reached a verbal agreement on a recognition clause, but the Academy "refused to sign off on the article or to execute a tentative agreement."

PARTIES' POSITIONS CONCERNING THE BLOCKING CHARGE

On April 3, 2015, the undersigned contacted the Petitioner, the Academy and the Association and provided each of them until April 13, 2015, to provide a response to the blocking charge.

Petitioner filed a response to the blocking charge requesting that the decertification election be allowed to proceed and that PERB deny the Association's request to block or postpone the vote. Petitioner asserts the Association is "interfer[ing] with the election process by preventing a true exercise of the free choice among bargaining members." Petitioner further asserts:

> [T]his vote is a separate issue from the issue that [the] Association is bringing up as a reason to postpone the vote. Our voting should not be linked to the litigation that [the Association and the Academy] are currently involved in. I do not think it is fair to the teachers that [the Association] is claiming to help protect so I am asking that you not consider the [Association's] request. [It] feel[s] that this is an attack against teachers and in retaliation for the decertification petition. I really believe that this request is an attempt by CTA and Inglewood Teachers Association to put off the vote for as long as they can in order to bully the teachers or wear us down until we drop the decertification. They think that if they can tie us to other decisions that may or may not be made in their favor, then they can waste our time and eventually stop the decertification. We are not [Academy] administration. We are a group of teachers who do not want a union. We are not going to go away or be worn down. We do not want to be forced to get a lawyer of our own but if we have to, we will. We thought that PERB was

> neutral and that if we followed the rules, filled out the petition, and sent in the paper work we could take an official vote. I am asking PERB to honor that.

Petitioner further states:

> [T]the claims made [by the Association] are not all true. [T]he [Association] lawyer says that, "[the Academy] impeded and prevented the [] Association from communicating with its bargaining unit members by unlawfully withholding the names and contact information of bargaining unit members." Last year, I was inundated with union emails, flyers and communication that I did not want, none of which was impeded by [the Academy]. How did they get my information if it wasn't given to them? There were also several meetings both on and off campus that were attended by teachers. If they did not have access, why were they on and off campus meeting? Towards the end of last year it seems to me that there was a meeting every week. They also met with teachers who were there to support them at meetings between the school and union. How much more unimpeded access did they want?
>
> This year there have been emails, a flyer, invitations to meet and greets, phone calls and site visits. Again, if they did not have access, then how did they get this information to us? How did they get on campus? They had access. What they did not have was the interest of this year's teachers to be accessed. The school did not impede communication. Each teacher made his or her own decision to be or not to be bothered or participate.

According to Petitioner, another untruth made by the Association in the blocking charge is that the Academy "participated in 'regressive bargaining practices'":

> Last year it was the union if anyone, who engaged in regressive bargaining practices. In the emails that I received it was the union representative who reverted to name calling, slurs, worn out negotiation jargon, all of which was sent via email to all staff members and even former staff members who no longer worked at the school. Then they all shared laughs and jokes based on what was sent and emailed it all about. It was also a union negotiator who invited a lawyer to "take it to the parking lot," (I am assuming to fight) at a public meeting in which parents, community, teachers, children and staff were all there to witness it. They are now using these practices on me and my colleagues who signed the petition. They would assert and have you believe

> that we are so weak minded and afraid of our bosses that we cannot vote for ourselves, that there are others who really want the union but can't speak up for themselves. That there are those who don't want to see this vote. This is condescending and insulting. But even if any of this were so, we should all still get the chance to vote one way or the other. In 2015, why should I have to beg to vote, prove that I should have the opportunity?...

Petitioner further states:

> What it boils down to is that we have an undue burden of proving that we are competent enough to vote and in union eyes the only way to do that is to be subject to them. Is this fair? I am asking you to not block or postpone our vote, and that you schedule it so that we can officially decide once and for all whether we want to have [the] Association represent us or not. I am asking you to keep this decision the separate issue that it is. We are not being coerced into this decision. We are being coerced by the union against voting. Let us vote, then PERB, Inglewood Teachers Association and Children of Promise can move forward and get our focus back on the students. We should not have to wait on that. PERB has already decided that I fil[]ed the proper papers in the proper time. Now let us take the vote.

The Academy filed a response to the blocking charge on April 13, 2015. The Academy asserts that the Association's blocking charge should be denied, because it is just a "pre-text" and the Association's "true purpose in filing the [Charge] is to prevent the teachers from voting to decide whether to stay with the Union." The Academy further alleges that the Association's claims are false and there is no cause to stay the teachers' election to decertify the Association.

The Academy further states that "[e]arlier," it provided e-mail addresses to the Association, but some teachers "complained to the Academy about the emails that Union representative Andrew Staiano was sending to the teachers." The Academy further contends that in September, "the Union representative physically entered the Academy with the Academy's permission and waited outside each teacher's classroom so that the Union representative could 'personally speak' with the teacher. Several teachers considered this

borderline harassment and again complained to the Academy." Thereafter, nine teachers "made written and signed requests that the Academy not turn over their home addresses and home telephone numbers to the union." Attached to the Academy's response to the blocking charge are nine written requests from teachers that the Academy not share personal contact information. Five of the attached requests are dated November 7, one is dated November 12, and one is dated November 14. Two requests are undated. The Academy asserts that it did not provide employee home addresses and phone numbers, because it was prohibited from doing so by Government Code section 6254.3. The Academy alleges it provided the contact information of two teachers who "did not make written requests to invoke their privacy rights."

The Academy contends that it provided all information requested relevant to bargaining when it provided Staiano a blank teacher contract on November 6. The Academy provides the sworn affidavits of witnesses to this event. The Academy also claims that the Academy "does not specifically recall whether the evaluation rubric was photocopied along with the teacher contract and handed to the Union with the teacher contract," but, because the Association "did not ask again for the evaluation rubric after the November 6th bargaining session," it presumably "received a copy of the evaluation rubric along with the teacher contract." [5]

The Academy contends that the Association falsely claims that the Academy refused to meet and confer in good faith. It states "[t]he union claims that the Academy's positions are 'insulting or hostile' to the Union[] [b]ut it was the Union President who called the Academy's counsel a 'dick.' And it was the Union representative who challenged the Academy's counsel

[5] The undated declaration of Thompson additionally asserts: "In September 2014, the Union representative, Andrew Staiano, physically entered the Children of Promise Preparatory Academy with permission and waited outside each female teachers' classroom so that Andrew Staiano could personally speak with the teachers. [¶] Several teachers told me that they considered this borderline harassment and complained."

to a fight." With regards to the hypotheticals posed by the Academy during negotiations over grievances and discipline, the Academy states that it learned from posing these hypotheticals to the Association that "the Union will never agree that an employee can ever be immediately terminated for anything. And that seems to be in bad faith." The Academy further states: "The Union makes much of the fact that the Academy has tentatively agreed to provisions but has not signed these provisions. But the Union has never cited a case, statute or regulation requiring one party to a negotiation to sign piecemeal provisions."

The Academy further states that the Board should not stay the election, because the Academy has not committed any unfair practice and has not attempted to prevent the teachers from exercising free choice. Finally, the Academy contends the Association's "objective is to deny teachers their free choice to decide whether to stay with the Union."

The Association contends its request for a stay pending the outcome of its blocking charge should be granted because "the employee dissatisfaction behind this decertification petition was directly caused by [the Academy's] unlawful actions. Allowing an election to proceed on this decertification petition would reward [the Academy's] illegal conduct and thwart the exercise of true employee free choice. PERB should therefore stay the election in this case pending resolution of the unfair practice charges that have been filed against [the Academy]."

ISSUE

Would the unfair practices allegedly committed by the Academy so affect the election process as to prevent the employees from freely selecting their exclusive representative?

CONCLUSIONS OF LAW

The Educational Employment Relations Act (EERA), codified at Government Code section 3540 et seq. contains the following express purpose:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

Section 3543, subdivision (a), provides that "[p]ublic school employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations." Pursuant to PERB Regulations 32720 and 33490,[6] PERB is authorized to conduct elections in order to implement the guarantee of rights provided by Government Code section 3543. Moreover, PERB has held that where a decertification petition raises a question concerning representation, PERB's statutory obligation is to expeditiously resolve the issues raised by the petition. (*International Union of Operating Engineers, State of California Locals 3, 12, 39*

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[6] PERB Regulation 32720 provides:

> An election shall be conducted when the Board issues a decision directing an election or approves an agreement for a consent election . . . [¶] The Board shall determine the date, time, place and manner of the election absent an approved agreement of the parties.

PERB Regulation 33490 provides:

> All elections shall be conducted by the Board in accordance with election procedures described in . . . these Regulations.

and 501, AFL-CIO (California State Employees' Association, SEIU, AFL-CIO) (1984) PERB Decision No. 390-S.)

The object of this administrative determination is to apply PERB Regulation 32752 to the alleged facts of this case in accordance with appropriate precedent. PERB Regulation 32752 provides:

> The Board may stay an election pending the resolution of an unfair practice charge relating to the voting unit upon an investigation and a finding that alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. . . .

The issue is whether the alleged unfair practices by the Academy would so affect the election process as to prevent the employees from freely selecting their exclusive representative. (*Manton Joint Union Elementary School District* (1992) PERB Decision No. 960.)

In similar circumstances, PERB has adopted the "blocking charge rule" used by the National Labor Relations Board (NLRB) in the private sector. (See, e.g., *NLRB v. Big Three Industries, Inc.* (5th Cir. 1974) 497 F.2d 43.) PERB does not apply the blocking charge rule mechanically, but rather determines on a case-by-case basis whether applying the rule will serve the purposes of the statutes enforced by PERB. (*Pleasant Valley Elementary School District* (1984) PERB Decision No. 380 (*Pleasant Valley*).) The Board has made clear, even prior to the adoption of PERB Regulation 32752, that each stay request is to be investigated and evaluated on its merits rather than being disposed of by rote application of a blocking charge rule. (*Jefferson School District* (1979) PERB Order No. Ad-66.) As the Board noted, a primary goal of the statutes it administers is to provide a "uniform basis for recognizing the right of [employees] to join organizations *of their own choice*." (*Ibid.*, emphasis added; Gov. Code, § 3540.) The Board found it appropriate, therefore, for PERB:

> to delay decertification elections in circumstances in which the employees' dissatisfaction with their representative is in all likelihood attributable to the employer's unfair practices rather than to the exclusive representative's failure to respond to and serve the needs of the employees it represents.

(*Jefferson School District, supra*, PERB Order No. Ad-66, pp. 5-6, citations omitted.)

Pleasant Valley, supra, PERB Decision No. 380, interpreted PERB Regulation 32752 such that "the Board agent's obligation is to determine whether the facts alleged in the unfair practice complaint, *if true*, would be likely to affect the vote of the employees, and, thus, the outcome of the election." (*Id.* at p. 5, emphasis added.) Under Board precedent, the Board agent is obligated to presume that the allegations in the blocking charge are true:

> The District also complains that the Board agent improperly presumed that the allegations in the complaint are true for purposes of his analysis. However, it is clear that the Board has directed its agents to do so for purposes of evaluating whether or not an election should be blocked.
>
> The District's defense and answer on the merits of the complaint allegations are matters to be addressed in the unfair practice hearing. It is neither the Board agent's obligation nor function to resolve disputed facts or venture into a pre-judgment of the merits of the unfair practice complaint.

(*Grenada Elementary School District* (1984) PERB Decision No. 387, p. 14, quoting *Pleasant Valley, supra*, PERB Decision No. 380.) These decisions, as well as the plain meaning of PERB Regulation 32752, make it clear that a determination to stay an election is not intended to involve adjudication of the unfair practice charge itself.

In *Regents of the University of California* (1984) PERB Decision No. 381-H, the Board held that the Board agent correctly analyzed "whether [the conduct alleged] is of such character and seriousness that, *if it were proven to have occurred*, it would be reasonable to infer that it would contribute to employee dissatisfaction and hence prevent a fair election."

(*Id.* at p. 6, emphasis added.) And, although the truth of all relevant allegations contained in the charges must be assumed (*Golden Plains Unified School District* (2002) PERB Decision No. 1489), allegations are not evaluated separately and without regard to the factual contexts in which they arose. (*Grenada Elementary School District, supra*, PERB Decision No. 387; *Antelope Valley Community College District* (1979) PERB Decision No. 97.) The circumstances in which they arise may be considered. (*Ibid.*; *Service Employees International Union #790 (Azda)* (2004) PERB Decision No. 1632-M [nothing in PERB case law requires the Board agent to ignore facts provided by the respondent or other parties and consider only the facts provided by the charging party].)

The blocking charge alleges bad faith conduct. An employer's refusal to provide necessary and relevant information is a per se violation of the duty to bargain in good faith. (*Regents of the University of California (Davis)* (2010) PERB Decision No. 2101-H; *Stockton Unified School District* (1980) PERB Decision No. 143.) Failure to provide contact information is a per se violation of the duty to bargain in good faith because it is "fundamental to the expanse of a union's relationship with the employees." (*Golden Empire Transit District* (2004) PERB Decision No. 1704-M.) The exclusive representative is entitled to the phone numbers and addresses of all unit employees, and, under the balancing test, this may include employees who request confidentiality. (*Ibid.* [employer violated its duty by refusing to provide contact information of four employees who requested confidentiality where the employer provided no compelling need for privacy].)

In *Grenada Elementary School District, supra*, PERB Decision No. 387, the Board affirmed the administrative determination finding that alleged bad faith bargaining, if found to

be true, would preclude the holding of a fair election. (*Id.* at p. 6.) The Board cited NLRB precedent to explain:

> It would be particularly anomalous and disruptive of industrial peace to allow the employer's wrongful refusal to bargain in good faith to dissipate the union's strength, and then to require a new election which "would not be likely to demonstrate the employee's true undistorted desires."
>
> [¶ . . . ¶]
>
> The reasoning underlying this limitation on temporary employee sentiment flows from the Supreme Court's decision in *Frank Bros.* [(1944)] 321 U.S. 702, 14 LRRM 591[]. As the Court there stated, "Out of its wide experience, the Board many times has expressed the view that the unlawful refusal of an employer to bargain collectively with its employees" chosen representative disrupts the employees' morale, deters their organizational activities, and discourages their membership in unions.
>
> [¶ . . . ¶]
>
> []Blocking a decertification petition[] works no injustice to the employees. In the first place, courts have long recognized that employee free choice is not necessarily reflected in an election where the employer, by committing substantial unfair labor practices, has poisoned the electoral well. [Citations omitted.] Indeed, a decertification petition tendered on the heels of employer unfair labor practices may "merely indicate that the unfair labor practices . . . continue to affect employee sentiment and make a fair election impossible."

(*Id.* at pp. 8-9.)

Given the NLRB precedent, the Board reasoned that "an election may properly be blocked where there has been a failure to bargain in good faith, since that conduct by its very nature undercuts support for an individual union or unions in general, and renders a fair election impossible." (*Id.* at p. 9.)

DISCUSSION

The question presented is whether the alleged unfair practices by the Academy, if true, are likely to affect the vote of the employees, and thus, the outcome of the election. (*Manton Joint Union Elementary School District*, *supra*, PERB Decision No. 960; *Pleasant Valley*, *supra*, PERB Decision No. 380.) In other words, would the alleged unlawful conduct described in the blocking charge, if true, "so affect the election process as to prevent the employees from exercising free choice." (PERB Reg. 32752; *Pleasant Valley*, *supra*, PERB Decision No. 380.) As noted above, the question is resolved by applying the blocking charge rule to the facts alleged in the blocking charge and not by a mechanical or rote application of the rule. (*Ibid.*)

Refusal to Provide Contact Information

The charge asserts that through November 21, the Academy did not provide the home address or home telephone contact information of the teachers in the bargaining unit. On November 21, the Academy provided the contact information of two teachers, but refused to provide the contact information of nine teachers that requested that the District not provide their contact information.

Lack of contact information for all the employees through November 21 would deprive the Association of the ability to contact bargaining unit employees by mail or telephone through November 21. The lack of contact information would hamper the Associations ability to represent the unit and negotiate on its behalf. For example, the inability before November 21 to contact members by phone or mail, and the inability after November 21 to contact all but two members by phone or mail likely hampered the Association's ability to establish

communication or effectively schedule meetings with members and therefore reduced the Association's ability to establish bargaining goals and strategy.

An inability to effectively negotiate with the Academy could have the effect of making the Association appear weak and ineffective in the eyes of bargaining unit members. "'Out of its wide experience, the Board many times has expressed the view that the unlawful refusal of an employer to bargain collectively with its employees' chosen representative disrupts the employees' morale, deters their organizational activities, and discourages their membership in unions." (*Grenada Elementary School District, supra*, PERB Decision No. 387, p. 9.) If it is true that the Academy refused to provide contact information, such conduct would therefore affect the exercise of free choice. (PERB Reg. 32752.)

The circumstances and factual context surrounding the Academy's refusal to provide contact information are also relevant: the Association had only been recognized as the exclusive representative in August 2013 and the Academy challenged the recognition and allegedly avoided its obligations to bargain and provide information during the appeal. (*Children of Promise Preparatory Academy, supra*, PERB Order No. Ad-401; Unfair Practice Charge No. LA-CE-5876-E.) The Petitioner was aware of the contentious relationship between the parties, as Petitioner wrote in its opposition to the blocking charge that:

> Last year it was the union if anyone, who engaged in regressive bargaining practices. In the emails that I received it was the union representative who reverted to name calling, slurs, worn out negotiation jargon, all of which was sent via email to all staff members and even former staff members who no longer worked at the school . . . . [A] union negotiator [] invited a lawyer to "take it to the parking lot," (I am assuming to fight) at a public meeting in which parents, community, teachers, children and staff were all there to witness it. They are now using these practices on me and my colleagues who signed the petition.

It appears that the contentious relationship between the Academy and the Association would have the effect of disrupting employee morale, deterring Association activities and discouraging membership in the Association. Employees would reasonably be deterred from engaging in communications or activities with the Association when they know that their employer is opposed to the Association and/or its status as a representative, or they are aware that the employer and representative have a contentious relationship such that name-calling and threats of physical altercations have allegedly occurred.

One apparent outgrowth of the Association's lack of contact information was that its representative resorted to initiating contact with teachers outside of their classrooms in September. According to the Academy, "[s]everal teachers considered this borderline harassment and again complained to the Academy. Thereafter nine teachers prepared and signed written instructions that the Academy" not provide contact information to the Association. It therefore appears that the Academy's refusal to provide contact information had the real effect of causing the Association to embark on personal contact with teachers which, according to the Academy, was viewed by several teachers as harassment and caused nine teachers to opt-out of providing contact information.

Under all the circumstances, it appears that the neutral conditions required for a fair election were tainted by the Academy's alleged conduct. The employees' dissatisfaction with the Association in this case may likely be attributed to the employer's refusal to provide contact information, rather than to the Association's failure to respond to and serve the needs of the employees it represents. It is therefore appropriate for PERB to delay the decertification election. (*Jefferson School District, supra*, PERB Order No. Ad-66.)

Refusal to Provide Information Relevant to Bargaining

The Association asserts that it requested copies of the performance evaluation used by the Academy and a copy of any current employment agreements. The March 25, 2015 blocking charge asserts: "To date, [the Academy] has not provided a copy of its employment agreement or performance evaluation to the Association." The Academy presents conflicting facts. The Academy claims it provided Staiano a blank teacher contract on November 6 and it also believes it may have provided "a copy of the evaluation rubric along with the teacher contract."[7]

As noted, the Board agent is obliged to accept the allegations in the charge as true even where the parties present conflicting facts. (*Grenada Elementary School District*, *supra*, PERB Decision No. 387, p. 14; *Golden Plains Unified School District*, *supra*, PERB Decision No. 1489 [the Board agent does not resolve factual disputes].) Thus, it is assumed for the purpose of evaluating the blocking charge that the Academy never provided the performance evaluation used by the Academy or any copies of current employment agreements. Accordingly, the Association lacked information necessary to carry out its duties to represent employees, and its ability to effectively negotiate the parties' first agreement appears to have been impeded. As with the asserted refusal to provide contact information, the Academy's alleged refusal to provide information relevant to bargaining would impede the Association's ability to effectively negotiate with the Academy and could have the effect of making the Association appear weak and ineffective in the eyes of bargaining unit members. If it is true that the Academy refused to provide requested information, such conduct would affect the

[7] It is noted that even if the Academy provided documents, it does not necessarily mean that the Academy fully complied with the Association's request for information, e.g., the Association requested "current employment agreements" however the Academy asserts it provided "the teacher contract."

exercise of free choice. (PERB Reg. 32752.) The circumstances and factual context surrounding the Academy's alleged refusal to provide requested information also support the conclusion that the Academy's conduct would affect the exercise of free choice for the reasons stated above.

Refusal to Negotiate in Good Faith

The Association asserts that the Academy engaged in bad faith bargaining, including reneging on proposals, proposing "presumptively unacceptable terms," refusing to reduce tentative agreements to writing and regressing from proposals the Academy made. The Association also alleges the Academy refused to discuss the Association's proposals for grievances and discipline and the Academy instead derailed negotiations by insisting on posing "highly specific, far-fetched hypotheticals." If it is true that the Academy engaged in bad faith bargaining, such conduct would affect the exercise for free choice and "an election may properly be blocked where there has been a failure to bargain in good faith, since that conduct by its very nature undercuts support for an individual union or unions in general, and renders a fair election impossible." (*Grenada Elementary School District, supra*, PERB Decision No. 387, p. 9; PERB Reg. 32752.) The circumstances and factual context surrounding the Academy's alleged refusal to negotiate in good faith also support the conclusion that the Academy's conduct would affect the exercise of free choice for the reasons stated above.

Petitioner's Opposition to the Blocking Charge

The decertification petitioner asserts the Association "engaged in regressive bargaining practices," "reverted to name calling, slurs [and] worn out negotiation jargon," "invited a lawyer to 'take it to the parking lot,'" and "[is] now using these practices on me and my colleagues who signed the petition." Petitioner further asserts it is "condescending and

insulting" that the teachers now have "an undue burden of proving that we are competent enough to vote." Petitioner states the Association had access to teachers and Petitioner questions "How much more unimpeded access did they want?" Petitioner also asserts that the decertification voting "should not be linked to the litigation" between the Association and the Academy.

In *Regents of the University of California (SUPA), supra*, PERB Decision No. 381-H, the Board addressed a similar argument raised by a petitioning group of employees—that the filing of the decertification petition was not motivated by any action of the employer, but rather by a wish to eliminate the exclusive representative. The Board found that the motivation of the petitioner in seeking a decertification election is *not* determinative, because the relevant question is not the reasons the petition was filed, but whether the alleged unlawful conduct would so affect the election process as to prevent the employees from exercising free choice. (*Id.* at p. 6; *Grenada Elementary School District, supra*, PERB Decision No. 387, pp. 10-11.) Under this holding, Petitioner's assertions about the Association, including Petitioner's belief that the Association engaged in regressive bargaining and had sufficient access, are not determinative. Similarly, Petitioner's request that the decertification election "not be linked to the litigation" must be rejected because the Academy's alleged unlawful conduct may be inextricably linked with the decertification petition; "employee free choice is not necessarily reflected in an election where the employer, by committing substantial unfair labor practices, has poisoned the electoral well." (*Grenada Elementary School District, supra*, PERB Decision No. 387, p. 9.)

The Petitioner's motives are not determinative and the only question to be answered is whether the alleged unlawful conduct by the Academy, if true, "would so affect the election

process as to prevent the employees from exercising free choice." (PERB Reg. 32752.) Thus, even if the Petitioner's motives stem only from a desire to be free of the Association, the election must be stayed nonetheless because the circumstances in this case are such that employee dissatisfaction with the Association is in all likelihood attributable to the employer's failure to provide information and bargain in good faith, rather than to the Association's failure to respond to and serve the needs of the employees it represents. (*Jefferson School District, supra*, PERB Order No. Ad-66.) Each allegation of unlawful conduct by the Academy, if ultimately proved true, would reasonably have the effect of frustrating the ability to reach a negotiated settlement, and might well have contributed to the teachers' view that the Association is impotent and unnecessary. It is therefore appropriate for PERB to delay the decertification election. (*Ibid.*)

Academy's Opposition to the Blocking Charge

The Academy asserts the Association's charge is a "pre-text" and the Association's "true purpose in filing the [Charge] is to prevent the teachers from voting to decide whether to stay with the Union." However, PERB Regulation 32752 specifically allows an election to be stayed based on allegations in an unfair practice charge that Respondent's alleged unfair conduct would so affect the election process as to prevent the employees from exercising free choice. There is no pretext here as the Association's charge specifically requests "an order staying any decertification election, holding Case No. LA-DP-403-E in abeyance."

The Academy asserts that the Association's claims are false; however, as explained above, the Board agent does not resolve factual disputes and instead must accept the allegations in the charge as true. (*Golden Plains Unified School District, supra*, PERB Decision No. 1489.)

The Academy asserts that it refused to provide contact information pursuant to Government Code section 6254.3. The teacher's dated requests for confidentiality indicate the earliest requests were made on November 7, 2014. Thus, it is not evident what basis, if any, justified the Academy's withholding of contact information from September 29, the date of the Association's request, through November 7. Moreover, failure to provide contact information is a per se violation of the duty to bargain in good faith, and whether the Academy can ultimately establish that it was justified in withholding the contact information before or after the teachers provided written requests is a matter that may not be resolved at this stage of the investigation into the blocking charge. (*Golden Empire Transit District*, *supra*, PERB Decision No. 1704-M; *Golden Plains Unified School District*, *supra*, PERB Decision No. 1489.)

The Academy states that the Union President called the Academy's counsel a "dick," and the Academy implies that the Association's conduct was "insulting or hostile." The Academy also states that it learned from its hypotheticals that "the Union will never agree that an employee can ever be immediately terminated for anything. And that seems to be in bad faith." Such comments, however, are not necessarily indicative of bad faith because "'disputes over wages, hours, and working conditions are among the disputes most likely to engender ill feelings and strong responses' [and] the parties are afforded wide latitude to engage in 'uninhibited, robust, and wide-open debate' in the course of those disputes." (*City of Oakland (Lewis)* (2014) PERB Decision No. 2387-M, p. 23.) Nonetheless, the Academy's allegations are taken into consideration pursuant to the Board agent's ability to consider the circumstances in which the charge arose. (*Grenada Elementary School District*, *supra*, PERB Decision No. 387; *Antelope Valley Community College District*, *supra*, PERB Decision No. 97; *Service*

Employees International Union #790 (Azda), *supra*, PERB Decision No. 1632-M.) The Association's conduct, as asserted by the Academy, together with all the circumstances and factual context surrounding the Academy's alleged unlawful conduct, as described above, support the conclusion that employee dissatisfaction is in all likelihood attributable to the Academy's alleged refusal to provide contact information and bargaining information and refusal to negotiate in good faith, rather than to the Association's failure to respond to and serve the needs of the employees it represents. It is therefore appropriate for PERB to delay the decertification election. (*Jefferson School District*, *supra*, PERB Order No. Ad-66.)

DETERMINATION

Based on the above, the blocking charge rule shall be applied in this case and the decertification election will be stayed pending the outcome of the blocking charge. PERB will not conduct an election where there is a likelihood that alleged unlawful conduct by the Academy has affected voter choice. Staying the election until the blocking charge is resolved serves the purpose of EERA to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

Right to Appeal

Pursuant to PERB Regulations, an aggrieved party may file an appeal directly with the Board itself and can request an expedited review of this administrative determination. (Cal.

Code Regs., tit. 8, §§ 32147, subd. (a), 32350, 32360, 32802, 61060.) An appeal must be filed with the Board itself within 10 days following the date of service of this determination. (Cal. Code Regs., tit. 8, § 32360, subd. (b).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board. (Ibid.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street, Suite 200
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

If an aggrieved party appeals this determination, any other party may file with the Board an original and five copies of a statement in opposition within 10 calendar days following the date of service of the appeal. (Cal. Code Regs., tit. 8, § 32375.)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding and on the Sacramento regional office. A "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself (see Cal. Code Regs., tit. 8, § 32140 for the required contents). The document will be considered properly "served" when personally delivered or deposited in the mail or deposited with a delivery service and properly addressed. A document may also be concurrently served via facsimile transmission on all parties to the proceeding. (Cal. Code Regs., tit. 8, § 32135, subd. (c).)

Extension of Time

A request for an extension of time in which to file an appeal or opposition to an appeal with the Board itself must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party (Cal. Code Regs., tit. 8, § 32132).