STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JOEI DYES AND THE ANONYMOUSKNOW NOTHINGS, Charging Parties, v. LOS ANGELES UNIFIED SCHOOL DISTRICT, Respondent.	Case Nos. LA-CE-6161-E LA-CE-6411-E Administrative Appeal PERB Order No. Ad-488 October 12, 2021

Appearance: Jefferey L. Norman, Representative, for Joei Dyes and the AnonymousKnowNothings.

Before Banks, Chair; Shiners and Krantz, Members.

DECISION

SHINERS, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Joei Dyes and the AnonymousKnowNothings[1] (Charging Parties) from an administrative decision by PERB's Office of the General Counsel (OGC). In its decision, OGC determined that Los Angeles Unified School District fully complied with the Board's Order in *Los Angeles Unified School District* (2020) PERB Decision No. 2750 (*LAUSD*), in which the Board found that the District

[1] The underlying decision in this case identified Charging Parties as Joei Dyes and the Anonymous Know-Nothings, but the filings by Charging Parties in this appeal indicate the correct format of the name of the self-described anonymous citizens group is AnonymousKnowNothings, without any spaces or hyphens.

violated the Educational Employment Relations Act (EERA) by interfering with employees' protected communication rights.[2] The remedial order in *LAUSD* directed the District to cease and desist from similar violations and to post a notice regarding the Board's decision, including via electronic means and as otherwise directed by OGC in light of unusual work circumstances during the COVID-19 pandemic.

During the first six months of 2021, the District submitted evidence reflecting several different efforts at circulating the required notice, including multiple mass e-mails and a 60-day website posting as directed by OGC. Charging Parties claimed some employees had not received the mass e-mails. OGC issued an order to show cause (OSC) requesting that Charging Parties provide declarations under penalty of perjury from employees who had not received the electronic notice. Charging Parties declined to file any declarations because OGC would not allow them to redact the declarants' names. Having received no declarations, OGC determined compliance was achieved and closed the case. On appeal, Charging Parties argue that OGC erred by not allowing them to file declarations with the declarant's name redacted, which Charging Parties assert is necessary to prevent the District from retaliating against the declarants.

Based on our review of the administrative decision, the entire case file, and relevant legal authority in light of Charging Parties' appeal, we affirm OGC's determination that the District fully complied with the Order for the reasons stated in the OSC, supplemented by the following discussion.

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[2] EERA is codified at Government Code section 3540 et seq. All statutory references are to the Government Code unless otherwise indicated.

SUMMARY OF COMPLIANCE PROCEEDINGS

In *LAUSD*, the Board concluded that the District violated EERA section 3541.5, subdivision (c), by directing Joei Dyes "not to contact any District employees during regular work hours." Section B.1. of the Board's Order required the District to post notice of the violation:

> "Within 10 workdays of the date this decision is no longer subject to appeal, post copies of the Notice attached hereto as an Appendix at all work locations where notices to employees in the District's certificated bargaining unit customarily are posted. The Notice must be signed by an authorized agent of the District, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of 30 consecutive workdays. The Notice shall also be sent to all bargaining unit employees by electronic message, intranet, internet site, or other electronic means customarily used by the District to communicate with employees in its certificated employee bargaining unit. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material."

The Order further said in footnote 11:

> "In light of the ongoing COVID-19 pandemic, Respondent shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If Respondent so notifies OGC, or if Charging Party requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing Respondent to

> commence posting within ten workdays after a majority of employees have resumed physically reporting on a regular basis; directing Respondent to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing Respondent to mail the Notice to those employees with whom it does not customarily communicate through electronic means."[3]

On January 5, 2021,[4] OGC directed the District to file an initial statement of compliance detailing the affirmative steps it had taken to comply with the notice posting requirements in section B.1 of the Order. Consistent with footnote 11 of the Order, OGC also asked the District to notify PERB in writing if employees at one or more work locations were not physically reporting to work at the time the physical notice posting would start under the Order.

On January 20,[5] the District responded that "[d]ue to the on-going COVID-19 pandemic, the vast majority—if not all—of the members represented by UTLA are working from home and not at any worksite location. As such, in order to comply with [PERB Decision No. 2750,] the Notice included in the Decision was instead emailed directly to all members of Charging party's former bargaining unit, United Teachers of Los Angeles (UTLA)." Exhibit B to the initial statement of compliance indicated that on

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[3] During the COVID-19 pandemic, the Board vested OGC with substantial discretion to adapt a notice-posting order to situations involving partial or complete closures and/or remote work. (*City of Culver City* (2020) PERB Decision No. 2731-M.)

[4] All dates are 2021 unless otherwise indicated.

[5] The letter erroneously states January 20, 2020.

January 19 the District sent the Notice by e-mail to a list-serv designated as "LAUSD-UTLA-MEMBERS@list.lausd.net."[6]

On January 25, OGC asked the parties to propose alternative methods of physically posting the Notice. OGC also sought clarification from the District about who the electronic notice was sent to:

> "[I]t is not clear from the District's initial statement that the District has complied with all requirements of the Board's Order in this case. The District's statement uses 'bargaining unit members' and 'UTLA members' interchangeably, though such terms represent different groups of employees. The statement does not explain whether all bargaining unit employees have access to e-mail messages, regardless of their furlough, lay-off, subject to recall, or other COVID-19-related employment status. Nor does it state who the e-mail address 'LAUSD-UTLA-MEMBERS@list.lausd.net' reaches."

On February 8, Charging Parties filed a response to the initial statement of compliance, asserting that "several employees of LAUSD did not receive" the District's January 19 e-mail. Charging Parties also suggested three alternatives in lieu of a physical posting: (1) that the District send an "Amber alert"-style electronic notice to bargaining unit members; (2) that PERB send the electronic notice to all bargaining unit members; and (3) that PERB require the District to give bargaining unit members' e-mail addresses to Charging Parties so they could send the electronic notice.

[6] All of the District's filings during the compliance proceedings were submitted under penalty of perjury that the response was true and complete to the best of the declarant's knowledge and belief.

On February 9, the District filed an additional statement of compliance. Among other explanations and responses, the District promised it would engage in two more efforts to circulate the Notice:

> "LAUSD will **also** post the notice on its website no later than February 12, 2021 for a period of 30-days.
>
> [¶] . . . [¶]
>
> "Second, Mr. Norman claims that unknown members claimed to have not received the email with the notice. Without any additional information, LAUSD cannot evaluate the veracity or accuracy of such a claim. Nonetheless, LAUSD will re-send the email with the notice via the list serve—again, the primary form of communication between LAUSD and members of UTLA—no later than February 16, 2021. Additionally, LAUSD will forward the notice to any additional email addresses provided by Charging Party, so long as those email addresses are shared with LAUSD's counsel no later than close of business February 12, 2021."

(Emphasis in original.)

On February 11, OGC issued a letter finding that the list-serv designated as "LAUSD-UTLA-MEMBERS@list.lausd.net" includes "all members of the bargaining unit represented by UTLA" rather than merely bargaining unit members who have chosen to join UTLA as members.[7] OGC also found that Charging Parties' suggested alternatives to a physical posting were impractical. OGC directed Charging Parties to "provide specific names and e-mail addresses of individuals who did not receive the District's

[7] Charging Parties did not appeal that determination, and we therefore express no opinion as to whether the record supports it.

January 19, 2021 electronic notice [and] respond to the District's February 9, 2021 additional statement of compliance" by February 25.

On February 25, Charging Parties filed a letter claiming that providing names and e-mail addresses of employees who did not receive the District's January 19 e-mail would subject those employees to retaliation by the District. Charging Parties asked PERB to "find a way to investigate the posting to each teacher's individual computer" so names would not have to be provided, or alternatively to postpone physical notice posting until employees returned to their worksites.

The District responded on March 4 that it would send the Notice again to the same list-serv no later than March 9. On March 19, Dyes sent OGC an e-mail stating that a number of unit members had contacted her about receiving the Notice from the District via e-mail.

On March 24, OGC issued a letter directing the District to post the Notice on its website for 60 days in lieu of physical posting. On April 5, the District notified OGC that it had posted the Notice on its website that day and that the posting would remain there until June 7.

On June 16, OGC issued a letter finding compliance had been achieved as the District had e-mailed the Notice to all members of the certificated bargaining unit on January 19 and had posted the Notice on its website for 60 calendar days.

On June 18, Charging Parties filed a letter disputing that compliance had been achieved, claiming they knew "a handful of LAUSD employees" did not receive either District e-mail containing the Notice, which led Charging Parties to believe the e-mails were not sent to the entire bargaining unit. Charging Parties again asked PERB to send

the Notice to bargaining unit employees or to "find a way to investigate the posting to each teacher's individual computer [because] we have no way of doing this without exposing the names of the teachers."

On June 30, OGC issued an OSC stating that the District had submitted "overwhelming evidence" of its compliance with the electronic notice posting order and that Charging Parties' "broad, non-specific concern" about retaliation did not "create an issue of material fact to prevent finding compliance." The OSC ordered Charging Parties to show cause why OGC should not find compliance had been achieved. Charging Parties were directed to provide, no later than July 15, "declarations under penalty of perjury by witnesses with personal knowledge" that any bargaining unit member did not receive the District's electronic notice posting e-mails.

On July 2, Charging Parties' representative told OGC they would not be filing a response to the OSC. On July 22, OGC issued an administrative decision finding that the District had fully complied with the Order and closing the case.

On August 2, Charging Parties timely filed an appeal of the administrative decision.[8] In their appeal, Charging Parties admit they failed to respond to the OSC because they believed "it would be a waste of time" to file declarations if they could not redact the declarants' names. They urge the Board to allow a party to file declarations with the declarant's name redacted to protect the declarant from retaliation by their employer.

[8] If a compliance investigation is conducted and a written administrative decision issued, it may be appealed to the Board. (PERB Reg. 32980, subds. (b), (c).) (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.)

DISCUSSION

"Compliance proceedings are governed by PERB Regulation 32980, subdivision (a), which provides in relevant part that '[t]he General Counsel or his/her designate may conduct an inquiry, informal conference, investigation, or hearing, as appropriate, concerning any compliance matter.'" (*Bellflower Unified School District* (2019) PERB Order No. Ad-475, p. 8.) This provision grants OGC considerable discretion to determine the most effective method for ensuring compliance with a Board order. (*Public Employment Relations Bd*. *v*. *Bellflower Unified School Dist.* (2018) 29 Cal.App.5th 927, 943.) In some circumstances, compliance may be determined based solely on documents submitted to OGC. (*Bellflower Unified School District*, *supra*, PERB Order No. Ad-475, p. 8.) In others, an evidentiary hearing is necessary to resolve disputed factual issues. (*Id*. at pp. 8-9.) When it is unclear whether a hearing is necessary, an OSC may be used "to determine if there are material facts in dispute and whether or not there is sufficient evidence to decide a disputed matter without convening an evidentiary hearing." (*Children of Promise Preparatory Academy* (2013) PERB Order No. Ad-402, p. 19.)

In compliance proceedings, the respondent has the burden to prove that it complied with the Board's order. (*Hacienda La Puente Unified School District* (1998) PERB Decision No. 1280, pp. 8-9.) In the context of physical mail, we have adopted the generally accepted rebuttable presumption that documents correctly addressed and properly mailed were received by the addressee. (*State of California (Department of Corrections)* (2006) PERB Decision No. 1806-S, pp. 8-9, citing Evid. Code, §§ 604, 641.) We find it appropriate to adopt a similar rebuttable presumption for electronic

mail. The District submitted statements based on personal knowledge under penalty of perjury that it e-mailed the Notice to all certificated bargaining unit members on January 19 and March 9, thereby creating a rebuttable presumption that it did so.

To investigate Charging Parties' claim that some bargaining unit members did not receive these e-mails, OGC issued an OSC to determine whether there was a material factual dispute that necessitated an evidentiary hearing. Specifically, OGC directed Charging Parties to provide declarations based on personal knowledge under penalty of perjury showing that any District certificated bargaining unit member did not receive the January 19 or March 9 e-mail notice. Charging Parties declined to provide such declarations, citing concerns that the declarants would face retaliation from the District. In the absence of any countervailing evidence, OGC correctly relied on the District's unrebutted evidence to conclude that it had e-mailed the Notice to all bargaining unit members on January 19 and March 9, thereby complying with the electronic notice posting order. (See *Children of Promise Preparatory Academy*, *supra*, PERB Order No. Ad-402, pp. 17-18 [employer failed to submit evidence in response to OSC and thus failed to create a material dispute over whether certain employees included in representation petition were management employees, so an evidentiary hearing was not warranted].)

In their appeal, Charging Parties reiterate their contention that redaction of declarants' names should be permitted to prevent the District from retaliating against the declarants. Charging Parties cite PERB Regulation 32125 in support of this contention. But that regulation governs filing confidential information with PERB, such as social security numbers, birthdates, a minor's identity, and financial account

information. (PERB Reg. 32125, subd. (a).) The names of potential witnesses in a compliance hearing do not fall under any of those criteria. Also, as identified in subdivision (b), a caveat to redacting sensitive information is that it is "not relevant to resolution of any matter before PERB." (*Ibid*.) The names of any individuals claiming they did not receive the District's e-mail notices were relevant and necessary to determine the veracity of their statements. Indeed, under these circumstances a declaration that did not identify the declarant would have questionable evidentiary value, as it would not allow the District or PERB to determine whether, in fact, the e-mail had been sent to the declarant or whether some transmission error had prevented the declarant from receiving it. Simply put, Charging Parties' unsupported speculation that the District might retaliate against an employee who submitted a declaration is not a substitute for actual evidence that a bargaining unit member did not receive the District's e-mail notices.

Because Charging Parties declined to produce declarations of District employees who allegedly did not receive the e-mail notice, there was no material factual dispute over whether the District e-mailed the Notice to the entire certificated bargaining unit. Accordingly, OGC correctly determined that the District complied with the Board's electronic notice posting order.[9]

[9] Because Charging Parties did not appeal OGC's determination that posting the Notice on the District's website for 60 days was a sufficient alternative to the physical posting requirement, that issue is not before us and we express no opinion about whether that was a sufficient alternative means to comply with the physical posting order.

ORDER

Joei Dyes and the AnonymousKnowNothings' appeal from the Office of the General Counsel's administrative decision is DENIED. The determination that Los Angeles Unified School District fully complied with all aspects of the Board's Order in *Los Angeles Unified School District* (2020) PERB Decision No. 2750 is AFFIRMED.

Chair Banks and Member Krantz joined in this Decision.