STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CHILD CARE PROVIDERS UNITED - CALIFORNIA, Charging Party, v. STATE OF CALIFORNIA, Respondent.	Case No. SA-CE-1-N PERB Order No. Ad-524-N February 27, 2025

Appearances: Rothner, Segall & Greenstone by Eli Naduris-Weissman, Attorney, for Child Care Providers United – California; California Department of Human Resources by Jennifer M. Pearson, Attorney, for State of California.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

PAULSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Charging Party Child Care Providers United – California (CCPU) from an Administrative Determination by PERB's Office of the General Counsel (OGC). The Administrative Determination concluded that Respondent State of California had complied with a final decision in this matter finding that the State had violated the Building a Better Early Care and Education System Act (Childcare Provider Act), designated PERB Decision No. HO-U-1733-N (Decision).[1] CCPU contends that the State has not fully complied with the Decision's remedial

[1] The Childcare Provider Act is codified at Welfare and Institutions Code, section 10420 et seq. Further undesignated statutory references are to the Welfare and Institutions Code.

order (Order). Specifically, CCPU argues that the State has not made reasonable efforts to distribute to all childcare providers a Notice of the Decision and Order (Notice).[2] The State asserts that it fully complied by making reasonable efforts in accordance with the Order.

We agree with CCPU that the State is not yet in compliance with the Order. The Decision specifically tailored traditional notice requirements to the circumstances of the bargaining unit, while providing some flexibility to the State. However, as we will explain, the State has not shown that it made reasonable efforts to distribute the Notice to all bargaining unit members by mail or e-mail, as the Decision requires.

FACTUAL AND PROCEDURAL BACKGROUND[3]

I. Underlying Charge and Proposed Decision

On July 27, 2020, PERB certified CCPU as the certified provider organization representing family childcare providers in negotiations with the State pursuant to the Childcare Provider Act. On September 25, 2020, in the lead-up to the parties' negotiations for their first memorandum of understanding, CCPU submitted a request for information. As summarized by the administrative law judge (ALJ) in the proposed decision in this case, the request "sought provider-level information about subsidies, program participation, and training to determine whether subsidies and training opportunities were adequate to attract and retain providers in the market." On October 30, 2020, CCPU sent a further request for "[a] list of family child care providers who

[2] CCPU does not dispute the State's compliance with the other parts of the Decision.

[3] The facts of the underlying case are drawn from the Decision. Issues relating to the parties' compliance dispute are drawn from OGC's investigation.

had waived family fees for September and October," to include each provider's name, license number, all available contact information, the amount of waived fees, and the agency or agencies with which the provider contracts.

Over the following months, the parties met and exchanged e-mails about the information requests and tracked the State's progress on the responses. But, in January 2021, the parties arrived at a disagreement. The California Department of Education (CDE) and Department of Social Services (DSS) contract with political subdivisions of the State, such as cities, counties, and county offices of education, as well as non-governmental contractors and subcontractors, to administer programs to distribute childcare subsidies and provide training to providers. The parties and the ALJ refer to these entities collectively as "contractors" or "vendors." To again quote the ALJ: "The central sticking point was whether the State had to request provider-level information from political subdivisions, contractors, and subcontractors with which CDE and DSS had contracts or whether it merely had to provide aggregate information that departments themselves already possessed." CCPU's ensuing unfair practice charge alleged that the State had violated the Childcare Provider Act by failing or refusing to provide it with necessary and relevant information.

The ALJ held that, because the California Department of Human Resources (CalHR) is the agent bargaining on behalf of the State as the Governor's representative (§ 10425.5, subd. (b)), it "has a duty to work with CDE and DSS to diligently seek requested information from the political subdivisions, contractors, or subcontractors those departments contract with." Furthermore, because contracts between the State and the certified provider organization are "binding on all state

departments and agencies and any political subdivision of the state that are involved in the administration of the state-funded early care and education program and the relevant contractors or subcontractors of those departments and agencies" (§ 10426, subd. (c)), CalHR may not accept these other parties' refusal to provide information. Thus, the State's duty under the Childcare Provider Act to provide CCPU with necessary and relevant information required CalHR to "pursue the information with more vigor" than it had done previously.

To remedy this violation, the ALJ ordered the State to "diligently seek" responsive information from the political subdivisions, contractors, and subcontractors with which the State has contracts or business relationships. Further, the ALJ ordered the State to "work with CCPU in good faith to devise effective techniques to seek this information, manage responsive information, and track third party compliance."

The ALJ also ordered the State to distribute the Notice directly to providers. The ALJ held:

> "Because childcare providers are distributed throughout California and do not work in central locations, it is not practical to post physical copies of a notice. Instead, the State must make reasonable efforts to distribute the attached notice to all providers in the bargaining unit represented by CCPU, such as by mail or e-mail."

Neither party filed exceptions to the proposed decision, which therefore became final on August 23, 2022.

II. Compliance Efforts

The State filed its first statement of compliance with OGC on October 27, 2022. In this unsworn letter, CalHR argued that "[g]iven the unique nature of the child care

providers and their relationship to the state, specifically the lack of an employer-employee relationship, the state determined the reasonable means of distributing the Notice is via the multiple website postings." Specifically, CalHR asserted that it would be "reasonable" to post the Notice on the CDE, DSS, and CalHR websites. But CalHR resisted the Decision's instructions to mail or e-mail the Notice directly to providers:

> "CalHR contends it is not reasonable to order CalHR to directly mail the Notice to over 36,000 providers – just the postage alone would be an estimated $21,600 ($0.60 x 36,000). PERB decisions where direct notice was required appear to be limited to those matters where the conduct of the respondent is egregious. (*Santa Monica Community College District* (1979) PERB Decision No. 103.)
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> "It is also not reasonable to require CalHR to email the notice to the providers. First, as noted, neither CalHR, CDSS, or CDE customarily email or even directly communicate with providers. Further, given the providers are not employees of the state, there is no existing listserv or similar of emails addresses of providers. While CDSS and CDE have begun collecting contact information on providers, no department has a complete list of emails addresses, nor are the email addresses stored in any email software, but rather maintained on an Excel spreadsheet. Thus, to email the notice to providers would not be sufficient compliance with distribution of the Notice as the list of addresses is incomplete, but for the emails the CDSS and CDE do have, CalHR would have to manually email thousands of addresses."

CCPU responded on November 4, 2022, arguing that the Decision clearly directed the State to distribute the Notice directly to providers, and questioning CalHR's claims about the feasibility of e-mail given commonly used "mail merge" processes in modern software. CCPU asserted that CalHR possessed the e-mail addresses for 27,428 providers (76% of the total), and the home or mailing addresses of the remaining

8,620 providers, except for six who opted out of providing any personal information. CalHR did not dispute these figures.

To attempt to resolve this dispute, OGC convened an informal settlement conference with the parties on December 12, 2022. CalHR claims that, as a result of this meeting, the parties agreed that CalHR would direct the vendors and subcontractors who administer the State's early childcare programs to distribute the Notice in the same manner they normally communicate with providers. CCPU claims that its position was additional measures would be needed to track and report contractors' distribution of the Notice to see if further efforts were needed. Neither party addresses how any such alleged facts and related arguments could be cognizable given California's mediation privilege. (See Evid. Code, § 1119.)

Nonetheless, it is undisputed that CalHR instructed contractors to distribute the Notice on at least two occasions, in December 2022 and March 2023. CalHR tracked contractors' compliance with these instructions in a spreadsheet, which it provided to CCPU and PERB. This document indicates that 110 of 137 of contractors responded that they had successfully distributed the Notice in some manner. Most of these responses indicated that the Notice was distributed by mail or e-mail, although some claimed only to have posted a copy in a public office building. Some contractors serving populous counties, including but not limited to the County of Los Angeles, the Los Angeles County Department of Education, the County of Orange Social Services Agency, and the Santa Clara County Department of Social Services, provided no response.

In all, CalHR filed three statements of compliance, though it did not verify any of them by filing a declaration under penalty of perjury, as OGC had directed. CalHR eventually filed a declaration describing its efforts at distributing the Notice on April 15, 2024, in response to an Order to Show Cause issued by OGC.

III. OGC Determines that Compliance has been Achieved

On September 18, 2024, OGC issued an Administrative Determination finding that the State had complied with the Order. The only disputed issue was whether the State had complied with the directive to undertake "reasonable efforts to distribute the attached notice to all providers in the bargaining unit represented by CCPU, such as by mail or e-mail." OGC found that the State had done so, based on its directive to all contractors to distribute the Notice, and follow-up directives to contractors who did not respond.

IV. Arguments on Appeal

CCPU appealed the Administrative Determination arguing that the State's efforts have not achieved compliance because, at best, approximately 80% of contractors confirmed that they distributed the Notice to providers. CCPU argues that the State has reasonable means to achieve compliance via mail or e-mail directly to the providers. Finally, CCPU argues, even if the State may comply with the Notice posting requirement through contractors, additional steps must be taken to track and manage compliance.

CalHR argues that posting the Notice on the DSS and CDE websites was reasonable and sufficient to achieve compliance with the Order. But, even if this alone was not sufficient, CalHR argues, its instructions to contractors to distribute the Notice

are “reasonable efforts.” CalHR further contends that the parties agreed that it could achieve compliance by using the contractors, and that CCPU does not contend that any specific providers did not receive the Notice. CalHR urges us to affirm the Administrative Determination.

DISCUSSION

In compliance proceedings, the respondent has the burden to prove that it complied with each part of the Board’s order. (*Los Angeles Unified School District* (2021) PERB Order No. Ad-488, p. 9.) Absent extraordinary circumstances, the parties may not use compliance proceedings to re-litigate any issues already decided and no longer subject to appeal. (*Bellflower Unified School District* (2022) PERB Decision No. 2544a, pp. 14-15, citing *City of Pasadena* (2014) PERB Order No. Ad-406-M, pp. 14, 16-17.)

I. Childcare Provider Act

Unlike the other statutes under PERB’s jurisdiction, the Childcare Provider Act covers persons who are not public employees. (§ 10420.5, subd. (b).) The Act was intended to “promote quality, access, and stability in the early care and education system” through a collective bargaining model. (§ 10420.5, subd. (a).) Providers who operate family childcare homes and participate in State-funded early care and education programs may select a single organization to act as their representative in negotiations with the State over matters specified in the Act. (§ 10420.5, subd. (a).) These include improved recruitment and retention of providers, professional development and training opportunities, payments for State-funded programs, reimbursement rates, and other matters. (§ 10424.5.) The Act’s provisions are

intended to “promote full communication” between providers and the State. (§ 10420.5, subd. (a).)

As the ALJ noted, although providers are not public employees, “many features of traditional labor relations apply” under the Childcare Provider Act. The purposes of the Childcare Provider Act mirror those of the Ralph C. Dills Act, which governs collective bargaining between the State and its employees. (Compare § 10420.5, subd. (a) with Gov. Code, § 3512.) Both are intended to promote full communication between the State and persons covered by the respective statutes, and both accomplish this through exclusive representation on enumerated matters.

In another parallel with a traditional labor relations statute, the Board’s powers to enforce the Childcare Provider Act are incorporated from PERB’s existing jurisdiction over statutes governing collective bargaining between public sector employers and their employees. (§ 10421, subd. (e).) As with other statutes under PERB jurisdiction, the Childcare Provider Act grants the Board broad powers. “The initial determination as to whether the charges of unfair practices are justified and, if so, what remedy is necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board.” (§ 10428, subd. (b).)

Because of these parallels with a traditional labor relations statute, it is appropriate to review well-established caselaw on notice postings. As we will explain further, the ALJ appropriately relied on this caselaw, and tailored the remedy to the circumstances of the CCPU-represented bargaining unit.

II. Basis for the Posting Requirement

Directing a respondent to post a notice of a violation has been a standard remedy in unfair practice cases since PERB's early days. Where there is a final decision sustaining a violation, "it is important that the employees affected by this decision and order be notified of their rights . . . and the findings of the Board in relationship thereto." (*Placerville Union School District* (1978) PERB Decision No. 69, p. 26.) Notice postings "inform[] employees of the resolution of the matter and of the employer's readiness to comply with the ordered remedy." (*City of Selma* (2014) PERB Decision No. 2380-M, p. 26.)

To effectuate the purposes of the relevant statute, the manner of notice posting has always been adapted to the circumstances of the case. There has never been a one-size-fits-all approach. For example, in *Antelope Valley Community College District* (1979) PERB Decision No. 97, an employer interfered with employees' rights to select an exclusive representative, carrying out its plan though face-to-face meetings and direct communications with employees. (*Id.* at p. 28.) Because "[t]he harm to the employees and to [their preferred union] was extreme from which recovery may well be slow," the Board found that mere posting of a notice at the worksite was inadequate. (*Ibid.*) The Board thus directed the employer to individually notify employees of the Board's decision and order by mail. (*Ibid.*)

In 2013, the Board updated its standard posting remedy to adapt to the realities of modern workplace communications. While physical postings in the workplace remain an "essential tool" for remedying unfair practices, where the respondent "regularly communicates with public employees by e-mail, intranet,

websites, or other electronic means, it shall [additionally] be required to use those same media to post notice of the Board's decision and remedial order." (*City of Sacramento* (2013) PERB Decision No. 2351-M, pp. 44-45.)

The Board continues to tailor the notice posting remedy to the specific circumstances of a violation. In *Mt. San Jacinto Community College District* (2023) PERB Decision No. 2865 (*Mt. San Jacinto*), the Board found that a college district had retaliated against two academic employees for their protected activity when it removed them from their positions as department chairs. (*Id.* at p. 38.) The Board declined to fully restore the status quo because it could not do so without harming innocent incumbents. (*Id.* at p. 42.) Because the remedy did not fully restore the status quo, and because the employer's conduct likely harmed the employees' reputations in a way that could impair their ability to compete in future chair elections, the Board supplemented its remedy to include spoken notice reading by an employer's representative to the employees' bargaining unit. (*Ibid.*) This remedy was necessary to "blunt the impact" of the employer's conduct where other means of doing so were unavailable. (*Id.* at p. 43.) Similarly, in *Hacienda La Puente Unified School District* (2024) PERB Decision No. 2930 (*Hacienda La Puente*), the Board found that the employer's egregious violations, power to control terms and conditions of employment, and the employees' economic dependence on the employer merited a spoken notice reading. (*Id.* at p. 18.)

III. The State Has Not Met its Burden to Prove It Complied with the Order

Here, the Decision plainly requires the State to use reasonable efforts to distribute the Notice personally to "all providers in the bargaining unit represented by

CCPU, such as by mail or e-mail." The ALJ concluded that physical posting of the Notice in the workplace was insufficient, and neither party filed exceptions to this conclusion. The State's argument that personal distribution of the Notice by mail or e-mail would be "unreasonable" is therefore procedurally improper. The State may not re-litigate issues that were already decided and are no longer subject to appeal. (*Bellflower Unified School District*, *supra*, PERB Decision No. 2544a, pp. 14-15.)

In principle, the State could comply with the Notice-posting requirement in this Order by using contractors. Some PERB orders identify a specific person who must be involved in providing at least one means of notice, but this Order did not so specify. (See, e.g., *Hacienda La Puente*, *supra*, PERB Decision No. 2930, p. 19 [directing school district superintendent to read notice to employees].) Even so, the State cannot avoid the Order's "reasonable efforts" requirements by shunting responsibility to third parties and then failing to make reasonable efforts to monitor their success and follow up as may be reasonably necessary. If the State elects to use contractors to deliver the Notice, these efforts are ultimately subject to the same scrutiny as any acts directed at compliance with a posting requirement. And even if the State uses contractors to distribute the Notice, the burden remains on the State to prove compliance. Thus, the State had the burden to prove it used reasonable efforts to achieve compliance through contractors, but it failed to meet that burden.[4]

[4] For this reason, even if CalHR could overcome the mediation privilege and establish that the parties had an "informal agreement" to permit CalHR to distribute the notice via contractors, our decision would be the same, as the problem is not that CalHR took such an approach but rather its failure to monitor and follow up with additional reasonable efforts as necessary.

Los Angeles Unified School District, *supra*, PERB Order No. Ad-488 illustrates the level of scrutiny PERB applies to notice posting compliance. There, as part of a final order of the Board, PERB directed an employer to post a notice. However, due to the COVID-19 pandemic that was then ongoing, most, if not all, members of a certificated bargaining unit affected by the decision were working from their homes. (*Id*. at p. 4.) The employer therefore sent the Notice to employees directly, by e-mail. (*Id.* at pp. 4-5.) OGC questioned the employer about whether the e-mail list-serv it had used included all affected employees. (*Id.* at p. 5.) In response, the employer filed a statement affirming that it would re-send the Notice to all affected employees via the list-serv and supplement the recipient list with any additional e-mail addresses for employees who purportedly did not receive the first message. (*Ibid.*) Consistent with its rule for physical mail, the Board adopted a rebuttable presumption that correctly addressed e-mails are received by the addressee. (*Id.* at p. 9, citing *State of California (Department of Corrections)* (2006) PERB Decision No. 1806-S, pp. 8-9.) Because the charging parties did not attempt to provide evidence rebutting this presumption, the Board found that the employer satisfied its burden to prove compliance with the order. (*Id.* at p. 11.)

Here, CalHR does not benefit from any presumption that the Notice was received. The data collected from contractors indicates only those contractors' responses to CalHR's instruction, but it contains no information that could confirm whether these messages were correctly addressed. The information that some contractors distributed the Notice is second hand; none of the contractors themselves provided a declaration under penalty of perjury to verify their attempts to distribute the

Notice on behalf of CalHR. Even if we were to overlook these evidentiary problems, the information from CalHR does not purport to show that contractors correctly addressed mail or e-mail messages to all providers. Some contractors, serving Contra Costa, San Bernardino, Monterey, El Dorado, and Tulare counties, responded only that they posted the Notice in a public building rather than directly to providers via mail or e-mail. Worse, some contractors serving other relatively populous counties, such as Los Angeles, Orange, and San Mateo, apparently did not provide any description of their posting efforts. In short, the information CalHR provided does not show that messages containing the Notice were correctly addressed to providers, and so we cannot presume that they were received.

Nor can we conclude, based on the information provided by CalHR in compliance proceedings, that it has carried its burden to prove it complied with the Order. That a significant number of contractors failed to respond, and others seemingly failed to distribute the Notice directly to providers, leaves no other interpretation. CalHR's self-commendation that its "diligence resulted in more than 80% of the vendors reporting their efforts to CalHR" only highlights the shortcomings in the State's approach. We again note that the Decision found that the State "must make reasonable efforts to distribute the attached notice to all providers in the bargaining unit represented by CCPU, such as by mail or e-mail." (Emphasis added.)

Our view is not changed by CalHR's claim that it "has no enforcement authority" over the contractors, which CCPU disputes. First, and most importantly, the Order was directed at the State, not the contractors. Thus, even if it is true that the State is unable to compel the contractors to distribute the Notice, the responsibility remains

with the State. Any failure by the contractors to follow CalHR's instructions only means that the State itself has not complied with the Order. The State's argument might be more persuasive if its only remaining options for achieving greater distribution were unreasonable ones. But the State has made no such showing, as there is more it could reasonably have done, through further follow up with contractors and direct options it has available to it.

The State's argument also conflicts with the central point of the Decision discussed above at pages 2-3 that, due to the structure of the Act, "the political subdivisions, contractors, and subcontractors . . . are not true third parties to the bargaining relationship." The ALJ reasoned that the State could not simply accept refusals from political subdivisions, contractors, and subcontractors to provide necessary and relevant information. CalHR did not except to these conclusions, and we believe they are also relevant to understanding the State's duties to comply with the notice posting requirement. If the State elects to have contractors distribute the Notice, it cannot simply accept their failure to do so when other reasonable efforts are available to it.

For these reasons, we cannot agree with OGC that CalHR has, to date, satisfied its duty to make "reasonable efforts" to distribute the Notice in compliance with the Decision.

IV. Further Compliance Efforts

For the above reasons, we will reverse the Administrative Determination and remand the matter to OGC for further compliance proceedings consistent with this decision. Because a significant amount of time has passed since the underlying

Decision became final and the State has not yet fully complied, we direct the State to distribute the Notice directly to providers by mail or e-mail by a reasonable deadline to be set by OGC. As discussed above, although distribution via third party contractors may have been a viable means to comply with the Order, the record of the compliance proceedings demonstrates that State did not use reasonable efforts to develop an administrative infrastructure to ensure compliance with the Order in this manner and prove that compliance to PERB. The parties may work in good faith to develop more efficient means to ensure consistent, effective, and provable compliance with notice posting orders, but these efforts may not delay compliance with the Order in this case any further.

ORDER

Child Care Providers United – California's appeal from the Administrative Determination is GRANTED. The matter is remanded to PERB's Office of the General Counsel for further proceedings to ensure compliance with all aspects of the final decision in PERB Decision No. HO-U-1733-N consistent with the findings and conclusions herein.

Chair Banks and Member Krantz joined in this Decision.