STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

TURLOCK TEACHERS ASSOCIATION, Charging Party, v. TURLOCK UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SA-CE-2708-E PERB Decision No. 2543 November 14, 2017

Appearances: Atkinson, Andelson, Loya, Ruud & Romo by Chelsey D. Quaide and Stephanie M. White, Attorneys, for Turlock Unified School District; California Teachers Association by Jacob F. Rukeyser, Attorney, for Turlock Teachers Association

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

GREGERSEN, Chair: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Turlock Unified School District (District) to the proposed decision (attached) of a PERB administrative law judge (ALJ). The complaint and underlying charge allege that the District violated the Educational Employment Relations Act (EERA)[1] when it unilaterally changed its professional growth policy and unreasonably delayed providing requested information.

The Office of the General Counsel issued the complaint on January 28, 2014, alleging that the District violated EERA section 3543.5, subdivisions (a), (b) and (c) by unilaterally changing its professional growth policy without providing the Turlock Teachers Association

[1] EERA is codified at Government Code section 3450 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

(Association) with notice and an opportunity to bargain. Paragraph 3 of the complaint identified the policy as follows:

> 3. Before on or about February 4, 2013, Respondent's policy concerning the approval of professional growth education credits was limited to the following criteria: 1) employees wishing to obtain salary schedule credit for additional academic course units must obtain approval from the Respondent prior to registering for such course units; and 2) employees are entitled to salary schedule credit for not more than 15 semester units in any given fiscal year.

The complaint also alleged that the District delayed providing necessary and relevant information requested by the Association. The District answered the complaint on February 14, 2014, admitting some allegations, denying others, and raising several affirmative defenses. With respect to paragraph 3 of the complaint, the District admitted this allegation without qualification.

The parties participated in a settlement conference on March 13, 2014, but were unable to reach a resolution of their dispute. A formal hearing was held on May 16, 2014. On March 11, 2015, the ALJ issued a proposed decision, concluding the District had violated its duty to bargain in good faith by unilaterally changing the professional growth policy and by unreasonably delaying in providing requested relevant information. On April 6, 2015, the District filed exceptions and a supporting brief, arguing that the ALJ erred in finding both violations. On April 27, 2015, the Association filed its response to the District's exceptions.

The Board has reviewed the entire record in this matter, including the complaint and answer, the hearing record, the District's exceptions, and the Association's response thereto. Based on this review, we find the ALJ's proposed decision to be well reasoned, adequately supported by the record, and in accordance with applicable law. We therefore adopt the ALJ's

proposed decision as the decision of the Board itself, as supplemented by the following discussion of the District's exceptions.

FACTS

The District and the Association are parties to a collective bargaining agreement covering the period of July 1, 2010 to June 30, 2014. Attachment A, Certificated Salary Schedule, Note 8 of the agreement states, in relevant part:

> Credit for additional units beyond a degree must be approved in advance of registration according to [P]rofessional Growth Policy #4141R to 4131(f)R. Credit for additional units beyond a regular credential or degree must be limited to 15 semester units in a fiscal year (July to June).

The Professional Growth Policy referenced above provides criteria for selection and approval of credit for advancement on the salary schedule. It states, in part:

> II. Selection of Professional Growth Pattern
>
> Each teacher desiring to advance on the salary schedule shall develop a personal professional growth pattern that conforms to the District's developed program most appropriate to his/her teaching assignment. . . .
>
> Following approval of the Professional Growth Pattern, the teacher may select courses within the pattern and complete the course application form. The teacher shall submit the course application form to the principal or supervisor for approval. The principal will forward the course application form to the District for approval. . . .
>
> III. Guidelines For Professional Growth Courses
>
> a. College units taken for credit on the salary schedule must be upper division or graduate courses, except in unusual circumstances, or courses initiated by the District. . . .
>
> b. District inservice courses taken for credit on the certificated employees salary schedule shall be directly or closely related to the employee's assignment.

c. Courses approved for professional growth which qualify for advancement on the salary schedule shall be directly or closely related to the certificated employee's approved professional growth pattern. . . .

In addition, Administrative Guidelines for Approval of Professional Growth Courses for Salary Advancement were created as guidelines for the principals and District administrators to reference while implementing the Professional Growth Policy.[2] These Guidelines provide in relevant part:

1. Courses should be upper division or graduate from an accredited college or university, except in unusual circumstances or for inservice courses approved by the District. . . .

2. The specific courses must meet the "Area of Study" of the professional growth pattern.

[¶. . . ¶]

5. Courses paid for by the District are not normally allowed as professional growth courses for salary advancement.

[¶. . . ¶]

9. All patterns and courses are subject to final approval of the District. . . . In order to provide consistent administrative procedures and to ensure continued improvement of the District's instructional programs, the following administrative guidelines are to be followed by site administrators:

a. Extension courses from out of state colleges or universities should not be approved. Exceptions may be made by the Assistant Superintendent of Instructional Services.

b. Independent study courses should not be approved except when that specific independent study course is a specific requirement for the fulfillment of an additional degree or credential.

[2] According to testimony at the hearing, these guidelines were not negotiated between the parties. They were developed by the District without involvement from the Association.

c. District approved inservice training programs shall count as the equivalent of one semester hour for each 15 hours of actual participation.

d. Attendance at conferences or workshops, even when paid by the District, may be approved for those hours actually attended <u>outside</u> of contract work hours on a basis of one seat hour for each four hours of conference attendance. . . .

(Emphasis in original.)

Ryan Hollister (Hollister) has worked for the District as a geoscience and environmental science teacher for approximately 10 years. In April 2008, Hollister submitted a request to attend and receive professional growth credit for a field study course to qualify for salary schedule advancement credit. The course was a five-day field study of Death Valley, offered by Modesto Community College. Principal Dana Treventhan (Treventhan) approved the course, however, it was denied by Assistant Superintendent Ed Felt (Felt) because it was an independent study course and did not meet the professional growth criteria. Hollister then appealed Felt's decision by providing additional detail about the course, and Felt ultimately approved the course.

In July 2009, District Director of Professional Development Kea Willett (Willet) was assigned to approve course applications after Assistant Superintendent Felt left the District. Willett soon realized that Felt had approved courses that did not meet the policy criteria, including lower division, independent study, and courses not from an accredited university.

In September 2009, Willett modified the application form for salary schedule advancement credit to require that a course description be attached. She also changed the language on the form to state, "units earned through conferences, classes, workshops, and courses paid for with district funds are not eligible for salary advancement."

In May 2010, Willet again changed the application form for the approval of college units by adding the statement, "If any of the above courses will be applied towards an advanced degree/credential in Education, please specify." The District distributed the revised forms to school sites so teachers were aware of the criteria before applying for summer courses.

In February 2012, Willet revised the application form for a third time by adding language to include information responding to the most frequently asked questions about course approval. The form was revised to state:

> In general university extension units based on accumulated hours of workshop/conference attendance are not sufficient to warrant salary advancement. Currently, isolated workshops that involve independent study-type follow up activities for courses outside the parameters of a post BA/advanced degree, credential, or certification from an accredited university are not generally approved. All course approval requests are reviewed on an individual basis. It is essential that certificated staff members interested in units for salary advancement seek prior approval before enrolling in a class or registering for a workshop or conference.

Jonathan Kamp (Kamp) teaches geoscience at Turlock High School. In February 2013, Kamp submitted an application for approval of the same Death Valley field study class that Hollister had taken in 2008. After consulting with Willett, Principal Marie Peterson (Peterson) denied the application because the course was an independent field study course that did not qualify for an advanced degree or credential.

On February 11, 2013, the Association requested a copy of the District's Professional Growth Policy. Two days later, District Assistant Superintendent of Human Resources Heidi Lawler (Lawler) responded that she was having difficulty locating a copy, and would respond the following week. In July 2013, after receiving no further response from the District, the

Association again requested a copy of the policy. After a further search, the District located a copy of the policy in the District's historical documents file, and provided it to the Association on August 16, 2013.

DISCUSSION

The District filed two exceptions. Its first exception addresses the ALJ's finding that the District violated EERA when it unilaterally changed the professional growth policy without providing the Association with notice and an opportunity to bargain. The District's first exception objects to the ALJ's exclusive reliance on the District's admission to paragraph 3 of the complaint in outlining the scope of the District's professional growth policy. In its second exception, the District takes issue with the ALJ's finding that the District's six-month delay in furnishing the necessary and relevant information was unlawful, notwithstanding the District's disclosure that it was having "difficulty" locating the requested information.

We address each of these exceptions in turn below.

Unilateral Change

To demonstrate an unlawful unilateral change, the union must prove that (1) the employer took action to change a policy, (2) the change in policy concerned a matter within the scope of representation, (3) the action was taken without giving the union notice and an opportunity to bargain over the change, and (4) the action had a generalized effect or continuing impact on terms and conditions of employment. (*Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262, p. 9.) The District does not dispute that each of the above requirements were proven. Accordingly, these issues are not before the Board. (PERB Regulation 32300, subd. (c).)

The District's sole exception to this allegation is that the ALJ erred in relying on the District's unequivocal admission to paragraph 3 of the complaint that the professional growth policy was limited to two criteria, instead of the relevant language in the parties' collective bargaining agreement.[3] According to the District, the changes to its professional growth policy merely conformed to the language in the parties' existing collective bargaining agreement and should have therefore been found lawful under *Marysville Joint Unified School District* (1983) PERB Decision No. 314 (*Marysville*).

Under *Marysville*, a past practice of providing benefits more generous than those provided in a collective bargaining agreement may be modified unilaterally if the change merely results in enforcement of the actual terms of the written agreement. (*Marysville, supra*, PERB Decision No. 314.) In order for *Marysville* to apply, however, evidence of the relevant terms of the parties' collective bargaining agreement must be submitted and considered as evidence.

As explained in the proposed decision, the District admitted unequivocally in its answer that prior to February 4, 2013, its professional growth policy had just two requirements: employees required approval before registering for a course, and each employee could take no more than 15 semester units annually. As PERB and the courts have previously held, such an admission in a pleading amounts to a judicial admission which conclusively removes the issue from controversy. (*Regents of the University of California* (2012) PERB Decision

[3] The language contained in the collective bargaining agreement is much broader than the language in the complaint. For instance, unlike the complaint, the collective bargaining agreement language refers to the District's professional growth policy itself, as well as its policy sections. The collective bargaining agreement language also requires that courses approved for salary schedule advancement credit be consistent with a teacher's professional growth plan.

No. 2302-H, proposed decision at p. 15, citing *Pinewood Investors v. City of Oxnard* (1982) 133 Cal.App.3d 1030, 1035; other citations omitted.) As the courts have expressed the rule:

> A judicial admission in a pleading (either by affirmative allegation or by failure to deny an allegation) is entirely different from an evidentiary admission. The judicial admission is not merely evidence of a fact; it is a conclusive concession of the truth of a matter which as the effect of removing it from the issues.

(*City of Oxnard, supra*, at p. 1035, quoting *Walker v. Dorn* (1966) 240 Cal.App.2d 118, 120.)

The effect of such an admission in the pleadings is that it *forbids* consideration of contrary evidence, any discussion of evidence offered to rebut a judicial admission is irrelevant and immaterial. (*County of San Luis Obispo* (2015) PERB Decision No. 2427-M, citing *Valerio v. Youngquist Construction* (2002) 103 Cal.App.4th 1264, 1271, citing *Braverman v. Rosenthal* (1951) 102 Cal.App.2d 30.)

Moreover, the District could have moved to amend its answer at any point in time up until the close of the hearing.[4] The District, however, made no attempt to do so, even after the Association clearly referenced the District's admission at the outset of the hearing. The District is therefore bound by the admission in its answer. (See *Thurman v. Bayshore Transit Management, Inc.* (2012) 203 Cal.App.4th 1112, 1156, citing *Valerio v. Andrew Youngquist Construction*, *supra*, 103 Cal.App.4th at p. 1272.) Therefore, even assuming that the *Marysville* rule could apply because of the language contained in the parties' collective

[4] Although PERB's Regulations and decisional law have generally been more concerned with preventing undue prejudice by ensuring timely amendments to a complaint (see, e.g., PERB Regulation 32648; *City of Roseville* (2016) PERB Decision No. 2505-M, pp. 15-16, and authorities cited therein), because the hearing officer and all parties must have adequate notice of the allegations and defenses at issue before the record is closed and the case is submitted for decision, the same principles of adequate notice and fair proceedings apply to denials, defenses or other matters alleged in an answer to the complaint. (PERB Regulations 32190; 32170, subds. (a), (f), and (h); *County of San Luis Obispo, supra*, PERB Decision No. 2427-M, pp. 27-18.)

bargaining agreement, the ALJ was correct to reach a different conclusion. Because the District admitted to the scope of the District's professional growth policy in its answer, absent an amendment to the District's answer, the ALJ was forbidden from finding that the terms of the parties' collective bargaining agreement established a different policy. Without a determination regarding what the collective bargaining agreement provided, a waiver defense or application of *Marysville* cannot be considered. (*Marysville*, *supra*, PERB Decision No. 314.)

In its exceptions, the District disputes the characterization of its admission as an admission of fact. It argues that the ALJ determined as a matter of law that the District's professional growth policies were incorporated into the parties collective bargaining agreement but found that because the District admitted changing its policy in its answer, the District committed an unfair labor practice. According to the District, any alleged admission in the District's answer that might contradict the ALJ's legal conclusion should be considered an admission of law and not a judicial admission of fact. We view this argument as nothing more than an attempt by the District to re-cast what it clearly admitted to in its Answer. First, the District did not admit that it "changed a policy" in its Answer. It admitted to what the professional growth policy was: "limited to the following criteria. . . ." This is a factual admission, not a mistaken conclusion of law as the District asserts. Second, the ALJ did not make any "conclusion of law" as to whether the District policies were incorporated into the parties' collective bargaining agreement. While the proposed decision discussed the relevant language of the parties' collective bargaining agreement and the applicability of a *Marysville* defense, it did so by suggesting that in different circumstances it *would have* found that defense compelling. This discussion is purely hypothetical and does not amount to a

conclusion of law. As such, we find the District's admission to be a judicial admission of fact, and that the ALJ correctly relied on our precedent in holding the District to its admission.

Request for Information

An exclusive representative is entitled to all information that is necessary and relevant to discharge its duty of representation. (*Stockton Unified School District* (1980) PERB Decision No. 143, p. 13 (*Stockton*); *NLRB v. Truitt Mfg. Co.* (1956) 351 U.S. 149, 152-153.) Once a valid request for information is made, an employer's response must be timely. (*Chula Vista City School District* (1990) PERB Decision No. 834.) An unreasonable delay in providing requested information is tantamount to a failure to provide the information. (*Id*.) The fact that an employer eventually provides the information does not excuse an unreasonable delay. (*Id.; Petaluma City Elementary School District/Joint Union High School District* (2016) PERB Decision No. 2485, p. 20.)

In its second exception, the District argues that after receiving the Association's request, it responded within two days stating that it was having "difficulty" finding a copy of the requested information and that it would respond the following week.[5] According to the District, the Association was therefore on notice that the District was unable to locate the requested information. And, because the Association failed to express its dissatisfaction with the District's initial response, and instead waited four months to submit a second request for information, the District contends that the ALJ erred in finding a violation.

In support of its contention, the District relies on *Los Angeles Superior Court* (2010) PERB Decision No. 2112-I and *Oakland Unified School District* (1983) PERB Decision

[5] The District does not except to the ALJ's finding that the information requested was necessary and relevant to the discharge of the Association's duties. Accordingly, this issue is not before the Board. (PERB Regulation 32300, subd. (c).)

No. 367, stating that no violation occurs when an employer partially complies with the request for information and the union fails to communicate its dissatisfaction, or fails to reassert or clarify its request. We find that, while the District's recitation of law is correct, the District's reliance on these cases is misplaced for one critical reason: the District did not comply, even partially, with the request until six months had passed. The District did not provide any information responsive to the Association's request. Instead, the District informed the Association that it was having difficulty locating the requested information and would respond the following week. We do not view such a response as akin to partial compliance with a request for information. We also do not view such a response as creating an obligation on the Association to renew its request or communicate its dissatisfaction since the District's communication included no substantive response to the request, but simply deferred its response to a later date. (See also *Los Angeles Unified School District* (2015) PERB Decision No. 2438, p. 17 [no obligation to renew request where doing so is futile].)

Because the District took six months from the Association's first request to provide a copy of the professional growth policy, we agree with the ALJ that the District's lengthy and unexplained delay in furnishing the requested information was a violation of EERA.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Turlock Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c). The District violated EERA by unilaterally changing the professional growth policy without providing the Turlock Teachers Association (Association) with notice and an

opportunity to bargain. The District also violated EERA by refusing to provide information that is relevant and necessary to the Association's right to represent bargaining unit employees.

Pursuant to EERA section 3541.5, subdivision (c), it hereby is ORDERED that the District, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally changing the professional growth policy without providing notice and an opportunity to bargain.

2. Failing to timely respond to the Association's requests for information necessary and relevant to its representational duties;

3. Interfering with the right of bargaining unit employees to be represented by their employee organization; and

4. Denying the Association the right to represent bargaining unit employees in their relations with the District.

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

1. Rescind changes to the professional growth policy until it has satisfied its obligation to meet and negotiate in good faith.

2. Make employees whole for any actual losses resulting from the unilateral change in policy, with interest at 7 percent per annum.

3. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the District customarily are posted, copies of the Notice attached hereto as an Appendix. 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 thirty (30) consecutive workdays. Reasonable steps

shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means customarily used by the District to communicate with employees represented by the Association.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The District shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Association.

Members Winslow and Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

TURLOCK TEACHERS ASSOCIATION, CTA/NEA, Charging Party, v. TURLOCK UNIFIED SCHOOL DISTRICT, Respondent.	UNFAIR PRACTICE CASE NO. SA-CE-2708-E PROPOSED DECISION (March 11, 2015)

Appearances: California Teachers Association by Jacob F. Rukeyser, Attorney, for Turlock Teachers Association, CTA/NEA; Atkinson, Andelson, Loya, Ruud & Romo by Chesley D. Quaide, Attorney, and Stephanie M. White, Attorney, for Turlock Unified School District.

Before Robin W. Wesley, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that the public school employer violated the Educational Employment Relations Act (EERA)[1] when it unilaterally changed its professional growth policy and unreasonably delayed providing requested information. The employer denies any violation.

On July 30, 2013, the Turlock Teachers Association (Association) filed an unfair practice charge against the Turlock Unified School District (District). The District filed a position statement in response to the charge on September 3, 2013.

On January 28, 2014, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint that alleged the District unilaterally

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

changed its professional growth policy without providing notice and an opportunity to bargain. The complaint also alleged that the District delayed providing necessary and relevant information requested by the Association. This conduct is alleged to have violated EERA section 3543.5 subdivisions (a), (b), and (c).

On February 14, 2014, the District filed an answer to the complaint, admitting some allegations, denying others, and asserting affirmative defenses.

The parties participated in a settlement conference on March 13, 2014, but the matter was not resolved. A formal hearing was held on May 16, 2014. The case was submitted for decision following receipt of post-hearing briefs on July 18, 2014.

FINDINGS OF FACT

The parties stipulated that the Association is an exclusive representative of an appropriate unit of employees within the meaning of EERA section 3540.1, subdivision (e). They further stipulated that the District is a public school employer within the meaning of EERA section 3540.1, subdivision (k).

The District was formed on July 1, 2004, by combining separate high school and elementary school districts. The first collective bargaining agreement (CBA) between the Association and the District was effective July 1, 2004 – June 30, 2007. All CBAs since the District was formed have included the same language for a professional growth policy that grants salary schedule advancement credit when employees take additional courses.

The parties' current CBA covers the period July 1, 2010 – June 30, 2014. CBA Attachment A, Certificated Salary Schedule, Note 8 states, in relevant part:

> Credit for additional units beyond a degree must be approved in advance of registration according to [P]rofessional Growth Policy #4141R to 4131(f)R. Credit for additional units beyond a regular

> credential or degree must be limited to 15 semester units in a fiscal year (July to June).

District Board Policy 4131.1(b)R describes the procedures and guidelines for professional growth courses, stating, in part:

> II. Selection of Professional Growth Pattern
>
> Each teacher desiring to advance on the salary schedule shall develop a personal professional growth pattern that conforms to the District's developed program most appropriate to his/her teaching assignment. . . .
>
> Following approval of the Professional Growth Pattern, the teacher may select courses within the pattern and complete the course application form. The teacher shall submit the course application form to the principal or supervisor for approval. The principal will forward the course application form to the District for approval. . . .
>
> III. Guidelines For Professional Growth Courses
>
> a. College units taken for credit on the salary schedule must be upper division or graduate courses, except in unusual circumstances, or courses initiated by the District. . . .
>
> b. District inservice courses taken for credit on the certificated employees salary schedule shall be directly or closely related to the employee's assignment.
>
> c. Courses approved for professional growth which qualify for advancement on the salary schedule shall be directly or closely related to the certificated employee's approved professional growth pattern.

The Administrative Guidelines for Approval of Professional Growth Courses, states, in relevant part:

> Courses should be upper division or graduate from an accredited college or university, except in unusual circumstances or for inservice courses approved by the District.
>
> The specific courses must meet the "Area of Study" of the professional growth pattern.

> Courses paid for by the District are not normally allowed as professional growth courses for salary advancement.
>
> All patterns and courses are subject to final approval of the District. . . . In order to provide consistent administrative procedures and to ensure continued improvement of the District's instructional programs, the following administrative guidelines are to be followed by site administrators:
>
> a. Extension courses from out of state colleges or universities should not be approved. Exceptions may be made by the Assistant Superintendent of Instructional Services.
>
> b. Independent study courses should not be approved except when that specific independent study course is a specific requirement for the fulfillment of an additional degree or credential.
>
> c. District approved inservice training programs shall count as the equivalent of one semester hour for each 15 hours of actual participation.
>
> d. Attendance at conferences or workshops, even when paid by the District, may be approved for those hours actually attended <u>outside</u> of contract work hours on a basis of one seat hour for each four hours of conference attendance. . . .

(Emphasis in original.)

Teachers collaborate with their principals to develop a professional growth plan. A professional growth plan may reflect the desire to obtain a master's degree, or an administrative or counseling credential. Professional growth plans are reviewed annually, and may be revised if a teacher's interests or goals change.

Association President Julie Shipman (Shipman) began teaching at the elementary school level for the prior school district in 1984, and now teaches German and English for the District at Turlock High School. Shipman began applying for salary schedule advancement credit in the mid-1980s. She understood that "pretty much everything" qualified for salary

advancement credit, including conferences, workshops, inservice training, and lower division courses. She believed that any course that enhanced teaching skills, whether or not related to her professional growth plan, was eligible for salary advancement credit. Shipman has not applied for salary advancement credit since 2002, before the current District was formed in 2004.[2]

Ryan Hollister (Hollister) has worked as a teacher for 10 years, teaching geoscience and environmental science at Turlock High School. In February 2007, Hollister submitted a request for approval of a geology field study course to qualify for salary schedule advancement credit. The course, offered through Modesto Community College, was a lower division, five-day field study of the Death Valley region. Principal Dana Trevethan (Trevethan)[3] approved the course, but it was denied by Assistant Superintendent Ed Felt (Felt) because it did not meet the professional growth policy criteria. There is no formal appeal procedure, but District administrators have always been open to meeting with teachers over application of the policy. After the denial, Hollister sent Felt an email explaining why he believed the course would be useful. Felt relented and approved the course.

In July 2009, Director of Professional Development Kea Willett (Willett)[4] began reviewing course applications for salary schedule advancement credit after Felt left the

[2] Because Shipman has not applied for salary schedule advancement credit while employed by the District, her experiences while working for a different school district under an unknown policy are irrelevant to this dispute.

[3] In January 2013, Trevethan was appointed as Assistant Superintendent of Education Services. She was Principal of Turlock High School from 2000 to 2013. Trevethan began as an English teacher, and served as Dean of Students and as an assistant principal.

[4] In 2001, Willett began teaching at the elementary school level. She later served as an assistant principal, Director of Special Programs, and Director of English Learner Programs before being appointed Director of Professional Development in July 2009.

District. Felt informed Willett of the policy criteria, and told her there was room for discretion in approving courses. Over time, Willett began to see that Felt had approved courses that did not meet the professional growth policy criteria. Willett also observed that principals were approving course applications when they did not have enough information to determine if the course met the policy criteria.

Courses previously approved for salary schedule advancement credit included, "Time to Teach, Classroom Management in the 21st Century." Willett researched the course, and learned that it was an independent study course. Independent study courses are approved if the course is required for an advanced degree or a credential, but "Time to Teach" did not meet this requirement. Thereafter, Willett did not approve the course for salary schedule advancement credit.

The California Music Education Association (CMEA) conference had also been approved for salary schedule advancement credit. Initially, Willett approved CMEA conference applications because the conference was previously approved. When Willett took a closer look, the conference did not meet the criteria. CMEA is not an accredited university, and the conference was not required for an advanced degree or a credential. The District recognized the conference provided professional development and encouraged music teachers to attend, but could not find any basis for approving it for salary schedule advancement credit under the professional growth policy criteria. Willett learned, however, that despite the requirement for preapproval, some teachers had already registered and paid to attend the 2011 CMEA conference. Willett approved these applications, but advised that the CMEA conference would not be approved for future salary schedule advancement credit.

A Turlock Irrigation District seminar "Project Wet," had also previously been approved for salary schedule advancement credit. The three-hour workshop provided instruction on canal safety. Willett determined that it did not meet the professional growth policy criteria.

The District continued to approve the High Intensity Language Training (HILT) course, a one-week conversational Spanish class offered in the summer. The course is not a graduate level course, and is not part of a university credential program. It was previously offered by California State University, Stanislaus (CSU Stanislaus) and counted toward a credential. When CSU Stanislaus stopped offering the course, the District and County Office of Education partnered to continue it. CSU Stanislaus asked whether its students could attend the course. Willett determined that because CSU Stanislaus was granting credential credit to its students for taking the HILT course, it satisfied the professional growth policy's credential criteria.

School principals are the first level for approval of applications for salary schedule advancement credit. Beginning in 2009-2010, Willett made presentations to the principals on how to determine if a course met the professional growth policy criteria. The goal was to develop consistency in course approval throughout the District.

In September 2009, Willett modified the application form for salary schedule advancement credit to require that a course description be attached, and informed applicants that classes, conferences, workshops and courses paid with District funds were not eligible for credit. Attaching the course description allowed the reviewer to determine if the course was offered by an accredited college or university, and whether it was an upper division or graduate level course.

In May 2010, Willett again changed the application form asking applicants to specify if the course applied toward an advanced degree or credential. The professional growth policy

criteria allowed such courses to apply for salary advancement credit even if the teacher was not working toward an advanced degree or credential. The District distributed the revised forms to school sites so teachers were aware of the criteria before applying for summer courses.

In February 2012, Willett revised the application form to include information responding to the most frequently asked questions about course credit approval. In 2012-2013, the District approved 84 applications for salary schedule advancement credit, and denied four or five applications.

Jonathan Kamp (Kamp) teaches geoscience at Turlock High School. In February 2013, Kamp submitted an application for approval of a geology field study course to qualify for salary schedule advancement credit. The five-day field study of Death Valley, offered by Modesto Community College, is the same course that Hollister received approval for in 2007. After consulting with Willett, Principal Marie Peterson (Peterson)[5] denied Kamp's application. The course was not an upper division or graduate level class, but was an independent field study course that did not qualify for an advanced degree or a credential. In a February 4, 2013 email to Kamp, Peterson explained:

> In the past few years, the District has really tightened up what it will/won't approve for advancement on the salary schedule. I know, in a previous year, Ryan [Hollister] was able to get the Death Valley Studies trip approved for salary advancement by Ed Felt. Unfortunately, this course, and specifically most "field trip-like courses" that do not meet degree requirements, no longer meets District salary advancement requirements.

Trevethan also addressed Kamp's request on February 4, 2013, stating:

[5] Peterson began teaching English at Turlock High School in 1997. In 2001, Peterson worked as a counselor, then served as Dean of Counseling, and Assistant Principal before becoming the Principal at Turlock High School in January 2013.

> Unfortunately, there have been several similar requests like this over the past 3 years that mirrored a previously approved course from many years past. The criteria for approval has changed and now it's a matter of certificate/advanced degree attainment that constitute salary advancement.

Although the course did not meet the professional growth policy criteria, Peterson believed the course would be beneficial for Kamp and offered to pay the $60 course fee. Kamp did not request to meet with District administrators to reconsider the decision to deny his course application. There is no evidence that Kamp completed the course.

District administrators testified consistently that the policy criteria itself had not changed, but under Willett, existing criteria was more closely followed. Their email statements that approval of courses had "tightened up" or criteria changed meant that enforcement of the policy criteria had changed by stricter application.

On February 11, 2013, CTA field staff Terri Pinkney (Pinkney) sent an email to Assistant Superintendent for Human Resources Heidi Lawler (Lawler), requesting a copy of the professional growth policy. On February 13, Lawler responded that she was having difficulty finding a copy of the policy, was researching the Association's request, and would try to respond the following week.

On April 2, 2013, Association Lead Negotiator Jennifer Collins sent a letter to Lawler demanding to bargain over the professional growth policy. The District did not respond.

On July 18, 2013, Pinkney sent Lawler a lengthy request for information on the professional growth policy, including a second request for a copy. Lawler's office made a further search after receiving the Association's second request, and the policy was located in a historical documents file in the Superintendent's office. Lawler provided the policy and other

requested information on August 16. Lawler admitted there was a delay in providing the policy because she had difficulty finding a copy.

ISSUE

1. Did the District unilaterally change the professional growth policy when it denied salary schedule advancement credit for courses that had previously been approved?

2. Did the District unreasonably delay providing necessary and relevant information?

CONCLUSIONS OF LAW

EERA section 3543.3 states that a public school employer must meet and negotiate with an exclusive representative "upon request with regard to matters within the scope of representation." EERA section 3543.5, subdivision (c), provides that it is unlawful for a public school employer to "[r]efuse or fail to meet and negotiate in good faith with an exclusive representative."

Unilateral Change

In determining whether a party has violated EERA section 3543.5, subdivision (c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating process. An unlawful unilateral change in a negotiable subject is considered a "per se" violation of the duty to bargain in good faith. (*Stockton Unified School District* (1980) PERB Decision No. 143.)

To demonstrate an unlawful unilateral change, a charging party must establish that: (1) the employer took action to change policy; (2) the change in policy concerns a matter within the scope of representation; (3) the action was taken without giving the exclusive representative notice or opportunity to bargain over the change; and (4) the action had a

generalized effect or continuing impact on terms and conditions of employment. (*Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262; *County of Santa Clara* (2013) PERB Decision No. 2321-M; *Grant Joint Union High School District* (1982) PERB Decision No. 196; *Walnut Valley Unified School District* (1981) PERB Decision No. 160.)

To prevail in a unilateral change case, the charging party must establish that the employer breached or altered an established policy. (*Grant Joint Union High School District, supra,* PERB Decision No. 196; *City of Long Beach* (2012) PERB Decision No. 2296-M.) An employer does not make an unlawful change if its actions conform to the terms of the parties' agreement. (*Marysville Joint Unified School District* (1983) PERB Decision No. 314; *County of Ventura (Office of Agricultural Commissioner), supra,* PERB Decision No. 2227-M; *City of Long Beach, supra,* PERB Decision No. 2296-M.)

In *Marysville Joint Unified School District, supra,* PERB Decision No. 314, the Board held that an employer does not waive its right to enforce the clear terms of the agreement even if it has previously provided a benefit that is more generous than the agreement affords. A past practice, even one of long duration, does not prevail over the parties' clearly established policy. (*Marysville Joint Unified School District, supra,* PERB Decision No. 314; *County of Fresno* (2010) PERB Decision No. 2125-M.)

The District argues that the *Marysville* rule applies. The District contends that it became lax in applying the professional growth policy criteria, granting more generous benefits than the CBA allowed. Later, a new administrator began to strictly apply the policy. The District admitted that some courses previously approved are no longer eligible for salary advancement credit because they do not meet the policy criteria incorporated in the CBA.

The Association asserts that the contract language is ambiguous, and it is necessary to rely on past practice. The Association argues that past practice demonstrates the criteria was limited to simply obtaining approval before registering for courses that were consistent with a teacher's professional growth plan, and credit was limited to 15 units per year. The Association contends the District unilaterally changed the practice when it rejected lower division, independent study, and courses not provided by an accredited university.

When contractual language is clear and unambiguous, it is unnecessary to go beyond the plain language of the contract to ascertain its meaning. (*County of Sonoma* (2011) PERB Decision No. 2173-M; *City of Riverside* (2009) PERB Decision No. 2027-M; *Regents of the University of California (Davis)* (2010) PERB Decision No. 2101-H; *Marysville Joint Unified School District, supra,* PERB Decision No. 314.) Although PERB does not have jurisdiction to resolve pure contract disputes, it may interpret contract language if necessary to decide an unfair practice case. (*County of Tulare* (2015) PERB Decision No. 2414-M; *City of Riverside, supra,* PERB Decision No. 2027-M; *County of Ventura* (2007) PERB Decision No. 1910-M.) In such cases, traditional rules of contract law guide the Board's interpretation of collective bargaining agreements. (*City of Riverside, supra,* PERB Decision No. 2027-M; *National City Police Officers' Assn. v. City of National City* (2001) 87 Cal.App.4th 1274, 1279; *Grossmont Union High School District* (1983) PERB Decision No. 313.) The whole of a contract taken together must be considered, so as to give effect to every part, if reasonably practicable, with each clause helping to interpret other parts. (Civ. Code, § 1641; *City of Riverside, supra,* PERB Decision No. 2027-M; *County of Tulare, supra,* PERB Decision No. 2414-M.) Thus, an interpretation which renders a part of a provision to be surplusage should be avoided. (*City of Riverside, supra,* PERB Decision No. 2027-M; *County of Tulare, supra,* PERB Decision

No. 2414-M.) Extrinsic evidence, such as bargaining history or past practice, will be considered only where contract language is silent or susceptible to multiple interpretations. (*County of Sonoma*, *supra*, PERB Decision No. 2173-M; *Marysville Joint Unified School District*, *supra*, PERB Decision No. 314; *Rio Hondo Community College District* (1982) PERB Decision No. 279.)

The initial question here is whether the CBA establishes in clear and unmistakable terms that the entire professional growth policy was incorporated into the parties' agreement. The CBA states, in relevant part, that "Credit for additional units beyond a degree must be approved in advance of registration according to [P]rofessional Growth Policy #4141R to 4131(f)R."

The Association contends that the contract language is ambiguous because the language that courses "must be approved in advance of registration according to" the policy implies a narrow requirement. The Association asserts this language suggests that the only part of the professional growth policy incorporated in the CBA is the requirement to obtain advance approval from the District before registering for the course. This interpretation, however, leaves part of the contract language without effect. The CBA cites the entire professional growth policy, "4141R to 4131(f)R," which includes the sections on course criteria, and requirement that teachers develop professional growth plans. If the only requirement for course approval was that employees have their applications approved before registering for the course, there would be no need to reference the policy.

Furthermore, the Association's view suggests that employees need only provide the District with advance notice that they plan to take a course for salary schedule advancement credit. But the requirement that applications "be approved" indicates that there is some

measure or criteria which the District uses to determine to approve a course for credit. The Association admits in its post-hearing brief that a course must be consistent with a teacher's professional growth plan. While this requirement is in the professional growth policy, it is not in the contract language. The Association therefore acknowledges that there is more to approval of courses for credit than simply submitting an application to take a course before registration. The clear terms of the agreement establish that the parties incorporated the entire professional growth policy into the CBA.

The Board held in *Marysville Joint Unified School District, supra,* PERB Decision No. 314, that an employer is entitled to enforce the terms of the contract despite its prior failure to do so. In *County of Fresno, supra,* PERB Decision No. 2125-M, the employer's longtime policy authorized it to impose furloughs. In the past, the employer bargained with the union before implementing furloughs, even though it was not required under the policy. Later, the employer implemented furloughs without engaging in negotiations. The Board held that the employer did not commit an unlawful unilateral change as no duty to bargain arises when the employer's actions represent the application of existing policy. Similarly in *State of California (Department of Personnel Administration)* (1993) PERB Decision No. 995-S, the union and employer negotiated ground rules that allowed release time for bargaining sessions. Initially, the employer also granted release time for bargaining preparation, but later allowed release time only for negotiating sessions. The Board held that the employer did not unilaterally change its policy when it enforced the parties' ground rules after temporarily authorizing a higher level of release time.

The District's conduct is consistent with the *Marysville* rule. For a period of time, the District approved courses that did not meet the professional growth policy criteria, providing

employees with a greater benefit than allowed by the CBA. The evidence demonstrates that a new administrator began to strictly apply the policy criteria incorporated in the CBA. Under the *Marysville* rule, the District would not have unlawfully changed an existing policy.

In this case, however, I must reach a different conclusion. In answering the complaint, the District admitted the allegation that described the professional growth policy. The PERB complaint alleged:

> 3. Before on or about February 4, 2013, Respondent's policy concerning the approval of professional growth education credits was limited to the following criteria: 1) employees wishing to obtain salary schedule credit for additional academic course units must obtain approval from the Respondent prior to registering for such course units; and 2) employees are entitled to salary schedule credit for not more than 15 semester units in any given fiscal year.

(Emphasis added.)

In *Regents of the University of California* (2012) PERB Decision No. 2302-H, the Board, in adopting the proposed decision, held that "[t]he admission of facts in a pleading 'is a conclusive concession of the truth of a matter which has the effect of removing it from the issues.'" (*Id*., proposed decision, p. 15.) Unlike the contract language, the complaint does not refer to the professional growth policy and its policy sections. The complaint alleged that the policy was limited to obtaining approval before registering for a course, and no more than 15 semester units annually. The District's answer admitted this allegation without qualification.

Even the Association conceded that the policy is broader than the complaint, requiring that courses approved for salary schedule advancement credit must be consistent with a teacher's professional growth plan. Because the District made no attempt to amend its answer prior to or during the hearing, however, it is bound by its admission that the professional

growth policy is limited to the requirements that course approval be obtained before registering, and a maximum of 15 semester units each fiscal year.

1. Change in Policy

The unilateral change test requires a determination of whether the District changed the professional growth policy. (*Fairfield-Suisun Unified School District, supra,* PERB Decision No. 2262; *Grant Joint Union High School District, supra,* PERB Decision No. 196.) District administrators admit that some courses previously approved for salary schedule advancement credit are no longer approved. The District previously approved applications for "Time to Teach," an independent study course. For several years, the District also approved the CMEA conference, even though CMEA is not an accredited university. In 2007, the District approved a lower division, independent field study course on Death Valley offered by a community college.

The evidence is clear that the District changed the policy described in the complaint when it began to apply the professional growth policy criteria to reject previously approved courses. Willett explained that when she took on the task of reviewing and approving course applications, she began to strictly apply the policy criteria. As a result, with some exceptions, the District now denies previously approved courses that are lower division, independent study, and not provided by an accredited university.

2. Scope of Representation

The policy allows employees to attain credit to advance on the salary schedule by completing course work. Wages are expressly enumerated and identified as a negotiable subject within the scope of representation. (EERA § 3543.2, subd. (a)(1).) Thus, the policy concerns a matter with the scope of representation.

3. Notice and Opportunity to Bargain

Willett first began to modify the application form in September 2009, indicating on the form new limitations on course approval. After that time, she began to deny courses that had previously been approved. There is no evidence that prior to these events the District provided the Association with notice of its intent to change the professional growth policy, and an opportunity to bargain.

4. Generalized Effect

Finally, the policy change had the effect of removing opportunities for employees to obtain salary schedule advancement credit. The denial of the opportunity to advance on the salary schedule imposed a generalized and continuing impact on bargaining unit employees.

Accordingly, the District did not provide notice and an opportunity to bargain before it implemented changes to the professional growth policy when it began to deny applications for previously approved courses.

Waiver

The District contends that the Association waived its right to negotiate by failing to timely demand to bargain when it learned of the changes Willett made to the course application form. Willett first modified the application form in September 2009 to advise applicants that classes, conferences, workshops, and courses paid with District funds were not eligible for salary schedule advancement credit.

There is no evidence that the Association was aware the District changed the application form. Notice of a proposed change must be given to an official of the employee organization having the authority to act on behalf of the organization. (*Fresno County Office of Education* (2004) PERB Decision No. 1674; *Fairfield-Suisun Unified School District, supra,*

PERB Decision No. 2262.) The notice must be communicated in a manner that clearly informs of the proposed change. (*Lost Hills Union Elementary School District* (2004) PERB Decision No. 1652; *Fairfield-Suisun Unified School District, supra,* PERB Decision No. 2262.) The Board has held, for example, that the general publication of a governing board's agenda does not constitute effective notice to an exclusive representative of proposed changes to matters within the scope of representation. (*Arvin Union School District* (1983) PERB Decision No. 300; *Fairfield-Suisun Unified School District, supra,* PERB Decision No. 2262.) There is no evidence that the District provided a copy of the form to an authorized Association representative in a manner reasonably calculated to put the Association on notice of the change.

Furthermore, when a firm decision to change a negotiable policy has been made, or a unilateral policy change has already been implemented, a union does not waive its right to bargain by failing to pursue negotiations. (*County of Santa Clara, supra,* PERB Decision No. 2321-M.) The Board stated that, "[o]nce an employer takes unilateral action on a matter in which the decision is within the scope of bargaining, the union is excused from demanding to bargain over that fait accompli." (*Id*., p. 24.)

The September 2009 modification of the course application form demonstrates that the District had already taken action to implement the change in policy. Once revised, the application form was delivered to the school sites so that teachers would be aware of the change before they requested approval for salary schedule advancement credit. The Association, therefore, did not waive its right to bargain by failing to demand negotiations after the course application form was modified.

Accordingly, it is found that the District violated EERA when it unilaterally changed the professional growth policy without providing the Association with notice and an opportunity to bargain.

Information Request

The complaint also alleges that the District breached its duty to bargain in good faith when it failed to timely provide the Association with a copy of the professional growth policy.

An exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty to represent bargaining unit employees. (*Stockton Unified School District, supra,* PERB Decision No. 143; *Chula Vista City School District* (1990) PERB Decision No. 834.) Absent a valid defense, an employer's failure to provide such information upon request is a per se violation of the employer's duty to bargain in good faith. (*Stockton Unified School District, supra,* PERB Decision No. 143; *City of Burbank* (2008) PERB Decision No. 1988-M.)

PERB uses a liberal standard, similar to a discovery-type standard, to determine the relevance of the requested information. (*Trustees of the California State University* (1987) PERB Decision No. 613-H; *Chula Vista City School District, supra,* PERB Decision No. 834.) Information pertaining immediately to a mandatory subject of bargaining is presumptively relevant. (*Stockton Unified School District, supra,* PERB Decision No. 143; *State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S; *Ventura County Community College District* (1999) PERB Decision No. 1340; *Chula Vista City School District, supra,* PERB Decision No. 834; *Santa Monica Community College District* (2012) PERB Decision No. 2303.)

Once a valid request is made, the burden shifts to the employer to either provide the information within a reasonable time, or overcome the presumption of relevance. (*State of California (Departments of Personnel Administration and Transportation), supra*, PERB Decision No. 1227-S.) An employer may not simply ignore a request for information. (*Chula Vista City School District, supra*, PERB Decision No. 834.)

An employer's response to a valid request for information must be timely. (*Chula Vista City School District, supra*, PERB Decision No. 834; *Regents of the University of California* (1999) PERB Decision No. 1314-H.) When a good faith demand is made for relevant information, it must be made available promptly and in a useful form. An unreasonable delay in providing requested information is tantamount to a failure to provide the information. (*Chula Vista City School District, supra*, PERB Decision No. 834.) The fact that an employer eventually provides the information does not excuse an unreasonable delay. (*Id*.)

In *Compton Community College District* (1990) PERB Decision No. 790, the Board held that a five-month delay in providing requested information was dilatory, and the employer's heavy workload did not excuse the delay. Even a two-month delay may be untimely under certain circumstances. (*Regents of the University of California, supra*, PERB Decision No. 1314-H, citing *Colonial Press, Inc.* (1973) 204 NLRB No. 126.)

In *City of Burbank, supra*, PERB Decision No. 1988-M, the Board found an employer's late response was a violation even though it eventually produced the information, because the employer failed to act diligently, and the delay interfered with the union's preparation for arbitration. The Board held that the delay would have been excused had it been reasonable, i.e., justified under the circumstances and it did not cause prejudice to the union.

There is no dispute that the professional growth policy was relevant information because it pertained to wages, a mandatory subject of bargaining. The information was also necessary for the Association to enforce the terms of the CBA and represent bargaining unit employees.

The Association first requested a copy of the professional growth policy on February 11, 2013. Lawler responded on February 13, stating she was having difficulty finding a copy and would respond the following week.

No further response from the District was received until the Association submitted a second request for the policy on July 18, 2013. Lawler provided a copy of the policy on August 16. Her office conducted a further search after the Association's second request, and finally located the policy in a historical documents file in the Superintendent's office.

The District took six months from the Association's first request to provide a copy of the policy. The District does not claim that it diligently searched the entire time. Its only excuse is that it had difficulty locating a copy of the policy. There is no evidence that other circumstances justified the delay. Thus, the six-month delay in providing the Association with a copy of the professional growth policy was unreasonable. Accordingly, the District breached its duty to bargain in good faith when it provided an untimely response to the Association's request for necessary and relevant information.

REMEDY

PERB has broad remedial powers to effectuate the purposes of EERA. EERA section 3541.5, subdivision (c), provides:

> The board shall have the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not

> limited to the reinstatement of employees with or without back pay, as will effectuate the policies of this chapter.

It is found that the District failed to meet and negotiate in good faith in violation of EERA section 3543.5, subdivision (c), when it unilaterally changed the professional growth policy without providing the Association with notice and an opportunity to bargain, and when it unreasonably delayed providing necessary and relevant information.

By the same conduct, the District interfered with the rights of employees to be represented by the Association in violation of EERA section 3543.5, subdivision (a); and denied the Association the right to represent bargaining unit employees in their employment relations with the District in violation of EERA section 3543.5, subdivision (b). It is appropriate therefore to order the District to cease and desist from such conduct.

In cases involving an unlawful unilateral change, the appropriate remedy is to restore the status quo by rescinding the change and making employees whole for any actual losses suffered as a result of the change. (*California State Employees' Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 946; *Desert Sands Unified School District* (2010) PERB Decision No. 2092.) The District is ordered to rescind the changes to the professional growth policy that limits approval of lower division, independent study, and courses not provided by an accredited university, until it has satisfied its obligation to meet and negotiate in good faith. There is no evidence in the record that any employee registered for and completed a course after the District denied the employee's application for salary schedule advancement credit. Any actual employee losses can be resolved through compliance proceedings.

In cases involving a failure to provide necessary and relevant information, an employer is typically ordered to provide the requested information. Here, the District provided the

Association with a copy of the professional growth policy on August 16, 2013, and therefore it is unnecessary to order the District to do so again.

Finally, it is appropriate that the District be ordered to post a notice incorporating the terms of the order at all locations where notices to public employees are customarily posted for employees in the bargaining unit. Posting such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, it is required to cease and desist from such activity, and it will comply with the order. It effectuates the purposes of the EERA that employees be informed of the resolution of this controversy and the District's readiness to comply with the ordered remedy. (*Placerville Union School District* (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the Turlock Unified School District (District) violated the Educational Employment Relations Act (EERA or Act), Government Code section 3543.5, subdivisions (a), (b), and (c). The District violated EERA by unilaterally changing the professional growth policy without providing the Turlock Teachers Association (Association) with notice and an opportunity to bargain. The District also violated the Act by its unreasonable delay in providing requested information that is necessary and relevant to the Association's duty to represent bargaining unit employees.

Pursuant to EERA section 3541.5, subdivision (c), it is hereby ORDERED that the District, its governing board, and its representatives shall:

A. CEASE AND DESIST FROM:

1. Unilaterally changing the professional growth policy without providing notice and an opportunity to bargain.

2. Failing to provide necessary and relevant information in a timely manner.

3. Interfering with the right of bargaining unit employees to be represented by their employee organization.

4. Denying the Turlock Teachers Association the right to represent bargaining unit employees in their employment relations with the District.

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

1. Rescind changes to the professional growth policy until it has satisfied its obligation to meet and negotiate in good faith.

2. Make employees whole for any actual losses resulting from the unilateral change in policy.

3. Within 10 workdays after service of a final decision in this matter, post at all work locations where notices to employees in the District are customarily posted, copies of the Notice attached hereto as an Appendix. 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. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by

the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the Turlock Teachers Association.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960
E-FILE: PERBe-file.Appeals@perb.ca.gov

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

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 or received by electronic mail before the close of business, which meets the requirements of PERB Regulation 32135, subdivision (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, 32091 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California

After a hearing in Unfair Practice Case No. SA-CE-2708-E, *Turlock Teachers Association v. Turlock Unified School District*, in which all parties had the right to participate, it has been found that the Turlock Unified School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a), (b), and (c). The District violated EERA by unilaterally changing the professional growth policy without providing the Turlock Teachers Association (Association) with notice and an opportunity to bargain. The District also violated EERA by refusing to provide information that is relevant and necessary to the Association's right to represent bargaining unit employees.

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

A. CEASE AND DESIST FROM:

1. Unilaterally changing the professional growth policy without providing notice and an opportunity to bargain.

2. Failing to timely respond to the Association's requests for information necessary and relevant to its representational duties;

3. Interfering with the right of bargaining unit employees to be represented by their employee organization; and

4. Denying the Association the right to represent bargaining unit employees in their relations with the District.

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

1. Rescind changes to the professional growth policy until it has satisfied its obligation to meet and negotiate in good faith.

2. Make employees whole for any actual losses resulting from the unilateral change in policy, with interest at 7 percent per annum.

Dated: _____ TURLOCK UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

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