STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNION OF AMERICAN PHYSICIANS & DENTISTS, Charging Party, v. STATE OF CALIFORNIA (CALIFORNIA CORRECTIONAL HEALTH CARE SERVICES), Respondent.	Case No. SA-CE-2168-S PERB Decision No. 2823-S June 29, 2022

Appearances: Weinberg, Roger & Rosenfeld by Anne I. Yen, Attorney, for Union of American Physicians & Dentists; California Department of Human Resources by Nicole D. Lobre, Labor Relations Counsel, for State of California (California Correctional Health Care Services).

Before Banks, Chair; Shiners and Krantz, Members.

DECISION[1]

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions by Respondent State of California (California Correctional Health Care Services) (CCHCS) to the attached proposed decision of an administrative law judge (ALJ). The complaint in this matter, as amended, alleged that

[1] PERB Regulation 32320, subdivision (d) authorizes the Board to designate a decision, or any part thereof, as non-precedential. (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.) Applying the criteria the regulation enumerates, we designate as non-precedential Parts II-V of the Discussion, the remedial order, the appendix, and the attached proposed decision. The Introduction, Factual and Procedural Background, and Part I of the Discussion are precedential.

CCHCS violated the Ralph C. Dills Act (Dills Act)[2] by: (1) implementing an Integrated Substance Use Disorder Treatment (ISUDT) program and a Medication Assisted Treatment (MAT) program without bargaining in good faith with Charging Party Union of American Physicians & Dentists (UAPD) over the decision and/or the effects thereof; and (2) failing to bargain in good faith before requiring all UAPD-represented primary care providers (PCPs) to obtain "X-Waivers" from the federal Drug Enforcement Administration (DEA) and fully provide ISUDT/MAT services.

After an evidentiary hearing, the parties submitted post-hearing briefs and the ALJ issued a proposed decision. The ALJ concluded that while CCHCS had no duty to bargain over its decision to offer the ISUDT and MAT programs, the Dills Act required CCHCS to bargain over the decision's negotiable effects on PCPs' terms and conditions of employment. The ALJ further concluded that CCHCS failed to comply with this duty. The ALJ directed CCHCS, among other things, to cease requiring PCPs to obtain X-Waivers and fully provide MAT, rescind any discipline issued for violating these mandates, and make PCPs whole.

CCHCS filed five exceptions to the proposed decision. Broadly categorized, the first four exceptions ask us to reverse the ALJ's conclusions on liability, as well as certain factual findings the ALJ reached. The fifth exception argues in the alternative that, if CCHCS violated the Dills Act, we should modify the ALJ's proposed remedy. UAPD filed no exceptions and asks us to affirm the ALJ's proposed decision.

[2] The Dills Act is codified at Government Code section 3512 et seq. All statutory references are to the Government Code.

We have reviewed the proposed decision, the record, and the parties' arguments. For the reasons we explain, we affirm the ALJ's overall conclusion that CCHCS violated the Dills Act, but we partially grant certain exceptions and therefore adjust the ALJ's factual findings, legal conclusions, and remedial order. Other than those instances in which we partially grant an exception, we affirm the ALJ's determinations.

FACTUAL AND PROCEDURAL BACKGROUND[3]

CCHCS provides medical, dental, and mental health services to inmates at institutions within the California Department of Corrections and Rehabilitation (CDCR). Since 2005, a court-appointed receiver has overseen health care services for CDCR inmates pursuant to a federal action currently styled as *Plata et al. v. Newsom et al.*, N.D. Cal. No. C01-1351-JST (*Plata*). In September 2018, the receiver directed CCHCS to implement a MAT program for inmates with Substance Use Disorder (SUD). CCHCS developed a plan to do so as part of an overall ISUDT program. The 2019-2020 State budget allocated $71.3 million to the ISUDT program, and the 2020-2021 budget allocated $161.9 million to the program.

UAPD exclusively represents State Bargaining Unit 16, which includes physicians who serve as PCPs for inmate patients within CDCR. The PCPs' classification specification and job duty statement require PCPs to provide primary care. This includes diagnosing patients and prescribing them medication and other treatment. These job descriptions have never specified that PCPs must obtain an

[3] The proposed decision includes a more complete statement of facts. This section sets forth an abbreviated version, providing context for our legal analysis.

X-Waiver. They also have never specified SUD or other medical conditions that PCPs must treat.[4]

On July 5, 2019, CCHCS notified UAPD of its plan to implement an ISUDT program and offered to meet with UAPD if requested. ISUDT includes MAT, which, in turn, includes medication, therapy, and community support. The primary SUD medication for inmates in the ISUDT and MAT programs is Suboxone, often prescribed for inmates with opioid use disorder. At this time, PCPs lacking X-Waivers from the DEA could not prescribe Suboxone beyond three-day "bridge" orders.[5]

UAPD requested to bargain, and the parties began ISUDT/MAT negotiations on October 3, 2019. At the parties' first bargaining session, UAPD proposed, among other items, that PCPs trained in treating ISUDT/MAT patients should receive a pay differential. CCHCS responded two months later, stating that the parties should bargain any economic proposals in negotiations for a successor Memorandum of Understanding (MOU). However, during the parties' subsequent MOU negotiations, CCHCS reversed course and stated that ISUDT/MAT bargaining was the appropriate forum for discussing proposed compensation adjustments related to those programs.

During the first year of the parties' ISUDT/MAT negotiations, CCHCS took a consistent, two-part position in its proposals: (1) Unit 16 employees must attend all

[4] PCPs must hold a license to practice medicine in California. In 2006, prior to the facts relevant to this case, CCHCS also began requiring newly hired PCPs to hold a certification in internal medicine or family medicine. CCHCS permitted incumbent PCPs who lacked such certification to remain non-certified, but they would then not benefit from a pay raise associated with certification.

[5] A bridge order allows a physician to provide continuity of care and prevent withdrawal symptoms before the patient sees a physician who holds an X-Waiver.

assigned SUD training and generally must continue MAT prescriptions for patients already on MAT;[6] and (2) at least for the time being, no Unit 16 employee had to obtain an X-Waiver or initiate MAT for patients with SUD, unless and until the employee feels competent to do so. CCHCS further proposed that the parties should reopen negotiations if CCHCS sought to require employees to obtain an X-Waiver and/or initiate MAT for patients with SUD. As part of its position, CCHCS claimed that it had no duty to bargain over mandatory trainings, but stated it did have a duty to bargain over any requirement that PCPs obtain X-Waivers to prescribe SUD medication.

UAPD did not agree with CCHCS's overall proposal and filed this unfair practice charge alleging that CCHCS was violating its duty to bargain. UAPD did, however, agree to CCHCS's proposal regarding mandatory SUD training.

PERB's Office of the General Counsel issued a complaint against CCHCS in June 2020. On October 20, 2020, three months before the formal hearing on the complaint commenced, CCHCS wrote UAPD as follows:

> "This is to provide a status of the [ISUDT] Program and the negotiations associated with the program that have been taking place since October 2019.
>
> "As you are aware, [CDCR] and [CCHCS] launched the ISUDT Program as part of their legal obligation to provide constitutionally mandated health care to the inmate/patient population. The CDCR and CCHCS developed the program in response to the severity of overdoses and increase[d] deaths in the institutions tied to opioid abuse. The program was implemented in January 2020 targeting patients who

[6] As the ALJ noted, the record is unclear as to whether continuing existing prescriptions is the same as ordering three-day bridge prescriptions.

enter prison already on [MAT], patients already in prison categorized as high risk and patients who are anticipating release from prison and will be transitioning to their communities.

“Early in the spring, factors began to impact the ISUDT program. COVID-19 played a large role in the evolution. Cognitive Behavioral Interventions (CBI) [were] placed on hold until alternative plans could be identified and implemented, and the expedited release of inmate/patients impacted the initial ISUDT focus group. However, during COVID-19, there was an unforeseen increase in the number of inmate/patients needing to participate in the program.

“Specifically, the main factors driving the higher volume of patients include:

- “Not limiting patient access to Addiction Medicine providers. Rather any patient at higher risk for morbidity and mortality related to Opioid Use Disorder/Alcohol Use Disorder is being referred to the ISUDT program and for MAT evaluations; and

- “Majority of patients assessed, are accepting MAT. Rather than the projected 50% acceptance rate, ISUDT program acceptance rate is approximately 90%.

“Because of these changes, CCHCS will be expanding the training to all [PCPs] to allow for PCPs to manage stable patients on their panels. CCHCS previously informed UAPD that, as we rolled this program out there would be an increase, however, there is an urgent need to operationalize this statewide to ensure proper care is provided to the program participants. The training will continue to be Didactic courses and mentoring by the Addiction Medicine Central Team and the institution Champions. This will allow all staff to provide services to ISUDT patients on a statewide basis.

“In addition, CCHCS now needs full PCP participation in the management of ISUDT patients on their panels including

> the prescribing of MAT. As discussed several times at the table, CCHCS could not close the negotiations without the ability to come back to UAPD should the need arise to require the PCPs to obtain an X-Waiver. Based on the rapid growth of the program there will be an expectation for all [physicians and surgeons] to obtain their X-Waiver by June 30, 2021, in order to maintain their privileging and credentialing. As this negotiation table is still open, it is the intent of CCHCS to address this change in position at our next scheduled meeting date."[7]

The parties held their next bargaining session on October 28, 2020. At that session, consistent with the October 20 letter, CCHCS proposed that PCPs must obtain X-Waivers and begin fully providing MAT by June 30, 2021.

UAPD made a counterproposal when the parties held their next bargaining session on December 2, 2020. Among other items, UAPD proposed that the X-Waiver and associated new duties would be mandatory only for employees hired on or after July 1, 2021. In response, CCHCS stated it was a "management decision" that all PCPs must obtain X-Waivers and participate in MAT, and CCHCS would not negotiate over that decision. Although the parties met three more times, the record does not indicate that CCHCS changed its position on bargaining over X-Waivers and participation in MAT.

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[7] In the proposed decision, the ALJ labeled this letter the "October 20 directive" and concluded that it unilaterally directed PCPs to obtain X-Waivers and begin fully providing MAT. The letter certainly changed CCHCS's bargaining position. Standing alone, however, it was not necessarily a "directive." On the one hand, the letter notified UAPD of an "expectation" that employees would need to obtain X-Waivers in the following eight months. But CCHCS apparently did not send the letter to employees and, overall, the letter largely indicates that CCHCS remained willing to bargain over this issue. We therefore refer to CCHCS's letter as simply the "October 20 letter."

Meanwhile, the ALJ held six non-consecutive days of hearing beginning on January 25, 2021. The parties presented their final witnesses and exhibits on the last hearing day, June 21, 2021, which was shortly before the deadline for PCPs to obtain X-Waivers and begin fully providing MAT.

CCHCS notified employees that the deadline to obtain X-Waivers was June 30, 2021, and thereafter CCHCS continued to insist on that deadline. This is clear based on testimony from CCHCS Deputy Director for Medical Services Renee Kanan, CCHCS negotiator Jan Sale, and Unit 16 PCP Steven Sabo. We also take administrative notice of the receiver's June 2021 report to the federal district court in *Plata* and related cases, wherein he stated that CDCR "has required all Medical Services providers" to obtain X-Waivers from the DEA. (https://cchcs.ca.gov/wp-content/uploads/sites/60/TR/T47_20210601_TriAnnualReport.pdf, p. 5 [as of June 23, 2022].) Thus, while the October 20 letter was not in and of itself a directive to employees, CCHCS did ultimately require PCPs to obtain X-Waivers and begin fully providing MAT by on or about July 1, 2021.[8]

DISCUSSION

Although the Board reviews exceptions to a proposed decision de novo, to the extent that a proposed decision adequately addresses issues raised by certain exceptions, the Board need not further analyze those exceptions. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) The Board also need not address alleged

[8] Federal rules regarding X-Waivers changed while the parties litigated the case. Effective April 2021, PCPs no longer needed X-Waivers to prescribe Suboxone for up to 30 patients. CCHCS, however, required PCPs "to be X-Waived" to prescribe Suboxone to at least 100 patients by no later than June 30, 2021.

errors that would not impact the outcome. (*Ibid*.) To the extent an ALJ assesses credibility based upon observing a witness in the act of testifying, we defer to such assessments unless the record warrants overturning them. (*Los Angeles Unified School District* (2014) PERB Decision No. 2390, p. 12.)

Here, the ALJ found that CCHCS had no duty to bargain over its decision to institute the ISUDT and MAT programs, but was required to bargain over the potential effects thereof, including whether PCPs: (1) must complete X-Waiver training and obtain an X-Waiver; (2) must fully provide MAT; and (3) would receive a salary increase in exchange for obtaining an X-Waiver and providing MAT. In finding that management had to bargain over these topics, the ALJ first determined that CCHCS implemented materially new qualifications and job duties that were not reasonably comprehended within PCPs' existing duties. The ALJ then held that CCHCS was not privileged to implement changes before completing effects negotiations because CCHCS failed to satisfy the first element of the three-part test set forth in *Compton Community College District* (1989) PERB Decision No. 720, pp. 14-15 (*Compton*). As a remedy, the ALJ principally ordered CCHCS to rescind its directive requiring PCPs to obtain an X-Waiver and provide MAT, make employees whole, and resume bargaining upon request.

Because UAPD filed no exceptions, it has now acceded to the ALJ's conclusion that CCHCS had no duty to bargain over its decision to offer ISUDT and MAT services, and instead had to bargain only over that decision's effects on employment terms and conditions. Moreover, CCHCS has declined to argue that its MOU with

UAPD permitted it to materially change job duties or qualifications. We express no opinion on these waived arguments.[9]

Accepting the conclusions to which neither party excepted, our remaining task is to determine whether the Dills Act required CCHCS to bargain about the new programs' effects on employment terms and conditions, and, if so, whether CCHCS complied with that duty. In Parts I-V below, we address the issues that CCHCS has raised in its five sets of exceptions. Where applicable, we note the differences between our analysis and the proposed decision, as well as between our remedial order and the ALJ's proposed order.

I. Exception Alleging that CCHCS's New Requirements Did Not Materially Change PCPs' Terms or Conditions of Employment

A charging party can establish that new job duties materially deviated from the status quo by showing that new duties or assignments are not "reasonably comprehended" within employees' prior duties or assignments. (*Cerritos Community College District* (2022) PERB Decision No. 2819, pp. 30-31 (*Cerritos*) [judicial appeal pending].) "Reasonably comprehended" is an objective standard that refers to what a reasonable employee would comprehend based on all relevant circumstances, including, but not limited to, past practice, training, and job descriptions. (*County of Santa Clara* (2022) PERB Decision No. 2820-M, p. 6, citing *Rio Hondo Community College District* (1982) PERB Decision No. 279, pp. 17-18 [while catchall language in job description does not overcome evidence of contrary past practice, PERB interprets

[9] Pursuant to PERB Regulation 32300, subdivision (e), the Board considers issues not raised in exceptions only where there is good cause to do so.

job descriptions in the context of employees' overall role].) For instance, the Board has found new duties were not reasonably comprehended within an existing assignment when they required employees to obtain additional credentialing. (*County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 6, citing *Mt. San Antonio Community College District* (1983) PERB Decision No. 297, p. 11 (*Mt. San Antonio*).)

An employer also must bargain if it materially alters employees' workload. (*County of Santa Clara*, *supra*, PERB Decision No. 2820-M, pp. 5-6 & fn. 4; *Cerritos*, *supra*, PERB Decision No. 2819, p. 30; *County of Kern* (2018) PERB Decision No. 2615-M, p. 10 & adopting proposed decision at p. 11.) Because this is a separate inquiry from whether new duties were reasonably comprehended within existing duties, a charging party need only show that the workload change was material. (*County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 6, fn. 4.) Thus, a change in workload may be found even when the nature of duties assigned does not materially change—for instance, if an employer assigns fewer employees to perform a steady amount of work. (See, e.g., *Fullerton Union High School District* (1978) PERB Decision No. 53, pp. 7-8.) The converse can also be true: an employer can impose materially new duties without increasing overall workload, as alleged in *County of Santa Clara*, *supra*, PERB Decision No. 2820-M. However, these two types of material changes often occur in concert with one another, as UAPD alleges in this case, and establishing one can aid in proving the other. For instance, if new duties increase employee workload, that tends to show that the new duties may not have been reasonably comprehended within existing duties.

This case also requires us to consider a third alternative means of showing a material change on a bargainable subject: An employer must bargain before materially

changing a job qualification unless the change merely complies with an externally imposed change in law. (*County of Sacramento* (2020) PERB Decision No. 2745-M, p. 17.) While a newly-required qualification is subject to bargaining if it is material and not required by an external change in law, it also may constitute evidence that the employer has materially changed duties. In other words, if an employer requires a new qualification while altering duties, the new qualification tends to show that the new duties were not reasonably comprehended within existing duties. (*County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 6; *Mt. San Antonio*, *supra*, PERB Decision No. 297, p. 11.)

To apply these standards, we compare new duties, qualifications, or workload with the status quo, and we determine if a reasonable employee would find the changes to be material. (*County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 8.) In arguing that it did not make material changes, CCHCS claims the ALJ made five factual errors and applied incorrect legal reasoning. We consider each argument in turn. Although we adjust the ALJ's findings to hew them more precisely to the record, and we alter the ALJ's analysis to better match precedent, we ultimately conclude that CCHCS made material changes to PCPs' terms and conditions of employment.

A. Factual Findings as to CCHCS's New Requirements for PCPs

1. First factual finding

CCHCS asks us to overturn the ALJ's finding that new job duties and qualifications took effect on July 1, 2021. CCHCS first points out that, before this date, PCPs could participate in the MAT and ISUDT programs on a partial basis. CCHCS then notes that the evidentiary record closed on June 21, 2021, claiming that the

record therefore did not include evidence showing what happened on or after July 1, 2021. CCHCS returns to a similar vein of argument in a later exception, claiming that the ALJ's findings contain "a factual impossibility" in that the record closed nine days before the implementation date and therefore cannot show that CCHCS did, in fact, implement new job qualifications and duties. On the record before us, this argument is legally and factually untenable.

A change in policy occurs on the date the employer makes a firm decision, even if the decision does not take effect immediately or never takes effect. (*City of Milpitas* (2015) PERB Decision No. 2443-M, p. 15.) Here, there is more than sufficient evidence that, well before the record closed, CCHCS had firmly decided that PCPs would take on the new duties and obtain new qualifications by July 1, 2021.

While the October 20 letter did not necessarily constitute a "directive" to employees, CCHCS's position crystalized on December 2, 2020, when CCHCS stated it was a non-negotiable management decision that all PCPs must obtain X-Waivers and begin fully providing MAT. CCHCS further indicated that its next step was to notify employees of the new requirements. At the PERB hearing, CCHCS admitted that it in fact required PCPs to submit their X-Waiver applications before June 2021 given that the application process generally takes between four and six weeks. Testimony from Kanan, Sale, and Sabo further proves that CCHCS maintained its announced deadline for PCPs to become X-Waived and begin providing MAT. Sale, for instance, testified that while CCHCS/CDCR originally anticipated most PCPs would voluntarily obtain X-Waivers, not enough PCPs were applying. For that reason, he continued, "we then had to put out that we were going to require it by a certain date. We just couldn't wait any longer for these doctors to get on board." Finally, the receiver's June 2021 report

similarly leaves no doubt as to what occurred, as he wrote that CDCR "has required all Medical Services providers to obtain a [DEA] X-Waiver." Thus, while CCHCS notes that it allowed partial participation in MAT before July 1, 2021, this does not counter the overwhelming evidence that well in advance of June 30, 2021, CCHCS established that date as a firm deadline for its changes.

2. Second factual finding

CCHCS next excepts to the ALJ's finding that "'the prescribing of MAT' is the same thing as requiring PCPs to prescribe Suboxone." CCHCS notes, for instance, that requiring a PCP to obtain an X-Waiver does not automatically require the PCP to prescribe SUD medication to any given patient.

CCHCS fails to acknowledge the context of the ALJ's finding. The ALJ found that: (1) CCHCS chose to use Suboxone as the primary medication component of MAT; and (2) "MAT also includes the use of cognitive behavior therapy (CBT) or cognitive behavior intervention (CBI)." Based on these findings, the ALJ reasoned that prescribing Suboxone was not reasonably comprehended within PCPs' existing job duties because, unlike other medications, PCPs must provide CBI and teach patients coping skills when prescribing Suboxone. CCHCS argues the ALJ was incorrect because PCPs may prescribe Suboxone based on their professional judgment, but they need not do so. We affirm the ALJ's inference that a PCP cannot fully participate in MAT without prescribing Suboxone on at least some occasions. CCHCS provided no evidence that fully providing MAT would be a de minimis part of PCPs' duties. Rather, the record supports the inference that CCHCS materially changed PCPs' duties.

3. Third factual finding

CCHCS contends the ALJ erred in finding that: (1) prescribing SUD medication differs from prescribing other medication in that it requires physicians to teach coping skills and provide CBI, including motivational interviewing; and (2) UAPD-represented PCPs do not have the time to conduct lengthy motivational interviews with each patient. The parties largely agree that the standard of care for treating SUD involves medication, CBI, and other supports, and they also agree that ISUDT and MAT programs involve far more than medication. However, the parties dispute the extent of the burden on PCPs.

While CCHCS and CDCR expect counselors to focus on CBI and CBT, the record nonetheless shows that PCPs were reasonable in understanding that CCHCS also expected them to provide ISUDT and MAT patients with materially new services beyond prescribing medication. Indeed, CCHCS's Care Guide for SUD provides that behavioral modification is the "cornerstone" for treatment, and PCPs are expected to "[u]se motivational interviewing to encourage initial and ongoing participation." Furthermore, inmate patients were often not receiving CBI or CBT from counselors, and group therapy sessions were often not available. Most importantly, existing PCP schedules generally provided 15-minute sessions, but physicians would frequently need to spend far more time than that to allow for motivational interviewing and other tasks associated with prescribing SUD medication.[10]

[10] Unit 16 PCP Thomas Bzoskie testified that a physician who prescribes SUD medication must take the time to understand the psychology behind their patients' addiction, a task that is unlike the primary care he provided in the past. Unit 16 PCP Alphonso Swaby similarly explained the difference in prescribing SUD medication, noting that he had to follow a time-consuming whole person, "360 degree" approach.

In sum, even if CCHCS did not impose on PCPs an absolute requirement of providing CBI and teaching coping skills to every patient with SUD, the ALJ made no error that would alter the outcome of this case. PCPs reasonably understood the new expectations as materially increasing their duties and workload, including new duties that were not reasonably comprehended within their previous duties.

4. Fourth factual finding

CCHCS excepts to the ALJ's finding that CCHCS considered modifying PCPs' job duty statement to include addiction medicine as a desirable qualification for new hires, and that it is therefore reasonable to infer CCHCS was aware that the existing job duty statement did not cover such work. While there was evidence regarding a proposed or actual revised duty statement, the record does not include such a revision and we therefore decline to speculate about its contents. Furthermore, it is unclear to which PCP positions the proposed or actual new duty statement might apply. Because this unclear and unpersuasive evidence does not support the ALJ's finding, we grant CCHCS's exception on this point.

5. Fifth factual finding

CCHCS excepts to the following passage in the proposed decision: "The weight of the evidence demonstrates that addiction medicine is a special area of practice, not within the expertise of a general practice PCP." CCHCS contends this finding "incorrectly infers that CCHCS is requiring PCPs to act as Addiction Specialists." Rather, CCHCS argues, the MAT-related duties it requires of PCPs "fall squarely within the expertise of a general practice PCP" and are "consistent with the community standard of care." CCHCS points to evidence that physicians in office-based settings can prescribe SUD medication, as well as evidence that other primary health care

delivery systems are increasing access to MAT.

UAPD, for its part, called six PCPs to testify. Each stated that providing MAT falls outside the prior scope of their practice. For instance, Christine Kuo testified that PCPs have no addiction medicine residency training and therefore have a "big gap" to cross, especially without the help of mental health care providers, to successfully treat addiction.[11]

We do not see these competing claims as mutually exclusive. It is entirely plausible that: (1) addiction medicine is a recognized specialty area; (2) primary care physicians outside of CCHCS nonetheless may find themselves responsible for treating SUD (especially when there is a dearth of other options); and (3) PCPs at CCHCS had largely not done so before the events at issue here. There is no cause for us to delve further into the extent to which, in modern American medical practice, addiction medicine may fall partially within primary care and/or partially outside of it. Further analysis would not substantially aid our inquiry, which involves applying precedent to determine whether *reasonable PCPs at CCHCS* would view their employer's new requirements as materially changing *their* qualifications, duties, and/or workload.

In answering this question, the CCHCS job descriptions for PCPs have limited utility given that they do not attempt to detail which medical conditions PCPs must treat on their own versus which conditions PCPs may refer to specialists in whole or in

[11] Although it is possible to obtain medical board certification in addiction medicine, CCHCS does not require PCPs to have any such certification. For this reason, testimony regarding addiction medicine residency training and medical board certification bears little weight.

part. Past practice thus becomes even more relevant. (*County of Santa Clara*, *supra*, PERB Decision No. 2820-M, p. 6 [catchall language in a job description does not outweigh contrary past practice].)

Turning to the relevant past practice, CCHCS did not require PCPs to obtain X-Waivers until July 1, 2021. If the new X-Waiver requirement stood alone, there may have been no bargaining obligation depending on the extent to which the new qualification materially altered PCPs' existing qualification requirements. But the X-Waiver requirement did not stand alone. Rather, it was integrally related to a significant new set of responsibilities that PCPs had not previously performed. In the past, mental health professionals had primarily overseen treatment for SUD and patients' other mental health needs; CCHCS significantly changed duties and increased workload by requiring PCPs to take on primary responsibility for SUD, a complex, immediately life-threatening mental health condition. Accordingly, while we do not affirm the proposed decision to the extent it arguably found that addiction medicine falls outside of primary care in American medical practice, this adjustment leaves intact the well-supported fact that CCHCS implemented material changes to UAPD-represented PCPs' terms and conditions of employment.

B. Legal Conclusions as to CCHCS's New Requirements for PCPs

In arguing that it merely assigned PCPs duties that were reasonably comprehended within their prior duties, CCHCS primarily relies on the last of its above-discussed factual contentions. Specifically, CCHCS argues that providing MAT is "within the scope and expertise of a general practice PCP, and not reserved for addiction specialists," and that having PCPs do so "is the preferred approach within the medical community." (Original underscore.) As discussed above, however,

arguments about current American medical practice bear substantially less weight than arguments about past practice at CCHCS.

Beyond its argument about the allegedly broad nature of primary care, CCHCS selectively cites past PERB decisions to argue for a broad scope of what constitutes existing job duties. But even were we to accept those select decisions as the sum of our precedent, we would still affirm the ALJ. For instance, CCHCS repeatedly cites *Davis Joint Unified School District* (1984) PERB Decision No. 393 (*Davis*), a decision that does not establish a broad management right to change job duties. (See *Cerritos*, *supra*, PERB Decision No. 2819, p. 31 [*Davis* cannot be broadly construed].) *Davis* does not help CCHCS, as it explicitly notes that management must bargain if it assigns tasks that are not reasonably understood to be among existing duties, and, even more importantly for this case, it cautions that increases in "the quantity of work" must be bargained. (*Davis*, *supra*, PERB Decision No. 393, p. 26 & fn. 11, original underscore.) Here, as discussed above, CCHCS assigned new duties that materially increased PCPs' workload.

Other decisions upon which CCHCS relies are similarly unavailing given that the instant case involves an increase in workload. For instance, in *Mt. San Antonio*, *supra*, PERB Decision No. 297, the Board distinguished between assigning librarians and counselors to teach classes integrally related to their specialties versus having them learn to teach new classes that were further afield from what they had previously taught. (*Id*. at pp. 10-11.) There was no allegation that such changes materially altered the total amount of work the school district expected employees to perform. (*Ibid*.)

Because the record here shows a workload increase, the ALJ ultimately reached a correct conclusion irrespective of whether assigning PCPs to treat SUD is

akin to forcing librarians and counselors to learn to teach new classes further afield from what they had previously taught. However, as an alternate basis for our holding, we find that CCHCS's new requirements, in both their premise and design, were, in fact, sufficiently similar to a school employer assigning courses far enough outside employees' prior scope of work that they must obtain new skills and certifications. The new requirements significantly shifted SUD treatment away from specialists and toward PCPs. While PCPs outside the prison system may have experience treating SUDs, UAPD-represented PCPs reasonably viewed these duties as new.

Accordingly, absent a contractual waiver of the right to bargain, CCHCS had two primary choices for imposing the new requirements. First, it could bargain in good faith to impasse or agreement, which CCHCS admits it did not do. Second, it could comply with the requirements of *Compton*, *supra*, PERB Decision No. 720, pp. 14-15. We turn now to CCHCS's exceptions alleging that it complied with *Compton*.

II.–V.*

ORDER*

APPENDIX*

ATTACHED PROPOSED DECISION*

* See footnote 1, *ante*.