STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

ADULT SCHOOL TEACHERS UNITED, Charging Party, v. WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT, Respondent.	Case No. SF-CE-3470-E PERB Decision No. 2881 November 6, 2023

Appearances: Law Offices of Robert J. Bezemek by Robert Bezemek, Tanya Smith, and Alexandra Iova, Attorneys, for Adult School Teachers United; Atkinson, Andelson, Loya, Ruud & Romo by Guy Bryant and Marci Williams, Attorneys, for West Contra Costa Unified School District.

Before Banks, Chair; Krantz and Nazarian, Members.

DECISION

KRANTZ, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions to a proposed decision of an administrative law judge (ALJ). The complaint alleged that West Contra Costa Unified School District violated the Educational Employment Relations Act (EERA) by failing to afford Adult School Teachers United (ASTU) notice and an opportunity to bargain over the following two decisions, and/or the effects thereof: (1) moving English as a Second Language (ESL) courses from remote instruction in the first 18 months of the COVID-19 pandemic to a mixed schedule of remote and in-person classes in the 2021-2022 school year; and

(2) implementing new assignment procedures for the 2021-2022 school year that materially changed whether and how ESL teachers would be allotted work opportunities, while also deviating from new seniority calculation methods that the parties had allegedly agreed to by that point.[1]

The ALJ found in the District's favor on all claims. ASTU's exceptions argue that the proposed decision contains multiple mistakes of fact and law, while the District urges us to affirm the ALJ's conclusions. Having reviewed the record de novo, we affirm in part and reverse in part. As explained below, the District violated EERA when it implemented material new assignment procedures without affording ASTU notice or an opportunity to bargain, but the District prevails in all other respects.

FACTUAL AND PROCEDURAL BACKGROUND

In addition to operating schools serving students in kindergarten through 12th grade, the District operates an adult school. In 2017, the District recognized ASTU as the exclusive representative of the District's adult education teachers.[2] The bargaining unit includes ESL teachers and ESL lead teachers, among others. As of the close of the formal hearing in this matter, the parties had not yet reached an initial collective bargaining agreement (CBA).[3]

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

[2] All further references to teachers mean adult education teachers.

[3] Although the proposed decision states that ASTU joined a multi-union agreement with the District that was in effect for several months in the spring of 2021, the parties agree there is no basis in the record for that finding.

From 1994 through the 2019-2020 school year, the District's procedures for assigning ESL work opportunities began each spring, when ESL lead teachers would survey teacher preferences for the following school year. The survey would ask if ESL teachers intended to return to the District, and if so, whether they sought any change in their assignments. Based on survey responses, the lead teachers would draft a proposed ESL class schedule and forward it to the adult education principal, who historically approved the schedule as proposed. The lead teachers would then proofread the schedule before the District published it.

After COVID-19 became a widespread concern in March 2020, the District transitioned to remote learning. Adult Education Assistant Principal Lisa Gonzalves later created an ESL class schedule for the 2020-2021 school year without following the past procedure or providing ASTU notice or an opportunity to bargain. The record contains no evidence that ASTU objected to this deviation.

Around the time that COVID vaccines became widely available in Spring 2021, the District was planning for the 2021-2022 school year. On April 27, 2021,[4] Gonzalves e-mailed teachers and asked them to respond to a non-binding survey. Gonzalves wrote:

> "We are beginning to talk about the fall, and would like to get some insight as to your potential teaching preferences regarding face-to-face vs. virtual classes.[5] Do note that your responses to this survey are in no way binding, as how you feel today may be different than a few weeks down the

[4] All further dates refer to 2021, unless otherwise indicated.

[5] The District's survey also included a "hybrid" option, consisting of one day in person and three days online.

> road. However, we do need to move forward with fall planning, and your responses will help give us a general idea of how to steer this ship."

Gonzalves did not notify ASTU before sending this e-mail.

On April 28, the District Board of Education approved a motion that would require the District to reopen for "100% in-person learning" in the fall of 2021. The record contains no evidence that the District notified ASTU in advance that the Board of Education would consider such a motion, or that any ASTU representatives were present when the motion passed.

On May 3, Adult Education Principal Jeffrey Carr e-mailed adult school staff as follows:

> "Last Wednesday, the school board passed a resolution that was and will remain to be controversial among stakeholder groups. The board resolved to fully reopen the K-12 side of the educational house in August. This language was an important step to give guidance to the district leadership to pursue a path to reopening. So despite it coming across as a declarative statement, it really was more of a procedural step to inform those negotiating with the various employee groups. Obviously, more to come on that topic.
>
> "In adult education, we are more likely to retain a robust virtual presence and make the foray into some in-person and face to face teaching on a limited basis following guidance from public health agencies.
>
> "With that as a preface, please make sure you have replied to our survey linked HERE regarding teaching for the 2021-2022 school year. This survey is meant to capture your thoughts at this time and is not meant to bind you to a particular mode of instructional delivery for next year."

The linked survey was the one Gonzalves had circulated on April 27.

Most teachers who responded to the survey indicated that they preferred for the District to pursue online or hybrid formats rather than in-person instruction.

On June 24, the District e-mailed ESL teachers a link to a draft schedule for the following school year. The District's e-mail advised teachers as follows:

> "Please let me know which teaching slot you would like to teach. Tell me the location (virtual is a location), the class, date and time you would like to teach.
>
> "The highlighted name slots are the available classes. Admin has placed some of your names in classes to which they presumed you would like to teach. Please let me know if that is not the case.
>
> "Admin has set the deadline to respond by as 6:00 pm on July 6, 2021. If there is more than one person who requests to teach a specific class, Admin will work with ASTU to define the selection criteria.
>
> "We basically want to know who wants to teach what in 21-22."

The District had created the June 24 draft schedule without informing ASTU and without the knowledge of, or input from, ESL teachers or lead teachers. The schedule listed some virtual classes, but it listed a greater number of in-person courses. It did not include any hybrid courses.[6]

The District partially pre-filled the June 24 draft schedule by assigning teachers to some of the in-person courses. In doing so, the District used teachers' responses to

[6] While the June 24 draft schedule is not in the record, we characterize it to the extent possible based upon witness testimony and inferences that may reasonably be drawn from such testimony. We also note that the District's final fall 2021 schedule included 7 in-person ESL classes and 11 online ESL classes.

the District's earlier survey, even though the District had explicitly promised that the survey was non-binding, the District had acknowledged that teachers might feel differently "a few weeks down the road," and teachers would reasonably have read the survey as collecting data to inform the choices the District would offer rather than asking teachers to make elections for the following school year. By relying on the teachers' non-binding survey responses, the District ensured assignments for the minority of teachers who had said they favored in-person instruction, thereby preferencing those teachers over others whose survey responses had favored online and/or hybrid formats.

On June 30, during ongoing CBA negotiations, the parties reached a tentative agreement on a seniority article. The tentative agreement specified different criteria to calculate seniority for permanent versus temporary teachers, in that a permanent teacher's seniority would be determined by date of hire, while a temporary teacher's seniority would be based on the total number of quarters taught.

On July 14, Carr e-mailed ASTU about assignments for online classes where more than one teacher requested the assignment in response to the June 24 draft schedule. Carr specifically sought to verify the seniority of ESL teachers vying for the same assignment. While ASTU asserted that the District should follow the parties' tentative agreement on seniority, the District did not do so.

On July 15, the District posted five open ESL teaching positions to a job recruitment board, and thereafter the District hired new teachers to teach in-person classes.

On July 19, July 20, and August 3, ASTU demanded to bargain over fall 2021 ESL assignments and the effects thereof. ASTU also provided the District with its proposed class schedule and challenged the District's decision to contravene its earlier promises and use April and May survey results to grant assignment preference to some teachers over others. While the parties discussed the ESL class schedule on several occasions in August and September, they did not reach an agreement.[7]

ASTU filed this charge on November 8, and PERB's Office of the General Counsel (OGC) issued a complaint on March 21, 2022. The District answered the complaint on April 8, 2022, and it thereafter filed a motion to dismiss for lack of standing. The ALJ conducted a formal hearing on October 12-13, 2022. The ALJ issued her proposed decision on June 12, 2023, finding ASTU had standing but dismissing the complaint and underlying unfair practice charge. ASTU timely excepted to the proposed decision, while the District filed no exceptions.[8]

[7] The details of the parties' August and September interactions do not alter the outcome of this case, as by that time the District had already violated EERA, and it was too late for good faith negotiations over the fall 2021 scheduling process. (*Oakland Unified School District* (2023) PERB Decision No. 2875, p. 9, fn. 6 (*Oakland*); *County of Santa Clara* (2013) PERB Decision No. 2321-M, p. 24 ["In the face of unilateral implementation, a demand to bargain is futile," because at that point there is no "level playing field" for fair negotiations to occur].)

[8] Because no party challenged the ALJ's finding that ASTU has standing to pursue this case, we express no opinion on that issue.

DISCUSSION

In resolving exceptions, the Board applies a de novo standard of review. (*City of San Ramon* (2018) PERB Decision No. 2571-M, p. 5.) However, the Board need not address alleged errors that would not affect the outcome. (*Ibid*.)

Here, ASTU's post-hearing brief to the ALJ largely ignored the complaint's first claim: that the District changed to a mix of in-person and remote instruction without fulfilling its obligation to bargain. We deem that claim waived. Turning to the complaint's second set of claims—that the District unilaterally altered its assignment procedures and methods of calculating seniority—the below discussion explains, first, that ASTU timely filed these claims. Next, we conclude that ASTU failed to prove a change in seniority calculations but established a violation as to assignment procedures. Finally, we summarize the appropriate remedy.

I. Timeliness

The six-month limitations period for an unfair practice charge begins once the charging party knows, or should know, of the conduct underlying the charge. (*Gavilan Joint Community College District* (1996) PERB Decision No. 1177, p. 4.) For OGC to issue a complaint, the charging party must allege facts that would, if proven, establish timeliness. (*Los Angeles Unified School District* (2014) PERB Decision No. 2359, pp. 3 & 30.) After OGC issues a complaint, the respondent bears the burden to plead untimeliness as an affirmative defense and to prove that the statute of limitations bars the charge. (*Id.* at p. 30.)

Here, June 24 was the earliest that ASTU could have learned that the District was using responses to its non-binding survey to assign work opportunities, as that

was the date the District e-mailed ESL teachers a draft schedule for fall 2021. Prior to that date, a reasonable teacher or union representative would have assumed, based on the District's explicit explanation, that the survey was non-binding on teachers and instead was a means of gathering information for the District's use in deciding what formats to offer. Furthermore, ASTU learned of the District's seniority calculations in July. Accordingly, the District has failed to establish a statute of limitations defense.

II. Merits

To establish a prima facie case that a respondent employer violated its decision bargaining obligation, an exclusive representative must prove: (1) the employer changed or deviated from the status quo; (2) the change or deviation concerned a matter within the scope of representation; (3) the change or deviation had a generalized effect or continuing impact on represented employees' terms or conditions of employment; and (4) the employer reached its decision without first providing adequate advance notice of the proposed change to the employees' union and bargaining in good faith over the decision, at the union's request, until the parties reached an agreement or a lawful impasse. (*Bellflower Unified School District* (2021) PERB Decision No. 2796, p. 9.) We address each element as well as the District's waiver defense.

A. Change in or Deviation from the Status Quo

There are three primary means of showing that a party changed or deviated from the status quo. (*Oxnard Union High School District* (2022) PERB Decision No. 2803 PERB Decision No. 2803, p. 31 (*Oxnard)*.) Specifically, a charging party satisfies this element by showing any of the following: (1) deviation from a written

agreement or written policy; (2) a change in established past practice; or (3) a newly created policy or application or enforcement of existing policy in a new way. (*Ibid*.)

1. Change in Seniority Calculation Method

We reject ASTU's argument that the District changed or deviated from the status quo by not following the seniority criteria for temporary employees set out in the parties' tentative agreement. Absent a specific agreement to the contrary, an unratified tentative agreement generally has no effect. (*City of Culver City* (2020) PERB Decision No. 2731-M, adopting proposed decision at p. 39 (*Culver City*).) Thus, while nothing prevents parties from agreeing to apply certain tentative agreements prior to overall ratification, the record contains no evidence of such an agreement here. Accordingly, the District was required to continue following its past methodology rather than switching to methods set forth in the tentative agreement. We therefore dismiss the portion of the complaint relating to seniority calculations.

2. Change in Procedures for Assigning Work Opportunities

As explained above, when the District surveyed ESL teachers in April and May about their "potential teaching preferences," it assured them that their responses were "in no way binding," acknowledging that "how you feel today may be different than a few weeks down the road," that the survey "is not meant to bind you to a particular mode of instructional delivery for next year," and that the survey was merely intended to help the District "steer th[e] ship." However, in the District's June 24 e-mail and draft schedule, the District abruptly used the non-binding survey results to ensure assignments for the minority of teachers who had said they favored in-person

instruction, thereby preferencing those teachers over others whose survey responses had favored online and/or hybrid formats.

The District's new approach changed or deviated from the status quo. It contravened the written assurances the District had made on April 27 and May 3 about use of the survey responses, and it was a newly created policy or application or enforcement of existing policy in a new way. Indeed, while lead teachers historically used a survey as part of the ESL work assignment procedure, the District's explicitly non-binding survey in spring of 2021, followed by its change in its use of the results, does not match any past practice.[9]

The District counters that its change, if any, occurred in March 2020, when it first deviated from the practice pursuant to which lead teachers would: (1) ask teaching staff if they intended to return the following year, and if so, whether they wanted the same schedule or a different one; (2) draft a proposed schedule, which the adult education principal would approve; and (3) proofread the schedule for accuracy before publication. This initial deviation in March 2020, however, provides no defense to the District's decision to adopt another new procedure in summer of 2021. We explain.

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[9] We infer from the record that, in response to the June 24 draft schedule, teachers not already placed on the draft schedule were permitted to request any unfilled spot but could not ask to displace those whom the District had slated for in-person courses based on survey responses expressing support for an in-person format. At the very least, if the District intended to allow such displacement, the record fails to show that it alerted teachers to that option. Clarifying this issue—and avoiding the overwhelming sense that the District had blindsided teachers by misusing their survey responses—constitute two of many reasons why EERA's requirement of good faith negotiations is a critical means of maintaining or restoring stable labor relations in a wide variety of circumstances. (*Oxnard*, *supra*, PERB Decision No. 2803, p. 57.)

First, the District cannot defend its new summer 2021 procedure by pointing to its spring 2020 deviation from the status quo, because the District deviated in a different manner in 2021, when it led teachers to believe survey results were non-binding but then used them for scheduling purposes. This bait-and-switch was not equivalent to what the District had done a year earlier, at the outset of the pandemic.

Second, to the extent the District claims it had a practice of assigning work opportunities at its discretion, the record does not support that claim. But even if it did, such a history would not privilege the District to continue making such discretionary decisions without bargaining. (*County of Kern* (2018) PERB Decision No. 2615-M, pp. 6-9 [employer's changes are consistent with a dynamic status quo only if the changes follow a nondiscretionary pattern of change].)

Third, a union's acquiescence to a unilateral change in one or more instances does not waive its right to bargain regarding a future change on the same subject. (*County of Kern & Kern County Hospital Authority* (2019) PERB Decision No. 2659-M, p. 22, fn. 19.) That principle is especially significant here because when the District first deviated from its past practice in Spring 2020, the pandemic privileged it to do so without reaching an impasse or agreement, provided that the District bargained in good faith as practicable. (*County of Santa Clara* (2023) PERB Decision No. 2876-M, pp. 32-34 (*Santa Clara*).) Because an emergency is not a static event, changes taken during an emergency must be limited to the timeframe that the emergency requires. (*Id*. at p. 35.) Thus, as the pandemic began to ease and the District moved back toward in-person instruction, the District could have lawfully returned to its established,

pre-COVID procedures for assigning and scheduling ESL courses, or it could have bargained with ASTU if it wished to change to a new system.

Notably, Carr testified that the District believed there was no need to bargain over "a return to normal," but this testimony ignored that the District was not returning to its pre-pandemic assignment system. Instead, without notice to ASTU, the District unilaterally changed to a new policy by making assignments based on its April and May survey, notwithstanding the District's prior assurances to the contrary.

3. Sufficiency of the Complaint

The District's new work assignment procedure is central to ASTU's exceptions, which explain that the District unilaterally created the June 24 draft schedule (a) without any involvement of lead teachers, and (b) using survey responses that were supposed to be non-binding. In response, the District does not argue that this alleged change falls outside the complaint, and in any event such an argument would be untenable given that PERB follows notice pleading principles. (*State of California (State Water Resources Control Board)* (2022) PERB Decision No. 2830-S, p. 15 (*SWRCB*); accord *Eastern Municipal Water District* (2020) PERB Decision No. 2715-M, p. 8 [because administrative proceedings are not bound by strict rules of pleading, a party cannot complain that proof varied from allegations, absent a due process violation].) Complaint paragraph 10 provided sufficient notice in alleging that the District changed policy by, among other changes, "assigning courses based on employees' previously stated preferences for in-person or remote teaching."[10]

[10] In the alternative, the record satisfies each element of the unalleged violation doctrine given that: (1) the District had adequate notice and opportunity to defend

Notice pleading principles, and in the alternative the unalleged violation doctrine, similarly excuse any lack of clarity in complaint paragraph 9, which alleged that the pre-existing status quo was that the District had promised to "work with" ASTU "to define the selection criteria if more than one teacher requested the same course assignment."[11] Moreover, given that the District unilaterally created a brand-new policy, ASTU's claim does not necessarily turn on establishing a firm prior policy. (See, e.g., *Regents of the University of California* (2004) PERB Decision No. 1700-H, adopting proposed decision at pp. 61-62 [letter prohibiting demonstrations inside university's central administration building constituted unilateral change, where previously employer had no such policy].)

B. Scope of Representation

Procedures for assigning courses to adult education teachers fall within the scope of representation. (*Pittsburg Unified School District* (2022) PERB Decision No. 2833, p. 9.) The District sidesteps this principle by claiming it had a management right to create a student schedule without bargaining. That is an incomplete statement of the law, however. Precedent is clear that employee schedules and assignments are

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given the content of ASTU's charge and opening statement [unilateral change in scheduling/assignment of ESL teachers in summer 2021]; (2) the acts or omissions at issue are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the parties fully litigated the allegations; and (4) the parties had the opportunity to examine and cross-examine witnesses regarding the acts or omissions at issue. (*SWRCB*, *supra*, PERB Decision No. 2830-S, p. 14.)

[11] Although this allegation arguably defines the status quo by referencing a commitment that EERA in any event required, the record does, in fact, show that the District committed in writing to work with ASTU on selection criteria if more than one teacher requested the same assignment.

fully bargainable, even though there is no duty to bargain over student schedules. (*Id*. at p. 10.)

Although COVID-19 continued to pose significant challenges when the District was assigning work for fall 2021 ESL classes, the District has not asserted an emergency/necessity defense to any of the claims in this case. We express no opinion as to whether the District could have proven such a defense, but we note that establishing a bona fide emergency/necessity at most alters the nature of an employer's bargaining obligation and does not change the scope of representation. (*Santa Clara*, *supra*, PERB Decision No. 2876-M, pp. 28-29 & 32-34 [pandemic did not alter scope of bargaining; rather, it permitted employer to make life-saving decisions without reaching an impasse or agreement, while providing notice and an opportunity to bargain as practicable].)

C. Generalized Effect or Continuing Impact

The District contends that the District's new assignment system did not have a generalized effect or continuing impact on employees. Specifically, the District argues that its change "only related to the ESL schedule and not the generalized membership throughout the Adult Education Program," and "there were only three ESL lead teachers" who lost responsibility for gathering teacher preferences and using those preferences to create assignments.

To the contrary, however, the new procedures for assigning classes impacted work opportunities for at least the fall 2021 semester and possibly later semesters or years as well, which is sufficient to satisfy this element. (*Oxnard*, *supra*, PERB Decision No. 2803, pp. 30-31; *San Bernardino Community College District* (2018)

PERB Decision No. 2599, p. 8.) Moreover, the District further demonstrated a generalized effect or continuing impact by asserting a non-existent management right. (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 8 [continuing impact shown if change either alters a term or condition of employment or involves employer assertion of non-existent right that could be relevant to future disputes].)

D. Adequate Notice and Opportunity to Bargain

Although the District did not believe it had a duty to afford ASTU notice and an opportunity to bargain over new procedures for assigning work opportunities, the District argues that it nonetheless fully complied with such a duty. But the District did not afford ASTU any advance notice, much less adequate notice followed by an adequate opportunity to bargain in good faith.

To begin, Board of Education meetings and associated public documents generally do not afford a union sufficient notice of a potential change, unless the employer sends such a document to a union official, in a manner reasonably calculated to draw attention to a specific item and with adequate time for good faith negotiations to ensue. (*Oakland*, *supra*, PERB Decision No. 2875, p. 21; *Regents of the University of California* (2004) PERB Decision No. 1689-H, adopting proposed decision at p. 45; *Victor Valley Union High School District* (1986) PERB Decision No. 565, pp. 5-6 & fn. 6.) The current facts do not satisfy this standard.

Next, Gonzalves' April 27 e-mail and Carr's May 3 e-mail did not clearly inform ASTU that the District intended to use the survey results for work assignments in any way. Indeed, it was only when ESL teachers received the District's June 24 e-mail—

and the attached spreadsheet with certain courses pre-assigned—that the new procedure became clear to recipients. Two of these recipients happened to be ASTU bargaining team members. Even if that could have constituted constructive or actual notice to ASTU, the earliest the union could have first learned of the change was simultaneously with affected bargaining unit teachers. Notice is inadequate when a union first learns of a decision or change as a fait accompli. (*County of Merced* (2020) PERB Decision No. 2740-M, p. 20.)[12]

E. Waiver Defense

While the District claims ASTU waived the right to bargain by failing to timely request negotiations *after* the District sent its June 24 e-mail, that claim cannot succeed. To establish waiver of the right to bargain based on conduct, a respondent has the burden to show the charging party consciously abandoned its right. (*Culver City*, *supra*, PERB Decision No. 2731-M, p. 18.) Normally, this involves proof that the

[12] Even assuming for the sake of argument that the new assignment procedures were no more than effects of a decision involving a non-mandatory topic of bargaining, there is no tenable argument that the District complied with *Compton Community College District* (1989) PERB Decision No. 720 (*Compton*), which allows an employer to implement its decision before completing effects negotiations if it can establish each of three elements: (1) the implementation date was based on an immutable deadline or an important managerial interest, such that a delay in implementation beyond the date chosen would effectively undermine the employer's right to make the decision; (2) the employer gave sufficient advance notice of the decision and implementation date to allow for meaningful negotiations prior to implementation; and (3) the employer negotiated in good faith prior to and after implementation. (*Id.* at pp. 14-15.) Indeed, even if the first element were satisfied, the District did not show that it provided advance notice, much less with sufficient time to allow meaningful pre-implementation negotiations. The District therefore cannot establish the second and third *Compton* elements.

union failed to seek bargaining even after the employer provided clear, advance notice of its proposed change with sufficient time to allow a reasonable bargaining opportunity. (*Id*., adopting proposed decision at pp. 25-26.) In this case, however, as discussed above, the District provided no such advance notice.

The District also asserts what amounts to a contractual waiver defense, arguing that unratified CBA language from its unfinished collective bargaining with ASTU empowered the District's adult education principal to make teacher assignments in any manner, without bargaining. However, just as ASTU cannot rely on unratified seniority language as a basis for asserting a unilateral change (see p. 10, *ante*), unratified CBA language is equally untenable as a basis for asserting a management right.

The District therefore failed to afford ASTU adequate notice and opportunity to bargain before adopting a new procedure for assigning work opportunities to ESL teachers. Moreover, this bargaining violation derivatively interfered with protected union and employee rights. (*Oxnard*, *supra*, PERB Decision No. 2803, pp. 2 & 54.)

III. Remedy

The appropriate remedy for an employer's unlawful unilateral change normally includes at least an order to bargain, make-whole relief, rescission of changes, a cease-and-desist order, and a notice-posting order, among other remedies. (*Santa Clara*, *supra*, PERB Decision No. 2876-M, pp. 37-38; *Imperial Irrigation District* (2023) PERB Decision No. 2861-M, p. 64.) We see no reason to depart from typical remedies, and we express no opinion regarding the nature or scope of compensable harms (if any) that ASTU may establish in compliance.

ORDER

Based on the foregoing and the entire record in this case, the Public Employment Relations Board (PERB) finds that West Contra Costa Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivision (c), and derivatively violated subdivisions (a) and (b), when it unilaterally changed the procedure for assigning classes to English as a Second Language (ESL) teachers without affording Adult School Teachers United (ASTU) adequate notice and opportunity to bargain. All other allegations are dismissed.

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. Instituting new procedures for assigning courses to adult education teachers without affording ASTU adequate notice and opportunity to bargain.

2. Interfering with either ASTU's right to represent bargaining unit employees or employees' right to be represented by ASTU.

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

1. Upon ASTU's request, rescind procedures for assigning ESL courses adopted in summer 2021.

2. Upon ASTU's request, bargain in good faith over new procedures for assigning ESL courses.

3. Make whole ASTU and all affected employees for any losses incurred because of the violations found in this case. Any make-whole amounts shall be augmented by interest at 7 percent per year.

4. Within 10 workdays after this decision is no longer subject to appeal, post at all District locations where notices to employees in ASTU's bargaining unit are posted, copies of the Notice attached hereto as an Appendix. An authorized agent of the District must sign the Notice, indicating that the District will comply with the terms of this Order. The District shall maintain the posting for a period of 30 consecutive workdays. The District shall take reasonable steps to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. In addition to physically posting this Notice, the District shall communicate it by electronic message, intranet, internet site, and other electronic means the District uses to communicate with employees in the bargaining unit ASTU represents.[13]

5. Notify OGC of the actions the District has taken to follow this Order by providing written reports as directed by OGC and concurrently serving such reports on ASTU.

Chair Banks and Member Nazarian joined in this Decision.

[13] Either party may ask PERB's Office of the General Counsel (OGC) to alter or extend the posting period, require further notice methods, or otherwise supplement or adjust this Order to ensure adequate notice. Upon receipt of such a request, OGC shall solicit input from all parties and, if warranted, provide amended instructions to ensure adequate notice.

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. SF-CE-3470-E, *Adult School Teachers United v. West Contra Costa Unified School District*, in which all parties had the right to participate, the Public Employment Relations Board found that West Contra Costa Unified School District violated the Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivision (c), and derivatively violated subdivisions (a) and (b), when it unilaterally changed the procedure for assigning classes to English as a Second Language (ESL) teachers without affording Adult School Teachers United (ASTU) adequate notice and opportunity to bargain.

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

A. CEASE AND DESIST FROM:

1. Instituting new procedures for assigning courses to adult education teachers without affording ASTU adequate notice and opportunity to bargain.

2. Interfering with either ASTU's right to represent bargaining unit employees or employees' right to be represented by ASTU.

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

1. Upon ASTU's request, rescind procedures for assigning ESL courses adopted in summer 2021.

2 Upon ASTU's request, bargain in good faith over new procedures for assigning ESL courses.

3. Make whole ASTU and all affected employees for any losses incurred because of the violations found in this case. Any make-whole amounts shall be augmented by interest at 7 percent per year.

Dated: _____

WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT

By: _____
Authorized Agent

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