STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHERS LOS ANGELES, Charging Party, v. ALLIANCE JUDY IVIE BURTON TECHNOLOGY ACADEMY HIGH SCHOOL, ALLIANCE GERTZ-RESSLER/RICHARD MERKIN 6-12 COMPLEX & ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 5, Respondents.	Case No. LA-CE-6600-E PERB Decision No. 2809 February 28, 2022

Appearances: Bush Gottlieb by Dexter Rappleye and Erica Deutsch, Attorneys, for United Teachers Los Angeles; Sheppard, Mullin, Richter & Hampton by Valerie E. Alter, Attorney, and Robert Escalante, General Counsel, for Alliance Judy Ivie Burton Academy High School, Alliance Gertz-Ressler/Richard Merkin 6-12 Complex & Alliance College-Ready Middle Academy No. 5.

Before Banks, Chair; Shiners, Krantz and Paulson, Members.

DECISION

BANKS, Chair: This case is before the Public Employment Relations Board (PERB or Board) for decision based on a stipulated record, pursuant to PERB Regulations 32215 and 32320, subdivision (a)(1).[1] In a prior representation decision involving these parties, we certified United Teachers Los Angeles (UTLA) as the

[1] PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

exclusive representative of three separate certificated bargaining units at Alliance Judy Ivie Burton Technology Academy High (Burton Tech), Alliance College-Ready Middle Academy No. 5 (Middle 5), and Alliance Gertz-Ressler/Richard Merkin 6-12 Complex (Gertz/Merkin) (collectively, Charter Schools or Alliance).[2] (*Alliance Judy Ivie Burton Technology Academy High, et al.* (2020) PERB Decision No. 2719 (*Alliance I*).) Following the issuance of *Alliance I*, the Charter Schools requested the Board to reconsider its decision, which we denied. (*Alliance Judy Ivie Burton Technology Academy High, et al.* (2020) PERB Decision No. 2719a.) Alliance also requested the Board to join in seeking judicial review of *Alliance I*, which we denied. (*Alliance Judy Ivie Burton Technology Academy High, et al.* (2020) PERB Order No. JR-30.)[3]

In this case, UTLA alleges that the Charter Schools have refused to recognize or bargain with UTLA as the exclusive representative of the certificated employees at the Charter Schools, in contravention of the Board's order in *Alliance I*. The Charter Schools admit that they have refused to bargain with UTLA. They contend that *Alliance I* was incorrectly decided and should be reversed based on a reorganization that took effect more than five months before *Alliance I* issued. For the reasons

[2] As of the date of the filing of the petitions, all three Charter Schools had Administrative Services Agreements with a nonprofit charter management organization, Alliance College-Ready Public Schools (Alliance CMO or Home Office).

[3] The Board will only join in requests for judicial review when all three of the following elements have been met: "(1) there is a novel issue presented; (2) the issue primarily involves construction of a statutory provision unique to the statute under consideration; and (3) the issue is likely to arise frequently." (*Alliance Judy Ivie Burton Technology Academy High, et al.*, *supra*, PERB Order No. JR-30, p. 4, citing *Burlingame Elementary School District* (2007) PERB Order No. JR-24, p. 3.)

explained below, we conclude that the reorganization does not render the bargaining units inappropriate or excuse the Charter Schools from recognizing or negotiating with UTLA; and therefore, the Charter Schools' refusal to bargain with UTLA violates the Educational Employer Employee Relations Act (EERA).[4] We also find the purported changed circumstances do not warrant modification of the units, and we amend UTLA's certifications to reflect the employers' new name.

FACTUAL AND PROCEDURAL SUMMARY[5]

UTLA and the organizational efforts leading to *Alliance I*

UTLA is an employee organization within the meaning of EERA section 3540.1, subdivision (d). In *Alliance I*, we found that each Charter School was a public school employer under section 3540.1, subdivision (j), and we certified UTLA as the exclusive representative of a certificated employee unit at each Charter School pursuant to EERA section 3540.1, subdivision (e).

UTLA has been organizing certificated employees at charter schools affiliated with Alliance CMO since at least March 13, 2015. During this organizing period, UTLA filed multiple unfair practice charges alleging Alliance-affiliated schools engaged in numerous unfair labor practices. The Board has sustained allegations against Alliance-affiliated schools in four decisions. (See *Alliance College-Ready Public Schools* (2017) PERB Decision No. 2545; *Alliance College-Ready Public Schools, et*

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

[5] The relevant facts and procedural history are drawn from *Alliance I*, the records of the consolidated cases decided in *Alliance I*, the stipulated record in this case, and a school board policy that we administratively notice, as discussed below.

al. (2020) PERB Decision No. 2716; *Alliance Environmental Science and Technology High School, et al*. (2020) PERB Decision No. 2717; *Alliance Marc & Eva Stern Math & Science High School, et al.* (2021) PERB Decision No. 2795 [judicial appeal pending].) In litigating the first of these cases, *Alliance College-Ready Public Schools*, *supra*, PERB Decision No. 2545, the schools contended that each was functionally autonomous. Based on these representations, UTLA refocused its organizing strategy from a campaign seeking a single, network-wide unit, to one focused on school-by-school organizing.

On May 2, 2018, UTLA filed petitions seeking recognition as the exclusive representative for three separate bargaining units consisting of the certificated employees at Burton Tech, Gertz/Merkin, and Middle 5.[6] UTLA provided proof of majority support for each petition. In June 2018, after receiving a list of all employees in the petitioned-for units, PERB's Office of the General Counsel (OGC) issued administrative determinations finding that a majority of the employees supported each of UTLA's petitions. Pursuant to PERB Regulation 33190, OGC found that there was a sufficient showing of support to certify UTLA as the exclusive representative of the certificated employees in the three schools. The Charter Schools were informed that they must recognize UTLA or file a statement contesting the appropriateness of the unit.

[6] There are currently two other representation matters pending before PERB involving UTLA and Alliance-affiliated schools, PERB Case Nos. LA-RR-1292-E and LA-RR-1293-E. We express no opinion regarding those cases.

Between late June and early July 2018, each of the Charter Schools filed a statement refusing to recognize UTLA and disputing the appropriateness of the petitioned-for units. The Charter Schools claimed: "The minimum appropriate unit is a single unit encompassing all similar personnel employed at schools within the network of charter schools affiliated with Alliance College-Ready Public Schools (the 'Alliance Network'), not an individual unit that includes only [each charter school's] employees."

A PERB Administrative Law Judge held a formal hearing to determine the appropriateness of the petitioned-for units. The hearing focused almost exclusively on the Charter Schools' contention that, together with the other Alliance-affiliated schools, they constitute a single-employer, so the only appropriate unit must encompass all teachers and counselors within the Alliance network. On August 30, 2019, the unit determination question for the consolidated cases was submitted directly to the Board itself for decision.

The Alliance network and its reorganization

When the petitions for recognition were filed, the Charter Schools were separately incorporated as nonprofit public benefit corporations with separate boards of directors, articles of incorporation, and bylaws. Each individual corporation held a separate charter with the Los Angeles Unified School District (LAUSD) to operate within the boundaries of the District. Those charters declared each individual corporation to be the "exclusive public school employer of all employees of the charter school" for collective bargaining purposes pursuant to Education Code section 47611.5, subdivision (b).

At all relevant times, LAUSD policy has required charter schools in the District to comply with the Ralph M. Brown Act (Brown Act, § 54950 et seq.), California Public Records Act (CPRA, § 6250 et seq.), and conflict of interest laws (Gov. Code, § 1090 et seq.).[7] (Los Angeles Unified School District, Policy for Charter School Authorizing (approved January12, 2010, revised February 7, 2012), p. 8 ["Charter schools shall comply with conflict of interest laws. . . . A charter school is also responsible for complying with the Ralph M. Brown Act and the California Public Records Act"].) Pursuant to this policy, the Charter Schools declared in their charters that they would comply with the requirements of those laws.

In the midst of the representation proceedings, and prior to the Board's issuance of *Alliance I*, the Alliance charter school network changed its structure, purportedly in response to the passage of Senate Bill 126 (SB 126), which would take effect on January 1, 2020.[8] According to Alliance Chief of Staff Zainab Ali, Alliance CMO and the Alliance-affiliated schools "analyzed legal-compliance implications of the

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[7] UTLA has requested we take administrative notice of this LAUSD policy. School board policies and regulations may be recognized by judicial notice. (*Physicians Committee for Responsible Medicine v. Los Angeles Unified School Dist.* (2019) 43 Cal.App.5th 175, 183.) Because this policy is relevant to the resulting charter agreements agreeing to abide by the specified laws, we deem it an appropriate matter for administrative notice.

[8] SB 126, effective January 1, 2020, added section 47604.1 to the Education Code, making explicit the application of the Brown Act (Gov. Code, § 54950 et seq.), CPRA (Gov. Code, § 6250 et seq.), conflict of interest laws (Gov. Code, § 1090 et seq.), and the Political Reform Act (Gov. Code, § 81000 et seq.), to California public charter schools. Prior to the enactment of SB 126, on December 26, 2018, the California Attorney General published an opinion stating that under existing law, charter schools were subject to the Brown Act, CPRA, Government Code § 1090, and the Political Reform Act. (11 Ops.Cal.Atty.Gen. 201 (2018).)

law given the day-to-day operations of the organization given the passage of SB 126, and ultimately decided" to merge into a single legal entity.[9] Alliance contends that at a minimum, the reorganization enhanced the network's ability to comply with the law because the Surviving Organization[10] can hold a single, regular, public board meeting to accomplish what previously occurred through meetings of 25 different school boards. Alliance also contends that the reorganization helps it to avoid disputes regarding purported conflicts inherent in the integrated operations between Home Office and the Alliance Network. In support of these contentions, Alliance claims that SB 126 placed new requirements upon the Charter Schools, beyond those required under LAUSD policy.

On September 18, 2019, after PERB transferred the hearing record to the Board itself, Alliance sent a letter to the Board "to notify the Board and [UTLA] of anticipated changes to [Respondents'] respective governance structures." Respondents stated in the letter that they and the various other charter schools affiliated with the Alliance CMO planned to "transition to a simplified governance structure" by "merg[ing] into a single legal entity governed by a single governing board." In *Alliance I*, we noted that Respondents did not provide information about the circumstances of the reorganization or make any argument about what effect, if any,

[9] According to Ali, Alliance had considered a possible reorganization in the past, as early as 2016, in response to Assembly Bill 1478, a bill similar to SB 126 that did not become law.

[10] Following the reorganization, Alliance-network schools became one entity along with Home Office, named "Alliance College-Ready Public Schools," which is also referred to as the "Surviving Organization."

the reorganization had on the pending representation petitions, or request to reopen or augment the record to include the letter or any other evidence concerning the reorganization. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 27, fn. 27.)

On September 24 and December 12, 2019, LAUSD held special board meetings to consider Alliance's reorganization. At the September board meeting, Alliance CEO Dan Katzir stated to school board members that the proposed reorganization was not linked to UTLA's unionization campaign, and that it was up to PERB to decide the issues related to unionization, which would not be based upon the school board's decision regarding the merger.

On January 1, 2020,[11] all 25 Alliance charter schools and the Home Office became one entity, Alliance College-Ready Public Schools. As a result of the reorganization, Home Office and the Alliance Charter Schools are no longer governed by separate Boards of Directors or managed by separate officers. Instead, Home Office and the Alliance Charter Schools became a single legal entity governed by a single Governing Board and a group of executives, with the sole authority to engage in collective bargaining and "to approve any collective bargaining agreement entered into by the Alliance."

Prior to the reorganization, the schools' charter petitions stated that each school "is deemed the exclusive public school employer of all employees of the charter school for collective bargaining purposes." Following the reorganization, the schools' charters state that each school "hereby declares that Charter School, operated as or

[11] All subsequent dates refer to 2020 unless otherwise specified.

by its nonprofit public benefit corporation, is and shall be the exclusive public school employer of Charter School's employees for the purposes of [EERA] . . . ."

As a result of the reorganization, Alliance's liabilities, obligations, and assets are now held collectively by the Surviving Organization. The Surviving Organization continues to provide centralized support to Alliance-affiliated schools. The Surviving Organization has authority to review or reverse a school's decision to discipline or terminate a teacher, or to authorize an employee to "depart from networkwide policies or practices." This includes the policy of not hiring employees who were previously terminated for performance-related reasons or for misconduct at another Alliance school.

Following the reorganization, Alliance Charter Schools' Principals no longer report directly to their school's Board of Directors, but instead report to their respective Instructional Superintendents. Prior to January 1, 2020, Instructional Superintendents were employed by the Home Office and, after January 1, 2020, they are employed by the Surviving Organization. Instructional Superintendents are assigned to oversee non-overlapping cohorts of the Alliance Charter Schools and directly supervise each of the principals in their respective cohorts. Additionally, the Home Office and Charter Schools no longer utilize separate Employer Identification Numbers (EIN) when reporting to state and federal agencies, but instead utilize a single EIN. Finally, as a result of the reorganization, Alliance College-Ready Public Schools adopted an

Intracompany Service Agreement, replacing individual Administrative Services Agreements between the Alliance CMO and network schools.[12]

On May 18, we issued *Alliance I*, PERB Decision No. 2719. In *Alliance I*, we took administrative notice of the records from several unfair practice cases litigated prior to the filing of the representation petitions, including PERB Case Nos. LA-CE-6061-E, LA-CE-6073-E, LA-CE-6165-E, and LA-CE-6204-E. In these cases, Alliance CMO and the charter schools vigorously disputed the notion that the schools were part of any integrated operation, and made statements that were inconsistent with the schools' later claims at the representation hearing regarding their alleged integration. We considered and rejected Alliance's arguments that the schools constituted a single employer and that the only appropriate unit was a network-wide unit. In so doing, we found that Alliance's prior representations regarding each school's individual autonomy warranted application of judicial and equitable estoppel, since UTLA had relied on Alliance's past positions when deciding to organize on a school-by-school basis. We further found that Alliance's inconsistent representations regarding the schools' autonomy rendered Alliance's arguments unpersuasive. And we found that

[12] In *Alliance College-Ready Public Schools, et al.*, *supra*, PERB Decision No. 2716, the record demonstrated that each Alliance-affiliated school had entered into an Administrative Services Agreement with the Alliance CMO that requires the CMO "to provide a range of operational and managerial services, including human resources services, information technology support, and all other services reasonably requested, in exchange for a service fee." (*Id*. at pp. 6-7.) In *Alliance Environmental Science and Technology High School, et al*., *supra*, PERB Decision No. 2717, the parties stipulated to the fact that the CMO acted as the agent of the schools in certain instances, which was the basis for our finding the schools liable for the actions of the Alliance CMO and its high-ranking official. (*Id*. at p. 5.)

individual certificated bargaining units at each school were appropriate. We thereby certified UTLA as the exclusive representative of a certificated employee unit at each of the three Charter Schools.

As noted above, on June 12, Respondents filed a Request for Reconsideration of *Alliance I*, along with a Request for Judicial Review. On October 14, we denied both requests.

Alliance's refusal to recognize or bargain with UTLA

On June 5, UTLA's representative, Glenn Goldstein, e-mailed Respondents' counsel, Robert Escalante, requesting that the June 10 Alliance Board of Directors meeting agenda should include: (1) formal recognition of UTLA as the exclusive bargaining representative for the Charter Schools' certificated employees; and (2) public notice of UTLA's "sunshine proposals" for bargaining with each of the Charter Schools.[13] On June 8, Goldstein e-mailed Escalante and stated that he had not received a response to his June 5 requests. On June 9, Escalante responded, stating that Respondents would not agree to "any formal initiation of bargaining" until they had "conduct[ed] further engagement with . . . [their] board and counsel," including "decisions on review requests authorized by Section 3542(a) of the Government Code for unit determinations."

On September 10, Goldstein e-mailed Escalante again, requesting dates to begin bargaining and reiterating his request that the Alliance Board provide public

[13] EERA section 3547 requires a public school employer to provide the public with notice of initial union and employer bargaining proposals by presenting them at one or more public meetings, a process often referred to as "sunshining" the proposals.

notice of UTLA's sunshine proposals. On September 16, Escalante responded, stating that Respondents would not recognize or bargain with UTLA "prior to determinations on reviews authorized by Section 3542(a) of the Government Code for unit determination[s]." On November 18, Escalante wrote to Goldstein, stating that Respondents "do[] not consider UTLA the exclusive representative of employees within Alliance schools and therefore shall not engage in bargaining with UTLA absent further guidance from the appellate courts."

On November 23, UTLA filed an unfair practice charge alleging that the Charter Schools had unlawfully refused to recognize and bargain with UTLA following the Board's decision in *Alliance I*. UTLA requested that the Board expedite the charge at all levels of PERB. On December 2, Respondents joined in the request to expedite. On December 4, the Board granted the request. On December 18, OGC issued a complaint alleging that Respondents failed to recognize UTLA as the exclusive representative as certified in *Alliance I*, failed to provide information UTLA requested in June and July 2020, and refused to bargain in good faith with UTLA.[14] On January 15, 2021, Respondents filed their answer, largely admitting the complaint allegations but explaining that Respondents merely sought to obtain judicial review of PERB's unit determination decision.[15] On March 12, 2021, Respondents filed a first

[14] The parties have stipulated to the withdrawal of the information request allegation, so it will not be addressed further.

[15] The answer alleges that Respondents seek review of PERB Decision No. 2716, which involved Alliance-affiliated schools and UTLA but decided unfair labor practice allegations rather than the representation matter at issue here. We believe this was a typographical error and Respondents intended to state that they sought

amended answer, adding the affirmative defense that their conduct was justified based upon "changed circumstances." On July 16, 2021, the parties filed a proposed stipulation and a five-volume stipulated record. After the parties filed their opening and reply briefs, on August 16, 2021, the case was submitted directly to the Board for decision.

DISCUSSION

I. Technical refusal to bargain

As noted above, Respondents assert that they failed to recognize and refused to bargain with UTLA to obtain judicial review of the Board's unit determination in *Alliance I*. While EERA section 3542, subdivision (a)(2) permits a party to obtain appellate review of a unit determination by engaging in a technical refusal to bargain, a party's right to do so is limited in several respects, which we will explain.

A party engaged in a technical refusal to bargain must rely on evidence already in the administrative record of the unit determination, because the prior representation decision is treated as binding with respect to all issues that were, or could have been litigated in the representation proceeding. (*Regents of the University of California* (2019) PERB Decision No. 2646-H, pp. 4-6.) A party may not collaterally attack PERB's determination using evidence that it could have raised in the unit determination proceeding, nor may it use the technical refusal as an attempt to modify a unit while circumventing PERB's mandatory unit modification procedure. (*Regents of University of California v. Public Employment Relations Bd.* (2020) 51 Cal.App.5th

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review of *Alliance I*, *supra*, PERB Decision No. 2719. We will therefore construe the answer in that manner.

159, 174 & fns. 4 and 5; *Regents of the University of California*, *supra*, PERB Decision No. 2646-H, p. 5, citing *Los Angeles Unified School District* (2007) PERB Decision No. 1884, p. 2 and *Regents of the University of California* (1989) PERB Decision No. 722-H.) Because a respondent in a technical refusal case should admit it is refusing to comply with the underlying representation order, PERB can normally grant judgment on the pleadings to resolve a technical refusal to bargain.

Moreover, a party engaging in a technical refusal takes on several risks aside from the risk of work stoppage or other consequences of labor strife. First, as in any case before it, PERB can issue litigation sanctions if any party takes a frivolous position in bad faith. (*Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 11; see also *Bellflower Unified School District* (2019) PERB Order No. Ad-475a, p. 4.) Second, even when there is no cause for litigation sanctions, if an employer pursues an unsuccessful technical refusal over a unit determination, the charging party union may be entitled to reimbursement of its increased costs outside of litigating the technical refusal charge, which may include increased costs for organizing, bargaining, lost dues, or legal costs beyond litigating the charge itself. (*City of Palo Alto* (2019) PERB Decision No. 2664-M, p. 8, fn. 6.)[16]

[16] Different considerations apply when an employer's technical refusal is based on good faith allegations of conduct that prevented a fair election and was sufficiently serious to "have affected the outcome of the election." (*J.R. Norton Co. v. Agricultural Labor Relations Bd.* (1979) 26 Cal.3d 1, 40.) Because we encourage judicial review of allegations concerning an election's fairness, make-whole relief for a technical refusal to bargain raising such issues is appropriate only in the absence of any good faith allegation of conduct or circumstances impacting election integrity to a degree that could have been dispositive in the outcome. (*Ibid.*) These considerations do not apply

Respondents primarily argue that changed or special circumstances warrant reconsideration of the units certified in *Alliance I*. We address those arguments below. Before reaching those new arguments, however, we note there is no need to address for a second time Respondents' arguments based on the evidence in the *Alliance I* record. When an employer engages in a technical refusal to bargain, PERB normally should expedite judicial review by granting judgment on the pleadings at all levels of PERB, treating the prior representation decision as binding with respect to all issues that were, or could have been litigated in the representation proceeding. (*Regents of the University of California*, *supra*, PERB Decision No. 2646-H, pp. 4-6.)

Therefore, we decline to revisit Alliance's arguments that PERB was required both to find the Charter Schools were a single employer and to extend *California Virtual Academies* (2016) PERB Decision No. 2484 to mean that whenever a single employer relationship exists, there is only one allowable unit structure. We already explained in *Alliance I* multiple independent reasons why each assumption in this syllogism is incorrect. First, we will not revisit the argument that we erred by rejecting the applicability of the single employer doctrine. As we explained in *Alliance I*, the outcome of a single employer inquiry does not necessarily determine unit appropriateness, and the Board has never "looked beyond the plain language of the petition to decide whether two or more public school employers satisfy the single employer test and, if so, whether that relationship requires that we allow only a singular global bargaining unit despite the petitioning union's request for localized

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where, as here, respondents merely dispute PERB's exercise of discretion in determining whether a union has petitioned for an allowable unit structure.

bargaining units." (*Alliance I*, *supra*, PERB Decision No. 2719, pp. 22-23, 27.) Nor will we revisit the argument that we erred by applying judicial and equitable estoppel, and by finding sufficient evidence to justify single school bargaining units. As explained in *Alliance I*, the Charter Schools failed to prove that only a network-wide unit is appropriate since the evidence the Charter Schools presented "was directly contradicted by evidence in prior cases from Alliance personnel, including key executives and charter school administrators," and "the Charter Schools have not given a reasonable or persuasive account of their shifting positions." (*Id*. at pp. 35, 45.) Finally, we do not repeat the reasons why Alliance's interpretation, which would find that a single unit is the only appropriate unit when the single employer test is satisfied, was a "constraining interpretation" that was "a bridge too far" in a case that presented a very different factual scenario. (*Id*. at p. 26.)

II. Respondents rely on evidence that is not appropriate to consider in a technical refusal to bargain case

Here, while Alliance has repeatedly claimed it is engaged in a technical refusal to bargain, Alliance nevertheless relies on new evidence. Alliance claims that "changed circumstances," demonstrated through new evidence, is a valid ground for a technical refusal to bargain. This argument is based on two faulty premises, each of which independently defeats Alliance's argument.

First, Alliance's allegedly new evidence existed before *Alliance I* issued on May 18, 2020. The reorganization occurred after the filing of the representation petitions and evidentiary hearing in *Alliance I*, but became effective more than five months prior to our issuance of *Alliance I*. Alliance informed PERB about the planned reorganization in a letter, but decided not to provide UTLA or PERB with details about

the new structure, file a motion to reopen the record, or provide any supplemental briefing.[17] Therefore, the new evidence of the reorganization is not newly discovered or previously unavailable evidence. Rather, it is evidence that Respondents could have introduced in the unit determination proceeding, and it is therefore not an appropriate defense to Alliance's technical refusal to bargain.

Second, to the extent Respondents assert true changed circumstances, viz., evidence that did not exist when *Alliance I* issued, Respondents cannot simply refuse to bargain; they were instead required to file a unit modification petition.[18] (*Regents of the University of California*, *supra*, PERB Decision No. 722-H, p. 5.) Alliance apparently urges us to overrule this precedent and instead adopt private sector precedent allowing for the consideration of an employer's reorganization as a defense to its technical refusal to bargain. We decline to adopt this line of precedent because it

[17] We noted this omission in *Alliance I*, where we explained that "[o]n September 18, 2019, Alliance wrote a letter to the Board stating that it had decided to merge all Alliance-affiliated schools into a single legal entity, effective January 1, 2020. Alliance provided no further information about this transition and did not argue that the transition had any effect on these petitions. Alliance did not ask us to augment the record with this September 2019 letter, nor did we do so." (*Alliance I*, *supra*, PERB Decision No. 2719, p. 27, fn. 27.)

[18] While Alliance has also referred to "special circumstances," Alliance has not provided any justification for considering its reorganization to constitute special circumstances. Indeed, in support of this proposition Alliance cites to *Brinks, Inc. of Florida* (1985) 276 NLRB 1, where the National Labor Relations Board (NLRB) found special circumstances existed because the unit contained security guards with other positions, in direct violation of the clear statutory mandate of the National Labor Relations Act (NLRA; 29 U.S.C. § 151 et seq.). (*Id*. at p. 2.) The units here do not violate the clear mandates of EERA, and therefore the facts of this case are distinguishable.

directly conflicts with PERB precedent and permits an employer to stop bargaining every time it has a unit dispute, thereby failing to effectuate the policies of EERA. We decline to adopt the private sector standard as a potential defense for several reasons, which we will explain.

PERB regulations and long-established precedent provide that a unit modification can only be effectuated by either the mutual agreement of the parties or through the filing of a petition and showing changed circumstances. (*Regents of the University of California*, *supra*, PERB Decision No. 722-H.)[19] Thus, procedurally we do not follow NLRB law on this point.[20]

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[19] *County of Ventura* (2012) PERB Decision No. 2272-M is not to the contrary. That case did not involve a prior PERB unit determination, but rather a prior PERB unfair practice decision involving a county's jurisdictional determination that certain employees were not county employees. Even there, the Board noted that a "technical refusal to bargain cannot be used as a means to challenge the parameters of a bargaining unit. Where an employer has engaged in such a tactic, the Board will not make any factual findings on the unit configuration issues as part of the unfair practice proceeding, and the challenged unit determination remains binding on the parties." (*Id*. at p. 16.) The Board thus remanded for limited consideration of whether it still had jurisdiction. Furthermore, to the extent Alliance relies on *Los Angeles Unified School District/Lynwood Unified School District* (1982) PERB Order No. Ad-132, that decision did not involve a technical refusal to bargain, and it is therefore inapposite.

[20] PERB is not bound by NLRB precedent. EERA generally provides greater protection to representational rights than the NLRA, but we may refer to NLRB precedent interpreting the NLRA to the extent we find it persuasive and consistent with the language and purposes of EERA. (*Capistrano Unified School District* (2015) PERB Decision No. 2440, pp. 28-29.) Moreover, when PERB does find federal authority persuasive on a particular issue, PERB is not automatically bound by subsequent developments in federal law on that point because the determinative issue is whether the cases are consistent with the language and purposes of EERA. (*Ibid*.)

To allow a public employer to make an end-run around the unit modification process while simultaneously refusing to bargain with the exclusive representative does not further the policies of representational stability since it deprives employees of the representation of the union that they have elected. It is self-evident that Alliance does not have the authority to decide whether its change in structure extinguishes such rights. (Cf. *Salinas Valley Memorial Hospital District* (2019) PERB Decision No. 2689-M, pp. 26-27 [even under MMBA, where employers create their own units, we do not defer to an employer's bargaining unit decision that frustrates employees' right to choose whether they wish to be represented].) Here, particularly given the history in which Alliance led employees to believe that each school was autonomous, and then steadfastly refused to abide by majority wishes in the individual units, it would frustrate EERA's purposes to extinguish bargaining rights based on a January 1, 2020 reorganization that Alliance chose not to raise until after we issued *Alliance I*. Moreover, while Alliance, and other charter schools, are afforded flexibility in structuring due to the Charter School Act (CSA), they are nonetheless public schools.[21] We thus decline to allow such an argument to serve as a defense to a technical refusal to bargain, as it would jeopardize unit stability, which does not serve EERA's purposes. (*Regents of University of California v. Public Employment Relations Bd.*, *supra*, 51 Cal.App.5th 159, 192 [PERB departs from federal labor law in placing greater weight on unit stability].)

[21] The CSA is codified at Education Code section 47600 et seq.

Even if we were to consider, for the sake of argument, Alliance's arguments for reconsideration of the unit based on private sector precedent, the facts here stand in stark contrast. In *Frito-Lay, Inc.* (1969) 177 NLRB 820, the NLRB dismissed a charge alleging the employer's failure to bargain because the unit was no longer appropriate following a reorganization. The NLRB explained that one of the reasons for its decision was that the employer's reorganization had eliminated "the essential factor which made" the unit appropriate. (*Id*. at p. 821.)

In contrast, Alliance's reorganization has not affected the "essential factor" that was the basis for the certification of the units in *Alliance I*. Alliance argues the reorganization further supports its argument that all Alliance-affiliated schools constitute a single employer. However, as we explained in *Alliance I*, "a single employer inquiry and a unit appropriateness inquiry involve separate analyses, and the outcome of one does not necessarily determine the other." (*Alliance I*, *supra*, PERB Decision. No. 2719, pp. 22-23, citing *Lawson Mardon USA* (2000) 332 NLRB 1282; NLRB Outline of Law and Procedure in Representation Cases, NLRB Office of the General Counsel 23 (2017), sec. 14-500 ["A determination of single-employer status does not determine the appropriate bargaining unit"].) We further explained that the single employer doctrine does not provide a basis to "overrule[] a petitioning union and declare[] that only a single employer unit is appropriate." (*Id*. at p. 28.) The schools' January 1, 2020 reorganization was allegedly not focused on meeting any need to promote employee interchange between schools or any other labor relations matter. And regardless, it did not produce significant enough changes to alter our conclusions in *Alliance I* as to community of interest, effectuating EERA's purposes,

and the lack of persuasiveness of Alliance's evidence. Therefore, even if we were to apply the private sector precedent urged by Alliance, it does not warrant modifying the established unit structure.

The private sector precedent Alliance urges us to adopt also undercuts Alliance's position in another way. In *Frito Lay*, the NLRB explained:

> "The record shows that Respondent's nationwide reorganization was undertaken on the recommendation of a management consultant firm on the basis of that firm's study of Respondent's organization – a study which was begun in the fall of 1967 *before this proceeding was instituted*. The record discloses that Respondent's restructuring was clearly not for the purpose of avoiding compliance with the Board's unit finding. Indeed, no one contends otherwise."

(*Frito-Lay, Inc.*, *supra*, 177 NLRB 820, 821, italics added; accord *NLRB v. New Vista Nursing and Rehabilitation* (3d Cir. 2017) 870 F.3d 113, 129-130 ["*Frito Lay* applies only when the changed circumstances result from a process begun prior to the representation proceeding before the Board"]; *K-Mart d/b/a Super K Mart* (1996) 322 NLRB 583, 583 & fn. 3 [if "the change [to the bargaining unit] was the result of unilateral actions by the Respondent, it would normally not be a basis for reconsidering the certification in [a] refusal-to-bargain proceeding"]; *Telemundo de Puerto Rico, Inc. v. NLRB* (1st Cir. 1997) 113 F.3d 270, 278 ["An employer seeking to overcome [the presumption that subsequently conferred duties are irrelevant to the representation decision] bears a heavy burden of showing a legitimate business necessity"].)

Here, the planning stage of the reorganization did not predate the initiation of the representation proceedings. UTLA filed its representation petitions with PERB on

May 2, 2018. (*Alliance I*, *supra*, PERB Decision No. 2719, p. 5.) Alliance Chief of Staff Ali stated in her declaration that Alliance CMO and the schools began discussing a possible reorganization in March 2019, following the passage of SB 126. Because the discussions that purportedly led to Alliance's reorganization did not predate the filing of the representation petitions, Alliance has not met the basic timing requirement, even assuming for the sake of argument that private sector law applied, which it does not.[22]

Additionally, the reorganization does not appear to have been necessary to comply with SB 126. Upon passage, SB 126 added section 47604.1 to the Education Code, making explicit the application of the Brown Act, CPRA, conflict of interest laws, and the Political Reform Act to California public charter schools. However, LAUSD policy already required charter schools to comply with these laws. (Los Angeles Unified School Dist., Policy for Charter School Authorizing (approved Jan. 12, 2010, revised Feb. 7, 2012), p. 8 ["Charter schools shall comply with conflict of interest laws. . . . A charter school is also responsible for complying with the Ralph M. Brown Act and the California Public Records Act"].) In accordance with this LAUSD policy, before the enactment of SB 126, each of the Charter Schools had declared in their charters that they "shall comply with the Brown Act and the Public Records Act," and that "[a]ll

[22] Alliance uses Katzir's statement to the LAUSD School Board emphatically stating that the reorganization decision would not affect employees' representation rights that were being litigated in *Alliance I*, to support the proposition that the reorganization was undertaken for legitimate business reasons. This statement is not well taken for that purpose, in light of Alliance's attempt to now utilize the reorganization as a means of ousting UTLA. Nonetheless, such a finding is not necessary for our inquiry because we decline to adopt this line of NLRB precedent.

employees and representatives of [each charter school] shall comply with federal and state laws . . . and LAUSD's charter school policies, regarding ethics and conflicts of interest." While Alliance has argued that the reorganization was undertaken in order to comply with SB 126, the statute did not require the reorganization.[23]

Accordingly, even were we to apply *Frito-Lay*, Alliance's arguments would still fail for both substantive and procedural reasons.

III. Unit modification is not warranted

As stated above, PERB's unit modification process requires either mutual agreement or filing a petition in accordance with PERB's regulations. (PERB Reg. 32781.) Here, the parties stipulated to a record exceeding 48,000 pages, which is more than adequate to resolve a unit modification petition, as well as UTLA's cross-request to amend its certifications. Accordingly, to serve judicial and administrative economy, and to obviate delay and the additional litigation costs both sides would incur if Alliance were to file a subsequent unit modification petition, we

[23] Furthermore, while we are not required to consider Alliance's motive for the reorganization, we nonetheless find noteworthy Alliance's history of fighting employees' efforts to unionize with UTLA. (See *Alliance College-Ready Public Schools, et al.*, *supra*, PERB Decision No. 2716 [finding schools had unlawfully failed to discuss a neutrality agreement proposed by UTLA during organizing drive, and had unlawfully polled employee support for UTLA]; *Alliance Environmental Science and Technology High School, et al*., *supra*, PERB Decision No. 2717 [finding Alliance had unlawfully prevented union organizers from distributing literature, and unlawfully refused to meet and discuss with UTLA over a new teacher evaluation program]; *Alliance Marc & Eva Stern Math & Science High School, et al.*, *supra*, PERB Decision No. 2795 [judicial appeal pending] [finding Alliance CMO and affiliated schools had unlawfully sent messages to employees discouraging joining UTLA after representation petitions for bargaining units at issue were filed].)

exercise our discretion to consider the impact of the evidence provided in support of unit modification.[24] (EERA, § 3541.3, subds. (i) & (n).)

A unit modification may be appropriate upon a party's demonstration that it is warranted by changed circumstances. (*Regents of the University of California* (1986) PERB Decision No. 586-H, pp. 6-7.) Here, however, most of the commonalities between schools upon which Alliance relies existed when we issued *Alliance I*. We nonetheless found individual school units appropriate for multiple reasons, including UTLA's reliance on the schools' representations that they were separate employers.

Alliance contends that following the reorganization, these circumstances have changed: (1) Home Office and the Charter Schools are governed by a single Governing Board and a group of executives, with the sole authority to engage in collective bargaining; (2) the schools' charters state that each school "hereby declares that Charter School, operated as or by its nonprofit public benefit corporation, is and shall be the exclusive public school employer of Charter School's employees for the purposes of [EERA] . . . ."; (3) each of the Charter Schools' respective Principals reports to the Surviving Organization's Instructional Superintendents, who are

[24] Alliance argued in its briefing that we ought to consider changed circumstances now, rather than after the appropriate petition process, threatening to refuse to bargain while litigating such a petition even though precedent would require it to recognize and bargain with UTLA, as well as abide by any agreements, during that time. Threatening to refuse to bargain while litigating a future unit modification petition, even as it inappropriately raises unit modification issues in this case and refuses to recognize or bargain with the employees' exclusive representative, is a patent misuse of PERB's processes which we do not condone. However, judicial economy and avoiding additional litigation costs to both parties weigh in favor of considering the issue on the merits in this unique instance.

employed directly by Alliance College-Ready Public Schools; (4) the liabilities, obligations and assets are now held collectively by Alliance College-Ready Public Schools; (5) the Surviving Organization continues to provide centralized support to Alliance-affiliated schools; (6) the Surviving Organization has authority to review or reverse a school's decision to discipline or terminate a teacher, or to authorize an employee to "depart from networkwide policies or practices," including the policy of not hiring employees who were previously terminated for performance-related reasons or for misconduct at another Alliance school; (7) Alliance College-Ready Public Schools utilize a single EIN; and (8) Alliance College-Ready Public Schools adopted an Intracompany Service Agreement.

However, Alliance has not alleged changes in teacher job duties or interchange among the schools. These circumstances do not warrant finding the units inappropriate and divesting teachers from representation in favor of requiring one network-wide unit. While PERB precedent governing traditional school districts favors larger units, even at traditional school districts we do not follow those principles where doing so would frustrate employees' right and expressed desire to be represented. (*Fairfield Suisun Unified School District* (2017) PERB Order No. Ad-452, adopting administrative determination at pp. 3-4; *Oakland Unified School District* (2001) PERB Decision No. 1464, adopting proposed decision at p. 19.) Here, that is precisely what Respondents would have us do: extinguish the duly chosen union's right to bargain.

Moreover, while Respondents point to the Intracompany Service Agreement as evidence of changed circumstances, it in fact shows that Respondents' reorganization was a comparatively subtle change. The agreement's first page notes that 26 parties

entered into it. The first party is Alliance-College Ready Public Schools. The agreement states that the remaining 25 parties are "the twenty-five affiliated charter schools, including [list of names omitted], each and every one their own respective local education agency." The agreement proceeds to detail the services that Alliance-College Ready Public Schools will provide for each respective charter school, while noting that each school will be invoiced and required to pay for the service at established rates, plus all "reasonable out-of-pocket expenses" that Alliance-College Ready Public Schools incurs in carrying out such services for the schools. Thus, the Intracompany Service Agreement is further evidence that Respondents' new structure is insufficient to overcome the many grounds noted in *Alliance I* for declining to find that a systemwide unit structure is the only appropriate unit. Based on the record evidence, we find no cause to undermine labor stability by reconfiguring the unit structure based on Respondents' claim of changed circumstances.[25]

In any event, as we noted in *Alliance I*, charter school networks take many forms, making them more variegated and subject to change from year to year as compared to traditional school districts, and more akin to private entities. There could be more structural changes in Alliance's future, and it undermines labor stability to

[25] Respondents assert that, post reorganization, only the single governing board had authority to designate a bargaining representative for bargaining with any of the school-by-school units PERB has certified, or to approve a collective bargaining agreement covering any of these units. This assertion implicitly acknowledged the continued practicality of a collective bargaining agreement covering a single school, and it was in step with Respondents' prior structure, in which each school had designated the CMO as its agent for such purposes. (*Alliance College-Ready Public Schools, et al.*, *supra*, PERB Decision No. 2716, pp. 5-6, 24-26.)

chase the perfect unit structure based on the latest changes. UTLA need only petition for *an* appropriate unit, not the *most* appropriate unit. (*Alliance I*, *supra*, PERB Decision No. 2719, pp. 31-32.)

In sum, there is still only a weak argument in support of requiring that a larger unit is the only appropriate unit. It remains appropriate to approve single site units, particularly where employee interchange between schools is not common enough to defeat school-based bargaining. As we held in *Alliance I*:

> "[W]hile our traditional unit determination criteria disfavor the proliferation of bargaining units in order to maximize the operational efficiency of school districts, we are required to take into account the CSA's unique policy goals when dealing with charter schools. (Ed. Code, § 47611.5, subd. (d).) Among those goals, the Legislature sought to "[e]ncourage the use of different and innovative teaching methods," to "[c]reate new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site," and to "[p]rovide vigorous competition within the public school system to stimulate continual improvements in all public schools." (Ed. Code, § 47601, subds. (c), (d), and (g).) It is evident that educators, in pursuit of these goals, have created a wide variety of charter school structures requiring us to certify a variety of unit configurations in order that EERA's goals of promoting fair collective bargaining not be erased by CSA's goals of promoting innovation and competition within the school system. In other words, the extreme variation we find in charter school contexts does not favor mechanistic presumptions and instead requires that we assure that efficiency does not trump representational rights."

(*Alliance I*, *supra*, PERB Decision No. 2719, pp. 30-31.)

For these reasons, we do not find that Alliance has established changed circumstances warranting reconsideration of the bargaining units. Therefore, Alliance

has failed to demonstrate that its refusal to recognize and bargain with UTLA was warranted, and this conduct violates EERA section 3543.5, subdivision (c).

IV. Amendment of certification

UTLA requests PERB issue an amended certification ordering the Surviving Organization to recognize and bargain with UTLA. PERB Regulation 32761, subdivision (a) provides that "[a]n employee organization may file . . . a request to amend its certification or recognition in the event of a reorganization, amalgamation, affiliation or transfer of jurisdiction, or *in the event of a change in the name* or jurisdiction *of the employer*." (Italics added.) Such a request is generally made by the requesting party sending PERB a letter that affords the employer the opportunity to respond or object. The regulation further provides that PERB "shall conduct such inquiries and investigations or hold such hearings as deemed necessary, and/or conduct a representation election, in order to decide the questions raised by the request." (PERB Reg. 32763, subd. (a).)

These procedural requirements have been met. UTLA requested an amendment of certification in its post-hearing brief, based upon evidence contained in the parties' stipulated record. Respondents had the opportunity to respond or object to the request, and they did so in a post-hearing reply brief.[26]

[26] Even if UTLA's request to amend certification did not substantially comply with our regulation, we address the request to further administrative efficiency, particularly given our decision to address Respondents' procedurally improper attempt to modify the existing unit structure by raising changed circumstances in a technical refusal to bargain.

The Charter Schools argue that an amended certification is not warranted because UTLA has not demonstrated network-wide support for unionization, which they contend is necessary because changed circumstances have resulted in Alliance schools becoming a single employer. However, an amendment in certification changes only the name of the employer or union—it does not change the contours of the bargaining units. Therefore, UTLA need not demonstrate majority support for network-wide UTLA representation. Based on the reorganization, it is appropriate to amend certification to require the Surviving Organization, Alliance College-Ready Public Schools, to recognize and bargain with UTLA for the three distinct certificated bargaining units.

V. Remedy

The Legislature has delegated to PERB broad powers to remedy EERA violations and to take any action the Board deems necessary to effectuate the Act's purposes. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2749, p. 10, citing EERA, § 3541.5, subd. (c); *City of San Diego* (2015) PERB Decision No. 2464-M, p. 42; *Mt. San Antonio Community College Dist. v. Public Employment Relations Bd.* (1989) 210 Cal.App.3d 178, 189-190.) In addition to serving restorative and compensatory purposes, the ordered remedy should also deter future misconduct, so long as the order is not a patent attempt to achieve ends other than those which can fairly be said to effectuate the policies of the Act. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2749, p. 11; *City of San Diego*, *supra*, PERB Decision No. 2464-M, pp. 40-42.)

In *Redondo Beach City School District* (1980) PERB Decision No. 140, the Board considered the appropriate remedial order in light of the employer's technical refusal to bargain. In addition to ordering the employer to meet and confer with the exclusive representative upon request, the Board further directed:

> "in order that the employees in the appropriate unit will be accorded the services of their selected representative for the period provided by law, the initial period of certification shall be construed as beginning on the date the District commences to negotiate in good faith with the Federation as the recognized exclusive representative in the appropriate unit. See *Mar-Jac Poultry Co., Inc.* (1962) 136 NLRB 785; *Commerce Co. d/b/a Lamar Hotel* (1962) 140 NLRB 226, 229, enfd. (5th Cir. 1964) 328 F.2d 600 . . ."

(*Id*., adopting proposed decision at p. 4; see also *Van Dorn Plastic Mach. Co.* (1990) 300 NLRB 278*; Richardson Eng'g Co.* (1980) 248 NLRB 702, 704; *Burnett Constr. Co.* (1964) 149 NLRB 1419, 1421.) We find the circumstances here warrant extending the certification bar to at least 12 months from commencement of good faith bargaining, subject to extension if Alliance is found to have engaged in additional unfair labor practices.

UTLA requests we award it the attorney fees it has incurred in responding to Alliance's technical refusal to bargain. PERB should make such an award if the offending party maintained a claim, defense or motion, or engaged in another action or tactic, that was without arguable merit and pursued in bad faith. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2749, p. 11; *Bellflower Unified School District*, *supra*, PERB Order No. Ad-475a, p. 4.) In a past technical refusal to bargain case, we explained:

> "While such fees may be awarded where the unfair conduct is 'without arguable merit and pursued in bad faith' (*City of Alhambra* (2009) PERB Decision No. 2036-M), we do not believe this is such a case, at least at present, because the [respondent] has invoked HEERA section 3564, subdivision (a)(2), which provides that an employer cannot seek judicial review of a unit determination except 'when the issue is raised as a defense to an unfair practice complaint.' Thus, the [respondent's] position, viz. that it must refuse to bargain in order to obtain judicial review of the underlying unit modification decision in *Regents*, *supra*, PERB Order No. Ad-453-H has at least minimal merit under the statute."

(*Regents of the University of California*, *supra*, PERB Decision No. 2646-H, p. 7; see also EERA, § 3542, subd. (a)(2) ["No employer or employee organization shall have the right to judicial review of a unit determination except: . . . when the issue is raised as a defense to an unfair practice complaint"].) Because Alliance has engaged in this technical refusal to bargain to obtain judicial review of PERB's unit determination in *Alliance I*, and Alliance has argued in favor of changing existing law in a manner that would not violate our litigation sanctions standard, we decline to award attorney fees.

However, as noted above, a union may be entitled to reimbursement of increased costs it incurred outside of litigating the technical refusal charge, which may include increased costs for organizing, bargaining, lost dues, or legal costs beyond litigating the charge itself. (*Sacramento City Unified School District*, *supra*, PERB Decision No. 2749, pp. 11-13; *City of Palo Alto*, *supra*, PERB Decision No. 2664-M, p. 8, fn. 6.) As discussed above, a charging party is more likely to obtain such relief when a technical refusal to bargain is based on a unit determination issue rather than an election integrity issue. Even when the underlying issue involves a unit determination, PERB has no blanket rule requiring make whole relief in a technical-

refusal-to-bargain case. Rather, we consider whether the totality of the respondent's conduct has disadvantaged the charging party to such a degree that make-whole relief is necessary to effectuate the governing statute's purposes, such as allowing fair representation and balanced collective bargaining. (See *J.R. Norton v. Agricultural Labor Relations Bd*., *supra*, 26 Cal.3d at pp. 39-40 [because remedies must "effectuate the policies of the Act," make-whole relief in a technical-refusal-to-bargain case turns, most fundamentally, on "factors peculiar to labor relations"].) Here, we find that Respondents' shifting positions and tactics, combined with Respondents' failure to file a unit modification petition as required by PERB precedent, merit make-whole relief outside of UTLA's costs of litigating this case. Indeed, one of the central reasons an employer must raise changed circumstances in a unit modification petition is because bargaining, contract enforcement, and all aspects of labor relations continue unchanged while PERB processes such a petition. Respondents frustrated that important policy here, while depriving employees of their elected representation, warranting make whole relief.

Based upon our finding above that an amendment of certification is appropriate, upon the finality of this decision, PERB's OGC shall issue an amended certification changing the employer's name to 'Alliance College-Ready Public Schools' for the three certificated units represented by UTLA at Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-Ready Middle Academy No. 5.

ORDER

Upon the foregoing decision and the entire record in this matter, the Board hereby DENIES Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-Ready Middle Academy No. 5's (collectively, Alliance College-Ready Public Schools') petition for unit modification.

Upon the foregoing decision and the entire record in this matter, the Board hereby GRANTS UTLA's petition for an amended certification. OGC shall issue an amended certification changing the employer's name to 'Alliance College-Ready Public Schools' for the three certificated units represented by UTLA at Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-Ready Middle Academy No. 5.

Upon the foregoing findings of fact and conclusions of law, the entire record in the case, and the record of *Alliance I*, *supra*, PERB Decision No. 2719, it is found that Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-Ready Middle Academy No. 5 (collectively, Alliance College-Ready Public Schools) violated the Educational Employment Relations Act, Government Code section 3543.5, subdivisions (a), (b) & (c), by failing to recognize and bargain with United Teachers Los Angeles (UTLA).

Pursuant to section 3541.3 of the Government Code, it hereby is ORDERED that Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-Ready Middle Academy No. 5 (Alliance College-Ready Public Schools) and their representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing to recognize or negotiate in good faith with UTLA as the exclusive representative of all classifications and positions in the certificated bargaining units;

2. By the same conduct, interfering with the rights of employees to be represented by their exclusive representative; and

3. Denying UTLA the right to represent its members.

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

1. Recognize and upon request, bargain with UTLA as the exclusive representative of the employees in the certificated units and if an understanding is reached, reduce it to writing and sign it. On commencement of bargaining, UTLA's status as the exclusive collective bargaining representative of the certificated units shall be extended for a minimum of 12 months thereafter, as if the initial year of the certification has not expired.

2. Make UTLA whole for all losses and expenditures caused by Respondents' refusal to bargain, as determined in compliance proceedings, other than the costs and fees UTLA paid in litigating this case.

3. Within 10 workdays following the date this decision is no longer subject to appeal, post at all work locations where notices to employees are customarily placed, copies of the Notice attached hereto as Appendix A-C, signed by an authorized agent of Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-Ready Middle

Academy No. 5 (Alliance College-Ready Public Schools), indicating that they will comply with the terms of this Order. 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 Alliance College-Ready Public Schools to communicate with employees represented by UTLA. Such posting shall be maintained for a period of 30 consecutive workdays. Reasonable steps shall be taken to ensure that this Notice is not reduced in size, altered, defaced or covered with any other material.[27]

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. Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Judy Ivie Burton Technology Academy High, and Alliance College-

[27] In light of the ongoing COVID-19 pandemic, Respondents shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If Respondents so notify OGC, or if Charging Party requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing Respondents to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing Respondents to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing Respondents to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

Ready Middle Academy No. 5 (Alliance College-Ready Public Schools) shall provide reports, in writing, as directed by the General Counsel or his designee. All reports regarding compliance with this Order shall be concurrently served on UTLA.

Members Krantz and Paulson joined in this Decision.

Member Shiners' dissent begins on page 37.

SHINERS, Member, dissenting: As explained in my dissent in *Alliance Judy Ivie Burton Technology Academy High School, et al.* (2020) PERB Decision No. 2719 (*Alliance I*), Alliance Judy Ivie Burton Technology Academy High, Alliance College-Ready Middle Academy No. 5, and Alliance Gertz-Ressler/Richard Merkin 6-12 Complex (Charter Schools) constitute a single employer along with the other Alliance-affiliated charter schools, and under *Peralta Community College District* (1978) PERB Decision No. 77 an Alliance-wide bargaining unit is the appropriate unit for Alliance's certificated employees. Because the single-school bargaining units certified by the majority in *Alliance I* are not appropriate, the Charter Schools have no obligation to meet and negotiate with United Teachers Los Angeles. (See EERA, § 3543.3 ["A public school employer . . . shall meet and negotiate with and only with representatives of employee organizations selected as exclusive representatives *of appropriate units*"], italics added.) "It is axiomatic that a refusal to bargain is not an unfair practice if the refusing party had no duty to bargain." (*Berkeley Unified School District* (2008) PERB Decision No. 1976, p. 7.) Because that is the case here, I would dismiss the complaint and underlying unfair practice charge.

APPENDIX A

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. LA-CE-6600-E, *United Teachers Los Angeles v. Alliance Judy Ivie Burton Technology Academy High School, et al.*, in which all parties had the right to participate, it has been found that the Alliance Gertz-Ressler/Richard Merkin 6-12 Complex (Alliance College-Ready Public Schools) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq.

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

A. CEASE AND DESIST FROM:

1. Refusing to recognize or negotiate in good faith with United Teachers Los Angeles (UTLA) as the exclusive representative of all classifications and positions in the certificated bargaining units;

2. By the same conduct, interfering with the rights of employees to be represented by their exclusive representative; and

3. Denying UTLA the right to represent its members.

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

1. Recognize and upon request, bargain with UTLA as the exclusive representative of the employees in the certificated units at Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, and if an understanding is reached, reduce it to writing and sign it. On commencement of bargaining, UTLA's status as the exclusive collective bargaining representative of the certificated units shall be extended for 12 months thereafter, as if the initial year of the certification has not expired.

2. Make UTLA whole for all losses and expenditures caused by our refusal to bargain, as determined in compliance proceedings, other than the costs and fees UTLA paid in litigating this case.

Dated: _____ Alliance Gertz-Ressler/Richard Merkin 6-12 Complex

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.

APPENDIX B

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. LA-CE-6600-E, *United Teachers Los Angeles v. Alliance Judy Ivie Burton Technology Academy High School, et al.*, in which all parties had the right to participate, it has been found that the Alliance Judy Ivie Burton Technology Academy High (Alliance College-Ready Public Schools) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq.

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

A. CEASE AND DESIST FROM:

1. Refusing to recognize or negotiate in good faith with United Teachers Los Angeles (UTLA) as the exclusive representative of all classifications and positions in the certificated bargaining units;

2. By the same conduct, interfering with the rights of employees to be represented by their exclusive representative; and

3. Denying UTLA the right to represent its members.

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

1. Recognize and upon request, bargain with UTLA as the exclusive representative of the employees in the certificated units at Alliance Judy Ivie Burton Technology Academy High, and if an understanding is reached, reduce it to writing and sign it. On commencement of bargaining, UTLA's status as the exclusive collective bargaining representative of the certificated units shall be extended for 12 months thereafter, as if the initial year of the certification has not expired.

2. Make UTLA whole for all losses and expenditures caused by our refusal to bargain, as determined in compliance proceedings, other than the costs and fees UTLA paid in litigating this case.

Dated: _____ Alliance Judy Ivie Burton Technology Academy High

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.

APPENDIX C

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. LA-CE-6600-E, *United Teachers Los Angeles v. Alliance Judy Ivie Burton Technology Academy High School, et al.*, in which all parties had the right to participate, it has been found that Alliance College-Ready Middle Academy No. 5 (Alliance College-Ready Public Schools) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq.

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

A. CEASE AND DESIST FROM:

1. Refusing to recognize or negotiate in good faith with United Teachers Los Angeles (UTLA) as the exclusive representative of all classifications and positions in the certificated bargaining units;

2. By the same conduct, interfering with the rights of employees to be represented by their exclusive representative; and

3. Denying UTLA the right to represent its members.

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

1. Recognize and upon request, bargain with UTLA as the exclusive representative of the employees in the certificated units at Alliance College-Ready Middle Academy No. 5, and if an understanding is reached, reduce it to writing and sign it. On commencement of bargaining, UTLA's status as the exclusive collective bargaining representative of the certificated units shall be extended for 12 months thereafter, as if the initial year of the certification has not expired.

2. Make UTLA whole for all losses and expenditures caused by our refusal to bargain, as determined in compliance proceedings, other than the costs and fees UTLA paid in litigating this case.

Dated: _____ Alliance College-Ready Middle Academy No. 5

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.