**STATE OF CALIFORNIA**
**DECISION OF THE**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, | ) | |
| Charging Party, | ) | Case No. LA-CE-3691 |
| v. | ) | PERB Decision No. 1262 |
| BAKERSFIELD CITY SCHOOL DISTRICT, | ) | April 28, 1998 |
| Respondent. | ) | |

Appearances: Alan S. Hersh, Staff Attorney, for California School Employees Association; Breon, O'Donnell, Miller, Brown & Dannis by David G. Miller and Ivette Peña, Attorneys, for Bakersfield City School District.

Before Caffrey, Chairman; Johnson and Dyer, Members.

DECISION

JOHNSON, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Bakersfield City School District (District) to an administrative law judge's (ALJ) proposed decision (attached). In the proposed decision, the ALJ found that the District violated section 3543.5(a), (b) and (c) of the Educational Employment Relations Act (EERA)[1] when it: (1) refused to provide the California

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[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise stated, all statutory references are to the Government Code. Section 3543.5 states, in pertinent part:

> It shall be unlawful for a public school employer to do any of the following:
>
> (a) Impose or threaten to impose reprisals on employees, to discriminate or threaten to discriminate against employees, or otherwise to interfere with, restrain, or coerce employees because of their exercise of rights

School Employees Association (CSEA) with information necessary and relevant to its representational duty; and (2) unilaterally changed the mechanics of the release of unit members' home addresses and phone numbers.

The Board has reviewed the entire record, including the proposed decision and hearing transcript, the District's exceptions and CSEA's response. The Board finds the ALJ's findings of fact and conclusions of law to be free of prejudicial error and adopts them as the decision of the Board itself consistent with the following discussion.

## DISCUSSION

The majority of the District's exceptions restate arguments thoroughly considered and properly decided by the ALJ. The Board sees no need to further discuss these arguments on appeal.

The District argues for the first time on appeal that PERB lacks jurisdiction over the unilateral change allegation, and asserts that the allegation should be dismissed and deferred to the parties' contractual grievance procedure under the test established in Lake Elsinore Unified School District (1987) PERB

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guaranteed by this chapter. For purposes of this subdivision, "employee" includes an applicant for employment or reemployment.

(b) Deny to employee organizations rights guaranteed to them by this chapter.

(c) Refuse or fail to meet and negotiate in good faith with an exclusive representative.

Decision No. 646 (Lake Elsinore) and EERA section 3541.5(a)(2),[2]

Under PERB precedent, including Lake Elsinore, deferral is appropriate when: (1) the parties' contractual grievance procedure covers the matter at issue and culminates in binding arbitration; and (2) the conduct complained of in the unfair practice charge is prohibited by the parties' agreement. The Board finds that no provision of the collective bargaining agreement between the parties arguably prohibits the conduct alleged in the charge and complaint. Accordingly, the Board finds deferral inappropriate in this case.

Remedy for Unilateral Change Allegation

We affirm the ALJ's finding of a violation on the unilateral change allegation; however, we are modifying the remedy he ordered. In fashioning a remedy for unlawful conduct, the Board has broad authority to take action which effectuates the policies of the EERA. In this case, the ALJ ordered an interim remedy requiring the District to facilitate CSEA's communications with unit members while the parties engage in negotiations over the mechanism by which the District will provide unit members' home addresses and phone numbers to CSEA.

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[2]EERA section 3541.5(a)(2) states, in pertinent part:

> . . . the board shall not . . . [i]ssue a complaint against conduct also prohibited by the provisions of the agreement between the parties until the grievance machinery of the agreement, if it exists and covers the matter at issue, has been exhausted, either by settlement or binding arbitration.

While the objective of this interim remedy may be commendable, in practical terms, it interjects the Board deeply into the internal administrative practices of the District. The Board declines to take that remedial action in this case, instead leaving the mechanics of providing the information in question to the negotiations of the parties. Accordingly, the remedy is modified as described below.

## ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, the Public Employment Relations Board (Board) finds that the Bakersfield City School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated these provisions of EERA on or about April 2, 1996, by refusing to provide the California School Employees Association (CSEA) with the home addresses and phone numbers of unit members and by unilaterally changing the mechanics of providing such information to CSEA. This conduct violated the District's duty to bargain in good faith with CSEA, in violation of EERA section 3543.5(c). This conduct also denied CSEA its right to represent unit members in violation of EERA section 3543.5(b). This conduct also interfered with the right of unit members to be represented by CSEA, in violation of EERA section 3543.5(a).

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

A. CEASE AND DESIST FROM:

1. Refusing without legal justification to provide CSEA with relevant and necessary information, upon a proper request by CSEA.

2. Making a unilateral change in the mechanics of providing information to CSEA.

3. By the same conduct, denying CSEA its right to represent bargaining unit members in their employment relations with the District.

4. By the same conduct, interfering with the right of unit members to be represented by CSEA.

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

1. Meet and negotiate with CSEA, if requested, within 10 days following service of this Decision, concerning the mechanics of providing unit members' home addresses and phone numbers to CSEA, including any formal mechanism for employees to exercise their rights under the California Public Records Act, Government Code section 6254.3.

2. Within thirty-five (35) days following the date this Decision is no longer subject to reconsideration, post at all work locations where notices to classified employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of

the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to insure that this Notice is not reduced in size, altered, defaced or covered by any other material.

3. Upon issuance of a final decision, make written notification of the actions taken to comply with this Order to the Sacramento Regional Director (Director) of the Board in accordance with the Director's instructions.

Chairman Caffrey and Member Dyer joined in this Decision.

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. LA-CE-3691, California School Employees Association v. Bakersfield City School District, in which all parties had the right to participate, it has been found that the Bakersfield City School District (District) violated the Educational Employment Relations Act (EERA), Government Code section 3543.5(a), (b) and (c). The District violated the EERA on or about April 2, 1996, by refusing to provide the California School Employees Association (CSEA) with the home addresses and phone numbers of unit members and by unilaterally changing the mechanics of providing such information to CSEA.

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

A. CEASE AND DESIST FROM:

1. Refusing without legal justification to provide CSEA with relevant and necessary information, upon a proper request by CSEA.

2. Making a unilateral change in the mechanics of providing information to CSEA.

3. By the same conduct, denying CSEA its right to represent bargaining unit members in their employment relations with the District.

4. By the same conduct, interfering with the right of unit members to be represented by CSEA.

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

1. Meet and negotiate with CSEA, if requested, within 10 days following service of this Decision, concerning the mechanics of providing unit members' home addresses and phone numbers to CSEA, including any formal mechanism for employees to exercise their rights under the California Public Records Act, Government Code section 6254.3;

Dated:_____ BAKERSFIELD CITY SCHOOL DISTRICT

By: _____
Authorized Agent

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

**STATE OF CALIFORNIA**
**PUBLIC EMPLOYMENT RELATIONS BOARD**

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| CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION,<br><br>Charging Party,<br><br>v.<br><br>BAKERSFIELD CITY SCHOOL DISTRICT,<br><br>Respondent. | ) | Unfair Practice Case No. LA-CE-3691<br><br>PROPOSED DECISION (8/15/97) |

Appearances: Alan S. Hersh, Staff Attorney, for California School Employees Association; Breon, O'Donnell, Miller, Brown & Dannis, by David G. Miller and Ivette Peña, Attorneys, for Bakersfield City School District.

Before Thomas J. Allen, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, a union alleges that a school district unlawfully withheld from the union the home addresses and home phone numbers of employees. The school district maintains its conduct was lawful.

On June 21, 1996, the California School Employees Association (CSEA) filed an unfair practice charge against the Bakersfield City School District (District). On July 29, 1996, the Office of the General Counsel of the Public Employment Relations Board (PERB) issued a complaint, alleging that on or about April 2, 1996, the District had refused to supply CSEA with employee home addresses and home phone numbers without employee authorization.[1] The complaint alleged the District's refusal

[1]The complaint also alleged the District refused to supply certain other employee information, including social security numbers, but in its reply brief CSEA withdrew those portions of

represented (1) an unlawful refusal to provide information that was relevant and necessary to CSEA's discharge of its duty to represent employees and (2) an unlawful unilateral change in policy.

On August 19, 1996, the District filed an answer to the complaint. On October 23, 1996, PERB held an informal settlement conference with the parties, but the matter was not resolved. On February 19, 20 and 21, 1997, PERB conducted a formal hearing. After the filing of post-hearing briefs, the matter was submitted for decision on July 3, 1997.[2]

## FINDINGS OF FACT

The District is a public school employer under the Educational Employment Relations Act (EERA).[3] CSEA is an employee organization under EERA and is the exclusive representative of three units of the District's classified employees.

The District and CSEA are parties to a negotiated agreement (Agreement) for the term July 1, 1995, through June 30, 1998.

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its charge. The District has not objected to this withdrawal. Pursuant to PERB Regulation 32625, I determine the withdrawal shall be with prejudice. In this proposed decision, I shall therefore make findings of fact and conclusions of law only as relevant to the issues involving addresses and phone numbers. (PERB regulations are codified at Cal. Code of Regs., tit. 8, sec. 31001 and following.)

[2]By a letter dated July 9, 1997, the District requested time to brief a "new issue" in CSEA's reply brief, but the District later withdrew this request, by a letter dated July 17, 1997.

[3]EERA is codified at Government Code section 3540 and following. Unless otherwise indicated, all statutory references are to the Government Code.

The Agreement does not address CSEA's rights to request and receive information, the District's rights to withhold information, or the rights of employees to have information withheld. The Agreement (in Article 3.2) does give CSEA the right to post notices on designated bulletin boards, subject to immediate removal by District management of information that is "false or defamatory." The Agreement (in Article 3.3) also gives CSEA the right to use the District mail service and mail boxes for communications to unit members, with the condition that the District superintendent must be provided with material intended for "general CSEA distribution." The Agreement (in Article 3.5) also provides for payment to CSEA of agency fees by unit members who are not CSEA members.

In 1992, the California State Legislature amended section 6254.3 of the California Public Records Act (Public Records Act or PRA).[4] This section previously applied to the home addresses and phone numbers of state employees only. As amended, the section states in relevant part as follows (with the new language underlined):

> (a) The home addresses and home telephone numbers of state employees <u>and employees of a school district or county office of education</u> shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:
>
> (3) To an employee organization pursuant to regulations <u>and decisions of</u> the Public

[4]The Public Records Act is codified at section 6250 and following.

> Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.
>
> (b) Upon written request of any employee, a state agency, <u>school district, or county office of education</u> shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

None of the District's witnesses testified as to when they became aware of this amendment. CSEA's Labor Relations Representative (Representative) testified she had known about it since the amendment was made.

On an annual basis since 1993, the CSEA Representative requested from the District, and the District provided, a list of unit members' home addresses and phone numbers. The last such complete list was provided to CSEA in April 1995. That list appears to give the home addresses (or post office boxes) and phone numbers of all the unit members; none of the addresses or phone numbers is listed as confidential.

On approximately a quarterly basis since 1994, the local CSEA treasurer requested from the District, and the District provided, a list of unit members that included their home addresses.[5] The last such complete list in evidence was dated

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[5]The treasurer testified she would have liked such a list every month but "we made a deal" that the District "would give it to me every three months or something like that."

October 18, 1995, and appears to include all the unit members' home addresses (or post office boxes), with none listed as confidential.[6] The treasurer testified these lists were provided within a week or so of her requests.

On February 22, 1994, the District sent out a survey to its principals and department heads, on the subject of a possible District directory. The principals and department heads were asked to talk to their staffs and to report, among other things, the numbers of employees who would authorize publication of their home addresses and phone numbers, their home addresses only, or their phone numbers only. Based on the responses to the survey, the District concluded, "Most employees surveyed would not authorize publication of their home address and/or phone number." The District therefore decided not to publish a directory. The CSEA Representative was unaware of this survey, which had no apparent effect on the District's practice of providing CSEA with employees' addresses and phone numbers.

The District's director of personnel services testified that at an unspecified time the District did a survey of part-time employees to determine their preferences with regard to a possible option to select a defined benefit plan in lieu of social security. A written survey asked questions of individual

[6]The only apparent anomaly was the street address of employee Cynthia Sanchez, which was listed simply as "G" on the list dated October 18, 1995. No explanation for this listing has been given. Cynthia Sanchez's full address was listed on earlier and later lists given to CSEA; it appears she moved sometime between a list dated May 15, 1995, and a list dated August 6, 1996. I attribute no particular significance to the anomaly.

employees, who returned the survey to the District. There was no evidence as to the results or effects of this survey.

On January 19, 1996, CSEA Representative Jonnie Parker (Parker) sent a letter to Michael Lingo (Lingo), the District's director of personnel services. The letter began as follows:

> As the exclusive representative of a (the) bargaining unit(s) in Bakersfield City School District, CSEA is entitled to certain information. In order for CSEA to fulfill its obligation as the exclusive representative and enforce the terms of our collective bargaining contract, we request the following information on all bargaining unit(s) employees.

The letter then requested a list of all unit members with certain information about them, including their home addresses and phone numbers. The letter continued as follows:

> However, we would prefer to establish an electronic transfer of this information. Such a transfer would greatly assist CSEA. The electronic transfer can be provided in one of several formats.

The letter then listed three alternative formats, along with several properties for the data requested.

At the time she sent this letter, Parker had last received a list of home addresses and phone numbers for unit members some nine months earlier, in April 1995. During 1995, she had discovered discrepancies between the gross numbers of the April 1995 list and the numbers of potential unit members.

During January, February and March of 1996, Parker had several conversations with Lingo's secretary, mostly concerning the format in which the District could provide information to

CSEA.[7] In a conversation on March 13, 1996, the secretary told Parker that CSEA would not receive home addresses and phone numbers. The next day, Parker showed the secretary copies of pages from the April 1995 list, which included addresses and phone numbers. Parker assumed that if there was still a problem Lingo would contact her, which he did not do. When Parker next talked to the secretary, Parker was told a data systems employee was working on providing the information; she was not told any information would be excluded.

On April 1, 1996, Lingo's secretary sent Parker a facsimile transmission. The cover sheet indicated Parker was being sent a "survey to classified employees re release of info" for Parker's "information and response." The second page was a document in two parts. The top part was an undated memo from Lingo addressed to "New Classified Employees" regarding "Release of Confidential Information." The memo stated as follows:

> Due to a change in the law, home addresses and telephone numbers are now considered, "confidential information."
>
> This information is sometimes requested by Classified [sic] School Employees Association, Chapter #48, (CSEA) for miscellaneous reports.
>
> Please complete the bottom of this page, indicating whether or not you would like this information released.

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[7]In one of these conversations, on January 25, 1996, the secretary told Parker that CSEA would not receive social security numbers, which had been part of CSEA's request. Parker told the secretary this issue had been settled the previous summer. Apparently the issue did not come up again in their conversations.

The bottom part of the page was a form headed "Bakersfield City-School District Personnel Services." The form had four blank lines labeled "Employee (Printed Name)," "Employee Signature, " "School/Department" and "Date Signed." The form then had two boxes, labeled as follows and in the following order:

> NO, permission is not granted to release my home address & telephone number.
>
> YES, I grant permission to release my home address & telephone number. [Emphasis in original.]

This facsimile transmission was the first notice Parker received that such a document would be used.

On the next day, April 2, 1996, Parker called Lingo and told him that she did not understand why the "survey" was being sent out, that she had never heard from Lingo there was a problem, that she believed the District had been stalling, and that in her opinion it was an unfair practice for the District to refuse to provide the requested information and to send out the memo and form. Lingo told Parker he had referred Parker's January 19 request to the District's counsel and had been advised that an amendment to the Public Records Act gave employees the ability to refuse CSEA their home addresses and phone numbers. He further told Parker that the District was not going to provide CSEA with anything until the District had "actively surveyed" the unit members. Parker reiterated CSEA's position that the District should provide the information and should not send out the memo and form.

On April 9, 1996, the District sent out to all unit members a revised version of the memo and form. The revised version was addressed to "All Classified Employees," not just "New Classified Employees." It bore the date April 9, 1996, and it referred to CSEA by its correct name. What had been the last sentence of the memo portion was revised to specify that employees should indicate whether or not they wanted information released "to California School Employees Association, Chapter #48." In addition, the following sentence was added:

> Please return completed form to Personnel by Monday, April 15, 1996. [Emphasis in original.]

The form portion was essentially unchanged except that it no longer asked for the "Date Signed." CSEA Representative Parker did not receive a copy of the revised memo and form from the District at that time.

At one school site, the school secretary gave the head custodian (who was also the local CSEA president) copies of the memo and form for all the custodians at the site; she told him to distribute them and have them returned to her. When he returned his own form she checked his name off a list. At another school site, copies of the memo and form were just placed in unit members' mail boxes, and names were not checked off.

In the District's Operations Department, the site supervisor handed out copies of the memo and form to unit members after giving them their work assignments for the day; he told them to turn in the forms before proceeding with their work. When unit

members asked questions, the supervisor referred them to the local CSEA chief job steward, who worked in the department, but the steward said he could not comment because he was there as an employee and not as a CSEA representative. The supervisor checked off employees' names as they turned in the forms.

On April 26, 1996, Lingo sent Parker a letter stating in part as follows:

> Pursuant to your request for personal information on Bakersfield City School District employees as stated in your letter of January 19, 1996, please be advised that the District is hesitant to supply such personal information without the express permission of each unit member. I am informed that a recent amendment to the Public Records Act underlines the need for the District to proceed with an abundance of caution, despite what might have occurred in the past, or any internal pressure an employee organization may wish to exert.
>
> I am also informed that in the intervening period several telephone conversations have occurred between our offices in an effort to clarify your specific need for such personal data. Pursuant to the advice of Counsel, your written request and our telephone conversation of April 2, 1996, please be advised that the District, at its own expense, is in the process of printing and distributing to each unit member, the attached form. Once received by the District, an affirmative response should enable the District to supply to CSEA, Chapter #48, the home address and telephone number on record, of consenting individual unit members.
>
> The District regrets any inconvenience and delay that may ensue pursuant to the District's legal position on the CSEA, Chapter #48, request for personal information on BCSD employees.

Attached to this letter was the revised version of the memo and form.

At the hearing, Lingo acknowledged that the District maintains the home addresses and phone numbers of unit members, and that the District had such information on January 19, 1996, when CSEA requested it. There was no evidence that at any time prior to April 9, 1996, there were any unit members who had made written requests that their home addresses and phone numbers not be disclosed to CSEA. It was stipulated on the record that PRA section 6254.3 does not refer to the ability of an employer to "survey" employees on this issue. Apart from Parker's testimony about what Lingo told her (which is hearsay) and Lingo's April 26 letter (also hearsay), there is no actual evidence in the record as to why the District refused to provide the requested information until it had surveyed the employees.

Lingo asked his secretary to keep track of who returned the surveys. On May 6, 1996, she informed him that of the District's 1,720 classified employees only 967 had returned completed surveys, while 753 had not. She asked him if she should send a list to each school site and department indicating who had not returned the survey, with a note asking the principals and department heads to collect and return the remaining surveys. Lingo responded, "Yes."

On May 10, 1996, Parker sent Lingo a letter in response to his April 26 letter. Parker's letter stated in part that the District was "refusing to provide information in a timely

manner," despite a "long standing practice" of providing such information, and was "obstructing the CSEA's right to relevant and necessary information" by "soliciting permission to release said information via a newly created form." The letter requested that the District provide the information no later than May 17, 1996, or face an unfair practice charge. Parker also called Lingo the same day with the same message.

On May 13, 1996, Parker and the local CSEA president met with Lingo and the District superintendent. In response to CSEA's expressed concerns, the superintendent stated, "What's done is done; where do we go from here?" Lingo stated a second survey would be sent out because the District had not received an adequate response to the first one. CSEA objected, but without success.

At the hearing, Lingo testified that it was his decision to send out a second "survey" and that he did not ask CSEA if he could do so. He gave his reasons for the decision as follows:

> I was concerned that 753 surveys had not been returned and I wanted, I thought it was necessary that we have some kind of response from those individuals before proceeding further.

He did not explain why he thought the additional responses were necessary.

On May 21, 1996, Lingo sent a memo to all principals and department heads regarding "Survey to All Classified Employees (Release of Confidential Information)." The memo stated in relevant part as follows:

> Enclosed is a list of classified employees at your site who have not responded to this survey.
>
> Each employee listed should receive this survey, which gives them the option to release -- (or not release) -- their home address and telephone number to California School Employees Association, Chapter #48.

Enclosed with each memo was a list of non-responding employees and copies of a new memo and form. The new memo was dated May 21, 1996, and was addressed to "All Classified Employees Not Responding to April 9, 1996, Memo." The new memo was otherwise like the April 9 memo, except that it asked for forms to be returned by "Friday, May 31, 1996," and it concluded with the following additional language:

> Unless this document is received on or before the due date with a mark in the "NO" box, your home address and telephone number will be provided to CSEA, Chapter #48.

The form portion of the document was essentially the same as before. CSEA Representative Parker did not receive a copy of the new memo and form from the District at that time, although she did receive a copy on June 12, 1996.

At one school site, the principal told the school secretary she (the principal) was going to take the new memo and form around to employees and ask them to sign it and turn it in. The principal instructed the secretary to check off the names of employees who returned the forms and to follow up on employees who did not do so. The secretary did as she was instructed.

On or about August 6, 1996, the District gave CSEA Representative Parker a 79-page computer-printed list of unit

members. For some unit members, the list gave home addresses and phone numbers, but for others it listed the home addresses and phone numbers as "confidential". Parker was told the "confidential" listings represented the employees who had marked the "No" box on the April 9 form or the May 21 form.

On February 6, 1997, Parker and Lingo's secretary reviewed and counted the forms that employees had marked. They found that on the April 9 form some 541 employees had marked the "Yes" box and 507 had marked the "No" box. They found that on the May 21 form some 155 employees had marked the "Yes" box and 146 had marked the "No" box.

At the hearing, several CSEA witnesses testified about CSEA's use of unit members' home addresses and phone numbers. One use of the home addresses was to send unit members who were not CSEA members their annual Hudson notices.[8] Home addresses and phone numbers were also used to survey or poll unit members on bargaining issues, to notify them of ratification votes, to monitor the status of unit members on extended leave, and to communicate with unit members facing layoff.

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[8]The name "Hudson notice" refers to the United States Supreme Court's decision in Chicago Teachers Union, Local No. 1 v. Hudson (1986) 475 U.S. 292, 106 S.Ct. 1066 [121 LRRM 2793]. In that decision, the Supreme Court held that a public employee who pays an agency fee has a constitutional right to receive from the union an adequate explanation of the basis for the fee. In PERB Regulation 32992, PERB requires that each agency fee payer receive annually a written notice that includes the amount of the fee, expressed as a percentage of dues based on identified chargeable expenditures, and the basis for calculating the fee, with all calculations made on the basis of an independent audit made available to the fee payer.

CSEA's witnesses also testified about difficulties in communicating with unit members without their home addresses and phone numbers. Unit members sometimes called CSEA and left messages with only their names and work sites. CSEA was not allowed to call unit members on their work time and could not always contact them on their lunch time. During the summer, the District mail system was not available as a means of communicating with many unit members, because the District did not deliver mail to most school sites, and most unit members were off work for one or two months. CSEA witnesses gave examples of bargaining and representation issues that arose during the summer months, when CSEA could not rely on the District mail system as a means of communicating with unit members.

CSEA's witnesses testified that even when the District mail system was available it was not always reliable or confidential. Mail CSEA sent to employees was sometimes sent back, because the employees had transferred without notice to CSEA. The local CSEA president sometimes found that mail sent to CSEA through the District mail system had already been opened when he received it. At one school site, classified aides shared mail boxes with certificated teachers, and mail intended for the aides was sometimes found in teachers' work rooms or rest rooms. At the same school site, mail for all the classified cafeteria workers went into one box and was picked up by the cafeteria manager. At another school site, mail for all the custodians went into one box and then was placed on a counter in the "custodian room."

Employees complained to CSEA that they did not receive mail CSEA had sent, or that CSEA did not respond to mail they had sent, which CSEA had not in fact received.

Mail for "general CSEA distribution" could not be confidential, because Article 3.3 of the parties' Agreement required that such material be provided to the District superintendent. Postings on bulletin boards could not be confidential either, because the bulletin boards were in open view.[9]

## ISSUES

1. Did the District unlawfully refuse to provide CSEA with the home addresses and phone numbers of unit members?

2. Did the District's conduct represent an unlawful unilateral change in policy?[10]

## CONCLUSIONS OF LAW

### Alleged Refusal to Provide Information

It has long been held by the National Labor Relations Board (NLRB) and by PERB that the duty to bargain in good faith requires an employer to provide information requested by a union

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[9]Also, as noted above, under Article 3.2 of the parties' Agreement "false and defamatory" information on bulletin boards was subject to immediate removal by District management. This clearly implies that the bulletin boards were subject to management scrutiny.

[10]CSEA's briefs argue that the District's conduct also represented unlawful polling and coercion of employees. This argument is not reflected in the PERB complaint, or in a motion to amend the PERB complaint, and was not fully litigated at the hearing. I shall therefore make no conclusions of law as to the issues raised by this argument.

that is necessary and relevant to the union's duty as exclusive representative to represent unit members. (NLRB v. Acme Industrial Company (1967) 385 U.S. 432 [64 LRRM 2069]; Procter & Gamble Manufacturing Company v. NLRB (8th Cir. 1979) 603 F.2d 1310 [102 LRRM 2128]; Stockton Unified School District (1980) PERB Decision No. 143 (Stockton).) Certain information is presumed to be relevant, but if the employer questions the relevance the union must give the employer an explanation. (Modesto City Schools and High School District (1985) PERB Decision No. 479.) Once relevant information is requested, the employer must provide it or adequately set forth the reasons why it is unable to comply. (The Kroger Company (1976) 226 NLRB 512 [93 LRRM 1315]; Stockton.) The employer may be excused if compliance would be burdensome, but the burden of proving this defense is on the employer. (NLRB v. Borden, Inc. (1st Cir. 1979) 600 F.2d 313 [101 LRRM 2727]; Stockton.)

The NLRB has held unit members' home addresses and phone numbers are presumptively relevant. (See, e.g., Harco Laboratories, Inc. (1984) 271 NLRB 220 [117 LRRM 1232] (addresses); Dvantron/Bondo Corp. (1991) 305 NLRB No. 75 [138 LRRM 1446] (addresses and phone numbers); Show Industries Inc. (1991) 305 NLRB No. 72 [138 LRRM 1416] (addresses and phone numbers).) In Prudential Insurance Co. v. NLRB (2d Cir. 1969) 412 F.2d 77, 84 [71 LRRM 2254] (Prudential), the Court of Appeals stated the following about a union's request for the addresses of unit members:

> The kind of information requested by the Union in this case has an even more fundamental relevance than that considered presumptively relevant. The latter is needed by the union in order to bargain intelligently on specific issues of concern to the employees. But data without which a union cannot even communicate with employees whom it represents is, by its very nature, fundamental to the entire expanse of a union's relationship with the employees. In this instance it is urgent so that the exclusive bargaining representative of the employees may perform its broad range of statutory duties in a truly representative fashion and in harmony with the employees' desires and interests. Because this information is therefore so basically related to the proper performance of the union's statutory duties, we believe any special showing of specific relevance would be superfluous.

In dynamic employment situations, where representation issues may arise quickly and require a quick response, this statement would seem to apply with equal force to a request for unit members' phone numbers.

With regard to requests for addresses (as well as with regard to other requests for information), PERB has generally followed NLRB precedent. (See, e.g., Mt. San Antonio Community College District (1982) PERB Decision No. 224, citing Prudential.) There appears to be no reason why PERB should not follow NLRB precedent with regard to requests for phone numbers as well. Indeed, in its reply brief the District "does not dispute that employee home addresses and home telephone numbers may, depending upon the circumstances, be relevant information to which an employee organization ordinarily is entitled [emphasis

added]." I conclude unit members' phone numbers as well as addresses are presumptively relevant information.

The PERB complaint alleges in part that on or about April 2, 1996, the District refused to provide relevant and necessary information, including addresses and phone numbers, which CSEA had requested on or about January 19, 1996. There is no evidence the District did not have the requested information on April 2, 1996; on the contrary, District Personnel Director Lingo testified the District had the information on January 19, 1996, when it was first requested.

I have concluded the requested information (addresses and phone numbers) was presumptively relevant. The District has not rebutted this presumption. There was no testimony the District even questioned the relevance of the information, so as to oblige CSEA to give the District an explanation.

The District argues (in its reply brief) that CSEA's request was "not urgent" because CSEA "had recently and repeatedly received such information from the District." There was no testimony, however, that the District questioned the timing and urgency of CSEA's request. On the contrary, the timing of CSEA's January 1996 request appears to have been consistent with the timing of previous requests that were honored by the District. Furthermore, CSEA Representative Parker testified that during 1995 she had discovered discrepancies between the gross numbers of the April 1995 list of address and phone numbers and the numbers of potential unit members. In a mobile society, it could

be expected a number of unit members would have changed addresses or phone numbers between the April 1995 list (or even the October 1995 list given to the local CSEA treasurer) and the January 1996 request. I therefore do not find that the District's argument that the request was "not urgent" rebuts the presumption of relevance and necessity.

The District does not argue it would have been unduly burdensome for it to provide the requested information. There is no evidence that the District told CSEA it was burdensome, or that it was burdensome in fact. On the contrary, it appears that in the past the District had been able to provide the information readily and promptly (within a week or so, in the case of the information requested by the local CSEA treasurer).

What the District did tell CSEA (mostly clearly in Lingo's April 26 letter) was that the District was "hesitant" to provide the requested information because of "a recent amendment to the Public Records Act," apparently a reference to the 1992 amendment to section 6254.3. As a justification for the District's alleged refusal to provide the requested information on or about April 2, 1996, however, this explanation is unsupported by the facts and the law. There was no evidence that on or about April 2, 1996, there were any unit members who had made written requests that their addresses and phone numbers not to be disclosed, and PRA section 6254.3(b) only required that the District not disclose

such information " [u]pon written request of any employee."[11] As PERB stated in California Union of Safety Employees (1992) PERB Decision No. 948-S, "The only home addresses properly withheld . . . were those of individuals who, in writing, had invoked the privacy provision of section 6254.3(b) [emphasis added]," not those of individuals who might invoke the provision in the future.

On April 2, 1996, Lingo told Parker the District would not provide any information until the District had "actively surveyed" the unit members. PRA section 6254.3, by its terms, does not require or authorize such a survey; it was stipulated on the record that the section does not refer to the ability of an employer to survey employees on this issue. Lingo did not testify he even believed the section required or authorized the survey.

The District appears to argue (in its reply brief) it did not actually "refuse" to provide information on or about April 2, 1996, as the complaint alleges, but merely delayed providing the information, with "no prejudice" to CSEA. Such an argument does not fit the facts of this case. The facts are the District refused to provide CSEA with the requested information during what was actually and predictably the last week there were (apparently) no employee requests limiting disclosure of the

[11]Section 6254.3(a)(3) also required that the District not disclose the addresses and phone numbers of employees "performing law enforcement-related functions," but there is no evidence of such employees in the CSEA units, and the requirement is not at issue in this case.

information. The District explicitly refused to provide the information until it had "actively surveyed" the unit members. It was certainly predictable that at least some of the employees surveyed, especially when given a specific form and a specific deadline, would request that their addresses and phone numbers not be disclosed. The prejudice to CSEA was obvious: the District's April 2 refusal, coupled with its April 9 and May 21 surveys, meant the District was not going to provide CSEA with all the information CSEA had requested, even though the District apparently could otherwise have provided all that information at any time prior to April 9, 1996.

I therefore conclude CSEA requested presumptively relevant information, the District did not rebut the presumption of relevance, the District refused to provide the information on or about April 2, 1996, and the District has established no defense for its April 2 refusal. Under PERB precedent, the District's refusal violated its duty to bargain in good faith with CSEA, in violation of EERA section 3543.5(c). This conduct also denied CSEA its right to represent unit members, in violation of EERA section 3543.5(b). This conduct also interfered with the right of unit members to be represented by CSEA, in violation of EERA section 3543.5(a).

Alleged Unilateral Change

An employer's unilateral change of terms and conditions of employment within the scope of representation is, absent a valid defense, a per se refusal to negotiate, in violation of EERA

section 3543.5(c). (Pajaro Valley Unified School District (1978) PERB Decision No. 51.)

To prevail on a complaint of unilateral change, a charging party must establish by a preponderance of the evidence (1) the employer breached or altered the parties' written agreement or an established past practice; (2) such action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach but amounted to a change of policy (that is, it had a generalized effect or continuing impact on the bargaining unit); and (4) the change in policy concerned a matter within the scope of representation. (Pajaro Valley Unified School District, supra, PERB Decision No. 51; Davis Unified School District (1980) PERB Decision No. 116; Grant Joint Union High School District (1982) PERB Decision No. 196.)

PERB has held the provision of relevant and necessary information to an exclusive representative is within the scope of representation. (Jefferson School District (1980) PERB Decision No. 133; Healdsburg Union High School District (1984) PERB Decision No. 375 (Healdsburg); Davis Joint Unified School District (1984) PERB Decision No. 474.) In Healdsburg, PERB found "the most appropriate way to avoid conflict over access to necessary information is to regulate the [exclusive representative's] access to that information through the collective bargaining process."

With regard to the provision of the home addresses of employees, PERB has issued specific regulations under the Ralph C. Dills Act (Dills Act) and the Higher Education Employer-Employee Relations Act (HEERA).[12] The Dills Act regulation is PERB Regulation 40165 and states in relevant part as follows:

> (a) Except as prohibited by law, the state employer shall release to an exclusive representative a mailing list of home addresses of state employees it represents pursuant to a written request by the exclusive representative. The mechanics of such release, including but not limited to (1) timing, frequency, and manner of disclosure, (2) maintenance of names or the mailing list, and (3) cost of production shall be subject to the collective bargaining process. [Emphasis added.]
>
> (c) As provided by Government Code Section 6254.3, and upon written request of a state employee, the state employer shall remove the state employee's home address from the mailing lists referenced in subsection (a) and (b) prior to the release of such lists.

The HEERA regulation is PERB Regulation 51027 and is parallel to the Dills Act regulation.

The Dills Act and HEERA regulations were issued in 1986, when PRA section 6254.3 applied to the home addresses and phone numbers of state employees only. Now that the 1992 amendment to the Public Records Act has made section 6254.3 applicable to the addresses and phone numbers of public school employees as well, there appears to be no reason why the principles embodied in these regulations should not also apply under EERA, which in all

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[12]The Dills Act is codified at section 3512 and following. HEERA is codified at section 3560 and following.

relevant respects is parallel to the Dills Act and HEERA. Given my conclusion that phone numbers as well as addresses are presumptively relevant information, there appears to be no reason those principles should not also apply to phone numbers. I therefore conclude that under EERA the "mechanics" of the release of unit members' home addresses and phone numbers are within the scope of representation and "subject to the collective bargaining process."

The District nonetheless argues (in its opening brief) "the duty to provide information is a stand-alone duty which may arise because of contract language" but the "existence or non-existence of a past practice regarding providing information is irrelevant because the nature, timing and substance of CSEA's requests for information vary." It is true CSEA may request a variety of information in a variety of contexts, and as to some such requests there may be no established past practice, but it does not follow there can never be an established past practice regarding any such requests. The District's argument appears to acknowledge that "contract language" may be relevant to the duty to provide information; in the law of unilateral change, established past practice may be just as relevant as contract language. (Pajaro Valley Unified School District, supra, PERB Decision No. 51; Davis Unified School District, supra, PERB Decision No. 116; Grant Joint Union High School District, supra, PERB Decision No. 196.)

In the present case, I find there was an established past practice with regard to the mechanics of providing unit members' home addresses and phone numbers. The practice was that the District provided addresses and phone numbers to the CSEA Representative on an annual basis, upon request, and that the District provided addresses to the local CSEA treasurer on approximately a quarterly basis, upon request. Furthermore, the practice was that the District provided the requested information promptly and without first conducting a survey of unit members on the subject.

I further find that on April 2, 1996, the District altered this past practice by refusing to provide the requested information until it had "actively surveyed" the unit members. This was a change in the mechanics of providing the information, both in that it affected the timing of disclosure and also in that it created an entirely new step in the disclosure process. This change affected all three CSEA bargaining units, and it was presented to CSEA as a flat refusal, not as a matter for negotiation. I therefore conclude the District's April 2 conduct constituted a unilateral change of policy.

The District argues (in its opening brief) "the District has regularly surveyed its employees about certain matters." The evidence does show that in 1994 the District surveyed unit members about a possible District directory, and also that at an unspecified time the District surveyed part-time unit members about a possible defined benefit option. I do not find, however,

that these two surveys demonstrate an established past practice relevant to the present case. First of all, two surveys within an unspecified period of years seem insufficient to demonstrate a "regular" practice, let alone an established one. Second, the evidence shows the CSEA representative was unaware of the 1994 directory survey, and there is no evidence CSEA was aware of the defined benefit survey, so it cannot be said the surveys demonstrate a past practice reflecting a tacit understanding between the parties. Furthermore, the two surveys were dissimilar even to each other, with the 1994 directory survey being addressed to principals and department heads, who simply reported back the numbers of employees who responded in various ways, while the defined benefit survey was addressed to individual employees, who returned individual responses. Moreover, there is no evidence either survey had any effect on any right of CSEA, including its right to receive information.

The District further argues that "the District's right to communicate with its employees is an area reserved to its discretion and the District is not legally obligated to negotiate with CSEA about it." This argument might be persuasive if all the District had done was inform employees of their rights under PRA section 6254.3. The District did more than that, however. First of all, the District unilaterally changed its established past practice of promptly providing addresses and phone numbers to CSEA, by refusing to provide any such information until it had "actively surveyed" unit members. Second, the District

unilaterally established a new and specific mechanism for employees to exercise their rights under PRA section 6254.3, which became part of the overall mechanics of the release of information to CSEA. The District unilaterally determined, among other things, that employees would be given a particular form to be returned to a particular office (personnel) by a particular deadline (initially, April 15, 1996). As to the form itself, the District unilaterally determined, among other things, how the employees' options would be defined and in what order they would be listed. Later, the District unilaterally determined there would be a second survey of nonresponding employees with another particular deadline (May 31, 1996). All of these determinations went beyond mere communication of information to employees, and altered the overall mechanics of the release of information to CSEA.

The District argues that employees' rights under section 6254.3 are themselves outside the scope of representation. I agree this appears to be a correct reading both of the Public Records Act and of the PERB regulations under the Dills Act and HEERA (PERB Regulations 40165 and 51027), which I have found applicable in principle under EERA as well. The District further argues "the process by which public school employees are informed of and exercise their rights . . . are similarly outside the scope of collective bargaining [emphasis added]." To the extent this argument would indicate that an employer may unilaterally design and dictate a formal mechanism for employees to exercise

their rights, I disagree. The rights created by PRA section 6254.3 are employee rights, not management rights. There is no reason why an employer should unilaterally determine any formal mechanism for the exercise of those rights, especially when that process will affect the mechanics of a union's access to relevant and necessary information. As PERB stated in Healdsburg, "the most appropriate way to avoid conflict over access to necessary information is to regulate the [exclusive representative's] access to that information through the collective bargaining process."

I therefore conclude that on or about April 2, 1996, the District unilaterally changed the mechanics of providing unit members' home addresses and phone numbers to CSEA, which was a matter within the scope of representation, and that the District has not established any valid defense. This conduct violated the District's duty to bargain in good faith with CSEA, in violation of EERA section 3543.5(c). This conduct also denied CSEA its right to represent unit members, in violation of EERA section 3543.5(b). This conduct also interfered with the right of unit members to be represented by CSEA, in violation of EERA section 3543.5(a).

## REMEDY

EERA section 3541.5 gives PERB:

> . . . the power to issue a decision and order directing an offending party to cease and desist from the unfair practice and to take such affirmative action, including but not limited to the reinstatement of employees

> with or without back pay, as will effectuate the policies of this chapter [EERA].

In the present case, the District has been found to have violated its duty to bargain in good faith (1) by refusing to provide CSEA with relevant and necessary information and (2) by unilaterally changing a policy within the scope of representation. It is therefore appropriate that the District be directed to cease and desist from making such refusals and such unilateral changes. It is also appropriate that the District be directed, if CSEA so requests, to meet and negotiate about the mechanics of providing unit members' home addresses and phone numbers, including any formal mechanism for unit members to exercise their rights under PRA section 6254.3. It is further appropriate that the District be directed, if CSEA so requests, to reinstate its past practice of providing home addresses and phone numbers promptly and without first conducting a survey of unit members on the subject.

If this were an ordinary case of refusal to provide information, it would also be appropriate to direct the District to provide CSEA now with all the information it unlawfully refused to provide on or about April 2, 1996, that is, all the unit members' home addresses and phone numbers available at that time, including those later listed as "confidential" due to the April 9 and May 21 surveys. In the present case, however, because of PRA section 6254.3, such a remedy appears legally inappropriate.

Since April 9, 1996, hundreds of employees have apparently exercised their right under PRA section 6254.3 to make written

requests that their addresses and phone numbers not be disclosed. PRA section 6254.3 appears to require the District to honor those requests now, and also appears to deny PERB the authority to order, by regulation or by decision, that they not be honored now. For the purposes of section 6254.3, it appears to be irrelevant that the written requests came into existence only after what has been found to be an unlawful refusal to provide the information, and only because of what has been found to be an unlawful unilateral change.[13]

PRA section 6254.3 thus makes it very difficult to provide an appropriate remedy in this case.[14] I have found, in effect, that CSEA had a right to receive the addresses and phone numbers of all unit members on or about April 2, 1996, and that the District unlawfully withheld the information at that time, but section 6254.3 apparently prevents PERB from ordering the District to provide all of that information to CSEA now. As a result, CSEA is deprived of information which appears to be relevant and necessary for CSEA to be able to communicate

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[13]Under PRA section 6254.3, the relevant inquiry appears to be whether an employee has made a "written request" that the employer not disclose the employee's address and phone number to an employee organization. Although the April 9 and May 21 forms do not track the language of section 6254.3, I do not find them so ambiguous that the District or PERB may disregard them, unless they are revoked by the employees or superseded by a new mechanism.

[14]For this reason, during the hearing I particularly invited both parties on the record to address the remedy issue in their post-hearing briefs.

promptly, reliably and confidentially with all the unit members it represents.

Some of the difficulty may be alleviated if the District and CSEA negotiate to agreement on a different mechanism for employees to exercise their rights under PRA section 6254.3. The mechanism unilaterally designed by the District is at least arguably slanted (whether intentionally or not) in favor of nondisclosure.[15] A negotiated agreement may yield a more neutral mechanism and ultimately more disclosure of addresses and phone numbers. If nothing else, a new mechanism may allow employees to be more fully informed about the rights and opportunities they may sacrifice by exercising their rights under section 6254.3.[16] As indicated above, the District shall be ordered to negotiate on this subject, if CSEA so requests.

Negotiation takes time, however, and meanwhile the District's unlawful conduct will have the continuing effect of limiting CSEA's ability to communicate with unit members. It is inappropriate for this effect to go entirely unremedied. It is more appropriate to fashion an interim remedy requiring the District to facilitate CSEA's communication with those unit

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[15]For example, the District's form described the issue as one of granting permission to release information, and it listed the "No" option first, arguably implying that nondisclosure was the norm.

[16]The District's description of CSEA's use of home addresses and phone numbers "for miscellaneous reports," while not necessarily inaccurate or pejorative, certainly does not convey the importance of CSEA's use of the addresses and phone numbers to send out Hudson notices, which are of constitutional significance, and for important representational purposes.

members whose addresses and phone numbers were listed as "confidential" due to the April 8 and May 21 surveys. As to those unit members, I find the following procedures to be an appropriate interim remedy:

1. When CSEA wishes to send a mailing to such a unit member, CSEA may place the mailing in a sealed CSEA envelope and give it to the District, along with sufficient information to identify the unit member. Within one business day, the District shall place the sealed CSEA envelope in a District envelope and mail it to the unit member's home address, with a cover letter stating, "In Unfair Practice Case No. LA-CE-3691, the Public Employment Relations Board ordered the District to mail to you at your home address the enclosed mailing from the California School Employees Association." The District may bill CSEA for the cost of necessary postage.

2. When CSEA wishes to contact such a unit member by phone, CSEA may give the District a message for the unit member, stating when and at what phone number the unit member may call CSEA. Within one business day, the District shall attempt to call the unit member's home phone number and leave the message, and shall report to CSEA the time of the attempted call and whether the message was left. The District may bill CSEA for the cost of necessary toll calls.

These procedures shall be in effect as an interim remedy from such time as CSEA requests negotiations on the mechanism for unit members to exercise their rights under PRA section 6254.3,

to the time such negotiations are completed, either by agreement or by exhaustion of statutory impasse procedures, unless the parties agree on different procedures or on a different interim period.

This interim remedy will be seen as imperfect from either party's point of view. From the District's point of view, the interim remedy will appear to impose an extraordinary duty to facilitate CSEA's communication with unit members --a duty that EERA would not otherwise impose on the District. That extraordinary duty is appropriate as a part of an interim remedy in this case, however, because the District's unlawful conduct on or about April 2, 1996, has (intentionally or not) limited CSEA's ability to communicate with unit members -- an ability that is important to CSEA's duty under EERA to represent those unit members. By requiring the District to facilitate such communication, the interim remedy will help to effectuate the policies of EERA.

From CSEA's point of view, on the other hand, the interim remedy will appear to fall short of fully restoring CSEA's previous opportunity for prompt, reliable and confidential communication with unit members. PRA section 6254.3, however, appears to prevent the full restoration of that opportunity in this case. In the long term, section 6254.3 is a reality to which CSEA will have to adjust. The interim remedy may at least help to ease that adjustment, and to alleviate the immediate

effects of the District's unlawful conduct, while the parties negotiate for the long term.

It is also appropriate that the District be directed to post a notice incorporating the terms of the order in this case. Posting of such a notice, signed by an authorized agent of the District, will provide employees with notice that the District has acted in an unlawful manner, is being required to cease and desist from this activity and to take affirmative remedial actions, and will comply with the order. It effectuates the purposes of EERA that employees be informed both of the resolution of this controversy and of the District's readiness to comply with the ordered remedy. (Placerville Union School District (1978) PERB Decision No. 69.)

PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law, and upon the entire record in this matter, it is found that the Bakersfield City School District (District) violated the Educational Employment Relations Act (Act or EERA), Government Code section 3543.5 (a), (b) and (c). The District violated these provisions of EERA on or about April 2, 1996, by refusing to provide the California School Employees Association (CSEA) with the home addresses and phone numbers of unit members and by unilaterally changing the mechanics of providing such information to CSEA. This conduct violated the District's duty to bargain in good faith with CSEA, in violation of EERA section 3543.5(c). This conduct also denied CSEA its right to represent unit

members, in violation of EERA section 3543.5(b). This conduct also interfered with the right of unit members to be represented by CSEA, in violation of EERA section 3543.5(a).

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

A. CEASE AND DESIST FROM:

1. Refusing without legal justification to provide CSEA with relevant and necessary information, upon a proper request by CSEA.

2. Making a unilateral change in the mechanics of providing information to CSEA.

3. By the same conduct, denying CSEA its right to represent unit members.

4. By the same conduct, interfering with the right of unit members to be represented by CSEA.

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

1. If requested by CSEA within 10 days of this proposed decision becoming final, to meet and negotiate in good faith with CSEA concerning the mechanics of providing unit members' home addresses and phone numbers to CSEA, including any formal mechanism for employees to exercise their rights under the California Public Records Act (PRA), Government Code section 6254.3;

2. If requested by CSEA, to reinstate the prior practice of providing unit members' home addresses and phone numbers to CSEA promptly and without first conducting a survey of unit members on the subject;

3. From such time as CSEA requests negotiations on the mechanism for unit members to exercise their rights under PRA section 6254.3, to the time such negotiations are completed, either by agreement or by exhaustion of statutory impasse procedures, to comply with the following procedures with regard to those unit members whose home addresses and phone numbers were listed as "confidential" due to the surveys of April 9, 1996, and May 21, 1996, unless CSEA and the District agree on different procedures or on a different interim period:

a. When CSEA wishes to send a mailing to such a unit member, CSEA may place the mailing in a sealed CSEA envelope and give it to the District, along with sufficient information to identify the unit member. Within one business day, the District shall place the sealed CSEA envelope in a District envelope and mail it to the unit member's home address, with a cover letter stating, "In Unfair Practice Case No. LA-CE-3691, the Public Employment Relations Board ordered the District to mail to you at your home address the enclosed mailing from the California School Employees Association." The District may bill CSEA for the cost of necessary postage.

b. When CSEA wishes to contact such a unit member by phone, CSEA may give the District a message for the

unit member, stating when and at what phone number the unit member may call CSEA. Within one business day, the District shall attempt to call the unit member's home phone number and leave the message, and shall report to CSEA the time of the attempted call and whether the message was left. The District may bill CSEA for the cost of necessary toll calls.

4. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to classified employees customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.

5. Upon issuance of a final decision, make written notification of the actions taken to comply with the Order to the Sacramento Regional Director of the Public Employment Relations Board, in accord with the regional director's instructions.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself at the headquarters office in Sacramento within 20 days of service of this Decision. In accordance with PERB regulations, the statement of exceptions should identify by page

citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (See Cal. Code of Regs., tit. 8, sec. 32300.) A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing ". . .or when sent by telegraph or certified or Express United States mail, postmarked not later than the last day set for filing . . . ." (See Cal. Code of Regs., tit. 8, sec. 32135; Code of Civ. Pro. sec. 1013 shall apply.) Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code of Regs., tit. 8, secs. 32300, 32305 and 32140.)

THOMAS J. ALLEN
Administrative Law Judge