STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHERS LOS ANGELES, Charging Party, v. ALLIANCE COLLEGE-READY PUBLIC SCHOOLS, ALLIANCE SUSAN & ERIC SMIDT TECHNOLOGY HIGH SCHOOL, and ALLIANCE RENEE & MEYER LUSKIN ACADEMY HIGH SCHOOL. Respondents.	Case Nos. LA-CE-6025-E & LA-CE-6027-E PERB Decision No. 2545 December 28, 2017

Appearances: Bush Gottlieb by Jesús E. Quiñonez, Erica Deutsch, Bryan Lopez, and Dexter Rappleye, Attorneys, for United Teachers Los Angeles; Proskauer Rose by Harold M. Brody and Irina Constantin, Attorneys, for Alliance College-Ready Public Schools, Alliance Susan & Eric Smidt Technology High School, and Alliance Renee & Meyer Luskin Academy High School.

Before Gregersen, Chair; Banks and Winslow, Members.

DECISION

WINSLOW, Member: These consolidated cases come before the Public Employment Relations Board (PERB or Board) on exceptions by United Teachers Los Angeles (UTLA) and cross-exceptions by Alliance College-Ready Public Schools (Alliance), Alliance Susan & Eric Smidt Technology High School (Smidt Tech), and Alliance Renee & Meyer Luskin Academy High School (Luskin Academy) (collectively, Respondents) to a proposed decision by an administrative law judge (ALJ).

The operative first amended complaint in Case No LA-CE-6025-E alleged that: (1) Alliance issued four written communications to teachers and members of the public

regarding UTLA's organizing campaign; (2) Alliance blocked an e-mail message sent by UTLA to employees' work e-mail addresses on March 25, 2015; (3) Alliance and Smidt Tech, acting through Smidt Tech Principal Lori Rhodes (Rhodes), terminated an after-school meeting between a UTLA organizer and teachers; and (4) Alliance and Luskin Academy, acting through Luskin Academy's principal, refused to allow UTLA organizers to enter the Luskin Academy campus for a meeting with teachers. Each of these actions was alleged to interfere with protected rights in violation of section 3543.5, subdivisions (a) and (b), of the Educational Employment Relations Act (EERA).[1]

The operative First Amended Complaint in Case No. LA-CE-6027-E alleged that: (1) Alliance and Smidt Tech, acting through Rhodes, questioned a Smidt Tech teacher, Michelle Buckowski (Buckowski), about her meeting with a UTLA organizer; and (2) Alliance removed a teacher from a professional development meeting and instructed her to stop distributing union-related flyers. Each of these actions was alleged to interfere with protected rights in violation of EERA section 3543.5, subdivisions (a) and (b).

The ALJ found that Alliance is a non-profit charter management organization (CMO) affiliated with a network of 27 charter schools. He also found that Smidt Tech and Luskin Academy are two of the charter schools within that network, and that each is a public school employer within the meaning of EERA section 3540.1, subdivision (k). Based on extensive findings regarding Alliance's relationship with Smidt Tech and Luskin Academy, the ALJ determined that the three entities constitute a "single employer" over which PERB has jurisdiction.

[1] EERA is codified at Government Code section 3540 et seq.

On the merits of the complaints, the ALJ found that Respondents violated EERA by denying UTLA organizers access to Smidt Tech and Luskin Academy, filtering UTLA's e-mail message to employees' spam folders, and threatening Buckowski. However, the ALJ dismissed the allegations concerning written communications and removal of the teacher from the professional development meeting. As a remedy for the violations found, the ALJ ordered Respondents to cease and desist their conduct and to post a notice to employees, physically and by electronic means. The ALJ denied UTLA's request for the remedy of a live reading of the order by Alliance's Chief Executive Officer (CEO).

UTLA excepts to the ALJ's dismissal of the allegations concerning Alliance's written communications and the ALJ's refusal to order a live reading remedy. UTLA also requests, as an additional remedy, that Respondents be ordered to provide UTLA a list of their employees.

Respondents except to the ALJ's conclusions that Alliance, Smidt Tech, and Luskin Academy are a single employer and that the Board has jurisdiction over Alliance. They also except to the ALJ's conclusion that they violated EERA by filtering UTLA's e-mail message to employees' spam folders.

The Board itself has reviewed the administrative hearing record in its entirety and considered the parties' exceptions, cross-exceptions, and responses thereto. Based on that review, we affirm in part and reverse in part the proposed decision. Because we conclude that we lack jurisdiction over Alliance, and find no alternate basis for holding Luskin Academy and Smidt Tech liable for Alliance's conduct as the case has been presented to us, we dismiss the allegations against Alliance. We affirm the ALJ's conclusion that Respondents Smidt Tech and Luskin Academy violated EERA when they denied UTLA organizers access to the school campus and when the principal of Smidt Tech, Rhodes, threatened Buckowski because of her

protected activity on behalf of UTLA. We also affirm the ALJ's denial of the live reading remedy requested by UTLA and deny UTLA's request for an additional remedy. Finally, we issue a modified order reflecting the dismissal of the allegations against Alliance.

PROCEDURAL HISTORY

On April 7, 2015, UTLA filed the unfair practice charge in Case Number LA-CE-6025-E against Alliance, Smidt Tech, and Luskin Academy. On April 24, 2015, UTLA filed the unfair practice charge in Case No. LA-CE-6027-E against Alliance, Smidt Tech, and Alliance Gertz-Ressler High School (Gertz-Ressler).

PERB's Office of the General Counsel issued complaints in both cases, naming Alliance as the sole respondent. Alliance filed answers to both complaints admitting that it was a "public school employer" within the meaning of EERA section 3540.1, subdivision (k), and admitting some of the factual allegations, but denying any violation of EERA and setting forth various affirmative defenses.

The parties participated in an informal settlement conference on August 21, 2015, but the matters were not resolved. The cases were then consolidated and set for formal hearing.

Before the hearing, Alliance filed amended answers to the complaints, denying it was a "public school employer," and disputing PERB's jurisdiction over it. Alliance also filed a motion to dismiss the complaints.

UTLA filed a motion to consolidate these cases with two other PERB cases—Case Nos. LA-CE-6061-E and LA-CE-6073-E.[2]

The ALJ denied Alliance's motion to dismiss and UTLA's motion to consolidate.

[2] Case No. LA-CE-6061-E was filed against Alliance, Gertz-Ressler, and Alliance Collins Family College-Ready High School; Case No. LA-CE-6073-E was filed against Alliance and Alliance Patti & Peter Neuwirth Leadership Academy. In each case, the Office of the General Counsel issued a complaint naming Alliance as the sole respondent.

On the first day of formal hearing, Alliance filed second amended answers to the complaints, asserting that the underlying claims in the complaints and PERB's jurisdiction are preempted by the National Labor Relations Act (29 U.S.C., § 151 et seq.).[3]

UTLA then moved to amend the complaints to name additional respondents. UTLA sought to add as respondents all of the Alliance-affiliated schools, on the grounds that Alliance's communications reached all of their employees. In the alternative, UTLA sought to add only Smidt Tech, Luskin Academy, and Gertz-Ressler. The ALJ granted the motion in part and issued the First Amended Complaints, which named Smidt Tech as a respondent in both cases and Luskin Academy as a respondent in Case No. LA-CE-6027-E. The ALJ denied the motion as to the other schools, finding that the underlying charges, the complaints, and UTLA's motion included no specific allegations that any other schools had violated EERA.

Smidt Tech and Luskin Academy filed answers to the First Amended Complaints, denying any violation of EERA and setting forth various affirmative defenses.

Formal hearing was completed over eight non-consecutive days between November 2015 and January 2016.

On June 3, 2016, the ALJ issued the proposed decision. UTLA filed timely exceptions, to which Respondents filed a timely response. Respondents filed timely cross-exceptions, to which UTLA filed a timely response.

[3] Alliance did not assert this preemption argument in its exceptions, but limited its objection to PERB's jurisdiction to its assertion that a CMO is not a public school employer as defined by EERA. Exceptions not specifically urged are waived. (PERB Regulation 32300, subd. (c).) We therefore do not address this issue.

SUMMARY OF FACTS[4]

Background

UTLA is an employee organization within the meaning of EERA section 3540.1, subdivision (d).

Alliance is incorporated as a non-profit public benefit corporation. It describes itself as a CMO affiliated with a network of 27 charter schools within the geographic boundary of the Los Angeles Unified School District.

Smidt Tech and Luskin Academy (the Schools) are individual charter schools within Alliance's network of schools, and are public school employers within the meaning of EERA section 3540.1, subdivision (k), having declared themselves to be the public school employer in their respective charter petitions.

Alliance incorporated Smidt Tech and Luskin Academy as non-profit public benefit corporations. Alliance is the sole member of both corporations, and appoints all nine voting members of each corporation's board of directors. Alliance's Chief Schools Officer sits on both boards, along with four members of Alliance's own board of directors.

Smidt Tech and Luskin Academy each has a management services agreement with Alliance, according to which Alliance provides a variety of "back office" services, such as human resources, accounting, information technology, curriculum, and professional development. Smidt Tech and Luskin Academy also lease their facilities from entities controlled by Alliance.

[4] Although we do not adopt the proposed decision, this summary is largely based on the ALJ's findings of fact, with some modifications based on Respondents' exceptions to those findings. Those exceptions will not be addressed at length, however, because most of them relate to the findings underlying the ALJ's conclusion that Respondents are a single employer, which the Board does not adopt.

Smidt Tech and Luskin Academy's day-to-day operations are run by their respective principals. The record includes evidence of coordination among the 27 network schools; for instance, they have adopted a common school-year calendar and common salary schedule, and they issue an employee handbook that was created by Alliance.

UTLA's Organizing Campaign and Alliance's Response

On March 13, 2015,[5] a group of teachers and counselors working at Alliance-affiliated schools e-mailed Judy Burton, the outgoing CEO and president of Alliance; her incoming replacement, Dan Katzir; and members of the Alliance board of directors. The message announced the employees' decision to organize a union with UTLA. In conjunction with this message, they distributed a Mission Statement signed by teachers and counselors from seven Alliance-affiliated schools discussing their decision to organize. Among the signatories was Buckowski, a teacher at Smidt Tech.

On March 16, Alliance issued a document titled "Some FACTS about Unionization & United Teachers of Los Angeles (UTLA)." Elena Goldbaum, a teacher at Gertz-Ressler, testified that she received this document in her work mailbox, and that it was referred to in meetings with the school's principal and vice principal.

On March 18, Jessica Foster (Foster), a UTLA organizer, met with teachers in Buckowski's classroom at Smidt Tech, after they had been dismissed for the day by Rhodes, their principal. As Foster and Buckowski were preparing to leave after the approximately hour-long meeting, Rhodes entered, informed Foster that she was not permitted to be on campus, and directed her to leave. Foster protested, but ultimately complied.

[5] All subsequent dates are 2015, unless otherwise noted.

Before leaving campus that day, Buckowski stopped at the main office and was called in to talk to Rhodes. Rhodes expressed her frustration that a large number of Smidt Tech teachers had signed the Mission Statement, and shared her unfavorable view of UTLA and its position on charter schools. Rhodes noted that Buckowski could remove her name from the Mission Statement, as another teacher had already done. When Rhodes asked why Buckowski supported UTLA, Buckowski referred to her low evaluation scores the prior semester. Rhodes responded that she had worked to keep Buckowski, and had chosen not to include certain negative comments on Buckowski's evaluation.

On March 20, Alliance issued a document titled "UTLA Unionization Campaign at Alliance Schools FAQs for Alliance Educators & School Community." Foster testified that unidentified teachers forwarded this document to UTLA after receiving it by e-mail or in their work mailboxes.

On March 23, Katzir sent an e-mail message to employees of the Alliance schools, which included references to UTLA's organizing campaign. Foster testified that unidentified teachers forwarded this message to UTLA.

Also on March 23, Burton and Katzir sent a letter addressed to Alliance parents and families regarding UTLA's organizing campaign. Foster testified that a parent forwarded this letter to UTLA.

Alliance's Treatment of UTLA's March 25 E-mail

Before March 25, UTLA had successfully sent e-mails to Alliance teachers at their work e-mail addresses, most recently on March 18. On March 25, UTLA sent an e-mail to Alliance teachers at their work e-mail addresses regarding the ongoing organizational campaign. Alliance's answer to the complaint in Case No. LA-CE-6025-E admitted:

> On or about March 25, 2015, it filtered organization-wide email communications sent by [UTLA] and intended for simultaneous distribution to all Alliance teachers to a "Spam" folder, where the emails could be accessed by the intended recipients.

March 26 Incident at Luskin Academy

Glenn Goldstein and Jesse Yeh are UTLA organizers involved with the organizing campaign at Alliance-affiliated schools. On March 26, shortly before the end of the school day, they arrived at Luskin Academy to attend a scheduled meeting with teachers at the site. As they entered the main gate, Chalio Medrano (Medrano), principal of Luskin Academy, stopped them and asked what they were doing on campus. Goldstein and Yeh informed Medrano that they were there to attend a meeting with teachers. Medrano stated Luskin Academy is private property and that the two could not be there. Goldstein and Yeh disagreed, but left without speaking to any teachers.

DISCUSSION

I. Jurisdiction over Alliance

Respondents, including Alliance, except to the ALJ's conclusion that PERB has jurisdiction over Alliance. The complaints allege that Alliance is a "public school employer" within the meaning of section 3540.1, subdivision (k). That section defines as "public school employer[s]": (1) governing boards of school districts; (2) school districts; (3) county boards of education; (4) county superintendents of schools; (5) charter schools that have declared themselves a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code; (6) certain auxiliary organizations; and (7) certain joint powers agencies. (§ 3540.1, subd. (k).)

The ALJ found that Alliance is a CMO and does not fall within EERA's statutory definition of a public school employer.[6] Nevertheless, the ALJ concluded that PERB may have jurisdiction over a private entity if it is a "single employer" with an entity over which PERB does have jurisdiction, such as Luskin Academy and Smidt Tech.

This conclusion was in error. The Board has held that it cannot obtain jurisdiction over a private entity that does not fall within the definition of "employer" under the applicable statute by finding that entity to be part of a "single employer" relationship with an entity over which the Board does have jurisdiction. (*The Regents of the University of California* (1999) PERB Order No. Ad-293-H, adopting ALJ's order at p. 15.) This holding was recently affirmed in *California Virtual Academies* (2016) PERB Decision No. 2484 (*CAVA*), which issued shortly after the proposed decision in this case. In that case, the Board described as "good law" the following principle:

> PERB cannot assert its jurisdiction over a matter involving the question whether two entities constitute a single employer where

[6] In its response to Respondents' cross-exceptions, UTLA suggests that the ALJ drew a distinction between "Alliance," which UTLA describes as "a network of charter schools within the geographic boundary of the Los Angeles Unified School District," and the "Alliance CMO." (UTLA's Response to Statement of Cross-Exceptions, pp 2-3.) UTLA states that its charges were filed against "'Alliance College-Ready Public Charter Schools,' which reasonably can be read to encompass all the schools in the Alliance network" (*id.* at p. 46), and claims that the ALJ "conclu[ded] that the Alliance CMO and its 'network of 27 charter schools' constitute a single employer" (*id.* at p. 27).

We disagree with UTLA's characterizations of the proposed decision and the pleadings. The ALJ did not conclude that the Alliance CMO was a single employer with all 27 of its network schools. He determined that Alliance, Luskin Academy, and Smidt Tech constituted a single employer. Nor did UTLA name the network of schools as the respondent in its underlying unfair practice charges. Both charges specifically alleged that Alliance "was founded in 2004 as a charter school operator of several charter schools (now 26 schools) in the Los Angeles area." Although UTLA did move to include all 27 schools in this complaint, the ALJ denied that motion. UTLA has not challenged the denial of that motion. Therefore, we reject UTLA's belated claim that "Alliance" in the proposed decision or the pleadings refers to the network of schools, rather than to the CMO.

> one of the entities is a private entity because private entities do not fall within EERA's definition of public school employer.

(*Id.* at p. 66.)[7]

In support of the contrary conclusion, the ALJ in this case relied on *El Camino Hospital District* (2009) PERB Decision No. 2033-M (*El Camino*). In that case the respondent was a health care district established according to Health & Safety Code section 32000 et seq., and indisputably a "public agency" subject to the Meyers-Milias-Brown Act (MMBA).[8] The district operated a hospital, but at some point decided to "privatize" the hospital by transferring its hospital-related assets to a non-profit public benefit corporation. The corporation was later returned to the district's control, with the district as the sole member of the corporation, and with the five members of the district's governing board occupying five of the six seats on the corporation's governing board. The question was whether, under these circumstances, PERB had jurisdiction over the corporation.

The Board answered that question in the affirmative, relying on two distinct theories. First, it held that the corporation fell within the MMBA's broad definition of "public agency." (*El Camino*, *supra*, PERB Decision 2033-M, p. 11, citing § 3501, subd. (c).) Second, it held, in the alternative, that the corporation and the district were a single employer, making the corporation subject to the MMBA. (*Id.* at p. 22.) In doing so, the Board did not consider or overrule *The Regents of the University of California*, *supra*, PERB Order No. Ad-293-H.

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[7] At issue in *CAVA*, *supra*, PERB Decision No. 2484, was whether a group of charter schools constituted a single employer. All of the schools contracted to receive managerial services from the same private company, K12, Inc. It was argued that if the Board were to find that the charter schools were a single employer, the Board would be improperly asserting jurisdiction over K12. The Board concluded that it was not asserting jurisdiction over K12 by finding the schools were a single employer, because K12 was not claimed to be part of the single employer entity.

[8] The MMBA is codified at Government Code section 3500 et seq.

We believe *El Camino*, *supra*, PERB Decision No. 2033-M erred in concluding that a single employer finding can give PERB jurisdiction over a private entity that does not meet the statutory definition of an employer. Such a conclusion would lead to the anomalous result that employees of a private entity would be subject to the Board's jurisdiction.[9] But the Board has long recognized that it "has only such jurisdiction and powers as have been conferred on it by statute," and "cannot acquire jurisdiction by the parties' consent, agreement, stipulation or acquiescence, nor by waiver or estoppel." (*Central Contra Costa Transit Authority* (2012) PERB Decision No. 2263-M, p. 6, citing *North Orange County Regional Occupational Program* (1990) PERB Decision No. 857.) We therefore disavow *El Camino*'s reliance on the single-employer doctrine as an alternative basis for asserting jurisdiction over the corporation.

We stress that we do not disturb *El Camino*'s separate analysis of whether the corporation in that case met the MMBA section 3501, subdivision (c)'s definition of a "public agency." (*El Camino*, *supra*, PERB Decision No. 2033-M.) Since *El Camino*, the Board has continued to construe that provision broadly:

> to include those entities that have achieved the status of a "public agency" by statute, constitutional provision, case law or administrative precedent, and in addition those entities whose operations and characteristics . . . indicate attributes commonly associated with public bodies.

(*Workforce Investment Board* (2014) PERB Order No. Ad-418-M, p. 22, citing *Central Contra Costa Transit Authority*, *supra*, PERB Decision No. 2263-M, pp. 16-25.)

Here, however, it is undisputed that Alliance does not meet the definition of a "public school employer" under EERA. We therefore cannot assert jurisdiction over the Alliance CMO,

[9] In this case, for instance, UTLA acknowledges that it has no interest in becoming the bargaining representative of the Alliance employees who provide support to the Alliance-affiliated schools. Yet a single employer finding would, nevertheless, bring them within PERB's jurisdiction.

even if it is a single employer with any or all of its network schools. The allegations against it must therefore be dismissed.

II. Liability for Alliance's Conduct

Although some allegations in the First Amended Complaints are attributed to Alliance and either Smidt Tech or Luskin Academy, several pertain only to Alliance. In its response to Respondents' cross-exceptions, UTLA argues that if Alliance is not subject to PERB's jurisdiction, the Board can still find that the 27 charter schools in Alliance's network constitute a single employer, that Alliance is an agent of the single employer, and that the single employer is therefore liable for this conduct.

Whatever the merits of these arguments, they cannot be considered here. Neither UTLA's expanded single employer theory, nor its agency theory appear in the First Amended Complaints. We may consider theories of liability other than those alleged in the unfair practice complaint only if the criteria of the unalleged violation doctrine are met. (*City of Roseville* (2016) PERB Decision No. 2505-M, pp. 24-25.) Specifically,

> (1) adequate notice and opportunity to defend has been provided to respondent; (2) the acts are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the unalleged violation has been fully litigated; and (4) the parties have had the opportunity to examine and be cross-examined on the issue.

(*Claremont Unified School District* (2015) PERB Decision No. 2459.)

These criteria have not been met with respect to the arguments raised in UTLA's response to the cross-exceptions. UTLA provided no clear notice that it intended to litigate the issue of whether all 27 schools are a single employer, or whether Alliance is an agent of any of those schools (including the other named Respondents, Luskin Academy and Smidt Tech). UTLA did not raise the single-employer theory in its motion to amend the complaint to add the

remaining schools in the Alliance network as respondents. In its post-hearing briefs to the ALJ, UTLA primarily argued that Alliance, Luskin Academy, Smidt Tech, and Gertz-Ressler[10] constituted a single employer, and it did not argue any theory of agency.[11] The ALJ found that Alliance, Luskin Academy, and Smidt Tech comprised a single employer, and made no findings of agency. UTLA's exceptions did not challenge the ALJ's findings or lack of findings in this regard, or his partial denial of UTLA's motion to amend the complaint. Thus, because UTLA raised these arguments for the first time in its response to the cross-exceptions, the unalleged violation doctrine is not satisfied. (*Lake Elsinore Unified School District* (2012) PERB Decision No. 2241, p. 10 [respondent did not have full opportunity to litigate theory raised for the first time in charging party's post-hearing brief to the ALJ]; *Whisman Elementary School District* (1991) PERB Decision No. 868, p. 20, fn. 8 [Board declined to consider issue raised for the first time in response to exceptions].)[12]

Our conclusion that the issue of whether the network of 27 Alliance charter schools comprise a single employer was not properly raised or litigated in this case in no way

[10] Since the ALJ had denied the motion to name Gertz-Ressler as a respondent, it is not clear why UTLA argued that Gertz-Ressler was part of the single employer.

[11] On page 84 of its post-hearing brief to the ALJ, UTLA argued that "EERA's employer definition does not bar recognition of the Alliance network of Schools as a single employer if sufficient proof exists for the conclusion." Such an isolated reference did not put the ALJ or Respondents on notice of its argument regarding all 27 schools, particularly given that UTLA's brief also defined "schools" as collectively referring to Luskin Academy, Smidt Tech, and Gertz-Ressler. (UTLA Post-Hearing Brief, p. 7.)

[12] UTLA's response to Respondents' cross-exceptions does not argue that Luskin Academy and Smidt Tech are a single employer without Alliance or the other 25 Alliance-affiliated schools. In any event, we would decline to consider this argument. Respondents have not excepted to the ALJ's findings regarding the unfair practices committed by Luskin Academy and Smidt Tech, and there is no question that each is liable as the "public school employer." A finding that they together comprise a single employer would not alter the conclusion that they have not been shown to be liable for Alliance's conduct.

forecloses UTLA from demonstrating in a future case that those schools do comprise a single employer (e.g., *CAVA, supra*, PERB Decision No. 2484), or that Alliance is an agent of the schools. Because UTLA has not proven that Luskin Academy and Smidt Tech are liable for Alliance's conduct under an agency theory, we therefore dismiss the allegations regarding Alliance's written communications to employees and its actions in blocking or filtering an e-mail message from UTLA.[13]

III. Violations by Luskin Academy and Smidt Tech

The ALJ found that Alliance and Smidt Tech violated UTLA's rights and employees' rights under EERA when Smidt Tech Principal Rhodes terminated an after-school meeting between a UTLA organizer and teachers, and made coercive statements to Buckowski. The ALJ also found that Alliance and Luskin Academy violated UTLA's rights and employees' rights under EERA when Luskin Academy Principal Medrano refused to allow UTLA organizers to enter the Luskin Academy campus to meet with teachers. Although we have reversed the ALJ to the extent he found violations by Alliance, Respondents did not except to the violations by Luskin Academy and Smidt Tech. Therefore, we do not disturb those conclusions. (PERB Regulation 32300, subd. (c).)

UTLA excepts to the proposed remedy for these violations, however, contending that the ALJ erred by declining to order a live reading of the order by Alliance's CEO. UTLA also urges the Board to order Respondents to provide UTLA a list of their employees.

[13] Although we find merit in UTLA's argument that EERA's right of access to "institutional bulletin boards, mailboxes, and other means of communication, subject to reasonable regulation" (§ 3543.1, subd. (b)) includes access to an employer's e-mail system, we must save for another day a definitive determination of that issue when we have jurisdiction over the employer or its agent responsible for the denial of access.

Although the Board has not considered a request for these types of remedies before, they are almost certainly included within the Board's broad remedial authority. That authority includes "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." (§ 3541.5, subd. (c).)

Both of the remedies requested by UTLA are considered by the National Labor Relations Board (NLRB) to be extraordinary remedies. As the ALJ noted, the NLRB:

> has held that the reading of a notice by a respondent is an "extraordinary" or "special" remedy that will be imposed only where required by the particular circumstances of a case. (*Ishikawa Gasket America, Inc.* (2001) 337 NLRB 175, 176, enfd. 354 F.3d 534 (6th Cir. 2004).) In cases where the NLRB has granted the remedy of notice-reading by a respondent or its representative, the conduct has been egregious. (*Ibid.*) For example, in one case where the remedy was granted, the employer, during multiple election campaigns, created the impression of surveillance, threatened employees with discharge, told employees the plant would close if a union came in, and had the mayor suggest to employees that unionization would cause the plant to close. (*Wallace International de Puerto Rico, Inc.* (1999) 328 NLRB 29, 29-30.)

(Proposed decision, p. 46.)

So, too, with ordering the respondent to provide a list of its employees. For instance, the NLRB ordered that remedy in *Excel Case Ready* (2001) 334 NLRB 4, 5 after finding that "upon learning of its employees' union activities, the Respondent systematically embarked on a campaign to rid its work force of leading union adherents." (*Ibid.*) It also ordered the remedy in *Blockbuster Pavilion* (2000) 331 NLRB 1274, 1274, in which the employer's violations included:

> informing employees that they were denied work opportunities because they engaged in union activities; threatening employees with discharge if they engage in union activity; threatening to

> burn its facility before allowing the Union to represent employees; interrogating employees concerning their union sentiments and the union sentiments of other employees; threatening not to give work to employees who promote the Union; denying employees work opportunities because they join or support the Union; and refusing to consider former employees for employment in order to undermine the strength and majority standing of the Union.

Notably, the NLRB imposed the employee-list remedy in that case because it believed that a bargaining order, i.e., an even more extraordinary remedy, would be unenforceable given the passage of time between the employer's actions and the NLRB's decision. (*Ibid.*)

UTLA argues that the ALJ was incorrect in holding that a respondent's conduct must be "egregious" to be subject to extraordinary remedies. Rather, it claims that the analysis is whether "traditional remedies will not sufficiently ameliorate the effect of the unfair labor practices found." (*First Legal Support Services, LLC* (2004) 342 NLRB 350, 351, fn. 6.) It is true that the egregious nature of a respondent's conduct is not the *sole* ground for ordering an extraordinary remedy. For instance, a notice-reading remedy may also be appropriate if there are low levels of literacy among employees. (*Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1979) 24 Cal.3d 335, 355.) It may also be appropriate where there have been "repeated violations . . . despite intervening declarations of illegality." (*J.P. Stevens & Co. v. N.L.R.B.* (5th Cir. 1969) 417 F.2d 533, 540.)

Nevertheless, UTLA has not shown why the Board's customary remedies are insufficient in this case. It argues that Respondents "shut down [UTLA's] physical and electronic access to employees immediately after they announced their intent to organize a union with UTLA." (UTLA's Statement of Exceptions, p. 21.) But based on the violations proven by UTLA in this case, this statement is exaggerated. The violations found by the ALJ are one instance in which Luskin Academy prohibited UTLA organizers from entering the campus, one instance in which

Smidt Tech asked a UTLA organizer to leave the campus, and one instance in which the Smidt Tech principal questioned and made coercive statements to Buckowski. The circumstances in which extraordinary remedies have been ordered are not present here.[14] Therefore, we affirm the ALJ's denial of a notice reading remedy,[15] and deny UTLA's request that Respondents be ordered to provide a list of employees.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that: (1) Alliance Susan & Eric Smidt Technology High School (Smidt Tech) violated Educational Employment Relations Act (EERA), Government Code section 3543.5, subdivisions (a) and (b), by denying UTLA organizers access to the Smidt Tech campus and making threatening statements to a Smidt Tech teacher; and (2) Alliance Renee & Meyer Luskin Academy High School (Luskin Academy) violated EERA section 3543.5, subdivisions (a) and (b), by denying UTLA organizers access to the Luskin Academy campus. All other allegations in the complaints are dismissed.

Pursuant to EERA section 3541.5, subdivision (c), it is hereby ORDERED that Smidt Tech and Luskin Academy, and its governing boards and representatives shall:

A. CEASE AND DESIST FROM:

1. Interfering with UTLA's statutory right of access.

2. Interfering with employees' right to be represented by UTLA.

[14] We in no way foreclose the possibility of ordering extraordinary remedies if we later find that the 27 Alliance network schools constitute a single employer and if additional violations are found to have occurred at other schools within the network. (See, e.g., *Beverly California Corp. v. N.L.R.B.* (7th Cir. 2000) 227 F.3d 817, 828.)

[15] In addition, because Alliance is not within our jurisdiction and UTLA has not proven that Alliance is an agent of Luskin Academy or Smidt Tech, the Board's authority to order affirmative action by "an offending party" would not extend to ordering an action by Alliance's CEO.

3. Denying UTLA its right to represent employees.

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

1. Within 10 (ten) workdays of the service of a final decision in this matter, post copies of the applicable Notice attached hereto as an Appendix at all work locations where notices to employees at Smidt Tech and Luskin Academy are customarily posted. The Notice must be signed by an authorized agent of the Respondent, indicating that the Respondent will comply with the terms of this Order. Such posting shall be maintained for a period of 30 (thirty) 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. The Notice shall also be posted by electronic message, intranet, internet site, and other electronic means customarily used by Smidt Tech and Luskin Academy to communicate with employees.

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board (PERB or Board), or the General Counsel's designee. Smidt Tech and Luskin Academy shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on UTLA.

Chair Gregersen and Member Banks joined in this Decision.

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 Nos. LA-CE-6025-E and LA-CE-6027-E, in which all parties had the right to participate, it has been found that Alliance Susan & Eric Smidt Technology High School (Smidt Tech) violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq. by denying United Teachers Los Angeles (UTLA) organizers access to the Smidt Tech campus and making threatening statements to a Smidt Tech teacher.

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

A. CEASE AND DESIST FROM:

1. Interfering with UTLA's statutory right of access.

2. Interfering with employees' right to be represented by UTLA.

3. Denying UTLA its right to represent employees.

Dated: _____

ALLIANCE SUSAN & ERIC SMIDT
TECHNOLOGY HIGH SCHOOL

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.

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 Nos. LA-CE-6025-E and LA-CE-6027-E, in which all parties had the right to participate, it has been found that Alliance Renee & Meyer Luskin Academy High School (Luskin Academy) violated Educational Employment Relations Act (EERA), Government Code section 3540 et seq. by denying United Teachers Los Angeles (UTLA) organizers access to the Luskin Academy campus.

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

A. CEASE AND DESIST FROM:

1. Interfering with UTLA's statutory right of access.

2. Interfering with employees' right to be represented by UTLA.

3. Denying UTLA its right to represent employees.

Dated: _____

ALLIANCE RENEE & MEYER LUSKIN ACADEMY HIGH SCHOOL

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.