

# CLIENT NEWS BRIEF

## PERB Holds District's Delay in Responding to Union Information Request, Policy Banning Distribution of Union Materials in the Workplace May Violate the EERA

The Public Employment Relations Board (PERB) recently held that an employee union could bring claims alleging violations of the Educational Employment Relations Act (EERA) for a district's unreasonable delay in providing the union with requested negotiations information and for its blanket prohibition on the distribution of union literature in the workplace.

In this case, the Petaluma Federation of Teachers (PFT) filed an unfair practice charge with PERB Counsel, alleging the District committed several violations of the EERA. Most notably, PFT alleged the District violated the EERA when it delayed in responding to a request for employee information for a period of six weeks. The PFT also alleged the District unlawfully interfered with employee rights by prohibiting distribution of union flyers in the workplace, including during non-duty time. After the PERB agent dismissed the unfair practice charge for failure to state a prima facie case, PFT brought an appeal with the board.

On July 2, 2014, as the District and PFT were in the middle of negotiations, a representative of the PFT requested information from the District regarding employee salaries and the number of certificated employees who had retired the prior year. The letter requested that the information be provided at the next negotiations session, which was scheduled for July 7, 2014. The District did not object to the request, nor did it advise that the information was unavailable. The July 7, 2014 meeting was canceled by the District due to reasons unrelated to the request. On August 13, 2014, approximately six weeks after PFT's request, the District provided the information.

PERB held that the exclusive representative has a broad right to all information that is relevant and necessary to discharge its representational duty. PERB found that a request for information pertaining to unit employee wages, hours or working conditions is presumptively relevant and must be disclosed, unless the employer can establish that the information is plainly irrelevant or can provide some other justification for the nondisclosure. PERB found that in the absence of any concurrent explanation by the District for the delay in providing the relevant information, PFT need only demonstrate sufficient facts to allege that the District's delay was unreasonable. Notably, and contrary to prior PERB decisions, PERB did not require PFT to present facts showing that it was prejudiced by the delay.

The second issue before PERB focused on the District's alleged ban on distributing union information. On September 5, 2014, the District superintendent's executive assistant sent a message to teachers via email and site mailboxes intended to "define the rules for staff handing out flyers." In the email, teachers were directed not to pass out flyers before school starts "as they are to be in their classroom[s] 30 minutes prior to school starting." The message further stated that teachers could pass out flyers only off school property and after their work duties were finished. Teachers were also directed not to hand out flyers of a "political or union nature." On October 10, 2014, the principal of one of the school sites sent an email to the teachers advising

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that they would only be permitted to hand out pamphlets outside of the workday, which she defined as before 7:55 a.m. and after 2:45 p.m.

PERB held that the District's message constituted unlawful interference with union representation. PERB found that a union may establish interference where an employer is alleged to have engaged in conduct that tends to or does result in at least slight harm to rights guaranteed by EERA. In its decision, PERB reiterated its prior decisions that peaceful picketing, including distribution of leaflets or other materials to advance grievances or solicit support from employees and the public are among the employee rights guaranteed under EERA. PERB found that the District's blanket restriction on distributing flyers at any time during the work day, including non-duty time and in non-working areas, was overbroad and presumptively unlawful. The District's geographic restriction to allow distribution of flyers only "off campus" was also not permissible, as it could reasonably be interpreted to prohibit these activities on campus but in non-working areas such as the parking lot, a breakroom or a staff lounge.

This case serves as an important reminder of the scope of representational rights for unions and employees and what employer actions may interfere with such rights. School districts and community colleges should carefully evaluate practices and policies.

If you have any questions regarding this decision or employee rights in general, please contact the authors of this Client News Brief or an attorney at one of our [10 offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).