

CLIENT NEWS BRIEF

PERB Addresses Claim That an Association Attempted to Cause an Employer to Violate the EERA

In *Santa Maria Joint Union High School District v. Santa Maria Joint Union High School District Faculty Association* (PERB Decision No. 2445), the PERB Board (Board) considered a school district's claim that a union attempted to cause it to violate Section 3543.5 of the Educational Employment Relations Act (EERA). While the EERA prohibits a public school employer from retaliating against a bargaining unit member for engaging in protected activities, it also prohibits a bargaining unit representative from causing an employer to engage in such retaliation. In this case, the Board narrowly applied this prohibition to situations where the unit representative causes the employer to unwittingly take action in furtherance of the representative's plan.

The Santa Maria Joint Union High School District (District) alleged that the Santa Maria Joint Union High School District Faculty Association (Association) tried to cause the District to take negative action against an employee because of his participation in the Association's activities. The employee, Glenn Goldin, was a special education teacher at Santa Maria High School (SMHS), but he also provided services to students at all four of the District's high school campuses.

Mr. Goldin was an outspoken critic of the Association leadership. In March 2014, he was nominated by his SMHS peers as a candidate for chairperson of the special education department at SMHS. Elections for department chairpersons were conducted by the Association, and Mr. Goldin was declared ineligible due to his District-wide service. The District disputed the Association's declaration and ordered the election to be held with Mr. Goldin's name on the ballot. Mr. Goldin was elected as a department co-chair in the District-ordered election, but the Association held its own election and another person was elected as the chairperson.

The Association filed grievances and a PERB charge against the District alleging that it held an improper election and illegally interfered with the Association's role in conducting the election. The District responded by filing an unfair practice charge asserting that the Association's grievances and PERB charge constituted an attempt to force the District to rescind Mr. Goldin's appointment as a co-chair and his right to a co-chair stipend.

The EERA prohibits a union from causing or attempting to cause an employer to commit unfair practices, including any reprisals, discrimination, or retaliation against employees for exercising protected rights. Here, the District asserted that the Association attempted to cause the District to take adverse action against an employee because of the employee's exercise of the right to participate in an employee organization.

In this decision, the Board applied two levels of analysis to evaluate the merits of the District's charge. First, the District was required to establish that rescinding Mr. Goldin's title and stipend would constitute unlawful retaliation by showing that: (1) Mr. Goldin exercised rights under the EERA; (2) the District had knowledge of the exercise of those rights; (3) the District took adverse action against Mr. Goldin; and (4) the action was taken because of Mr. Goldin's exercise of rights. In this case, the Board held that any action to remove Mr.

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Goldin from the chairperson position would not be “because of” Mr. Goldin’s exercise of rights and thus would not constitute a violation of the EERA. Rather, the District’s action would be taken in response to the Association’s claims of a contract violation or unfair labor practice.

Additionally, the Board found that the District’s claim would not pass the second level of analysis, because the District must show that the Association’s actions (filing multiple grievances and an unfair practice charge) affirmatively caused or consciously attempted to make the District its unwitting accomplice in retaliating against Mr. Goldin. As a matter of public policy, the Board refused to find that filing grievances or PERB charges constitute an attempt to cause an employer to violate the EERA. The Board further found no evidence that the Association’s actions were based upon a retaliatory or improper motive.

The Board also faulted the District for actively inserting itself into the controversy and then claiming that the Association’s requested remedy would constitute retaliation against Mr. Goldin. In reviewing these types of claims, the Board has previously required a district to show that its only possible response to an association-created situation would be to engage in an unfair labor practice. (*Tustin Unified School District* (1987) PERB Dec. No. 626E.) Following precedent, the Board found that the Association had not forced the District into the controversial situation.

This decision provides useful guidance for school employers to determine if an employee organization has committed an unfair practice by causing, or attempting to cause, the employer to engage in an unfair labor practice. Such issues may arise during collective bargaining, disciplinary meetings, and other settings involving representational and organizational rights. For further information about this decision or for questions regarding the EERA or unfair practices, please contact one of our [nine offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#), or download our [Client News Brief App](#).