

CLIENT NEWS BRIEF

PERB Further Expands Employee Rights to Union Representation

The Public Employment Relations Board (PERB) recently held that a public school employer violated the Educational Employment Relations Act (EERA) by interfering with an employee's right to have union representation present during a meeting with her supervisor. (*Capistrano Unified School District (2015) PERB Decision No. 2440.*) In this case, the union alleged the district violated the employee's right to union representation by proceeding with the meeting despite the employee's request to have a union representative present. While the district did not believe the meeting to be investigatory or disciplinary, PERB found the employee had a right to representation.

The employee, Teresa Hause, worked in the food services department at the Niguel Hills Middle School. Ms. Hause had a strained relationship with her supervisor, John Chamberlin and, in the past, Ms. Hause was counseled by Mr. Chamberlin for not following directives.

In April 2011, the District began implementing a new food services accounting and inventory system. On the day the program was to begin, Ms. Hause did not implement the new program as directed. When Mr. Chamberlin called Ms. Hause and directed her to follow his instructions, Ms. Hause criticized the program and hung up on Mr. Chamberlin. Mr. Chamberlin followed up with an unannounced visit to Niguel Hills. Mr. Chamberlin testified he did not intend to discipline Ms. Hause during this meeting. However, Ms. Hause told Mr. Chamberlin that, if the meeting was going to be disciplinary, she wanted a union representative present. Mr. Chamberlin did not take any action in response to this request. Instead, after Mr. Chamberlin asked Ms. Hause several times to repeat his directives, Ms. Hause restated the directives and confirmed she was following them. Following this meeting, the District issued Ms. Hause a written reprimand.

Based on these facts, the California School Employees Association (CSEA) filed an unfair practice charge, and PERB issued a complaint alleging the District interfered with Ms. Hause's right to union representation in violation of EERA section 3542.5. A formal hearing was held and the administrative law judge (ALJ) concluded the District had violated EERA by denying Ms. Hause's request for representation. On appeal, the PERB Board agreed with the ALJ's determination.

PERB held that EERA includes broad rights to employees to participate in employee organizations for the purpose of representation on all matters of employer-employee relations. PERB found that an investigatory or disciplinary interview falls within the broad definition of "all matters of employer-employee" relations and therefore guarantees public school employees representational rights that are at least as broad as those afforded private-sector employees. However, PERB does not extend the right to representation to "every run-of-the-mill shop floor conversation" between employer and employee.

In this decision, PERB reminds us that the rights of employees under the EERA are broader than those provided under federal labor laws. PERB emphasized that California law extends the right of representation beyond disciplinary meetings

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to employer-initiated meetings held under “highly unusual circumstances” – even though the meeting is not clearly “investigative” or “disciplinary” in nature. Even when an employer does not contemplate discipline in the meeting, it still may be “investigatory” if it elicits incriminating evidence against the employee. Here, PERB found the meeting to be investigatory because questions about Ms. Hause’s compliance with directives were aimed at eliciting admissions that could impact Ms. Hause’s employment in light of her ongoing criticism of the program and history of insubordination.

This decision follows PERB’s recent extension of an employee’s representation rights to interactive meetings regarding disability accommodations. (*Sonoma County Superior Court* (2015) PERB Decision No. 2409-C.) The final outcome of the *Sonoma* decision is presently unclear because further proceedings in this matter are ongoing, but both decisions clearly indicate that PERB is adopting an expanded view of the right to representation in public employment.

School and community college employers should be cautious when dealing with employee requests for union representation at meetings that, at first blush, may not appear to be disciplinary in nature. If representation is requested, employers should also keep in mind that PERB will not allow an employee to unreasonably delay a meeting simply because his/her representative of choice is unavailable.

If you have questions about these recent PERB decisions, or about employee rights in general, 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](#).