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APPENDIX A

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION TWO

ALLIANCE MARC & EVA STERN MATH AND SCIENCE HIGH SCHOOL et al., Petitioners, v. PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent; UNITED TEACHERS LOS ANGELES, Real Party in Interest.	No. B316745 (Super. Ct. No. LA-CE-6362-E through LA-CE-6366-E and LA-CE-6372-E through LA-CE-6377-E) (Bernhard Rohrbacher, Judge)

ORIGINAL PROCEEDING; petition for writ of extraordinary relief. Bernhard Rohrbacher, Judge. Petition affirmed.

Aclient, Robert A. Escalante; Sheppard, Mullin, Richter & Hampton, David A. Schwarz, Jay T. Ramsey, Alexandra M. Jackson for Petitioners.

J. Felix De La Torre, General Counsel, Wendi L. Ross, Joseph W. Eckhart and Jessica S. Kim, Regional Attorneys, for Respondent.

Altshuler Berzon, Scott A. Kronland, Matthew J. Murray and Juhyung Harold Lee for California Teachers Association, California Federation of Teachers, and Service Employees International Union California State Council as Amici Curiae on behalf of Respondent.

Bush Gottlieb, Ira L. Gottlieb, Erica Deutsch, Dexter Rappleye and Michael E. Plank for Real Party in Interest.

* * * * * *

Petitioners are 11 public charter schools (collectively, the Schools)[1] seeking to set aside a November 3, 2021 decision and order (Order) by respondent Public Employment Relations Board (PERB). In the Order, PERB found that the Schools violated section 3550 of the Prohibition on Public Employers Deterring or Discouraging Union

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[1] The 11 schools are Alliance Marc & Eva Stern Math & Science High School, Alliance Ouchi-O'Donovan 6-12 Complex, Alliance Renee & Meyer Luskin Academy High School, Alliance College-Ready Middle Academy #10 also known as Alliance Leadership Middle Academy, Alliance Judie Ivie Burton Technology Academy High School, Alliance Collins Family College-Ready High School, Alliance Gertz-Ressler/Richard Merkin 6-12 Complex, Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School, Alliance College-Ready Middle Academy No. 5, Alliance College- Ready Middle Academy No. 8, and Alliance College-Ready Middle Academy No. 12.

Membership (PEDD) (Gov. Code,[2] §§ 3550-3553) and ordered the Schools, their governing boards, and their representatives to cease and desist from doing so. As originally enacted and as applicable here, section 3550 provided that "[a] public employer shall not deter or discourage public employees from becoming or remaining members of an employee organization." (Stats. 2017, ch. 567, § 1.)[3]

PERB concluded that e-mail communications by the Schools' management organization, Alliance College-Ready Public Schools (Alliance CMO), and by principals and assistant principals at eight of the Schools tended to influence School employees' decision whether to be represented by real party in interest United Teachers Los Angeles (UTLA), in violation of section 3550. PERB further concluded the Schools could be held responsible for those violations.

The Schools contend PERB's interpretation of section 3550[4] is erroneous because it eliminates longstanding free speech defenses under federal and California law for noncoercive employer speech. The Schools further contend section 3550 is facially unconstitutional because it violates free speech protections afforded by the federal and California

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[2] All further statutory references are to the Government Code unless stated otherwise.

[3] Section 3550 was amended, effective June 27, 2018. (Stats. 2018, ch 53, § 11.) Because the alleged violations at issue occurred before June 27, 2018, the original version of section 3550 applies.

[4] PERB in its decision applied section 3550 as amended in 2018 rather than the version of the statute as originally enacted. For purposes of our analysis, there is no substantive difference between section 3550 as originally enacted or as amended in 2018.

Constitutions and is unconstitutional as applied to the communications at issue. Finally, the Schools challenge the sufficiency of the evidence supporting PERB's finding that Alliance CMO and the principals and assistant principals acted on behalf of the Schools when they e-mailed School employees about possible representation by UTLA.

PERB and UTLA maintain that PERB's interpretation of section 3550 is not clearly erroneous, and this court must defer to and uphold that interpretation. As to the Schools' constitutional claims, PERB and UTLA contend the Schools are political subdivisions of the State of California and as such cannot assert free speech claims against the state under the federal or California Constitutions. PERB and UTLA further argue that the communications at issue constitute government speech unprotected by the First Amendment, that the Schools waived any free speech rights they now seek to assert, and that PERB properly held the Schools responsible for communications by the administrators and Alliance CMO. PERB in addition argues that section 3550 is a permissible regulation of the Schools' speech as part of the public school program funded by the state.

PERB's interpretation of section 3550 is not clearly erroneous, and we therefore uphold that interpretation while we reject the Schools' constitutional claims. Although the Schools are not political subdivisions of the state and are not barred from asserting their free speech claims in this case, section 3550 is not facially unconstitutional because it regulates only government speech unprotected by the free speech provisions of the First Amendment and the California Constitution. Section 3550 is not

unconstitutional as applied. The communications by School administrators and by Alliance CMO were made not as private citizens but pursuant to official and contractual duties as School administrators. Those communications accordingly were not private speech but government speech unprotected by constitutional free speech provisions. Given our conclusion that section 3550 regulates only government speech, we do not address PERB's argument that the statute is a permissible regulation of the Schools' speech as part of a government funded public education program. Substantial evidence supports PERB's finding that Alliance CMO's and the School administrators' communications are attributable to the Schools under theories of actual and apparent authority. For the foregoing reasons, we affirm the Order.

FACTUAL BACKGROUND

The parties

The Schools

The Schools are chartered by the Los Angeles Unified School District. At the times relevant to this action, the Schools were incorporated and operated as separate nonprofit public benefit corporations under California's Nonprofit Public Benefit Corporation Law. (Corp. Code, § 5110 et seq.) Each has separate articles of incorporation and bylaws.[5]

Alliance CMO

Alliance CMO is a nonprofit public benefit corporation that contracted with the Schools to

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[5] On January 1, 2020, each of the nonprofit corporations that operated the Schools merged with Alliance CMO, who has been added as a party to this appeal.

provide certain services, including human resources and employee relations.

PERB

PERB is the agency empowered by the Legislature to adjudicate unfair labor practice claims under several public employment relations statutes. (*Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912 (*Boling*).) PERB also has exclusive initial jurisdiction to adjudicate alleged violations of section 3550. (§ 3551, subd. (a).)

UTLA

UTLA is an employee organization within the meaning of PEDD section 3552, subdivision (a). It has been organizing the Schools' educators since 2015. On May 2, 2018, UTLA filed representation petitions seeking to represent employees at two of the Schools.

E-mail communications

Alliance CMO's e-mails

Between March 22, 2018, and May 1, 2018, Alliance CMO sent four e-mail communications to staff employed at the Schools. The contents of the e-mails are undisputed and are included in full in the Order. They are summarized in relevant part below.

March 22, 2018 e-mail

The March 22, 2018 e-mail stated that Alliance CMO had received complaints from some staff members about UTLA organizers contacting them at their homes. The e-mail advised staff that if they did not want a UTLA representative to visit their homes they could send a written request to UTLA. The e-mail offered a downloadable "Do Not Disturb" door hanger.

April 26, 2018 e-mail

The April 26, 2018 e-mail advised staff that the consequences of providing their signatures to a union organizer included "signing on with a vehemently anti-charter union"; paying $1,000 in annual dues, a "significant portion" of which would be "used to support anti-charter legislation, lobbying and elected officials"; and "**bypass[ing] a secret ballot election**" with "no open, transparent discussion among Alliance educators about what is best for Alliance scholars and staff."

April 27, 2018 e-mail

The April 27, 2018 e-mail asked, "**Will your union dues bail out UTLA's budget deficit?**" It pointed out that with sufficient employee signatures, UTLA could obtain $650,000 in dues from School educators. Under a heading captioned, "**UTLA'S FUNDING OF ANTI-CHARTER LEGISLATION**" the e-mail stated: "About 50% of UTLA dues are paid to affiliate unions in Sacramento and Washington, DC, including paying for political contributions that support anti-charter laws and candidates."

May 1, 2018 e-mail

Under the caption, "**WHAT DO YOU GET BY PAYING UTLA $1,000 EVERY YEAR? UTLA DUES GUARANTEE VERY LITTLE**," the May 1, 2018 e-mail stated: "Despite what UTLA might say to you, they cannot guarantee you increased compensation, a different evaluation system or any other specific benefits or working conditions. The results of collective bargaining may be the same, better, or worse than currently exist."

Under a second caption titled, "**PAY UTLA FOR POTENTIALLY LESS THAN YOU HAVE NOW**," the May 1, 2018 e-mail stated:

"Alliance teachers and counselors earn more than their peers represented by UTLA in LAUSD schools."

"The average Alliance class size is smaller than the class size written into UTLA's LAUSD contract."

"Alliance student to counselor ratio is 150:1 vs. the 'goal' of 500:1 in UTLA's LAUSD contract."

E-mail messages from School principals and assistant principals

In April and May 2018, several School principals and/or assistant principals used their School e-mail accounts to send e-mails to their staff. The e-mails were sent either before or after regular school hours. In nearly all cases, the e-mails included the senders' titles as principal or assistant principal of their respective schools. Several e-mails advised staff that UTLA had a history of opposing charter schools and sponsoring or supporting legislation that would adversely affect charter schools. Some principals recounted their experiences as former union members. One principal described the "negative culture" at a union meeting. Another stated that UTLA "did not help me become a better teacher, did not help my students become better behaved or better educated and they certainly did not give me more 'voice' or 'clout' at my school or in district-level decision making."

Some e-mails asserted that UTLA's organizing efforts were causing dissension and division in the Schools, accused UTLA organizers of harassing teachers, suggested that unionization would adversely affect the Schools and their students and could cause staff to leave the Schools. Two e-mails

contained identical language, although they came from administrators at different schools.

PROCEDURAL HISTORY

Complaints and administrative hearing

On June 4, 2018, UTLA filed unfair labor practice charges against the Schools. PERB issued complaints alleging that the Schools violated PEDD section 3550 as well as section 3543.5, subdivisions (a) and (b), of the Educational Employment Relations Act (EERA) (§ 3540 et seq.),[6] when Alliance CMO and School administrators sent anti-union messages to School employees. The complaints were consolidated and assigned to an administrative law judge (ALJ).

The parties stipulated to evidence submitted to the ALJ, including the e-mails sent by Alliance CMO and the principals and assistant principals, the Schools' charter renewal petitions, and the administrative services agreements between Alliance CMO and the Schools.

After a two-day hearing, the ALJ issued a proposed decision dismissing the allegations regarding the Schools' e-mail messages. Applying PERB decisional law regarding speech alleged to interfere with employee rights, the ALJ found the messages did not violate EERA section 3543.5 because they did not contain "threats of reprisal or force or promises of benefit" required to establish unlawful interference under EERA. In the absence of a PERB decision interpreting then-recently enacted section 3550, the ALJ interpreted that statute's bar on deterring or discouraging public employees from

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[6] The EERA violations are not at issue in this appeal.

union membership as reiterating existing prohibitions under EERA against employer reprisals, threats, discrimination, restraint, coercion, or interference with an employee's right to join and be represented by a union. The ALJ then concluded the e-mail messages did not violate section 3550. UTLA and the Schools filed exceptions to the ALJ's proposed decision.

PERB's *Regents I* and *Regents II* decisions

While the parties' exceptions were pending, PERB issued its first decisions interpreting section 3550. In *Regents of the University of California* (2021) PERB Dec. No. 2755-H (*Regents I*), PERB concluded that section 3550 does not duplicate interference prohibitions in existing statutes. (*Regents I,* at p. 28.) PERB reasoned that section 3550 "uses new and broader language than prior law" (*Regents I,* at p. 30) and that the legislative history "indicates the Legislature's desire to afford special protection to employee decisions regarding union selection, membership, and support" (*id.* at p. 32). PERB concluded that section 3550 prohibits conduct that "tends to influence employee choices as to *whether or not* to authorize representation." (*Regents I,* at p. 25.)

PERB applied an objective, burden-shifting test for determining whether conduct or communication deters or discourages employees from making the choices enumerated in section 3550: "It is the charging party's burden to show that the conduct or communication tends to influence employee free choice, not that the conduct actually did influence employee choice. We will look first to the conduct or communication itself in determining whether it tends to influence employee free choice. But context

matters in even the objective assessment. Therefore, we also will examine the context surrounding the conduct or communication when determining whether such conduct is reasonably likely to deter or discourage employee choices on union matters." (*Regents I, supra*, PERB Dec. No. 2755-H at p. 24.) When a charging party meets this burden, PERB determined "the burden then shifts to the employer to plead and prove a business necessity as an affirmative defense." (*Regents of the University of California* (2021) PERB Dec. No. 2756-H, p. 7 (*Regents II*); see *Regents I*, pp. 35–36.)

After *Regents I* and *Regents II* were issued, PERB requested further briefing from the parties in this case. Each side submitted a supplemental brief.

Order

PERB found the Schools violated section 3550 as alleged in the complaints. PERB concluded the Schools were liable for Alliance CMO's messages under theories of actual authority, apparent authority, and ratification, and for the Schools' administrators' messages under theories of actual and apparent authority. Applying the *Regents I* standard, PERB found the messages sent by Alliance CMO and School administrators violated section 3550 because they tended to influence employee choice by "sowing fear and distrust of unionization, the collective bargaining process, and UTLA specifically." PERB rejected the Schools' various defenses, including whether they established a business necessity for entering the debate as to whether employees should authorize unionization by UTLA, and whether that necessity outweighed the tendency to influence employees.

Petition for writ of extraordinary relief, petition for review, and order to show cause

The Schools filed a petition for writ of extraordinary relief from the Order. After this court summarily denied the petition, the Schools filed a petition for review in the California Supreme Court. On November 15, 2023, the Supreme Court granted the petition and transferred the matter back to this court pursuant to California Rules of Court, rule 8.528(d), with directions to vacate the order denying extraordinary relief and to issue an order directing PERB to show cause why the relief sought in the Schools' petition should not be granted.

Pursuant to the Supreme Court's November 15, 2023 order, this court issued an order directing PERB to show cause why the relief sought in the Schools' petition for extraordinary relief should not be granted. In response, PERB filed a letter brief stating that the relevant arguments were set forth in full in its opposition to the Schools' writ petition. The Schools also filed a letter brief asking this court to consider briefing submitted by the parties in the Schools' petition for review in the California Supreme Court.

DISCUSSION

I. Applicable legal framework

A. *California public employee labor relations laws*

The public policy of California is expressly declared to be in favor of labor organization. (Lab. Code, § 923.)[7] To further that policy, the California

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[7] Labor Code section 923 states in part: "[T]he public policy of this State is declared as follows: [¶] Negotiation of

Legislature has enacted a series of statutes granting public employees organizational and negotiating rights analogous to those accorded to private sector employees under federal labor relations laws. (*Teamsters Local 2010 v. Regents of University of California* (2019) 40 Cal.App.5th 659, 668 (*Teamsters Local 2010*).) Certain of those statutes are relevant to our analysis of the issues presented here.

1. *EERA*

EERA accords public school employees the right to join labor organizations of their choice and to be represented by such organizations in their employment relationships with their public school employers. (§ 3543.) EERA section 3540 states the Legislature's intent in this regard as follows: "It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems in the State of California by providing a uniform basis for recognizing the right of public

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terms and conditions of labor should result from voluntary agreement between employer and employees. Governmental authority has permitted and encouraged employers to organize in the corporate and other forms of capital control. In dealing with such employers, the individual unorganized worker is helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment. Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy."

EERA section 3543.5, subdivision (a) makes it unlawful for public school employers to impose or threaten to impose reprisals on employees, discriminate or threaten to discriminate against them, or to interfere with, restrain, or coerce employees because they exercise their right to join and be represented by a labor organization.

Section 3543.5, subdivision (b) makes it unlawful for a public school employer to deny employee organizations any of the rights guaranteed to them under EERA, including freedom from interference in forming or administering any employee organization.[8]

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[8] Section 3543.5 states in its entirety:

"It is 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 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. Knowingly providing an exclusive representative with inaccurate information, whether or not in response to a request for information, regarding the

Although the language of section 3543.5, subdivision (b) does not mirror that of subdivision (a) and is not limited to employer reprisals, discrimination, interference, restraints, coercion, or threats against employees, PERB interprets the prohibitions set forth in both subdivisions (a) and (b) in a similar manner. To establish a prima facie case under either subdivision, the charging party must demonstrate that the employer's conduct tends to or does result in harm to employee rights. (*San Diego Unified School Dist.* (2019) PERB Dec. No. 2634-E, p. 17; *Carlsbad Unified School District* (1979) PERB Dec. No. 89, p. 10.) If the prima facie case is established, PERB balances the degree of harm to protected rights against any legitimate business interest asserted by the employer.

When engaging in the balancing analysis under section 3543.5, PERB applies free speech provisions found in title 29 United States Code section 158(c)[9] and federal case law to accord public

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financial resources of the public school employer constitutes a refusal or failure to meet and negotiate in good faith.

"(d) Dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

"(e) Refuse to participate in good faith in the impasse procedure set forth in Article 9 (commencing with Section 3548)."

[9] Title 29 United States Code section 158(c) states: "The expressing of any views, or argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

school employers a safe harbor from EERA sanctions for expressing their views on employment matters, so long as such expression contains no threat of reprisal or force or promise of benefit. (See, e.g., *California Virtual Academies* (2018) PERB Dec. No. 2584-E, p. 29.) PERB has reasoned that "[w]hile this Board is aware that the EERA contains no provision paralleling title 29 United States Code section 158(c), we find that a public school employer is nonetheless entitled to express its views on employment related matters over which it has legitimate concerns in order to facilitate full and knowledgeable debate. It is unreasonable to assume that the Legislature, by its omission, intended to restrict the public school employer from disseminating any views regarding the employment relationship once an employee organization appeared on the scene." (*Rio Hondo Community College District* (1980) PERB Dec. No. 128-E, p. 19.)

2. *HEERA*

The Higher Education Employer-Employee Relations Act (HEERA) (§§ 3560–3599), accords employees of the University of California and California State University systems organizational and negotiating rights similar to those in EERA. PERB has initial jurisdiction to determine unfair labor practices under HEERA. (§ 3563.2.)

HEERA states that it is unlawful for a public higher education employer to "(a) [i]mpose 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 guaranteed by this chapter. . . . [¶] . . . [¶] (d) Dominate or interfere with the formation or

administration of any employee organization . . . ." (§ 3571.)

HEERA section 3571.3 expressly codifies the safe harbor for non-coercive, non-threatening employer speech found in title 29 United States Code section 158(c) and applied by PERB under EERA: "The expression of any views, arguments, or opinions, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute, or be evidence of, an unfair labor practice under any provision of this chapter, unless such expression contains a threat of reprisal, force, or promise of benefit; provided, however, that the employer shall not express a preference for one employee organization over another employee organization."

3. *PEDD*

The California Legislature enacted the PEDD in 2017. Unlike EERA and HEERA, which apply to public school employers, the PEDD applies to all public employers. As originally enacted and as applicable here, section 3550 provided: "A public employer shall not deter or discourage public employees from becoming or remaining members of an employee organization." (Stats. 2017, ch. 567, § 1.)[10] Effective January 1, 2023, PERB may assess

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[10] The statute was subsequently amended, effective June 27, 2018, to state: "A public employer shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization. This is declaratory of existing law." (Stats. 2018, ch. 53, § 11.) Because the e-mails at issue here were sent between March and May of 2018, the

civil penalties against a public employer who violates the statute. (§ 3551.5.)

B. *Charter Schools Act*

The Charter Schools Act of 1992 (CSA) (Ed. Code, § 47600 et seq.) created California's charter school system "to establish and maintain schools that operate independently from the existing school district structure" to accomplish a variety of educational goals. (Ed. Code, § 47601.) "For certain purposes, the [charter] school is 'deemed to be a "school district"' (*id.,* § 47612, subd. (c)), is 'part of the Public School system' (*id.,* § 47615, subd. (a)), falls under the 'jurisdiction' of that system, and is subject to the 'exclusive control' of public school officers (*id.,* § 47615, subd. (a)(2); see § 47612, subd. (a))." (*Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1186 (*Wells*).) Like other public schools, a charter school is eligible for state and local public education funds. A charter school's share of such funds is calculated primarily, as with all public schools, on the basis of its enrollment. (Ed. Code, § 47612; *Wells*, at p. 1186.)

A charter school may elect to operate as a nonprofit corporation organized under the Nonprofit Public Benefit Corporation Law (Ed. Code, § 47604, subd. (a)) but must operate pursuant to the terms of its charter. A charter school is exempt from many of the laws governing public school districts but must comply with the CSA and certain other specified laws, including, as relevant here, EERA and the PEDD. (Ed. Code, §§ 47610, 47611.5, subd. (a); *Wells, supra,* 39 Cal.4th at p. 1186.) The CSA requires

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statute as originally enacted applies, rather than the 2018 amended version.

school charters to contain a declaration asserting whether "the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code."[11] (Ed. Code, § 47611.5, subd. (b).)

The Schools each submitted a charter renewal petition to LAUSD stating that each school "is deemed the exclusive public school employer of all employees of the charter school for collective bargaining purposes. As such, Charter School shall comply with all provisions of the Educational Employment Relations Act ('EERA'), and shall act independently from LAUSD for collective bargaining purposes. In accordance with the EERA, employees may join and be represented by an organization of their choice for collective bargaining purposes." In their charter renewal petitions, each school agreed to "comply with all applicable federal and state laws and regulations, and District policy as it relates to charter schools."

II. Statutory interpretation

A. *Applicable legal principles and standard of review*

PERB has initial exclusive jurisdiction to adjudicate unfair labor practice claims under the PEDD. (§ 3551, subd. (a).) "It is settled that '[c]ourts generally defer to PERB's construction of labor law provisions within its jurisdiction. [Citations.] ". . .

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[11] As relevant here, Government Code section 3540.1, subdivision (k) defines a "public school employer" as "the governing board of a school district, a school district, a county board of education" and "a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code."

PERB is 'one of those agencies presumably equipped or informed by experience to deal with a specialized field of knowledge, whose findings within that field carry the authority of an expertness which courts do not possess and therefore must respect.' [Citation.]" [Citation.] We follow PERB's interpretation unless it is clearly erroneous. [Citation.]' [Citation.] [I]nterpretation of a public employee labor relations statute "'falls squarely within PERB's legislatively designated field of expertise,"' dealing with public agency labor relations. Even so, courts retain final authority to "'state the true meaning of the statute."'" (*Boling, supra,* 5 Cal.5th at pp. 911–912.)

When interpreting statutory language, PERB, as well as a reviewing court, must follow the fundamental rule to ascertain the intent of the Legislature to effectuate the purpose of the law. (*People v. Murphy* (2001) 25 Cal.4th 136, 142; *Regents I, supra,* PERB Dec. No. 2755-H at p. 20.)

B. *PERB's interpretation of section 3550 is not clearly erroneous*

As originally enacted and as applicable here, PEDD section 3550 provided: "A public employer shall not deter or discourage public employees from becoming or remaining members of an employee organization." (Stats. 2017, ch. 567, § 1.) PERB interprets the words "deter or discourage" as used in section 3550 to mean "to tend to influence an employee's free choice regarding whether or not to (1) authorize union representation, (2) become or remain a union member, or (3) commence or continue paying union dues or fees." (*Regents I, supra,* PERB Dec. No. 2755-H at p. 21.)

In *Regents I*, PERB found section 3550 "sufficiently clear and unambiguous" to sustain its

interpretation. (*Regents I, supra,* PERB Dec. No. 2755-H at p. 31.) PERB nevertheless found support for its interpretation in the overall statutory scheme of which the PEDD is a part, PERB decisional law, case law, and the legislative history behind section 3550.

PERB found "useful equivalents" of the terms "deter or discourage" in other labor relations statutes. (*Regents I, supra*, PERB Dec. No. 2755-H at p. 21.) Section 16645, subdivision (a), for example, which prohibits use of state funds or facilities to "assist, promote, or deter union organizing" defines those terms as follows: "'Assist, promote, or deter union organizing' means any attempt by an employer to influence the decision of its employees in this state or those of its subcontractors regarding either of the following: [¶] (1) Whether to support or oppose a labor organization that represents or seeks to represent those employees. [¶] (2) Whether to become a member of any labor organization."

PERB found additional support for its interpretation in *Teamsters Local 2010, supra*, 40 Cal.App.5th 659. The court in that case considered whether a bulletin circulated by the employer could reasonably be found to "deter" union organizing, in violation of section 16645.6.[12] The court held that the phrase "assist, promote, or deter union organizing" as defined in section 16645 and used in section 16645.6 required only a showing of "'any attempt by an employer to *influence* the decision of its employees.'" (*Teamsters Local 2010*, at p. 666.) The

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[12] Section 16645.6, subdivision (a) states: "A public employer receiving state funds shall not use any of those funds to assist, promote, or deter union organizing."

court rejected the employer's argument that noncoercive communications that do not constitute unfair labor practices under HEERA section 3571.3 also do not violate section 16645.6. The court noted that "[a]lthough the bulletin was not coercive, in that [the employer] professed neutrality on the issue of unionization, couched the communication in terms of providing employees with facts, and did not threaten employees with reprisals if they unionized, a trier of fact could reasonably find the bulletin was an attempt to 'influence' the employees who were on the receiving end." (*Teamsters Local 2010*, at pp. 666–667.)

In *Regents I*, PERB noted that although the Legislature did not incorporate in section 3550 the definition of "deter" in section 16645, it chose to use the term "deter" in both statutes; sections 16645 and 3550 govern the same subject matter—employer conduct related to employee decisions regarding unions; and that generally, when the Legislature uses a word or phrase in a particular statute, the word or phrase should be understood to have the same meaning when used in another statute addressing the same subject matter. (*Regents I, supra*, PERB Dec. No. 2755-H at p. 23, citing *People v. Tran* (2015) 61 Cal.4th 1160, 1167–1168.)

PERB interprets the term "discourage" as used in section 3550 in a similar manner. Although "discourage" is not defined in any related law, PERB noted in *Regents I* that the term "encourage" appears in other statutes prohibiting employer conduct that could "'in any way encourage employees to join any organization in preference to another.'" (*Regents I, supra,* PERB Dec. No. 2755-H at pp. 23–24; see, e.g., §§ 3506.5, subd. (d), 3519, subd. (d), 3524.71, subd.

(d), 3543.5, subd. (d), 3571, subd. (d).) PERB further noted that its decisions interpreting "encourage" as used in those statutes as "'whether the employer's conduct tends to influence'" employee choice one way or another is consistent with its interpretation of "discourage" in section 3550. (*Regents I, supra,* PERB Dec. No. 2755-H at p. 24.)

In *Regents I*, PERB concluded the PEDD provides public employers no safe harbor for noncoercive or nonthreatening speech similar to that found in HEERA section 3571.3. PERB reasoned that "the PEDD is in its own chapter separate from HEERA," "uses no language which duplicates the limitations of HEERA's free speech safe harbor," and does not reference the HEERA safe harbor provision "explicitly or implicitly." (*Regents I, supra,* PERB Dec. No. 2755-H at p. 30.)

Applying its decision in *Regents I*, PERB found no safe harbor protection under the PEDD for the speech at issue here, despite the absence of any threat of reprisal, force, or promise of benefit.

In *Regents I*, PERB treated section 3550 "even-handedly as prohibiting public employer conduct which tends to influence employee choices as to *whether or not* to authorize representation, become or remain a union member, or commence or continue paying union dues." (*Regents I, supra*, PERB Dec. No. 2755-H at p. 25.) PERB reasoned that interpreting section 3550 to permit an employer to encourage employees to become or remain union members would conflict with the prohibition in HEERA section 3571, subdivision (d) against an employer "'encourag[ing]'" support for one union over another. (*Regents I*, at p. 26.)

PERB also found support for its interpretation in the legislative history for section 3550. A Senate Floor Analysis for Senate Bill No. 285, through which the Legislature enacted section 3550, notes that the bill "'essentially seeks to ensure that public employers shall remain neutral when their employees are deciding whether to join a union or to stay in the union.' (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading analysis of Sen. Bill No. 285 (2017-2018 Reg. Sess.) as amended March 14, 2017, p. 4." (*Regents I, supra*, PERB Dec. No. 2755-H at p. 28.) PERB also relied on an Assembly Floor Analysis that quoted Senate Bill No. 285's author as stating that the bill "'ensure[s] that public employees remain free to exercise their personal choice as to *whether or not to become union members*, without being deterred or discouraged from doing so by their employer.' (Assem. Com. on Public Employees, Retirement, and Social Security, Analysis of Sen. Bill No. 285 (2017-2018 Reg. Sess.) as amended March 14, 2017, p. 3, italics added.)" (*Regents I*, at p. 28.)

PERB's interpretation of section 3550 is not clearly erroneous. As set forth in detail in *Regents I* and summarized above, PERB's interpretation is consistent with the statutory scheme governing labor organization rights of public employees, case authority and PERB decisional law applying those statutes, and the legislative history underlying section 3550. Because PERB's interpretation of section 3550 is not clearly erroneous, we defer to and uphold that interpretation. (*Boling, supra*, 5 Cal.5th at p. 913.)

III. The Schools' standing to assert their constitutional challenge

We reject PERB's and UTLA's contention that the Schools are political subdivisions of the State of California who cannot assert constitutional free speech claims against the state. It is settled that "'"[a] public school district is a political subdivision of the State of California"'" (*West Contra Costa Unified School Dist. v. Superior Court* (2024) 103 Cal.App.5th 1243, 1274, quoting *K.M. v. Grossmont Union High School Dist.* (2022) 84 Cal.App.5th 717, 752), and as such has "no privileges or immunities under the federal constitution which it may invoke in opposition to the will of its creator." (*Williams v. Baltimore* (1933) 289 U.S. 36, 40.) While the Legislature treats charter schools as public school districts for certain purposes, it does not do so for all purposes. (*Wells, supra*, 39 Cal.4th at p. 1186.) There is no indication the Legislature intended charter schools to be deemed political subdivisions of the state for the purpose of restricting their ability to assert constitutional claims against the state.

The purposes for which a charter school is deemed to be a school district are statutorily delimited. Education Code section 47612, subdivision (c) specifies "how, and to what extent, and under which statutory provisions charter schools are deemed to be part of the system of public schools, or 'deemed to be a "school district."'" (*Los Angeles Leadership Academy, Inc. v. Prang* (2020) 46 Cal.App.5th 270, 278–279 (*Prang*).) That statute provides: "A charter school shall be deemed to be a 'school district' for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9 of Division 1 of Title 1, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of Part 24 of Division 3, Section 47638, and Sections 8

and 8.5 of Article XVI of the California Constitution." (Ed. Code, § 47612, subd. (c).) All of statutes specified in Education Code section 47612, subdivision (c) govern funding and allocation of state monies for support of the public school system and public institutions of higher education.[13] There is no indication the Legislature intended charter schools to be deemed school districts for purposes of asserting privileges or immunities under the federal or California Constitutions against the state.

It is true that charter schools are "part of the Public School System, as defined in Article IX of the California Constitution,"[14] (Ed. Code, § 47615, subd.

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[13] Title 1, division 1, part 9, chapter 1, article 1 of the Education Code governs sources, conditions for apportionments, and amounts of financial support for the public school system. Education Code section 41301 sets forth an allocation schedule for the State School Fund. Section 41302.5 states that "school districts" for purposes of funds allocated to the State School Fund "shall include county boards of education, county superintendents of schools, and direct elementary and secondary level instructional services provided by the state, including the Diagnostic Schools for Neurologically Handicapped Children . . . ." Section 41850 governs apportionments for home- to-school transportation and special education transportation. Section 47638 states that for purposes of allocating lottery funds, a charter school shall be deemed to be a school district.

Article XVI, sections 8 and 8.5 of the California Constitution govern funding priority from state revenues for support of the public school system and public institutions of higher education, and allocations of state revenues to the State School Fund for elementary, high school, and community college purposes, respectively.

[14] Article IX, section 6 of the California Constitution states that "[t]he Public School System shall include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance

(a)), fall under the "jurisdiction" of the public school system and the "exclusive control" of public school officers for purposes of section 8 of article IX of the California Constitution[15] (Ed. Code, §§ 47615, subd. (a)(2), 47612, subd. (a)), and may, like all public schools, receive state and local public education funds (Ed. Code, § 47612). (*Wells, supra*, 39 Cal.4th at p. 1186.) Charter schools, however, are exempt from many of the laws governing public schools and school districts. (Ed. Code, § 47610; *Wells*, at p. 1186.) Unlike a public school, "[a] charter school may elect to operate as, or be operated by, a nonprofit corporation organized under the Nonprofit Public Benefit Corporation Law." (*Wells,* at p. 1186.)

A charter school's ability to operate as a nonprofit corporation is a factor courts have found significant in distinguishing charter schools from public school districts for purposes of asserting certain privileges and immunities under California law. In *Wells, supra,* 39 Cal.4th at page 1200, our Supreme Court rejected several charter schools' claim that they were "entitled to any 'public entity' immunity enjoyed by their chartering districts"

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with law and, in addition, the school districts and the other agencies authorized to maintain them. No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System."

[15] Article IX, section 8 of the California Constitution states: "No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State."

under the California False Claims Act (CFCA) (§ 12650 et seq.). The Supreme Court held that public school districts were not "persons" who could be sued under the CFCA but charter schools and their nonprofit corporate operators could be liable under the statute. Applying a "traditional rule of statutory construction" the court in *Wells* held that "absent express words to the contrary, governmental agencies" such as school districts "are not included within the general words of a statute." (*Wells*, at p. 1192.) That rule did not apply to the charter schools, however, because the CFCA expressly defines "persons" liable under the statute to include "corporations" and does not exempt corporations that operate charter schools under the CSA. (*Wells*, at p. 1192.)

The court in *Wells* concluded the charter schools were not exempt from liability "merely because such schools are deemed part of the public school system" (*Wells, supra*, 39 Cal.4th at p. 1179) and distinguished between charter schools and their chartering districts. "Though charter schools are deemed part of the system of public schools for purposes of academics and state funding eligibility, and are subject to some oversight by public school officials [citation], the charter schools here are *operated*, not by the public school system, but by distinct outside entities— which the parties characterize as nonprofit corporations—that are given substantial freedom to achieve academic results free of interference by the public educational bureaucracy." (*Id.* at pp. 1200–1201; see Ed. Code, § 47604, subd. (a).)

Applying *Wells*, the appellate court in *Prang, supra*, 46 Cal.App.5th 270, 281, similarly held that

charter schools, unlike public school districts, are not exempt from property taxes and special assessments on property used for public education purposes. "*Wells* establishes that charter schools are operated 'by distinct outside entities'; the CSA assigns 'no . . . sovereign significance to charter schools or their operators'; and '[e]xcept in specified respects,' charter schools are exempt from the laws governing school districts." (*Id.* at p. 278.) The court in *Prang* further reasoned that in Education Code section 47612, subdivision (c), "the Legislature has specified precisely how, and to what extent, and under which statutory provisions charter schools are deemed to be part of the system of public schools, or 'deemed to be a "school district"' [citation]. Notably absent is any suggestion that charter[] schools are to be treated like school districts for taxation purposes." (*Prang*, at pp. 278–279.)

The Legislature's express delineation in Education Code section 47612, subdivision (c) as to "how, and to what extent, and under which statutory provisions charter schools are deemed to be part of the system of public schools, or 'deemed to be a "school district"'" (*Prang, supra*, 46 Cal.App.5th at p. 279) and case law distinguishing charter schools from public schools and public school districts persuade us that a charter school, unlike a public school district, is not a political subdivision of the state. The Schools accordingly are not barred from asserting their free speech challenge to the PEDD under the federal and California Constitutions.

PERB cites several nonbinding, nonprecedential cases in which courts, applying charter school laws from other states, have concluded that a charter school is a political subdivision of the

state. The charter school laws in those states differ materially from the CSA, and we find the cited cases unpersuasive for that reason. (See, e.g., *Nampa Classical Academy v. Goesling* (9th Cir. 2011) 447 F.Appx. 776, 777 [under Idaho statute that deemed a public charter school a "governmental entity" that "may sue or be sued . . . to the same extent and on the same conditions as a traditional public school district," charter school organized as a private nonprofit corporation was a political subdivision of the state that could not assert 1st Amend. claims against the state]; *Greater Heights Academy v. Zelman* (6th Cir. 2008) 522 F.3d 678, 680–681 [Ohio statute establishes charter schools as political subdivisions and a private nonprofit corporation organized under Ohio charter school law is unable to assert 14th Amend. claim against Ohio superintendents of public schools]; *Reach Academy for Boys & Girls, Inc. v. Delaware Dept. of Educ.* (D.Del. 2014) 46 F.Supp.3d 455, 466 [Delaware statute providing that "'[a] charter school may sue or be sued to the same extent and on the same conditions as a public school district'" precluded charter school's constitutional claims against the state]; *First Philadelphia Preparatory Charter School v. Commonwealth Dept. of Educ.* (Pa. Commw. Ct. 2018) 179 A.3d 128, 140 [Pennsylvania statute providing that charter school can "'[s]ue or be sued, but only to the same extent and upon the same condition that political subdivisions and local agencies can be sued'" precluded charter school's 42 U.S.C. § 1983 claims against school district]; *Honors Academy, Inc. v. Texas Education Agency* (Tex. 2018) 555 S.W.3d 54, 64 [under Texas law, charter school is statutorily designated as a governmental entity

unable to assert federal and state constitutional claims against the state].) The CSA, unlike the charter school laws in other states, contains no provision declaring charter schools to be political subdivisions of the state or according charter schools the right to sue or be sued but only to the same extent as political subdivisions of the state.

Other courts, moreover, have concluded that a state's statutory characterization of a charter school as a "public school" is not dispositive as to whether the school is a state actor rather than a private entity. In *Caviness v. Horizon Community Learning Center, Inc.* (9th Cir. 2010) 590 F.3d 806 (*Caviness*), for example, the Ninth Circuit rejected claims under title 42 United States Code section 1983 by a discharged teacher against an Arizona public charter school that the school's false statements about him deprived him of his liberty interest in finding and obtaining work. The teacher argued that the charter school was a state actor that could be held liable under section 1983 because it was chartered and funded by the state, provided public education, participated in the state's retirement system, and was subject to state regulation in personnel matters. (*Caviness*, at pp. 815–818.) The Ninth Circuit noted that the case involved "the special situation of a private non-profit corporation running a charter school that is defined as a 'public school' by state law," and that "because the conduct of a private corporation is at issue, our inquiry does not end there." (*Id.* at p. 812.) The court explained that under section 1983, "'[s]tate action may be found if, though only if, there is such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State

itself.'" (*Caviness*, at p. 812.) The Ninth Circuit found no such nexus under the circumstances presented. (*Id.* at p. 818.)

Citing *Caviness*, the court in *Sufi v. Leadership High School* (N.D.Cal. 2013) 2013 WL 3339441 (*Sufi*) similarly rejected a similar title 42 United States Code section 1983 claim by a discharged administrator against a San Francisco charter school. The court in *Sufi* noted that the Arizona charter school statutes cited in *Caviness* were "very similar to those of California" and that neither California nor Arizona specifically designated charter schools as government entities. (*Caviness*, at p. *8.) The court in *Sufi* applied the Ninth Circuit's analysis in *Caviness,* found no "close nexus" between the state and the charter school's actions, and dismissed the plaintiff's section 1983 claims. (*Caviness*, at p. *8.)

Here, as in *Caviness* and *Sufi*, that state law deems charter schools to be public schools for some purposes does not make them governmental entities for all purposes. Because we conclude the Schools are not political subdivisions of the state for purposes of challenging the constitutionality of section 3550, we address their free speech claims.

IV. Constitutionality

In addressing the Schools' constitutional claims, a threshold issue arises concerning fact finding. The issue arises because PERB did not address the Schools' constitutional claims, as it had no authority to do so. (Cal. Const., art. III, § 3.5.)[16]

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[16] Article III, section 3.5 of the California Constitution states: "An administrative agency, including an administrative

PERB accordingly did not make fact findings specific to those claims. However, PERB did make factual findings concerning agency, which we determine in part V, *post*, of this decision are supported by substantial evidence. Those factual findings are also relevant to our constitutional analysis. An appellate court, moreover, is empowered to make findings of fact, particularly where, as here, the parties have stipulated to evidence that is not in conflict. (Code Civ. Proc., § 909; *Diaz v. Professional Community Management, Inc.* (2017) 16 Cal.App.5th 1190, 1213.) We exercise our discretion to make such findings to the extent necessary to adjudicate the constitutional issues.

A. *Free speech rights and government speech*

The free speech clause of the First Amendment prohibits governmental entities and actors from "abridging the freedom of speech."[17]

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agency created by the Constitution or an initiative statute, has no power:

"(a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;

"(b) To declare a statute unconstitutional;

"(c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations."

[17] The free speech clause of the First Amendment states, "Congress shall make no law . . . abridging the freedom of speech." "[T]he Fourteenth Amendment makes the First Amendment's Free Speech Clause applicable against the

California's counterpart to the First Amendment's free speech provision is in article I, section 2 of the California Constitution, which states: "Every person may freely speak, write and publish his or her sentiments on all subjects . . . . A law may not restrain or abridge liberty of speech or press."

Free speech guarantees under the federal and California constitutions do not apply to government speech. (*Pleasant Grove City v. Summum* (2009) 555 U.S. 460, 467 (*Pleasant Grove*); *Delano Farms Co. v. California Table Grape Com.* (2018) 4 Cal.5th 1204, 1210–1211, 1244.) "The Free Speech Clause restricts government regulation of private speech; it does not regulate government speech." (*Pleasant Grove*, at p. 467.) "When government speaks, it is not barred by the Free Speech Clause from determining the content of what it says." (*Walker v. Texas Div., Sons of Confederate Veterans, Inc.* (2015) 576 U.S. 200, 207.) "After all, the government must be able to 'promote a program' or 'espouse a policy' in order to function." (*Shurtleff v. City of Boston* (2022) 596 U.S. 243, 248, citing *Walker*, at p. 208.)

B. *Section 3550 regulates government speech*

The Schools' facial constitutional challenge to section 3550 must be rejected because the statute restricts only "government speech" unprotected by the First Amendment and the California Constitution. The plain language of section 3550 makes clear that it regulates only government speech. The statute, by its terms, applies only to a "public employer," defined in section 3552 to include

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States." (*Manhattan Community Access Corp. v. Halleck* (2019) 587 U.S. 802, 807.)

public agencies (e.g., governmental subdivisions, cities, counties, municipal and public corporations), state employers, the superior courts and Judicial Council, the Regents of the University of California and the California State Universities, public transit districts, and public school employers (§ 3552, subd. (c))—all governmental entities. As relevant here, section 3550 also applies to "a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code." (§ 3540.1, subd. (k).) In their respective charter renewal applications, each of the Schools declared itself to be deemed "the exclusive public school employer" for labor relations purposes within its school.

Because section 3550 applies only to public employers, the Schools' argument that the statute is an unconstitutionally overbroad form of viewpoint discrimination fails. The government "'is entitled to say what it wishes,' [citation], and to select the views that it wants to express . . . ." (*Pleasant Grove, supra*, 555 U.S. at pp. 467–468.) "It is the very business of government to favor and disfavor points of view . . . ." (*National Endowment for Arts v. Finley* (1998) 524 U.S. 569, 598 (conc. opn. of J. Scalia).)

The Schools' contention that section 3550 is unconstitutional as applied because it restricts their speech as private entities is also unavailing. Permissible restrictions on government speech apply equally to private entities who are enlisted to convey the government's message. (*Rosenberger v. Rector and Visitors of Univ. of Va.* (1995) 515 U.S. 819, 833 (*Rosenberger*) [government may "regulate the content of what is or is not expressed when it is the speaker or when it enlists private entities to convey its own

message"].) Although incorporated and operated as nonprofit public benefit corporations, the Schools are subject to section 3550 because they each have declared themselves to be a "public school employer" under Education Code section 47611.5, subdivision (b) and thereby agreed to the government-mandated obligations of public employers. The Schools were not required to make such a declaration. Education Code section 47611.5, subdivision (b) states that if a charter school does not declare itself to be an exclusive public school employer, "the school district where the charter is located shall be deemed the public school employer" for labor relations purposes. (Ed. Code, § 47611.5, subd. (b).) By declaring themselves to be exclusive "public school employers," the Schools, rather than the school district, became propagators of the state's message concerning their employees' right to join a labor organization.

The government speech doctrine also precludes the Schools' constitutional challenge on behalf of their principals and assistant principals and Alliance CMO. Although "the First Amendment's protections extend to 'teachers and students,' neither of whom 'shed their constitutional rights to freedom of speech or expression at the schoolhouse gate,'" "[n]one of this means the speech rights of public school employees are so boundless that they may deliver any message to anyone anytime they wish. In addition to being private citizens, teachers and coaches are also government employees paid in part to speak on the government's behalf and convey its intended messages." (*Kennedy v. Bremerton School Dist.* (2022) 597 U.S. 507, 527 (*Kennedy*).)

When analyzing "the interplay between free speech rights and government employment," the

United States Supreme Court applies a two-step inquiry. (*Kennedy, supra,* 597 U.S. at p. 527.) "The first step involves a threshold inquiry into the nature of the speech at issue. If a public employee speaks 'pursuant to [his or her] official duties,' [the Supreme Court] has said the Free Speech Clause generally will not shield the individual from an employer's control and discipline because that kind of speech is— for constitutional purposes at least—the government's own speech." (*Ibid*.) This same balancing analysis applies to independent contractors such as Alliance CMO. (*Board of County Commissioners Wabaunsee County, Kansas v. Umbehr* (1996) 518 U.S. 668, 684–685.) The plaintiff bears the threshold burden of demonstrating his speech was private speech, not government speech. (*Kennedy*, at pp. 524, 529.)

When an employee "'speaks as a citizen addressing a matter of public concern,'" however, the Supreme Court has indicated "that the First Amendment may be implicated and courts should proceed to a second step. [Citation.] At this second step . . . courts should attempt to engage in 'a delicate balancing of the competing interests surrounding the speech and its consequences.' [Citation.] Among other things, courts at this second step have sometimes considered whether an employee's speech interests are outweighed by '"the interest of the State, as an employer, in promoting the efficiency of the public services it performs through its employees."'" (*Kennedy, supra*, 597 U.S. at p. 528.)

The School administrators' e-mail communications show that those communications were government speech, not private speech.

Although the Schools argue the administrators' communications "were couched in the form of their personal opinions," the administrators' use of the School e-mail system rather than their personal e-mail accounts to communicate their views weighs against a determination that those communications were private rather than government speech. (See *Pleasant Grove, supra*, 555 U.S. at p. 467 [noting that the location where a message is displayed can affect the public's perception of who is speaking].) Nearly all of the administrators' e-mails include the sender's title as principal or assistant principal of the school. Many of the administrators' e-mails expressed concerns that unionization or the labor organizing process could adversely affect their school's operations. One principal, for example, wrote: "[M]y fear is that UTLA will negatively impact our unique school. I worry that they will impose rules like those they have created in their 400-page contract at LAUSD. I am worried that a UTLA contract at Ouchi or across Alliance will diminish the flexibility each of us has here—to the detriment of our students and our school."

Another principal echoed those concerns: "[M]any of the issues you have told me are pain points (i.e., being asked to meet with an Administrator on a prep period, being asked to cover a class during a prep period, having a meeting scheduled during a pupil free day or prep period, conferencing with parents during a prep period, being asked to participate in a meeting after school, having to share classrooms, traveling teachers, class sizes exceeding 25, etc.) . . . are allowed for under this union-negotiated contract. [¶] Under UTLA, I worry that our ability to adapt to unique issues we

are facing on our campus will be jeopardized as we will need to wait for negotiations to go to a collective bargaining table and be put into a contract before we can act."

One principal voiced concerns about losing teachers because of tensions caused by unionization efforts: "Unfortunately, several strong educators have recently indicated hesitation about returning next year despite having 100% of certificated staff originally say they intended to return a few months ago. At the time of a teacher shortage, it would be detrimental for our scholars and community to lose experienced, heavily involved, Master teachers due to political tension among adults."

School operations such as those mentioned in the e-mails come within the scope of the principals' and assistant principals' official duties. The Schools' respective charter renewal petitions state that while each school's board of directors and administrative staff share responsibility for "day-to-day operations of the Charter School, including, but not limited to, making necessary provisions for accounting, budgeting, payroll, purchasing, liability, insurance, and the like," "[a]ll management powers not specifically designated to the [school's] Board are delegated to the principal . . . ." As the Supreme Court has explained, "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes . . . ." (*Garcetti v. Ceballos* (2006) 547 U.S. 410, 421.)

That the principals' and assistant principals' e-mails were sent to employees under their supervision is a further indication that their statements were made pursuant to their official

duties. As PERB found in its Order, the principals and assistant principals acted as their Schools' agents when they communicated with certificated employees under their supervision about labor issues affecting their Schools.

The Schools' argument that section 3550 impinges on their administrators' free speech rights as private citizens has been rejected by the Ninth Circuit in similar circumstances. In *Barke v. Banks* (9th Cir. 2022) 25 F.4th 714, several elected local government officials sought to assert a First Amendment challenge to section 3550, arguing that the statute violated their individual free speech rights by prohibiting speech based on its content. (*Barke*, at p. 718.) The Ninth Circuit rejected that argument, noting that "section 3550 does not regulate speech made by Plaintiffs in their individual capacities; the statute only impacts them to the extent their speech can be attributed to their 'public employer[s].' [Citation.] '[W]hen public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes,' and therefore restrictions on such speech do not implicate the employees' individual constitutional rights." (*Id.* at p. 719, quoting *Garcetti v. Ceballos, supra*, 547 U.S. at pp. 421–422.) We find the Ninth Circuit's reasoning to be persuasive and apply it here. Section 3550 does not restrict the School administrators' speech as individuals, only statements made pursuant to their official duties.

Cases cited by the Schools do not support their position that the e-mail communications at issue were private speech. *Lindke v. Freed* (2024) 601 U.S. 187 (*Lindke*) involved social media posts by a city

manager (Freed) on a Facebook page not designated as either "personal" or "official." Freed posted about both personal and job-related topics. He occasionally deleted unwelcome comments in response to those posts, including comments by Lindke, who complained about the city's response to the COVID-19 pandemic. Lindke filed an action under title 42 United States Code section 1983, alleging Freed had violated his First Amendment rights. The Supreme Court held that "a public official's social-media activity constitutes state action under §1983 only if the official (1) possessed actual authority to speak on the State's behalf, and (2) purported to exercise that authority when he spoke on social media." (*Lindke,* at p. 198.) Because section 1983 requires state action before a private person can be sued in in his individual capacity, the Supreme Court noted that "[c]ategorizing posts that appear on an ambiguous page like Freed's is a fact-specific undertaking in which the post's content and function are the most important considerations." (*Lindke*, at p. 203.) The Court further noted, however, that "[i]n some circumstances, the post's content and function might make the plaintiff's argument a slam dunk." (*Ibid.*)

Unlike *Lindke*, this case does not involve social media posts on an "ambiguous" Facebook page, but e-mail communications sent to School employees via the Schools' e-mail system. The e-mails indicate the senders' titles as principals or assistant principals of their schools and discuss the impact unionization might have on school operations. The administrators possessed actual authority to speak on behalf of their respective Schools about school operations and labor issues affecting their schools,

and the e-mail communications themselves indicate the administrators' intent to exercise that authority.

Molloy v. Acero Charter School, Inc. (N.D.Ill. 2019) 2019 U.S. Dist. Lexis 176797 *and Martinez v. Redwood City School Dist.* (N.D.Cal. 2021) 2021 U.S Dist. Lexis 46938, nonpublished federal court decisions cited by the Schools, are unpersuasive. The court in *Molloy* ruled that a charter school teacher's complaints to an outside staffing agency about the school's program for students with learning disabilities were made as a private citizen and not pursuant to her official duties and were therefore protected by the First Amendment. *Martinez* involved a community school coordinator's statements at a public meeting of the county board of supervisors, which the court found to be private speech. *Martinez* is distinguishable because it involved speech in a public forum, not the workplace. The speech at issue here, in contrast, was made by school administrators to their subordinates using their school e-mail accounts. The e-mails included the administrators' official titles as principals or assistant principals of their schools and discussed the potential impact of unionization on school operations.

The government speech doctrine also precludes the Schools' constitutional challenge on behalf of Alliance CMO, a private entity authorized to convey a public employer's message regarding labor relations matters. The administrative services agreements between Alliance CMO and the Schools specify that Alliance CMO's responsibilities include "[m]anag[ing] employee and grievance processes," and supporting the Schools "to ensure compliance to federal, state, and local agencies and charter

authorizer requirements." By contractually delegating employee relations matters to Alliance CMO, the Schools authorized Alliance CMO to speak on their behalf regarding such matters. As an authorized speaker for a public school employer, Alliance CMO's communications on labor organizations constitutes government speech subject to government regulation. (*Rosenberger, supra*, 515 U.S. at p. 833.)

The Schools fail to sustain their burden of demonstrating the e-mail communications by School administrators and Alliance CMO constitute private speech, not government speech. (*Kennedy, supra,* 597 U.S. at pp. 524, 529.) We therefore do not proceed to the second step of the *Kennedy* free speech inquiry to determine whether the administrators' and Alliance CMO's speech interests are outweighed by the interests of the state. (*Id.* at p. 528.)

V. Agency

Alliance CMO and the School administrators challenge PERB's findings that they were the Schools' actual and apparent agents. This challenge fails because substantial evidence supports the findings.

Agency may be established by showing the purported agent had actual or apparent authority to act on the employer's behalf, or that the employer ratified the purported agent's conduct. (*City of San Diego* (2015) PERB Dec. No. 2464-M, pp. 38–39.) The existence of an agency is a factual determination. (*Inglewood Teachers Assn. v. Public Employment Relations Bd.* (1991) 227 Cal.App.3d 767, 780.) We must accept PERB's factual findings, including ultimate facts, as conclusive if supported by substantial evidence. (*Id.* at p. 781.) Under that

standard, ""'we do not reweigh the evidence. If there is a plausible basis for [PERB's] factual decisions, we are not concerned that contrary findings may seem to us equally reasonable . . . .'"" (*Boling, supra*, 5 Cal.5th at p. 912.)

"An agency is actual when the agent is really employed by the principal." (Civ. Code, § 2299.) "Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess." (Civ. Code, § 2316.) Because an actual agent is employed by the principal, the primary inquiry in assessing actual authority is whether the agent was acting within the scope of his or her authority. (*City of San Diego, supra*, PERB Dec. No. 2464-M at p. 15.)

Apparent authority is "such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess." (Civ. Code, § 2317.) "'Both PERB and the courts have held that apparent authority to act on behalf of the employer may be found where the manifestations of the employer create a reasonable basis for employees to believe that the employer has authorized the alleged agent to perform the act in question.'" (*Santa Ana Unified School Dist.* (2013) PERB Dec. No. 2332-E, pp. 9–10.) Under some circumstances, employees may perceive their employer as responsible for the actions of subordinates, even without specific authorization or ratification by the employer. (*Compton Unified School Dist.* (2003) PERB Dec. No. 1518-E, p. 5, fn. 3 (*Compton*).)

The Schools argue on appeal, as they did below, that *Inglewood Unified School District* (1990) PERB Dec. No. 792 sets forth the proper test for

apparent authority, requiring PERB to establish justifiable reliance on the purported agent's conduct and a change in position resulting from that reliance. In its Order, however, PERB overruled *Inglewood* to the extent that decision requires a showing of justifiable reliance and a change of position by a party seeking to prove apparent authority and explained its reasons and authority for doing so.[18] The Schools do not challenge PERB's overruling of *Inglewood*.

Substantial evidence supports PERB's finding that Alliance CMO and the School administrators were the Schools' actual agents. Alliance CMO's contracts with the Schools expressly state that Alliance CMO will provide each school with human resources and employee relations services. As managerial employees, the principals and assistant principals were actual agents of the Schools that employed them. (*Chula Vista Elementary School Dist.* (2004) PERB Dec. No. 1647-E, p. 7; *Compton, supra*, PERB Dec. No. 1518-E, p. 5.)

Substantial evidence also supports PERB's findings that Alliance CMO acted within the scope of its actual and apparent authority when it sent the e-mail communications at issue to faculty and staff at the Schools. Alliance CMO's contracts with the Schools and the Schools' charter renewal petitions show that Alliance CMO acted within the scope of its authority. The Schools' charter renewal petitions specify the scope of Alliance CMO's authority as

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[18] PERB in the past has overruled its prior decisions when it has deemed appropriate to do so. (See, e.g., *County of Santa Clara* (2013) PERB Dec. No. 2321-M, p. 30, overruling, among other decisions, *Sylvan Union Elementary School Dist.* (1992) PERB Dec. No. 919-E.)

follows: "Alliance [CMO] also provides oversight and monitors adherence by [the Schools'] Board of Directors to the charter process and any applicable law." Alliance CMO acted within the scope of its authority when it sent e-mails to School faculty and staff about UTLA's organization campaign—an employee relations matter governed by its contracts with the Schools and by EERA and the PEDD.

Substantial evidence further supports PERB's finding that the School administrators acted within the scope of their actual and apparent authority when they sent the e-mail communications at issue to faculty and staff. The Schools' charter renewal petitions expressly delegate to their principals all management powers not specifically designated to the School's board of directors. Many of the principals' e-mails discussed the potential impact of unionization on students, faculty, and school operations.

The Schools' charter renewal applications also show that principals and assistant principals are the highest ranking administrators at the Schools with supervisory authority over school staff. The School administrators used the Schools' e-mail system and their titles as principals and assistant principals of their respective schools to communicate with their subordinates about UTLA's organizing campaign and its effect on their respective schools. Given these circumstances, a reasonable employee would perceive the e-mails as expressing the Schools' view regarding UTLA's unionization efforts. (*Compton, supra*, PERB Dec. No. 1518-E at p. 5, fn. 3.)

Substantial evidence supports PERB's findings that the Schools may be held accountable under the PEDD for the e-mail communications at

issue sent by Alliance CMO and School principals and assistant principals under theories of actual and apparent authority. We need not determine whether the Schools may also be held responsible for those communications under the theory of ratification.

DISPOSITION

PERB's November 3, 2021 decision and order is affirmed. PERB shall recover its costs on appeal.

CHAVEZ, J.

We concur:

LUI, P. J.

HOFFSTADT, J.*

* Presiding Justice of the Court of Appeal, Second Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

APPENDIX B

Court of Appeal, Second Appellate District, Division Two - No. B316745

S289058

IN THE SUPREME COURT OF CALIFORNIA

En Banc

ALLIANCE MARC & EVA STERN MATH & SCIENCE HIGH SCHOOL et al., Petitioners,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD, Respondent;

UNITED TEACHERS LOS ANGELES, Real Party in Interest.

The petition for review is denied.

GUERRERO
Chief Justice

APPENDIX C

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

UNITED TEACHERS LOS ANGELES Charging Party, v. ALLIANCE MARC & EVA STERN MATH & SCIENCE HIGH SCHOOL; ALLIANCE OUCHI-O'DONOVAN 6-12 COMPLEX; ALLIANCE RENEE & MEYER LUSKIN ACADEMY HIGH SCHOOL; ALLIANCE COLLEGE-READY MIDDLE ACADEMY #10 A.K.A. ALLIANCE LEADERSHIP MIDDLE ACADEMY; ALLIANCE JUDY IVIE BURTON TECHNOLOGY ACADEMY HIGH SCHOOL; ALLIANCE COLLINS FAMILY COLLEGE- READY HIGH SCHOOL; ALLIANCE GERTZ-	Case Nos. LA-CE-6362-E LA-CE-6363-E LA-CE-6364-E LA-CE-6365-E LA-CE-6366-E LA-CE-6372-E LA-CE-6373-E LA-CE-6374-E LA-CE-6375-E LA-CE-6376-E LA-CE-6377-E PERB Decision No. 2795

RESSLER/RICHARD MERKIN 6-12 COMPLEX; ALLIANCE LEICHTMAN-LEVINE FAMILY FOUNDATION ENVIRONMENTAL SCIENCE & TECHNOLOGY HIGH SCHOOL; ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 5; ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 8; ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 12,

Respondents.[1]

Appearances: Bush Gottlieb by Ira Gottlieb, Erica Deutsch, and Dexter Rappleye, Attorneys, for United Teachers Los Angeles; Sheppard, Mullin, Richter & Hampton by David A. Schwarz and Alexandra M. Jackson, Attorneys, and Robert A. Escalante, General Counsel, for Alliance Schools.

Before Banks, Chair; Shiners, Krantz, and Paulson, Members.

DECISION

[1] We will refer to the Respondents collectively as "Alliance Schools."

SHINERS, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on exceptions by United Teachers Los Angeles (UTLA) and cross-exceptions by Alliance Schools to the proposed decision of an administrative law judge (ALJ). These cases arise out of UTLA's ongoing efforts to organize and represent Alliance Schools' certificated employees. Around the time UTLA filed petitions with PERB to represent certificated employees at three Alliance Schools, the Alliance College-Ready Public Schools charter management organization (Alliance CMO) and several Alliance School principals and assistant principals sent e-mail messages about UTLA's organizing efforts to certificated employees at Alliance Schools.

The complaints issued by PERB's Office of the General Counsel (OGC) alleged that these e-mail messages violated the Educational Employment Relations Act (EERA) and the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD).[2] Following an evidentiary hearing, the ALJ concluded that none of the e-mails violated EERA or PEDD. Based on our review of the proposed decision, the entire record, and relevant legal authority in light of the parties' submissions, we conclude that the e-mails deterred or discouraged support for UTLA in violation of PEDD but did not

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[2] EERA is codified at Government Code section 3540 et seq. PEDD is codified at Government Code section 3550 et seq. All statutory references are to the Government Code unless otherwise indicated.

interfere with employee or union rights in violation of EERA.[3]

FACTUAL BACKGROUND[4]

Charging Party UTLA is an employee organization within the meaning of EERA section 3540.1, subdivision (d), and PEDD section 3552, subdivision (a). UTLA has been conducting an organizing campaign at Alliance Schools since March 2015.

Respondents Alliance Schools are public school employers within the meaning of EERA section 3540.1, subdivision (k), and PEDD section 3552, subdivision (c). Alliance Schools are individual charter schools affiliated with non-party Alliance CMO, a non-profit public benefit corporation. Each Alliance School and Alliance CMO are separately

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[3] The complaints also alleged that two of the Alliance Schools, Alliance Marc & Eva Stern Math & Science High School (Stern School) and Alliance Renee & Meyer Luskin Academy High School (Luskin School), violated EERA and PEDD by distributing to those schools' certificated employees petitions urging UTLA to cease its organizing efforts. The ALJ concluded that Luskin School committed the alleged violation but dismissed the allegation against Stern School. Neither party excepted to these conclusions. Accordingly, they are not before the Board on appeal but remain binding on the parties. (PERB Regs. 32215, 32300, subd. (c); *County of Orange* (2018) PERB Decision No. 2611-M, p. 2, fn. 2; *City of Torrance* (2009) PERB Decision No. 2004-M, p. 12.) (PERB Regulations are codified at Cal. Code Regs., tit. 8, § 31001 et seq.) We accordingly incorporate into our remedial order the ALJ's proposed order as to Luskin School's petition distribution.

[4] These factual findings reflect circumstances as they existed in August 2019 when the formal hearing took place, and do not include any subsequent changes.

incorporated legal entities with exempt status authorized under section 501(c)(3) of the U.S. Internal Revenue Code.

The Administrative Service Agreement (ASA) between each Alliance School and Alliance CMO states that Alliance CMO will provide the Alliance School with certain "Basic Services" that include, under the title "Human Resources and Employee Relations," the following:

> "Employee Relations:
> • "Manage employee and grievance processes
> • "Provide training, tools, and support for administrators regarding effective resolution of employee issues"

The ASAs between each Alliance School and Alliance CMO also state that Alliance CMO will provide the Alliance School with "School Operations Support" that include, under the "School Operations Supports [*sic*]" the following: "Develop communications related to school operations for all stakeholders (e.g., school staff, parents, student, community members)."

Each Alliance School submits a charter renewal petition to the Los Angeles Unified School District (LAUSD) Board of Education, requesting a five-year renewal term. These applications state that "Alliance [CMO] provides oversight and monitors adherence by [each Alliance School's] Board of Directors to . . . any applicable law," including EERA. The applications also state that the Alliance CMO Director of Human Resources must have advanced education or technical experience in labor relations.

A. E-Mail Messages from Alliance CMO

The parties stipulated that on the dates indicated below, Alliance CMO sent the following e-mail messages to "[a]ll [r]espondent [s]taff" at each Alliance School via a list serve "news@laalliance.org Alliance News", including all certificated employees UTLA seeks to represent.[5]

1. The March 22, 2018 E-Mail Message[6]

On March 22, Alliance CMO sent the following e-mail message to all staff at each Alliance School:

> "**SPOTLIGHT ON THE FACTS**
>
> "**Your Privacy & Personal Time**
>
> "As you head into the break, we hope you enjoy a well- earned and restful week.
>
> "**UTLA Visits to Your Home or the Homes of Your Relatives**
>
> "In the past, UTLA has hired paid organizers to contact Alliance staff at their homes over break. We have received complaints from many of you

[5] Bold and underline formatting has been retained from the original messages.

[6] All dates refer to 2018 unless otherwise indicated.

regarding these encroachments on you and your family's privacy and personal time. In response, we want to remind you of your rights.

"**Your Rights**

"Teachers and counselors have an equal right to support or not support UTLA. Accordingly, if a UTLA organizer shows up on your doorstep, it is completely your decision whether to speak to them or not. If you do not want a UTLA representative to visit your home, you can ask UTLA to remove your information from their list by writing to Alex Caputo-Pearl, UTLA, 3303 Wilshire Blvd., Los Angeles, CA 90010.

"**Your Signature**

"Read carefully whatever UTLA is asking you to sign. Providing your signature to UTLA may allow them to bypass a secret ballot election.

"**We encourage you to get the facts before you sign anything.**

"**If you would like a [']Do Not Disturb['] door hanger download <u>here</u>.**"

2. <u>The April 26 E-Mail Message</u>

On April 26, Alliance CMO sent the following e-mail message to all staff at each Alliance School:

> "**Why are union organizers pressing so hard for your signature?**
>
> "Providing your signature to an Alliance union organizer means that:
>
> "**You support UTLA as the exclusive union for all Alliance educators.** You are not signing on with a generic 'union.' You are legally signing on with a vehemently anti- charter union.
>
> "**You would pay annual dues. Current UTLA dues are $1,000 per year.** A significant portion of UTLA's dues are used to support anti-charter legislation, lobbying and elected officials.
>
> "**You would bypass a secret ballot election.** There would be no open, transparent discussion among Alliance educators about what is best for Alliance scholars and staff.
>
> "**We encourage you to get all the facts before you sign anything.**
>
> "**Don't be coerced or deceived by a union organizer into providing your signature.**"

3. The April 27 E-Mail Message

On April 27, Alliance CMO sent the following e-mail message to all staff at each Alliance School:

> "**Will your union dues bail out UTLA's budget deficit?**
>
> "If UTLA gets enough signatures, they stand to earn $1,000 per person annually in dues, or over $640,000 from Alliance educators.
>
> [¶] . . . [¶]
>
> "**UTLA'S FUNDING OF ANTI-CHARTER LEGISLATION:** About 50% of UTLA dues are paid to affiliate unions in Sacramento and Washington, DC, including paying for political contributions that support anti-charter laws and candidates.
>
> "**We encourage you to get all the facts before you sign anything.**
>
> "**Don't be coerced or deceived into providing your signature.**"

4. The May 1 E-Mail Message

On May 1, Alliance CMO sent the following e-mail message to all staff at each Alliance School:

"**WHAT DO YOU GET BY PAYING UTLA $1,000 EVERY YEAR?**

"**UTLA DUES GUARANTEE VERY LITTLE**

"Despite what UTLA might say to you, they cannot guarantee you increased compensation, a different evaluation system or any other specific benefits or working conditions. The results of collective bargaining may be the same, better, or worse than currently exist.

"**PAY UTLA FOR POTENTIALLY LESS THAN YOU HAVE NOW**

"• Alliance teachers and counselors earn more than their peers represented by UTLA in LAUSD schools.

"• The average Alliance class size is smaller than the class size written into UTLA's LAUSD contract.

"• Alliance student to counselor ratio is 150:1 vs. the 'goal' of 500:1 in UTLA's LAUSD contract.

[¶] . . . [¶]

"**We encourage you to get all the facts before you sign anything.**

"**Don't be coerced or deceived into providing your signature.**"

B. E-Mail Messages from the Principals and Assistant Principals at Eight Alliance Schools

The parties stipulated that on the dates indicated below, principals or assistant principals at eight Alliance Schools sent the following e-mail messages to their staff, including all certificated employees UTLA seeks to represent at these Schools.

1. Stern School

At all relevant times, Stern School employed Kirsten Woo as its principal. On May 3, Principal Woo sent the following e-mail message to all staff at Stern School:

"Hi Stern MASS Colleagues:

"One of the many things I love about Stern MASS is the people. I am surrounded by adults who are not afraid of working hard, spending time planning and executing lessons, or having courageous conversations with students. We positively affect our students through our words, our actions, and our bond of making this school a safe space. But when something happens that shakes our strong foundation, I take notice, pause, and reflect.

"Now that the Alliance Educators United and United Teachers Los Angeles (UTLA) have shared they have filed for union recognition with the California Public Employment Relations Board (PERB) for Alliance College-Ready Middle Academy #5 (CRMA 5), Alliance Gertz-Ressler Richard Merkin 6-12 Complex (Gertz-Ressler and Richard Merkin), and Alliance Judy Ivie Burton Technology Academy High School (Burton Tech), this affects 3 of our 25 Alliance schools. Based on the LA Times article, 'Teachers Union Gains a Foothold in L.A.'s Largest Charter School Group,' a UTLA spokesperson wrote a statement that 'these three schools, with more than 100 educators, are the first to file. Others in the 25-school charter chain are expected to follow.'

"I don't talk about it openly but those of us returning from last year know that my parents and I were all part of labor unions. I was part of Montebello Teachers Association and paid my $2,000 annual union dues. At one point, I was asked to be a union building representative for my school and went to one of the MTA meetings. I left the meeting feeling disheartened and determined not to be actively part of the union because I was momentarily surrounded by disgruntled people. I did

not want to be part of that negative culture.

"My mother was part of UTLA and would picket when asked. But she would feel bad when teachers 'crossed the line' and then were yelled at by their colleagues who had to work because they were single mothers who needed to put food on the table for their children. My father was part of United Food and Commercial Workers (UFCW) and was the union steward (what we know as union representative) for his laboratory. He helped represent workers to management and would sit in private conversations between a supervisor and worker. He represented workers who were sleeping on the job or did not show up for work.

"For at least a decade, UTLA has opposed charter schools through both their policies and in their rhetoric. It is a long, well-documented history of opposition to our schools. It has become especially fierce and divisive the past several years. The California Teachers Association (CTA) and UTLA recently sponsored or supported bills that would dismantle the system of appeals that allows charter schools like ours to appeal to the County and the State if we were denied a renewal by LAUSD.

"These bills would also allow LAUSD to deny a new charter or a charter renewal if the charter school would impose financial hardship on the traditional school district. If this bill, or a similar bill were passed by the state legislature, and any Alliance school were non-renewed by LAUSD, we would be shut down. Stern MASS and other Alliance schools are up for renewal next year. If UTLA and CTA are charter friendly, why would they support legislation that is harmful to charter schools? I am personally concerned that UTLA's anti-charter rhetoric and action means that they don't really want charter schools to exist.

"I have heard from some of you that you're wondering what will happen next with Stern MASS. As of now, we continue with our commitment and focus to be what is best for our Titans and maintain our strong, student-centered culture of respect we have built on campus. I know that when we left last year, I felt we were a divided school where teachers and counselors were afraid to speak to the person across the hall. I don't want us to be walking on eggshells or be afraid of being made to feel unwelcome or uncomfortable because someone's viewpoints were different than our own. More importantly, I don't want us to

> wake up in the morning and not feel like we want to go to work and make what we do every day a 'job we have' instead of the 'career we have at a place we chose.'
>
> "We all work too hard to become disjointed. If we become disjointed, I worry that families will start considering other schools as their first choice. With dwindling numbers comes decreased resources and opportunities to our instructional and college ready program. None of us can predict the future, but this is my fear.
>
> "We are all here for our students and ensuring they feel valued, respected, and receive the best educational opportunity we can provide. I hope that you'll put aside your personal feelings about the union whether you're for, against, or neutral while we are here at work. We are a team because once a Titan, always a Titan."

2. Ouchi Complex

At all relevant times, Alliance Ouchi-O'Donovan 6-12 Complex (Ouchi Complex) employed Dea Tramble as its principal. On April 29, Principal Tramble sent the following e-mail message to all staff at Ouchi Complex:

> "Hello Team,

"Our regular weekly Staff Newsletter will be emailed out in the morning. However, I did want to send out the information below. Feel free to reach ou[t] or stop by my office i[f] you have questions. Thanks[.]

"As some of you may know, this Spring is the beginning of the fourth year of UTLA's organizing campaign at Alliance. Given that UTLA has now become a regular presence at Ouchi, and for some of you, at your home, I want to take a few minutes to share my thoughts with you about this issue.

"Let me start with an important statement: The decision to unionize with UTLA or to retain an independent Alliance is your decision to make. I respect everyone's opinion on this issue. I also believe that it is important for me to share with you my own experience with UTLA and my personal concerns on what unionization with UTLA might mean for us at Ouchi.

"As you may know, I began my career in LAUSD. I worked as a teacher, counselor, and administrator there. As a teacher and counselor, I automatically became a paying UTLA member. I had no choice whether or not to have monthly dues taken out of my paycheck,

dues that UTLA has now raised to $1,000 per year.

"During the 15 years I was at Carver Middle School, UTLA's presence was a mystery to me. They did not have any impact on me or my classroom. They did not help me become a better teacher, did not help my students become better behaved or better educated and they certainly did not give me more 'voice' or 'clout' at my school or in district- level decision making.

"In fact, every year I taught in LAUSD I received a pink slip. Every year there was a 'Reduction in Force' and I received a layoff notice informing me that I was at risk of not returning to Carver for the following school year. This made me feel very uneasy and unstable as I was a young single lady needing to support myself. I was a devoted teacher committed to my community and students. Each year when I received the pink slip I questioned myself as an educator and even considered changing my profession. In the end, I left the classroom much more quickly than I initially intended because I felt like my career would be more stable as an administrator.

"I wouldn't want this to happen to anyone else. UTLA did not support me at that time of my life. I am not anti-union, as I feel that there are some really supportive unions that exist. However UTLA did not support me, and from what I know of others who have worked with UTLA – at district schools and at other charter schools – I am very worried that they will not support you either.

"Though UTLA pledged to be on my side, nothing came of their efforts. My students' accomplishments and my dedication to the school did not matter. Seniority was a protection that UTLA had championed for and fiercely stood by. UTLA is a HUGE organization and its constituents are a HUGE group.

"As educators, we know that individualization and differentiation are indispensable to learning and growth. Alliance's small schools, tight-knit communities, and committed professional development protect this personalization. We can't predict the future, but my fear is that UTLA will negatively impact our unique school. I worry that they will impose rules like those they have created in their 400-page contract at LAUSD. I am worried that a UTLA contract at Ouchi or across Alliance will diminish the flexibility

each of us has here – to the detriment of our students and to our school.

"I am also personally concerned about UTLA's opposition to charter schools. UTLA has regularly sponsored or supported legislation that would make it more difficult for schools like ours to get authorized or renewed. UTLA has supported elected officials who have voted against charter schools. UTLA has maligned donors who make charitable contributions to the Alliance non-profit organization. These charitable donations enabled us to buy our land here and to build our school. Those charitable donations go to support college scholarships for Ouchi seniors.

"I want to reiterate that the right to unionize with UTLA or not is yours and yours alone. I appreciate and value each of you as part of the special community we have here at Ouchi. Thank you for your time and allowing me to share my experiences and opinions about UTLA. My door is always open to you on this issue, or any other issue, idea, or suggestion you may have to improve our school community and to better serve our students."

3. Academy #10

At all relevant times, Alliance College-Ready Middle Academy #10 (Academy #10 or Leadership) employed Joy May-Harris as its principal. On May 2, Principal May-Harris sent the following e-mail message to all staff at Academy #10:

> "As some of you may know, this Spring is the beginning of the fourth year of UTLA's organizing campaign. Given that UTLA has now become a regular presence at Leadership, and for some of you, at your home, I want to take a few minutes to share my thoughts with you about this issue.
>
> "Let me start with an important statement: The decision to unionize with UTLA or to retain an independent Alliance is your decision to make. I respect everyone's opinion on this issue. I also believe that it is important for me to share with you my own experience with UTLA and my personal thoughts on what unionization with UTLA might mean for us at Leadership.
>
> "As you may know, I began my career in LAUSD. I worked as a teacher there. As a teacher, I automatically became a paying UTLA member. I had no choice whether or not to have monthly dues taken out of my paycheck, dues that UTLA have raised to $1,000 per year.

"During the 10 years I was at Audubon Middle School, UTLA's presence was a mystery to me. They did not have any impact on me or my classroom. They did not help me become a better teacher, did not help my students become better behaved or better educated and they certainly did not give me more 'voice' or 'clout' at my school or in district- level decision making.

"I am not anti-union, as I feel that there are some really supportive unions that exists [*sic*]. However, UTLA did not support me, and from what I know of others who have worked with UTLA – at district schools and at other charter schools – I am very worried that they will not support you either.

"As educators, we know that individualization and differentiation are indispensable to learning and growth. Alliance's small schools, tight-knit communities, and committed professional development protect this personalization. We can't predict the future, but my fear is that UTLA will negatively impact our unique school. I worry that they will impose rules like those they have created in their 430-page contract at LAUSD. I am worried that a UTLA contract at Leadership or across Alliance will diminish the flexibility each of us has here – to the

detriment of our students and to our school.

"If there are any issues here at our school or across the Alliance that concern you, you know that you can bring them directly to me or a member of my Administration team, or your ILT representatives, and we will work collaboratively to address them. Additionally, there are many other avenues for teacher and counselor voice[s] to be heard both anonymously and face to face through frequent surveys and focus groups hosted on our campus by our CEO and other Home Office teams. Also, we send a representative from Leadership to the Teacher Advisory Panel and another to the Executive Educator Council to meet regularly with Home Office Chiefs, Vice Presidents, and Directors.

"I don't want educators from other schools or representatives not from Leadership dictating what they think is best for our students and our school. Nor do I want our team of educators and leaders to have their hands tied by a contract like that which exists for my friends in LAUSD: 430 pages of rules and restrictions. **For your reference, a copy of that contract is attached here.** The contract begins with several

pages on the rights of the union itself, not the educators.

"Skim through and you will find that many of the issues you have told me are pain points (i.e., being asked to meet with an Administrator on a prep period, being asked to cover a class during a prep period, having a meeting scheduled during a pupil free day or prep period, conferencing with parents during a prep period, being asked to participate in a meeting after school, class sizes exceeding 25, etc.) are also issues within LAUSD and are allowed for under this union-negotiated contract.

"I am also personally concerned about UTLA's opposition to charter schools. UTLA has regularly sponsored or supported legislation that would make it more difficult for schools like Leadership to get authorized or renewed. UTLA has supported elected officials who have voted against charter schools. UTLA has maligned donors who make charitable contributions to the Alliance non-profit organization. These charitable donations enabled us to buy our land here and to build our school.

"I want to reiterate that the right to unionize with UTLA or not is yours and yours alone. I appreciate each and every

> one of you and your contributions to our school community. We have poured our time, energy, and love into this school, keeping students at the center of our work and I hope we can continue to do so, in collaborative and innovative ways, in the years to come.
>
> "Thank you for taking the time to read my opinion. My door is always open to you on this issue, or any other issue, idea, or suggestion you may have to improve our school community and to better serve our students."

4. Burton Academy

At all relevant times, Alliance Judy Ivie Burton Technology Academy High School (Burton Academy) employed Rogelio Sanchez, Jr. as its principal. On April 27, Principal Sanchez sent the following e-mail message to all staff at Burton Academy:

> "Dear Burton Tech Family,
>
> "I wanted to take a few minutes of your time because I understand that UTLA may be ramping up its efforts to convince Alliance teachers and counselors, including those at Burton, to sign on with UTLA. To preface, I want to say that I respect everyone's opinion on this issue. The decision to unionize with UTLA or to retain an independent

Alliance is each person's right to make. I want only to share my opinion with you, which you may or may not find helpful in making your own informed decision.

"I want to begin by acknowledging our school's success and what we have in place today that I believe helps our students to thrive here at Burton, in college and beyond. We have a unique instructional program at Burton. We can respond to student performance data immediately to address their current needs. Together, we can plan for proactive measures in the best interest of our particular students. We do not have to wait for what to be told to do and we do not have to adhere to a rigid set of policies and procedures that may impede our efforts for student success.

"I am so proud of the collaborative team of teachers we have at our school. We have an open-door policy and work together to ensure our instructional program can be adapted to serve the needs of every single student. In my opinion, it is this flexibility and autonomy that enable us to outperform the neighboring schools. Our school's autonomy provides our students with more opportunities to persevere through college so that ultimately, they can be

> stronger agents of change in the community and society at large.
>
> "I cannot predict the future, but I worry that UTLA would make our school more like some of the district schools that operate under the 400-page UTLA contract. I worry that over time, that the success and well-being of our students might be in threatened by UTLA's 'one size fits all' model. It might slow down our progress, or worse, our students' success and opportunities might be in jeopardy. My fear is that the UTLA/LAUSD model is not the best one to serve Burton students. Our students deserve the very best from us, not a simulated version of an educational model that Burton families have told us is broken and has failed their children year in and year out.
>
> "As always, my door is always open for conversations about this issue, and any others that are on your mind. This is my professional home. I want to see our team here continue to thrive.
>
> "Thanks for your attention. I wish you all a great weekend."

5. Collins School

At all relevant times, Alliance Collins Family College-Ready High School (Collins School) employed

Robert Delfino as its principal. On May 9, Principal Delfino sent the following e-mail message to all staff at Collins School:

> "Good afternoon Collins Family,
>
> "It's Teacher Appreciation Week and also a hectic time of the school year. Testing takes a major toll on our students and staff, so I know the greatest gift I could provide you this week was the gift of time by not having a PD agenda today. The atmosphere was so positive together this afternoon as our students also recognized the amazing work you all do.
> I also hope you enjoyed the space to think and socialize with your peers. It pains me to potentially dampen that mood.
>
> "However, the current times at Alliance are too unpredictable and concerning for me to not take a few minutes right now to address the elephant in the room. We all know about the unionization of Alliance Gertz HS & Merkin MS, Burton, and MS#5. Based on UTLA's public statements, they clearly will be ramping up their efforts to unionize more Alliance schools. But I wonder how much you know about how the culture at those schools has been since last week?

"Merkin teachers have raised numerous complaints about UTLA's petition to represent all of them even though UTLA only obtained majority support at Gertz. Many Merkin teachers were blindsided by the card check and, even after the petition, have been excluded from union discussions concerning future bargaining. I find it very troubling and difficult to make sense of teachers advocating for more voice while excluding the voice of their own peers. I find it hard to believe how the level of collaboration among teachers would continue to be strong on a campus if teachers feel blindsided and excluded from big decisions. These concerns are on top of those I've had regarding complaints on bullying during organizing.

"We teach our students the importance of respecting one another's personal space, opinions, and to be honest with one another. I worry about the impact adults could have on our students if they do not model these behaviors. I want to remind you that the decision whether or not to unionize is your right to make, a decision to be made based on whatever reasons and information you decide. Still, I wonder what you would have to lose by waiting to see if the promises that have been claimed by unionizing efforts will actually play out?

I don't know if any of you share this wonder, and you don't need to, these are just my thoughts.

"Lastly, I've also heard that there are some UTLA supporters who are telling others that remarks like the ones I am sharing with you today, or the personal story that Peter shared with you a few weeks ago are being written by Home Office or forced on administrators as part of some vitriolic anti-union campaign. Nothing could be further from the truth. It is insulting to think otherwise. And, incredibly demeaning and divisive to spread this rumor across schools. Given the litigious nature of UTLA, both Peter and I vetted our remarks with legal counsel. But let me be crystal clear: I wrote these words. Peter wrote his.

"I'm incredibly proud of what we've been able to do for our students in a collaborative environment these past years. Based on the complaints of exclusion and pressuring for signatures, I'm concerned about the future. I don't have a crystal ball, but my concerns are sincere and I care way too much about the work we have done together to remain silent. Thank you for hearing me out on this issue."

6. <u>Gertz-Merkin Complex</u>

At all relevant times, Alliance Gertz-Ressler/Richard Merkin 6-12 Complex (Gertz-Merkin Complex) employed Meghan Van Pelt and Stephanie Tsai as its principals and Roman Guerra as its assistant principal. On April 30, Principal Van Pelt sent the following e-mail message to all staff at Gertz-Merkin Complex:[7]

> "Good morning RMMS Team,
>
> "As some of you may know, this Spring is the beginning of the fourth year of UTLA's organizing campaign at Alliance. UTLA has now become a regular presence at Merkin, both before school and after school, and for some of you, at your home or on your personal cell phone. Given the increase in efforts most recently to convince Merkin and other Alliance teachers and counselors to sign on with the UTLA, I wanted to take a few minutes to re-share my thoughts with all of you. I also wanted to provide a space for our APs to share theirs – as I feel that their voices are equally as important.
>
> "Let me be clear as I was a year ago – I respect everyone's opinion on this issue.

---

[7] The Gertz-Merkin Complex consists of Alliance Richard Merkin Middle School (Merkin Middle School) and Alliance Gertz-Ressler High School (Gertz High School). Van Pelt was the principal of Merkin Middle School.

The decision to unionize with UTLA or to retain an independent Alliance is your decision to make. I want only to share my opinion with all of you, which you may or may not find helpful in making your own decision about UTLA.

"When I spoke with you last year, I shared my experiences as a founding teacher of an Alliance school. I also discussed the incredible progress I have seen over the last 11 years that was a direct result of collaboration among teachers, administrators and the home office. For over a decade, we have gone from strength to strength. All of this was accomplished in an independent Alliance not controlled by UTLA.

"I am incredibly proud of all the hard work that we continue to do together, collaboratively, as a team here at Merkin. We have made so much progress this year and I know that we will continue to strive to create change for our Trailblazers. This is what makes Merkin so great – we can respond to our students' needs, both academic and social- emotional, immediately. Together, we can plan for proactive measures in the best interest of our students. We do not have to wait for what to be told to do and we do not have to adhere to a rigid set of policies and

procedures that may impede our efforts for student success.

"If there are issues here at our school or across the Alliance that concern you, let's do what we have done consistently here at Merkin – identify our unique issues and work collaboratively to solve them in a way that is the best for our school. I certainly don't want teachers from other schools telling us what they think is best for our students and our school. I want to retain the autonomy and flexibility we have here at Merkin. I do not want to have our team here locked into a 400-page contract full of standardized rules and regulations written by UTLA.

"Most importantly, as we are a Complex, I do not want decisions to be made for us by the teachers at Gertz, who, given their higher enrollment and larger number of staff, would always have the majority in a vote.

"I continue to hear from a number of staff who say that they would leave if Alliance unionized with UTLA. They can't afford the dues, they dislike the rules imposed by UTLA, and they can't stand the loss of freedom and flexibility that we currently have. I worry what this would do to our team and our Trailblazers.

> "I am also personally concerned about UTLA's opposition to charter schools. UTLA has regularly sponsored or supported legislation that would make it more difficult for schools like Merkin to get authorized or renewed. This is especially important to me and for our team as we work this year on our charter petition renewal in order to continue to provide a wonderful school and instructional program [to] our students and families.
>
> "I want to reiterate that the right to unionize with UTLA or not is yours and yours alone. I appreciate and value each of you as part of the special community we have here at Merkin. Thank you for your time and for allowing me to be vulnerable by sharing my experiences in the Alliance and opinions about UTLA. My door is always open to you on this issue, or any other issue, idea or suggestion you may have to improve our school community and to better serve our Trailblazers."

On May 1, Principal Tsai sent the following e-mail message to all staff at Gertz-Merkin Complex:[8]

> "Hello Gertz-Ressler Family,

[8] Tsai was the principal of the Gertz High School portion of the Gertz-Merkin Complex.

"Given the recent increase in efforts to convince Gertz- Merkin and other Alliance teachers and counselors to sign on with UTLA, I wanted to share my thoughts with all of you on this issue.

"I respect the opinions of each and every one of you on the unionization issue. The decision to unionize with UTLA or to retain an independent Alliance is your right, as an individual professional, to make; however, it has significant consequences for your colleagues, our students, and our school culture so it is a decision that should not be taken lightly. I have been largely silent on this issue but it is one that I feel strongly about.

"This Spring, we are entering the fourth year of UTLA's organizing campaign at Alliance. UTLA representatives have become a frequent presence here at Gertz-Merkin, in our classrooms, halls, outside, our parking lot, and some of you have received visits to your homes or calls on the phone. Some of you have shared privately that you feel harassed by UTLA representatives visiting you during prep times, breaks, and after school.

"Some of you have also shared with me that you do not wish to work for an

Alliance unionized by UTLA. I, too, would strongly consider resigning as your Principal, should UTLA become the exclusive bargaining representative for Alliance teachers and counselors.

"Currently, our team is in the months-long process of writing our charter renewal petition, meeting with policymakers, mobilizing parents, and other advocacy efforts in order to inform them about the transformative work we have done here with scholars to ensure our charter is renewed for another five years. It is disheartening to know that concurrently, UTLA and CTA are actively working to support legislation that puts our charter renewal in jeopardy.

"When I graduated from the Masters in Teaching program at USC, my cohort of new teachers left excited to transform Los Angeles as 'change agents' in urban, public schools. I was fortunate to be hired as a teacher at Alliance Gertz-Ressler High School while many of my classmates were bounced from school to school within LAUSD or pink- slipped within the first year or two. Despite being dues- paying members of UTLA, their union representatives did nothing to help my friends as the decisions were based on seniority rules in the UTLA contract, not student need.

"As a founding member of two Alliance schools, I know we have always found pride in outperforming LAUSD schools academically and providing safer, more supportive school environments for our scholars and staff. I have shared with you before that our visitors always comment on how well behaved and respectful our students are compared to those in LAUSD schools. Given our open enrollment as a public school, that speaks volumes about our support structure and our scholars' ability to rise to the challenge when we set our expectations high.

"Additionally, the organizational health work within Alliance, a particular focus for us at Gertz over the past two years, to regularly collect and act on feedback, promote growth and leadership opportunities for educators, and make sure our school is not just a best place to learn but also a best place to work has resulted in continuously increasing Staff Satisfaction and our Best Place to Work ratings.

"Within my own household, my husband and I have grown as educators within the Alliance from Student Teacher and Teacher, to Department Chairs, and Club Advisors, to Instructional Coaches, to Assistant Principals, and me as

Principal. Along the way, we have been provided a tremendous amount of mentorship, support, development opportunities, and opportunities for sharing our voice as founding TAP members, TCRP pilot teachers, Department Chairs, and Coaches, in order to shape our schools and our organization. As a family of 5, our dental, health, and vision benefits are all covered through Alliance and we saw teacher salary potential increase by approximately $30,000 over a span of just a few years, which benefited our growing family tremendously.

"If there are any issues here at our school or across the Alliance that concern you, you know that you can bring them directly to me or a member of my Administration team, or your ILT or CULT representatives, and we will work collaboratively to address them. Additionally, there are many other avenues for teacher and counselor voice[s] to be heard both anonymously and face to face through frequent surveys and focus groups hosted on our campus by our CEO and other Home Office teams. Also, we send two representatives from Gertz to the Teacher Advisory Panel and another to the Executive Educator Council to meet regularly with Home Office Chiefs, Vice Presidents, and Directors.

"This year, our Instructional Leadership Team has become the driving force behind our site Professional Development and we have been able to shift to PD that is driven by weekly teacher feedback surveys as well as what we see in our classrooms and has growth in teacher practice at the center. Our CULTure Leadership Team works together to revise Gertz'[s] policies and use data to drive site-based response to issues on campus. Many of you have told me how proud you are of the collaborative work we have done to shift our school culture. I am looking forward to our continued work to improve further.

"I don't want educators from other schools or representatives not from Gertz dictating what they think is best for our students and our school. Nor do I want our team of educators and leaders to have their hands tied by a contract like that which exists for my friends in LAUSD: 430 pages of rules and restrictions. For your reference, a copy of that contract is attached here. The contract begins with several pages on the rights of the union itself, not the educators.

"Skim through and you will find that many of the issues you have told me are

pain points (i.e., being asked to meet with an Administrator on a prep period, being asked to cover a class during a prep period, having a meeting scheduled during a pupil free day or prep period, conferencing with parents during a prep period, being asked to participate in a meeting after school, having to share classrooms, traveling teachers, class sizes exceeding 25, etc.) are also issues within LAUSD and are allowed for under this union- negotiated contract.

"Under UTLA, I worry that our ability to adapt to unique issues we are facing on our campus will be jeopardized as we will need to wait for negotiations to go to a collective bargaining table and be put into a contract before we can act.

"Again, the decision to unionize with UTLA or not is your individual right to make.

"I appreciate each and every one of you and your contributions to our school community. We have poured our time, energy, and love into this school, supporting our colleagues, and keeping students at the center of our work and I hope we can continue to do so, in collaborative and innovative ways, in the year to come.

> "Thank you for taking the time to read my opinion. My door is open should you wish to discuss this or any other concern or suggestion you have to improve our learning community."

On May 3, Tsai sent another e-mail message to all staff at the Gertz-Merkin Complex:

> "Dear Gertz-Ressler Family,
>
> "In a handful of separate conversations today, Roman and I were accused of having the emails we sent earlier this week either written by our Home Office staff against our will or that we were somehow forced to write them. Furthermore, we weren't *asked* whether we wrote or chose to send the emails, but rather were *told* this was already 'known.' So, let's set the record straight. Nobody else wrote our emails, we wrote them. It was time for the two of us to share our thoughts and opinions with you and finally join in, to the extent that we can, on a conversation that has been happening daily on our campus for the entire time we have been your Principal and AP. Given how litigious UTLA has been, we did have each of our messages reviewed by legal counsel.
>
> "Roman and I are deeply invested in Gertz and have worked hard to build relationships and open lines of

> communication with each of you so that we can support you and our school community. These kind of personal attacks and spreading of misinformation are one of the major reasons I am concerned about what a UTLA presence will do to our culture and the relationships built thus far. I want us to be a school community that assumes good intentions, brings up issues openly and honestly with each other, discusses difficult issues civilly, and works together towards solutions."

On May 14, Assistant Principal Guerra sent the following e-mail message to all Alliance Marine Innovation & Technology 6-12 Complex (Marine Complex)[9] staff:

> "As you know, UTLA has reported majority support among teachers and counselors at Gertz-Ressler and Merkin for UTLA to become their exclusive bargaining representative. A number of you have reached out to me over the past week to ask how I am doing and to learn what the mood is on our campus now.

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[9] Although the record contains no information about the relationship between the Marine Complex and the Gertz-Merkin Complex, it appears from the e-mail quoted below that the Marine Complex is part of the Gertz-Merkin Complex.

"Over the past week, the vibe on our campus has been uncomfortable and divisive. Teachers are arguing with each other in the staff lounge, creating awkward situations for other employees. Staff members have questioned why the die-hard loyalty to UTLA, why the aggressiveness in getting people to sign, why the continued push to unionize other Alliance schools even though they already have enough signatures at Gertz-Merkin, and why there is not a clear agenda or consensus on what to ask for in a contract negotiation.

"Teachers have been sent to talk to other teachers with planned talking points to convince them to support union activities. Others have broken down crying because they have felt betrayed and disrespected by their colleagues. "Some have asked if signers are willing to fund the UTLA annual dues for non-signers.

"Some staff have come to our Administrative Team to explain why they signed on to be represented by UTLA and attest that none of it was due to any wrongdoing of the Administrative Team. At the same time, others are coming to share the scare tactics used to get them to sign, including colleagues scaring them with

exaggerated stories of what Administration can do to them and thus, why they need protection.

“Some employees have told us they would fight for us if the Alliance tried to fire the Administrative Team. This is strange to hear because we feel incredibly supported by the Home Office and know that our jobs are not on the line because of unionization. Why are our staff members trying to turn us against the Home Office? If anything, the uncomfortable tensions here in our daily interactions are what would drive us away from this school.

“Unfortunately, several strong educators have recently indicated hesitation about returning next year despite having 100% of certificated staff originally say they intended to return a few months ago. At the time of a teacher shortage, it would be detrimental for our scholars and community to lose experienced, heavily involved, Master teachers due to political tension among adults.

“Employees have come with technical questions about how and when they would have the ability to back out of their Agreements should negotiations not be made in their favor or their contract changes mid-year. We know

how detrimental it is for our schools to lose teachers and counselors and I worry that some are going to leave us over the summer or during the school year due to unpredictable changes. Staff turnover is something UTLA and its supporters claim they want to counter yet these questions and concerns indicate certificated staff retention is . . . now in jeopardy at our school.

"Cap and gown orders had to be cancelled because some teachers decided to not participate in this year's graduation ceremony, which is being held on a Saturday this year.
After all, it is not mandatory per their Agreement. What kind of message does that send to our scholars if we have to mandate that teachers show up and call their names across a graduation stage?

"Students have come to ask questions like[:] 'Why are our teachers mad?' 'Did we do something wrong?' 'Do they not like their jobs?' Our high school[ ] already struggles with widespread positive student-staff relationships. I worry that this is reversing the progress we have made.

"Parents have been approached by staff members and asked for their contact information, invited to UTLA meetings that have nothing to do with their own

kids. All in the name of protection, seniority, and job security for teachers who earn 2x to 3x our average family's income. Parents have asked us 'How will our kids benefit from this?' to which we are not sure how to answer. In my opinion, scholars have not and would not benefit from UTLA.

"Teachers at other[ ] schools I have worked at say they have been approached by UTLA, saying Administration Teams from schools undergoing card check are giving them all they want, that the union has put fear in us to give in to everything. This is completely untrue, here at Gertz it is and always will be business as usual because I will continue to work tirelessly to ensure my students, teachers, and counselors have what they need, just as I always have. Teachers can still reach out to me at any time and I will respond – not because I am afraid, but because that is who I am and what I do every day. I will continue to voice my opinion on anything that I believe puts my students, our students, and their education in jeopardy because their education is what I signed up for when I signed on to work for Alliance. I encourage you to reflect on your WHY. What brought you to Alliance and what

> has kept you here? Whose lives are you here to impact?
>
> "Of course, teachers and counselors have the right to disagree, develop their own opinions, and make decisions regarding UTLA for whatever reason they choose. I have and will continue to respect that right. At the same time, I care too much about our students to remain completely silent about my opinions and experiences. However, ultimately, I can only share, it is for teachers and counselors to decide."

7. Leichtman-Levine School

At all relevant times, Alliance Leichtman-Levine Family Foundation Environmental Science and Technology High School (Leichtman-Levine School) employed Andrés Versage as its principal. On May 2, Principal Versage sent the following e-mail message on behalf of himself and Assistant Principals Eli Reyna and Stephanie Lee to all staff at the Leichtman-Levine School:[10]

> "Dear ESAT Faculty:
>
> "It is an honor to serve as your Administrators and to work side by side

[10] Due to a clerical error, the First Amended Complaint in this case substituted another message for the one reproduced below, which nonetheless correctly appeared in the original Complaint. At the hearing, the parties stipulated to the message below as the correct one.

with you all daily to make ESAT the best school that it can be and to support our students' success. With this appreciation as a backdrop, we wanted to take a moment to share with you some of the things we feel are special about ESAT and why we appreciate what we have in this school and in each other.

"At the same [time], we recognize that this letter comes at a time when faculty is considering the possibility of joining a teachers union. We recognize the decision to unionize, to unionize with UTLA or to remain independent as your right. We respect differing opinions on this matter, but also feel that it is in the conversation's best interest for us to share our thoughts on sustaining our success.

"**From Andrés**

"At ESAT we have always placed a premium on our teachers, teacher autonomy, and teacher leadership. We recognize that it is in the best interest of our students to find the best teacher [*sic*] and let them do what they know how to do. To support this, as a school have fought to keep our enrollment numbers low so that we can maintain modest class sizes. This has not been easy, as lower class sizes means lower

revenue, but it has been commitment we believe in and so do what we can to balance the budget while still providing the resources that we need to teach our students. The relationships and collaboration that we have as a staff are the basis for the successes that we have had at ESAT and will continue to have in the future.

"-Andrés

"**From Eli**

"A few years ago, when the unionization efforts were first beginning, I attended a couple of meetings with UTLA representatives. Multiple people came to my apartment to discuss the issues. I listened to their arguments, and definitely considered joining the movement.

"I figured that having a union was inherently better than not having one. However, as I examined closer and met some of the people involved, I genuinely came to the conclusion that I didn't want to be part of UTLA in particular. Here was my thought process:

"For one, UTLA has a negative relationship with charter schools. They support anti-charter school board members and have statements on

record calling for the rolling back of charters. As a proud supporter of charter schools, this was hard for me to reconcile. Why did I want to be represented by an organization with these views so contrary to my own? There is no doubt that within the city of Los Angeles, charter schools have had a positive effect on kids.

"Secondly, the UTLA members who came to my apartment to discuss always seemed to be making promises that I knew very well couldn't all be fulfilled. There was something very dogmatic and coded about their arguments. The discussions always felt to me like they were reading talking points.

"They'd talk about reducing class size, and I would retort how my biggest class was 28 (when the contract in LAUSD allows for well into the mid 30s).

"They'd talk about 'fair' salaries, and I'd note how teachers were regularly making 60, 70, even 80,000 dollars per year in their second and third years teaching . . . and we didn't have to follow the rigid 'last in, first out' policies.

"They'd talk about administrators like they were these dark, shadowy figures to be feared . . . who acted out of malice.

There was always an air of paranoia. I would tell them that I had a really great relationship with my administrators and was met with a look of disbelief.

“At ESAT, the things that we have done to support our students over these past 9 years are truly wonderful. Part of this is due to the open line of communication between administrators and teachers, and the push for humanity over bureaucracy. I absolutely love the way we regularly work together to swiftly make changes—to modify curriculum, discuss teaching practices, create after school events, and so many other things to support our students.

“There are a lot of promises that can be made in a situation like this. But the fact of the matter is: In a bargaining situation, everything is on the table. If we adopted LAUSD’s pay scale tomorrow, almost every single teacher at our school would receive a significant pay cut. There is no guarantee class sizes would be smaller. Communication between administrators and teachers could become much more adversarial, which I would hate to see.

“As a former teacher, I genuinely understand the appeal of the concept of unionization. In the end, the choice is completely up to you, and I will respect

whatever choice you make. However, I think that the unintended consequences far outweigh UTLA's promises that have no guarantees of being fulfilled.

"-Eli Reyna

"**From Steph**

"The work that we do is difficult. The stakes are exceedingly high. What we do deeply and profoundly impacts our students and the community that we love and serve. When I first considered coming to ESAT, I recall being impressed with the family culture and the autonomy that was given the teachers. I was told that there were leadership opportunities made available. I made the 3 hour daily commute and still do because I believe in the work that we do together. When I first started teaching, administrators advocated for us and changes were made based on our feedback. I was never forced to use curriculum that my department was against.
Even as a first year ESAT teacher, my voice was valued and I was heard.

"My letter to you was not mandated by the Alliance Home Office; this is truly coming from a colleague that would like to open the doors of communication. Please let me preface by saying I am not

anti-union. I am simply anti-UTLA. For those that were here at ESAT when I was still teaching, I recall our teacher lounge conversations regarding what this would possibly mean for ESAT. We discussed how UTLA was an anti-charter organization and we questioned UTLA's motive. I do not want ESAT to be another LAUSD school. I do not want us to be a first-in and first-out [*sic*] district.

"I can't speak for other Alliance schools, but I can speak for ours. We have always had open communication and we always push to do better for our students. I urge you to consider what it would possibly mean to ESAT if Alliance unionized. I fear that UTLA will set up an 'us-versus-them' environment and it will ultimately harm staff morale and school culture. UTLA may mention that they promote the collective voice; but what about the individual voice?

"I truly value you. I value what we have built and what we continue to build here at ESAT. I want us to be a place where we can serve our students best. I appreciate your time and allowing me the opportunity to share my opinions on this important matter regarding ESAT.

"-Stephanie Lee

> "As your Admin team, we are proud to support you and to work with you every day to improve our students' future. We look forward to continuing to develop open relationships, to support your growth, to offer curricular flexibility, and providing what our students need to succeed. If you have any questions, issues or concerns that you would like to discuss further, please reach out at any time. Thank you for being partners with us in this important work that we do.
>
> "Andrés, Eli and Stephanie"

8. Academy No. 5

At all relevant times, Alliance College-Ready Middle Academy No. 5 (Academy No. 5) employed Jose Kubes as its principal. On April 29, Principal Kubes sent the following e-mail message to all staff at Academy No. 5:

> "Greetings Condor Family,
>
> "I'd like to begin this correspondence by acknowledging that the last few weeks have been stressful for many of us. This is a hard time of year – with testing and grading and other near-end-of year activities. I know that our budget and staffing situation for next year has also been difficult. It's been difficult for me too.

"I also know that it is important for you to always know where I stand and what is on my mind.

"Because I understand that UTLA may be ramping up its efforts to convince Alliance teachers, including those at CRMA5, to sign on with their union, I find it important to let you know where I stand on this matter:

"First of all, I respect everyone's opinion on this issue. The decision to unionize or to retain an independent Alliance is each person's right to make. Exercising this right is not a concern for me. However, the idea of unionizing with UTLA brings me much worry.

"I started my career in education in 1998, as a teacher at Manual Arts High School in South Los Angeles. I was a member of UTLA and found myself frustrated by decisions UTLA made to appease adults over protecting students. I came into this work with a single focus: to fight for kids. As a UTLA member I often found myself without a voice, and when I attempted to stop paying dues I was told by the union rep that if I did so it would be the end of my career. Out of fear, I kept paying. UTLA dues are now $1,000 per year.

"As a first year teacher, I was given the worst caseload filled with 9th grade ELA and ESL classes because veteran teachers did not want to teach those courses or those children. As a consequence of the UTLA position that allowed veteran teachers to pick the courses they wanted to teach, I had to take what one colleague called 'the leftovers.' 'Look Jose,' he said, 'just put in your time and in a few years down the road you will have the power to pick your classes first.' I found this appalling, and when I reached out to my administration they said that their hands were tied because all they could do was follow the rules of the UTLA contract.

"When I moved into an Assistant Principal role in 2010, I saw it as an opportunity to better serve both students and teachers. At the school there were many teachers who were eager to develop their instructional practice, and I saw it as my duty to support their growth.

"One specific teacher (Let's call him Mr. D) was in much need of support. Mr. D had a night job, and never planned his lessons in advance. He would buy his students pizza once a week and give them all Cs if they just 'stayed quiet and did not say anything.' Mr. D played

lots of movies and told students that he would give them passing grades for quietly watching. After extensive coaching and support, I finally put him on our school's version of a PIP. Immediately, his UTLA rep accused me of being a racist. The final straw came near the end of the year when Mr. D requested a transfer to another school. The UTLA rep asked me to change Mr. D's evaluation scores so he could transfer and 'then Mr. D will be out of your life.'

"This brings me to my worry. During the coming weeks we will begin the collaborative work of transforming CRMA5: We will review and decide upon next year's master schedule together, we will discuss how to better leverage advisory time, we will brainstorm in an open and collaborative process how to better serve you next year during PD. We will embark on a journey into PBIS that only we, the Condor Family, can truly understand.

"If UTLA succeeds in obtaining a majority of signatures on petitions or authorization cards (even if obtained through pressure tactics or deception), it is UTLA, not some other union, that will become the exclusive representative for you and other Alliance teachers and counselors.

"I value the independence and autonomy we have as an individual Alliance school. I worry that a UTLA contract might require CRMA5 to follow a long set of bureaucratic directives that are uniform across all schools. I worry that a small group of UTLA executives would negotiate terms for our teachers regardless of anyone's individual values and voice.

[¶] . . . [¶]

"Currently UTLA and its parent union CTA, the California Teachers Association, routinely use its members' dues to support legislation opposing charter schools. Recent bills impose caps on charter schools, restrict charter school flexibility, and make it easier to deny charters the ability to open or be renewed. CTA and UTLA recently have sponsored or supported bills that would dismantle the ability of charter schools like ours to appeal if we were denied a renewal by LAUSD. Our school is up for renewal next year. I don't want this legislation to put that at risk.

"I know next year will bring many new changes for us, but these changes bring the opportunity to make CRMA5 a teacher driven school. Transformation through collaboration begins with the

> kinds of steps we have taken this year. I look forward to our work ahead, not because we will be driven by a 400-page union contract that values some teachers over others, but because our work will be driven by every teacher's voice as an equal partner. This sense of equal voice and collaboration is something I don't want us to lose here at our school. Based on my personal experience with UTLA, I am worried about losing exactly that.
>
> "Thank you for opening yourself to my personal experience and my opinions on this issue. As we continue to build our Condor community, I want you to know that I will always speak my truth, and hope and expect that you will do the same. This is how we do the slow, difficult work of building a learning community together – for ourselves and for the students and community we serve."

On May 2, UTLA filed with PERB three separate petitions to represent certificated employees at Gertz-Merkin Complex, Academy No. 5, and Burton Academy. Each petition was accompanied by proof of support from the majority of certificated employees then employed by that school.

PROCEDURAL HISTORY

On June 4, UTLA filed 11 separate unfair practice charges against various individual Alliance Schools. On November 5, OGC issued complaints in Case Nos. LA-CE-6362-E through LA-CE-6366-E. On November 6, OGC issued complaints in Case Nos. LA-CE-6372-E through LA-CE-6377-E. In pertinent part, the complaints alleged that each Alliance School interfered with employee and union rights in violation of EERA section 3543.5, subdivisions (a) and (b), when its agents e-mailed six different messages to certificated employees at each Alliance School. Eight of the complaints further alleged that the named Alliance School interfered with employee and union rights when its principal and/or assistant principal, acting as the School's agent, e-mailed one or more messages to the School's certificated employees. The complaints alleged that by the same conduct each Alliance School deterred or discouraged public employees from becoming or remaining members of an employee organization in violation of PEDD section 3550.

On November 30, each Alliance School filed an answer to the complaint against it. As relevant here, all answers admitted that Alliance CMO e-mailed the messages to certificated employees at each Alliance School but denied that in doing so Alliance CMO acted as the School's agent. Eight answers similarly admitted that the principal and/or assistant principal at the named Alliance School e-mailed one or more messages to the certificated employees at the School but denied that in doing so the principals and/or assistant principals acted as the School's agent. The answers further denied that sending the e-mails constituted an unfair practice. Each answer pled as an affirmative defense that the

allegations in the complaints were "predicated upon privileged statements under the law, including, but not limited to, the California and Federal Constitutions."

On December 17, all 11 cases were consolidated for formal hearing.

On March 25, 2019, the ALJ granted UTLA's Motion to Amend Complaints and Withdraw Allegations. The ALJ accordingly issued a First Amended Complaint in each of these cases that, in pertinent part, deleted all the allegations regarding two of the six messages that were e-mailed to certificated employees at each Alliance School, and deleted some of the allegations regarding two other messages.

On July 16, 2019, Alliance Schools submitted five questions to the ALJ about the legal standard for assessing a violation of PEDD section 3550. After ordering and receiving briefing from the parties on this issue, the ALJ deferred ruling on it until after the hearing and submission of post-hearing briefs.

Around this same time, a dispute arose over a subpoena duces tecum served by Alliance Schools on UTLA's custodian of records and president. To resolve the dispute, the parties memorialized the following joint stipulations at the August 7, 2019 pre-hearing conference:

> "1. Charging Party United Teachers Los Angeles's (UTLA's) theory of the above-captioned cases (including under both Government Code sections 3543.5 and 3550) does not require assessment of the truth or falsity of statements of fact

contained in the Complaints in these cases.

"2. UTLA will not argue in the above-captioned cases that any statement of fact contained in the Complaints in these cases is unlawful because of any omission of material fact.

"3. For the sole and exclusive purpose of any affirmative defense that Respondents Alliance Marc & Ava [*sic*] Stern Math & Science HS et al. (Alliance Schools) may raise in the above-captioned cases only, UTLA will not dispute the veracity of any statement of fact contained in the Complaints in these cases.

"4. The Alliance Schools will not require or pursue compliance with or enforcement of the Subpoenas Duces Tecum signed by Administrative Law Judge Bernhard Rohrbacher on July 16, 2019 and subsequently served on UTLA's Custodian of Records and Alex Caputo-Pearl.

"5. The Parties agree that these Joint Stipulations and all the agreements contained herein are to be used for the sole purpose of these proceedings and shall not be used, distributed, or displayed for any other purpose, in any other context, or in any other form.

> "The Parties reserve all rights and arguments not expressly waived herein."

On August 8, 2019, Alliance Schools filed a Motion to Amend Answers seeking to add several affirmative defenses, including that the e-mails were justified "based on operational need, legitimate business purpose, special circumstances, and/or business necessity." The ALJ granted the motion during the formal hearing, which was held on August 14 and 16, 2019. On October 15, 2019, the parties submitted post- hearing briefs.

The ALJ issued the proposed decision on January 24, 2020. The ALJ first dismissed the interference allegations because the e-mail messages did not contain a "threat of reprisal or force or promise of benefit," as necessary to constitute unlawful coercive speech under PERB's decisional law. Turning to the legal standard to state a violation of PEDD section 3550, the ALJ concluded that section 3550 does not create a new type of unfair practice but merely strengthens existing protections against interference and discrimination. Because the e-mails did not interfere with EERA- protected rights, the ALJ concluded that they also did not violate section 3550. Having found that none of the e-mails was unlawful, the ALJ declined to decide whether in sending the e-mails Alliance CMO acted as the agent of Alliance Schools or the principals and assistant principals acted as agents of their respective schools.

UTLA filed timely exceptions to the proposed decision, arguing that the ALJ improperly construed

section 3550 as mirroring PERB's existing interference standard and erred by declining to decide whether Alliance CMO and the principals and assistant principals acted as agents of Alliance Schools. Alliance Schools filed timely cross-exceptions, which argued that section 3550 is unconstitutional.[11]

On March 1, 2021, the Board issued *Regents of the University of California* (2021) PERB Decision No. 2755-H (*Regents I*) and *Regents of the University of California* (2021) PERB Decision No. 2756-H (*Regents II*), which articulated for the first time the legal standard for analyzing section 3550 allegations.

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[11] Alliance Schools also purported to "preserve" an argument that Civil Code section 47 privileged some or all of the e-mails at issue. PERB Regulation 32300, subdivision (a)(3) "requires the statement of exceptions to identify the page or part of the decision to which each exception is taken, state the grounds for each exception, and to designate by page or exhibit number the portions of the record, if any, relied on for each exception." (*County of Santa Clara* (2018) PERB Decision No. 2613-M, p. 6.) "Compliance with the regulation is required to afford the responding party and the Board an adequate opportunity to address the issues raised." (*Ibid.*) Alliance Schools failed to explain the grounds for this exception, and thus the requirements of PERB Regulation 32300 have not been met. We accordingly find that Alliance Schools waived any argument based upon Civil Code section 47. (See *id.* at pp. 6-7 [party's failure to advance argument in its exceptions resulted in the Board concluding it had abandoned the argument].)

The following day, we asked the parties for supplemental briefing on how the newly-announced legal standard "applies to the facts of this case." After mutually-agreed extensions of time, the parties submitted supplemental briefing on July 2, 2021.

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*County of Santa Clara* (2019) PERB Decision No. 2629-M, p. 6.) Under this standard, we review the entire record and are free to make different factual findings and reach different legal conclusions than those in the proposed decision. (*City of Milpitas* (2015) PERB Decision No. 2443-M, p. 12.)

Before turning to UTLA's exceptions, we briefly address Alliance Schools' argument that section 3550 violates the free speech protections of the federal and California constitutions. Article III, section 3.5 of the California Constitution prohibits an administrative agency from declaring a statute unconstitutional, and from refusing to enforce a statute on constitutional grounds unless an appellate court has ruled the statute is unconstitutional. (Cal. Const., art. III, § 3.5, subds. (a), (b).) PERB thus lacks authority to rule on the constitutional issues raised in Alliance Schools' briefing. (*California Assn. of Professional Scientists v. Schwarzenegger* (2006) 137 Cal.App.4th 371, 381-382; *Santa Clara County Superior Court* (2014) PERB Decision No. 2394-C,

p. 22.) We accordingly do not address Alliance Schools' constitutional arguments.[12]

UTLA's exceptions claim the ALJ erred in two ways. First, UTLA argues the ALJ improperly interpreted PEDD section 3550 as mirroring PERB's interference standard. After the proposed decision issued in this case, we held in *Regents I* that section 3550 creates a new type of unfair practice, and we articulated the legal standard for analyzing section 3550 allegations. We thus agree that the ALJ did not apply the correct legal standard. But before applying the *Regents I* standard to the e-mails, we address UTLA's second claim: that the ALJ erred in declining to decide whether Alliance CMO and the principals and assistant principals acted as Alliance Schools' agents in e-mailing certificated employees. After all, if Alliance Schools cannot be held liable for the e-mails, there is no reason to analyze whether they violated section 3550 or EERA. We thus begin with the agency issue.

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[12] On August 25, 2020, the United States District Court for the Central District of California dismissed a lawsuit challenging the constitutionality of PEDD section 3550. (*Barke v. Banks* (C.D. Cal., Aug. 25, 2020, No. 8-20-CV-00358-JLS-ADS) 2020 WL 7223271.) The court found that plaintiffs, seven individuals who serve on local agency governing boards, lacked standing because as individual elected board members they are not a "public employer" to whom the statute applies. (*Id.* at pp. *4-6.) The court also noted that "under well-established precedent, the public employers themselves are creatures of the state and have 'no privileges or immunities under the federal constitution which [they] may invoke in opposition to the will of its creator.' *Ysursa v. Pocatello Educ. Ass'n*, 555 U.S. 353, 363 (2009)." (*Id.* at p. *6, fn. 11.) As of the date of this decision, plaintiffs' appeal of the dismissal is pending before the United States Court of Appeals for the Ninth Circuit (Case No. 20-56075).

I. Agency

UTLA contends that, in sending the above-quoted e-mails to certificated employees, Alliance CMO and the principals and assistant principals of various Alliance Schools acted as the Schools' agents. "Agency is employed to impose liability on the charged party for the unlawful acts of its employees or representatives even when the principal is not at fault and takes no active part in the action." (*City of San Diego* (2015) PERB Decision No. 2464-M, adopting proposed decision at p. 39, affd. *sub nom. Boling v. Public Employment Relations Board* (2018) 5 Cal.5th 898.) "Although labor boards adhere to common law principles of agency, they routinely apply these principles with reference to the broad, remedial purposes of the statutes they administer, rather than by strict application of concepts governing an employer's responsibility to third parties for the acts of its employees." (*City of San Diego*, *supra*, PERB Decision No. 2464-M, p. 15; *Trustees of the California State University* (2014) PERB Decision No. 2384-H, p. 40; *International Ass'n of Machinists, Tool and Die Makers Lodge No. 35 v. National Labor Relations Board* (1940) 311 U.S. 72, 88.)[13]

The party asserting an agency relationship bears the burden of proving it. (*Inglewood Teachers*

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[13] Although federal judicial and administrative precedent is not binding on PERB, it may provide persuasive guidance in construing California's public sector labor relations statutes. (*Capistrano Unified School District* (2015) PERB Decision No. 2440, p. 15, citing *Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608, 616-617.)

Assn. v. Public Employment Relations Bd. (1991) 227 Cal.App.3d 767, 780.) Agency may be established by showing: (1) the purported agent had actual authority to act on behalf of the employer; (2) the purported agent had apparent authority to act on behalf of the employer; or (3) the employer ratified the purported agent's conduct. (*City of San Diego*, *supra*, PERB Decision No. 2464-M, adopting proposed decision at pp. 38-39.) For the following reasons, we conclude that Alliance CMO acted as Alliance Schools' agent under all three theories, and that the principals and assistant principals acted as agents of their respective Alliance School under both actual and apparent authority principles.

A. Actual Authority

Actual agency exists "when the agent is really employed by the principal." (Civ. Code, § 2299.) "Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess." (Civ. Code, § 2316.) An agent's authority includes the degree of discretion necessary for the agent to carry out the purposes of the agency in accordance with the interests of the principal. (*Skopp v. Weaver* (1976) 16 Cal.3d 432, 439; *Workman v. City of San Diego* (1968) 267 Cal.App.2d 36, 38.) Because an actual agent is employed by the principal, the primary inquiry in assessing actual authority is whether the agent was acting within the scope of his or her authority. (*City of San Diego*, *supra*, PERB Decision No. 2464-M, p. 15; *Inglewood Unified School District* (1990) PERB Decision No. 792, p. 19 (*Inglewood*); *Vista Verde Farms v.*

Agricultural Labor Relations Bd. (1981) 29 Cal.3d 307, 312.)

School principals and assistant principals are actual agents of the school district that employs them. (*Chula Vista Elementary School District* (2004) PERB Decision No. 1647, p. 7 (*Chula Vista*).) While admitting this point, Alliance Schools argue that sending the e-mails was not within the scope of the principals' and assistant principals' authority because they were expressing personal opinions. Yet principals and assistant principals act as employer agents when they communicate with certificated employees they supervise about labor issues affecting their school. (*Id.* at p. 9; *Compton Unified School District* (2003) PERB Decision No. 1518, adopting proposed decision at p. 18 (*Compton*).) In *Chula Vista*, for instance, a principal pressured teachers to be "on his side" in an upcoming election to amend or revoke the school's charter and polled them about how they would vote. The Board found the principal acted with actual authority because "meeting with teachers during the school day at the school site is within a principal's authority." (*Chula Vista*, *supra*, PERB Decision No. 1647, p. 9.)

Like the principal's expression of his views on the upcoming election in *Chula Vista*, Alliance Schools' principals and assistant principals acted within the scope of their actual authority when they communicated with certificated employees at their respective schools about UTLA's organizing campaign. These communications are therefore distinguishable from an elected official's political speech, answer to a constituent question, or other communication where such speech does not manifest employer authority. (Compare *Boling v. Public*

Employment Relations Bd., *supra*, 5 Cal.5th at p. 919 [city mayor who served as designated bargaining representative acted as city's agent for labor law purposes when using powers and resources of mayor's office to alter terms and conditions of employment] with *San Jose/Evergreen Federation of Teachers* (2020) PERB Decision No. 2744, p. 22, fn. 11 [conduct of elected union board members is attributable to union where they have actual or apparent authority, but they play a different role when engaged in internal union political struggle for control of board, and they do not act as union agents in that context].)

As for Alliance CMO, the ASAs expressly state that Alliance CMO will provide each Alliance School with human resources and employee relations services. Also, the charter renewal petitions submitted by each Alliance School to the LAUSD Board of Education state that "Alliance [CMO] provides oversight and monitors adherence by [each Alliance School's] Board of Directors to . . . any applicable law," including EERA, and further state that the Alliance CMO Director of Human Resources must have advanced education or technical experience in labor relations. Just as in *Alliance College Ready Public Schools* (2020) PERB Decision No. 2716, pp. 25-26 (judicial appeal pending), we find these facts establish that Alliance CMO acted as Alliance Schools' actual agent regarding labor relations and human resources matters.
Sending e-mails to Alliance Schools' certificated employees about a labor relations matter—UTLA's organizing campaign—thus was within the scope of Alliance CMO's actual authority under the ASAs.

B. Apparent Authority

Apparent authority is "such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess." (Civ. Code, § 2317.) "PERB and the courts have held that apparent authority to act on behalf of the employer may be found where the manifestations of the employer create a reasonable basis for employees to believe that the employer has authorized the alleged agent to perform the act in question." (*Santa Ana Unified School District* (2013) PERB Decision No. 2332, pp. 9-10, quoting *West Contra Costa County Healthcare District* (2011) PERB Decision No. 2164-M, p. 7.) The inquiry is best framed as whether under the circumstances a reasonable employee would believe the alleged agent "was reflecting company policy and speaking and acting for management." (*Compton*, *supra*, PERB Decision No. 1518, p. 5, fn. 3, quoting *Great Am. Products* (1993) 312 NLRB 962, 963.) This is an objective inquiry. (*City of San Diego*, *supra*, PERB Decision No. 2464-M, p. 18; *Chula Vista*, *supra*, PERB Decision No. 1647, pp. 8-9.)

Ignoring these authorities, Alliance Schools assert that *Inglewood* sets out the proper test for apparent authority: the party asserting agency must "establish representation by the principal (the District) of the agency, justifiable reliance by the party seeking to impose liability on the principal (the teachers)[,] and a change in position resulting from that reliance." (*Inglewood*, *supra*, PERB Decision No. 792, pp. 19-20, citing *Yanchor v. Kagan* (1971) 22 Cal.App.3d 544, 549.) As Member Craib observed in his dissent in *Inglewood*, this test is used to

determine whether a contract entered into by a putative agent is enforceable against the principal, and it does not provide a useful framework for "holding a principal responsible for the wrongful acts of its agents."[14] (*Inglewood*, *supra*, PERB Decision No. 792, pp. 42-43 (dis. opn. of Craib, M.).) We agree with Member Craib's observation, and accordingly overrule *Inglewood* to the extent it requires a party to prove apparent authority by showing justifiable reliance on a principal's representation of agency and a corresponding change in position by the relying party.[15]

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[14] The same is true of the decisions Alliance Schools cite for the proposition that affirmative conduct by the principal is necessary to create an agency relationship.

[15] In *Inglewood Teachers Assn. v. Public Employment Relations Bd.*, *supra*, 227 Cal.App.3d 767, the court found the Board's formulation of the test for apparent authority was not clearly erroneous. (*Id.* at p. 781.) The court did not conclude, however, that this was the only possible formulation of the test. We accordingly are not bound by the court's affirmance of the *Inglewood* test and are free to adopt a different test. (Cf. *Mesa Verde Const. Co. v. Northern California Dist. Council of Laborers* (9th Cir. 1988) 861 F.2d 1124, 1129-1130 [when an appellate court panel affirms the National Labor Relations Board's (NLRB) construction of a statute as reasonable under a deferential standard of review, and does not conduct its own independent construction of the statute, a later panel of the court is free to affirm a different but reasonable interpretation of the statute by the NLRB]; *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.* (1984) 467 U.S. 837, 863-864 ["An initial agency interpretation is not instantly carved in stone. On the contrary, the agency, to engage in informed rulemaking, must consider varying interpretations and the wisdom of its policy on a continuing basis. Moreover, the fact that the agency has adopted different definitions in different contexts adds force to the argument that the definition itself is flexible"]; but see *Association of Graduate Student Employees v.*

Applying the objective test articulated in *Santa Ana Unified School District* and *Compton*, we find that Alliance School principals and assistant principals acted as agents of their respective schools when they sent the e-mails at issue. Principals and assistant principals are the highest-ranking administrators at a school site, and they directly supervise certificated staff at their respective schools. The e-mails were sent via each school's e-mail system by a principal or assistant principal and discussed ongoing labor issues at the school related to UTLA's organizing campaign. Under these circumstances, a reasonable employee would perceive that the e-mails represented the official view of the school. Thus, in using work e-mail addresses to communicate with their subordinates about a labor matter, the principals and assistant principals had both actual and apparent authority to act in an employer capacity.[16]

Public Employment Relations Bd. (1992) 6 Cal.App.4th 1133, 1142 [PERB lacked authority to change test established by California Supreme Court for determining whether student employees are covered under the Higher Education Employer-Employee Relations Act when the Court derived the test from its independent construction of the statute].)

[16] Just as actual authority principles apply differently when a supervisor communicates with subordinates versus when an elected official gives a political speech (see *ante* at p. 47), the same is true in our apparent authority analysis. For instance, an employee hearing a campaign speech decrying public employee unions should not reasonably believe that campaign speech is clothed with the employer's authority. In other contexts, elected officials can act with actual or apparent authority under standard agency principles, such as when they use the power and resources of their offices to make changes to employment conditions. (See *Boling v. Public Employment Relations Bd.*, *supra*, 5 Cal.5th at p. 919.)

Alliance CMO similarly acted with the employer's apparent authority. Under the ASAs, Alliance CMO was responsible for labor relations and human resources matters for each Alliance School. Persons whose duties "include employee or labor relations . . . are generally presumed to speak and act on behalf of the employer" with regard to those subjects. (*City of San Diego*, *supra*, PERB Decision No. 2464-M, p. 23; *Trustees of the California State University*, *supra*, PERB Decision No. 2384-H, p. 41.) Alliance CMO's ASAs also authorize Alliance CMO to regularly develop communication related to school operations and share them with Alliance School employees, including those about labor issues. Here, using the Alliance Schools' e-mail system, Alliance CMO sent via the list serve "news@laalliance.org Alliance News" four e-mails to Alliance School employees about UTLA's organizing campaign. Because the e-mails were consistent with Alliance CMO's authority under the ASAs regarding communication about labor matters, a reasonable employee would perceive that Alliance CMO was speaking on behalf of their school. The Alliance CMO accordingly acted with apparent authority in sending the e-mails.

C. Ratification

UTLA also argues that an agency relationship existed between Alliance CMO and Alliance Schools because the respective schools ratified the CMO's conduct of sending the e-mails. To find that a principal ratified the acts of another, thereby establishing agency after the fact, it must be shown that the principal knew or was on constructive notice

of the agent's conduct and failed to disavow that conduct. (Civ. Code, § 2310; *Chula Vista*, *supra*, PERB Decision No. 1647, p. 8; *Compton*, *supra*, PERB Decision No. 1518, p. 5.) Alliance CMO's four e-mails were sent to all staff at Alliance Schools. While it is possible that administrators at each school were not part of an "all staff" e-mail group, it is unlikely that Alliance CMO would send communications about UTLA's organizing campaign to certificated employees without school administrators' knowledge. School administrators thus had at least constructive knowledge of the e-mails, and their failure to disavow the e-mails constituted agency by ratification.

For these reasons, both Alliance CMO and the principals and assistant principals acted as agents of Alliance Schools when they sent the e-mails at issue to Alliance Schools' certificated employees. We thus turn to whether the e-mails violated PEDD and EERA.

II. PEDD

PEDD section 3550 provides that "[a] public employer shall not deter or discourage public employees or applicants to be public employees from becoming or remaining members of an employee organization, or from authorizing representation by an employee organization, or from authorizing dues or fee deductions to an employee organization." "'Deter or discourage' means to tend to influence an employee's free choice regarding whether or not to (1) authorize union representation, (2) become or remain a union member, or (3) commence or continue paying

union dues or fees." (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 21.)

To establish a prima facie case of a section 3550 violation, the charging party must show that the challenged conduct or communication is reasonably likely to deter or discourage employee free choice, not that the conduct actually did deter or discourage. (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 24.) Once this showing is made, "the burden then shifts to the employer to plead and prove a business necessity as an affirmative defense." (*Regents II*, *supra*, PERB Decision No. 2756-H, p. 8, citing *Regents I*, *supra*, PERB Decision No. 2755-H, pp. 35-36.) "If the likely influence is 'inherently destructive' of employee free choice, then the employer must show that the deterring or discouraging conduct was caused by circumstances beyond its control and that no alternative course of action was available." (*Regents I*, *supra*, PERB Decision No. 2755-H, pp. 35-36.) "For conduct that is not inherently destructive, the employer may attempt to justify its actions based on operational necessity and PERB will balance the employer's asserted interests against the likelihood of influencing employee free choice." (*Id.* at p. 36.) "[T]he stronger the likelihood to influence employee free choice, the greater is the employer's burden to show its purpose was important and that it narrowly tailored its conduct or communication to attain that purpose while limiting influence on employee free choice to the extent possible. If the likelihood of

influence outweighs the asserted business necessity, we will find a violation." (*Ibid.*)[17]

In *Regents I*, *supra*, PERB Decision No. 2755-H, after examining PEDD's construction and legislative history, we found that section 3550 bars all employer communications and conduct tending to influence certain employee decisions— including the decision whether to unionize—unless the employer narrowly tailors its conduct to a business necessity while minimizing the tendency to influence employee free choice as much as possible. (*Id*. at pp. 29-36.) We noted that section 3550's protection is more robust than the pre-existing protection against employer interference, as it prohibits most employer influence even if the employer refrains from threatening reprisals or force, or from promising a benefit. (*Id*. at pp. 4, 31-33.)

A. Prima Facie Case

1. Content of the Communications

We begin by examining the content of Alliance Schools' e-mails. (*Regents I*, *supra*, PERB Decision No. 2755-H, pp. 41-42.) Taken together, the e-mails' content tends, in several ways, to influence

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[17] As stated in *Regents I*, *supra*, PERB Decision No. 2755-H, Member Shiners disagrees that the concept of "inherently destructive conduct" should be part of PERB's standard for section 3550 violations and would simply "balance the harm to protected rights against the employer's asserted justification for its conduct" in all section 3550 cases. (*Id*. at p. 36, fn. 27, citing *Contra Costa County Fire Protection District* (2019) PERB Decision No. 2632-M, p. 75 (dis. opn. of Shiners, M.).)

employees' choice whether or not to authorize representation by UTLA.

One way is by sowing fear and distrust of unionization, the collective bargaining process, and UTLA specifically. For example, several of the communications conveyed that UTLA is "vehemently anti-charter" and spends member dues to support political campaigns directed at closing charter schools, including Alliance Schools:

> Alliance CMO e-mail on April 26 to all employees: "You are legally signing on with a vehemently anti-charter union."
>
> Alliance CMO e-mail on April 27 to all employees: "**UTLA'S FUNDING OF ANTI-CHARTER LEGISLATION**:
> About 50%
> of UTLA dues are paid to affiliate unions in Sacramento and Washington, DC, including paying for political contributions that support anti-charter laws and candidates."
>
> E-mail from Principal Kubes on April 29 to Academy No. 5 employees: "Currently UTLA and its parent union CTA, the California Teachers Association, routinely use its members' dues to support legislation opposing charter schools.
> Recent bills impose caps on charter schools, restrict charter school flexibility, and make it easier to deny charters the ability to open or be

renewed. CTA and UTLA recently have sponsored or supported bills that would dismantle the ability of charter schools like ours to appeal if we were denied a renewal by LAUSD. Our school is up for renewal next year. I don't want this legislation to put that at risk."

E-mail from Principal Van Pelt on April 30 to Gertz-Merkin Complex employees: "I am also personally concerned about UTLA's opposition to charter schools."

E-mail from Principal Tsai on May 1 to Gertz-Merkin Complex employees: "Currently, our team is in the months-long process of writing our charter renewal petition, meeting with policymakers, mobilizing parents, and other advocacy efforts in order to inform them about the transformative work we have done here with scholars to ensure our charter is renewed for another five years. It is disheartening to know that concurrently, UTLA and CTA are actively working to support legislation that puts our charter renewal in jeopardy."

E-mail from Principal Versage on behalf of himself and Assistant Principals Reyna and Lee on May 2 to Leichtman-Levine School employees: "UTLA has a negative relationship with charter schools. They support anti-charter

> school board members and have statements on record calling for the rolling back of charters." [¶] . . . [¶] "We discussed how UTLA was an anti-charter organization and we questioned UTLA's motive."
>
> E-mail from Principal Woo on May 3 to Stern employees: "For at least a decade, UTLA has opposed charter schools through both their policies and in their rhetoric. It is a long well-documented history of opposition to our schools. It has become especially fierce and divisive the past several years. The California Teachers Association (CTA) and UTLA recently sponsored or supported bills that would dismantle the system of appeals that allows charter school like ours to appeal to the County and the State if we were denied a renewal by LAUSD. [¶] These bills would also allow LAUSD to deny a new charter or a charter renewal . . . we would be shut down. Stern MASS and other Alliance schools are up for renewal next year."

The e-mails also repeatedly sent the message that UTLA organizers will violate employees' privacy and will deceive and coerce employees:

> Alliance Schools e-mail on March 22 to all employees: "**Your Privacy & Personal Time [¶] UTLA Visits to**

Your Home or the Homes of Your Relatives In the past, UTLA has hired paid organizers to contact Alliance Staff at their homes over break. We have received complaints from many of you regarding these encroachments on you and your family's privacy and personal time. In response, we want to remind you of your rights. [¶] . . . [¶] **Your signature** Read carefully whatever UTLA is asking you to sign. Providing your signature to UTLA may allow them to bypass a secret ballot election. **We encourage you to get the facts before you sign anything. If you would like a [']Do Not Disturb[']** door hanger download **here.**"

Alliance Schools e-mail on April 26 to all employees: "**Don't be coerced or deceived by a union organizer into providing your signature.**"

Alliance Schools e-mail on April 27 to all employees: "**Don't be coerced or deceived into providing your signature.**"

Alliance Schools e-mail on May 1 to all employees: "**Don't be coerced or deceived into providing your signature.**"

E-mail from Principal Tramble on April 29 to Ouchi Complex employees: "Given

that UTLA has now become a regular presence at Ouchi, and for some of you, at your home, I want to take a few minutes to share my thoughts with you about this issue."

E-mail from Principal Van Pelt on April 30 to Gertz-Merkin Complex employees: "As some of you may know, this Spring is the beginning of the fourth year of UTLA's organizing campaign at Alliance. UTLA has now become a regular presence at Merkin, both before school and after school, and for some of you, at your home or on your personal cell phone. Given the increase in efforts most recently to convince Merkin and other Alliance teachers and counselors to sign on with the UTLA, I wanted to take a few minutes to re-share my thoughts with all of you."

E-mail from Principal Guerra on May 14 to Marine Complex employees: "Over the past week, the vibe on our campus has been uncomfortable and divisive. Teachers are arguing with each other in the staff lounge, creating awkward situations for other employees. Staff members have questioned why the die-hard loyalty to UTLA, why the aggressiveness in getting people to sign, why the continued push to unionize other Alliance schools even though they already have enough signatures at

> Gertz-Merkin, and why there is not a clear agenda or consensus on what to ask for in a contract negotiation. Teachers have been sent to talk to teachers with planned talking points to convince them to support union activities. Others have broken down crying because they have felt betrayed and disrespected by their colleagues . . . others are coming to share the scare tactics used to get them to sign, including colleagues scaring them with exaggerated stories of what Administration can do to them and thus, why they need protection[s]."[18]

Some e-mails conveyed opinions that UTLA and other unions only serve the interests of lazy employees and "disgruntled" employees with "negative" attitudes:

> E-mail from Principal Kubes on April 29, to Academy No. 5 employees: "One specific teacher (Let's call him Mr. D) was in much need of support. Mr. D had a night job, and never planned his lessons in advance. He would buy his

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[18] Although the parties stipulated that "UTLA will not dispute the veracity of any statement of fact" in the e-mails, some of the statements at issue are primarily opinion rather than primarily factual. (See *County of Riverside* (2018) PERB Decision No. 2591-M, p. 10 [employee's description of her new work location as "remote" and "substandard" was opinion, not fact].) For example, it is more opinion than fact for an e-mail to assert that a school's "vibe" was "uncomfortable."

students pizza once a week and give them all Cs if they just 'stayed quiet and did not say anything.' Mr. D played lots of movies and told students that he would give them passing grades for quietly watching. After extensive coaching and support I finally put him on our school's version of a PIP.

Immediately, his UTLA rep accused me of being a racist. The final straw came near the end of the year when Mr. D requested a transfer to another school. The UTLA rep asked me to change Mr. D's evaluation scores so he could transfer and 'then Mr. D will be out of your life.'"

E-mail form Principal Woo on May 3 to Stern employees: "[While a teacher at Montebello], I was asked to be a union building representative for my school and went to one of the [Montebello Teachers Association] meetings. I left the meeting feeling disheartened and determined not to be actively part of the union because I was momentarily surrounded by disgruntled people . . . My father was part of [a union] and was the union steward (what we know as union representative) for his laboratory. He helped represent workers to management and would sit in private conversations between a supervisor and worker. He represented workers who

> were sleeping on the job or did not show up for work."

A couple of e-mails attacked UTLA for allegedly attempting to block employees from discussing or debating unionization, as well as for allegedly excluding teachers from union discussions:

> Alliance CMO e-mail on April 26 to all employees: "**You would bypass a secret ballot election.** There would be no open, transparent discussion among Alliance educators about what is best for Alliance scholars and staff."
>
> E-mail from Principal Delfino on May 9 to Collins School employees: "Many Merkin teachers were blindsided by the card check and, even after the petition, have been excluded from union discussions concerning future bargaining. I find it very troubling and difficult to make sense of teachers advocating for more voice while excluding the voice of their own peers."

Some e-mails raised fears that UTLA would require employees to accept onerous or undesirable provisions of UTLA's collective bargaining agreement with LAUSD:

> E-mail from Principal Sanchez on April 27 to Burton employees: "I worry that UTLA would make our school more like some of the district schools that operate

under the 400-page UTLA contract . . . My fear is that the UTLA/LAUSD model is not the best one to serve Burton students."

E-mail from Principal Tramble on April 29 to Ouchi Complex employees: "I worry that they will impose rules like those they have created in their 400-page contract at LAUSD."

E-mail from Principal Kubes on April 29 to Academy No. 5 employees: "I worry that a UTLA contract might require [Academy No. 5] to follow a long set of bureaucratic directives that are uniform across all schools . . . I look forward to our work ahead, not because we will be driven by a 400-page union contract that values some teachers over others."

E-mail from Principal Van Pelt on April 30 to Gertz-Merkin employees: "I do not want to have our team here locked into a 400-page contract full of standardized rules and regulations written by UTLA."

Alliance CMO e-mail on May 1 to all employees: "Alliance teachers and counselors earn more than their peers represented by UTLA in LAUSD. [¶] The average Alliance class size is smaller than the class size written into UTLA's LAUSD contract. [¶] Alliance

student to counselor ratio is 150:1 vs. the 'goal' of 500:1 in UTLA's LAUSD contract."

E-mail from Principal Tsai on May 1 to Gertz-Merkin employees: "I don't want educators from other schools or representatives not from Gertz dictating what they think is best for our students and our school. Nor do I want our team of educators and leaders to have their hands tied by a contract like that which exists for my friends at LAUSD: 430 pages of rules and restrictions . . . Skim through and you will find that many of the issues you have told me are pain points (i.e., being asked to meet with an Administrator on a prep period, being asked to cover a class during a prep period, having a meetings scheduled during a pupil free day or prep period, conferencing with parents during a prep period, having to share classrooms, traveling teachers, class sizes exceeding 25, etc.) are also issues within LAUSD and are allowed for under this union-negotiated contract."

E-mail from Principal May-Harris on May 2 to Academy #10 employees: "Nor do I want our team of educators and leaders to have their hands tied by a contract like that which exists for my friends in LAUSD: 430 pages of rules and restrictions. For your reference, a

> copy of that contract is attached here . . . Skim through and you will find that many of the issues you have told me are pain points (i.e., being asked to meet with an Administrator on a prep period, being asked to cover a class during a prep period, conferencing with parents during a pupil free day or prep period, being asked to participate in a meeting after school, class sizes exceeding 25, etc.) are also issues within LAUSD and are allowed for under this union-negotiated contract."
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> E-mail from Assistant Principal Reyna on May 2 to Leichtman-Levine employees: "If we adopted LAUSD's pay scale tomorrow, almost every single teacher at our school would receive a significant pay cut. There is no guarantee class sizes would be smaller."

Several e-mails conveyed that unionization causes strife among co-workers, which would cause administrators and other teachers to resign:

> E-mail from Principal Van Pelt on April 30 to Gertz-Merkin employees: "I continue to hear from a number of staff who say that they would leave if Alliance unionized with UTLA.
>
> They can't afford the dues, they dislike the rules imposed by UTLA, and they

can't stand the loss of freedom and flexibility that we currently have."

E-mail from Principal Tsai on May 1 to Gertz-Merkin employees: "Some of you have also shared with me that you do not wish to work for an Alliance unionized by UTLA. I, too, would strongly consider resigning as your Principal, should UTLA become the exclusive bargaining representative for Alliance teachers and counselors."

E-mail from Principal Guerra on May 14 to Marine employees:
"Unfortunately, several strong educators have recently indicated hesitation about returning next year despite having 100% of certificated staff originally say they intended to return a few months ago. At the time of a teacher shortage, it would be detrimental for our scholars and community to lose experienced, heavily involved, Master teachers due to political tension among adults . . . We know how detrimental it is for our schools to lose teachers and counselors and I worry that some are going to leave us over the summer or during the school year due to unpredictable changes. Staff turnover is something UTLA and its supporters claim they want to counter yet these questions and concerns indicate

> certificated staff retention is now in jeopardy at our school."

Some e-mails expressed that unionization would hurt the quality of education, causing parents to withdraw their students from Alliance Schools and imperiling the Schools' future:

> E-mail from Principal Tramble on April 29 to Ouchi Complex employees: "I am worried that a UTLA contract at Ouchi or across Alliance will diminish the flexibility each of us has here – to the detriment of our students and to our school."
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> E-mail from Principal Sanchez on April 27 to Burton Academy employees: "I cannot predict the future, but I worry that UTLA would make our school more like some of
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> the district schools that operate under the 400-page UTLA contract. I worry that over time, that the success and well- being of our students might be in threatened by UTLA's 'one size fits all' model. It might slow down our progress, or worse, our students' success and opportunities might be in jeopardy. My fear is that the UTLA/LAUSD model is not the best one to serve Burton students. Our students deserve the very best from us, not a simulated version of an educational model that Burton

> families have told us is broken and has failed their children year in and year out."
>
> E-mail form Principal May-Harris on May 2 to Academy #10 employees: "I am worried that a UTLA contract at [Academy #10] or across Alliance will diminish the flexibility each of us has here – to the detriment of our students and to our school."
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> E-mail from Principal Woo on May 3 to Stern employees: "We all work too hard to become disjointed. If we become disjointed, I worry that families will start considering other schools as their first choice. With dwindling numbers comes decreased resources and opportunities to our instructional and college ready program. None of us can predict the future, but this is my fear."

On their face, these e-mails convey that unionization, especially with UTLA, will lead only to potential negative consequences, such as unwanted terms and conditions of employment being forced upon employees by UTLA, increased strife among employees, lower quality of education for students, resignation of administrators and teachers, and even school closures. But this is not the only way the e-mails influenced employee free choice.

Like the employer's communications in *Regents I*, Alliance Schools' e-mails attached a financial disincentive to union support. There, the

University sent a communication to all represented employees—union members and non-member agency fee payers—notifying them that the University would cease deducting agency fees from employees' paychecks in compliance with the United States Supreme Court's decision in *Janus v. American Federation of State, County, and Mun. Employees, Council 31* (2018) _____ U.S. __[138 S.Ct. 2448] (*Janus*).[19] We found this communication tended to influence employee free choice because it attached a financial disincentive to union membership without any context. (*Regents I*, *supra*, PERB Decision No. 2755-H, pp. 41-42.) Similarly here, Alliance Schools' e-mails repeatedly stressed the dues obligations employees would incur if they exercised their right to join a union, which "connected their choice to refrain from joining a union with a larger paycheck." (*Id.* at p. 41.) The e-mails also indicated that dues would be forced on employees[20] and suggested they would receive little in return:

> Alliance CMO e-mail on April 26 to all employees: "Why are union organizers pressing so hard for your signature? . . .

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[19] In *Janus*, the United States Supreme Court "held it unconstitutional for a public sector employer to enforce compulsory agency fee deductions from non-union member employees." (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 6.)

[20] Although UTLA did not challenge the truthfulness of the e-mails' statements about dues, we do not rely on the e-mails' implication that (1) all employees pay dues irrespective of whether they become union members, and (2) union members have no ability to vote on the amount of dues they pay.

Providing your signature to an Alliance union organizer means that: . . . You would pay annual dues. Current UTLA dues are $1,000 per year."

Alliance CMO e-mail on April 27 to all employees: "**Will your union dues bail out UTLA's budget deficit**? . . . If UTLA gets enough signatures, they stand to earn $1,000 per person annually in dues, or over $640,000 from Alliance educators."

E-mail from Principal Tramble on April 29 to Ouchi Complex employees: "I . . . automatically became a paying UTLA member. I had no choice whether or not to have monthly dues taken out of my paycheck, dues that UTLA has now raised to $1,000 per year."

E-mail from Principal Kubes on April 29 to Academy No. 5 employees: "[W]hen I attempted to stop paying dues I was told by the union rep that if I did so it would be the end of my career. Out of fear, I kept paying. UTLA dues are now $1,000 per year."

Alliance CMO e-mail on May 1 to all employees: "**WHAT DO YOU GET BY PAYING UTLA $1,000 EVERY YEAR? UTLA DUES GUARANTEE VERY LITTLE** . . . [UTLA] cannot guarantee you increased compensation,

a different evaluation system or any other specific benefits or working conditions. The results of collective bargaining may be the same, better, or worse than currently exist. **PAY UTLA FOR POTENTIALLY LESS THAN YOU HAVE NOW.**"

E-mail from Principal Tsai on May 1 to the Gertz-Merkin Complex employees: "[M]any of my [college] classmates were bounced from school to school within LAUSD or pink- slipped within the first year or two. Despite being dues- paying members of UTLA, their union representatives did nothing to help my friends as the decisions were based on seniority rules in the UTLA contract, not student need."

E-mail from Principal May-Harris on May 2 to Academy #10 employees: "I began my career in LAUSD. I worked as a teacher there. As a teacher, I automatically became a paying UTLA member. I had no choice whether or not to have monthly dues taken out of my paycheck, dues that UTLA have raised to $1,000 per year. [¶] During the 10 years I was at Audubon Middle School, UTLA's presence was a mystery to me. They did not have any impact on me or my classroom. They did not help me become a better teacher, did not help my students become better behaved or

> better educated and they certainly did not give me more 'voice' or 'clout' at my school or in district-level decision making."
>
> E-mail from Principal Versage on behalf of himself and Assistant Principals Reyna and Lee on May 2 to Leichtman-Levine School employees: "There are a lot of promises that can be made in a situation like this. But the fact of the matter is: In a bargaining situation, everything is on the table. If we adopted LAUSD's pay scale tomorrow, almost every single teacher at our school would receive a significant pay cut. There is no guarantee class sizes would be smaller. Communication between administrations and teachers could become much more adversarial, which I would hate to see."

Alliance Schools' e-mails also tended to influence employee choice by suggesting that employees' wages and working conditions could be worse under UTLA representation. In *Regents II*, the University sent a flyer to unrepresented employees who were the target of a union organizing campaign. The flyer suggested that the wage increases of employees represented by the union were less substantial than unrepresented employees' wage increases, and that unrepresented employees "already have sufficient job protections." (*Regents II*, *supra*, PERB Decision No. 2756-H, p. 9.) Alliance Schools' e-mails likewise suggested that unionization

would not lead to increased wages or better working conditions, and that existing employer policies provide sufficient protections for employees:

> E-mail from Principal Tramble on April 29 to Ouchi Complex employees and e-mail from Principal May-Harris on May 2 to Academy #10 employees: "[UTLA] did not have any impact on me or my classroom. They did not help me become a better teacher, did not help my students become better behaved or better educated and they certainly did not give me more 'voice' or 'clout' at my school or in district- level decision making . . . UTLA did not support me, and from what I know of others who have worked with UTLA . . . I am very worried that they will not support you either."
>
> Alliance CMO e-mail on May 1 to all employees: "**WHAT DO YOU GET BY PAYING UTLA $1,000 EVERY YEAR? UTLA DUES GUARANTEE VERY LITTLE** . . . [UTLA] cannot guarantee you increased compensation, a different evaluation system or any other specific benefits or working conditions. The results of collective bargaining may be the same, better, or worse than currently exist. **PAY UTLA FOR POTENTIALLY LESS THAN YOU HAVE NOW**."

> E-mail from Principal Versage on May 2 to Leichtman- Levine School employees: "[T]he fact of the matter is: In a bargaining situation, everything is on the table. If we adopted LAUSD's pay scale tomorrow, almost every single teacher at our school would receive a significant pay cut.
> There is no guarantee class sizes would be smaller."

Viewed as a whole, Alliance Schools' e-mails tended to influence employee choice about whether or not to authorize representation by UTLA by strongly suggesting that unionization, especially with UTLA, would harm employees' paychecks, their employment, the students, and the continuation of their charter school. We thus have no difficulty concluding that a prima facie violation of PEDD section 3550 has been established based solely on the text of the e-mails.

2. Contextual Circumstances

In addition to the content of the communications, we must also consider the contextual circumstances surrounding the issuance of the communications. (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 43.) Several contextual factors further support finding a prima facie case here.

First, the timing of the e-mails would tend to influence employee free choice about supporting UTLA. Alliance CMO sent its e-mails to employees between March 22 and May 1. UTLA filed

representation petitions for three Alliance Schools on May 2. Alliance Schools' principals or assistant principals sent their e-mails between April 27 and May 14. The e-mails thus were sent at a time when UTLA's organizing efforts were beginning to produce results, at least at three Alliance Schools.

Second, the sudden participation of principals and assistant principals also would tend to influence employee choice. Principals and assistant principals had remained silent during the prior three years of UTLA's organizing campaign. Then, just as the campaign was beginning to bear fruit, the principals and assistant principals abruptly decided to e-mail employees regarding unionization and UTLA. Two of the later e-mails even referenced conditions after the filing of the representation petitions on May 2:

> E-mail from Principal Delfino on May 9 to Collins School employees: "Based on UTLA's public statements, they clearly will be ramping up their efforts to unionize more Alliance schools. But I wonder how much you know about how the culture at those schools has been since last week? [¶] Merkin teachers have raised numerous complaints about UTLA's petition . . . have been excluded from union discussions concerning future bargaining. I find it very troubling and difficult to make sense of teachers advocating for more voice while excluding the voice of their own peers."

> E-mail from Assistant Principal Guerra on May 14 to Gertz- Merkin Complex employees: "Over the past week, the vibe on our campus has been uncomfortable and divisive. Teachers are arguing with each other . . . Staff members have questioned why the die-hard loyalty to UTLA, why the aggressiveness in getting people to sign, why the continued push to unionize other Alliance schools . . . [¶] Others have broken down crying because they have felt betrayed and disrespected by their colleagues."

Receiving such an e-mail from their principal or assistant principal about UTLA's organizing campaign, particularly on the heels of four e-mails from Alliance CMO about the same subject, would cause a reasonable employee to believe "the message was particularly urgent and important." (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 44.)

Finally, the principals' and assistant principals' e-mails contained many similarities in theme and some also contained the exact same language:

> E-mail from Principal Tramble on April 29 to Ouchi Complex employees: "We can't predict the future, but my fear is that UTLA will negatively impact our unique school."
>
> E-mail from Principal May-Harris on May 2 to Academy #10 employees: "We

> can't predict the future, but my fear is that UTLA will negatively impact our unique school."
>
> E-mail from Principal Sanchez on April 27 to Burton Academy employees: "I cannot predict the future, but I worry that UTLA would make our school more like some of the district schools that operate under the 400-page UTLA contract . . . My fear is that the UTLA/LAUSD model is not the best one to serve Burton students."
>
> E-mail from Principal Woo on May 3 to Stern employees: "If we become disjointed, I worry that families will start considering other schools as their first choice. With dwindling numbers comes decreased resources and opportunities to our instructional and college ready program. None of us can predict the future, but this is my fear."

As two of the e-mails themselves indicated, these similarities caused employees to question whether the e-mails were drafted by Alliance CMO or were sent as part of an anti-union campaign:

> E-mail from Principal Tsai on May 3 to the Gertz-Merkin Complex employees: "In a handful of separate conversations today, Roman and I were accused of having the emails we sent earlier this week either written by our Home Office

> staff against our will or that we were somehow forced to write them."
>
> E-mail from Principal Delfino on May 9 to Collins School employees: "Lastly, I've also heard that there are some UTLA supporters who are telling others that remarks like the ones I am sharing with you today, or the personal story that Peter shared with you a few weeks ago are being written by Home Office or forced on administrators as part of some vitriolic anti-union campaign."

Although the content of the e-mails themselves tended to influence employee choice, that tendency was strengthened by the context in which the e-mails were sent—shortly before and after representation petitions were filed, by high-ranking administrators who had never spoken about the organizing campaign before but then did so in the midst of, or shortly after, a series of similar e-mails from Alliance CMO, and using related themes and sometimes identical language. Rather than leaving it to anti-union employees to campaign against unionization as PEDD contemplates, Alliance Schools repeatedly and broadly circulated its own arguments against unionization. We have no trouble concluding, based on both content and context, that the e-mails tended to influence whether or not employees supported UTLA. UTLA thus has met its burden to establish a prima face case.

B. Business Necessity Defense

Having found a prima facie case, we turn to whether Alliance Schools established a business necessity as an affirmative defense.[21] When the employer asserts a business necessity defense, "PERB will balance the employer's asserted interests against the likelihood of influencing employee free choice." (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 36.) "[T]he stronger the likelihood to influence employee free choice, the greater is the employer's burden to show its purpose was important and that it narrowly tailored its conduct or communication to attain that purpose while limiting influence on employee free choice to the extent possible. If the likelihood of influence outweighs the asserted business necessity, we will find a violation." (*Ibid*.)

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[21] Because we find Alliance Schools' conduct was not justified under the less stringent test applied to conduct that is not inherently destructive of employee free choice, we need not determine whether the potential influence was inherently destructive. (Cf. *Chula Vista Elementary School District* (2018) PERB Decision No. 2586, p. 29, fn. 11.)

Based on the facts of this case, Chair Banks would find Alliance Schools' conduct was inherently destructive because the "'natural and probable consequence'" of such conduct "is to discourage protected activity." (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 35, fn. 26.) Considering the nature and content of the messages, along with the context, such as the timing and frequency of the messages and the other unfair practices Alliance Schools have committed throughout UTLA's four-year organizing campaign, the natural and probable consequence of Alliance Schools' messages is to discourage employees from authorizing representation by UTLA. (See *Alliance Environmental Science and Technology High School et al.* (2020) PERB Decision No. 2717 (judicial appeal pending); *Alliance College-Ready Public Schools et al.*, *supra*, PERB Decision No. 2716; *Alliance College-Ready Public Schools* (2017) PERB Decision No. 2545.)

Absent evidence sufficient to establish an affirmative defense, section 3550 leaves it to employees on each side of a unionization debate to marshal their arguments. Thus, in the critical debate over whether Alliance Schools' employees should authorize UTLA to become their exclusive representative—including but not limited to the question whether UTLA's stance on charter schools makes it a poor fit for representing Alliance School employees—we must consider whether Alliance Schools have established a business necessity showing that they cannot leave it to employees to be the ones to argue against unionization.[22]

Alliance Schools assert the e-mails were justified by two business necessities: (1) responding to employees' complaints about UTLA's aggressive organizing campaign; and (2) countering UTLA's untruthful communications to employees. We find no merit to either defense.

As to the first defense, Alliance Schools have provided scant evidence that employees complained to school management about UTLA's organizing tactics. The only such evidence is a statement in Alliance CMO's March 22 e-mail that it had "received complaints from many of you" about UTLA's visits to employee's homes, and statements by Principal Delfino that Gertz-Merkin Complex employees

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[22] For example, if a union makes a material misstatement of fact regarding the employer and the employees have no access on their own to the true information, then a narrowly-tailored communication clarifying the record may be appropriate. (See *Regents I*, *supra*, PERB Decision No. 2755-H, p. 48 [a "communication's truthfulness weighs in favor of the employer in defending a section 3550 claim, particularly if it is countering a misleading communication from a union"].)

lodged complaints about UTLA's "bullying during organizing." These hearsay reports of complaints being made to management are insufficient to support a finding that such complaints actually were made. (*Palo Verde Unified School District* (2013) PERB Decision No. 2337, p. 23.) Even if there were actual complaints, the vague descriptions of the complaints in these two e-mails provide insufficient foundation or detail to assess what steps such complaints could have necessitated. Alliance Schools thus have not established that their e-mails were narrowly tailored to address the purported employee complaints, especially considering that, in addition to informing employees of their rights regarding union solicitation, the e-mails expressed the Schools' opinion that UTLA's solicitation conduct was coercive and deceitful.

Alliance Schools' second defense fails for the same reason. An employer's communication may be justified by the need to accurately counter a union's misleading communication. (*Regents II*, *supra*, PERB Decision No. 2756-H, p. 9.) But none of UTLA's communications to Alliance Schools' employees are in the record. We therefore cannot determine whether those communications were misleading or whether the Schools' e-mails were necessary to provide accurate information to employees. Indeed, as a general matter Alliance Schools' failure to call even a single witness makes it all but impossible to conclude that its e-mails were in furtherance of, and narrowly tailored to, one or more business necessities.

Finally, although not explicitly asserted as an affirmative defense, Alliance Schools claim the e-mails were necessary to "defend the existence of a

legally- constituted charter school" by addressing "the potentially destabilizing influence of UTLA's attacks" on charter schools. But the e-mails' timing and content show Alliance Schools did not narrowly tailor the communications to protect their business from anti- charter political campaigns while influencing employee free choice as little as possible.

First, as to timing, UTLA's purported long history of anti-charter conduct would have posed a potential threat to Alliance Schools well before UTLA began organizing Alliance School employees. Yet Alliance Schools did not begin communicating with employees about this alleged threat until after UTLA began its organizing campaign. The timing of these communications suggests it was UTLA's organizing campaign, not its alleged hostility to charter schools, that prompted Alliance Schools to send the e-mails at issue. (See *Regents I*, *supra*, PERB Decision No. 2755-H, p. 48 [business necessity defense fails when employer's claimed need for its conduct is pretextual].)[23]

Second, as to content, the e-mails were not narrowly tailored to protect Alliance Schools' charters. Rather than discussing only UTLA's alleged support for anti-charter legislation and

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[23] Indeed, taking as true the assertion that UTLA had in the past sought to restrict or oppose charter schools, such conduct occurred when UTLA did not exclusively represent Alliance School employees. An exclusive representative has a legal obligation to fairly represent its members. (§ 3544.9; see *Rocklin Teachers Professional Association (Romero)* (1980) PERB Decision No. 124, pp. 6-8.) Indeed, becoming the exclusive representative at one or more Alliance Schools could cause UTLA to defend the Alliance charters in order to protect its new members' jobs, particularly if urged to do so by Alliance School employees.

candidates, the e-mails also discussed at length subjects unrelated to the Schools' charters, such as potential impacts of unionization on wages, benefits, and working conditions, as well as administrators' own personal experience with unions in other school districts. Thus, Alliance Schools' purported business necessity would not justify most of the statements in the e-mails sent to Alliance School employees.

Further undercutting Alliance Schools' affirmative defense are earlier unfair practices that Alliance-affiliated schools, including some of the Alliance Schools, committed in response to UTLA's organizing efforts, including interfering with protected rights by calling law enforcement to stop union handbilling and by directing an employee and a UTLA organizer to leave school premises (*Alliance Environmental Science and Technology High School et al.*, *supra*, PERB Decision No. 2717); interfering with UTLA's rights by failing to respond to its request to meet and discuss a fair and neutral organizing process (*Alliance College-Ready Public Schools et al.*, *supra*, PERB Decision No. 2716); and denying UTLA organizers access to a school campus and threatening a teacher because of her protected activity on behalf of UTLA (*Alliance College-Ready Public Schools*, *supra*, PERB Decision No. 2545). While we would still reach the same outcome if these unfair practices had not occurred, they are additional relevant evidence regarding motive, further suggesting that Alliance Schools sent the e-mails not because of any legitimate business necessity but as part of their ongoing efforts to squelch UTLA's

organizing campaign. (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 48.)[24]

In sum, Alliance Schools' e-mails had a strong tendency to influence employee choice about whether or not to authorize representation by UTLA, as they clearly suggested that unionization, especially with UTLA, would harm employees' paychecks, their employment, students, and the continuation of their charter school. Moreover, on this record, there is no question that the e-mails' tendency to influence employee free choice outweighs Alliance Schools' poorly-supported justifications. We therefore conclude that Alliance Schools deterred or discouraged employees from exercising free choice regarding unionization in violation of PEDD section 3550.

III. Interference

UTLA excepts to the ALJ's dismissal of the complaints' interference allegations solely on the ground that the ALJ failed to find a derivative interference violation based on a violation of PEDD section 3550. Because a section 3550 violation does not require a showing of coercive effect, it does not give rise to a derivative interference violation. (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 53.)

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[24] While Member Shiners disagrees that motive is relevant in determining whether a respondent has a legitimate justification for conduct that tends to or does harm protected rights (*Regents I*, *supra*, PERB Decision No. 2755-H, p. 51, fn. 37), he nonetheless agrees that Alliance Schools' contemporaneous unfair practices are further evidence that the Schools did not act because of the justifications asserted in their briefing.

The ALJ's other interference conclusions are not before us, as Luskin School has not excepted to the conclusion that it is liable for interference and UTLA has not excepted to the dismissal of its other independent interference allegations. For these reasons, the interference allegations in the complaints issued in all cases except Case No. LA-CE-6364-E (as discussed in footnote 3, *ante*) are dismissed.

ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in these cases, it is found that Alliance Marc & Eva Stern Math & Science High School; Alliance Ouchi-O'Donovan 6-12 Complex; Alliance Renee & Meyer Luskin Academy High School; Alliance College-Ready Middle Academy #10 A.K.A. Alliance Leadership Middle Academy; Alliance Judy Ivie Burton Technology Academy High School; Alliance Collins Family College-Ready High School; Alliance Gertz- Ressler/Richard Merkin 6-12 Complex; Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School; Alliance College-Ready Middle Academy No. 5; Alliance College-Ready Middle Academy No. 8; Alliance College-Ready Middle Academy No. 12 (collectively Alliance Schools or Respondents) violated the Prohibition on Public Employers Deterring or Discouraging Union Membership (PEDD), Government Code section 3550, when their agent, the charter management organization Alliance College-Ready Public Schools (Alliance CMO), e-mailed four different messages to

certificated employees at each Alliance School, when principals or assistant principals at eight Alliance Schools e-mailed messages to certificated employees at their respective schools, and when agents of Alliance Renee & Meyer Luskin Academy High School (Luskin School) distributed a petition to certificated employees at that school. Distribution of the petition by Luskin School also violated Educational Employment Relations Act (EERA) section 3543.5, subdivisions (a) and (b) by interfering with employees' right to be represented by UTLA and UTLA's right to represent employees in their relations with Alliance Schools. All other allegations in the complaints are DISMISSED.

Pursuant to section 3551 of the Government Code, it hereby is ORDERED that Alliance Schools, their governing boards, and their representatives shall:

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Additionally, pursuant to section 3541.5, subdivision (c) of the Government Code, Luskin School is ordered to CEASE AND DESIST FROM:

2. Interfering with employees' exercise of rights guaranteed to them by EERA;

3. Denying UTLA rights guaranteed to it by EERA.

B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO

EFFECTUATE THE POLICIES OF PEDD AND EERA:

1. Within 10 workdays of the date this decision is no longer subject to appeal, post at all work locations where notices to certificated employees customarily are posted, a copy of the applicable Notice attached hereto as Appendix A-K. Each Notice must be signed by an authorized agent of the named Alliance School, indicating that it will comply with the terms of this Order. Such postings shall be maintained for a period of 30 consecutive workdays.[25] Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material. The Notices shall also be sent to all employees by

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[25] In light of the ongoing COVID-19 pandemic, Alliance Schools shall notify PERB's Office of the General Counsel (OGC) in writing if, due to an extraordinary circumstance such as an emergency declaration or shelter-in-place order, a majority of employees at one or more work locations are not physically reporting to their work location as of the time the physical posting would otherwise commence. If Alliance Schools so notifies OGC, or if UTLA requests in writing that OGC alter or extend the posting period, require additional notice methods, or otherwise adjust the manner in which employees receive notice, OGC shall investigate and solicit input from all relevant parties. OGC shall provide amended instructions to the extent appropriate to ensure adequate publication of the Notice, such as directing Alliance Schools to commence posting within 10 workdays after a majority of employees have resumed physically reporting on a regular basis; directing Alliance Schools to mail the Notice to all employees who are not regularly reporting to any work location due to the extraordinary circumstance, including those who are on a short term or indefinite furlough, are on layoff subject to recall, or are working from home; or directing Alliance Schools to mail the Notice to those employees with whom it does not customarily communicate through electronic means.

electronic message, intranet, internet site, or other electronic means customarily used by Alliance Schools 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, or the General Counsel's designee. Alliance Schools shall provide reports, in writing, as directed by the General Counsel or designee. All reports regarding compliance with this Order shall be concurrently served on UTLA.

Chair Banks and Members Krantz and Paulson 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 No. LA-CE-6362-E, *United Teachers Los Angeles v. Alliance Marc & Eva Stern Math & Science High School*, in which all parties had the right to participate, it has been found that Alliance Marc & Eva Stern Math & Science High School violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, May 1, 2018, and May 3, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE MARC & EVA STERN MATH & SCIENCE HIGH SCHOOL

By: _____
Authorized Agent

THIS IS AN OFFICIAL NOTICE. IT MUST REMAIN POSTED FOR AT LEAST 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 No. LA-CE-6363-E, *United Teachers Los Angeles v. Alliance Ouchi-O'Donovan 6-12 Complex*, in which all parties had the right to participate, it has been found that Alliance Ouchi-O'Donovan 6-12 Complex violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, May 1, 2018, and May 2, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated:_____

ALLIANCE OUCHI-O'DONOVAN 6-12
COMPLEX

By: _____
Authorized Agent

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

APPENDIX C

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-6364-E, *United Teachers Los Angeles v. Alliance Renee & Meyer Luskin Academy High School* in which all parties had the right to participate, it has been found that Alliance Renee & Meyer Luskin Academy High School (Luskin School) violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, and May 1, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA. It also has been found that Luskin School violated the Educational Employment Relations Act (EERA), Government Code section 3540 et seq., by circulating a petition to its employees between May 16, 2018 and May 31, 2018, that interfered with their right to join and participate in the activities of UTLA.

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 employees' exercise of rights guaranteed to them by EERA;

2. Denying UTLA rights guaranteed to it by the EERA; and

3. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE RENEE & MEYER LUSKIN ACADEMY HIGH SCHOOL

By: _____
Authorized Agent

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

APPENDIX D

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-6365-E, *United Teachers Los Angeles v. Alliance College-Ready Middle Academy #10 a.k.a. Alliance Leadership Middle Academy*, in which all parties had the right to participate, it has been found that Alliance College-Ready Middle Academy #10 a.k.a. Alliance Leadership Middle Academy violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, May 1, 2018, and May 2, 2018, that deterred and discouraged employees from authorizing union representation, becoming members of the United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE COLLEGE-READY MIDDLE ACADEMY #10 A.K.A. ALLIANCE LEADERSHIP MIDDLE ACADEMY

By: _____
Authorized Agent

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

APPENDIX E

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-6366-E, *United Teachers Los Angeles v. Alliance Judy Ivie Burton Technology Academy High School*, in which all parties had the right to participate, it has been found that Alliance Judy Ivie Burton Technology Academy High School violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, and May 1, 2018, that deterred and discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE JUDY IVIE BURTON
TECHNOLOGY ACADEMY HIGH SCHOOL

By: _____
Authorized Agent

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

APPENDIX F

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-6372-E, *United Teachers Los Angeles v. Alliance Collins Family College-Ready High School*, in which all parties had the right to participate, it has been found that Alliance Collins Family College-Ready High School violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, May 1, 2018, and May 9, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE COLLINS FAMILY COLLEGE-READY HIGH SCHOOL

By: _____
Authorized Agent

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

APPENDIX G

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-6373-E, *United Teachers Los Angeles v. Alliance Gertz-Ressler/Richard Merkin 6-12 Complex*, in which all parties had the right to participate, it has been found that Alliance Gertz-Ressler/Richard Merkin 6-12 Complex violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, April 30, 2018, May 1, 2018, May 3, 2018, and May 14, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE GERTZ-RESSLER/RICHARD MERKIN 6-12 COMPLEX

By: _____
Authorized Agent

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

APPENDIX H

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-6374-E, *United Teachers Los Angeles v. Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School*, in which all parties had the right to participate, it has been found that Alliance Leichtman-Levine Family Foundation Environmental Science & Technology High School violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, May 1, 2018, and May 2, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE LEICHTMAN-LEVINE FAMILY FOUNDATION ENVIRONMENTAL SCIENCE & TECHNOLOGY HIGH SCHOOL

By: _____
Authorized Agent

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

APPENDIX I

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-6375-E, *United Teachers Los Angeles v. Alliance College-Ready Middle Academy No. 5* in which all parties had the right to participate, it has been found that Alliance College-Ready Middle Academy No. 5 violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, April 29, 2018, and May 1, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 5

By: _____
Authorized Agent

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

APPENDIX J

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-6376-E, *United Teachers Los Angeles v. Alliance College-Ready Middle Academy No. 8* in which all parties had the right to participate, it has been found that Alliance College-Ready Middle Academy No. 8 violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq., by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, and May 1, 2018, that deterred or discouraged employees from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 8

By: _____
Authorized Agent

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

APPENDIX K

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-6377-E, *United Teachers Los Angeles v. Alliance College-Ready Middle Academy No. 12* in which all parties had the right to participate, it has been found that Alliance College-Ready Middle Academy No. 12 violated the Prohibition on Public Employers Deterring or Discouraging Union Membership Chapter, Government Code section 3550 et seq, by sending e-mail communications through one or more of its agents on March 22, 2018, April 26, 2018, April 27, 2018, and May 1, 2018, that deterred or discouraged them from authorizing union representation, becoming members of United Teachers Los Angeles (UTLA), and/or authorizing dues or fee deductions with UTLA.

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

A. CEASE AND DESIST FROM:

1. Deterring or discouraging employees from authorizing union representation, becoming members of UTLA, and/or authorizing dues or fee deductions.

Dated: _____

ALLIANCE COLLEGE-READY MIDDLE ACADEMY NO. 12

By: _____
Authorized Agent

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