Case No. C103184

COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT

ROCKLIN UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

PUBLIC EMPLOYMENT RELATIONS BOARD,

Respondent,

ROCKLIN TEACHERS PROFESSIONAL ASSOCIATION,

Real Party in Interest

Appeal of Public Employment Relations Board
Decision No. 2939
[Unfair Practice Charge Case No. SA-CE-3136-E]

ROCKLIN UNIFIED SCHOOL DISTRICT'S OPENING BRIEF

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The Policy and the unfair labor charge

In September 2023, Rocklin Unified School District ("the District") chose to amend its policies to protect parental rights. Its new Parental Notification Policy ("Policy"), which was lawfully passed by the District Board ("Board"), requires certain District employees to inform parents or guardians (hereafter "parents") of students' transgender or gender nonconforming status in certain circumstances. More specifically, the Policy acknowledged a parental right:

> To be notified within three (3) school days when their child requests to be identified as a gender other than the child's biological sex or gender; requests to use a name that differs from their legal name (other than a commonly recognized nickname) or to use pronouns that do not align with the child's biological sex or gender; requests access to sex-segregated school programs and activities, or bathrooms or changing facilities that do not align with the child's biological sex or gender. Notification shall be made by the classroom teacher, counselor, or site administrator. Such notification shall only be delayed up to 48 hours to fulfill mandated reporter requirements when a staff member in conjunction with the site administrator determines based on credible evidence that such notification may result in substantial jeopardy to the child's safety.

The Policy also requires that, except for notifying the parents, a student's transgender or gender-nonconforming status must remain private and confidential:

> Right to privacy: A student's transgender or gender-nonconforming status is the student's private information with the exception of parental notification, and the district shall only disclose the information to others with the student's prior written consent, except when the disclosure is otherwise required by law or when the district has compelling evidence that disclosure is necessary to preserve the student's physical or mental well-being. In any case, the district shall only allow disclosure of a student's personally identifiable information to employees with a legitimate educational interest as determined by the district pursuant to 34 CFR 99.31. Any district employee to whom a student's transgender or gender nonconforming status is disclosed shall keep the student's information confidential to all other persons except the student and their parent(s). When disclosure of a student's gender identity is made to a district employee by a student, the employee shall seek the student's permission to notify the compliance officer. If the student refuses to give permission, the employee shall keep the student's information confidential, unless the employee is required to disclose or report the student's information pursuant to this administrative regulation, and shall inform the student that honoring the student's request may limit the district's ability to meet the student's needs related to the student's status as a transgender or gender-nonconforming student. If the student permits the employee to notify the compliance officer, the employee shall do so within three school days. (PERB-010-12.) [1]

Consistent with the District's practice of posting Board meeting agendas and relevant documents, the District published the proposed changes in advance of Board action online on September 1, 2023

[1] References to PERB-XXX are to the PERB Decision No. 2939 Administrative Record, filed by PERB on April 24, 2025.

(Hearing Transcript, PERB-726[2]), and notified the Rocklin Teachers Professional Association ("RTPA") president of the proposed changes in advance as well. (District's Opening Brief, PERB-126.) Three days later, counsel for RTPA sent a cease-and-desist letter to the Superintendent, demanding that it withdraw the proposed changes because they purportedly violated California law. The following day, RTPA counsel sent correspondence directly to the Board, alleging that the District could not implement any such policy until it had given RTPA proper notice and an opportunity to bargain over the Policy's negotiable *effects*. (*Id.*)

On September 6, 2023, the Board adopted the Policy. (*Id.*) On September 8, RTPA filed an Unfair Practice Charge with PERB, alleging that the Policy contained a mandatory subject of bargaining and the District failed to bargain. That same day, the District sent RTPA an email offering several dates to bargain the effects and impacts

[2] PERB alleges that the proposed changes were published on September 4 (PERB-647), but RTPA's president, when asked "When did you first learn about this committee's specific proposal to amend" the pertinent regulations, replied "The official notification would have been the Friday prior to the September 6th meeting when the Board docs went public." (Hearing Transcript, PERB-725-26.) The Friday prior to September 6, 2023, was September 1.

of the Policy, expressly communicating the District's intent to fully bargain the impacts and effects of the Policy prior to implementation. (*Id.*, PERB-128.) Although RTPA professed that it would provide its availability in short order, RTPA refused to meet with the District to bargain. (*Id.*)

On September 29, 2023, the parties met for a pre-scheduled bargaining session. The District placed the Policy on the bargaining agenda, but RTPA refused to engage in negotiations regarding the Policy. (*Id.*) These actions were repeated on October 18, 2023, during another bargaining session. (*Id.,* PERB-129.) RTPA's position was that RTPA would not negotiate over any policy revision that it believed to be in violation of student safety and the law. (*Id.,* PERB-128-29.) The District has communicated to RTPA that it will not implement the Policy until the Unfair Practice Charge is resolved, and the District has not implemented the Policy. (PERB-649.)

Separate proceedings concerning parental notification

After RTPA filed its Unfair Practice Charge, the California Department of Education ("CDE") initiated a separate proceeding challenging the Policy to investigate whether the Policy violates

Education Code section 220. On February 1, 2024, CDE issued a report alleging that the Policy violates the Education Code. CDE then sought a Writ of Mandate in the Superior Court for the County of Placer, through which it seeks to enforce its February 1, 2024, report. That matter is currently stayed because of this litigation and litigation concerning AB 1955. (PERB-649-651.)

On July 15, 2024, Governor Newsom signed Assembly Bill 1955 ("AB 1955") into law. AB 1955 prohibits school districts from *requiring staff* to disclose information to parents related to a student's sexual orientation or gender identity. It does not prohibit such notification itself; it only prohibits school districts from requiring staff to make such a disclosure. (PERB-657-58.) The constitutionality of AB 1955 is currently being challenged in multiple ongoing litigations. (*Mirabelli v. Olson*, Case No. 23CV0768 BEN WVG (S.D. Cal. 2023); *Chino Valley Unified School District v. Newsom*, Case No. 2:24-cv-01941-DJC-JDP (E.D. Cal. 2024) (appeal to Ninth Circuit forthcoming); *City of Huntington Beach v. Newsom*, Case No. 2:24-cv-7959 (C.D. Cal. 2024).)

PERB's decision

Based on RTPA's Charge, PERB issued a Complaint against the District, alleging that it unlawfully adopted the Policy without affording RTPA an opportunity to negotiate the decision to implement the change in policy or the effects of the change in policy. The Complaint further alleged the District's conduct constituted a failure to bargain in good faith, in violation of Government Code section 3543.5, subdivision (c). Finally, the Complaint asserted that the District's conduct interfered with the rights of teachers and guidance counselors and denied RTPA its right to represent its teachers and guidance counselors, in violation of Government Code sections 3543.5, subdivisions (a) and (b), respectively. (PERB-045-48.)

On January 28, 2025, PERB issued Decision No. 2939, finding the District committed an unfair labor practice when it (1) amended its parental notification policies without first giving RTPA notice and the opportunity to bargain over the policy change; and (2) premised its agreement to bargain effects and implementation of the policy on changes that violate the California Constitution and state law, thereby

engaging in a *per se* violation of its duty to bargain in good faith. This appeal followed.

STANDARD OF REVIEW

PERB's factual findings are reviewed under a "substantial evidence" standard, meaning that the findings are conclusive if supported by substantial evidence on the record of a whole. (*Boling v. Public Employment Relations Bd.* (2018) 5 Cal.5th 898, 912.) On questions of law, courts review PERB's decisions interpreting labor law for clear error. (*Id.*)

ARGUMENT

While RTPA and PERB attempt to frame these issues as garden variety labor disputes subject to PERB's jurisdiction, PERB precedent fails to support this mischaracterization. A determination as to whether the Parental Notification Policy is lawful relies on legal principles wholly beyond PERB's jurisdiction: matters of parent rights, student privacy, and equal access guaranteed by the California Constitution. All such issues are beyond the scope of PERB's jurisdiction, which is limited to matters of employer-employee relations.

Moreover, PERB's decision incorrectly classifies the Policy as a mandatory subject for bargaining when it has no nexus to wages, hours of employment, or other terms and conditions of employment and, therefore, falls outside of the scope of mandatory bargaining topics under the EERA. To the extent that the Policy is a non-mandatory subject for bargaining, the record shows that the District repeatedly sought to negotiate the Policy's effects and impacts on matters within the scope of representation prior to its implementation, but RTPA flatly refused to negotiate at all. Rather, the policy at issue is a classic example of subjects squarely within the management prerogative of the District.

In sum, because the facts do not support a prima facie case that the District committed any labor violation at all, and because PERB exceeded its authority and jurisdiction in finding that the Parental Notification Policy itself was unlawful, PERB's decision should be reversed.

I. PERB erred in holding that the Policy falls within the scope of representation.

First, PERB stated that the policy change fell within the scope of representation and was therefore a per se violation of the District's duty

to bargain in good faith. (PERB Decision No. 2939, PERB-659.) It made this determination under the *Anaheim* framework, whereby a non-enumerated issue falls within the scope of representation if, *inter alia*, it is logically and reasonably related to wages, hours, or an enumerated term and condition of employment. (PERB-662.) Normally, this includes conditions like employee workloads, peer review programs, and employee evaluations, *not* parental communications. (*Trustees of California State University* (2012) PERB Decision No. 2287-H, pp. 13-14; *Standard School District* (2005) PERB Decision No. 1775, pp. 11-12; *Jefferson School District* (1980) PERB Decision No. 133.) These are the sort of "[c]hanges to job duties, workload, qualifications, or performance standards [that] generally fall within the scope of representation." (PERB-663.) But according to PERB, the District's policy prior to September 2023 "was directly in line with employees' existing understanding of their job duties," including "adhere[nce] to the California Education Code," while the revised Policy "forced teachers to

violate state law and guidance,"[3] which "[t]eachers would reasonably see . . . as a change in duties." (PERB-663-64.)

But this analysis is flawed. Communication with parents is and always has been a part of teachers' job duties, both before and after the September 2023 policy revision. And teachers were already expected to communicate with parents without student consent in certain circumstances prior to September 2023. (Hearing Transcript, 2/13/24, PERB-764-65). And the Job Description for classroom teachers states that a "typical dut[y]" of teachers will be to "communicate with students and parent on the . . . social progress of the student." (RTPA Hearing Exhibit 1, PERB-900) Likewise, the Job Description for guidance counselors states that a "typical duty" for counselors is to "consult[] with parents . . . in helping to develop the best educational programs for children." (RTPA Hearing Exhibit 2, PERB-904)

And PERB already knew that communicating certain information to parents falls outside the scope of bargaining. (*Beverly Hills Unified School District* (2008) PERB Decision No. 1969, overruled in part on

[3] PERB does not have the authority to make such a determination. (*See* Part II, *supra.*)

other grounds.) In that case, the Beverly Hills Educators Association challenged their employer's directive to provide parents with their children's written examinations upon request. (*Id.*) There, the union conceded that "the decision to adopt the test release policy was not negotiable." (*Id.* at 5.) Reviewing the facts de novo, PERB did not disagree with the union's contention. (*See generally id.* (examining the scope of the district's duty to bargain effects, not whether the decision itself was negotiable.)

Moreover, to the extent that the Policy "forced teachers to violate state law and guidance," that state law and guidance is invalid pursuant to the Supremacy Clause of the U.S. Constitution. The Family Educational Rights and Privacy Act ("FERPA") provides parents the absolute right to access their child's educational records, including but not limited to, records regarding a child's request to change their name or pronouns or to access District programs or facilities. (34 C.F.R. §§ 99.3-99.4; Ed. Code § 49069.7.) Therefore, parents already had the right to this information under FERPA, and requiring teachers to communicate that information to parents is not a new duty or obligation.

And there are two additional prongs to *Anaheim* that PERB tried to brush under the rug. First, the topic must be "of such concern to both management and employees that conflict is likely to occur *and* the mediatory influence of collective negotiations is the appropriate means of resolving the conflict." (*Oxnard High School District* (2022) PERB Decision No. 2803-E at 42, citing *San Bernadino Community College District* (2018) PERB Decision No. 2599, p. 8 (emphasis added).) Although the District pointed out that collective negotiation was *not* the appropriate vehicle for resolving such conflict (Respondent's Opening Brief, PERB-134), PERB simply ignored that element and focused wholly on whether conflict was likely to occur. (PERB-666.)

The fact of the matter is that collective negotiation is not an appropriate means of resolving this conflict. The conflict between a student's right to privacy in their gender identity and a parent's right to direct the upbringing of their child is a policy question best left to the legislature. And in this case, the legislature has indeed addressed issues underlying parental notification and litigation is ongoing to challenge the legislature's adoption of AB 1955. (*Mirabelli v. Olson*, Case No. 23CV0768 BEN WVG (S.D. Cal. 2023); *Chino Valley Unified*

School District v. Newsom, Case No. 2:24-cv-01941-DJC-JDP (E.D. Cal. 2024) (appeal to Ninth Circuit forthcoming); *City of Huntington Beach v. Newsom*, Case No. 2:24-cv-7959 (C.D. Cal. 2024).) The issue that is central to this appeal is not the constitutional parameters of parental notification, it is whether school boards must bargain with teachers' associations every time they adopt a new policy—effectively stripping boards of their managerial powers.

The final prong of the *Anaheim* test requires that a mandatory bargaining subject not "significantly abridge" any of the managerial prerogatives that are central to carrying out the District's mission. The District has a managerial prerogative to inform parents about their children's affairs. And PERB's assertion that gender identity is "a matter that hardly lies at the core educational mission of a school district" (PERB-666) is simply not in tune with the reality of curricula at California schools. The Education Code specifically requires that "[i]nstruction in social sciences shall include . . . a study of the rule and contributions of . . . LGBTQ+ Americans . . . to the economic, political, and social development of California." (Ed. Code § 51204.5) (When the Policy was adopted in early September 2023, this provision specifically

referenced "transgender Americans." (*See* 2023 Cal. AB 1078.)) Since at least 2017, the California Department of Education's History-Social Science Framework has recommended that schools "[m]ake available and share age-appropriate literature that reflects the diversity of humankind" so as to combat a "hostile climate" that "transgender [] students" "miss days of school to avoid."[4]

The Parental Notification Policy has no nexus to wages, hours of employment, or other terms and conditions of employment, and therefore falls outside the scope of mandatory bargaining topics.

For the foregoing reasons, the Policy does not fall under matters within the scope of representation. However, assuming *arguendo* that it does, the District also contests PERB's assertion that it failed its obligation under EERA section 3543.2 to give reasonable notice. PERB noted that "a public meeting agenda" for the District's Board "does not provide sufficient notice *unless* the employer provides such documentation to a union official in a manner reasonably calculated to draw attention to a specific item and with adequate time for good faith

[4] (*See* https://www.cde.ca.gov/ci/hs/cf/documents/hssfwchapter20.pdf, p. 531-32.)

negotiations." (PERB-667-68.) But then PERB claimed that "RTPA learned of the proposed amendments . . . at the same time as the general public" and that "two days' notice could not possibly suffice for RTPA to decide whether to request information, demand bargaining, consult its members, and then bargain in good faith." (PERB-668.) This is belied by the facts. The District alerted the RTPA president to the proposed changes on September 1, which was *five* days before the Board meeting, not two (Unfair Practice Charge, PERB-012; Hearing Transcript, PERB-726-27), and RTPA responded in force on September 4 and 5, via its September 4 cease-and-desist letter[5] and its September 5 correspondence with the Board.

Over a year and a half since RTPA received notice of the Policy on September 1, 2023, the Policy has still not been implemented. RTPA has received proper notice.

II. PERB failed to consider the District's good-faith attempts to bargain and RTPA's refusal to do so.

[5] Under PERB's misunderstanding of the timeline (*see* Footnote 2, *ante)*, RTPA managed to draft, finalize, and send a cease-and-desist letter *on the same day* it first received notice of the proposed changes. (PERB-647.) PERB's argument, then, necessarily must be that a handful of hours is sufficient time for RTPA to send a cease-and-desist, but not enough time to demand bargaining.

"[T]he duty to bargain effects arises 'when a final decision is made.'" (*Cal. Faculty Ass'n. v. Trustees of the Univ. of Cal.* (2012) PERB Decision No. 2287-H, p.10.) The "firm decision" in this case is the adoption of the Policy at the September 6, 2023, Board meeting. The duty to bargain effects was triggered on that date, and the District could not lawfully implement the Policy until it fulfilled its duty to bargain. Consistent with this duty, the District spent more than a month attempting to bargain with RTPA only to be rebuffed at every turn.

PERB alleged that the District "premised its agreement to bargain effects and implementation of the [P]olicy on changes that violate the California Constitution and state law." (PERB-637.) This statement is wrong. First, AB 1955 was not signed until July 15, 2024, *long* after the Unfair Practice Charge was filed on September 8, 2023. The District attempted to bargain, and had its attempts thwarted by RTPA, during the period of September 6 to October 18, 2023—all well before AB 1955 was signed into law.

Prior to AB 1955, numerous California courts examined notification policies similar to the Policy at issue here and came to inconsistent

conclusions regarding those policies' legality. In particular, the District called PERB's attention to *M. v. Komrosky,* [Riverside Sup. Ct. 2023] Case No. CVSW2306224.[6] That case concerned a parental notification policy in the Temecula Valley Unified School District ("Temecula Valley"). That policy was identical to a policy enacted by the Chino Valley Unified School District ("Chino Valley"). But while the San Bernadino Superior Court issued an injunction against Chino Valley, the Riverside Superior Court denied a similar injunction against Temecula Valley, finding that the policy does not violate the plaintiffs' constitutional rights. (*Komrosky* at 13.) At the time PERB ruled, California superior courts were not unanimous on the issue of whether parental notification policies violated students' rights.

The second problem with PERB's analysis here is that the determination that the Policy allegedly "violate[s] the California

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[6] All citations to *Komrosky* refer to the tentative ruling issued on February 23, 2024, available at https://static1.squarespace.com/static/5460e86be4b058ea427aec94/t/65d8ed8c47073d184f060a82/1708715404427/2024.02.2. That tentative ruling was adopted. (2024 Cal.Super. LEXIS 5698.) *Komrosky* was reversed on separate grounds, (2025 Cal. App. LEXIS 312), with the court not reaching the question of the legality of the parental notification policy because said policy had been rescinded. (2025 Cal. App. LEXIS 312 at *6.)

Constitution and state law" is not one that PERB has the authority to make. PERB does not have jurisdiction to direct or interpret compliance with statutory obligations outside of the EERA. (*Lake Elsinore Unified School District* (2018) PERB Dec. No. 2548.) Mandatory provisions of the Education Code, including the notification requirements of Education Code section 51101, are outside the purview of PERB. (Gov. Code § 3540.) Nor does PERB have the authority to rule on constitutional issues. (*Alliance Marc & Eva Stern Math and Science School et. al.* (2021) PERB Decision No. 2795 [judicial appeal pending]; *see also State of California (Department of Consumer Affairs)* (2005) (PERB Decision No. 1762-S, p. 10.)

The question of whether the Policy violates either the California Constitution or state law (it did neither when RTPA refused to bargain; whether it does now turns on the constitutionality of AB 1955) is a question PERB is not authorized to answer. Therefore, PERB cannot rule that the Policy is unlawful and, as a direct result, cannot rule that the District imposed "unlawful" duties on certificated unit members.

III. The Policy is lawful.

Even if PERB were entitled to rule on constitutional issues, which it is not, PERB's findings are clearly erroneous because they infringe on the substantive due process rights of parents, under the Fourteenth Amendment of the U.S. Constitution, to raise their children and decide how to handle health care issues. "The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by [the Supreme] Court [of the United States]." (*Troxel v. Granville* (2000) 530 U.S. 57, 65; *see also Parham v. J.R.* (1979) 442 U.S. 584, 602; *Pierce v. Soc'y of Sisters* (1925) 268 U.S. 510, 534; *Meyer v. Nebraska* (1923) 262 U.S. 390, 399; *Keates v. Koile* (9th Cir. 2018) 883 F.3d 1228, 1235-36.)

PERB's findings are clearly erroneous. When a child's constitutional right to privacy conflicts with a parent's constitutional interest in their child's health, Supreme Court precedent favors "permit[ting] the parents to retain a substantial, if not the dominant, role" in a health care decision. (*Parham*, 442 U.S. at 604.) In other words, the constitutional rights of parents trump the constitutional rights of their

children. In *Mirabelli v. Olson*, the court ruled that "[a] child's gender incongruity is a matter of health. Matters of a child's health are matters over which parents have the highest right and duty of care. Parental rights over matters of health continue to be preeminent even where the government may worry about a general possibility of abuse or parental nonacceptance due to their child's exhibition of gender incongruity." (*Mirabelli v. Olson* (S.D. Cal. Jan. 7, 2025) Case No.: 3:23-cv-0768-BEN (VET), __ F.Supp.3d ___, 2025 WL 42507, *10.) "The fact that a child may balk at hospitalization or complain about a parental refusal to provide cosmetic surgery does not diminish the parent's authority to decide what is best for the child." (*Id.*; *see also Mann v. Cty. of San Diego* (9th Cir. 2018) 907 F.3d 1154, 1156 ("We have long recognized the potential conflict between the state's interest in protecting children from abusive or neglectful conditions and the right of the families it seeks to protect to be free of unconstitutional intrusion into the family unit, which can have its own potentially devastating and long lasting effects.").) But again, regardless of whether the District's policy ultimately proves to be constitutionally protected, it is beyond the

purview of PERB's authority to adjudicate such legal rights. Such questions are reserved for courts of competent jurisdiction.

The District's Parental Notification Policy acknowledges that a parent's right to direct the upbringing of their children is not without limitation. Indeed, the government "is not without constitutional control over parental discretion in dealing with children when their physical or mental health is jeopardized." (*Parham*, 442 U.S. at 603.) Courts have described a health and safety exception as a critical component in this arena, as it is a long-standing exception to parental due process rights. (*See, e.g.*, *Pickup v. Brown* (E.D. Cal. 2012) 42 F.Supp.3d 1347, 1368, *aff'd* (9th Cir. 2013).) In accordance with this exception, the District's Parental Notification Policy requires a 48-hour delay in parental notification when a staff member determines that such notification may result in substantial jeopardy to the child's safety, as well as a corresponding duty to fulfill mandated reporting requirements, such as notifying Child Protective Services, for example.

PERB's Decision is clearly erroneous in failing to acknowledge that the Policy accounts for such exigencies.

CONCLUSION

Because PERB erred in holding that the Policy falls within the scope of representation and failed to consider the District's good-faith attempts to bargain (and RTPA's refusal to do so), and because the Policy is lawful, Petitioner requests that this Court issue a peremptory writ and/or extraordinary relief directing PERB to set aside and vacate Decision No. 2939 and enter a new order dismissing RTPA's Charge and PERB's associated Complaint.

Dated: May 29, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Emily Rae, am counsel in this matter and I certify that the attached Appellants' Reply Brief has a typeface of 14 points or more and contains 4,149 words, as determined by a computer word count.

Dated: May 29, 2025

/s/Emily Rae

Emily Rae

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