



STATE OF CALIFORNIA  
DECISION OF THE  
PUBLIC EMPLOYMENT RELATIONS BOARD

DAVE LUKKARILA,

Charging Party,

v.

CLAREMONT FACULTY ASSOCIATION,

Respondent.

Case No. LA-CO-1630-E

PERB Decision No. 2474

February 29, 2016

Appearances: Dave Lukkarila, on his own behalf; California Teachers Association by Richa Amar, Attorney, for Claremont Faculty Association.

Before Martinez, Chair; Huguenin and Gregersen, Members.

DECISION

GREGERSEN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Dave Lukkarila (Lukkarila) to a proposed decision (attached) by an administrative law judge (ALJ), dismissing the complaint and underlying unfair practice charge against the Claremont Faculty Association (Association). The complaint (as amended) alleged that the Association failed to comply with Lukkarila's multiple requests for detailed financial reports, pursuant to Educational Employment Relations Act<sup>1</sup> (EERA) section 3546.5, and that such failure interfered with his ability to campaign for an elected position with the Association.

The Board has reviewed the entire record in this matter, including Lukkarila's exceptions and the Association's opposition to exceptions. The record as a whole supports the ALJ's factual findings.

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<sup>1</sup> EERA is codified at Government Code section 3540 et seq.

We affirm the ALJ's dismissal of any allegation that the Association did not provide reports for fiscal years prior to the 2012-2013 fiscal year, as well as the ALJ's dismissal of the allegation that the Association's actions in denying Lukkarila the required signed and certified financial documents interfered with his ability to campaign for Association president. On those claims alone, we find the proposed decision well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, on these claims the Board hereby adopts the proposed decision as the decision of the Board itself.

However, with regard to the claim that the Association failed to timely respond to Lukkarila's request for financial records for the 2012-2013 fiscal year, we disagree with the ALJ's conclusion that the Association's belated compliance with Lukkarila's request for financial records renders Lukkarila's claim moot. On that claim alone, we reverse the ALJ's dismissal of the charge and concomitant granting of the Association's motion to dismiss the amended complaint, as explained below.

#### LUKKARILA'S EXCEPTIONS

Lukkarila excepts to the ALJ's reliance on *California Nurses Association (O'Malley)* (2003) PERB Decision No. 1578-H (*O'Malley*) in dismissing Lukkarila's charge, and to the ALJ's alleged disregard for Association President Dave Chamberlain's (Chamberlain) hostility towards Lukkarila's requests for financial statements and for the resulting advantage obtained by Chamberlain in the campaign for Association president.

Lukkarila also excepts to what he characterizes as the ALJ's dismissal of the charge because he failed to file a charge alleging the Association violated its duty of fair representation under EERA section 3544.9. Lukkarila notes that he filed his charge under EERA section 3543.6, subdivision (b), which, in relevant part, makes it unlawful for an

employee organization to “interfere with, restrain, or coerce employees because of their exercise of rights guaranteed by this chapter.” (EERA section 3543.6, subd. (b).)

Lastly, Lukkarila excepts to the ALJ’s reliance on *Rio Teachers Association (Lucas)* (2011) PERB Decision No. 2157 and *California School Employees Association & its Chapter 47 (Shampine, et al.)* (2014) PERB Decision No. 2355 (*Shampine*) in dismissing his allegations that the Association did not provide fiscal year reports prior to the 2012-2013 fiscal year.

The Association asserts that the claims should be dismissed because some of Lukkarila’s requests were untimely, that it eventually provided the requested documents, and that the failure to provide the financial reports did not have a substantial impact on Lukkarila’s employment.

#### DISCUSSION

Since the repeal of PERB Regulation 32125<sup>2</sup> in 2006, the appropriate procedure to remedy a failure to comply with section 3546.5<sup>3</sup> is to file an unfair practice charge. As with any unfair practice charge, when the PERB Office of the General Counsel (OGC) has issued a complaint alleging a violation of EERA section 3546.5, an ALJ has issued a proposed decision,

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<sup>2</sup> PERB regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

<sup>3</sup> EERA section 3546.5 states, in relevant part:

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

and one or more parties have filed exceptions to that proposed decision, the Board itself may hold that the respondent has violated EERA and order an appropriate remedy, including a posting.

EERA section 3546.5, however, equips the Board with an auxiliary but voluntary course of action, viz., “the [B]oard *may* issue such compliance order [with section 3546.5] on its [own] motion.” (Emphasis added.) This sentence uses the language “may,” indicating a permissive intent by the legislature.

Although not manifest in the language of EERA section 3546.5 itself, the authority it provides the Board to essentially bypass the traditional unfair practice process and instead issue a compliance order on its own motion is directly correlated to the ease of the remedy, viz., providing an individual union member with the requested financial reports. However, the Board retains the discretion to forego its ability to issue a compliance order on its own motion and instead await the completion of the unfair practice process before deciding whether or not it will order a remedy, including but not limited to a posting order.

In *Shampine, supra*, PERB Decision No. 2355, the Board did not await the completion of the unfair practice process before ordering the respondent to provide a financial report to the charging parties. However, the procedural posture of that case was notably different than the case before us. In *Shampine*, the OGC had not issued a complaint, but rather had dismissed the unfair practice charge. At that point, the Board would have been within its authority to remand the case to the OGC to issue a complaint. However,

because CSEA’s position statement indicates that the documents exist and are located at the home of its former president, it is appropriate to order CSEA and its Chapter 47 to produce the documents required by EERA section 3546.5 for the fiscal year in question . . . .

(*Id.* at p. 13)

In essence, the respondent in *Shampine, supra*, PERB Decision No. 2355 had stipulated to the very facts necessary for the Board to determine that the charging parties were entitled to the financial report in question. In that specific procedural posture, the Board exercised its discretion under EERA section 3546.5 to issue a compliance order on its own motion, rather than remanding the case to the OGC. Nothing in *Shampine* suggests that the Board lacked the authority to remand the case to the OGC for issuance of the complaint, or that if the case returned to the Board on exceptions to a proposed decision, that the Board could not find the respondent had violated EERA, even if the union had complied with EERA section 3456.5 subsequent to the issuance of the complaint.

In the present case, the OGC *has* issued a complaint. It is therefore incumbent upon both the ALJ and the Board to order a remedy if in fact the respondent has violated EERA section 3546.5. (*State of California (Department of Transportation)* (1983) PERB Decision No. 361-S at pp. 17-18 [“We are no less mindful than our dissenting colleague of the Board’s obligation to provide remedies which effectuate the purposes of EERA”].) If the Board were to decline finding an EERA violation, employee organizations would lack the incentive from an enforcement perspective to provide union members with financial reports until the member filed an unfair practice charge and the OGC issued a complaint.

It is clear that the respondent did violate EERA section 3546.5, because the financial report it initially provided to Lukkarila was not “signed and certified as to accuracy by its president and treasurer, or corresponding principal officers.” (EERA section 3546.5) The Association argues that it was excused from its EERA violation when it provided Lukkarila with the signed financial report. However, it did not provide the signed report until after the OGC issued the complaint, and nearly a year after Lukkarila requested the report.

An unexcused delay in responding to a request for a financial report is analogous to an employer's unexcused delay in responding to a request for information that is relevant and necessary to an employee organization's representational duties. Likewise, an unreasonable delay in providing requested information is tantamount to a failure to produce the information at all. (*Chula Vista City School District* (1990) PERB Decision No. 834.) Furthermore,

Even a delay as short as two months, without employer explanation, has been held to be a violation. The fact that an employer ultimately furnishes the information does not excuse an unreasonable delay.

(*Id.* at 51; citations omitted)

Therefore, for the period of time between Lukkarila's request for the report and the Association's delay in providing Lukkarila with a signed report, the Association was in breach of EERA section 3546.5. Providing the report to Lukkarila after the OGC issued the complaint, without explanation, did not excuse the violation prior to that date. During the delay, the unsigned financial report had questionable value to Lukkarila, either as an Association member or as a candidate for Association president, since he had no verification that the unsigned report reflected the true financial status of the Association.

*O'Malley, supra*, PERB Decision No. 1578-H relied upon by the ALJ, is inapplicable to the present case. As the proposed decision notes, PERB Regulation 32125, subdivision (b), was repealed in 2006, and the appropriate procedure to remedy a failure to comply with section 3546.5 is now to file an unfair practice charge. *O'Malley* was decided prior to 2006, when the sole remedy available to parties for a violation of section 3546.5 was an order compelling compliance, and the sole avenue for achieving that result was for the charging party to file a petition to compel compliance. (*Id.* at pp. 5-6.) Since the charging party in that case could not have sought an order by the Board that the respondent had violated EERA, the sole available

remedy was achieved when the respondent filed the requested reports with the Board and copies were sent to the charging party. Under that very different procedural posture, the Board held that the issues raised in the charge were moot.

Subsequent to the repeal of PERB Regulation 32125, a charging party alleging a violation of EERA section 3546.5 is now entitled to a remedy besides receipt of the applicable financial report, viz., a posting by the respondent. For this reason, the Board's finding in *O'Malley, supra*, PERB Decision No. 1578-H that the issues were moot after the charging party's receipt of the financial report is inapposite to the present matter, because Lukkarila is entitled to seek a posting order.

*California State University Employees Union, SEIU Local 2579, CSEA (Sarca)* (2006) PERB Order No. Ad-351-H, also relied upon by the ALJ, suffers from the same inadequacies as *O'Malley*, as the relevant facts in that case occurred prior to the repeal of PERB Regulation 32125.

With regard to Lukkarila's charge of interference, we reject Lukkarila's exception that the ALJ dismissed the charge because Lukkarila failed to allege that the Association violated its duty of fair representation under EERA section 3544.9. The ALJ makes reference to cases in which a charging party alleges a breach of the duty of fair representation as an example "where PERB has in the past inserted itself into the dispute." (Proposed decision at p. 12.) The ALJ notes this example as a contrast to the present case, where the complaint touches only on internal union affairs of an employee organization that would not substantially impact Lukkarila's relationship with an employer. Nowhere does the ALJ suggest that Lukkarila's charge should be dismissed because he did not allege a violation of the Association's duty of fair representation. We also reject the remaining exceptions as they raise no issues that were not already adequately addressed in the proposed decision.

We note that when a respondent admits to a failure to comply with EERA section 3546.5 at the charge processing stage, we do not profess a preference that the OGC issue a complaint. The OGC has full authority under EERA section 3546.5 to issue an order compelling compliance with that section and, upon full compliance with the order, to dismiss the charge, even when the charge is pleaded alongside independent charges that meet the criteria for the issuance of a complaint.

### ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the Claremont Faculty Association (Association) violated the Educational Employment Relations Act (EERA), Government Code section 3546.5 by failing to timely provide Dave Lukkarila (Lukkarila) with a detailed written financial report of its financial transactions for fiscal year 2012-2013 in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. The remaining allegations are **DISMISSED WITH PREJUDICE**.

Pursuant to EERA section 3546.5, it hereby is **ORDERED** that the Association, its governing board and its representatives shall:

A. **CEASE AND DESIST FROM:**

1. Failing to make available annually to Association members within sixty (60) days after the end of the Association's fiscal year, a detailed written financial report of an adequate itemized record of its financial transactions, in the form of a balance sheet and an operating statement, signed and certified as to accuracy by the Association president and treasurer, or corresponding principal officers.



B. TAKE THE FOLLOWING AFFIRMATIVE ACTIONS DESIGNED TO EFFECTUATE THE POLICIES OF EERA:

1. Within ten (10) workdays of the service of a final decision in this matter, post at all Association locations where notices to Association members customarily are posted, copies of the Notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the Association, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material. In addition to physical posting of paper notices, the Notice shall be posted by electronic message, intranet, internet site, and other electronic means customarily used by the Association to communicate with its members.

2. Written notification of the actions taken to comply with this Order shall be made to the Office of the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. The Association shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on Dave Lukkarila.

Chair Martinez and Member Huguenin joined in this Decision.

**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-CO-1630-E, in which all parties had the right to participate, it has been found that the Claremont Faculty Association (Association) violated the Educational Employment Relations Act (EERA), Government Code section 3546.5.

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

**A. CEASE AND DESIST FROM:**

1. Failing to make available annually to Association members within sixty (60) days after the end of the Association's fiscal year, a detailed written financial report of an adequate itemized record of its financial transactions, in the form of a balance sheet and an operating statement, signed and certified as to accuracy by the Association president and treasurer, or corresponding principal officers.

Dated: \_\_\_\_\_

CLAREMONT FACULTY ASSOCIATION

By: \_\_\_\_\_  
Authorized Agent

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

STATE OF CALIFORNIA  
PUBLIC EMPLOYMENT RELATIONS BOARD



DAVE LUKKARILA,

Charging Party,

v.

CLAREMONT FACULTY ASSOCIATION,

Respondent.

UNFAIR PRACTICE  
CASE NO. LA-CO-1630-E

PROPOSED DECISION  
(June 29, 2015)

Appearances: Dave Lukkarila, on his own behalf; Richa Amar, Staff Attorney, California Teachers Association, for Claremont Faculty Association.

Before Shawn P. Cloughesy, Chief Administrative Law Judge.

PROCEDURAL HISTORY

This case alleges that an exclusive representative failed to comply with a member's multiple requests for detailed financial reports, pursuant to Educational Employment Relations Act<sup>1</sup> (EERA) section 3546.5, and that such failure interfered with the member's ability to campaign for an elected position with the exclusive representative. The exclusive representative asserts that the claims should be dismissed because some of the charging party's requests were untimely, that it eventually provided the requested documents, and that the failure to provide the financial reports did not have a substantial impact on the member's employment.

On August 14, 2014, Dave Lukkarila (Lukkarila) filed an unfair practice charge (charge) against the Claremont Faculty Association (CFA or Association). The charge was signed under penalty of perjury by Lukkarila to be true and complete to the best of his knowledge. The charge stated in brief that: on June 7, 2013, Lukkarila declared that he was going to begin his campaign for the office of Association President for 2013-2014; that he

<sup>1</sup> EERA is codified at Government Code section 3540 et seq.

requested on four occasions between February 3 and March 3, 2014, for the Association to provide him with copies of its financial records for the past three years;<sup>2</sup> that Lukkarila never received “signed and certified” financial records; that the Association violated EERA sections 3543.6, subdivision (b), and 3546.5; and that the Association’s failure to release “signed and certified” financial records interfered with his campaign for Association President by preventing him from creating a political platform based upon accurate and truthful facts.

On November 25, 2014, the Office of General Counsel of the Public Employment Relations Board (PERB) issued a complaint which stated in pertinent part:

1. Charging Party is an employee within the meaning of Government Code sections 3540.1(j).
2. Respondent is the exclusive representative within the meaning of Government Code section 3540.1(e) of an appropriate unit of employees.
3. On or about February 3, 2014, Charging Party requested that CFA provide “financial statements, going back three years.”
4. Respondent failed to provide a balance sheet and an operating statement, signed and certified as to the accuracy of such documents by its president and treasurer, or corresponding principal officers, in violation of Government Code section 3546.5.

On November 25, 2014, a formal hearing was set for March 9, 2015.

On December 9, 2014, the Association filed its answer. It admitted that it provided financial records which were unsigned, but also included a representation that the records were accurate. The Association asserted that if Lukkarila requested, it would provide Lukkarila a balance sheet and operating statement and certify the accuracy of the document with signatures from the Association President and Treasurer.

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<sup>2</sup> Lukkarila, however, clarified that he would accept financial records for the 2012-2013 fiscal year.

## First Motion to Dismiss

On February 9, 2015, the Association filed a motion to dismiss and attached to the motion the following financial records of the Association: Statement of Activities for the Year Ended August 31, 2013; Statement of Financial Position, dated August 31, 2013; and Statement of Cash Flows for the Year Ended August 31, 2013. The financial records were signed and certified by the Association President and Treasurer on January 31, 2015, and February 2, 2015, respectively.<sup>3</sup> The motion also included a letter to Lukkarila dated February 5, 2015, which stated that the Association's "balance sheet and operating statement for fiscal year ending August 31, 2013, signed and certified as to accuracy by Claremont Faculty Association's President and Treasurer, and responsive to your February 3, 2014 request" were enclosed. The Statement of Financial Position set forth the Association's "Assets" and "Liabilities and Net Assets." The Statement of Cash Flows contained the following reported categories: "Cash Flows from Operating Activities"; "Cash Flows from Investing Activities"; "Net Increase in Cash"; "Beginning Cash and Cash Equivalents"; and "Ending Cash and Cash Equivalents." The Statement of Activities set forth the Association's "Revenues, Gains and other Support"; its "Expenses"; its "Increase (Decrease) in Net Assets"; and its "Net Assets at the Beginning of the Year" and "Net Assets at the End of the Year."

The Association contended in its motion that Lukkarila was untimely in his request for financial reports prior to the 2012-2013 fiscal year and as the Association had now provided him with the 2012-2013 fiscal year financial reports, the complaint was now moot and should be dismissed. The Association also argued that Lukkarila's interference allegation was beyond the jurisdiction of PERB as it intruded into internal union matters unrelated to Lukkarila's

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<sup>3</sup> The certification contained the following language, "We certify that the audited financial [r]eport above is accurate to the best of our knowledge."

employment relationship and did not have a substantial impact on his relationship with the employer. (*Service Employees International Union, Local 99 (Kimmitt)* (1979) PERB Decision No. 106; *California State Employees Association (Hard, et al.)* (1999) PERB Decision No. 1368-S, pp. 24-25.)

On February 13, 2015, the Association requested that the March 9, 2015 formal hearing date be taken off calendar pending the Administrative Law Judge (ALJ) Valerie Pike Racho's (Pike Racho) ruling on the motion to dismiss.

On February 17, 2015, ALJ Pike Racho afforded Lukkarila an opportunity to respond to the Association's answer and its motion to dismiss. The ALJ granted the Association's request to remove the matter from the formal hearing calendar.

#### Motion to Amend the Complaint

On or about March 3, 2015, Lukkarila filed a response to the motion to dismiss, request to continue the hearing, and request to amend the complaint. In short, Lukkarila contended that the titles of the financial records provided were not "Balance Sheet" or "Operating Statement," so an evidentiary hearing should be conducted to determine whether these records meet the requisites of EERA section 3546.5. Lukkarila requested that the complaint be amended to include an interference allegation that the Association's failure to provide him with signed and certified financial records had "some" effect on his campaign and gave his opponent and incumbent, David Chamberlain (Chamberlain), an advantage over him in the election. Lukkarila argued that the amendment was appropriate because the allegation was raised in the charge, but had not been included in the complaint nor been dismissed by the PERB Office of General Counsel.

On March 27, 2015, the Association filed its opposition to Lukkarila's motion to amend the complaint. The Association opposed Lukkarila being allowed to add the interference

allegation and further contended that PERB did not have jurisdiction over the interference allegation based upon similar arguments it made in its motion to dismiss.

### Amended Complaint

On April 17, 2015, ALJ Pike Racho denied the motion to dismiss without prejudice and granted Lukkarila's motion to amend the complaint. The amended complaint added paragraphs five through seven to the already existing four paragraphs of the original complaint.

The amended complaint provided:

1. Charging Party is an employee within the meaning of Government Code sections 3540.1(j).
2. Respondent is the exclusive representative within the meaning of Government Code section 3540.1(e) of an appropriate unit of employees.
3. On or about February 3, 2014, Charging Party requested that CFA provide "financial statements, going back three years."
4. Respondent failed to provide a balance sheet and an operating statement, signed and certified as to the accuracy of such documents by its president and treasurer, or corresponding principal officers, in violation of Government Code section 3546.5.
5. On or about June 7, 2013, Charging Party notified Respondent's agents and current President, Dave Chamberlain (Chamberlain), that he was going to run for that position of President of Respondent organization in an upcoming May 22-23, 2014, election to select Respondent's officers. On or about February 3, 24, and 25, 2014, and March 3, 2014, Charging Party requested that Chamberlain provide signed and certified copies of Respondent's financial statements for 2012-2013.
6. Respondent, acting through its agent Chamberlain, failed and refused to provide Charging Party with signed and certified copies of Respondent's 2012-2013 financial statements prior to the election for Respondent's officers held on or about May 22-23, 2014.
7. By the acts and conduct described in paragraph 6, Respondent interfered with employee rights guaranteed by the

Educational Employment Relations Act in violation of  
Government Code section 3543.6(b).

Answer to Amended Complaint

On May 11, 2015, the Association filed its answer to the amended complaint. The answer was accompanied by a declaration under penalty of perjury in compliance with PERB Regulation 32644, subdivision (b)(7).<sup>4</sup> Specifically, the Association admitted to the allegations in paragraphs one, two and three. It also set forth in its answer:

4. In answering Amended Complaint paragraph 4, Respondent admits that prior to the filing of Respondent's Answer to the Complaint, it failed to provide a balance sheet and an operating statement that were signed and certified as to the accuracy of such document by its president and treasurer, or corresponding principal officers, in violation of Government Code section 3546.5, but on February 5, 2015, Respondent provided Charging Party its 2012-2013 balance sheet and operating statement for the fiscal year ending August 31, 2013.

5. In answering Amended Complaint paragraph 5, Respondent admits that: Charging Party notified Respondent's President Dave Chamberlain on or about June 9, 2013 that he was going to run for the position of President in the next election; Charging Party requested copies of Respondent's 2012-2013 financial statements on or about February 3, 2014; and Charging Party requested signed and certified copies of Respondent's 2012-2013 financial statements on or about February 23 and 25, 2014.

6. In answering Amended Complaint paragraph 6, Respondent denies that it failed to provide Charging Party with copies of its financial statements prior to the election for Respondent's officers held on or about May 22-23, 2014, but admits that the copies provided to Charging Party were not signed and certified.

7. In answering Amended Complaint paragraph 7, Respondent denies the allegation of paragraph 7 of the Complaint.

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<sup>4</sup> PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.



In its answer, the Association also asserted affirmative defenses of timeliness and PERB's lack of jurisdiction over the interference allegation as it concerned internal union governance, which was unrelated to Lukkarila's employment.

#### Motion to Dismiss the Amended Complaint

On June 3, 2015, the Association filed a motion to dismiss the amended complaint. The Association made similar arguments as previous, except with more extensive case citations. By the date of this proposed decision, Lukkarila never responded to the motion to dismiss the amended complaint, nor requested additional time to do so. The fourteen days to file a response to the motion pursuant to PERB Regulation 32190, subdivision (b), had elapsed.

#### Transfer of Case

On June 10, 2015, the case was transferred from ALJ Pike Racho to ALJ Shawn P. Cloughesy. The formal hearing was previously scheduled for July 20 and 21, 2015.

#### FINDINGS OF FACT

When considering a motion to dismiss, the Board construes all facts in the manner most favorable to the non-moving party. (See *California State Employees Association (Parisi)* (1989) PERB Decision No. 733-S [treating motion to dismiss as motion for summary judgment]; *Los Angeles Community College District* (1983) PERB Decision No. 331 [treating motion to dismiss as motion for judgment on the pleadings].) Additionally, the admission of facts in the answer to the amended complaint is a conclusive concession of the truth of a matter, which has the effect of removing it from the issues in controversy. (See *Regents of the University of California* (2012) PERB Decision No. 2302-H, adopted ALJ's proposed decision, p. 15.)

The parties do not dispute what occurred. In a sense, through the verified unfair practice charge, the amended complaint, and its corresponding verified answer, the Association

has stipulated to the truth of much of the pleadings. As such, factual findings can be made for purposes of determining this motion to dismiss.

Lukkarila is an employee within the meaning of EERA section 3540.1, subdivision (j). The Association is the exclusive representative within the meaning of Government Code section 3540.1, subdivision (e), of an appropriate unit of employees.

On or about June 7, 2013, Lukkarila notified the Association President Chamberlain that he was going to run for that position of Association President in an upcoming May 22-23, 2014 election. Between the dates of February 3 and March 3, 2014, Lukkarila requested three years of financial records, but admitted that he would accept the financial records for the 2012-2013 fiscal year. The Association during this period of time provided financial records, but they were not "signed and certified" by the Association President and its Treasurer. Lukkarila did not have signed and certified financial records during the time of his campaign and lost the election.

On or about February 5, 2015, the Association provided Lukkarila with the following signed and certified financial records: Statement of Activities for the Year Ended August 31, 2013; Statement of Financial Position, dated August 31, 2013; and Statement of Cash Flows for the Year Ended August 31, 2013. These financial records contain information as to the Association's assets and liabilities; total assets; total liability; total net assets; total liabilities and net assets; revenues and expenses; net assets at the beginning of the year, and net assets at the end of the year; and beginning and ending cash.

#### ISSUES

1. Was the initial request for three years of financial documents timely?
2. Does the Association's providing the financial records on February 5, 2015, mandate the dismissal of the allegation?

3. Did the failure to provide “signed and certified” financial records before the election constitute unlawful interference?

### CONCLUSIONS OF LAW

#### Pertinent EERA Sections

EERA section 3543.6, subdivision (b), provides:

It shall be unlawful for an employee organization to:

[¶ . . . ¶]

(b) 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.

[¶ . . . ¶]

(Emphasis added.)

EERA section 3546.5 provides:

Every recognized or certified employee organization shall keep an adequate itemized record of its financial transactions and shall make available annually, to the board and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, signed and certified as to accuracy by its president and treasurer, or corresponding principal officers. In the event of failure of compliance with this section, any employee within the organization may petition the board for an order compelling such compliance, or the board may issue such compliance order on its motion.

(Emphasis added.)

#### Untimeliness of the Three Year Records Request

In *Rio Teachers Association (Lucas)* (2011) PERB Decision No. 2157, p. 3 (*Rio*), and *California School Employees Association & its Chapter 47 (Shampine, et al.)* (2014) PERB Decision No. 2355, p. 10, (*Shampine*), p. 10, the Board limited members’ requests for financial

records pursuant to EERA 3546.5 to the “immediate preceding fiscal year.” The six-month statute of limitations in EERA section 3541.5, subdivision (a)(1), applies to requests for financial records under EERA section 3546.5. (*Rio, supra*, PERB Decision No. 2157, p. 4; *Shampine, supra*, PERB Decision No. 2355, p. 8.) As Lukkarila made his requests for financial records pursuant to EERA section 3546.5 between February 3 and March 3, 2014, the immediate preceding fiscal year is 2012-2013. Any allegation that the Association did not provide prior fiscal year reports to the 2012-13 fiscal year therefore cannot be considered and are dismissed.

#### Mootness/Dismissal

The Higher Education Employer-Employee Relations Act (HEERA),<sup>5</sup> at section 3587, contains a provision virtually identical to EERA section 3546.5. In *California Nurses Association (O'Malley)* (2003) PERB Decision No. 1578-H (*O'Malley*), the charging party alleged that his union violated HEERA section 3587 by failing to provide financial reports. A Board agent forwarded copies of the financial reports to the charging party, and then dismissed the charge as moot. In upholding the dismissal, the Board stated in part:

[The union] provided the requested financial records to the Board; and in turn, the Board agent forwarded them to [the charging party]. That is all that is required by HEERA section 3587 and PERB Regulation 32125.

(*Id.*, p. 6.)

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<sup>5</sup> HEERA is codified at Government Code section 3560 et seq.

Although PERB Regulation 32125<sup>6</sup> has been repealed, HEERA section 3587 has not changed, nor has EERA section 3546.5. In *O'Malley, supra*, PERB Decision No. 1578-H, p. 6, the Board further stated:

Since [the union] has complied with the request for financial records, the issue is now moot.

In 2014, well after the issuance of *O'Malley* and the revision to the PERB Regulations treating violations of EERA section 3546.5 as unfair practice charges, the Board rendered its decision regarding an EERA case in *Shampine*. In *Shampine*, the Board found that the employee organization violated EERA section 3546.5 by not providing the financial records, but it did not remand the matter to the PERB Office of General Counsel for the issuance of a complaint. Rather, it merely ordered the employee organization to produce the financial records. (*Shampine, supra*, PERB Decision No. 2355, p. 13.)

Similarly, in the present case, the Association on or about February 5, 2015, has complied with Lukkarila's request for financial records by providing financial records which contain the same or equivalent information as a balance sheet and operating statement and were "*in the form of a balance sheet and an operating statement.*"<sup>7</sup> (EERA section 3546.5 (emphasis added).) As in *O'Malley, supra*, PERB Decision No. 1578-H, and in *Shampine, supra*, PERB Decision No. 2355, p. 13, no other action should be taken and the allegation therefore will be dismissed.

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<sup>6</sup> Regulation 32125, subdivision (b), was repealed in 2006, and the appropriate procedure to remedy a failure to comply with section 3546.5 is now an unfair practice charge. (PERB Reg. 32602, subdivisions (a) and (d), and *Rio, supra*, PERB Decision No. 2157, p. 4.)

<sup>7</sup> See *California State University Employees Union, SEIU Local 2579, CSEA (Sarca)* (2006) PERB Order No. Ad-351-H, p. 5, "once documents meeting the minimum requirements . . . are produced, the responding party's obligation has been fully discharged and dismissal is appropriate."

## Interference

In *California School Employees Association & its Chapter 36 (Peterson)* (2004) PERB Decision No. 1683, the Board found that for an employee organization to interfere with the right of an employee under EERA, unlawful motive need not be established, but only at least slight harm to the employee's claimed EERA rights. However, the Board has been reluctant to interfere in internal union affairs of an employee organization, unless the alleged interference would substantially impact an employee's relationship with its employer. (*California State Employees Association (Hutchinson, et al.)* (1998) PERB Decision No. 1304-S, pp. 27-28.)

In this case, Lukkarila asserts that the Association's actions in denying him the required signed and certified financial documents impacted his ability to campaign for Association President. However, one's candidacy for chapter office or one's holding a position within the employee organization have been found to be purely internal union affairs that do not have a substantial impact on one's employment relationship. (*California School Employees Association & its Chapter 36 (Peterson)* (2004) PERB Decision No. 1733, p. 7; *California School Employees Association & its Chapter 36 (Peterson)*, *supra*, PERB Decision No. 1683; *California State Employees Association (Barker & Osuna)* (2003) PERB Decision No. 1551-S, p. 8; *Service Employees International Union, Local 99 (Kimmitt)*, *supra*, PERB Decision No. 106, 15-17.) This is not a case where Lukkarila is asserting a violation of the employee organization's duty of fair representation or an unreasonable application of the employee organization's procedures for taking a disciplinary action against a member, where PERB has in the past inserted itself into the dispute. (*California State Employees Association (Hard, et al.)* (2002) PERB Decision No. 1479-S; *California Correctional Peace Officers Association (Colman)* (1989) PERB Decision No. 755-S; *California School Employees Association and its*

*Shasta College Chapter #381 (Parisot)* (1983) PERB Decision No. 280.) Thus, Lukkarila's allegations are insufficient to state a prima facie case of interference.

As a substantial impact on the employee-employer relationship cannot be established according to prior PERB decisional law, the allegation of interference must also be dismissed.

Furthermore, as all of Lukkarila's allegations have been dismissed, the motion to dismiss the amended complaint is granted.

#### PROPOSED ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, the complaint and underlying unfair practice charge in Case No.

LA-CO-1630-E, *Dave Lukkarila v. Claremont Faculty Association*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Public Employment Relations Board (PERB or Board) itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board  
Attention: Appeals Assistant  
1031 18th Street  
Sacramento, CA 95811-4124  
(916) 322-8231  
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet

which meets the requirements of California Code of Regulations, title 8, section 32135, subdivision (d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)