

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



MANHATTAN BEACH UNIFIED TEACHERS
ASSOCIATION, CTA/NEA,

Charging Party,

v.

MANHATTAN BEACH UNIFIED SCHOOL
DISTRICT,

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CE-5806-E

PROPOSED DECISION
(August 29, 2014)

Appearances: California Teachers Association by Jean Shin, Attorney, for Manhattan Beach Unified Teachers Association, CTA/NEA; Atkinson, Andelson, Loya, Ruud & Romo by Joshua E. Morrison, Attorney, for Manhattan Beach Unified School District.

Before Kent Morizawa, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, an exclusive representative claims that a public school employer violated the duty to bargain in good faith under the Educational Employment Relations Act (EERA)¹ by failing to respond to its requests for information. The employer denies any violation.

On April 19, 2013, the Manhattan Beach Unified Teachers Association, CTA/NEA (MBUTA) filed the instant unfair practice charge with the Public Employment Relations Board (PERB or Board) against the Manhattan Beach Unified School District (District). On October 4, 2013, the PERB Office of the General Counsel issued a complaint alleging a violation of EERA section 3543.5(a), (b), and (c).

¹ EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

On October 23, 2013, the District filed an answer to the PERB complaint denying any violation of EERA. The parties participated in an informal settlement conference on February 24, 2014, but the matter was not resolved.

PERB held a formal hearing on May 13-14, 2014. The matter was submitted for decision when post-hearing briefs were filed on August 12, 2014.

FINDINGS OF FACT

The Parties

The District is a public school employer within the meaning of EERA section 3540.1(k). Rick Bagley (Bagley) is the Deputy Superintendent of Administrative Services. In this capacity, he oversees a number of District departments, including Fiscal Services, Information Technology, and Maintenance and Operations. He is also the District's chief negotiator.

MBUTA is an exclusive representative within the meaning of EERA section 3540.1(e). Sandra Goins (Goins) is the Executive Director of South Bay United Teachers and assists MBUTA with negotiations and bargaining; writing, interpreting, and enforcing contract language; representational issues with members; and grievance processing.

MBUTA and the District were parties to a Collective Bargaining Agreement (CBA) whose terms were in effect at all times relevant to this case.

MBUTA's Requests for Information

On August 1, 2012, Goins sent Bagley a request for information seeking, in relevant part, the following:

Financial Reports of the Manhattan Beach School Facilities Corporation from 2005-present

A list of all MBUTA Bargaining Unit members receiving stipends indicating the nature of the stipend (e.g. Head Football Coach) and the amount.

Goins testified that at the time of the August 1st request, she understood the Manhattan Beach School Facilities Corporation (Corporation) to be a for-profit corporation whose income impacted the District's finances.

On September 6, 2012, Goins sent Michael Matthews (Matthews), the District's Superintendent, a request for information seeking, in relevant part, the following:

10. 2011-2012 Salary information for Certificated and Classified Management. Placement information and salary schedule that is similar to that found on the J-90 reports^[2] for teachers.

12. Copies of all agreements made with law firms, consulting and accounting firms and any individuals retained by the District.

Goins testified that she requested this information to determine the impact these expenditures had on the District's budget, which would assist MBUTA during the course of bargaining.

In late September and early October 2012, Bagley and Kathy Hall (Hall), the District's Director of Human Resources, provided responses to MBUTA's August 1st and September 6th requests for information.

On March 12, 2013, Goins sent Matthews an e-mail stating that MBUTA did not receive complete responses to the August 1st and September 6th requests. From the August 1st request, the District had yet to provide information regarding the Corporation and stipend

² A "J-90 report" is a report that school districts complete each year. It contains certain financial information regarding its employees, including a scattergram, which is a version of the salary schedule that shows the number of full-time equivalent assigned to each square of the salary schedule and the total cost of the salaries in each square. The J-90 report also includes some salary information for administrative positions, such as the Superintendent and school principals.

information for bargaining unit members. From the September 6th request, the District had yet to provide responses to Items 10 and 12.

Bagley testified that at some point in time he learned that the Corporation was incorporated in 1995 as a non-profit public corporation for the purpose of setting itself up as a third-party lessor in transactions typically financed through a certificate of participation. At the time MBUTA made its August 1st request, the Corporation was still in existence, but was no longer being used by the District. It did not have any financial resources or records.

Bagley testified that Human Resources (HR) had some difficulty obtaining stipend information because certain stipends were paid by the Manhattan Beach Athletic Foundation, and the District did not have immediate access to that stipend information. However, other stipends are paid directly by the District, and the District did have access to that information. Bagley also testified that he was unaware that Hall had not provided the stipend information in October 2012. He did not learn of this omission until March 2013, and at that time he became directly involved in gathering the stipend information. By April 30, 2013, the District had compiled all of the requested stipend information.

On March 12, 2013, Goins also made a new request for information seeking the following:

Complete copies of the 2010-2011, 2011-2012 and 2012-2013 [District] Adopted Budget including all detail pages. MBUTA recognizes this is a great deal of paper. In order to expedite printing and the associated costs, please provide the files electronically.

Please provide copies of all Public Disclosures of Proposed Collective Bargaining Agreements (AB 1200 documents filed with LACOE) from 2007-2012.

Also, please provide copies of all correspondence from Los Angeles County Office of Education (LACOE) and the [District] during 2007/2008-2012/2013 school years.

(Emphasis in original.) Goins testified that she requested the budget detail pages in order to obtain more complete information regarding the District's budget, she requested the AB1200 documents to verify the District's claims that certain MBUTA proposals would not pass the Los Angeles County Office of Education's (LACOE) AB1200 review, and she requested all correspondence from LACOE to verify the District's claim that it sometimes received directives from LACOE regarding how it should create its budget.

On April 15, 2013, Goins sent Matthews an e-mail stating MBUTA was still waiting for responses to its August 1st, September 6th, and March 12th requests. Attached to this e-mail were also two new requests for information. The first request sought:

[C]opies of all correspondence, between the District and the Los Angeles County Office of Education (LACOE) for the *current* fiscal year as well as the preceding four (4) fiscal years.

[Copies] of all contracts and invoices related to the iPad program and the technology related to its implementation and installation. (Including WiFi acquisition/installation, hardware, software, training and all related costs associated with the iPad program.)

(Emphasis in original.) Goins testified that she requested information regarding the iPad program because the program had a substantial impact on the District's budget.

Goins' second April 15th request sought:

Copies of all contracts, representation agreements, authorization letters, fee schedules, and related documents between the District and its retained legal counsel related to the provision of legal services regarding: collective bargaining, collective bargaining agreement compliance; grievance representation; employee discipline, lay-offs or other reductions in force and other related matters for the *current* fiscal year as well as the preceding four (4) fiscal years.

Copies of all summary documents (e.g. spreadsheets, accounts, fund or expense summaries, cumulative statements or expenses incurred, audits, *etc.*) or other records that list legal services costs

incurred by the District for any reason for the *current* fiscal year as well as the preceding four (4) fiscal years.

Copies of all invoices, legal services bills, payment notices, checks, drafts, warrants or other related documents concerning or payable to the District's retained legal counsel for the *current* fiscal year as well as the preceding four (4) fiscal years.

Copies of applications or requests for the reimbursement of mandated costs related to legal services for the *current* fiscal year as well as the preceding four (4) fiscal years.

(Emphasis in original.) Goins testified that she requested this information because of the impact the District's use of legal fees had on the District's budget.

Bagley testified that April 2013 was a busy time for his office because the District was working on the issuance of a bond. This involved coordinating with bond rating agencies and preparing all necessary documentation to issue the bonds. The bonds were necessary so the District could finish their construction project at the high school.

On June 5, 2013, Matthews and Bagley met with Goins and Karl Kurz, who was MBUTA's President at the time, about the District's responses to MBUTA's requests for information. Bagley informed MBUTA that it had set up a website containing the District's responses to MBUTA's requests for information and that the website went "live" the prior day. Prior to this meeting, the District did not inform MBUTA that it intended to respond to the requests for information in this manner.

On the website, each request for information had its own heading, and under each heading were subheadings corresponding to each individual item in the request for information. Clicking on the subheading directed the user to documents or other information that the District believed was responsive to the individual request. The District's website included new information and information that it had already provided to MBUTA in prior responses.

Under the heading corresponding to the August 1st request, clicking on the subheading reading “Q2: MBUSD Capital Facilities Fund Information” directed the user to the Corporation’s Statements of Information filed with the State of California from 2005 to 2013. Bagley testified that he informed Goins at the June 5th meeting that the District did not possess any information responsive to MBUTA’s request for the Corporation’s financial reports. Goins testified that she did not receive this information until November 2013. Under the August 1st heading, clicking on the subheading reading “Q3: Stipend information for 2012-13 (Updated 4/2013)” directed the user to a matrix containing stipend information for bargaining unit members in the 2012-2013 school year.

Under the heading corresponding to the September 6th request for information, clicking on the subheading reading “Q10: 2011-2012 Salary Information for Management” directed the user to a page of the District’s HR website containing classified and certificated salary schedules. Bagley testified that an individual would be able to ascertain management salaries by reviewing the salary schedules on the District’s HR website. The subheading reading “Q12: Copies of Agreements with All Law Firms” contained three subheadings, each of which directed the user to a different contract for legal services between the District and an outside law firm. There were no contracts for consultants, accounting firms, or individuals.

Under the heading corresponding to the March 12th request for information, the subheading reading “Q1: Adopted Budgets” contained three subheadings corresponding to the 2010-2011, 2011-2012, and 2012-2013 school years. Clicking on each subheading directed the user to the adopted budget for that school year. The adopted budgets each consist of hundreds of pages and contain the narrative pages for each budget, which incorporate the standardized account code structure (SACS). Bagley testified that he interpreted “detail pages” in MBUTA’s request to mean the budget detail (i.e., the narrative pages and the SACS forms);

not the expenditure detail for each budget. The expenditure detail is an itemized list of expenditures broken down by area (books and supplies, services, etc.) and consists of thousands of pages.

Under the March 12th request for information, the subheading reading, “Q2: AB1200 Forms” contained two subheadings corresponding to the 2007-2008 CBA and the 2011-2012 CBA. Clicking on each subheading directed the user to the AB1200 Public Disclosure of Proposed Collective Bargaining Agreements for the respective CBA. The subheading reading “Q3: Correspondence from LACOE to MBUSD” directed the user to a page of LACOE’s website containing a searchable database of bulletins that LACOE issued to all school districts. Bagley testified that the District responded in this manner to MBUTA’s request for correspondence with LACOE because the District did not know with specificity the type of correspondence MBUTA was seeking.

Under the heading corresponding to the first April 15th request for information, the subheading reading “Q1: Copies of All Correspondence Between the MBUSD and LACOE for Past 5 Years” again directed the user to a page of LACOE’s website containing a searchable database of bulletins that LACOE issued to all school districts. The subheading reading, “Q2: All Information Related to the iPad Program” directed the user to a page of the District’s website containing a link to software applications for the iPad, links to examples of students using the iPad, and quotes from students describing how the iPad helped them with their schoolwork.

Under the heading corresponding to the second April 15th request for information, the subheading reading “Q1: Documents Pertaining to All Legal Services (Current + Prior 4 years)” contained four subheadings, each of which directed the user to a different contract for legal services between the District and an outside law firm. The subheading reading, “Invoices

& Other Documents Pertaining to All Legal Services (Current + Prior 4 Years)” directed the user to a document showing itemized expense detail on expenditures made to outside entities, including some of the law firms identified in response to MBUTA’s requests for information, from July 1, 2007 to May 31, 2013. The subheading reading, “Q3: Documents Pertaining to Mandated Cost Reimbursement re: Legal Services” directed the user to a page that read:

ITEM(S) REQUESTED CURRENTLY NOT AVAILABLE

The item requested is very broad in scope and/or comprised of a large number of documents that will take a significant amount of time for staff to locate and compile. More specific detail regarding the request is needed.

(Emphasis in original.)

On June 7, 2013, Matthews sent Goins a letter following up on the June 5th meeting and providing the URL for the website containing the District’s responses to MBUTA’s requests for information. Matthews’ letter also requested clarification regarding the necessity and relevance of all correspondence between LACOE and the District and the costs associated with the District’s use of legal services.

On June 21, 2013, Goins responded to Matthew’s June 7th letter. She provided MBUTA’s rationale for why the information requested was necessary and relevant to its representational duties and reiterated its request for that information. Goins’ letter also noted that the District’s website contained incomplete information in response to several other items in MBUTA’s prior requests for information, including the iPad program and the Corporation. Goins’ letter also noted that the website contained inadequate responses to MBUTA’s request for correspondence between the District and LACOE and reiterated its request for that information, clarifying the meaning of “correspondence” as follows:

[T]he “correspondence” requested includes, but is not limited to:
Email exchanges, letters, bulletins and notices between MBUSD

and LACOE. This includes advisories, recommendations on how to build the District's budget. By this request, MBUTA intends to review recommendations, requirements, and mandates made by LACOE to MBUSD and the District's acquiescence or resistance to those communications. To be clear, MBUTA seeks to confirm the District's assertions about its financial standing in light of County and State requirements and recommendations. This information is essential to fulfilling our duties as the exclusive representative.

On July 3, 2013, Matthews responded to Goins' June 21st letter. In response to MBUTA's request for all contracts for legal services and related documents between the District and outside law firms, the District provided links to contracts for legal services between the District and outside law firms. This is the same information posted to the District's website in June 2013 in response to MBUTA's second April 15th request for information. In response to MBUTA's request for information pertaining to the cost of legal services provided by outside law firms, the District provided a link to a document showing itemized expense detail on expenditures to outside entities, including some of the law firms identified in response to MBUTA's requests for information, made from July 1, 2007 to May 31, 2013. This is the same information posted to the District's website in June 2013 in response to MBUTA's second April 15th request for information. The District also provided links to documents showing itemized expense detail on expenditures made for books and supplies and services made from July 1, 2007 through May 31, 2013. Each of these expense details consisted of thousands of pages of documents. Bagley testified that he only provided the itemized expense detail on expenditures for books and supplies and services because he interpreted Goins' June 21st letter as only asking for that information with regard to the iPad program, and he believed that the information for the iPad program would be contained in the expense detail pages. He did not interpret Goins' June 21st letter as requesting expense detail

for the entire budgets referenced in MBUTA's previous requests for information. Several days after sending the July 3rd letter, the District posted the information to the website.

In his July 3rd letter, Matthews also stated the District remained unable to conclude whether correspondence between LACOE, the costs associated with the use of legal services, and financial documents associated with the iPad were necessary and relevant to MBUTA's representational duties. However, the District offered to provide MBUTA access to the documents so it could make any necessary copies and invited Goins to contact him to set up a mutually convenient time to do so.

In November 2013, Goins and Shawn Chen (Chen), MBUTA's President at the time, went to the District's administrative offices to copy the documents referenced in Matthews' July 3rd letter. Upon their arrival, they were asked to sign an agreement setting forth the terms and conditions for copying the documents. Goins' testified that the agreement was not in line with her understanding of what would occur that day. From her previous conversations with Matthews, she was under the belief that there would be an employee present to monitor their work, but that she and Chen would otherwise be free to make copies. Goins and Chen did not sign the agreement and no copies were made that day.

MBUTA and the District met in November 2013 to discuss the requests for information. Goins testified that at this time she informed the District that she had yet to receive the expenditure detail pages for each of the budgets requested in her requests for information. The District was not aware that Goins was seeking the expenditure detail pages. Goins testified that she and Bagley came to the conclusion that she was calling the expenditure detail pages something that the District was unfamiliar with. After receiving clarification, in November 2013 the District provided Goins with a flash drive containing expenditure detail

pages for the budgets at issue. However, the information was incomplete and did not contain all of the relevant object codes.

Goins testified that at the November 2013 meeting, Matthews asked for clarification regarding the type of information Goins was seeking regarding the iPad program. On November 25, 2013, Matthews sent Goins an e-mail with budget figures for iPad-related expenses from the District's General Fund. On December 9, 2013, Goins sent an e-mail to Matthews stating that MBUTA was requesting the actual invoices related to the iPad program. On February 4, 2014, Goins sent Matthews another e-mail renewing MBUTA's request for invoices showing costs related to the implementation of the iPad program.

Goins testified that in November 2013, the District provided further responses to MBUTA's second April 15th request for information pertaining to the District's use of legal services. Goins testified that she believed the District's response to be incomplete. However, Goins could not point to any specific information that was missing from the District's response.

Goins also testified that in November 2013, the District provided further information in response to MBUTA's requests for specific correspondence from LACOE, including communication between LACOE and the District's School Board President regarding the District's budget presentations. Goins testified that Bagley and Matthews said it still had additional correspondence from LACOE regarding special education that it would produce after redacting any sensitive information. Bagley testified that he was unaware of the District agreeing to produce redacted special education documents in response to MBUTA's requests for information.