



## LAW UPDATE LABOR AND EMPLOYMENT

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### PERB WARNING BE SURE YOUR “NO CONTACT LETTERS” DO NOT VIOLATE THE EERA

In a recent decision<sup>1</sup>, the Public Employment Relations Board (“PERB”) found that the Claremont Unified School District (“District”) violated the Educational Employment Relations Act<sup>2</sup> (“EERA”) when it issued a cease and desist letter to certificated employee Dave Lukkarila (“Lukkarila”) after he sent an email regarding various workplace issues to approximately 200 district staff members. Lukkarila sent the email at issue in this case after being placed on administrative leave for allegedly creating a hostile work environment, threatening and intimidating coworkers (including the Claremont Faculty Association (“CFA”) President), and disrupting both district and CFA meetings.

Following the emails containing threats to district staff, the CFA President requested in writing that the District take action to make Lukkarila stop his threats. In response, the District sent several informal written warnings to Lukkarila regarding his conduct. Finally, on April 7, 2014 Lukkarila sent an email to at least 200 district certificated staff members with the heading “Confidential/Internal Union Memo.” The final email contained complaints about the District and CFA but no actual threats. In response to the final email, the District issued a formal cease and desist letter to Lukkarila that was placed in his personnel file.

Notwithstanding Lukkarila’s prior history of threats and the climate of fear he had created,<sup>3</sup> PERB found that the District retaliated against Lukkarila even though he sent the April 7, 2014 email in direct violation of a no contact directive issued by the District. PERB noted the District’s concluded investigation, and the April 7, 2014 email intended only for CFA members that was limited to general complaints about working conditions and other internal CFA issues. The finding was that the District in fact engaged in retaliation against Lukkarila for an activity protected under the EERA when it issued the cease and desist letter.

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<sup>1</sup> *Dave Lukkarila v. Claremont Unified School District*, PERB Decision No. 2654 issued July 10, 2019

<sup>2</sup> California Government Code section 3543 et seq.

<sup>3</sup> Over 44 district employees, all of them CFA members, had complained about Lukkarila’s behavior and requested the District take action.

It is worth noting that in its decision PERB acknowledged that a district could issue a no contact order during employment investigations and take measures to prevent employees from communicating threats. However, PERB did criticize the practice of issuing a cease and desist letter without considering if the communication violated the underlying reason for the district's no contact order.

This case is presently under appeal to the Superior Court and we will provide further updates as the matter progresses on appeal. In the meantime, if an employee on administrative leave violates a no communication directive, administration should carefully review its response on a case-by-case basis to ensure the issue can be addressed without inadvertently violating the employee's rights under the EERA.

If you have questions concerning this case or related issues, do not hesitate to contact our office.

-Darren J. Bogié

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