STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

RYAN ALLEN WAGNER, Charging Party, v. OPERATING ENGINEERS LOCAL UNION NO. 3, AFL-CIO, Respondent.	Case No. SA-CO-144-M
MARK C. R. PIPKIN, Charging Party, v. OPERATING ENGINEERS LOCAL UNION NO. 3, AFL-CIO, Respondent.	Case No. SA-CO-145-M
BRETT DAY, Charging Party, v. OPERATING ENGINEERS LOCAL UNION NO. 3, AFL-CIO, Respondent.	Case No. SA-CO-146-M PERB Decision No. 2782-M July 26, 2021

Appearances: National Right to Work Legal Defense Foundation by Frank D. Garrison, Attorney, for Ryan Allen Wagner, Mark C. R. Pipkin, and Brett Day; Weinberg, Roger & Rosenfeld by David A. Rosenfeld and Anne I. Yen, Attorneys, for Operating Engineers Local Union No. 3, AFL-CIO.

Before Banks, Chair; Krantz and Paulson, Members.

DECISION

KRANTZ, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on exceptions by Operating Engineers Local Union No. 3 (Local 3) to the proposed decision of an administrative law judge (ALJ). The complaints alleged that Local 3, which represents a bargaining unit at the Sacramento-Yolo Mosquito & Vector Control District, violated the Meyers-Milias-Brown Act (MMBA) and PERB Regulations by interfering with the rights of three District employees: Ryan Allen Wagner, Mark C.R. Pipkin, and Brett Day (collectively Charging Parties).[1]

The gravamen of each complaint is that Local 3 interfered with protected rights when one of its business agents, Felix Huerta, submitted to the District a records request under the California Public Records Act (CPRA).[2] Huerta requested that the District perform a keyword search among various documents, including any e-mails that Charging Parties and several other employees sent or received over a 15-week period, and that the District produce all documents matching the search criteria.

In advance of the dates set for formal hearing, the parties filed cross-motions for summary judgment. The ALJ issued a proposed decision finding Local 3 liable for interfering with Charging Parties' rights. In its exceptions, Local 3 asks us to reverse

[1] The MMBA is codified at Government Code section 3500 et seq. All statutory references are to the Government Code, unless otherwise specified. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

[2] The CPRA is codified at section 6250 et seq.

the proposed decision and enter summary judgment in its favor. Charging Parties filed no exceptions and urge us to affirm the proposed decision.

We have reviewed the record and considered the parties' arguments. For the following reasons, there are sufficient undisputed facts to show that Charging Parties cannot prevail in their interference claims. Accordingly, we reverse the proposed decision and dismiss the complaints and underlying charges in Case Nos. SA-CO-144-M, SA-CO-145-M, and SA-CO-146-M.

FACTUAL BACKGROUND

Charging Parties, who are members of the District's Maintenance Operations Administrative & Technical (MOAT) bargaining unit, are public employees as defined by MMBA section 3501, subdivision (d). Charging Parties have never been Local 3 members.

Local 3 was certified as the exclusive bargaining representative of the MOAT unit on January 3, 2018. Shortly thereafter, Huerta heard that District employees were using the District's e-mail system to send messages urging decertification and that District Manager Gary Goodman had met with some of these employees. Huerta submitted a CPRA request to the District on April 17, 2018.[3] The CPRA request stated:

> "We request under the California Public Records Act any and all emails, documents, records[,] etc. either sent to or from the following [District] employees from January 1[,]

[3] Huerta asserted in a declaration that he sought to investigate whether management was assisting decertification efforts and the extent to which employees might be using District resources as part of such efforts. Based on our analysis *post*, we need not resolve whether these were in fact Huerta's motivations.

> 2018 to the present (April 15, 2018) containing the following subjects, matters, words, phrases[,] concepts:
>
> "Operating Engineers Local Union, No. 3; OE3; Union; Anti-Union; PERB; Public Employee Relations Board; MMBA; Meyers-Milias-Brown Act; Decertify; Decertification; Get rid of the Union etc[.]; How to get rid of the Union; Felix; Felix Mario Huerta Jr.; The Union."
>
> "We request this information for or to the following:
>
> "Ryan Wagner, Soda Sanouvang, Steve Ramos, Will Hayes, Brett Day, Mike Fike, Dan Bickel, Garth Ehrke, Garrett Bell, Samer Elkashef, Mark Pipkin, Gary Googman [*sic*], Janna McLeod."
>
> "Sincerely,
>
> "Felix Mario Huerta, Jr."

(Formatting adjusted from original text.)[4]

On or about April 27, 2018, the District sent each Charging Party notice of the CPRA request, including a copy thereof. Such notices are often referred to as *Marken* notices, based on the California Court of Appeal's decision in *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250 (*Marken*). *Marken* provides a means of redress for a third party who has an arguable confidentiality interest in records that are potentially the subject of a pending CPRA request, allowing such a third party to file a "reverse-CPRA" lawsuit seeking to restrict disclosure, or to

[4] Huerta addressed the CPRA request to Janna McLeod, the District's Administrative Manager. Other than McLeod, Goodman, Huerta, and the three Charging Parties, the record does not identify any of the individuals mentioned in the CPRA request.

intervene in a lawsuit that the requesting party has brought against the public entity holding the records. (*Id.* at pp. 1266-1267 & fn. 13.) *Marken* notices inform such third parties of pending CPRA requests that they may wish to challenge.

In this case, the District's *Marken* notice informed Charging Parties and other potentially interested third parties that the CPRA request specifically sought their communications, and that communications sent to or from a District e-mail account would be subject to production. The *Marken* notice further informed Charging Parties that the District did not believe any responsive documents would be exempt from disclosure, and that it intended to produce responsive documents unless a court ordered it not to do so. After the District sent its *Marken* notices, no interested third party (including Charging Parties) claimed that any of the requested documents were exempt from disclosure or brought a legal action to limit or prevent disclosure. Accordingly, the District informed Huerta that it would produce responsive records, and the District did so on June 22, 2018.[5]

On October 18, 2018, Charging Parties filed identical unfair practice charges alleging that Local 3 interfered with protected employee rights by submitting the CPRA request.[6] After Local 3 responded to the charges, PERB's Office of the General Counsel issued identical complaints in each of the three cases. In its answers to the complaints, Local 3 admitted submitting the CPRA request, denied any MMBA

[5] The record does not contain the responsive documents the District produced.

[6] The charges initially alleged that the CRPA request also constituted discrimination, but thereafter each Charging Party withdrew the discrimination allegation.

violation, and raised multiple affirmative defenses. The parties thereafter filed cross-motions for summary judgment and the ALJ issued a proposed decision on January 22, 2021.[7] Local 3 timely filed exceptions to the proposed decision.

DISCUSSION

When resolving exceptions to a proposed decision, the Board applies a de novo standard of review. (*Eastern Municipal Water District* (2020) PERB Decision No. 2715-M, p. 7.) Here, we agree with Local 3 that it pointed to sufficient undisputed facts to demonstrate that Charging Parties cannot prevail in their interference claims. The following discussion explains the basis for this conclusion.[8]

[7] On May 2, 2019, Local 3 requested that PERB consolidate the three cases pursuant to PERB Regulation 32612, subdivision (d). None of the Charging Parties objected to this request. Although no consolidation order appears in the record, the ALJ issued a unitary proposed decision addressing all three matters. We clarify any remaining procedural ambiguity by consolidating the three matters pursuant to PERB Regulation 32612, subdivision (d).

[8] A Board agent may issue a decision without holding an evidentiary hearing if the pleadings (together with any stipulations and any facts that may be administratively noticed) establish that there are sufficient undisputed facts to make a hearing unnecessary. (PERB Reg. 32207; *Eastern Municipal Water District*, *supra*, PERB Decision No. 2715-M, p. 13.) While Local 3 mainly argued that there are sufficient undisputed facts to warrant summary judgment in its favor, Local 3 argued in the alternative that Charging Parties are ineligible for summary judgment in their favor, because they did not sufficiently authenticate the District's *Marken* notice. This exception is moot, as there are sufficient undisputed facts to show that Local 3 did not interfere with protected employee rights, irrespective of whether the ALJ erred in accepting the *Marken* notice as appropriate evidence for certain purposes. In fact, as the below discussion demonstrates, while Charging Parties proffered the *Marken* notice in support of their summary judgment motion, the notice supports Local 3's argument more so than Charging Parties' argument.

I. Interference Standards

A. General Interference Test

MMBA Section 3502 protects employee rights to form, join, and participate in union activities, or to refrain from doing so, and MMBA Section 3506 prohibits interference with such employee rights. To establish a prima facie interference case, a charging party must show that a respondent's conduct tends to or does result in some harm to union and/or employee rights protected under the statutes we enforce. (*City of San Diego* (2020) PERB Decision No. 2747-M, p. 36.) A charging party normally need not establish that the respondent held an unlawful motive. (*Ibid*.) Once a charging party has established a prima facie case, the burden shifts to the respondent. (*Ibid*.) The degree of harm dictates the employer's burden. (*Ibid*.) If the harm is "inherently destructive" of protected rights, the respondent must show that the interference results from circumstances beyond its control and that no alternative course of action was available. (*Ibid*.) For conduct that is harmful but not inherently destructive, the respondent may attempt to justify its actions based on operational necessity. (*Ibid*.) In such cases, we balance the asserted need against the tendency to harm protected rights; if the tendency to harm outweighs the necessity, we find a violation. (*Ibid*.) Within the category of actions or rules that are not inherently destructive, the stronger the tendency to harm, the greater is the respondent's burden to show its need was important and that it narrowly tailored its actions or rules to attain that purpose while limiting harm to protected rights as much as possible. (*Id*. at p. 36, fn. 19.)

B. Application Against Union Respondents

PERB applies the above interference test to both employer and union respondents. (*San Jose/Evergreen Federation of Teachers, AFT Local 6157, and*

American Federation of Teachers, AFL-CIO (Crawford et al.) (2020) PERB Decision No. 2744, p. 23 (*San Jose/Evergreen*).) However, because a union generally lacks control over the employer-employee relationship, it will normally have less capacity to coerce or chill employees from exercising their rights. (*Ibid*. [finding no prima facie case of inference because union officials lacking control over the employment relationship do not have the same capacity as an employer's agent to discourage protected activity]; see also *Hartnell Community College District* (2015) PERB Decision No. 2452, p. 25; *City of Oakland* (2014) PERB Decision No. 2387-M, p. 25, fn. 5; *Oxnard Federation of Teachers (Collins)* (2012) PERB Decision No. 2266, adopting warning letter at p. 6; *California Faculty Association (Hale et al.)* (1988) PERB Decision No. 693-H, adopting warning letter at p. 5.) Furthermore, except in cases alleging that a union failed to establish or follow reasonable membership restrictions or disciplinary procedures impacting membership, a charging party must allege facts showing that the union's conduct impacted the employer-employee relationship. (*San Jose/Evergreen*, *supra*, PERB Decision No. 2744, pp. 17-18 & fn. 8.)

C. Application in Circumstances Implicating *Bill Johnson's* Principles

Where a charging party alleges that a respondent has interfered with protected activities via litigation, the charging party faces an extra hurdle that is not present in other interference cases: the charging party must establish that the respondent acted without any reasonable basis and for an unlawful purpose. (*County of Tulare* (2020) PERB Decision No. 2697-M, pp. 9-10 (*Tulare*); *State of California (State Personnel Board)* (2004) PERB Decision No. 1680-S, adopting warning letter at pp. 2-4; *Rim of the World Unified School District* (1986) PERB Order No. Ad-161, pp. 16-18; see

County of Riverside (2018) PERB Decision No. 2591-M, p. 7, fn. 5 (*Riverside*) [PERB precedent does not protect baseless, bad faith litigation conduct]; cf. *Alliance Environmental Science and Technology High School et al.* (2020) PERB Decision No. 2717, p. 25 (judicial appeal pending) [baselessly summoning law enforcement to remove organizers or employees engaged in protected activity constitutes unlawful interference].)[9]

In *Tulare*, *supra*, PERB Decision No. 2697-M, pp. 9-10, we noted that we apply these principles because we find persuasive a private sector labor law decision, *Bill Johnson's Restaurants, Inc. v. NLRB* (1983) 461 U.S. 731 (*Bill Johnson's*).[10] We find *Bill Johnson's* persuasive because it protects labor rights while also preserving parties'

[9] In this decision, we use "bad faith" as a shorthand adjective for conduct that is motivated by an unlawful purpose. Furthermore, we use "colorable" to mean the opposite of "baseless."

[10] Although California public sector labor relations precedent frequently protects employee and union rights to a greater degree than does federal precedent governing private sector labor relations, we consider federal precedent for its potential persuasive value. (*City of Santa Monica* (2020) PERB Decision No. 2635a-M, p. 47, fn. 16; *City of Commerce* (2018) PERB Decision No, 2602-M, pp. 9-11; see also *Social Workers' Union, Local 535 v. Alameda County Welfare Dept.* (1974) 11 Cal.3d 382, 391 [when interpreting California public sector labor relations laws, federal precedent is a "useful starting point," but it does "not necessarily establish the limits of California public employees' representational rights"]; *County of San Joaquin* (2021) PERB Decision No. 2761-M, pp. 24, 33, 40 & 45-48 (judicial appeal pending) [considering private sector labor law precedent for its persuasive value while noting certain differences in California public sector labor law precedent]; *City of Bellflower* (2020) PERB Order No. Ad-480-M, p. 11 [both "statutory differences and distinct principles relevant to agencies serving the public" have "frequently led the Board to craft sui generis precedent"].) We express no opinion regarding the extent to which PERB may find persuasive federal precedent applying the *Bill Johnson's* doctrine in particular contexts.

ability to pursue colorable litigation in good faith. *Bill Johnson's* principles are thus akin to litigation privilege principles, though less absolute. (See *Sacramento City Unified School District* (2020) PERB Decision No. 2749, p. 14, fn. 7 (*Sacramento*) [noting connection between litigation privilege principles and the *Bill Johnson's* rule PERB reaffirmed in *Tulare*, *supra*, PERB Decision No. 2697-M, pp. 9-10].) Indeed, as we proceed to explain, by following *Bill Johnson's*, PERB applies a qualified litigation privilege rather than the nearly absolute privilege set forth in Civil Code section 47, subdivision (b).

The statutory litigation privilege bars most tort liability for statements made in a legislative proceeding, judicial proceeding, other official proceeding authorized by law, or in the initiation or course of any other proceeding authorized by law and reviewable by writ. (Civ. Code, § 47, subd. (b).) The privilege protects against tort causes of action other than malicious prosecution claims. (*Hagberg v. California Federal Bank* (2004) 32 Cal.4th 350, 358.)[11] PERB charges do not assert tort claims, and the statutory litigation privilege does not apply in PERB proceedings. (Cf. *Gerawan Farming, Inc. v. Agricultural Labor Relations Board* (2020) 52 Cal.App.5th 141, 164 [reviewing decision of PERB's counterpart agency, the Agricultural Labor Relations

[11] Because the statutory litigation privilege is not an evidentiary privilege, it does not bar a court from admitting into evidence statements made during an official proceeding. (*Oren Royal Oaks Venture v. Greenberg, Bernhard, Weiss & Karma, Inc.* (1986) 42 Cal.3d 1157, 1168 [noting that the statutory litigation privilege "does not create an evidentiary privilege" and that "when allegations of misconduct properly put an individual's intent at issue in a civil action, statements made during the course of a judicial proceeding may be used for evidentiary purposes in determining whether the individual acted with the requisite intent"].)

Board, and noting there is no satisfactory explanation as to "how unfair labor practice proceedings are equivalent to tort proceedings or why the [litigation] privilege should apply"].)[12]

While we do not apply the nearly absolute statutory litigation privilege, by applying *Bill Johnson's* principles, we effectively follow a qualified litigation privilege that preserves parties' ability to litigate colorable legal rights while disallowing baseless, bad faith conduct that tends to harm protected labor rights. (*Riverside*, *supra*, PERB Decision No. 2591-M, p. 7, fn. 5 [PERB does not apply litigation privilege principles in a manner that protects "baseless litigation that an employer brings with the intent of interfering with or retaliating against employees for their exercise of protected rights"]; see generally Zerger et al., editors, California Public Sector Labor Relations (2d ed. 2021) § 13.15.) Applying these qualified principles helps to assure that California's labor laws are not rendered ineffective. (Cf. *People v. Persolve, LLC* (2013) 218 Cal.App.4th 1267, 1274 [courts do not apply litigation privilege where doing so cannot be reconciled with "other coequal state laws"].)[13]

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[12] Notably, if PERB charges counted as tort claims, and were the statutory litigation privilege strictly applied in PERB proceedings, then we could not apply *Bill Johnson's* principles. Instead, we would absolutely immunize from unfair practice liability all conduct covered under Civil Code section 47, subdivision (b), irrespective of whether the conduct is baseless and in bad faith.

[13] In *County of San Bernardino* (2018) PERB Decision No. 2556-M (*San Bernardino*), a PERB ALJ cited the statutory litigation privilege, wrongly analyzing it as if it were an evidentiary privilege and therefore incorporated into PERB procedure under PERB Regulation 32176. (*Id*., proposed decision at p. 12.) Neither party in *San Bernardino* excepted to the ALJ's litigation privilege discussion, or even to the unfair practice allegation to which that discussion pertained; rather, all the exceptions before the Board concerned separate issues. (*Id*., at p. 1, fn. 2.) The proposed decision's

As discussed below, we hold that *Bill Johnson's* principles apply in unfair practice proceedings in which the sole challenged conduct is a party's CPRA request. Accordingly, Charging Parties cannot prevail unless Local 3's CPRA request, or any part of it, was both baseless and in bad faith.

II. Interference Analysis

The proposed decision sought to analyze under what circumstances, if any, a union can interfere with protected rights by submitting a CPRA request to a public employer. As is evident from the above-described standards, fully analyzing every aspect of that question would involve multiple issues. However, there is no cause to analyze most such issues. Because undisputed facts demonstrate that Local 3's CPRA request was not baseless, *Bill Johnson's* principles preclude Charging Parties from prevailing, irrespective of the outcome of any other issue.

The CPRA was modeled on the federal Freedom of Information Act (codified at 5 U.S.C. § 552 et seq.) and enacted "for the explicit purpose of 'increasing freedom of information' by giving the public access to information in possession of public agencies." (*CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 651, internal citations omitted.) Invoking the CPRA—whether via litigation or via correspondence that could lead to litigation—normally should not constitute interference except where such acts are baseless and taken in bad faith, as set forth in *Bill Johnson's*. In reaching this

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litigation privilege discussion was therefore non-precedential. (*Contra Costa Community College District* (2019) PERB Decision No. 2652, p. 12.) For the same reason, no precedential value attaches to the ALJ's litigation privilege discussion in *Sacramento, supra,* PERB Decision No. 2749, proposed decision at pp. 18-20. Thus, *San Bernardino* and *Sacramento* should not be construed to mean that PERB applies the nearly absolute statutory litigation privilege.

conclusion, we note that the statutory litigation privilege protects a communication to a governmental official that invokes statutory rights and serves as a precursor to potential litigation. (*Slaughter v. Friedman* (1982) 32 Cal.3d 149, 156.) Recognizing that PERB applies *Bill Johnson's* in part based on qualified litigation privilege principles, and finding no countervailing MMBA principle strong enough to persuade us to adjust the *Bill Johnson's* balance in this instance, we hold that the *Bill Johnson's* standard applies to Local 3's CPRA request.

Although Local 3 cited the *Bill Johnson's* standard and argued that unfair labor practice liability cannot be imposed for submitting a reasonably based CPRA request, Charging Parties notably did not address this argument, thereby effectively conceding it. But Charging Parties do not lose solely because they failed to contest that *Bill Johnson's* principles require us to dismiss their charges. Rather, as we proceed to explain, the undisputed facts do not reveal that any part of Local 3's CPRA request was baseless, and Charging Parties further undercut their claim by not objecting to disclosure after the District provided them with *Marken* notices.

The CPRA provides that "every person has a right to inspect any public record" unless an exemption applies. (§ 6253, subd. (a).) CPRA section 6254 exempts 29 types of records, including "[p]ersonnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy." (§ 6254, subd. (c); see *Los Angeles Unified School Dist. v. Superior Court* (2014) 228 Cal.App.4th 222, 239 (*LAUSD*) [in applying § 6254, subdivision (c), courts broadly interpret the term "similar files" and balance the public's interest in disclosure against third party privacy rights].) Another CPRA provision similarly requires courts to apply a balancing test: Section 6255, subdivision (a), commonly known as the "catch-all

exemption," permits a public agency to withhold public records if it can demonstrate "on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." (§ 6255, subd. (a).)

In *City of San Jose v. Superior Court* (2017) 2 Cal.5th 608 (*City of San Jose*), the California Supreme Court considered a CPRA request for e-mails that government officials sent from their private e-mail accounts. The Court began by noting that while the CPRA and related provisions in the California Constitution "strike a careful balance between public access and personal privacy" (*id*. at p. 616), "public access to information must sometimes yield to personal privacy interests" (*id*. at p. 615). One critical issue before the Court was comparable to a question at the core of Local 3's request: What e-mails can fairly be deemed to "relate to public business"? (*Id.* at pp. 618-619.) The Court provided the following guidance, which is relevant both to requests for e-mails sent from private accounts as well as to Local 3's request:

> "Whether a writing is sufficiently related to public business will not always be clear. For example, depending on the context, an e-mail to a spouse complaining 'my coworker is an idiot' would likely not be a public record. Conversely, an e-mail to a superior reporting the coworker's mismanagement of an agency project might well be. Resolution of the question, particularly when writings are kept in personal accounts, will often involve an examination of several factors, including the content itself; the context in, or purpose for which, it was written; the audience to whom it was directed; and whether the writing was prepared by an employee acting or purporting to act within the scope of his or her employment . . . Communications that are primarily personal, containing no more than incidental mentions of agency business, generally will not constitute public records. For example, the public might be

> titillated to learn that not all agency workers enjoy the company of their colleagues, or hold them in high regard. However, an employee's electronic musings about a colleague's personal shortcomings will often fall far short of being a 'writing containing information relating to the conduct of the public's business.'"

(*Ibid*.)[14]

City of San Jose thus does not fully resolve whether Local 3's CPRA request sought documents that related to public business and were therefore public records within the meaning of the CPRA. Similarly, precedent does not clearly demonstrate whether Local 3 sought records that were exempt, in whole or in part, pursuant to CPRA section 6254, subdivision (c) or section 6255, subdivision (a).[15] Accordingly, we express no opinion as to whether the District properly construed its CPRA obligations,

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[14] In the instant case, the District interpreted Local 3's CPRA request as not seeking e-mails sent from private accounts. That does not render *City of San Jose*'s analysis inapposite, as an agency must always assess whether documents relate to the public business, irrespective of whether the documents are e-mails from a private account, e-mails from a governmental account, or documents that do not involve e-mail. (§ 6252, subd. (e).)

[15] It is no easy task to define the public interest and to balance it against privacy interests. (See, e.g., *LAUSD*, *supra*, 228 Cal.App.4th at pp. 240 & 241 [noting that appellate courts have "struggled" with these issues and that there is "inherent tension between the public's right to know and society's interest in protecting private citizens (including public servants) from unwarranted invasions of privacy"].) Here, Local 3's request could have contributed to "public understanding of governmental activities" (*id*. at p. 241) if the request revealed a manager improperly influencing employees in favor of or in opposition to their union, but otherwise the request may have primarily revealed employee sentiments and organizing activities for or against unionization, which are private (*City of Bellflower* (2021) PERB Decision No. 2770-M, pp. 16-21) and warrant nondisclosure under the CPRA.

and we note that unsettled jurisprudence in this area is one factor making it difficult to find that any part of Local 3's CPRA request was baseless.

Furthermore, Charging Parties undercut their claim by failing to object to disclosure after receiving *Marken* notices. After Charging Parties failed to raise any issue, the District proceeded to produce the documents. Thus, while *Bill Johnson's* principles typically require us to decide if a respondent's unmeritorious and/or unsuccessful actions were also baseless, here neither Charging Parties nor the District took even the slightest step to oppose Local 3's CPRA request or to suggest that any part of it was overbroad; as a result, Local 3's request was 100 percent successful.

For the foregoing reasons, there are sufficient undisputed facts to demonstrate that Charging Parties cannot prevail, and a formal hearing is unnecessary. Accordingly, we grant summary judgment in favor of Local 3 and dismiss the complaints and underlying charges in unfair practice Case Nos. SA-CO-144-M, SA-CO-145-M, and SA-CO-146-M.

ORDER

The complaints and unfair practice charges in Case Nos. SA-CO-144-M, SA-CO-145-M, and SA-CO-146-M are DISMISSED.

Chair Banks and Member Paulson joined in this Decision.