

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 1021,

Charging Party,

v.

CITY OF HAYWARD,

Respondent.

CITY OF HAYWARD,

Charging Party,

v.

SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 1021,

Respondent.

Case Nos. SF-CE-1075-M,
SF-CE-1117-M, SF-CE-1118-M,
SF-CE-1174-M

Case Nos. SF-CO-320-M,
SF-CO-321-M

PERB Decision No. 2620-M

January 8, 2019

Appearances: Weinberg, Roger & Rosenfeld by Paul K. Pfeilschiefter, Attorney, for Service Employees International Union Local 1021; Liebert Cassidy Whitmore by Richard C. Bolanos and Matthew M. Nakano, Attorneys, for City of Hayward.

Before Banks, Shiners, and Krantz, Members.

DECISION

SHINERS, Member: These consolidated cases are before the Public Employment Relations Board (PERB or Board) on exceptions by the City of Hayward (City) to a proposed decision of an administrative law judge (ALJ). The complaints issued by PERB's Office of the

General Counsel alleged that the City violated the Meyers-Milias-Brown Act (MMBA or Act)¹ and PERB Regulations² by: (1) interfering with employee rights by telling employees there would be layoffs if Service Employees International Union Local 1021 (SEIU) did not agree to concessions in contract bargaining; (2) interfering with employee rights by questioning two employees about their support for a potential strike by SEIU, and engaging in surveillance of SEIU members' protected activity; (3) attempting to bypass SEIU by distributing City bargaining proposals not previously shared with SEIU to its members, and issuing a memorandum disparaging SEIU and its negotiators; (4) failing to meet and confer in good faith by failing to respond to a bargaining proposal and prematurely declaring an impasse in negotiations; and (5) failing to meet and confer in good faith by implementing a last, best, and final offer (LBFO) without bargaining in good faith to impasse, and attempting to bypass SEIU by blaming SEIU for the City's implementation of its LBFO. The complaints also alleged that SEIU violated the MMBA and PERB Regulations by: (1) engaging in unlawful pressure tactics during bargaining by engaging in a strike and/or threatening a strike, and by encouraging or causing a strike by employees essential to public health and safety; and (2) failing to meet and confer in good faith by failing to meet for a bargaining session, engaging in a pre-impasse strike, failing to discuss subjects or make counterproposals, threatening non-bargaining unit members to prevent them from crossing picket lines, and issuing false public statements about negotiations.

¹ The MMBA is codified at Government Code section 3500 et seq. Hereafter all statutory references are to the Government Code unless otherwise indicated.

² PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

After ten days of hearing, the ALJ determined that the City engaged in surface bargaining, prematurely declared impasse, undermined and bypassed SEIU by communicating directly with employees, and unilaterally implemented its LBFO without negotiating in good faith to impasse. The ALJ dismissed all other allegations in the complaints. The City timely filed exceptions to the proposed decision, and SEIU filed a response to the exceptions.

On January 2, 2019, the parties filed with the Board a “Joint Request for Dismissal” (Joint Request) of the complaints in this matter with prejudice. In the Joint Request, the City also withdrew its exceptions to the proposed decision with prejudice. According to the Joint Request, the parties reached a settlement resolving all disputed issues underlying the complaints. A copy of the executed settlement agreement was attached to the Joint Request.

The Board has discretion to grant or deny requests to withdraw and dismiss cases pending before the Board itself. (MMBA, § 3509, subd. (a); EERA, § 3541.3, subds. (i) and (n);³ PERB Reg. 32320, subd. (a)(2) [“The Board itself may . . . [¶] . . . take such other action as it considers proper.”]; *State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S; *Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171a; *ABC Unified School District* (1991) PERB Decision No. 831b.)

The Board has a longstanding policy favoring voluntary settlement of disputes, such as achieved by the parties in this case. (*Dry Creek Joint Elementary School District* (1980) PERB Order No. Ad-81a.) Based on the Board’s review of the parties’ Joint Request and their settlement agreement, and the entire record in this matter, the Board finds granting the request to be in the best interest of the parties and consistent with the purposes of the MMBA to promote harmonious labor relations.

³ The Educational Employment Relations Act (EERA) is codified at section 3540 et seq.

ORDER

The parties' Joint Request for Dismissal is GRANTED. The City of Hayward's exceptions to the proposed decision are deemed withdrawn. The complaints and underlying unfair practice charges in Case Nos. SF-CE-1075-M, SF-CE-1117-M, SF-CE-1118-M, SF-CE-1174-M, SF-CO-320-M, and SF-CO-321-M are DISMISSED WITH PREJUDICE, and the proposed decision is hereby vacated.

Members Banks and Krantz joined in this Decision.