

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SERVICE EMPLOYEES INTERNATIONAL
UNION LOCAL 721,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. LA-CE-787-M

Request for Reconsideration
PERB Decision No. 2591

PERB Decision No. 2591a

December 18, 2018

Appearance: Rothner, Segall & Greenstone by Glenn Rothner and Jonathan Cohen, Attorneys,
for Service Employees International Union Local 721.

Before Winslow, Shiners, and Krantz, Members.

DECISION

KRANTZ, Member: This case comes before the Public Employment Relations Board (PERB or Board) on a request by Charging Party Service Employees International Union Local 721 (SEIU) for the Board to reconsider its decision in *County of Riverside* (2018) PERB Decision No. 2591-M (*Riverside*). Specifically, SEIU asks us to modify one aspect of our remedial order.

In *Riverside*, we found that Respondent County of Riverside (County) violated the Meyers-Milias Brown Act (MMBA)¹ and PERB Regulations² by taking various adverse

¹ The MMBA is codified at Government Code section 3500 et seq.

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

actions against County employee Wendy Thomas (Thomas), including placing her on administrative leave and then terminating her employment, based upon her exercise of protected rights. We ordered the County to take certain affirmative actions designed to effectuate the policies of the MMBA, including: (1) to offer Thomas reinstatement to her former position or, if that position no longer exists, then to a substantially similar position; and (2) to make Thomas whole for lost benefits, monetary and otherwise, which she suffered as a result of the County's conduct, including back pay, plus interest at the rate of 7 percent per annum, *from the date of her discharge, January 10, 2013*, to the date she is reinstated or declines the offer of reinstatement. (*Riverside, supra*, PERB Decision No. 2591-M, pp. 18-19, emphasis added.) SEIU argues that the Board's decision contains a prejudicial error of fact by calculating Thomas's back pay entitlement from the date of her discharge, January 10, 2013, rather than from six months earlier, July 21, 2012, when the County placed her on administrative leave. Although Thomas was on paid administrative leave, SEIU contends that Thomas lost additional earnings, including overtime pay, shift differentials, and holiday pay, during the administrative leave period, and that it will establish the extent of such losses in compliance proceedings, as necessary. (See PERB Reg. 32980.) Citing *South Bay Union School District* (1982) PERB Decision No. 207a, SEIU requests that we grant reconsideration and amend our remedial order.

The Board has reviewed the record in this matter, including SEIU's request for reconsideration, in light of applicable law.³ Based on that review, we grant SEIU's request and issue a revised order.

³ The County did not file an opposition to the request.

DISCUSSION

Under PERB Regulations, the grounds for requesting reconsideration of a final Board decision are limited to claims that: “(1) the decision of the Board itself contains prejudicial errors of fact, or (2) the party has newly discovered evidence which was not previously available and could not have been discovered with the exercise of reasonable diligence.” (PERB Regulation 32410, subd. (a); *Regents of the University of California (Davis)* (2011) PERB Decision No. 2101a-H, p. 3 (*Regents*)). A party may not use the reconsideration process to register its disagreement with the Board’s legal analysis, to re-litigate issues that have already been decided, or simply to ask the Board to “try again.” (*Chula Vista Elementary School District* (2004) PERB Decision No. 1557a, p. 2; see also *Redwoods Community College District* (1994) PERB Decision No. 1047a, pp. 2-3.)

The Board has consistently viewed an error in its remedial order as a proper subject of reconsideration. For instance, in *Desert Sands Unified School District* (2004) PERB Decision No. 1682 (*Desert Sands*), the Board found that reconsideration was warranted under the newly discovered evidence standard, because the erroneous remedial order did not exist and could not have been discovered until the Board issued its decision. (*Id.* at p. 4-5.) The Board applied the same reasoning in *Regents, supra*, PERB Decision No. 2101a-H, and thereby granted reconsideration where the Board’s decision evidenced an intent to award a full make-whole remedy, but the Board had neglected to include one element of such a remedy in its order. (*Id.* at p. 5.) Other precedent is in accord. (See, e.g., *San Mateo City School District* (1984) PERB Decision No. 375a, p. 3 [granting reconsideration to revise initial order to include a back pay remedy]; *South Bay Union School District, supra*, PERB Decision No. 207a, p. 2 [upon reconsideration, amending back pay portion of the order to conform remedy to unfair

practice committed]; see also *Compton Community College District* (1989) PERB Decision No. 720a, pp. 1, 3 [granting reconsideration to modify date used to compute employer's back pay liability when date was not known until after case was before the Board].)

Here, the record supports amending the back pay remedy to calculate it from the date the County placed Thomas on administrative leave. The operative complaint alleges that the County took adverse action against Thomas on or about July 21, 2012, when it placed her on administrative leave pending an investigation. In the proposed decision, the ALJ described the events of July 21, 2012 and concluded that the County took adverse action against Thomas by placing her on involuntary paid administrative leave. The County did not except to the ALJ's findings regarding adverse action, and we found that the MMBA protected Thomas's conduct which led the County to take such adverse action.⁴ (*Riverside, supra*, PERB Decision No. 2591-M, p. 8.) Reconsideration is appropriate where, as here, we mistakenly failed to take into account the earliest date of adverse action. (See *Oakland Unified School District* (1984) PERB Decision No. 275b, p. 5 [reconsideration appropriate to amend Board order, where order had mistakenly failed to account for a violation found in the proposed decision but to which no party excepted].)

Furthermore, only by amending our remedial order can we restore the economic status quo that would have obtained but for the County's violation. (*City of Pasadena* (2014) PERB

⁴ The County admitted that it took each of the adverse actions, including placing Thomas on involuntary paid administrative leave, "because of eight assertions that SEIU and Thomas made in the District Court litigation." (*Riverside, supra*, PERB Decision No. 2591-M, p. 8.) The ALJ did not find that the placement of Thomas on administrative leave was unlawfully motivated, because she deemed four of Thomas's eight statements to have been unprotected. Contrary to the ALJ, we determined that the MMBA protected all eight of the challenged assertions. (*Id.* at p. 18.) Accordingly, Thomas's involuntary administrative leave, like her termination, was unlawfully motivated.

Order No. Ad-406-M, p. 13; *Santa Clara Unified School District* (1979) PERB Decision No. 104, pp. 26-27.) Accordingly, the Board grants SEIU's request for reconsideration and modifies the remedial order in this matter.

ORDER

The request for reconsideration of *County of Riverside* (2018) PERB Decision No. 2591 is GRANTED and the Order is hereby AMENDED to read as follows:

Based on the foregoing findings of fact, conclusions of law, and the entire record in this case, it is found that the County of Riverside (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3506 and 3506.5, subdivisions (a) and (b), and therefore committed unfair practices under MMBA section 3509, subdivision (b), and PERB Regulation 32603, subdivision (b). Pursuant to MMBA section 3509, subdivision (b), it is hereby ORDERED that the County, its governing board, administrators, and representatives shall:

A. CEASE AND DESIST FROM:

1. Retaliating against employees for engaging in protected activity;
2. Denying employee organizations the right to represent their members.

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

1. Offer Wendy Thomas (Thomas) reinstatement to her former position, or, if that position no longer exists, then to a substantially similar position;
2. Make Thomas whole for lost benefits, monetary and otherwise, which she suffered as a result of the County's conduct, including back pay, plus interest at the rate of 7 percent per annum, from the date she was placed on involuntary administrative leave, July 21, 2012, to the date she is reinstated or declines the offer of reinstatement;

3. Within ten (10) workdays following the date this decision is no longer subject to appeal, post at all locations where notices are customarily posted, copies of the notice attached hereto as an Appendix. The Notice must be signed by an authorized agent of the County, indicating that it will comply with the terms of this Order. Such posting shall be maintained for a period of thirty (30) consecutive workdays. 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 County to communicate with its employees. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced, or covered with any other material;

4. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. Respondent 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 Service Employees International Union Local 721.

Members Winslow and Shiners 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-CE-787-M, *Service Employees International Union Local 721 v. County of Riverside*, in which all parties had the right to participate, it has been found that the County of Riverside (County or we) violated the Meyers-Milius-Brown Act (MMBA), Government Code sections 3506 and 3506.5, subdivisions (a) and (b), and therefore committed unfair practices under MMBA section 3509, subdivision (b), and PERB Regulation 32603, subdivision (b).

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

A. CEASE AND DESIST FROM:

1. Retaliating against employees for engaging in protected activity;
2. Denying employee organizations the right to represent their members.

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

1. Offer Wendy Thomas (Thomas) reinstatement to her former position, or, if that position no longer exists, then to a substantially similar position;
2. Make Thomas whole for lost benefits, monetary and otherwise, which she suffered as a result of the County's conduct, including back pay, plus interest at the rate of 7 percent per annum, from the date she was placed on involuntary administrative leave, July 21, 2012, to the date she is reinstated or declines the offer of reinstatement.

Dated: _____

COUNTY OF RIVERSIDE

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.