

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



SAN BERNARDINO COUNTY PUBLIC
ATTORNEYS ASSOCIATION,

Charging Party,

v.

COUNTY OF SAN BERNARDINO (OFFICE OF
THE PUBLIC DEFENDER),

Respondent.

UNFAIR PRACTICE
CASE NO. LA-CE-554-M

PROPOSED DECISION
(March 27, 2013)

Appearances: Reich, Adell & Civitan by Marianne Reinhold, Attorney, for San Bernardino County Public Attorneys Association; Kenneth C. Hardy, Deputy County Counsel, for County of San Bernardino (Office of the Public Defender).

Before Eric J. Cu, Administrative Law Judge.

PROCEDURAL HISTORY

In this case, an exclusive representative alleges that a public agency violated the Meyers-Milias-Brown Act (MMBA) and Public Employment Relations Board (PERB or Board) Regulations by interfering with protected representation rights and by unilaterally changing a policy within the scope of representation.¹ The agency denies any violation.

On August 19, 2009, the San Bernardino County Public Attorneys Association (Association) filed an unfair practice charge with PERB against the County of San Bernardino (Office of the Public Defender) (County). The Association alleged that the County denied an employee the right to Association representation during an investigatory meeting where discipline was expected. The Association further alleged that the County threatened the

¹ The MMBA is codified at Government Code section 3500 et seq. PERB Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

employee with insubordination if he did not attend the meeting and also unilaterally changed existing policy concerning the Association's right to select its representatives.

On July 28, 2011, the PERB Office of the General Counsel issued a complaint asserting that the above-referenced allegations violated MMBA sections 3502, 3503, 3505, and 3506 as well as PERB Regulations 32603(a), (b), and (c).² On August 29, 2009, the County filed an answer to the PERB complaint denying the substantive allegations and asserting multiple affirmative defenses. An informal settlement conference was held on October 24, 2011, but the matter was not resolved.

On April 24, 2012, the County filed a motion to dismiss the PERB complaint for lack of jurisdiction. That motion was taken under submission.

A formal hearing was held on June 19, 2012 before Administrative Law Judge (ALJ) Thomas J. Allen. During the hearing, the parties entered into the following stipulation:

The County of San Bernardino and the San Bernardino County Public Attorneys Association hereby stipulate and respectfully request that the County and the Association be permitted in the above-referenced case to utilize and refer to any evidence (documentary, testimonial, and other) admitted into evidence in the hearing in *San Bernardino County Public Attorneys Association (Berman/Willms) v. County of San Bernardino*, PERB Case No. LA-CE-431-M.

The evidentiary record in PERB Case Number LA-CE-431-M consists of 8 volumes of transcripts and joint exhibits A through DD, as well as respondent's exhibits 1 through 17. In addition to this evidence, the parties also stipulated to additional joint exhibits, labeled 1 through 10. ALJ Allen admitted two additional respondent's exhibits, A and B, without ruling

² The issues raised by the PERB complaint in this case were similar to allegations in another matter involving the same parties, PERB Case Number LA-CE-431-M. At the time of this Proposed Decision, that other case was pending for decision by the Board.

on the Association's objections. The parties agreed that those stipulations and exhibits comprised the complete evidentiary record in this case.

The parties filed simultaneous closing briefs on August 10, 2012 and simultaneous reply briefs on August 24, 2012. With the receipt of those briefs, the record was closed and the matter was submitted for decision.

On January 24, 2013, the case was transferred to ALJ Eric J. Cu for decision. Neither party objected to the transfer.

FINDINGS OF FACT

The Parties

The County is a public agency within the meaning of MMBA section 3501(c) and PERB Regulation 32016(a). The Association is an exclusive representative within the meaning of PERB Regulation 32016(b), and represents a bargaining unit of various attorney classifications.

Organization of the Public Defender's Office

The County Public Defender's Office represents the indigent in criminal proceedings in the County. Those same cases are prosecuted by the County District Attorney's Office. At all times relevant to this case, Doreen Boxer was the County Public Defender and Lauri Ferguson was the Assistant Public Defender, which is a supervisory position. Rank and file attorneys in the Public Defender's Office are part of the Deputy Public Defender (DPD) series of classifications. At the times relevant to this case, Mark Drew was an employee of the County, within the meaning of MMBA section 3501(c), and was a DPD.

Organization of the Association

The Association represents roughly 350 attorneys in the County, including DPDs, and Deputy District Attorneys (DDAs). DDA Grover Merritt is the president of the Association.

The Association is governed by an eight-member Board of Directors, most of whom are DDAs.

The Parties' Memorandum of Understanding

The County and the Association were parties to a Memorandum of Understanding (MOU) covering the terms and conditions of employment for bargaining unit members at all times relevant to this case. The most recent MOU was in effect by its own terms from June 21, 2008 until June 17, 2011.

The "RECOGNITION" clause of the MOU memorializes that the County certified the Association as the exclusive representative of its attorneys bargaining unit on October 17, 2001.

The "AUTHORIZED EMPLOYEE REPRESENTATIVES" clause gives the Association the right to "designate employees as authorized representatives or alternates to represent employees in the processing of grievances or during disciplinary proceedings" subject to certain rules that are not relevant to this case. The Association is required to submit a list of its selected designees to the County Human Resources Office. The MOU does not address the ethical responsibilities of the Association's membership.

The MOU also contains an "ACCESS TO PERSONNEL RECORDS" clause which allows "[e]mployees currently employed by the County of San Bernardino, and/or their representatives," access to their own personnel records.

The "COUNTY MANAGEMENT RIGHTS" clause recognizes the County's authority to, among other things, discipline employees.

The MOU also contains a "FULL UNDERSTANDING, MODIFICATION AND WAIVER" clause which states, in relevant part: "Therefore, the County and [the Association]

for the life of this Agreement, each voluntarily waives the right to meet and confer in good faith with respect to any subject or matter referred to or covered in this Agreement.”

The February 20, 2009 Interview

On January 26, 2009, Ferguson learned of certain issues regarding Drew’s job performance. Ferguson scheduled a meeting for Drew for February 13, 2009. Drew’s supervisor had previously informed him of some concerns about his work performance, including his maintenance of case files. On February 12, 2009, Merritt informed Ferguson and Boxer by e-mail that the Association was assigning DDA Sharon Caldwell to the represent Drew at the meeting and requested a postponement. Boxer replied on February 13, 2009, granting the postponement but objecting to a DDA serving as Drew’s representative because “[d]uring the interview with Mr. Drew, our office will be discussing confidential matters relating to Public Defender cases.” Boxer stated that it would be “inappropriate and unethical” for Association members to discuss the issues raised in the interview with any DDA. At the time, Drew and Caldwell were opposing counsel in a criminal matter set for trial. This was not the first time Boxer objected to a DDA representing a DPD in an investigatory meeting. The meeting was rescheduled for February 20, 2009.

Drew appeared for the meeting at the scheduled time, around 2:00 p.m., with private counsel for the Association, Marianne Reinhold. During the meeting, Reinhold said she was present at the request of the Association to serve as Drew’s attorney. She also said that she did not believe there to be any conflict of interest in representing both Drew and the Association.

Ferguson said that, under Business and Professions Code section 6068, Reinhold could not discuss any of the issues covered during the meeting, including client information and the internal work process of the Public Defender’s Office, without either a court order or a waiver from Drew, Boxer, and the clients whose cases would be discussed that day. Ferguson sated

that Boxer was unwilling to agree to such a waiver. Reinhold said that she could not agree to Ferguson's terms. Ferguson then said she would not proceed with the meeting but allowed Drew until 4:00 that afternoon to secure a representative that satisfied Ferguson's concerns. Ferguson confirmed that if Drew failed to reappear by 4:00 p.m., she would consider that insubordination.

Drew reappeared to the meeting around 3:35 that afternoon without any representative. Drew requested and was granted the opportunity to make two statements about the events from earlier in the day. First, Drew said he felt that he had no choice but to proceed with the interview without representation because he was unable to find a private attorney given the time and cost constraints and because he did not want to be found insubordinate. Second, Drew said that he was not interested in being a part of the larger conflict between the Association and the County over the issue of representation. Rather, Drew said he wanted to address whatever issues Ferguson had and to go back to doing his job as a DPD.

Ferguson stated that she had no objection to having a fellow DPD represent him during the interview. Ferguson provided Drew with additional time to explore that as an option. The meeting adjourned briefly, but Drew was unable to find a DPD Association representative to assist him. At the time, the Association had not designated any DPDs as its official representatives under the MOU. Therefore, the meeting proceeded without Association representation.

Ferguson questioned Drew over a variety of subjects. One of the topics covered was whether Drew ever discussed with Association representative's Merritt, Caldwell, or Reinhold any specific confidential information relating to cases assigned to him or anything relating to the confidential work product or other confidential information of the Public Defender's Office. Ferguson then proceeded to question Drew about his work performance, with specific

attention to Drew's failure to annotate or otherwise document his work in his case files. The focus of the discussion was Drew's need to improve on completing these annotations. Very little was said about what items needed to be annotated or how those annotations were used by the Public Defender's Office. These issues, in roughly the same detail, were documented in one of Drew's prior performance evaluations. Drew said he understood that annotating case files assists the Public Defender's Office in determining whether it has any conflicts of interests in its representation of clients, but that he was unaware of what process was used. That process was not discussed during the meeting. Nor did Drew and Ferguson discuss in any significant detail Drew's actual work on any case assigned to him. Ferguson also questioned Drew about his failure to appear in court on time. At the end of the meeting, Ferguson assured Drew that, because he appeared for the interview, his actions that day did not constitute insubordination. The record does not indicate whether Drew was otherwise disciplined by the Public Defender's Office.

The March 24, 2009 Policy Directive

On March 11, 2009, Boxer sent a letter to Merritt about the parties' "dispute over whether the Association has the right to appoint Deputy District Attorneys to represent Deputy Public Defenders in personnel matters." Boxer reiterated her concerns about the disclosure of confidential client and work-product information as well as what she described as "an inherent conflict of interest." Boxer included drafts of two new policies. Relevant to this case is the draft policy entitled "Confidential Information in Attorney Personnel Actions" (Confidential Information policy). Boxer invited the Association to "meet to discuss" the drafts and other issues regarding the parties' dispute.

The parties met on March 19, 2009, but did not resolve their dispute. On March 24, 2009, Boxer sent a memorandum to all attorneys in the Public Defender's Office. In the

memorandum, Boxer explained some aspects of the parties' dispute over DDA's ability to represent DPDs. Boxer also noted that she was aware that there were no DPDs designated to be Association representatives. Boxer also attached a slightly edited version of the Confidential Information policy which she said "articulate[s] some of duties of Public Defender attorneys in light of existing law and ethics rules on confidential information and conflicts of interest."

The final version of the Confidential Information policy precludes attorneys in the Public Defender's Office from disclosing confidential information to anyone outside the office without written consent of the Public Defender, except when it is necessary to do so in personnel matters. In those cases, the attorney may only disclose confidential information to a designated representative if that representative is: (1) another DPD that is a designated Association representative without any conflicts of interest and who agrees not to disclose any confidential information outside of the Public Defender's Office; or (2) to a privately hired attorney that has no conflicting interests and who agrees not to share confidential information with the Association or any other entity.

ISSUES

- A. Does PERB have jurisdiction to resolve the issues raised by the PERB complaint and the County's answer?
- B. Did the County interfere with MMBA-protected rights by its actions on February 20, 2009?
- C. Did the County unilaterally change policies concerning the selection of authorized representatives and the disclosure of personnel information?

CONCLUSIONS OF LAW

A. Jurisdiction to Resolve the Dispute

The County asserts that PERB lacks jurisdiction over the issues raised by the PERB complaint because any decision concerning either the validity of the County's conduct or the appropriate remedy in the event that PERB finds a violation would amount to an unconstitutional regulation of the practice of law. The County does not maintain that attorneys lack collective bargaining rights under the MMBA,³ only that PERB as an administrative agency and not a court established under article VI of the California Constitution, lacks the authority to address claims arising under the MMBA if those claims also implicate attorneys' ethical conduct.

In support of its position, the County cites extensively to *Santa Clara County Counsel Attorneys Association v. Woodside* (1994) 7 Cal.4th 525 (*Woodside*), which concerned the intersection of public employee-attorneys' MMBA-protected rights and those attorneys' ethical obligations to their employer-clients.⁴ The court found that the Legislature's decision to grant attorney employee's collective bargaining rights under the MMBA did not necessarily create an impermissible conflict with attorneys' ethical responsibilities. (*Id.* at p. 544.) Instead, the court held that the proper inquiry was whether the attorney-employee has allowed the natural antagonism arising out of the parties' collective bargaining relationship "to overstep the boundaries of the employer/employee bargaining relationship and [] actually compromise[] client representation." (*Id.* at p. 552.)

³ Attorneys' right to organize is expressly codified in MMBA section 3507.3.

⁴ *Woodside* was decided prior to the Legislature's enactment of MMBA section 3509 in 2001, which extended PERB's jurisdiction over unfair practice charges arising under the MMBA.

Woodside, supra, 7 Cal.4th 525, was decided before the Legislature conferred PERB with authority over unfair practice charges arising under the MMBA and it accordingly does not discuss PERB's jurisdiction. That decision did find that a Legislatively-created agency cannot intrude upon the judiciary's inherent power to regulate attorney admission, disbarment, and discipline. (*Id.* at p. 543, citing *Hustedt v. Workers' Comp. Appeals Bd.* (1981) 30 Cal.3d 329, 336 (*Hustedt*) [In *Hustedt*, the court held that a workers' compensation agency overstepped its authority when it suspended an attorney from practicing before that agency].)

A case more squarely on point is *City of San Jose v. Operating Engineers Local Union No. 3* (2010) 49 Cal.4th 597 (*City of San Jose*). In that case the California Supreme Court recognized that PERB has "exclusive initial jurisdiction over activities 'arguably protected or prohibited' by public employment labor law." (*Id.* at p. 606, citing *El Rancho Unified School Dist. v. National Education Assn.* (1983) 33 Cal.3d 946, 953.)⁵ Following this principle, the court held that PERB had jurisdiction to address MMBA-covered employees' right to strike unless it is clearly shown that PERB's remedy would be inadequate. (*Id.* at p. 611.)

Here, the primary issues in the PERB complaint are whether the County: (1) unlawfully denied representation rights; and/or (2) unilaterally changed existing policy within the scope of representation. Both claims, if proven, violate the MMBA. (*Omnitrans* (2010) PERB Decision No. 2143-M [concerning unilaterally adopted policy changes; *San Bernardino County Public Defender* (2009) PERB Decision No. 2058-M (*San Bernardino County*) [concerning denial of representation].) Thus, because the alleged conduct is "arguably prohibited" by the MMBA, PERB has initial exclusive jurisdiction to decide the matter. (*City of San Jose, supra*, 49 Cal.4th at p. 600.)

⁵ When interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

The County argues that a decision from PERB would amount to amount to an unauthorized regulation of the practice of law, but there is insufficient support for this position. Typically, the appropriate remedy for a denial of representation is an order to cease and desist from the offending conduct. (*City of Monterey* (2005) PERB Decision No. 1766-M.) The typical remedy for an unlawful unilateral change is to cease and desist from violating the law and to rescind the non-negotiated policy. (*City of Davis* (2012) PERB Decision No. 2271-M.) The County made no showing that either remedy, if ordered in this case, amounts to PERB regulating the practice of law. Nor has the County shown that such an order, in the context of this case, would cause either the Public Defender or Association unit members to “actually compromise[] client representation.” (See *Woodside, supra*, 7 Cal.4th at p. 552.⁶) For these reasons, the County’s contention that PERB lacks jurisdiction over this matter is rejected and its motion to dismiss the PERB complaint is denied.

B. Interference With Protected Rights

MMBA section 3502 states in relevant part: “public employees shall have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.” Public agencies, such as the County, may not interfere with those protected rights. (MMBA, § 3506; PERB Reg. 32603(a).)

1. The Right to Representation During Investigatory Meetings

PERB has found that, under MMBA section 3502, employees who are required to participate in an investigatory meeting with their employers are entitled to union representation if the employees have a reasonable basis for believing that the meeting could result in

⁶ Although not argued by the County, there is also no showing that PERB’s resolution of this case would intrude on the Court’s authority to regulate attorney discipline as it pertains to the practice of law. (*Hustedt, supra*, 30 Cal.3d at p. 336.)

discipline. (*San Bernardino County, supra*, PERB Decision No. 2058-M.) In so holding, PERB adopted the *Weingarten*⁷ rule, and applied it to cases decided under the MMBA and other statutes PERB enforces. (*Id.* citing *Rio Hondo Community College District* (1982) PERB Decision No. 260.) An employer violates the *Weingarten* rule where:

- (a) the employee requests representation;
- (b) for an investigatory meeting;
- (c) which the employee reasonably believed might result in disciplinary action; and
- (d) the employer denied the request.

(*San Bernardino County, supra*, PERB Decision No. 2058-M, citations omitted.)⁸

The undisputed facts show that all of these elements are met in this case. First, Drew clearly requested Association representation for the meeting. He even brought Association representative Reinhold to the meeting.⁹

Second, Ferguson's detailed and lengthy questioning demonstrates that the meeting was an investigatory interview. (See *California State University, Long Beach* (1991) PERB Decision No. 893-H [holding that a meeting to get an employee's "side of the story" was an investigatory interview]; *AAA Equipment Service Co.* (1978) 238 NLRB 390 [meeting to "elicit facts" from employee was more than a mere shop-floor conversation.])

⁷ The *Weingarten* rule refers to *National Labor Relations Board v. J. Weingarten Co.* (1975) 420 U.S. 251, where the U.S. Supreme Court found that employees are entitled to union representation during investigatory meetings where there is a reasonable expectation of discipline.

⁸ Although not directly relevant to this case, employees may also have the right to representation in non-investigatory interviews arising under "highly unusual circumstances." (*Redwoods Community College District v. PERB* (1984) 159 Cal.App.3d 617, 625.)

⁹ Even though Reinhold is an attorney, this case is distinguishable from the line of cases holding that the right to representation during investigatory meetings does not include the right to private counsel. (*County of Riverside* (2009) PERB Decision No. 2090-M; *State of California (Department of Consumer Affairs)* (2005) PERB Decision No. 1762-S (*Department of Consumer Affairs*).) In those cases, the Board reasoned that the right to representation derives from the statutory right to participate in the activities of an employee organization and representation from a private attorney does not advance that right. Here, Reinhold was at the meeting in her capacity as an Association representative.

Third, Drew reasonably believed that discipline could result from the meeting because his supervisor had previously identified some of the performance deficiencies discussed that day in meetings and in Drew's performance evaluation.

Fourth, the County denied Drew's request to be represented by Reinhold. Once an employee invokes the right to representation during an applicable meeting, the employer has limited options. It may, of course, allow representation at the meeting. In the alternative, it may discontinue the interview and proceed with its investigation through other means. The employer may also instruct the employee that he or she has the option of continuing the interview unrepresented or having no interview at all. (*San Bernardino City Unified School District* (1998) PERB Decision No. 1270 (*San Bernardino USD*), citing *Weingarten, supra*, 420 U.S. 251.) The employer may also reschedule the interview to a time when a union representative is able to attend. (*Ibid.*)

In this case, the County denied Drew's request to be represented either by DDA Caldwell or by Reinhold. It offered to reschedule the meeting later that day if Drew could find a DPD to represent him, but this was not a realistic option given the short notice and because there were no DPD Association representatives at the time. Once Drew confirmed that he could not secure Association representation, the County did not utilize one of the legally permissible options under *San Bernardino USD, supra*, PERB Decision No. 1270; it did not discontinue the interview and it did not offer Drew the option of forgoing the interview altogether or proceeding without representation. Instead, the County ordered Drew to participate unrepresented. This order interfered with Drew's right to representation.

The County contends that there was no interference with protected rights because the Association was aware of the County's opposition to DDAs being informed of confidential information discussed during personnel meetings. In support of that position, the County cites

to *Upland Police Officers Association v. City of Upland* (2003) 111 Cal.App.4th 1294. That case concerned limitations on a police officer's right to request a specific representative during investigations under the Public Safety Officers Procedural Bill of Rights.¹⁰ The court held:

[W]e fully support the officer's right to be represented by a person of his or her choice during an interrogation. We only hold that such a right is not unlimited. The officer must choose a representative who is reasonably available to represent the officer, and who is physically able to represent the officer at the reasonably scheduled interrogation.

(*Id.* at p. 1306.)

Assuming for the moment that a public employee's right to representation under the MMBA is analogous to a police officer's right under the Public Safety Officers Procedural Bill of Rights, the instant case is still distinguishable. Here, Drew selected a representative, Reinhold, who was both available and physically present. The only impediments to her acting as a representative were Ferguson and Boxer. Thus, the court's rationale in *City of Upland* does not provide a defense in this case. Equally unpersuasive is the County's argument that there should be no violation because it previously informed the Association that it would not allow either DDAs or Reinhold to represent DPDs during investigatory meetings. Advance notice that an employer will violate protected rights is not a defense and does not obligate either the Association or the employee to accommodate that violation.

2. The County's Justification

Once the charging party establishes that protected rights were harmed, the employer has the burden of producing evidence justifying its conduct. (*Stanislaus Consolidated Fire Protection District* (2012) PERB Decision No. 2231-M (*Stanislaus*), citing *Public Employees*

¹⁰ The Public Safety Officers Procedural Bill of Rights is codified at Government Code section 3300 et seq.

797, 807.) When conducting this analysis,

If the harm to employees' rights is slight, and the employer offers justification based on operational necessity, the competing interest of the employer and the rights of the employees will be balanced to determine if the employer's conduct constitutes an unfair practice. If the harm is inherently destructive of employee rights, the employer's conduct will be excused only on proof that it was occasioned by circumstances beyond the employer's control and that no alternative course of action was available.

(State of California (Department of Personnel Administration) (2011) PERB Decision

No. 2106a-S (DPA), citing *Carlsbad Unified School District* (1979) PERB Decision No. 89;

see also *Stanislaus, supra*, PERB Decision No. 2231-M.)

In *Santa Monica Community College District* (1979) PERB Decision No. 103

(Santa Monica CCD), the Board found that an employer's decision to condition a salary increase upon the union's agreement to waive further negotiations over salary was "inherently destructive" of protected rights because the employer sought to eliminate the union's statutory right to bargain. In contrast, in *State of California (Department of Corrections)* (1999) PERB Decision No. 1339-S *(Department of Corrections)*, an employer denied a union's request to hold meetings in certain preferred classrooms. The employer instead granted use of other classrooms that were closer to the employer's offices even though members were reluctant to attend meetings so close to the employer's office. The Board found such conduct was not "inherently destructive" of the union's rights, but instead only caused slight harm.

As in *Santa Monica CCD, supra*, PERB Decision No. 103, the present case concerns an employer's attempt to limit a fundamental statutory right. That case concerned the right to bargain. This case concerns Drew's right to be represented by the Association. And unlike in *Department of Corrections, supra*, PERB Decision No. 1339-S, this case was not merely a

matter of accommodating Drew's preferences. Ferguson repeatedly insisted that the only Association representative Drew could have was a fellow DPD even though that was not an option. Under these circumstances, Ferguson's insistence on Drew having only a DPD represent him constitutes a total denial of the right to be represented by the Association.¹¹ For these reasons, it is concluded that the County's conduct was "inherently destructive" of MMBA-protected rights. Accordingly, for the County's justification to be persuasive, it must demonstrate that it was caused by circumstances beyond the employer's control and that no alternative course of action was available. (*Stanislaus, supra*, PERB Decision No. 2231-M; *DPA, supra*, PERB Decision No. 2106a-S.)

Because the County's decision to conduct an investigation was prompted by something beyond its control, i.e., Drew's work performance issues, this Proposed Decision will focus on the second aspect of the Board's analysis in *Stanislaus, supra*, PERB Decision No. 2231-M; *DPA, supra*, PERB Decision No. 2106a-S, whether the County had no alternative to denying protected rights. On that issue, the thrust of the County's position is that its actions were necessary to protect against conflicts of interest that arise from the inherent adversarial relationship between the Public Defender's Office and the District Attorney's Office. The County also asserts that its actions were needed to prevent disclosure of confidential client information and internal work product to the District Attorney's Office. The County cites to Business and Professions Code section 6068(e)(1) and Rule 3-100 of the Rules of Professional

¹¹ The County contends that Drew also had the option of hiring his own private counsel to assist him at the meeting. This argument is unpersuasive for at least two reasons. First, Drew explained that he lacked both the time and funds to utilize this option, making it unrealistic under the circumstances. Second, as explained above, employees' right to union representation does not include the right to hire independent private counsel. (See *County of Riverside, supra*, PERB Decision No. 2090-M; *Department of Consumer Affairs, supra*, PERB Decision No. 1762-S.) Thus, the County's offer to allow Drew to hire a private attorney is not related to Drew's protected right to Association representation.

Conduct, in support of this position. Both rules prevent attorneys from disclosing confidential client information or work product without the consent of the client.

As discussed above, in *Woodside, supra*, 7 Cal.4th 525, the California Supreme Court identified tension between County-employed attorneys' MMBA rights and their ethical duties as attorneys. In that case, the court held that attorney-employees' exercise of statutory rights under the MMBA was consistent with the court's regulation over the practice of law unless it can be shown "that a direct and fundamental conflict exists between the operation of the [MMBA], as it applies to attorneys, and attorneys' settled ethical obligations." (*Id.* at p. 544.) To demonstrate such a conflict, it must be shown that the attorney-employee's exercise of rights "actually compromised client representation." (*Id.* at p. 552.)

Here, the County asserts that the "transcript of the investigative interview of DPD Drew shows that confidential information was disclosed during the interview." However, the record does not support this conclusion. The primary purpose of the meeting was to discuss Drew's work performance, including his failure to properly document his work and his tardiness in court appearances. Drew and Ferguson did not discuss any specific details about cases handled by the Public Defender's Office and did not even discuss the details of what items Drew failed to document in his case files. Therefore, the record does not show that confidential information was disclosed.

For similar reasons, the County's assertion that Ferguson and Drew discussed confidential attorney work product during the meeting is also unpersuasive. Penal Code section 1054.6 defines the scope of "work product" in a criminal proceeding. That section defines "work product" as any "writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories." (*People v. Scott* (2011) 52 Cal.4th 452, 489, citing Penal Code, § 1054.6, Code Civ. Proc., § 2018.030(a).) In this case, the County appears to

contend that its procedures for documenting work fit under the umbrella of attorney work product. However, it is unclear from the record how those processes constitute impressions, conclusions, opinions, research or theory. In addition, very little was said about the actual processes other than to say that the Public Defender's Office has procedures for documenting work and that documentation plays some unexplained role in checking for future conflicts of interests. Notably, Drew's failure to annotate his files was also previously discussed in a prior performance evaluation which, under the ACCESS TO PERSONNEL RECORDS clause of the MOU, Drew was entitled to show to his Association representative.

Mark Tuft, who the County identified as an "expert witness" on attorney ethics, testified generally that a law office's internal protocols could be considered attorney work product and should be protected from disclosure. Tuft's testimony was based on documents reviewed by him but not admitted into the record. In addition, Tuft did not provide either a legal or factual basis for reaching this conclusion. Based on these facts, and because his testimony is inconsistent with the above-cited authority concerning attorney work product in criminal cases, his testimony is not credited on this issue.

The County also cites to *Coronado Police Officers Assn. v. Carroll* (2003) 106 Cal.App.4th 1001 (*Carroll*), for the proposition that any information relating to public defenders' files should be considered confidential under the rules governing attorney conduct, even if the information in those files was otherwise public. In *Carroll*, a police officer's union requested that information from a public defender's office under the Public Records Act (PRA).¹² The court concluded that the requested items were not "public records" as defined by the PRA because the public defender was not considered a "state actor" under the act. (*Id.* at p. 1008.) The present case is readily distinguishable. The Association here is not seeking

¹² The PRA is codified at Government Code section 6250 et seq.

information from the County under the PRA and is not asserting that the County Public Defender is a “state actor.” Rather, this case is about the Association’s efforts to represent one of its members in an investigatory meeting, a right that members undeniably possess under the MMBA. Moreover, the court in *Carroll* did not address attorneys’ ethical responsibilities concerning confidential information and did not reference Business and Professions Code section 6068 or any of the Rules of Professional Conduct. Therefore, *Carroll* does not support the County’s assertion that the information discussed during the February 20, 2009 meeting was confidential or otherwise protected from disclosure to the Association for purposes of representing its members.

Even if confidential client information or attorney work product might have been discussed during the meeting, the County has not shown that it had “no alternative” to a total denial of Drew’s right to representation. (*Stanislaus, supra*, PERB Decision No. 2231-M.) In fact, readily available alternatives exist. As explained in *San Bernardino USD, supra*, PERB Decision No. 1270, if the County was unwilling to accommodate Drew’s request for Association representation, the County had the option of canceling the interview or providing Drew the option of either forgoing the interview altogether or proceeding without representation. In addition, Rule 3-100(A) of the Rules of Professional Conduct expressly allows for the disclosure of confidential information with the informed consent of the client.

In the alternative, the County could have also redacted or otherwise excluded actual confidential information from the discussion that day. Notably, the parties submitted as a joint exhibit the County’s copy of a full transcript of the meeting at issue, redacting only the names of clients, judges, and attorneys not affiliated with the DPDs office. Presumably, the redacted items were the only portions of the interview that the County felt unfit to include in a public

record. The County offered no explanation why similar redaction could not have addressed its concerns with having Reinhold present during the meeting.

The County did not utilize any of these options or establish why those or other options were unavailable under the circumstances. Therefore, even if confidential information was discussed during the February 20, 2009 meeting, the County failed to prove that it had no other option than to deny Drew's right to Association representation.

The County's denial of representation interfered with Drew's right to be represented by the Association as well as the Association's right to represent its members. Likewise, Ferguson's insistence that Drew participate in the interview under threat of insubordination also interfered with protected rights because it was clear under those circumstances that Drew would not be able to secure alternative Association representation. The County's asserted justification is unpersuasive and is rejected.

C. Unilateral Change to Policy Within the Scope of Representation

MMBA section 3505 places a mutual obligation on public agencies and exclusive representatives to meet and confer in good faith over wages, hours, and other terms that are within the scope of employment. Unilateral changes are considered "per se" violations of the duty to bargain if certain criteria are met. Those criteria are: (1) the employer breached or altered the parties' written agreement or past practice; (2) the action was taken without giving the exclusive representative notice or an opportunity to bargain over the change; (3) the action is not merely an isolated incident, but amounts to a change of policy (i.e., having a generalized effect or continuing impact on terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*San Joaquin County Employees Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813; *Omnitrans* (2009) PERB Decision

No. 2001-M; *Desert Sands Unified School District* (2010) PERB Decision No. 2092; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

1. Alteration to Existing Policy

The first element of the unilateral change test is whether the employer breached or altered existing policy. The March 24, 2009 Confidential Information policy, as relevant to this case, precludes DPDs from disclosing any confidential client information to their designated representative during a personnel meeting unless that representative is either a fellow DPD or a private attorney, both of whom must agree to not disclose any confidential information to the Association.

The County describes the policy at issue here as a one concerning disclosure of confidential information, but the detailed restrictions completely prevent the Association from selecting DDAs as authorized representatives for DPDs in disciplinary matters involving confidential information. The undisputed evidence shows that the County was aware that the Association had no DPD representatives at the time it implemented the policy. It further restricts even DPDs from being designated as representatives unless they agree not to disclose any confidential information to the Association. The Confidential Information policy fundamentally changes the Association's right to "designate employees as authorized representatives or alternates to represent employees in the processing of grievances or during disciplinary proceedings," as negotiated in the parties' MOU. It also alters what type of issues representatives may discuss with the Association leadership.

2. Notice and Opportunity to Bargain

The second element of the analysis is whether the County provided the Association with notice of its proposed changes and the opportunity to request and complete bargaining. Typically, an employer satisfies its duty by informing bargaining representatives "sufficiently

in advance of a firm decision to make a change to allow the exclusive representative a reasonable amount of time to decide whether to make a demand to negotiate.” (*State of California (Department of Corrections & Rehabilitation, Department of Personnel Administration)* (2010) PERB Decision No. 2115-S, quoting *Victor Valley Union High School District* (1986) PERB Decision No. 565.) However, in *Oakland Unified School District* (2005) PERB Decision No. 1770, PERB held that “[t]he zipper clause in a contract generally precludes unilateral changes in any negotiable topics during the life of the agreement.” In that case, PERB found that a union was free to use a negotiated zipper clause as a “shield” to resist unilateral policy changes during the life of the agreement. (*Ibid.*)

Here, the County provided notice that it was considering adopting the Confidential Information policy and offered to meet prior “to discuss” final implementation. Under the circumstances of this case, however, the Association was under no obligation to request bargaining over the proposed changes. The parties’ MOU contains a FULL UNDERSTANDING, MODIFICATION AND WAIVER, or “zipper” clause whereby “the County and [the Association] for the life of this Agreement, each voluntarily waives the right to meet and confer in good faith with respect to any subject or matter referred to or covered in this Agreement.” As explained above, the issues of designating representatives and access to confidential information in personnel records are covered in the parties’ MOU. Thus, the Association was under no obligation to negotiate over issues already covered by the MOU and the County was not free to unilaterally change the policies contained in the MOU.

3. Change in Policy

The third element of the unilateral change analysis is whether the alleged change amounts to a new policy or whether it is merely an isolated incident. Here, Boxer’s notice to DPDs about the new policy made it clear that the policy applied on an ongoing basis. The

County's continued application of the Confidential Information policy is sufficient to satisfy this element of the unilateral change analysis. (See *State of California (Department of Corrections and Rehabilitation, Ventura Youth Correctional Facility)* (2010) PERB Decision No. 2131-S.)

4. Scope of Representation

The final element of the unilateral change analysis is whether the alleged policy change concerns an issue within the scope of representation. Under the MMBA, the scope of representation is defined as:

The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

(MMBA, § 3504.)

The Board interpreted MMBA section 3504 in *City of Alhambra* (2010) PERB Decision No. 2139-M. Relying on California Supreme Court precedent, the Board found that an issue is within the scope of representation if: (a) the issue has a significant and adverse effect on wages, hours, or working conditions for represented employees; (b) the issue does not arise from a fundamental managerial policy decision; and (c) the benefit to employer-employee relations gained by bargaining outweighs the employer's need for unencumbered decision-making. (*Id.*, citing *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 638 (*City of Claremont*)). Each of these elements will be discussed below.

a. Significant and Adverse Effect

The first issue under the MMBA scope analysis is whether the adoption of the Confidential Information policy had a significant and adverse effect on unit members'

employment. (*City of Alhambra, supra*, PERB Decision No 2139-M.) In *Long Beach Police Officer Assn. v. City of Long Beach* (1984) 156 Cal.App.3d 996 (*City of Long Beach*), the court held that an employer's policy allowing officers involved in a shooting to consult with a representative during an investigation was subject to negotiations because of the potential for adverse consequences such as discipline or criminal action. (*Id.* at p. 1000.)

In contrast, in *Association for Los Angeles Deputy Sheriffs v. County of Los Angeles* (2008) 166 Cal.App.4th 1625 (*County of Los Angeles*), the court found that the employer's so-called "anti-huddling" policy, which prevented multiple officers involved in a shooting to discuss the incident amongst themselves prior to being interviewed by the employer, did not have a "significant and adverse" effect on employment because the policy preserved the right to meet individually with counsel. (*Id.* at pp. 1639, 1643.)

In *West Contra Costa Healthcare District* (2010) PERB Decision No. 2145-M (*West Contra Costa*), PERB found that an employer's policy requiring non-employee union representatives to obtain an identification badge prior to accessing the employer's property had only a *de minimus* effect on employment because "nothing in the record indicate[d] that the additional time required to complete this procedure impacted [union] representatives' ability to meet with employees."

In the present case, unlike in *West Contra Costa, supra*, PERB Decision No. 2145-M, the record here shows that the County's policy actually prevents all current Association representatives from representing DPDs in disciplinary proceedings. The County was well-aware of that fact at the time it implemented the policy. As in *City of Long Beach, supra*, 156 Cal.App.3d 996, the policy at issue here significantly and adversely affects Association members' working conditions because DPDs must face the possibility of discipline without

any Association representation. These same circumstances make the instant case distinguishable from *County of Los Angeles, supra*, 166 Cal.App.4th 1625.

b. Fundamental Managerial or Policy Decision

The next issue is whether the alleged change arises out of a fundamental managerial policy decision. Matters that are traditionally within the management's discretion fall outside the scope of representation. (*City of Alhambra, supra*, PERB Decision No 2139-M.) In *City of Alhambra*, the Board recognized that decisions concerning primarily the provision of public services are traditionally part of an employer's discretion. For example, a decision to allow a citizens' commission to attend police department hearings was determined to be within management's discretion. (*Berkeley Police Assn. v. City of Berkeley* (1977) 76 Cal.App.3d 931.) Similarly, a policy limiting the use of deadly force by police officers on criminal suspects was considered primarily an aspect of the city's public services. (*San Jose Police Officers' Assn. v. City of San Jose* (1978) 78 Cal.App.3d 935.)

On the other hand, in *City of Long Beach, supra*, 156 Cal.App.3d 996, the court found that an employer's investigatory process was subject to negotiations because that process carried the very real possibility of employee discipline. PERB has traditionally found that "both the criteria for discipline and the procedure to be followed, are matters within the scope of representation" and not a managerial prerogative. (*Fairfield-Suisun Unified School District* (2012) PERB Decision No. 2262, citing *Healdsburg Union High School District and Healdsburg Union School District/San Mateo City School District* (1984) PERB Decision No. 375 (*Healdsburg UHSD*) (other citations omitted); see also *Omnitrans, supra*, PERB Decision No. 2001-M [holding disciplinary procedures are negotiable under the MMBA].) PERB also found that policies concerning access to personnel file information are traditionally subject to negotiations (*Healdsburg*), and that a union's right to select its own representatives

was an essential aspect of its statutory right to represent its members and not subject to employer interference, unless it presents “a clear and present danger” to the relationship between the parties. (*Savanna School District* (1982) PERB Decision No. 276 (*Savanna USD*), citing *General Electric Co. v. National Labor Relations Bd.* (2d Cir. 1969) 412 F.2d 512.¹³) Here, the Confidential Information policy changes the process for conducting disciplinary and other personnel interviews, changes policies concerning access to personnel information, and limits the Association’s right to select its representatives.¹⁴ All of these issues are traditionally considered to be negotiable and not part of a managerial prerogative.

According to the County, the sole and express purpose of the policy was to prevent DPDs from violating their ethical duties to the Public Defender’s clients. Although it may be argued that this purpose primarily concerned the Public Defender’s representation services to the public, this argument is ultimately unpersuasive due to the profound effect on traditionally negotiable subjects and the lack of any legal authority indicating that monitoring attorneys’ ethical responsibilities has traditionally been treated as a managerial prerogative. In fact, the Rules of Professional Conduct regulate the conduct of all members of the State Bar, not just managers. (Rules Prof. Conduct, rule 1-100.) Thus, it cannot be said that adherence to these rules is traditionally considered an area of exclusive managerial discretion.

¹³ *Savanna USD* concerned a union’s right to select its own bargaining representatives.

¹⁴ It is noted that the MOU contains a “MANAGEMENT RIGHTS CLAUSE,” which reserves to the County the right to discipline employees. This language is not sufficient to constitute a “clear and unmistakable waiver” of the Association’s right to negotiate over changes to the Association’s right to select representatives during meetings that might result in discipline. (See *Fullerton Joint Union School District* (2004) PERB Decision No. 1633.)

c. Balancing Test

The remaining issue under the MMBA scope of representation test is to balance the benefits of negotiations against the employer's need for unencumbered decision-making on this subject. (*City of Alhambra, supra*, PERB Decision No 2139-M.)

In this case, the effect on subjecting this issue to negotiations is great, given the fundamental nature of the rights at issue. Employees' statutory right to select their representative is expressly protected by MMBA section 3502. In addition, employees' right to representation in investigatory meetings where discipline is expected has a long history with its basis in U.S. Supreme Court precedent. (See *Weingarten, supra*, 420 U.S. 251.) As explained above, issues involving the discipline process and access to personnel information are traditionally subject to negotiations.

These benefits are balanced against the County's need for unencumbered decision-making. The County asserts that it has a significant interest in protecting the independence of the Public Defender in representing criminal defendants, as defined by the Rules of Professional Conduct and other authority governing attorney conduct. The County fails to explain, however, why its exercise of this independence must come at the expense of MMBA-protected rights. In *San Mateo City School Dist. v. Public Employment Relations Bd.* (1983) 33 Cal.3d 850, the California Supreme Court held that an issue otherwise subject to negotiations are not rendered non-negotiable simply because those issues are covered by other legal authority on the issue (in that case the Education Code). (*Id.* at p. 864.) The Court stated unless that other authority "clearly evidences an intent to set an inflexible standard or insure immutable provisions, the negotiability of a proposal should not be precluded." (*Id.* at pp. 864-865, quoting *Healdsburg UHSD, supra*, PERB Decision No. 375.) Here, the Court in *Woodside, supra*, 7 Cal.4th at 551, found that attorney-associations that organize and assert

rights under the MMBA are not “*per se* in violation of any duty of loyalty or any other ethical obligation.” (Emphasis in original.) Thus, the mere fact that the Public Defender’s Office has ethical obligations to its clients does not override the County’s obligations under the MMBA to negotiate over issues within the scope of representation.

Moreover, the County’s position that it needs independence free from collective bargaining is undermined by the fact that it has already negotiated with the Association over this very issue and memorialized those negotiations in the AUTHORIZED EMPLOYEE REPRESENTATIVE clause of the MOU.¹⁵ There is no evidence that these negotiations adversely affected the County’s operations. Even the County’s own purported expert witness, Tuft, testified that the ethical issues arising out of DDAs representing DPDs in investigatory meetings should be resolved through some kind of agreement from the parties. Accordingly, the strong interests in protecting employee rights and bargaining over issues traditionally considered to be within the scope of representation outweigh the County’s need for unrestricted decision-making authority.

For all these reasons, the County’s Confidential Information policy is within the scope of representation. Furthermore, because all the elements of a unilateral policy change are met here, the County’s adoption of the Confidential Information policy violates the duty to negotiate in good faith.

¹⁵ However, it is noted that an employer may bargain over a non-mandatory subject of bargaining without waiving the right to later assert that the issue was not subject to negotiations. (*Chula Vista City School District* (1990) PERB Decision No. 834.) Here, the parties’ prior negotiations are only highlighted to rebut the County’s assertion that the Public Defender’s independence would be adversely affected by bargaining with the Association.

REMEDY

It has been found that the County violated MMBA sections 3502, 3503, and 3506 and PERB Regulation 32603(a), (b), and (c). MMBA section 3509(b) authorizes PERB to order “the appropriate remedy necessary to effectuate the purposes of this chapter.” (*Omnitrans, supra*, PERB Decision No. 2143-M.) This includes an order to cease and desist from conduct that violates the MMBA. (*Ibid.*) PERB’s remedial authority also includes the power to order an offending party to take affirmative actions to effectuate the purposes of the MMBA. (*City of Redding* (2011) PERB Decision No. 2190-M.)

It is also appropriate to order the County to restore the status quo ante and rescind the unilateral policy change. In *California State Employees’ Assn. v. Public Employment Relations Bd.* (1996) 51 Cal.App.4th 923, 946, the court found:

Restoration of the status quo is the normal remedy for a unilateral change in working conditions or terms of employment without permitting bargaining members’ exclusive representative an opportunity to meet and confer over the decision and its effects. This is usually accomplished by requiring the employer to rescind the unilateral change and to make the employees “whole” from losses suffered as a result of the unlawful change.

(Citations omitted; see also *County of Sacramento* (2009) PERB Decision No. 2045-M.)

Accordingly, the County is ordered to rescind the March 24, 2009 Confidential Information policy. Nothing in this remedy or anywhere else in this Proposed Decision absolves any attorneys in the County of existing ethical responsibilities under the Rules of Professional Conduct or any other law governing attorneys’ conduct.

It is also appropriate to order the County to post a notice incorporating the terms of this order at all locations where notices to the Association’s unit members are usually posted. Posting of such a notice, signed by an authorized representative of the County, provides employees with notice that the County acted in an unlawful manner, must cease and desist

from its illegal action, and will comply with the order. It effectuates the purposes of the MMBA to inform employees of the resolution of this controversy. (*City of Redding, supra*, PERB Decision No. 2190-M, citing *Placerville Union School District* (1978) PERB Decision No. 69.)

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in the case, it is found that the County of San Bernardino (Office of the Public Defender) (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3502, 3503, 3505, and 3506 and Public Employment Relations Board (PERB or Board) Regulation 32603(a), (b), and (c) (Cal. Code Regs., tit. 8, § 31001 et seq.). The County violated the Act by: (1) denying San Bernardino County Public Attorneys Association (Association) member Mark Drew the right to be represented by the Association during a meeting where there was a reasonable expectation of discipline and ordering Drew to continue with that meeting without representation under threat of insubordination; and (2) unilaterally changing a policy concerning the Association's right to select representatives for Deputy Public Defenders during personnel meetings.

Pursuant to section 3509(b) of the Government Code, it hereby is ORDERED that the County, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Failing to negotiate in good faith by enacting unilateral policy changes concerning issues within the scope of representation;
2. Denying Association members the right to be represented in investigatory meetings involving potential discipline; and
3. Denying the Association the right to represent its members.

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

1. Restore the status quo ante and rescind the unilaterally implemented March 24, 2009 policy entitled Confidential Information in Attorney Personnel Actions.
2. Within ten (10) workdays of the service of a final decision in this matter, post at all work locations where notices to employees in the County Office of the Public Defender 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. Reasonable steps shall be taken to ensure that the Notice is not reduced in size, altered, defaced or covered with any other material.
3. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of PERB, 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 the Association.

Right to Appeal

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
(916) 322-8231
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received during a regular PERB business day. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130; see also Gov. Code, § 11020, subd. (a).) A document is also considered "filed" when received by facsimile transmission before the close of business together with a Facsimile Transmission Cover Sheet which meets the requirements of PERB Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subds. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)

**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-554-M, *San Bernardino County Public Attorneys Association v. County of San Bernardino (Office of the Public Defender)*, in which all parties had the right to participate, it has been found that the County of San Bernardino (Office of the Public Defender) (County) violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. by: (1) denying San Bernardino County Public Attorneys Association (Association) member Mark Drew the right to be represented by the Association during a meeting where there was a reasonable expectation of discipline and ordering Drew to continue with that meeting without representation under threat of insubordination; and (2) unilaterally changing a policy concerning the Association's right to select representatives for Deputy Public Defenders during personnel meetings.

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

A. CEASE AND DESIST FROM:

1. Failing to negotiate in good faith by enacting unilateral policy changes concerning issues within the scope of representation;
2. Denying Association members the right to be represented in investigatory meetings involving potential discipline; and
3. Denying the Association the right to represent its members.

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

Restore the status quo ante and rescind the unilaterally implemented March 24, 2009 policy entitled Confidential Information in Attorney Personnel Actions.

Dated: _____

COUNTY OF SAN BERNARDINO (OFFICE OF THE PUBLIC DEFENDER)

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.