

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



TEAMSTERS LOCAL 517,

Charging Party,

v.

GOLDEN EMPIRE TRANSIT DISTRICT,

Respondent.

Case No. LA-CE-52-M

PERB Decision No. 1704-M

November 8, 2004

Appearance: Beeson, Tayer & Bodine, by John Provost, Attorney, for Teamsters Local 517.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by Teamsters Local 517 (Local 517) to an administrative law judge's (ALJ) proposed decision. The unfair practice charge alleged that the Golden Empire Transit District (District) violated the Meyers-Milias-Brown Act (MMBA)¹ by refusing to provide requested information about bargaining unit employees. The complaint alleged that this conduct constituted a violation of MMBA sections 3503, 3505, 3506, and 3509(b) and PERB Regulation 32603(a), (b) and (c)².

The only issue excepted to involves the remedy. The Board has reviewed the entire record in this matter, including the unfair practice charge, the complaint, the answer, the

¹MMBA is codified at Government Code section 3500, et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

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

parties' post-hearing briefs, the proposed decision and Local 517's exceptions to the proposed decision. As a result of our review, the Board adopts the ALJ's proposed decision but modifies the remedy consistent with the discussion below.

BACKGROUND

On March 1, 2002, Local 517 Business Agent Scott Lupo (Lupo) sent a letter to District Chief Executive Officer Chester Moland (Moland) requesting a current list of unit employees' names, addresses and phone numbers in order to communicate with its members. Lupo also requested that the District notify Local 517 when new employees are hired and such notice should include the information requested above plus the employee's position and pay rate. On the same day, Moland responded by letter to Lupo stating that District policy prohibited the release of the requested information and that union stewards have traditionally collected the information in person. This policy was contained in the District's Employee Policy Handbook at least since 1992 under the heading of "Standards of Performance" and states, in pertinent part:

Confidential Information

The protection of confidential information is essential both for Golden Empire Transit District and its employees' future security. To protect such information, employees may not disclose any confidential information, such as any employee's telephone number or address, personnel information, medical history, etc. Employees who are exposed to confidential, sensitive, or proprietary information about the District, its employees, its customers, or its processes are required to keep such information confidential. Employees who disclose confidential District information are subject to disciplinary action up to and possibly including discharge.

On July 22, 2002, Moland posted on bulletin boards in the drivers' room and the maintenance breakroom the following memo to all bargaining unit employees:

Representatives of Teamsters Local 517 are attempting to obtain information that the District considers to be confidential (home telephone numbers and addresses) for all bargaining unit

employees without the consent of employees. Management has informed the Teamster representatives that we are willing to provide this information with the consent of each employee, which has been the past practice. Please complete the attached form indicating your willingness to permit the District to release your home telephone and address to the Union.

Attached to the memo was a consent form, for which employees were asked to check one of two options:

_____ The Golden Empire Transit District has my permission to release my home address and telephone number to Teamsters Local 517.

_____ The Golden Empire Transit District does not have my permission to release my home address and telephone number to Teamsters Local 517.

Copies of the consent form were stacked on tables in these rooms. Employees were to complete and sign the form and return it to any supervisor. The District faxed this memo to Local 517 on the same day.

The parties disputed whether Lupo had prior notice of the District's intent to issue the memo and whether the District provided Lupo with any information derived from the District's issuance of the memo and consent form.

In June 2002, Local 517 requested and the District provided the names and pay rates of all unit employees. According to the District, Local 517 had never before requested addresses and phone numbers, nor had the District provided the information. The District also states that Local 517 had never challenged the "Confidential Information" provision in the Employee Policy Handbook.

Article XXXIV (Management Prerogatives) of the collective bargaining agreement (CBA) states, in pertinent part:

(b) It is agreed that, except as specifically delegated, abridged, granted or modified by this Agreement, all of the rights, powers and authority the District had prior to the signing of this Agreement are retained by the District and remain the exclusive right of management without limitation.

CBA Article XIV (State Laws), section 1 also states, in part, that the District shall:

Comply with all applicable state and federal laws regarding wages, hours, working conditions

ALPS PROPOSED DECISION

The ALJ found that the District violated the MMBA by refusing to provide unit employees' phone numbers and addresses. He reasoned that Local 517 is entitled to all information which is "necessary and relevant" to discharge of its duty of fair representation. The Board utilizes a liberal standard, similar to a discovery-type standard, to determine the relevance of the requested information. Failure to provide this information is a per se violation of the duty to bargain in good faith. This type of information is "fundamental to the expanse of a union's relationship with the employees." (Prudential Insurance Co. v. NLRB (2d Cir. 1969) 412 F. 2d 77, 84 [71 LRRM 2254].)

The District does not dispute the presumption or suggest that the provision of the information is unduly burdensome but rather attempts to rebut the presumption by claiming that Local 517 waived its right to the information. A waiver must be established by clear and unmistakable language or conduct. The ALJ found that the District had not established such waiver either through the "Confidentiality Information" provision in the Employee Policy Handbook, Local 517's previous failure to request this information in the past, or the District's claim that Lupo had agreed to put together a form that Moland never received. The ALJ thus found a violation of MMBA sections 3501 (c), 3503, 3505, and 3506, and PERB Regulations 32016(a), 32603(a), (b) and (c).

The ALJ further dismissed Local 517's contention that the District refused to provide information to Local 517 regarding the pay rates of unit members.

As a remedy, the ALJ directed the District to cease and desist not providing addresses and phone numbers, and to meet and confer regarding the mechanics of providing the information including the rights of employees to exercise their right to confidentiality, and to post a notice incorporating the terms of the order.

With regard to requiring the District to provide the requested information, the ALJ distinguished this case from Bakersfield City School District (1998) PERB Decision No. 1262 (Bakersfield), in which the Board held such a remedy to be inappropriate because of specific employee requests for privacy under Government Code section 6254.3(b) of the California Public Records Act (PRA).³ In this case, however, only four out of 200 employees in the unit requested confidentiality and so the District is withholding the information about the majority of the employees. Therefore, it is easy for the District to disclose the information while honoring the four employees' requests for confidentiality.

The ALJ declined to order the release of phone numbers and addresses of the four employees who requested confidentiality. Although not covered by the PRA, the ALJ stated that the Board must balance privacy interests against Local 517's need for information. (Los Rios Community College District (1988) PERB Decision No. 670 (Los Rios); Modesto City Schools and High School District (1985) PERB Decision No. 479 (Modesto.) Without explanation, the ALJ found the same balance required by the PRA to be appropriate here.

DISCUSSION

Local 517 disputes the portion of the ALJ's remedy that Local 517 is not entitled to receive the home addresses and phone numbers of unit employees. We agree with Local 517.

With regard to information requests, the exclusive representative is entitled to information which is "relevant to and necessary for" fulfilling its obligation to represent unit

³The PRA is found at Government Code sections 6250, et seq.

employees. (Modesto.) When constitutional privacy rights are implicated, the U.S. Supreme Court has held that "where a union seeks relevant information about a mandatory subject of bargaining, the disclosure of which may infringe upon constitutionally protected privacy interests, the National Labor Relations Board must undertake to balance the conflicting rights." (Modesto, citing (Detroit Edison Company v. NLRB (1979) 440 U.S. 301 [100 LRRM 2728] (Detroit Edison)).) The California courts have utilized the same approach to reconcile the state constitution's privacy protection with a strong public policy favoring discovery.⁴ (Modesto, citing Board of Trustees v. Superior Court (1981) 119 Cal. App. 3d 516, 522 [174 Cal.Rptr. 160].)

Under PERB precedent, the Board is required to balance the privacy interests of employees against the union's need for information. In Modesto, two employees filed grievances over the procedure used to select employees for certain vacant positions. The union requested rating sheets but agreed that identification of the rater and the applicant could be deleted. The Board noted that "where a union has established the relevance and need for particular information, the burden of proof is on the party holding the information to show that disclosure would compromise the right of privacy. (Citations omitted.)" (Modesto, at p. 10.) The Board concluded that the District failed to provide evidence to show how disclosure of the contents of the rating sheets, minus the identities of the rater and applicant, would violate the privacy rights of those individuals. (Modesto.)⁵

⁴California Constitution Article 1, § 1 protects the right to privacy.

⁵In Modesto, the Board found that the balancing test need not be applied in situations where there were several applicants, since the grievant could not learn the name of the applicant. However, the Board made an exception regarding situations in which only two applicants applied for a particular position. Here, the grievant could learn the identity of the successful applicant even though the name had been deleted. Under those circumstances, privacy interests are implicated and the balancing test must be used. Applying this test, the Board still found that the rating sheets must be disclosed because without the comparison, there was no means to prove improprieties in the rating procedures.

In Los Rios, the union requested a report that contained, among other things, the identity of each employee and the employee's social security number. The employer refused on the basis that the reports included social security numbers and that it contained information on employees both within and outside of the bargaining unit. The employer stated that it was willing to provide the report so long as the social security numbers of non-unit employees were deleted. The Board affirmed the balancing test set forth in the above-referenced quote from Detroit Edison. Citing federal privacy law, the Board in Los Rios approved the employer's assertion of confidentiality to justify refusal to disclose the social security numbers of non-unit employees.

The right claimed by Local 517 in this matter is the need for access, the need to communicate with its members, in order to fulfill its statutory duties as the exclusive representative. In its testimony before the ALJ, Local 517 cited several examples of instances in which the inability to communicate to employees at their homes severely hindered Local 517's ability to meet those obligations. These include termination of employees for failure to meet union security requirements due to the union's inability to provide notice of those requirements, a recent dues increase, and the inability to contact a specific employee regarding a problem at work. Local 517 also noted that it wants to quickly contact employees who might be witnesses in a grievance investigation and to inform employees of union meetings involving negotiations or other important matters. Local 527 was persuasive in showing that posting notices and attempting to meet employees at the job site are not adequate means of contact since the employees are bus drivers who are out on their routes during their shifts and who work different shifts.

The ALJ applied the balancing test by analyzing the requirements for protection of privacy for exemptions to disclosure under the PRA, while acknowledging that provisions of the PRA barring disclosure of home addresses and phone numbers do not apply to employees

under the MMBA. Thus, there is no statutory requirement that prohibits disclosure of such information to Local 517.⁶ The District has not proffered any evidence justifying the need for privacy other than the request of the four employees. As noted above, the burden is on the District to show the need for privacy outweighs Local 517's need for the information; the District has not met this burden.

Indeed, as acknowledged by the ALJ, the Board has previously found this information to be presumptively relevant to obligations of the exclusive representative. (Bakersfield.) The exclusive representative's ability to communicate with its members is fundamental to its role as bargaining representative. Disclosure is mandated absent a compelling need for privacy; there was none shown here. The ALJ erred in not permitting disclosure of the information for the four employees who requested confidentiality or consequently, of those employees who might request confidentiality in the future.

⁶The PRA exemption for disclosure of home addresses and phone numbers found in Government Code section 6254.3 provides, in pertinent part:

(a) The home addresses and home telephone numbers of state employees and employees of a school district or county office of education shall not be deemed to be public records and shall not be open to public inspection, except that disclosure of that information may be made as follows:

(3) To an employee organization pursuant to regulations and decisions of the Public Employment Relations Board, except that the home addresses and home telephone numbers of employees performing law enforcement-related functions shall not be disclosed.

(b) Upon written request of any employee, a state agency, school district, or county office of education shall not disclose the employee's home address or home telephone number pursuant to paragraph (3) of subdivision (a) and an agency shall remove the employee's home address and home telephone number from any mailing list maintained by the agency, except if the list is used exclusively by the agency to contact the employee.

As noted, this exemption does not cover public employees under the MMBA.

ORDER

Based on the foregoing findings of fact and conclusions of law, and the entire record in this case, it is found that the Golden Empire Transit District (District) violated the Myers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505 and 3506, and Public Employment Relations Board Regulation 32603(a), (b) and (c), by refusing to provide Teamsters Local 517 (Local 517) with the home addresses and phone numbers of bargaining unit employees and by unilaterally changing the mechanics of providing such information to Local 517. All other allegations are hereby dismissed.

Pursuant to MMBA section 3509(b) it is hereby ORDERED that the District, its governing board and its representatives shall:

A. CEASE AND DESIST FROM:

1. Refusing without legal justification to provide Local 517 with relevant and necessary information, upon a proper request by Local 517.
2. Making a unilateral change in the mechanics of providing information to Local 517.
3. By the same conduct, denying Local 517 its right to represent unit members in their employment relations with the District.
4. By the same conduct, interfering with the right of unit members to be represented by Local 517.

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

1. Within 10 workdays following the date this decision is no longer subject to appeal, provide Local 517 with the home addresses and phone numbers of all bargaining unit employees.

2. Within 10 workdays following the date this decision is no longer subject to appeal, meet and confer with Local 517, if requested, concerning the mechanics of providing bargaining unit employees' home addresses and phone numbers to Local 517.

3. Within 10 workdays of a final decision in this matter, post copies of the Notice attached hereto as an Appendix at all work locations where notices to bargaining unit employees are customarily posted. The Notice must be signed by an authorized agent of the District, indicating that the District will comply with the terms of this Order. Such posting shall be maintained for a period of 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.

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. The District 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 Local 517.

Chairman Duncan and Member Neima 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-52-M, Teamsters Local 517 v. Golden Empire Transit District, in which all parties had the right to participate, it has been found that the Golden Empire Transit District (District) violated the Meyers-Milias-Brown Act (MMBA), Government Code sections 3503, 3505, and 3506 and PERB Regulation 32603(a), (b) and (c), by refusing to provide Teamsters Local 517 (Local 517) with the home addresses and phone numbers of bargaining unit employees, and by unilaterally changing the mechanics of providing such information to Local 517.

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

A. CEASE AND DESIST FROM:

1. Refusing without legal justification to provide Local 517 with relevant and necessary information, upon a proper request by Local 517.
2. Making a unilateral change in the mechanics of providing information to Local 517.
3. By the same conduct, denying Local 517 its right to represent unit members in their employment relations with the District.
4. By the same conduct, interfering with the right of unit members to be represented by Local 517.

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

1. Provide Local 517 with the home addresses and phone numbers of all bargaining unit employees.
2. Meet and confer with Local 517, if requested, concerning the mechanics of providing bargaining unit employees' home addresses and phone numbers to Local 517.

Dated: _____

GOLDEN EMPIRE TRANSIT DISTRICT

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.