STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

STATIONARY ENGINEERS LOCAL 39, Charging Party, v. CITY OF FRESNO, Respondent.	Case No. SA-CE-312-M PERB Decision No. 1841-M May 18, 2006

Appearance: Weinberg, Roger & Rosenfeld by Brooke D. Pierman, Attorney, for Stationary Engineers Local 39.

Before Duncan, Chairman; Shek and McKeag, Members.

DECISION

DUNCAN, Chairman: This case is before the Public Employment Relations Board (Board) on appeal by the Stationary Engineers Local 39 (Local 39) of a Board agent's partial dismissal (attached) of its unfair practice charge. The charge alleged that the City of Fresno (City) violated the Meyers-Milias-Brown Act (MMBA)[1] by engaging in bad faith bargaining through bypassing the exclusive representative and dealing directly with bargaining unit employees, refusing to bargain, surface bargaining, withholding information and unlawfully declaring impasse. The Board agent issued a partial dismissal of the charges alleging bypass bargaining, surface bargaining and bad faith bargaining.

The Board has reviewed the entire record in this matter, including the initial unfair practice charge, the two amended charges, the response from the City, the Board agent's warning and partial dismissal letters and Local 39's appeal. The Board finds the warning and

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

partial dismissal letters to be free of prejudicial error and adopts them as the decision of the Board itself.

ORDER

The partial dismissal of the unfair practice charge in Case No. SA-CE-312-M is hereby AFFIRMED.

Members Shek and McKeag joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
Telephone: (916) 327-8386
Fax:(916)327-6377

June 23, 2005

Brooke Pierman, Attorney
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, Ca 95814

Re: Stationary Engineers Local 39 v. City of Fresno
Unfair Practice Charge No. SA-CE-312-M, Second Amended Charge
PARTIAL DISMISSAL LETTER

Dear Ms. Pierman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on February 9, 2005.[1] The Stationary Engineers Local 39 alleges that the City of Fresno violated the Meyers-Milias-Brown Act (MMBA)[2] by bargaining directly with employees, making threats, degrading the Union's bargaining position, refusing to bargain, bad faith bargaining, and unlawfully declaring impasse.

I indicated to you in my attached letter dated May 13, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to May 27, the charge would be dismissed. On May 25, you requested a one-week extension to file an amended charge to June 3. I granted your request.

On June 3, I received the Union's amended charge. The Union failed to provide any new or additional facts that correct the deficiencies detailed in the warning letter sufficient to make out a prima facie case for bypass/direct bargaining, interference, or surface bargaining. In fact, no new facts were introduced to support the allegation of bypass/direct bargaining. The warning letter provides a detailed discussion of each of the above allegations plus failure to provide information. Hereafter, I will provide a supplemental discussion addressing interference and surface bargaining, the allegations reintroduced by the Amended Charge, but which fail to state a prima facie case.

[1] All dates hereafter refer to 2005 unless otherwise noted.

[2] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Interference

In the First Amended Charge, the Union alleges that the City interfered with representation and degraded the Union's bargaining position by sending a letter directly to employees and further communicating with employees via a survey. The Second Amended Charge alleges more untruths are contained in the City's letter. However, as indicated in the warning letter, "the charging party must show that the employer's communications would tend to coerce or interfere with a reasonable employee in the exercise of protected rights." ("California State University (1989) PERB Decision No. 777H.) In this case, the City's statements, true or untrue, do not constitute a threat of reprisal or force or promise of benefit. (Charter Oak USD (1991) PERB Decision No. 873.) For example, the City's letter says that they have managed to avoid layoffs, in part, because employee organizations have agreed to hold down salary and benefit costs during negotiations. The preceding language does not constitute a threat of layoffs because it does not indicate that layoffs will occur unless the Union signs a contract with no salary increases.

Surface Bargaining

In the Second Amended Charge, the Union alleges that the City adamantly refused to consider proposals that did not exactly mirror the language already ratified by other bargaining units. The Second Amended Charge includes examples of the City's bargaining proposals (e.g. 3 year contract with no salary increases in the first two years, a two percent equivalent in the second year that could not go to salaries, and a third year potential salary increase dependent on economic triggers; no more than $541 per employee for health care costs.). The Union includes the City's rationale for not increasing salaries for the Local 39 contract (because other City contracts include most favored nation clauses). The Union also details the City's main concerns - workers compensation costs to 76% and later, health care costs. However, as indicated in the warning letter, an adamant insistence on a bargaining position is not necessarily a refusal to bargain in good faith. (Placentia Fire Fighters, supra; Oakland Unified School District supra, PERB Decision No. 275.) The facts seem to suggest that the City had a rational basis for their position. (NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829, 2830].)

Ultimately, the Amended Charge does not correct the deficiencies detailed in the warning letter for the allegations of bypass/direct bargaining, interference, or surface bargaining. Therefore, I am dismissing those allegations which fail to state a prima facie case based on the facts and reasons contained herein and in my May 13 letter.

Right to Appeal

Pursuant to PERB Regulations,[3] you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this

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

dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Regulations 32135(a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of 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. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By
Erin R. Koch-Goodman
Regional Attorney

Attachment

cc: Howard A. Sagaser, Esquire

PUBLIC EMPLOYMENT RELATIONS BOARD

Sacramento Regional Office
1031 18th Street
Sacramento, CA 95814-4174
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Fax:(916)327-6377

May 13, 2005

Brooke D. Pierman, Attorney
Weinberg, Roger & Rosenfeld
428 J Street, Suite 520
Sacramento, CA 95814-2341

Re: Stationary Engineers Local 39 v. City of Fresno
First Amended Unfair Practice Charge No. SA-CE-312-M
WARNING LETTER

Dear Ms. Pierman:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on January 26, 2005. The Stationary Engineers Local 39 alleges that the City of Fresno violated the Meyers-Milias-Brown Act (MMBA)[1] by bargaining directly with employees, making threats, degrading the Union's bargaining position, refusing to bargain, bad faith bargaining, and unlawfully declaring impasse.

Stationary Engineers, Local 39, is the exclusive representative of the City of Fresno's Blue Collar Unit. The collective bargaining agreement expired on June 30, 2004. The parties began negotiations for a successor agreement on April 29, 2004. The parties have met more than 19 times in an attempt to reach agreement. Several proposals have been exchanged between the parties. The Union alleges that the City has, without explanation, cancelled negotiations sessions; sent negotiators without authority to bargaining sessions; attended a bargaining session without the City's lead negotiator present; made only package proposals to the Union; unlawfully declared impasse and failed to provide requested information.

On or about January 5, 2005, the City declared impasse and has henceforth refused to meet with the Union. The Union alleges that the City has failed to comply with the City's Municipal Code for the resolution of impasses.

On or about January 7, 2005, the City sent a letter to all bargaining unit members. The letter discussed the city's financial issues and the negotiations between the City and the Union. The letter states that the City "has paid Local 39 $500 per month per employee for health insurance. This amount is the same provided to all city employees for health insurance." According to the

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

Union, this is inaccurate because the City pays $541.50 for some City employees in a different bargaining unit. The letter also states: "Local 39 has offered to give up this inequity in exchange for agreements that were adverse to City policy (binding arbitration) or too costly in wage or benefit increases." The Union alleges that this portion of the letter is not a factual statement about negotiations, and is only the City's opinion. Additionally, the City's letter states:

> We continually look for ways to maintain a balance between customers, employees and the financial health of the City. As we do, the contracting of some services is being explored. While contracting of City services impacts City jobs, we have offered to Local 39 in the present negotiations that affected employees would be guaranteed a job during the first year of a new contract. As importantly as saving jobs (sic), the City has maintained its commitment to providing you and your family a quality, affordable and accessible health insurance plan. Unfortunately, the City's proposal to maintain this commitment has been rejected by your union.

The Union alleges that this letter contains threats against employees regarding contracting out and healthcare expenses.

On February 2, 2005, the City circulated a survey to all City employees to "assess how well we are currently doing with respect to our key objective of Employee Satisfaction and provide a baseline for future improvements." The survey was voluntary and the City said that "all individual responses will be kept completely confidential by the independent research organization that will be conducting the survey." The Union alleges that the survey is improper Boulwarism, and by surveying the employees and planning to present the results of the survey as a proposal at the bargaining table, the City is directly dealing with represented employees and surface bargaining.

Direct/Bypass Bargaining

The Union alleges that the City bargained directly with employees by sending a letter to represented employees. An employer may not communicate directly with employees to undermine or derogate the representative's exclusive authority to represent unit members. (Muroc Unified School District (1978) PERB Decision No. 80.)[2] Similarly, the employer violates the duty to bargain in good faith when it bypasses the exclusive representative to negotiate directly with employees over matters within the scope of representation. (Walnut Valley Unified School District (1981) PERB Decision No. 160.) However, once a policy has been established by lawful means, an employer has the right to take necessary actions, including consulting with employees, to implement the policy. (Ibid.) To establish that an

[2] 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. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

employer has unlawfully bypassed the union, the charging party must demonstrate that the employer dealt directly with its employees (1) to create a new policy of general application, or (2) to obtain a waiver or modification of existing policies applicable to those employees. (Ibid.)

The facts do not allege any direct dealing with the Local 39 represented employees to create a new policy or to obtain a waiver or modification of existing policies applicable to those employees. The letter at issue informs the employees of the State deductions taken from the General Fund, the increase in healthcare costs, and discusses the California financial crisis. The letter also discusses the negotiations between the City and the Union. There is no indication that the City was offering a new proposal (that had not already been introduced to the Union), or that the City was asking for a response to the letter from the employees. Therefore, the charge as it stands does not establish a prima facie case for direct bargaining.

Interference

The Union alleges that the City interfered with representation and degraded the Union's bargaining position by sending a letter directly to employees and further communicating with employees via a survey. As to the allegation of interference, I will first discuss the City's letter and then address the survey.

The MMBA, similar to the National Labor Relations Act (NLRA), imposes on employers an obligation to bargain in good faith. The NLRA also expressly guarantees employers the right of free, non-coercive speech. Section 8(c) of the NLRA provides as follows:

> The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit. (29 U.S.C, sec. 158(c).)

The MMBA does not contain a provision paralleling section 8(c). However, the Board has held under the Educational Employment Relations Act (EERA),[3] which also does not contain a provision paralleling section 8(c), that a public agency is entitled to express its views on employment related matters over which it has legitimate concerns in order to facilitate full and knowledgeable debate. In so holding, the Board stated that it is unreasonable to assume that the Legislature intended to restrict a public agency from disseminating its views regarding the employment relationship once an employee organization appeared on the scene. (Rio Hondo Community College District (1980) PERB Decision No. 128.) Thus, it is appropriate to infer that such free speech rights exist under the MMBA.[4]

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[3] EERA is codified at Government Code section 3540 et seq.

[4] 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. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

To demonstrate a prima facie case of interference, the charging party must show that the respondent's conduct tends to or does result in some harm to employee rights guaranteed by the MMBA. (Carlsbad Unified School District (1979) PERB Decision No. 89 at p. 10.) In Chula Vista City School District (1990) PERB Decision No. 834, at pp. 10 - 13, the Board reviewed and quoted from its decision in Rio Hondo Community College District (1980) PERB Decision No. 128, stating:

> As more fully explained below, employer speech causes no cognizable harm to employee rights granted under EERA unless it contains "threats of reprisal or force or promise of a benefit." Therefore, a prima facie case of interference cannot be based on speech that contains no "threats of reprisal or force or promise of a benefit."

Whether the employer's speech is protected or constitutes a proscribed threat or promise is determined by applying an objective rather than a subjective standard. ("California State University (1989) PERB Decision No. 777H.) Thus, "the charging party must show that the employer's communications would tend to coerce or interfere with a reasonable employee in the exercise of protected rights."

In this case, the City's statements do not constitute a threat of reprisal or force or promise of benefit. The City does discuss California's fiscal crisis and the possibility of contracting out some City services. However, there is no indication that this is a false representation of the City's situation or that the City is attempting to coerce the employees to take any action or refrain from taking any action. While the charge states that the City's letter is inaccurate as to the amount spent on healthcare for other bargaining units, this small alleged inaccuracy of $41.50, without a threat of reprisal or force or promise of benefit, is not enough to constitute an unfair labor practice. Charter Oak USD (1991) PERB Decision No. 873. As to the letter, the facts are insufficient to establish a prima facie case of interference.

The City also communicated with employees via a survey. The Union alleges that the City's survey is another incident of interference. To date, no PERB case law directly examines employer surveys. However, the NLRB provides on-point precedent. In Leland Stanford, Jr. University (1979) 240 NLRB No. 1138 [100 LRRM 1391], the Board held that:

> Surveys, even though they solicit grievances and impliedly promise benefits do not interfere with employee rights unless the underlying purpose was to undermine organizing activities of the union; the solicitation of grievances by an employer is not illegal unless it is accompanied by an express or implied promise of benefits specifically aimed at interfering with, restraining, and coercing employees in their organizational effort; a survey does not breach an employer's bargaining obligation unless it is attempted to erode the union's bargaining position.

The facts of the instant case are substantially similar to those in Leland. Here, the survey queried all City employees about working relationships with supervisors and managers, asked employees whether the City was providing clear direction, and whether employees have the tools/training to do a good job. The survey asks only one question about salary (is your salary comparable to others who do the same work?), and one question about benefits (are you satisfied with your vacation, sick leave, and retirement?). In this case, like Leland, there was no attempt to "deal with" the employees. The survey was voluntary and confidential and conducted by an independent third party. The survey was sent to represented and non-represented employees alike. At most, the survey was an attempt to elicit information from the employees about their overall job satisfaction working for the City of Fresno. As in Leland, the survey here does not interfere with the Union's rights to represent 750 of the City's 3500 employees. Without more, the survey does not make a prima facie case of interference.

Failure to Provide Information

The Union alleges that the City has failed to provide requested information. The Meyers-Milias-Brown Act provides in section 3500(a), "[I]t is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations."[5]

Thus the exclusive representative is entitled to all information that is "necessary and relevant" to the discharge of its duty of representation. (Stockton Unified School District (1980) PERB Decision No. 143).[6] PERB uses a liberal standard, similar to a discovery-type standard, to determine relevance of the requested information. (California State University (1986) PERB Decision No. 613-H.) Failure to provide such information is a per se violation of the duty to bargain in good faith.

The charge alleges that during bargaining, on December 8, 2004, the Union requested several documents and the City has not provided them. The Union requested three documents: the Solid Waste Division's employee satisfaction survey, classification and compensation study, and economic forecast in light of Proposition 1A. In a letter dated February 22, 2005, addressed to Bart Florence, the City states that the Solid Waste study has been located and will be emailed to the Union; the classification and compensation study will be complete in approximately two weeks and will be forwarded to the Union as well; and no economic forecast exists because the Controller and Budget Office have not made specific projections

[5] In addition, during bargaining the parties have "the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation prior to the adoption by the public agency of its final budget for the ensuing year." (Government Code section 3505.)

[6] 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. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

but have indicated that they are available to discuss the issue with Local 39. Thus, it appears that the City responded in a timely manner.

> Under Oakland Unified School District (1983) PERB Decision No. 367, if there is no request for additional information, then the employer is not obligated to provide additional information as there is no violation when an employer partially complies with a request for information and after that, the employee organization "never reasserts or clarifies its request." Trustees of the California University (2004) PERB Decision No. 1732H).

At this time, the burden is clearly on the charging party to detail what documents were originally requested and still have not been provided or in what manner the City has not provided the documents requested.

Surface Bargaining

The charge alleges that the employer violated Government Code section 3505 and PERB Regulation 32603(c)[7] by engaging in bad faith or "surface" bargaining. Bargaining in good faith is a "subjective attitude and requires a genuine desire to reach agreement." (Placentia Fire Fighters v. City of Placentia (1976) 57 Cal.App.3d 9, 25 [92 LRRM 3373].) PERB has held it is the essence of surface bargaining that a party goes through the motions of negotiations, but in fact is weaving otherwise unobjectionable conduct into an entangling fabric to delay or prevent agreement. (Muroc Unified School District (1978) PERB Decision No. 80.)[8] Where there is an accusation of surface bargaining, PERB will resolve the question of good faith by analyzing the totality of the accused party's conduct. The Board weighs the facts to determine whether the conduct at issue "indicates an intent to subvert the negotiating process or is merely a legitimate position adamantly maintained." (Oakland Unified School District (1982) PERB Decision No. 275; Placentia Fire Fighters, supra.)

The indicia of surface bargaining are many. Entering negotiations with a "take-it-or-leave-it" attitude evidences a failure of the duty to bargain because it amounts to merely going through the motions of negotiations. (General Electric Co. (1964) 150 NLRB 192, 194 [57 LRRM 1491], enf. 418 F.2d 736 [72 LRRM 2530].) Recalcitrance in the scheduling of meetings is evidence of manipulation to delay and obstruct a timely agreement. (Oakland Unified School District (1983) PERB Decision No. 326.) Dilatory and evasive tactics including canceling meetings or failing to prepare for meetings is evidence of bad faith. (Oakland Unified School District, supra, PERB Decision No. 326.) Conditioning agreement on economic matters upon prior agreement on non-economic subjects is evidence of an unwillingness to engage in a give-

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

[8] 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. (Firefighters Union v. City of Vallejo (1974) 12 Cal.3d 608.)

and-take. (State of California (Department of Personnel Administration) (1998) PERB Decision No. 1249-S.)

Other factors that have been held to be indicia of surface bargaining include: negotiator's lack of authority which delays and thwarts the bargaining process (Stockton Unified School District (1980) PERB Decision No. 143.); insistence on ground rules before negotiating substantive issues (San Ysidro School District (1980) PERB Decision No. 134.); and reneging on tentative agreements the parties already have made (Charter Oak Unified School District (1991) PERB Decision No. 873; Stockton Unified School District, supra, PERB Decision No. 143; Placerville Union School District (1978) PERB Decision No. 69.).

It is clear, however, that while a party may not merely go through the motions, it may lawfully maintain an adamant position on any issue. Adamant insistence on a bargaining position is not necessarily refusal to bargain in good faith. (Placentia Fire Fighters, supra; Oakland Unified School District, supra, PERB Decision No. 275.) "The obligation of the employer to bargain in good faith does not require the yielding of positions fairly maintained." (NLRB v. Herman Sausage Co. (5th Cir. 1960) 275 F.2d 229 [45 LRRM 2829, 2830].)

The Union alleges several specific incidents that evidence surface bargaining by the City. The Union alleges that the City cancelled two successive days of negotiations without explanation. At one bargaining session, City negotiators were without authority beyond the economic offers already made. And, the City's lead negotiator was absent at one bargaining session. The City states that the bargaining sessions were cancelled, and the Union notified, because the City's outside negotiators' contract expired and needed to be renewed by the City Council prior to further negotiations. The City states further that negotiators were not without authority simply because they were not authorized to offer additional economic increases beyond the current offer. And finally, the City states that even without the lead negotiator, City negotiators were capable of conducting a negotiating session with the Union.

Collectively, the above examples fail to provide sufficient indicia of surface bargaining. Although each and every proposal has been rejected by both sides, both parties have offered several unique proposals. Until the declaration of impasse, the parties have not been held up from negotiating because of the above cited behavior by the City. Moreover, in November 2004, the City requested the Union agree to the use of a mediator to assist with the process towards agreement. According to the City, the Union has never responded to the request for mediation. The City asserts that a mediator, Shirley Campbell, from the California State Mediation and Conciliation Service has been assigned to resolve the dispute.

Without agreement, the City declared impasse. The Union provided the last offer, and the City states that the proposal was rejected. The Union alleges that the City has violated the City of Fresno Municipal Code, specifically Section 2-1916 (c)(l)(i), because no written demand for an impasse meeting was delivered to the Union. The Municipal Code states, in relevant part:

> (c) The impasse resolution procedures and the sequence in which they must be utilized shall be as follows:

> (1) Impasse meeting:
>
> (i) The party initiating the impasse resolution procedures sequence shall deliver to the other party or parties involved a written demand for an impasse meeting together with a statement of the initiating party's position on all matters at impasse.

On January 7, 2005, via a written memorandum, the City negotiator reported to the Assistant City Manager on impasse detailing the City's interest in bargaining, the Union's interest in bargaining, and a request for an impasse meeting. A copy of the letter was provided to the Union. Given the above language, it seems that the requirements of Municipal Code Section 2-1916 (c)(l)(i) have been met. Therefore, the allegations, taken as a whole, do not make out a prima facie case of surface bargaining.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled Second Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before May 27, 2005, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Erin R. Koch-Goodman
Regional Attorney

EKG