OVERRULED IN PART by County of Santa Clara (2013) Decision No. 2321-M

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 777, Charging Party, v. COUNTY OF RIVERSIDE, Respondent.	Case No. LA-CE-373-M PERB Decision No. 2097-M February 10, 2010

Appearances: Sala Ponnech, Representative, for Laborers International Union of North America, Local 777; Thomas J. Prescott, Employee Relations Division Manager, for County of Riverside.

Before Dowdin Calvillo, Acting Chair; McKeag and Wesley, Members.

DECISION

WESLEY, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Riverside (County) to the proposed decision of an administrative law judge (ALJ). The ALJ found that the County failed to meet and confer in good faith in violation of the Meyers-Milias-Brown Act (MMBA)[1] when it unilaterally discontinued part of the Performance and Competency Pay Plan (CPP), without providing the Laborers International Union of North America, Local 777 (Local 777) with notice and an opportunity to bargain. The ALJ also found that the County violated a local rule, the CPP, in violation of the MMBA.

The Board has reviewed the proposed decision and the record in light of the County's exceptions, Local 777's response and the relevant law. Based on this review, the Board finds

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

that Local 777 failed to establish that the County violated the MMBA at sections 3503, 3505, and 3506, and PERB Regulation 32603(a), (b), (c) and (g).[2]

SUMMARY OF FACTS

Local 777 is the exclusive representative of several classifications of information technology (IT) employees employed by the County.[3]

Sometime in 2000, the County developed a new classification and pay plan for IT employees to replace the existing step and grade plan. The CPP was designed to reward IT employees who acquired and used additional technical competencies to perform their jobs. The purpose of the plan was to allow the County to attract and retain highly skilled IT employees and provide an incentive for employees to acquire advanced IT skills.

Under the CPP, employees received part of their salaries as "base pay" depending on the job classification, and the rest as "dynamic pay" based on the addition of acquired competencies or "hot skills" they actually used on the job. Employees were able to request an increase in dynamic pay based on newly acquired "hot skills." Applications for additional "hot skills" could be initiated at any time by the employee's manager (either on their own initiative or at the employee's request), and were subject to review and approval by Human Resources (HR) staff. Once a "hot skill" was approved, the employee would receive "hot skills" pay on top of their base pay. "Hot skills" pay made up 35-50 percent of an IT employee's total salary.

In addition to the acquisition of "hot skills" obtained through the independent submission process described above, IT employees were subject to an annual "focal review"

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

[3] Other IT employees are in units represented by SEIU Local 1997. Representatives of SEIU were present at labor/management meetings regarding the development and implementation of a new step and grade plan to replace the CPP. However, neither SEIU nor their represented employees are parties to these proceedings.

during the third quarter of each fiscal year (January–March). At the focal review, the employee's "hot skills" were evaluated, and an employee's salary could be increased or decreased based on the number and value of their "hot skills." The annual focal review was the only mechanism by which the County could decrease an employee's "hot skills" pay.

Local 777 was involved in the process of developing the CPP. Although she did not represent Local 777 in 2000, Representative Sala Ponnech (Ponnech) testified that Local 777 participated in the approval of the CPP. The CPP was adopted by the Board of Supervisors as Board Policy No. C-28,[4] in March 2000. Section IX of the CPP states:

> Administrative responsibility is granted to the Human Resources Director to administer all sections of this policy, including publishing amendments, policy revisions or discontinuing the IT Performance and Competency Pay Policy, subject to any meet and confer obligations with SEIU Local 1997 or LIUNA Local 777 over the effects of any changes.

In July 2006, Local 777 and the County negotiated a new memorandum of understanding (MOU), effective July 1, 2006 through June 30, 2010. The CPP was not incorporated into the MOU. However, the General Wage Increase section of the MOU referenced the plan. MOU Article XXVIII provided for specific yearly annual wage increases to be applied only to "base salaries," except that for the year 2006, the increase for IT employees would apply to both "base pay" and "hot skills" pay, as follows:

> NOTE: The parties agree that the general wage increases for 2006 outlined above shall be applied to the base pay plus hot skill pays for IT employees represented by [Local 777] who are in the hot skill pay program. This is a one-year only arrangement.

Sometime in 2006, the County began to consider a change from the CPP, back to a traditional step and grade plan. Variations of the reclassification plan were discussed at labor/management meetings between the County and the unions. Although Local 777 was

[4] The complaint incorrectly refers to this section as County Resolution No. 99-379.

aware that the County was developing a specific plan that would be presented to the unions, it expected that employees would continue to be paid pursuant to the CPP until the new plan was fully developed and properly noticed and implemented.

In late February 2007, Local 777 Representative Ponnech learned that the County was not going to perform the annual focal reviews that would impact IT employee compensation for the 2007-2008 fiscal year. Ponnech contacted the County's Senior Human Resources Analyst to inquire about this change. The County confirmed that in anticipation of presenting and implementing a new step and grade compensation plan, they had discontinued the focal review process. However, the County assured Ponnech that employees would remain eligible for additional "hot skills" pay through the independent submission process, and that the only impact to employees from the discontinuance of the focal review would be that employees would not have "hot skills" pay reduced pursuant to the focal review process. Based on these representations, Local 777 did not object to the cessation of the focal reviews.

On March 20, 2007, Ponnech learned from a Local 777 member that the County had discontinued the independent submission process as well, and would no longer accept or consider requests for additional "hot skills." In addition, requests previously submitted pursuant to the CPP, would no longer be processed. Ponnech again contacted the County's Senior Human Resources Analyst, who confirmed that, with the exception of new hires and employees promoting from one classification to another, the County was no longer accepting or considering requests to add new "hot skills."

On March 23, 2007, Local 777 hand delivered a letter to Director of Human Resources, Ron Komers requesting a meeting with the County regarding the changes made to the CPP. The March 23, 2007 letter states:

> [Local 777] members covered by the current Information Technology Competency Pay Plan have informed us that they

> will not be allowed to acquire competency pay. Upon checking with Classification and Compensation, we found that this report was true and that only new hires and employees promoting into new concepts will be allowed to do so. We had believed that the only change to the current salary procedures was that IT employees would not have competencies taken away during this year's focal review.
>
> We were surprised that you had not notified us of this change, which could impact our members' salaries and squarely falls within the meet-and-confer provisions of the Meyers-Milias-Brown Act. We request a meeting with you as soon as possible to discuss this matter.

The County did not respond to the March 23, 2007 letter. Thereafter, on April 18, 2007, Local 777 filed the present unfair practice charge.

During this period, the County continued with its reclassification plans for IT employees. In June 2007, the County formally notified Local 777 that it was discontinuing the CPP, and provided them a copy of the proposed step and grade plan. The Board of Supervisors approved the step and grade plan on June 12, 2007.

The County and Local 777 held labor/management meetings on June 13, 2007 and July 11, 2007, to discuss various issues concerning the new plan. During the July 11 meeting, Local 777 stated that while it had not raised any objections to the implementation of the new plan thus far, it wanted to clarify for the record that Local 777 retained the right to discuss the impact of the new plan, after the entire transition process was complete. The County agreed.

At a later meeting on July 19, 2007, between Ponnech, Thomas Prescott, employee relations division manager for the County, and other management representatives, questions were again raised regarding the transition to new classifications and the parties discussed the issue of appeal processes for employees dissatisfied with their reclassification. The County's earlier decision to discontinue the acceptance and consideration of requests for new "hot skills" was neither raised nor discussed at any of these meetings.

On August 2, 2007, the County implemented the new step and grade plan and transitioned all IT employees from the CPP to the new plan. Except for the County's decision to stop considering additional "hot skills" requests in March 2007, which is the subject of this unfair practice charge, Local 777 has not raised any issues concerning the County's transition to the new step and grade plan for IT employees.

DISCUSSION

Restatement of the Issue/Unalleged Violation

The complaint alleged, in part:

> 4. On or about March 20, 2007, Charging Party learned that Respondent no longer permitted information technology employees to earn competency pay under Respondent's Information Technology Competency Pay Plan.
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> 5. Respondent engaged in the conduct described in paragraph 4 without prior notice to Charging Party and without having afforded Charging Party an opportunity to meet and confer over the effects of the change in policy.

In the proposed decision, the ALJ determined that paragraph 4 of the complaint did not accurately reflect the dispute between the parties. The ALJ stated:

> The complaint alleged that the County 'no longer permitted information technology employees to earn competency pay.' As the County correctly pointed out in its closing brief, this allegation was somewhat inaccurate in that employees continued to receive competency pay after the change in policy. Instead, the crux of the charge was that the employees were prevented from earning additional competency pay by qualifying for new dynamic ('hot skills') pay. Since all parties understood that earning additional competency pay was the actual issue and litigated the case accordingly, this minor variance in the pleadings is disregarded. [Emphasis in original]

The ALJ set forth the issue in the proposed decision as follows:

> Did the County violate the MMBA and local rules by unilaterally deciding to stop considering additional 'hot skills' requests by IT employees in March 2007?

The County argues that the ALJ's restatement of the issue amounts to an improper consideration of an unalleged violation. The County asserts that it presented its case based solely on the allegation that it no longer permitted IT employees "to earn competency pay," and that this question is fundamentally different from whether employees were prohibited from earning "additional competency pay." The County claims that it was not on formal notice of the issue as set forth by the ALJ, and was not provided the opportunity to present evidence on the issue as modified.

The Board has the authority to review unalleged violations when the following criteria are met: (1) adequate notice and opportunity to defend has been provided the respondent; (2) the acts are intimately related to the subject matter of the complaint and are part of the same course of conduct; (3) the unalleged violation has been fully litigated; and (4) the parties have had the opportunity to examine and be cross-examined on the issue. (*Fresno County Superior Court* (2008) PERB Decision No. 1942-C.) The unalleged violation also must have occurred within the applicable statute of limitations period. (*Ibid.*) These criteria have been satisfied.

Based on our review of the record, the Board finds the County's argument without merit. The Board agrees with the ALJ, that all parties understood that acquiring additional competency pay was the actual issue in this case, and that all parties litigated the case accordingly. Thus, as explained below, the criteria for considering an unalleged violation have been met.

From the outset of the hearing, Local 777 maintained that the matter at issue was the County's decision to not consider requests for additional "hot skills" pay for current IT employees. This was clearly defined in Local 777's opening statement, and not disputed by the County. Moreover, Local 777's opening statement also made clear that there were no other

complaints by the union concerning the County's failure to meet and confer over any other aspect of IT pay. Both parties spent ample time at hearing addressing the relevant policy, the process by which additional "hot skills" pay could be acquired, the circumstances leading up to Local 777's discovery in March 2007 that the County had discontinued accepting and processing requests for additional "hot skills" pay, and the extent of the parties' bargaining obligations with respect to this conduct.

The specific act of misconduct alleged against the County is the same under both statements of the issue. Therefore, the issue as set forth by the ALJ is intimately related to the same subject matter as the complaint and involves the same course of conduct. [5]

Evidence was presented by both parties regarding the new step and grade plan implemented by the County on August 2, 2007, and its relationship to the County's decision to discontinue accepting requests for additional "hot skills" in March 2007. Moreover, the transcript includes detailed examination by both parties of several employee requests for new "hot skills," which Local 777 argued were wrongfully denied submission and/or consideration.

Both parties also specifically clarified the issue several times during the hearing, bringing into focus the refusal by the County to accept or process requests for additional "hot skills." For example, the County's attorney raised the following questions during cross-examination of Ponnech:

> Q . . . and so the only change was sort of existing employees were not going to be evaluated for new skills. Is that fair?
>
> A That's fair.
>
> Q . . . that was the change that you were concerned about?
>
> A That's correct.

[5] Also, because the issues allege the same act of misconduct, the statute of limitations requirement is satisfied as well.

Furthermore, the County's attorney engaged in significant cross-examination of Ponnech regarding whether or not Local 777 had the opportunity to meet and confer with the County regarding the issue of the County's decision to discontinue processing new requests for "hot skills" pay.

Finally, although the County argues that it only understood the issue to be whether or not the County ceased making payments of existing "hot skills" pay to IT employees prior to the implementation of the new plan in August 2, 2007, neither party engaged in any discussion or presented any evidence on this issue. Nowhere in the record, except for the County's post hearing brief, is there any evidence that either party had considered this to be the issue. And, while the County does spend approximately one and one-half pages on this argument in its post hearing brief, the remainder of its 12 page brief is predicated on the issue as stated by the ALJ.

Therefore, the Board finds the criteria for consideration of an unalleged violation to be satisfied. The new statement of the issue involves the same alleged act of misconduct as that stated in the complaint, the parties had adequate notice that the issue reflected the discontinuation of *additional* competency pay, and the parties fully litigated the issue.

The County's Obligation to Bargain

The ALJ correctly found the parties' dispute involved the County's decision to stop considering requests for additional "hot skills" pay. However, the ALJ erroneously held that the County had an obligation to bargain the decision to discontinue the CPP, rather than deciding whether the County had a duty to bargain the effects of its decision.

In determining whether a party has violated Section 3505 and PERB Regulation 32603(c), PERB utilizes either the "per se" or "totality of the conduct" test, depending on the specific conduct involved and the effect of such conduct on the negotiating

process. (*Stockton Unified School District* (1980) PERB Decision No. 143.)[6] Unilateral changes are considered "per se" violations if certain criteria are met. Those criteria are: (1) the employer breached or altered the parties' written agreement or its own established past practice; (2) such action was taken without giving the other party notice or an opportunity to bargain over the change; (3) the change was not merely an isolated breach of the contract, but amounts to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment); and (4) the change in policy concerns a matter within the scope of representation. (*Vernon Fire Fighters v. City of Vernon* (1980) 107 Cal.App.3d 802; *Walnut Valley Unified School District* (1981) PERB Decision No. 160; *San Joaquin County Employees Association v. City of Stockton* (1984) 161 Cal.App.3d 813; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

Where a change is made to a matter that is not within the scope of representation, or where the right to demand bargaining over the decision to change has been waived by the employee organization, the employer is obligated to provide notice and an opportunity to bargain over the negotiable effects of the decision, but not the decision itself. (*Sylvan Union Elementary School District* (1992) PERB Decision No. 919 (*Sylvan*), citing *Mt. Diablo Unified School District* (1984) PERB Decision No. 373b; *Newman-Crows Landing Unified School District* (1982) PERB Decision No. 223 (*Newman-Crows Landing*).)

In the case at hand, the County enacted the CPP in March 2000. Ponnech testified at the hearing that at the time the policy was adopted Local 777 was aware of the implementation of the provision and participated in some kind of approval process. Ponnech also acknowledged that Section IX of the CPP provided that the County reserved the right to make

[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. (*Fire Fighters Union v. City of Vallejo* (1974) 12 Cal.3d 608.)

changes to the CPP, including discontinuance of the program, "subject to any meet and confer obligations with . . . Local 777 over the *effects* of any changes." (Emphasis added.) Nothing in the record suggests that this provision was implemented improperly or otherwise invalid.[7] As such, Local 777 is entitled to notice and an opportunity to bargain over the effects of the County's decision to stop processing requests for additional "hot skills," but not over the decision itself.[8]

Local 777's Request to Bargain

In dealing with effects bargaining, the employee organization is entitled to reasonable notice and an opportunity to bargain over the negotiable effects of a non-negotiable decision. (*Trustees of the California State University* (2007) PERB Decision No. 1926-H; *Newman-Crows Landing*.) Failure by the employee organization to make a valid request to bargain the negotiable effects of the decision constitutes a waiver of the right to bargain regarding those effects. (*Ibid.*)

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[7] The ALJ found insufficient evidence to show that the parties bilaterally negotiated the CPP, and held that a waiver of the right to bargain the decision to make changes to the CPP, as contained in Section IX, could not be based on a unilaterally adopted management policy. However, this finding overlooks fundamental Board precedent setting forth that when the employer provides notice and a reasonable opportunity to meet and confer prior to implementation of a change to a matter within the scope of representation, and the employee organization fails to request to meet and confer, the right to demand bargaining over the decision is waived by the employee organization. (*Metropolitan Water District of Southern California* (2009) PERB Decision No. 2055-M; *Stockton Police Officers' Assn. v. City of Stockton* (1988) 206 Cal.App.3d 62, 66; *Stationary Engineers v. San Juan Suburban Water Dist.* (1979) 90 Cal.App.3d 796, 802; *Santee Elementary School District* (2006) PERB Decision No. 1822.) Here it is undisputed that Local 777 had notice and the opportunity to bargain over the implementation of the CPP in March 2000. Under these circumstances, the CPP becomes valid and binding on the parties.

[8] Local 777 argues that the waiver of the right to bargain the decision to amend the CPP is no longer valid because the CPP was incorporated by reference into the General Wage Increases section of the MOU, thus making any changes to the CPP subject to bargaining. On the contrary, the Board finds that even if the CPP itself had been incorporated into the MOU, it would not invalidate the waiver provision in Section IX, but would reinforce the provision as a negotiated term of the MOU.

Moreover, where formal notice is not given, but the "[a]ssociation receives actual notice of a decision, the effects of which it believes to be negotiable, the employer's 'failure to give formal notice is of no legal import'" and the burden is on the employee organization to request bargaining. (*Sylvan*, citing *Regents of the University of California* (1987) PERB Decision No. 640-H (*Regents*).) Therefore, in order to make a prima facie case for violation of the duty to bargain in good faith over effects, the employee organization must demonstrate that it made a valid request to bargain the negotiable effects of the employer's decision. (See *Sylvan; Regents; State of California (Department of Corrections)* (2006) PERB Decision No. 1848-S.)

A valid request to bargain need not consist of specific verbiage, "where there is a clear demand to meet and discuss a matter." (*Calistoga Joint Unified School District* (1989) PERB Decision No. 744 (*Calistoga*); *Newman-Crows Landing.*) However, it must clearly identify negotiable areas of impact, and clearly indicate the employee organization's desire to bargain over the effects of the decision as opposed to the decision itself. (*Sylvan*; *Allan Hancock Community College District* (1989) PERB Decision No. 768 (*Allan Hancock CCD*); *Newman-Crows Landing.*) A request that clearly demands to meet and discuss a matter, but fails to indicate a desire to bargain effects as opposed to the decision itself, is not valid.

Again, in the case at hand, the CPP provided that the County could make changes to the CPP, subject to the obligation to bargain over the effects of those changes.[9] In March 2007,

[9] Section IX of the CPP states:

> Administrative responsibility is granted to the Human Resources Director to administer all sections of this policy, including publishing amendments, policy revisions or discontinuing the IT Performance and Competency Pay Policy, subject to any meet and confer obligations with SEIU Local 1997 or LIUNA Local 777 over the *effects* of any changes. [Emphasis added.]

Local 777 learned that the County had made a change to the CPP, in that they had discontinued accepting and processing requests by IT employees to add new "hot skills." Local 777 confirmed this with the County Human Resources Director, and within days, on March 23, 2007, served the Human Resources Director with a letter requesting "a meeting . . . to discuss this matter." Based on the Board's standards outlined in *Calistoga* and *Newman-Crows Landing*, the Board finds that the March 23, 2007 letter was a request to bargain even though it did not specifically articulate an intention to "meet and confer" or "negotiate." Therefore, the key question is whether it was a request to bargain effects as opposed to the decision itself.

In *Newman-Crows Landing*, the Board set forth that a request to bargain over an agency's decision will not be interpreted as a request to bargain the effects of that decision. The employee organization's request must clearly indicate the desire to bargain over the effects as opposed to the decision itself. The union's charge, in that case, alleged that the employer had refused to meet and confer with respect to the lay off of certain enumerated employees. The union stated in its charge that it had "requested the opportunity to negotiate about the layoffs," that the "Respondent had failed to meet and negotiate on the issue prior to taking the action to layoff," and furthermore that the union had "pointed out" that they "had concerns as to the validity and/or accuracy of a seniority list of instructional aides." The Board, in its decision, found that testimony at hearing indicated that the union had requested to negotiate "taking the action to lay off" the employees, and that the union did not clarify to the employer any desire to negotiate the effects issue. The Board also noted that the union's assertion that once the employer had formally announced the layoffs the union believed the matter to be closed and any further negotiations futile, and the fact that the remedy requested by the union was not an order to bargain impacts of the layoffs, but an order to rescind the layoffs and rehire the laid off employees, further supported the conclusion that the union demanded bargaining

over the decision to layoff, and not the effects of that decision. Therefore, although at the time of the hearing, the union claimed to have been primarily interested in negotiating the effects of the layoff, it failed to demonstrate that its demand to bargain gave notice of a desire to bargain effects as opposed to the decision to layoff itself. In the absence of specific notice of intent to bargain effects, the Board found that the employer's failure to negotiate could only be directed to the matter of the layoff itself, and not to the effects of the layoff.[10]

In the present case, Local 777's letter to the County confronted the County with its decision to change the salary procedures by discontinuing the policy of allowing IT employees to acquire new "hot skills" pay. The letter went on to state that Local 777 was surprised that the County "had not notified [them] *of this change*, which could impact [its] members' salaries and squarely falls within the meet-and-confer provisions of the Meyers-Milias-Brown Act" (emphasis added), and requested to meet to discuss the matter. The letter fails to indicate a desire by Local 777 to negotiate the effects of the change as opposed to the change itself.[11] Although the letter references that the change could impact its members' salaries, the Board

[10] This standard has been followed in numerous Board cases: *Delano Joint Union High School District* (1983) PERB Decision No. 307 (union protest of district action, request to meet with the school board, and statement regarding timing of negotiations not sufficient to indicate intent to bargain effects); *Allan Hancock CCD* (demand to bargain "wages, hours and working conditions" following a position reclassification, and demand to bargain on the "fine arts position" held not sufficient to indicate interest in negotiating the effects of the reclassification); *Sylvan* (expression of concern over the elimination of a position, and the impact on the employee's ability to reapply for other positions, held inadequate request to bargain and insufficient to indicate intent to bargain the effects of the decision over the decision itself).

[11] The ALJ found that the March 23, 2007, letter satisfied the *Newman-Crows Landing* test for effects bargaining, in that it requested to bargain the elimination of future "hot skills" applications, which is an identifiable "effect" of the decision to implement the new step and grade compensation plan. However, in its closing brief, Local 777 clearly distinguished the decision to stop accepting applications for new "hot skills," prior to March 2007, from the decision to implement the new step and grade plan in August 2007, and specifically argued that the former decision was the basis of their request to bargain.

finds that this reference serves merely to demonstrate a reason why the County's decision to make the change "squarely falls" within the provisions of the MMBA, e.g., because wages are a matter within the scope of representation. As such, the Board finds that the reference to salaries does not indicate, or put the County on notice of, a clear desire to negotiate the effects of the decision as opposed to the decision itself.

Local 777 demonstrated its understanding of the importance of clearly articulating the desire to negotiate the effects of a non-negotiable decision during meetings in June and July 2007 regarding the County's implementation of the new step and grade plan, when it specifically reserved the right to bargain the effects of the new plan. Notably, Local 777 never raised the issue of the additional "hot skills" requests during these meetings, suggesting that Local 777 believed the matter of the additional "hot skills" requests to be closed at that point and negotiations futile. As in *Newman Crows-Landing*, this also supports the conclusion that Local 777 was interested in bargaining the decision to stop processing additional "hot skills" requests and not the effects of the decision.

Furthermore, Local 777's charge alleges that "The County's failure to meet and confer before unilaterally implementing its decision not to allow current employees to acquire new hot skills is a violation of its obligation to meet and confer under the [MMBA]" and demands as a remedy that all requests be processed pursuant to the CPP, and that the County meet and confer about any and all proposed changes to the IT pay plan. Local 777's post-hearing brief further argues that the "hot skills" pay program was incorporated into the parties' MOU, making any decision to change the program subject to bargaining. Based on the analysis in *Newman Crows-Landing*, these statements support the conclusion that at the time of its demand to bargain, Local 777 did not clearly indicate a desire to negotiate over the effects of the decision to change the pay plan, as opposed to the decision itself.

Finally, the record contains contradicting assertions as to whether Local 777 desired to negotiate the effects of the County's decision to stop processing requests for additional "hot skills," or the decision itself. However, if anything, Local 777's vacillating compels the finding that it did not communicate to the County a clear intent to negotiate effects as opposed to the decision itself. Therefore, based on our thorough evaluation of the record, the Board finds that Local 777 failed to establish that its March 23, 2007, demand to bargain indicated an intent to bargain the effects of the decision as opposed to the decision itself, and thus fails to establish a prima facie case for violation of the duty to bargain in good faith.

Violation of Local Rule

The complaint alleges that by the same conduct the County violated a local rule, the CPP. The Board found herein, that this provision established the County's obligation to bargain the effects of the County's decision to change the CPP, but not the decision itself. Therefore, since the Board finds that Local 777 failed to establish a prima facie case for refusal to bargain effects in this case, there is no violation of the local rule.

ORDER

Based on the foregoing findings of fact and conclusions of law, the complaint and underlying unfair practice charge in Case No. LA-CE-373-M are hereby DISMISSED.

Acting Chair Dowdin Calvillo and Member McKeag joined in this Decision.