STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SANTA CLARA COUNTY CORRECTIONAL PEACE OFFICERS' ASSOCIATION, Charging Party, v. COUNTY OF SANTA CLARA, Respondent.	Case No. SF-CE-228-M PERB Decision No. 2114-M June 8, 2010

Appearances: Clisham & Sortor by David P. Clisham, Attorney, for Santa Clara County Correctional Peace Officers' Association; Renne, Sloan, Holtzman & Sakai by Jeffrey Sloan, Attorney, for County of Santa Clara.

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

DECISION

McKEAG, Member: This case comes before the Public Employment Relations Board (PERB or Board) on appeal by the County of Santa Clara (County) of a proposed decision by an administrative law judge (ALJ). The Santa Clara County Correctional Peace Officers' Association (CPOA) alleged the County violated the Meyers-Milias-Brown Act (MMBA)[1] by placing two charter amendments on the November 2004 ballot without meeting its duty to meet and confer in good faith. CPOA alleged this conduct violated MMBA sections 3505, 3509(b) and PERB Regulation 32603(c)[2].

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

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

This case begins with a ballot initiative (hereinafter referred to as the BIA Initiative) sponsored by CPOA and two other labor organizations. The BIA Initiative proposed to amend the Santa Clara County Charter (County Charter) to require the County and the initiative's union sponsors to submit disputes regarding wages, hours and other terms and conditions of employment to binding interest arbitration. In response to the BIA Initiative, the County placed two proposed charter amendments on the ballot. One of the County's ballot measures (hereinafter referred to as the Interest Arbitration Measure) proposed the addition of Section 715 to the County Charter regarding binding interest arbitration. The other ballot measure (hereinafter referred to as the Prevailing Wage Measure) proposed an amendment to Section 709 of the County Charter that would have changed the calculation of prevailing wages used in the determination of rates of pay for County employees.

The ALJ found that both ballot measures were within the scope of representation and, therefore, the County had a duty to meet and confer with CPOA prior to placing them on the ballot. The ALJ further found that the County failed to fulfill its bargaining obligation before placing the measures on the ballot. Accordingly, the ALJ concluded that the County breached its duty to bargain in good faith.

We have reviewed the entire record and find the Interest Arbitration Measure was not a mandatory subject of bargaining. Accordingly, the County did not breach its duty to bargain in good faith when it placed this measure on the ballot. On the other hand, we find the Prevailing Wage Measure was within the scope of representation and that the County improperly placed the measure on the ballot prior to the completion of bargaining. Accordingly, we find the

County breached its duty to bargain in good faith when it unilaterally placed the Prevailing Wage Measure on the ballot.[3]

FINDINGS OF FACT

The County is a public agency within the meaning of MMBA section 3501(c) and PERB Regulation 32016(a). CPOA is an employee organization within the meaning of MMBA section 3501(a), a recognized employee organization within the meaning of MMBA section 3501(b), and an exclusive representative within the meaning of PERB Regulation 32016(b) for a bargaining unit of correctional officers, sergeants, and lieutenants.

With their memorandum of understanding (MOU) set to expire in August 2003, the parties began negotiations for a successor MOU in May 2003. Still without a contract in early 2004, CPOA, together with the Government Attorneys Association and the Registered Nurses Professional Association circulated a petition to place an initiative on the November 2004 ballot. The BIA Initiative was entitled, "Initiative For Compulsory Binding Arbitration In Labor Disputes Between County and Employee Organizations Representing Certain County Registered Nurses, Certain County Attorneys, and County Correctional Officers." The BIA Initiative sought to amend the County Charter to require the County and specified unions to submit disputes regarding wages, hours and other terms and conditions of employment to binding interest arbitration. A notice of intent to circulate the petition was filed on April 2, 2004.

[3] The County requested oral argument in this matter. Historically, the Board has denied requests for oral argument when an adequate record has been prepared, the parties had ample opportunity to present briefs and have availed themselves of that opportunity, and the issues before the Board are sufficiently clear to make oral argument unnecessary. (*United Teachers of Los Angeles (Valadez, et al.)* (2001) PERB Decision No. 1453; *Monterey County Office of Education* (1991) PERB Decision No. 913.) Based on our review of the record, all of the above criteria are met in this case. Therefore, the County's request for oral argument is denied.

In response to the BIA Initiative, County Human Resources Director Luke Leung (Leung) sent a letter to CPOA President Everett Fitzgerald (Fitzgerald) on May 21, 2004 stating:

> This serves as notice that the Board of Supervisors plans to submit to the voters in the fall certain charter amendments affecting County employees.
>
> To the extent that the proposed charter amendments, if adopted by the voters, potentially have an impact on your bargaining unit, we wish to afford you an opportunity to meet and confer with County representatives. It is our desire to complete and conclude any meet and confer in the next two months so as to meet the timeline for placement of the measures on the November ballot.

The conclusion of the letter indicated that the County would contact CPOA to determine whether it wanted to "meet and confer with the County over these amendments."

One of the measures, the Interest Arbitration Measure, proposed to add Section 715 to the County Charter if the BIA Initiative passed. Two separate versions of that section were under consideration by the County. One alternative sent an interest arbitration award to the voters if the award resulted in "greater cost" to the County than its last offer. The other permitted the County to reject an arbitration award if it determined the award would substantially interfere with the County's ability to manage its financial affairs.

The other County Charter amendment, the Prevailing Wage Measure, proposed to amend Section 709 which provided that "[r]ates of pay shall be fixed by the Board of Supervisors which are commensurate with those prevailing throughout the county for comparable work." The amendment proposed to change four aspects of Section 709:

(1) Only public sector salaries would be used to calculate the prevailing wage, private sector salaries would be excluded;

(2) "Wages" would be defined to include all employer paid costs;

(3) The terms "comparable" and "commensurate" would be defined to mean substantially similar or substantially in conformity with; and

(4) In calculating the prevailing wage, those employees paid a base wage of $100,000 would be conclusively presumed to earn the prevailing wage. This presumption would be in addition to the existing one for rates of pay contained in a collective bargaining agreement with recognized employee organizations.

The parties met on four occasions to discuss the County's measures. The first meeting, which was held on June 15, 2004, began at the end of a session of MOU negotiations. Leung, the County's lead MOU negotiator, departed and did not attend subsequent discussions regarding the measures with CPOA. He assigned Labor Representatives William Ganley (Ganley) and Louis Chiarmonte (Chiarmonte) to represent the County.

CPOA's negotiator, Attorney David Clisham (Clisham) remained the union spokesman for the discussions with Ganley regarding the County's ballot measures. Clisham testified that CPOA representatives were told they could make suggestions that would be considered by the County. Clisham believed Ganley and Chiarmonte had no authority to negotiate.

Leung testified that although he did not believe the County's ballot measures required bargaining, County representatives sought tonegotiate the measures with CPOA. The County wanted negotiations regarding the measures to be handled separately from MOU negotiations so that they could be placed on the November 2004 ballot with the union-supported BIA Initiative. Accordingly, County representatives insisted on meeting separately regarding the County's ballot measures.

Like Leung, Ganley also believed that the County's ballot measures were not subject to mandatory bargaining. Ganley, however, was available to meet with CPOA after the May 21, 2004, letter and was generally available until the Board of Supervisors acted on the ballot measures at their August 3, 2004, Board of Supervisors meeting.

During the parties' first meeting on June 15, 2004, Ganley encountered "rowdiness" and profanities and was unable to finish his presentation. CPOA representatives characterized the County's ballot measures as regressive bargaining in relation to the ongoing MOU negotiations and submitted a list of 24 questions regarding the measures. Information sought by CPOA included the County's research on interest arbitration in other jurisdictions, estimates of the County's costs or savings from the proposed ballot measures, the County's complete file on the subject of interest arbitration and explanations regarding how the binding interest arbitration process is unfair to the County as an employer.

The parties met again on June 22, 2004 for approximately two hours. At the meeting, Ganley provided some of the information requested by CPOA, and indicated that he was looking for feedback on the proposed initiatives. Union representatives made a counterproposal dated June 26, 2004, that included MOU issues and a response to the County's ballot measures:

> CPOA is prepared to discuss a mutually acceptable county charter amendment, to be placed on the November 2004 ballot by the Board of Supervisors, to provide for final and binding impasse resolution of unresolved contract negotiation issues. CPOA is not prepared to discuss giving up members' political rights or entering into any quid pro quo, which CPOA believes to be unlawful, in regard to the voter petition to provide for binding interest arbitration for designated employee groups.

Leung saw the counter proposal as a "request to deal with a mutually acceptable binding interest arbitration language to be placed on the ballot by the Board."

At the July 13, 2004 meeting, Ganley reiterated that the ballot measures were separate from the MOU negotiations. There was additional discussion regarding Clisham's information request. CPOA indicated they did not support the County's ballot measures. When Ganley

sought to schedule another meeting, Clisham said he would let him know within two days. Clisham called Ganley on July 19, 2004 and a meeting was scheduled for July 26, 2004.

On July 26, 2004, the parties discussed the CPOA information request. Also, Ganley again advised CPOA that the Board of Supervisors would vote on the ballot measures on August 3, 2004, because August 6, 2004 was the last day for placing initiatives on the November ballot. Ganley asked Clisham whether CPOA would like to meet again but Clisham stated that he was busy for the rest of the week. CPOA representatives inquired whether the County had chosen the final language for amending Section 709 or the version of new Section 715 that would be sent to the voters. Ganley stated that he was still meeting with other unions and he would inform CPOA when he had that information.

According to Ganley, the unavailability of CPOA representatives resulted in the lack of additional meetings. Ganley further testified that CPOA sought to delay the negotiations notwithstanding his attempts to negotiate and seek counterproposals. When asked the extent to which he urged counterproposals, Ganley stated, "we reiterated over and over that this was an opportunity to be able to discuss this and give some meaningful feedback."

Ganley testified that his mission was to "gather information" and solicit feedback for the Board of Supervisors. At other points he stated, "I wasn't prepared to make changes at the table, but that wasn't the purpose of the meetings, in my mind" and "it was not my goal to necessarily come to an agreement at the table with [CPOA] necessarily, but to be able to report back to the Board information we solicited and let them have the opportunity to take it into consideration and make changes."

On July 29, 2004, Ganley informed Clisham that the County selected the interest arbitration proposal that required voter approval when an arbitration award exceeded the

County's last offer. Additionally, as a result of meetings with other unions, the County revised the Prevailing Wage Measure by deleting the presumption that a salary of $100,000 would be a prevailing wage. Although the final versions were not provided directly to CPOA, Clisham was informed he could immediately access them through the County's website.

On August 2, 2004, Fitzgerald sent a letter to the Board of Supervisors urging them not to place the measures on the ballot. On August 3, 2004, the Board of Supervisors approved the submission of the proposed Charter amendments for the November ballot.

CPOA spent approximately $240,000 in the ensuing election campaign to support the original BIA Initiative and oppose the County's ballot measures. Fitzgerald, however, was unable to state how much of that amount was spent opposing the County's ballot measures.

The voters in the November 2004, election rejected the union supported BIA Initiative and both of the County measures.

ISSUE

Did the County violate its obligation to bargain when it submitted proposed charter amendments to Sections 709 and 715 of the County Charter for the November 2004 ballot?

CONCLUSIONS OF LAW

MMBA section 3505 requires public agencies to meet and confer in good faith with employee organizations regarding matters with the scope of representation. In determining whether a party has violated MMBA 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.)[4]

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 Assn. v. City of Stockton* (1984) 161 Cal.App.3d 813; *Grant Joint Union High School District* (1982) PERB Decision No. 196.)

The rule is applicable when a party seeks to change a matter within the scope of representation through the initiative process. Prior to placing the matter before the voters, the party seeking the change must first satisfy its obligation to bargain. (*People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591.) Thus, the first issue to be addressed in this case is whether the County's ballot measures were within the scope of representation. If not, the County did not have a duty to meet and confer prior to submitting the measures for the November 2004 ballot.

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

A. The Interest Arbitration Measure Was Not Within Scope

As indicated above, the Interest Arbitration Measure proposed the addition of Section 715 to the County Charter if the BIA Initiative passed. This measure would have amended the interest arbitration procedures contained in the BIA Initiative by requiring an interest arbitration award to be approved by the voters if the award resulted in "greater cost" to the County than its last offer.

The ALJ found this provision to be within scope. However, while this matter was pending before the Board, a lawsuit was filed against the County alleging the County improperly spent public funds for partisan electoral purposes when it bargained for the union's non-support of the BIA Initiative. On January 22, 2010, the Sixth District Court of Appeal issued its decision in *DiQuisto v. County of Santa Clara* (2010) 181 Cal.App.4th 236 (*DiQuisto*) dismissing the lawsuit. Relevant to this discussion, the court held that interest arbitration provisions in general, and the BIA Initiative in particular, are permissive subjects of bargaining. (*Ibid.*)

In the instant case, the County sought to ameliorate the harsh consequences of the BIA Initiative with the addition of Section 715 to the County Charter. Section 715, as proposed, would have become part of the binding interest arbitration procedure proposed by the BIA Initiative. Based on *DiQuisto,* we find the Interest Arbitration Measure was a permissive subject of bargaining. As such, the County did not have an obligation to provide CPOA with a notice and an opportunity to bargain prior to placing it on the ballot. Accordingly, we find the County did not breach its duty to bargain when it placed the Interest Arbitration Measure on the November 2004 ballot.

B. The Prevailing Wage Measure

1. The Prevailing Wage Measure was Within Scope

In its appeal, the County reiterates its position that *City of Fresno v. People ex rel. Fresno Firefighters* (1999) 71 Cal.App.4th 82 (*Fresno*) compels a finding that the Prevailing Wage Measure was not within scope. In *Fresno*, the court considered whether the City of Fresno (City) had a duty to meet and confer prior to repealing a City charter provision that required a survey of eight other jurisdictions to set a minimum salary for police and firefighters. The court found that because the charter provision merely determined the City's initial bargaining position, and did not set wages, it was not a mandatory subject of bargaining. (*Ibid.*) The court compared the City's charter provision at issue from prevailing wage charter sections that "purport to set wages" and concluded that the unions "had no stake under the MMBA in determining . . . an *opening bargaining position* to be assumed by the City's labor negotiators." (*Ibid.*, at p. 96.)

In *Fresno*, the relevant portion of City's charter at issue provided as follows:

> salaries of the members of the police and fire departments of the city shall be fixed annually at an amount *not less than* the average monthly salaries . . . . [Underlining in original; emphasis added.]

We find the "not less than" language is a key component of this provision. As noted by the court in Fresno, this language clearly established an initial bargaining position for the City. It did not, however, establish a maximum rate of pay nor did it set the wages for the employees in question.

The Prevailing Wage Measure in the present case, however, did not include the "not less than" or similar language. Instead, the measure provided as follows:

> Rates of pay for county employees shall be fixed by the Board of Supervisors and shall be commensurate with rates of pay that are

> prevailing throughout the county for comparable public sector employees.

Absent the "not less than" language, we find that this provision did not establish an initial bargaining position. Instead, it established the wages of the employees in question based on the prevailing wages throughout the County. Because this provision purports to set wages, we find the Prevailing Wage Measure is within the scope of representation. Accordingly, the County had a duty to satisfy its obligation to bargain over the Prevailing Wage Measure prior to placing it on the ballot.

Thus, the remaining question in this case is whether the County breached its duty to bargain and that determination must be made by application of the unilateral change test. Because we have determined that the Prevailing Wage Measure was within the scope of representation, the fourth element of the test is satisfied. The first three elements of the unilateral change test are addressed below.

2. The Prevailing Wage Measure Constituted an Alteration in the Parties' Written Agreement or its Own Established Past Practice

The first element in the unilateral change test is whether the respondent breached or altered the parties' written agreement or its own established past practice. The County argues that its proposed changes to Section 709 sought only to clarify the existing prevailing wage provision and, therefore, did not trigger an obligation to bargain. However, these changes sought, among other things, to limit the salaries that would be considered in determining the prevailing wage and also to redefine what constituted "wages." We find these changes go beyond mere clarification and constitute substantive changes to Section 709. Accordingly, we find the first element of the unilateral change analysis is satisfied.

3. The County Failed to Complete Bargaining Over the Prevailing Wage Measure

The second element in a unilateral change test is whether the respondent's action was taken without giving the other party notice or an opportunity to bargain over the change. The Board has held that the obligation to meet and negotiate in good faith is one that must be fulfilled before implementing changes to matters within the scope of representation. (*Calexico Unified School District* (1983) PERB Decision No. 357 (*Calexico*).) Indeed, MMBA section 3505 provides, in relevant part:

> 'Meet and confer in good faith' means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall 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. The process should include adequate time for the resolution of impasses where specific procedures for such resolution are contained in local rule, regulation, or ordinance, or when such procedures are utilized by mutual consent. [Emphasis added.]

Thus, absent a waiver by the exclusive representative, an employer violates its duty to meet and confer in good faith when it makes a unilateral change to a matter within scope prior to the completion of bargaining. (*Omnitrans* (2009) PERB Decision No. 2001-M.) This duty is satisfied if the parties either reach agreement or bargain to impasse and participate in any applicable impasse procedures.

In the instant case, the County met with CPOA on four separate occasions to bargain both the Prevailing Wage Measure and the Interest Arbitration Measure but failed to reach agreement on either issue. Rather than declaring impasse, or continuing to bargain, the County choose to put the Prevailing Wage Measure on the November 2004 ballot. Accordingly, we

find the County breached its duty to meet and confer in good faith when it failed to bargain the Prevailing Wage Measure to agreement or impasse prior to placing it on the ballot, unless that obligation was waived by CPOA or was otherwise excused.

a. CPOA's Conduct did not Excuse the County from Completing Negotiations

The County argues that CPOA demonstrated bad faith by its lack of interest, dilatory tactics, profanity and failure to make meaningful counterproposals; and, by this conduct, CPOA waived its right to bargain. The Board, however, has held that a waiver of bargaining rights will not be found absent clear and unmistakable language or demonstrative behavior waiving a reasonable opportunity to bargain over a decision not already firmly made by the employer. (*Sutter Union High School District* (1981) PERB Decision No. 175.) Moreover, any doubts regarding waiver must be resolved against the party asserting it. (*Placentia Unified School District* (1986) PERB Decision No. 595.)

There is little evidence in this case that the four meet and confer sessions suffered from a lack of interest by CPOA. To the contrary, Ganley asserts he was met with rowdiness and profanity at the first meeting. Nor is the occasional use of profanity in the collective bargaining arena recognized as indicia of waiver. The County claims CPOA engaged in delay tactics. However, there is insufficient factual support for either this assertion or the inference that more meetings would have resulted in actual bargaining. Accordingly, we find the County failed to establish waiver in this case.

Additionally, the Board has held that "self-help" during negotiations regarding matters within scope is unlawful. (*Palo Verde Unified School District* (1987) PERB Decision No. 642 (*Palo Verde*).) Instead, when a party believes its counterpart is not conducting its negotiations in good faith, the party may file an unfair practice charge. (*Ibid.*) In the instant case, the

County claims CPOA did not bargain over the County's ballot measures in good faith, yet the County did not file an unfair practice charge against CPOA. Instead, the County resorted to self-help by unilaterally placing the Prevailing Wage Measure on the ballot. Based on *Palo Verde*, we find CPOA's alleged misconduct at the table did not excuse the County's obligation to bargain in this case.

b. The County was not Excused from Bargaining Based on a Statutory Deadline for Submitting Initiatives for the Ballot

The County also argues that it was "privileged to act" because it was confronted with a statutory deadline for submitting its initiatives for the November 2004 ballot. The County cites *Compton Community College District* (1989) PERB Decision No. 720 (*Compton*) for the rule that an employer may implement a change prior to completion of bargaining where there exists an imminent need for the employer to act. In that case, the employer was free to initiate layoffs based on an immutable deadline, as long as it had bargained in good faith prior to implementation and continued to negotiate after implementation. With regard to effects of layoff, the Board found that continued bargaining could be of some value to the union and the affected employees.

Here, the Prevailing Wage Measure, unlike the Interest Arbitration Measure, was not directly related to the BIA Initiative. Therefore, it does not appear that the County was faced with an imminent need to act prior to the statutory deadline for submitting the measure for the ballot. Additionally, continued negotiations after enactment of the Prevailing Wage Measure would be of little or no value. Accordingly, we find the County was not privileged under *Compton* to place the Prevailing Wage Measure on the ballot prior to the completion of bargaining.

c. The County was not Excused from Bargaining Based on a Business Necessity

At times, a compelling operational necessity can justify an employer acting unilaterally before completing its bargaining obligation. (*Calexico*.) However, the employer must demonstrate "an actual financial emergency which leaves no real alternative to the action taken and allows no time for meaningful negotiations before taking action." (*Oakland Unified School District* (1994) PERB Decision No. 1045.)

In support of its claim for immediate action, the County claimed it "could not wait for a future election cycle, because by that time potentially incalculable damage could have been done, both to the financial resources of the County and to the County's labor relations program." The County presents no facts and little argument to support this bare assertion. The Board of Supervisors did not declare an emergency or make a statement of serious harm threatened. Rather, as Leung testified, the County acted because it wanted its provisions on the same ballot as that of the union-sponsored measure.

As indicated above, it does not appear that the County was faced with an imminent need to act prior to the statutory deadline for submitting the Prevailing Wage Measure for the ballot. The mere fact that the county thought inclusion of the measure on the November 2004 ballot was desirable does not constitute a compelling operational necessity sufficient to set aside its bargaining obligation.

Based on the foregoing, we find the County failed to satisfy its bargaining obligation when it placed the Prevailing Wage Measure on the ballot. Accordingly, we conclude the second element of the unilateral change test is satisfied.

4. The Prevailing Wage Measure Constituted a Change of Policy

The third element of a unilateral change test is whether the change was not merely an isolated breach of the contract, but amounted to a change in policy (i.e., it has a generalized effect or continuing impact upon bargaining unit members' terms and conditions of employment). In this case, the Prevailing Wage Measure would have changed the calculation of prevailing wages used in the determination of rates of pay for County employees. Clearly, such a change would have an ongoing and generalized effect on the terms and conditions of employment. Under these circumstances, we find the Prevailing Wage Measure constituted a change in policy. Accordingly, the third element of the unilateral change test is satisfied.

CONCLUSION

We find the Interest Arbitration Measure was not a mandatory subject of bargaining and, therefore, CPOA failed to establish all four elements of a unilateral change claim. Accordingly, we find the County did not breach its duty to bargain when it placed this measure on the ballot. In addition, with regard to the Prevailing Wage Measure, we find CPOA established all four elements of a unilateral change claim. Accordingly, we find the County committed an unlawful unilateral change when it placed the Prevailing Wage Measure on the ballot prior to the completion of bargaining.

REMEDY

PERB is authorized to remedy violations of the MMBA. In relevant part, Section 3509(b) states:

> The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board.

Where a violation is found in unilateral change cases, PERB has the authority and long standing practice of ordering a restoration of the status quo ante for unilateral change violations. (*County of Sacramento* (2008) PERB Decision No. 1943-M.) This is typically accomplished by requiring the employer to rescind the unilateral change and make employees whole for losses suffered as a result of the unlawful unilateral change. (*Desert Sands Unified School District* (2004) PERB Decision No. 1682.) The monetary losses compensable are "out of pocket losses." (*Temple City Unified School District* (1990) PERB Decision No. 841.) Here, no order for a return to the status quo is necessary because the ballot measures failed. Therefore, an award for "out of pocket losses" is not appropriate.

In addition to the foregoing, it is appropriate that the County be directed to cease and desist from such conduct. It is also appropriate that the County be required to post a notice incorporating the terms of the order. Posting of such a notice, signed by an authorized agent of the County, will provide employees with a notice that the County has acted in an unlawful manner, is being required to cease and desist from this activity, and will comply with the order. It effectuates the purposes of the MMBA that employees be informed of the resolution of this controversy and of the County's readiness to comply with the order. (*Placerville Union School District* (1978) PERB Decision No. 69.)

ORDER

Based on the foregoing findings of fact and conclusions of law and the entire record in this matter, the Public Employment Relations Board (Board) hereby dismisses the allegation that the County of Santa Clara (County) unlawfully placed the Interest Arbitration Measure on the November 2004 ballot. Further, the Board finds the County violated the Meyers-Milias-

Brown Act (MMBA), Government Code section 3505 et seq., when it placed the Prevailing Wage Measure on the ballot prior to the completion of bargaining.

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

A. CEASE AND DESIST FROM:

Submitting charter amendment initiatives regarding prevailing wages for placement on an election ballot without fulfilling its duty to bargain in good faith.

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

1. Within ten (10) workdays following the date this Decision is no longer subject to appeal, post at all work locations where notices to employees in the bargaining unit represented by the Santa Clara County Correctional Peace Officers' Association (CPOA) customarily are 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.

2. Written notification of the actions taken to comply with this Order shall be made to the General Counsel of the Public Employment Relations Board, or the General Counsel's designee. Respondent shall provide reports, in writing, as directed by the General Counsel or his/her designee. All reports regarding compliance with this Order shall be concurrently served on the CPOA.

Chair Dowdin Calvillo and Member Wesley joined in this Decision.

APPENDIX

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. SF-CE-228-M, *Santa Clara County Correctional Peace Officers' Association v. County of Santa Clara*, in which all parties had the right to participate, it has been found that the County of Santa Clara violated the Meyers-Milias-Brown Act (MMBA), Government Code section 3505 et seq., by unilaterally submitting a charter amendment initiative regarding prevailing wages for placement on an election ballot without fulfilling its duty to bargain in good faith.

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

A. CEASE AND DESIST FROM:

Submitting charter amendment initiatives regarding prevailing wages for placement on an election ballot without fulfilling the duty to bargain in good faith.

Dated: _____ COUNTY OF SANTA CLARA

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.