

STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD



SANTA CLARA COUNTY REGISTERED
NURSES PROFESSIONAL ASSOCIATION,

Charging Party,

v.

COUNTY OF SANTA CLARA,

Respondent.

Case No. SF-CE-229-M

PERB Decision No. 2120-M

June 25, 2010

Appearances: Wylie, McBride, Platten & Renner by Mark S. Renner, Attorney, for Santa Clara County Registered Nurses Professional 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 appeals by both the County of Santa Clara (County) and the Santa Clara County Registered Nurses Professional Association (RNPA) of a proposed decision by an administrative law judge (ALJ). In the underlying charge, the RNPA 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. RNPA 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. Unless otherwise noted, all statutory references are to the Government Code.

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 RNPA 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 November 2004 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 which would have modified the interest arbitration set forth in the BIA Initiative. The other ballot measure (hereinafter referred to as the Prevailing Wage Measure) proposed an amendment to Section 709 of the County Charter which 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 RNPA 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.

Both the County and RNPA appealed the proposed decision. On appeal, the County argued the ballot measures were not within the scope of representation and, therefore, it had no duty to meet and confer with RNPA prior to placing the measures on the ballot. Additionally, even if the measures were within scope, the County argued it fulfilled its bargaining obligation prior to placing the measures on the ballot. RNPA, on the other hand, argued it should have

received an award for the out-of-pocket losses it suffered that flowed directly from the County's violations.

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. With regard to the remedy for this violation, we find an award for out-of-pocket losses is not appropriate based on the facts of this case.

FINDINGS OF FACT

The County is a public agency within the meaning of MMBA section 3501(c) and PERB Regulation 32016(a). RNPA 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 nurses.

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, RNPA, together with the Government Attorneys Association and the Correctional Peace Officers' 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.

In response to the BIA Initiative, County Human Resources Director Luke Leung (Leung) sent a letter to RNPA President Rosemary Knox (Knox) 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 RNPA 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.

Although Leung did not believe the County's proposed charter changes required bargaining, he assigned employer representatives to negotiate the changes with the sponsoring unions. With regard to the RNPA negotiations, Leung assigned Priscilla Hood (Hood) and Louis Chiamonte (Chiamonte) to represent the County. Leung directed the representatives to insist that the charter proposals be handled separately from ongoing MOU negotiations so that they could be placed on the November 2004 ballot with the BIA Initiative.

Hood has been a principal labor relations representative for the County since 2001 and was the County's chief spokesperson for the discussions with RNPA regarding the proposed charter amendments. A week after Leung sent the May 21, 2004, notice to the unions, Hood called RNPA to arrange meetings. She was told that RNPA would prepare a schedule. The first meeting was scheduled for June 24, 2004, the first day that the RNPA attorney, Christopher E. Platten (Platten) was available.

According to Hood, the County representatives were instructed to meet and confer with RNPA to the extent they could prior to an August deadline for placing the County initiatives on the November ballot. Chiamonte told RNPA representatives that he could be available anytime.

Hood testified that she believed she had the authority to negotiate and make counterproposals at the meetings. However, the County took the position that it was not necessary to use the County charter impasse procedures (mediation) because they were only required for MOU negotiations.

Among attendees at the June 24, 2004 meeting were Platten and Knox for RNPA and Hood and Chiamonte for the County. The meeting lasted less than an hour. Platten made requests for information and was assured of a County response. He stated that the union would be unable to produce a counterproposal until the requested information was provided and requested that it not be produced in a piecemeal fashion. Hood provided some of the information at the meeting and directed RNPA to the County website.

The parties next met on July 6, 2004, with Chiamonte and Labor Relations Representative William Ganley (Ganley) representing the County. Platten's information request was discussed; Ganley stated he would respond in writing.

Hood was present for a meeting on July 13, 2004, that lasted less than an hour. There was some discussion regarding court cases involving interest arbitration. RNPA reiterated that it would not submit a counterproposal until the information requested had been provided. No additional proposals were exchanged.

A fourth meeting took place on July 20, 2004. It lasted an hour and a half. Hood was presented with a written information request of 45 items that concluded with a statement that all items had been requested a month earlier with little result. The parties reviewed the request. By letter on the same day, Platten sent three additional information requests to Hood.

On July 27, 2004, Hood sent a letter to Platten responding to each of the 48 information requests. She reminded Platten that RNPA was provided notice of the County's ballot

measures on May 21, 2004 and was clearly afforded an opportunity to meet and confer over the potential impact of these measures. In addition, Hood claimed that RNPA engaged in delay tactics by its delay in setting meetings and its lengthy information request. She also stated that while County representatives had no obligation to use the current charter impasse resolution procedures, they would agree to mediation if completed by August 3, 2004.

At some point, Platten informed the County that RNPA would not submit a counterproposal on the Interest Arbitration Measure until it was told which of the County's two alternatives had been selected. According to Hood, that decision was delayed by meetings with other unions.

The parties met on July 28, 30 and August 2, 2004. Hood did not attend but received reports from County representatives.

On July 28, 2004, Chiaramonte informed RNPA that the County had eliminated the \$100,000 presumption from its original charter proposal on the Prevailing Wage Measure. At one point in her testimony, Hood referred to this change as "minor." Later, in response to a leading question, she testified that it was "significant." The change resulted from RNPA input. Additionally, Chiaramonte informed RNPA that the County had determined to proceed with the version of the Interest Arbitration Measure that required voter approval of an interest arbitration award only if it was more expensive than the County's final offer.

At the July 30, 2004 and August 2, 2004 meetings, RNPA made counterproposals to both of the County's ballot measures. They were rejected by County representatives, and no changes were made to either measure.

On August 2, 2004, RNPA demanded mediation under the County's Employee Management Relations Ordinance, but the County refused. County representatives presented what they believed to be the final draft of the charter amendments to RNPA.

On August 3, 2004, prior to their meeting, the County Board of Supervisors received a letter from Platten urging them to comply with the "meet and confer" requirements of MMBA before placing their final language on the ballot. Platten contended that the County had not exhausted its bargaining obligation, and had not participated in required impasse procedures. However, the County's proposed charter amendments were approved by the Board of Supervisors on August 3, 2004. Hood testified that the final versions contained language that was not identical to the prior version given to RNPA.

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

ISSUE

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

DISCUSSION

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.)³

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.

³ 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 RNPA with 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 the 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, however, did not include the "not less than" or similar language. Instead, the measure provided:

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 RNPA on seven separate occasions to bargain both the Prevailing Wage Measure and the Interest Arbitration Measure but failed to reach agreement on either measure. However, 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 second element of the unilateral change analysis 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.

Because all four elements of the test have been met, 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 RNPA or was otherwise excused.

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

The County argues that RNPA demonstrated bad faith by its lack of interest, dilatory tactics, insisting on irrelevant information requests and refusing to comment on the measures until the County responded to all the information requests; and, by this conduct, RNPA 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.)

Here, the parties held seven meet and confer sessions, and there is little evidence that these sessions suffered from a lack of interest by RNPA. Moreover, there is insufficient evidence to establish either that RNPA engaged in delay tactics or 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 RNPA did not bargain over the County’s ballot measures in good faith, yet the County did not file an unfair practice charge against RNPA. Instead, the County resorted to self-help by unilaterally placing the Prevailing Wage Measure on the ballot. Based on *Palo Verde*, we find RNPA’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. (*Callexico*.) 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, according to Leung, 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 the 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.

CONCLUSION

We find the Interest Arbitration Measure was not a mandatory subject of bargaining and, therefore, RNPA 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. On the other hand, we find the Prevailing Wage Measure was a mandatory subject of bargaining, and we find RNPA established all four elements of a unilateral change claim for this measure. 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.)

In its appeal, RNPA claims that the ALJ erred when he failed to award “out-of-pocket losses suffered by RNPA that flowed directly from the County’s violations.” While it is true that out-of-pocket expenses are compensable, such costs are only recoverable if they are a direct consequence of the violation. In the present case, RNPA failed to establish that its political expenditures were necessary to defeat the County’s ballot measures. Instead, the record shows that RNPA was engaged in a political campaign, and its resources were voluntarily spent on achieving political victory. Accordingly, we find RNPA’s alleged losses too remote to warrant recovery in this case.

It is also noteworthy that the record contains no evidence that either RNPA or its members suffered any out-of-pocket expenses or other type of harm in connection with the County’s ballot measures. Indeed, both measures failed and, therefore, an order to return to the status quo is not necessary. Consequently, an award for out-of-pocket losses is not appropriate.

We, therefore, find the appropriate remedy in this case is an order for the County to cease and desist from its unlawful conduct. It is also appropriate to order the County 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 Registered Nurses Professional Association (RNPA) 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 RNPA.

Chair Dowdin Calvillo and Member Wesley joined in this Decision.



**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD
An Agency of the State of California**

After a hearing in Unfair Practice Case No. SF-CE-229-M, *Santa Clara County Registered Nurses Professional 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, 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.