STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

SOLANO PROBATION PEACE OFFICERS' ASSOCIATION, Charging Party, v. COUNTY OF SOLANO, Respondent.	Case No. SF-CE-926-M PERB Decision No. 2402-M December 16, 2014

Appearances: Mastagni, Holstedt, Amick, Miller & Johnsen by Kathleen N. Mastagni and Christina J. Petricca, Attorneys, for Solano Probation Peace Officers' Association; Lee Axelrad, Deputy County Counsel, for County of Solano.

Before Martinez, Chair; Huguenin and Banks, Members.

DECISION

HUGUENIN, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the Solano Probation Peace Officers' Association (SPPOA) to the proposed decision (attached) of an administrative law judge (ALJ). The complaint, issued by PERB's Office of the General Counsel, alleged that Solano County (County) violated sections 3503, 3505, 3506, and 3509(a) and (b) of the Meyers-Milias-Brown Act (MMBA)[1] and PERB Regulations 32603(a),(b) and (c)[2] during negotiations for a memorandum of understanding (MOU) when it proposed to eliminate the arbitration of grievances and failed satisfactorily to respond to SPPOA's inquiry regarding "target savings" sought by the County in negotiations. The ALJ concluded that under the totality-of-

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

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

circumstances test, the County did not violate the MMBA or PERB regulations by failing to meet and confer in good faith, nor did it violate its duty to provide requested information to SPPOA.

We have reviewed the entire record in this matter including the proposed decision, SPPOA's exceptions and the County's response thereto. The ALJ's proposed decision is well-reasoned, adequately supported by the record and in accordance with applicable law. Accordingly, with one exception noted below, the Board adopts the ALJ's proposed decision as the decision of the Board itself subject to our discussion below of SPPOA's exceptions.

PROCEDURAL HISTORY

On February 10, 2012, the SPPOA filed an unfair practice charge against the County alleging violations of the MMBA and PERB Regulations. On March 26, 2012, the County submitted its response to the allegations urging that a complaint not be issued. On July 12, 2012, PERB's Office of the General Counsel issued a complaint alleging that the County violated MMBA sections 3503, 3505, 3506, and 3509(a) and (b) and PERB Regulations 32603(a),(b) and (c) during its contract negotiations with SPPOA.

On July 30, 2012, the County filed its answer. The County denied the material allegations of the complaint and raised several affirmative defenses. An informal settlement conference was held on September 21, 2012, but the matter was not resolved. On December 18-21, 2012, a formal hearing was conducted in Oakland. The ALJ issued his proposed decision on May 15, 2013.

On June 14, 2013, after being granted an extension of time, SPPOA filed its exceptions to the ALJ's proposed decision. On July 5, 2013, the County filed its response to SPPOA's exceptions. On July 11, 2013, the parties were notified that the filings were complete and the case had been placed on the Board's docket.

FACTUAL SUMMARY[3]

Sometime in March of 2011, after a successful decertification campaign against the Service Employees International Union, Local 1021, SPPOA became the exclusive representative of two units of County probation department employees: line staff and supervisors. On April 22, 2011, SPPOA and the County executed a side-letter agreement acknowledging which provisions of the pre-existing MOU would continue in effect following the change in representation. Included in this agreement was the grievance procedure through all pre-arbitration steps but not including arbitration. The pre-existing MOU provided for binding arbitration. (Proposed Dec., pp. 2-3.)

For several years prior to entering into contract negotiations with SPPOA the County had experienced financial pressure: property tax revenue had fallen, the County's fund balance had decreased, and the County had reduced the size of its workforce. The County projected an operational deficit of $19 million for the 2011-2012 fiscal year. As a result, the County sought concessions from labor during contract negotiations. (Proposed Dec., p. 3.)

On May 11, 2011, SPPOA and the County commenced negotiations on successor MOUs for the two units. Concurrently, the County was negotiating with several other bargaining units. On May 20, 2011, SPPOA requested historical data regarding the rates the County paid of the employee contribution to the California Public Employees Retirement System (CalPERS),[4] and the dollar amount equivalent of 1 percent of SPPOA's bargaining units' salary and 1 percent of the County's total payroll. (Proposed Dec., pp. 3-4.)

On May 24, 2011, the County made its opening proposal offering SPPOA substantially identical proposals to those made to the other units with which it was negotiating: the

[3] We adopt as the findings of the Board itself the findings set forth in the proposed decision. We provide this factual summary solely to assist the reader.

[4] At the time, the County paid half of the employees' CalPERS contribution.

elimination of two floating holidays, a County option to impose up to 12-furlough days, employee payment of the full share of the employee contribution to CalPERS, and a reduction from 80 percent to 70 percent in the County's contribution to medical insurance premiums. The County's proposal included a 3 percent maximum cost of living adjustment (COLA) increase effective January 6, 2013. The County told SPPOA that the COLA increase was predicated on achieving cost savings in negotiations, principally through the increased employee contribution to CalPERS. Also at the May 24, 2011, meeting SPPOA presented two proposals related to organizational rights, including a proposal that arbitration be restored. (Proposed Dec. pp. 4-5.)

On June 1, 2011, SPPOA sent the County an information request, via e-mail, asking for: (1) the cost savings of all County concession proposals; (2) a list of its bargaining unit members' sick leave balances; and (3) the amount of the budget reduction imposed on the probation department between October 2011 and November 2012. (Proposed Dec., pp. 5-6.)

At a bargaining session on June 1, 2011, the County made a presentation regarding the County's economic situation. SPPOA requested that the County provide it with the "target savings," or total dollar amount, the County hoped to achieve in its negotiations with SPPOA. The County responded that it did not have such information, because its goal was simply across-the-board concessions from all of the units with which it was negotiating. SPPOA presented six proposals including a salary increase, suspension of all disciplinary matters until a new agreement was reached, a longer contract term, modification of the County's military leave policy, and an incentive for out-of-class work. None of SPPOA's proposals received substantive discussion. (Proposed Dec., pp. 6-7.)

In a letter dated June 14, 2011, the County provided SPPOA with the information SPPOA had requested on various dates including: (1) the dollar amount of 1 percent of the

SPPOA's bargaining units' salary and a chart indicating the "cost savings of all concession proposals." The County explained that the cost savings estimates were based on reaching agreement with SPPOA prior to the end of the fiscal year or "close to the time a new budget was adopted." (Proposed Dec., p. 8.)

On June 29, 2011, the parties met for another bargaining session. SPPOA tentatively agreed to several of the County's proposals and presented another proposal regarding organizational security. The County made a proposal regarding the grievance procedure and indicated that it would be willing to include arbitration if the parties reached a complete agreement. (Proposed Dec., p. 8.)

On July 13, 2011, the County rejected the proposals made by SPPOA at the June 1, 2011, bargaining session. SPPOA made three new proposals all of which were rejected by the County.[5] Also at this session, the County indicated that its COLA proposal might be withdrawn if a new agreement were not reached within a "reasonable" time. On July 25, 2011, the parties reached a tentative agreement on a joint labor/management safety committee in response to one of SPPOA's proposals. (Proposed Dec., pp. 9-10.)

At a bargaining session on August 11, 2011, SCPOA made eight new proposals all of which were either rejected by the County at that meeting or in the subsequent meeting. At the subsequent meeting on August 23, 2011, the County suggested that it might reduce or withdraw its salary increase proposal if SPPOA failed to agree to the concessions. SPPOA reiterated its request for the County's "target savings." The County indicated that it was not seeking a specific dollar amount, but that it had the objective of having all employees "pay their share" of the concessions. The County amended its salary proposal to push back the start date of the COLA increase from January to March of 2013. (Proposed Dec., pp. 12-13.)

[5] These concerned the rights of an employee under investigation, a workload monitoring proposal and a safety proposal.

The parties met again on September 6, 16, 20, and 26, 2011. At these bargaining sessions, the parties reached two tentative agreements and SPPOA presented two "comprehensive" proposals. At the September 26, 2011, meeting the County made what it called its "last offer:" the County moved on two subjects, withdrew its COLA offer and maintained its major economic proposals. The County justified its withdrawal of the COLA proposal on the ground that circumstances had changed. (Proposed Dec., pp. 14-15.)

The parties met again on September 30, 2011. SPPOA submitted another comprehensive proposal. The County responded with its last, best and final offer which gave SPPOA two options: "Option A" included a provision for binding arbitration, while "Option B" contained slightly better economic terms but did not provide for arbitration. The County placed a deadline on the offer of October 3, 2011, after which both options would be considered rejected. SPPOA did not accept either option by October 3, 2011. The parties met for a final bargaining session on October 6, 2011. SPPOA presented its last, best and final offer, which the County rejected. The County declared impasse, and SPPOA did not object. (Proposed Dec., pp. 15-16.)

On October 28, 2011, the parties met for a mediation session. The County submitted a revised last, best and final offer which contained a revised expiration date for Option A and a provision that if any part of Option B was rejected, it would be deemed a rejection of the entire option. Rejection of Option B would result in imposition of Option A. The deadline for Option A passed on November 4, 2011. SPPOA took no position on Option B. On November 22, 2011, the County implemented the terms of Option A. (Proposed Dec., p. 16.)

PROPOSED DECISION

The ALJ framed the issue as whether the County had engaged in bad faith bargaining in its negotiations with SPPOA in 2011. The ALJ applied the totality-of-circumstances test to

determine if the County had engaged in bad faith bargaining. (Citing *Placentia Fire Fighters v. City of Placentia* (1976) 57 Cal.App.3d 9, 25 [the question of good or bad faith is primarily a factual determination based on the totality of the circumstances].) The ALJ noted the indicia of surface bargaining previously identified by PERB and distinguished bad faith bargaining from "hard bargaining." (Proposed Dec., pp. 17-18.)

The ALJ noted that in addition to the indicia of bad faith alleged in the complaint, SPPOA contended that the County engaged in bad faith bargaining by: (1) failing to engage in substantive discussions of SPPOA's proposals or reconcile differences between the parties; (2) attempting to force coalition bargaining upon SPPOA; (3) providing false or misleading information about safety equipment; (4) engaging in regressive bargaining; and (5) imposing an arbitrary timeline for reaching an agreement.

The ALJ determined that SPPOA failed to carry its burden of proof that the County failed to engage in substantive discussions with the union over its proposals. The ALJ found that the many hours the parties spent in bargaining and mediation, combined with the lack of documentation in SPPOA's bargaining notes, cast doubt upon SPPOA's characterization that the County refused to engage in discussions over SPPOA's proposals.

With regard to coalition bargaining, the ALJ noted that SPPOA cited to "no legal authority that the mere attempt to achieve identical contracts [with other bargaining units of the same employer] rises to the level of coalition bargaining." (Proposed Dec., p. 21.) The ALJ determined that "across-the-board" concessions such as those sought by the County during its 2011 negotiations with SPPOA and several other unions were not coercive because each union maintained the right to independently accept or reject the County's proposals and proceed to impasse resolution procedures.

The ALJ also found that the evidence did not support SPPOA's claim that the County's misrepresentations regarding safety equipment brought the integrity of the negotiations into question or was intended to distract the union from substantively discussing safety issues. The ALJ found that nothing in the record supported the contention that the County provided SPPOA with misinformation in order to disrupt negotiations.

The ALJ also determined that the County's withdrawal of its COLA proposal and its condition that it would only agree to binding arbitration if it reached a total contract agreement with SPPOA did not constitute regressive bargaining. The ALJ determined that the County used the COLA proposal and binding arbitration as an inducement designed to encourage agreement and not as a means to delay or obstruct agreement. In addition, the ALJ determined that the County's failure to provide SPPOA with its "target savings" information was not a refusal to provide necessary and relevant information and to the extent that SPPOA's request sought the County's "bottom-line" it intruded "into the mental processes and strategies of the employer." (Proposed Dec., p. 25.)

Lastly, the ALJ determined that the County did not impose an arbitrary deadline for reaching an agreement. The ALJ found that neither the County's calculated savings, which were based on reaching an agreement before the end of the fiscal year, nor the County's withdrawal of its COLA proposal after ten bargaining sessions, demonstrated the imposition of an arbitrary deadline. Thus, having found no indicia of bad faith, the ALJ concluded that the County did not engage in bad-faith bargaining under the totality-of-circumstances test and dismissed the charges.

EXCEPTIONS

SPPOA takes three exceptions to the ALJ's proposed decision. According to the SPPOA, the ALJ erred: (1) when he found that it was increasingly common and acceptable for

employers to seek "across-the-board" concessions from each of its bargaining units; (2) when he determined that "target savings" sought to be achieved by the county were not relevant and necessary information and that to the extent SPPOA's request for "target savings" sought to discover the County's bottom-line, it intruded impermissibly upon the County's mental processes; and (3) when he determined that conditioning binding arbitration to a total agreement was not an unfair practice. The County takes no exceptions, argues that SPPOA's exceptions all lack merit and urges us to affirm the ALJ's proposed decision.

DISCUSSION

Across-the-Board Concessions

In its first exception, SPPOA contends that the ALJ erred by determining that across-the-board concessions do not violate the MMBA. According to SPPOA, in order to satisfy its bargaining obligation under the MMBA, the County must

> engage in the complex, time consuming analysis of budgets, individually tailor proposals for each bargaining unit and engage in the politics within departments and management to reach a consensus on a memorandum of understanding.

(SPPOA Memorandum, p. 3.) SPPOA contends that the County's across-the-board concessions imposed coalition bargaining upon the union and deprived its bargaining unit members of the right to be represented by their chosen representative.

PERB distinguished coordinated and coalition bargaining in *Gilroy Unified School District* (1984) PERB Decision No. 471 (*Gilroy*). As the Board stated in *Gilroy*,

> It is necessary at the outset to distinguish between the negotiations of separate unit agreements during common sessions ("coordinated" bargaining) and the merger of negotiations for two or more units ("coalition" bargaining). In the first case, the respective unit proposals are considered independently of each other and the settlement of one contract is not dependent upon the settlement of the other. The only significant area of commonality is the use of the same bargaining sessions to address the separate issues. In coalition bargaining, however, negotiations are

> directed toward similar contracts, containing the same or similar provisions. Further, the settlement of each contract is usually dependent upon the settlement of others.

(*Gilroy*, pp. 7-8.) Alternatively,

> "Coordinated" bargaining connotes communication and accommodation among different bargaining agents but independent decision making in separate bargaining processes. . . . "Coalition" bargaining, on the other hand, implies a de facto merger of bargaining units, or an effort to achieve that end.

(Higgins, The Developing Labor Law (6th ed. 2012) Ch. 13.X., p. 1124.) In order to prevail on a theory that a party has refused to bargain by insisting on coalition bargaining, the charging party must prove that the other party refused to bargain unless the bargaining units met jointly or that settlement of one contract was conditioned on the settlement of another contract. (See *Compton Community College District* (1989) PERB Decision No. 728, p. 4.) SPPOA has not proven that the County ever suggested, much less insisted, that SPPOA bargain jointly with any of the County's other bargaining units and the evidence establishes that each contract the County was negotiating in 2011 was settled independently from the others. While the County may have engaged in permissible hard-bargaining by seeking across-the-board concessions from its bargaining units, this does not mean that it imposed coalition bargaining on those units. As the ALJ noted, each bargaining unit met and bargained independently with the County and each bargaining unit was free to accept or reject the County's proposals independently from the others. Therefore, SPPOA's first exception lacks merit.

Target Savings Information Request

In its second exception, SPPOA claims the "target savings" information was relevant and necessary to the bargaining process because the County sought economic concessions, and that its request did not intrude upon the County's mental processes. SPPOA claims that the

County's "target savings" information was necessary for SPPOA to assess the County's economic proposals and present its own counter-proposals.

An exclusive representative is entitled to all information that is necessary and relevant to the discharge of its duty of representation. (*Stockton Unified School District* (1980) PERB Decision No. 143; *Labor Board v. Truitt Manufacturing Co.* (1956) 351 U.S. 149.) An employer's refusal to provide such information evidences bad faith and violates per se its duty to meet and confer unless the employer can demonstrate adequate reasons why it cannot supply the information. (*Ibid.*) Information that pertains to a mandatory subject of bargaining is presumptively relevant. (*State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S.) MMBA section 3504 defines the mandatory subjects of bargaining or, alternatively, the scope of representation as:

> all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

PERB applies a liberal, discovery-type standard to determine that the requested information is relevant to a matter within the scope of representation. (*Trustees of the California State University* (1987) PERB Decision No. 613-H (*Trustees*); *NLRB v. Acme Industrial Co.* (1967) 385 U.S. 432.) If the information sought is not presumptively relevant, the exclusive representative must demonstrate how the information is relevant to its representational responsibilities such as negotiations or contract administration. (*Regents of the University of California (Davis)* (2010) PERB Decision No. 2101-H; *Trustees*.)

The ALJ found that "target savings" were "the total dollar amount of savings [the County] hoped to achieve from the negotiations with the two [SPPOA] units" and that SPPOA requested the information because SPPOA considered the information "necessary to enable the

union to structure its proposals, mitigate the impacts of the County's demands, and assess the reasonableness of those demands." (Proposed Dec., p. 6.) We conclude that the "target savings" information requested by SPPOA is presumptively relevant because it pertains to a mandatory subject of bargaining (wages).

However, our inquiry does not end there. The ALJ determined that the County never calculated its "target savings." (Proposed Dec., p. 25.) SPPOA did not take exception to this determination.[6] An employer need not provide requested information that does not exist. (See *Los Angeles Superior Court* (2010) PERB Decision No. 2112-I.) In addition, SPPOA does not claim that it received no financial information from the County. The County spent part of at least one bargaining session making a presentation about its current and future economic situation, including its cost savings from each of its proposals. (Proposed Dec., pp. 6-8.) Nor is there evidence that the County ignored SPPOA's request or supplied it with misleading information. (See *City of Pinole* (2012) PERB Decision No. 2288-M, p. 3.) We conclude with the ALJ that the County's failure to provide a "target savings" figure was neither an indicium of bad faith nor a per se refusal to provide necessary and relevant information. Therefore, SPPOA's second exception lacks merit.[7]

Conditioning Binding Arbitration on Total Agreement

SPPOA's third exception contends that the ALJ erred when he determined that conditioning binding arbitration upon a total agreement was not an unfair practice. The ALJ determined that binding arbitration was "an inducement designed to encourage agreement."

[6] An exception not specifically urged shall be waived. (PERB Reg. 32300(c).)

[7] We do not reach the issue of whether SPPOA's "target savings" request intruded upon the County's mental processes and strategies and therefore was exempt from disclosure. We conclude that having failed to establish that the County in fact had calculated a "target savings," SPPOA failed to overcome the County's affirmative defense to its production burden.

(Proposed Dec., p. 24.) SPPOA claims that the County used the exclusion of binding arbitration as a threat to force a speedy agreement, to gain leverage, weaken SPPOA's bargaining power and force acquiescence to an agreement.

The ALJ determined that it was not unlawful to place a condition on a proposal unless the condition is outside the control of the parties. Since the County's binding arbitration proposal was designed to encourage agreement, the ALJ reasoned, the conditioning of binding arbitration was not intended to delay or obstruct agreement. (Proposed Dec., p. 24.)

SPPOA relies on the Board's decision in *Modesto City Schools* (1983) PERB Decision No. 291 (*Modesto*) for the proposition that conditioning agreement on a no-strike/arbitration combination may be indicium of bad faith if the intent of the condition is to avoid a contract or weaken the union. (*Modesto*, p. 31.) We concur with the ALJ that binding arbitration was offered by the County to encourage, not avoid, agreement. In addition, we find no evidence in the record—and SPPOA does not point to any evidence—that the County was motivated by an intent to avoid a contract or weaken SPPOA. Therefore, we conclude that SPPOA's third exception lacks merit.

ORDER

The complaint and underlying unfair practice charges in Case No. SF-CE-926-M are hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chair Martinez and Member Banks joined in this Decision.

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD

SOLANO COUNTY PROBATION PEACE OFFICERS' ASSOCIATION, Charging Party, v. COUNTY OF SOLANO, Respondent.	UNFAIR PRACTICE CASE NO. SF-CE-926-M PROPOSED DECISION (May 15, 2013)

Appearances: Mastagni, Holstedt, Amick, Miller & Johnsen by Kathleen N. Mastagni and Christina J. Petricca, Attorneys, for Solano County Probation Peace Officers' Association; Lee Axelrad, Deputy County Counsel, for County of Solano.

Before Donn Ginoza, Administrative Law Judge.

PROCEDURAL HISTORY

Solano County Probation Peace Officers' Association (SCPPOA) filed an unfair practice charge under the Meyers-Milias-Brown Act (MMBA or Act)[1] against the County of Solano (County) on February 2, 2012. On July 12, 2012, the Office of the General Counsel of the Public Employment Relations Board (PERB or Board) issued a complaint alleging that the County failed and refused to meet and confer in good faith during contract negotiations by proposing to eliminate arbitration of grievances and failing to provide information regarding the "target savings" sought by the County in the negotiations. This conduct is alleged to violate sections 3503, 3505, and 3506 of the Act and PERB Regulation 32603(a), (b), and (c).[2]

On July 30, 2012, the City filed its answer to the complaint, denying the material allegations and raising affirmative defenses.

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

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

On September 21, 2012, an informal settlement conference was held, but the matter was not resolved.

On December 18, 19, 20, and 21, 2012, a formal hearing was conducted in Oakland.

On March 27, 2013, the matter was submitted for decision with the filing of post-hearing briefs.

FINDINGS OF FACT

SCPPOA is an "employee organization," within the meaning of section 3501(a), and an "exclusive representative" of two bargaining units of public employees, within the meaning of PERB Regulation 32016(b). The County is a "public agency" within the meaning of section 3501(c).

In March 2011, SCPPOA became the exclusive representative of the County's bargaining unit of line staff probation department employees (deputy probation officers and group counselors) and its unit of probation department supervisors as a result of a successful decertification campaign against the Service Employees International Union, Local 1021 (SEIU), which had previously represented those units. SEIU and the County were parties to a memorandum of understanding (MOU) for each unit. Both covered a term of May 18, 2008 through October 1, 2011. The line staff unit is referred to as Unit 12. The supervisors unit is referred to as Unit 15. SCPPOA retained David Topaz, a negotiator/consultant, to lead the negotiations for successor agreements for the two units.

On April 22, 2011, Topaz executed a side letter agreement with the County acknowledging which provisions of the existing MOUs would continue in effect following the change in representation. The document did so by identifying those provisions that would cease to be maintained. All of these provisions related to union rights (union security, released time, no-strike/lockout, dues deductions, etc.). The parties agreed that the County would honor

the grievance procedure through all steps but arbitration. The prior agreement provided for binding arbitration. This is currently a feature of all of the other units' MOUs.

The County has been experiencing financial pressure for several years. Its total revenue is in the $800 million range, the bulk of which comes from the state and federal governments. The County's general fund comprises $200 million of that total, and the bulk of that discretionary income source is generated through property taxes. In 2010, property tax revenue had fallen significantly. Going into the 2011-2012 budget year, the rate of decline had slowed. Between 2007-2008 and 2009-2010 the County's fund balance had declined from $62 million to $37 million. Over the same period the size of the workforce had decreased from 3,092 to 2,318. In 2000-2011, the County eliminated 200 positions and would ultimately eliminate 60 more positions in 2011-2012.

The County estimated an operational deficit of $18 million in 2010-2011 and projected a deficit of $19 million in 2011-2012. With state and federal mandated programs remaining in place, the County anticipated the increased use of local funds to maintain these commitments. The deficit in the County's general fund was its top budget priority. As a result of this challenge, the County determined it would seek concessions from labor.

In May 2012, SCPPOA and the County commenced formal negotiations for successor agreements for the two units. Topaz and SCPPOA President Tarita Moehrke headed the union's negotiating team. Labor Relations Manager Jeannine Seher was the County's spokesperson.

A number of other bargaining units were also engaged in contract negotiations at this time, including the attorneys unit, three SEIU units, and the medical staff unit. Substantially identical economic proposals were made by the County to all the units. They included elimination of floating holidays, a County option to impose furlough days, employee payment

of the full share of the employee contribution to the California Public Employees Retirement System (CalPERS) (i.e., the employer paid member contribution (EPMC)), and a reduction in the County's contribution to medical insurance premiums. At the time, 50 percent of the EPMC was paid by the County.

May 11, 2011 Meeting

At the first negotiating session, the parties discussed ground rules and future meeting dates. It was agreed that two MOUs would again be negotiated. Information on the status of the County budget was shared, and SCPPOA was warned about the declining revenue picture for the upcoming fiscal year.

By e-mail dated May 20, 2011, Topaz requested information regarding the historical rates the County paid for its share of the CalPERS contribution. He also requested the dollar amount equivalent of one percent of the salary of the bargaining unit and one percent of the total payroll.

May 24, 2011 Meeting

At the May 24 meeting, the County presented a comprehensive opening proposal. Included were proposals for contract language to be carried over from the previous agreements. Consistent with the proposals made to the other units, the significant economic proposals were: (1) full assumption of the EPMC; (2) an equal share of any future increases in the employer retirement contribution over 15 percent in the form of an additional employee contribution (in the past the County had paid all of such increases); (3) reduction of the County's contribution to health insurance premiums under the cafeteria plan from 80 percent to 70 percent; (4) elimination of two floating holidays; and (5) discretionary authority by the governing board to impose up to 12 furlough days per year. The County's salary proposal carried over most of the existing contract language, while specifying a maximum of a three percent cost-of living-

adjustment (COLA) increase effective January 6, 2013. Seher explained that the COLA was predicated on the County achieving cost savings in the negotiations, principally from the EPMC pick-up. The County also proposed a modification of the "two percent at age 55" retirement formula and an offer to resolve a corrected valuation issue for employees filing for two percent at age 50. Moehrke testified that the County's principal justification for the five-point economic concession proposal was that the same concessions were being asked of all the units. Much of the time was spent by the County explaining its proposal. There was significant discussion about some of the proposals and minimal discussion of others.

SCPPOA submitted two proposals, both related to organizational rights. One was for 20 hours of union released time for the president or a designated representative. The other was to restore the arbitration step and remove the "adjustment board" step (immediately preceding arbitration) from the grievance procedure. Seher responded to the proposal by asserting that 20 hours was excessive and that authorization of a designated representative was "broad and problematic." In consultation with the auditor controller, Seher concluded the latter provision would also be difficult to monitor. As to the grievance procedure, Seher explained that it did not want to eliminate the adjustment board step because it had led to the successful resolution of grievances in the past.

On the same date, Seher responded to Topaz's May 20 information request by providing actuarial evaluation reports for the County's CalPERS safety retirement plan for the years from 2001 through 2007.

June 1, 2011 Meeting

By e-mail early on the morning of June 1, Topaz submitted an information request to Seher. He requested: (1) the "cost savings of all County concession proposals"; (2) a list of all Unit 12 and Unit 15 members and their sick leave balances; and (3) the amount of the budget

reduction imposed on the Probation Department between October 2011 and November 2012. In addition, he reminded Seher that the County had not yet responded to a prior request for the dollar amount of one percent of salary and one percent of payroll.

During the June meeting, a County financial analyst, Ron Grassi, made a Powerpoint presentation regarding the economic situation the County was facing as it approached the new budget year. The presentation showed the potential for a continuing deterioration in the County's financial position. SCPPOA stated a request that the County indicate its "target savings" or the total dollar amount of savings it hoped to achieve from the negotiations with the two units. Seher responded that the County did not have a specific dollar amount because its goal was simply to obtain across-the-board concessions from all the units.

Topaz testified that the target savings figure was necessary to enable the union to structure its proposals, mitigate the impacts of the County's demands, and assess the reasonableness of those demands. As to the latter issue, Topaz asserted that the information was needed to determine if the savings were equitable in relation to the concessions the County was reporting that the other unions were making.

SCPPOA presented six proposals: (1) a salary proposal for a COLA of between two and four percent depending on the regional Consumer Price Index (CPI) at ratification and in the 2012 and 2013 years of the contract as well; (2) the County holding all disciplinary matters involving SCPPOA in abeyance until a new grievance procedure was agreed upon; (3) a contract term of July 1, 2011 through June 13, 2014; (4) modification of the policy allowing employees to perform military duty on a paid leave basis; and (5) an incentive for out-of-class work.

According to Moehrke, the County did not engage in substantive discussion of these proposals. However, Seher testified that she sought clarification of the military leave proposal

and engaged in discussion regarding the application of the proposed rule. There was discussion about the question of how military leaves are calculated, and the County asserted that the current statement of the policy was consistent with military rules. The County explained that SCPPOA's rule would extend the leaves at additional cost to the County. The department's director consulted with counsel regarding application of the Military and Veterans Code to the leave issue and reported back to Seher.

As to the out-of-class work proposal, the County asked questions regarding the application of the benefit and the rate of bonus pay.

In response to the proposal on holding disciplinary appeals in abeyance, the County reported it was attempting to identify which disciplinary matters involved SEIU so as to be excluded from the proposal. Seher explained that the County disagreed with the concept of holding disciplinary appeals in abeyance, though she admitted she did not flesh out her reasoning.

Seher explained to SCPPOA that the County favored its proposal for a two-year term over the union's four-year term because of the possibility it might need additional economic concessions in light of the financial situation.

Seher expressed disappointment with SCPPOA's salary proposal, which came after Grassi's presentation regarding the County's deteriorating budget situation. A number of these proposals would be rejected six weeks later at the meeting on July 13.

By letter dated June 14, 2011, Seher responded to Topaz's June 1 e-mail information request as well as others presented at times not indicated in the record, providing a list of all vacant positions in the department, a breakdown of membership enrollment in health plans, and the amount of hours in the Catastrophic Leave Bank. The County also provided the cost of one percent of base salary for each unit.

In regard to the question of "cost savings of all concession proposals" Seher provided a chart detailing cost savings from each of the County's proposals for fiscal years 2012-2013 and from July 2013 through September 2013 (furlough days, deletion of floating holidays, reduction in health premium contribution, elimination of the EPMC, and split of the CalPERS employer increases, offset by the County's two percent COLA). Seher explained that the cost-savings estimates for the 2012-2013 period as well as the deficit figures for the new budget were based on reaching agreement with SCPPOA prior to the end of the fiscal year or close to the time the new budget was adopted.[3]

June 29, 2011 Meeting

At the June 29 meeting, SCPPOA tentatively agreed to a number of County proposals on workers' compensation, state disability insurance, insurance plans, dismissal/suspension, and extra help benefits. The record does not reveal the nature of the proposals accepted by SCPPOA.

SCPPOA submitted an eighth proposal dealing with organizational security.

The County presented a proposal on the grievance procedure that substituted a mediation step in place of the adjustment board. The County remained opposed to restoring arbitration. The County indicated that it would be willing to grant arbitration if the parties reached a complete agreement. SCPPOA believed it was unfair that its unit was the only one being denied grievance arbitration. Topaz believed the only rationale for the County's position was to retain leverage in achieving its objectives in the negotiations.

[3] It appears that a 2011-2012 projection would have been more pertinent to these negotiations, but no one challenged the 2012-2013 date as being incorrect.

July 13, 2011 Meeting

At the July 13 meeting, the County announced that it was rejecting a number of the union's outstanding proposals as noted above. As to the grievance procedure, the County indicated it preferred its own proposal. The County was disappointed with SCPPOA's proposal for additional COLA increases and preferred its own. The County indicated it was still researching which disciplinary appeals would be delayed. As to the subject of military leave benefits, the County restated that the current policy complied with existing law. The County objected to the out-of-class proposal because it deviated from the practice common for other units. The County did not accept the union's organizational security proposal because it was still researching the matter of service fees.

SCPPOA presented its ninth, tenth and eleventh proposals. Proposal No. 9 concerned the right of an employee under investigation for misconduct to receive notification and have the right to representation in an investigatory interview. Proposal No. 10 required the Probation Department to meet with the union regarding workload to ensure an equitable distribution. Proposal No. 11 proposed to establish a committee to provide recommendations on safety policies. The County rejected the proposals, though it devoted more discussion to the safety proposal and submitted a counterproposal at a subsequent meeting. It stated its belief that the current contract language was sufficient in regard to workload monitoring. The County believed the subject was better handled by an existing labor/management committee and objected to the proposal to the extent it might compel management to adjust workloads and infringe on managerial prerogatives. The exploration of the workload monitoring proposal prompted the County to invite a management employee to explain the monitoring practices at the next session. Seher assured SCPPOA that the County would discuss any of the union's specific workload concerns.

The County indicated that its proposal for a COLA might be withdrawn if agreement was not reached in a reasonable time. The County restated that it needed the proposed economic concessions, and needed them from all of the units.

During the meeting, the County responded to an information request regarding safety equipment available to employees. The list provided indicated that "panic buttons" were available to employees in juvenile hall interview rooms to call for assistance in the event of an emergency. Moehrke disagreed that the buttons were available in those rooms. After about five minutes of discussion on the point, the matter was unresolved. Moehrke volunteered to go to the facility and confirm the absence of the buttons. During the day, the County inquired into the matter with the department. As a result Moehrke was informed she was correct and that it would not be necessary for her to visit the facility. After the meeting Seher e-mailed Topaz and Moehrke to apologize for the error.

July 25, 2011 Meeting

The County's department head made a presentation explaining safety equipment and workload monitoring. One of the issues raised by SCPPOA was the lack of keys issued to employees that would allow them to enter another section of a secured area to assist a fellow employee in distress. Union bargaining notes indicate there was also discussion about union rights, the grievance procedure, and the County's economic proposals. One tentative agreement was reached on a County proposal made in response to the union's Proposal No. 11 regarding the establishment of a joint labor/management safety committee.

August 11, 2011 Meeting

Prior to the meeting, the County informed the union that all new proposals needed to be submitted by the scheduled August 11, 2011 meeting, consistent with one of the ground rules. The County asserted that negotiations were not progressing fast enough. Seher explained that

many of SCPPOA's proposals were "going in the wrong direction" and that the County was obtaining its desired concessions from other units either through agreement or through the imposition of terms. She repeated a statement made often before that these concessions were "consistent across the board" for all the unions, that they were needed because of the County's financial position, and that the County was not "looking to give away anything." The health insurance, EPMC pick-ups, and furloughs remained the County's primary objectives.

SCPPOA presented its Proposal No. 12, which called for 2.5 percent increases in salary based on 10, 15, 20, 25 and 30 years of service. The County rejected this longevity compensation proposal with little or no substantive discussion.

SCPPOA Proposal No. 13 requested enhancements to policies on overtime. The County rejected the proposal, but promised to submit its own proposal at the next meeting.

SCPPOA Proposal No. 16 requested enhancements for the accrual of leave time. The County rejected this proposal at the next meeting. SCPPOA subsequently withdrew it.

SCPPOA Proposal No. 17 requested removal of a disqualification for sick leave based on injuries arising from non-County employment or for willful misconduct as defined by worker's compensation law. The County rejected the proposal at the next session with little or no explanation.

SCPPOA Proposal No. 18 requested an increase in the rate of compensation for fixed-date holiday duty. The County rejected the proposal at the next meeting. The union could recall no substantive discussion of the proposal. It later withdrew the proposal.

SCPPOA Proposal No. 20 requested the right to submit reclassification requests in the first year of the agreement. The County rejected the proposal at the next meeting on the grounds that classification reviews had recently been conducted and that additional review was unnecessary.

SCPPOA Proposal No. 22 proposed to allow shift bidding every six months. The County rejected the proposal because it had previously achieved a change to annual bidding after having it every six months, and did not want to revert to the previous schedule.

SCPPOA Proposal No. 24 proposed to allow stipends for employees for training assignments in order to instruct classes or lead counseling groups. The County would thereafter consult with the department chief, who objected to the change, citing the fact that training assignments are within the scope of the job descriptions and that additional training should not be necessary, but could be requested if needed. The County rejected the proposal at the next session.

Topaz testified that it appeared at this point that if the proposal was not a County proposal, the County was not interested.

One tentative agreement was reached on a SCPPOA proposal to strike a provision of the prior agreement regarding welfare reform.

August 23, 2011 Meeting

The August 23 meeting began with a discussion of vacant positions and an exchange of information. The County reported that its governing board had met and learned of a projected three percent decline in revenue for the 2011-2012 fiscal year, a possible double-dip recession, and the announcement of workshops related to the adoption of the budget. Seher registered the concern that SCPPOA had failed to respond to the County's high-priority economic proposals or agree to any concessions, that the governing board's patience was running out, and that the County needed concessions immediately from all of bargaining units who had not yet agreed to them.

SCPPOA again requested a statement of the County's target savings, and the County reiterated that it was seeking to have the employees "pay their share." Seher suggested the

possibility of the County withdrawing or reducing its salary increase proposal if SCPPOA failed to agree to the concessions. SCPPOA had been informed that the economic concessions had been imposed on at least two other bargaining units and interpreted Seher's comments as a threat that it would impose on SCPPOA's units as well. Moehrke's notes confirm that the County's "bottom line" was not a particular dollar amount, but the objective of all employees paying their share of the concessions.

The County then produced a proposal that amended its previous salary offer based on the CPI to delay the accrual date from January to March 2013. The County reiterated its earlier justification that time was lapsing without an agreement to the concessions.

The County produced a counterproposal to SCPPOA Proposal No. 19 which had contained a list of equipment items it was requesting that the County provide. The County was willing to cover the cost of approximately five of the eleven requested items (i.e., duty belt, pair of handcuffs and handcuff key, flashlight, badge, and ballistic vest). There was back-and-forth discussion over this proposal. The County also provided a counterproposal agreeing to maintain the Employee Recognition Program.

SCPPOA presented a counterproposal to the County's May 24 proposal regarding the retirement plan. The County rejected it on the same day, stating that its provisions would add COLAs and equities amounting to 21 percent for the unit. Again, as to economic issues, the County denied it had a dollar figure for the amount of savings needed to conclude the negotiations.

Tentative agreements were reached on two SCPPOA proposals related to employee recognition and adoption.

On the same day, Topaz requested information concerning the amount of money the Probation Department provided for training and its sources. Seher responded to the request in

an e-mail the following day. By e-mail dated August 26, Seher also provided a list of bargaining unit members by classification and location responsive to another request by the union.

September 6, 2011 Meeting

On September 26, the parties reached tentative agreement on the carry-over language from the prior MOU.

September 16, 2011 Meeting

At the September 16 meeting, SCPPOA submitted a "comprehensive counter proposal." It summarized its latest position on each of its 24 proposals and each of the County's 19 proposals. It included withdrawals of several proposals including those on disciplinary appeals, reclassifications, leave accrual, and holiday compensation. It recited tentative agreements on three of its proposals, including those on employee recognition, bereavement leave, and welfare reform, and seven County proposals, including those on worker's compensation, insurance plans, discipline, extra-health benefits, and safety. SCPPOA countered with a January 2013 start date for the County's proposed COLA, rather than the County's March 2013 date. SCPPOA also countered with 2.5 percent for the age 55 multiplier in the retirement program, and proposed assumption of the nine percent employee paid contribution over time in annual one percent incremental increases beginning at five percent.

Tentative agreements were reached on the probationary period and overtime/callback.

September 20, 2011 Meeting

SCPPOA presented a revised comprehensive proposal at the September 20 meeting. It included the withdrawal of five proposals pertaining to banked released time, disciplinary appeals, the term of the agreement, longevity compensation, leaves, holiday compensation, and

reclassifications. Topaz contended that at this point, the union had moved substantially, in contrast to the County.

The County responded with a counteroffer labeled as its "last offer." It made movement on two subjects, but also withdrew its COLA proposal and stood fast on the major economic concession proposals. Seher testified that the County withdrew the COLA because of changed circumstances, namely, the inability to reach agreement with SCPPOA so as to begin realizing the projected savings. Although at the time she did not specify any concrete data reflecting a deteriorating financial situation for the County in the fall of 2011, she indicated the county administrative officer was "increasingly concerned" that the fiscal picture was "not getting any better."

September 30, 2011 Meeting

At their September 30 meeting, SCPPOA submitted a new comprehensive counterproposal recapitulating its prior position on its proposals and the County's proposal. The union offered movement on its proposal for out-of-class work compensation, accepted the County's September 16 counteroffer on workload monitoring, and reduced its proposals on hours related to travel and training assignments. SCPPOA believed the County had either failed to respond to a number of its proposals, was unwilling to discuss them, or was not interested in hearing other options presented by the union.

The County responded with its last, best and final offer. Consistent with the prior proposal the salary increase had been deleted. The County provided the union with two options for accepting its offer. "Option A" was the same as the previous offer except for a change to its proposal on overtime and call duty and a clarification regarding its shift/vacation bidding proposal. Option A provided that binding arbitration would be granted upon ratification. "Option B," a slightly better offer overall, contained additional modifications

relating to implementation of the EPMC and health insurance premium pick-up, but did not contain the potential for arbitration. Failure to accept one of the offers by October 3, 2011, constituted a rejection of both options.

October 6, 2011 Meeting

The October 3 deadline passed without acceptance by SCPPOA. On October 6, the parties met, and SCPPOA presented its last, best and final offer. The union withdrew its military leave and out-of-class work proposals. After the County rejected the proposal, Seher declared that the parties were at impasse and stated her intention to request the services of a mediator. SCPPOA did not object to the County's declaration of impasse.

October 28, 2011 Mediation Session

The County submitted a revised last, best, and final offer during the parties' October 28 mediation session. Options A and B were retained and were similar to their previous statements. The offer contained a new expiration date of November 4, 2011 for Option A, and provided that if any portion of Option B was rejected it would be deemed a rejection of the entire option, resulting in the County's imposition of Option A. Option A expired before SCPPOA could present both options to its membership for ratification. The membership took no position on Option B when it was presented to them.

November 22, 2011 Imposition

On November 22, 2011, the County implemented the terms of Option A. Binding arbitration was not provided for grievances and no COLA was granted. Included were the EPMC pick-up, reduction in contribution to health insurance premiums, and an option for furloughs. Similar concessions were obtained from other units, either through agreement or unilateral imposition.

ISSUE

Did the County engage in bad faith bargaining during its contract negotiations with SCPPOA in 2011?

CONCLUSIONS OF LAW

The complaint alleges that the County failed to meet and confer in good faith as demonstrated by its (1) making a proposal to eliminate binding arbitration and (2) failing to provide a satisfactory response to the request for information regarding the target savings sought from the SCPPOA bargaining unit through negotiations.

Both parties acknowledge that the theory of the complaint is that the County violated its duty to bargain in good faith based the totality-of-circumstances test. (See *Placentia Fire Fighters v. City of Placentia* (1976) 57 Cal.App.3d 9, 25.) The totality-of-circumstances test applies in cases of surface bargaining, where one of the parties "goes through the motions of negotiations" but displays a lack the "genuine desire to reach agreement." (*City & County of San Francisco* (2007) PERB Decision No. 1890-M, pp. 10-12; *Muroc Unified School District* (1978) PERB Decision No. 80, p. 13; *Oakland Unified School District* (1982) PERB Decision No. 275, pp. 15-16.)

PERB has identified a number of indicia of surface bargaining, including (1) entering negotiations with a "take-it-or-leave-it" attitude (*General Electric Co.* (1964) 150 NLRB 192, 194, enf. (2d Cir. 1969) 418 F.2d 736); (2) unwillingness to schedule meetings (*Oakland Unified School District* (1983) PERB Decision No. 326); failure to exchange reasonable proposals and reconcile differences (*Gonzales Union High School District* (1985) PERB Decision No. 480); conditioning agreement on economic matters upon prior agreement on non-economic matters (*State of California (Department of Personnel Administration)* (1998) PERB Decision No. 1249-S); reneging on tentative agreements of the parties (*Charter Oak Unified*

School District (1991) PERB Decision No. 873); refusal to provide information (*Stockton Unified School District* (1980) PERB Decision No. 143; and regressive bargaining (*Pajaro Valley Unified School District* (1978) PERB Decision No. 51). The cases often require PERB to distinguish between unlawful bad faith bargaining and lawful "hard bargaining," which involves the adamant maintenance of a legitimate position. (*Oakland Unified School District, supra,* PERB Decision No. 275; *NLRB v. Herman Sausage Co.* (5th Cir. 1960) 275 F.2d 229; compare *NLRB v. A-1 King Size Sandwiches, Inc.* (11th Cir. 1984) 732 F.2d 872, 874.)

In addition to the two indicia cited in the complaint, SCPPOA contends that the County (1) failed to engage in substantive discussion of the union's proposals and failed to make any genuine attempt to reconcile differences; (2) attempted to force coalition bargaining; (3) provided inaccurate or false information regarding the subject of safety equipment; (4) engaged in regressive bargaining by (a) withdrawing its COLA proposal, (b) conditioning grievance arbitration on reaching complete agreement, and (c) failing to provide its target savings figure; and (5) imposed an arbitrary timeline for completion of the negotiations. SCPPOA further alleges that the refusal to provide the target savings figure amounted to a per se violation based on a refusal to provide necessary and relevant information. The County anticipates and responds to each of the alleged indicia of bad faith.

Failure to Engage in Substantive Discussion of Proposals

Both Topaz and Moehrke testified repeatedly that the County failed to engage in "substantive discussions" of SCPPOA's proposals. While there is some support for the union's characterization overall, its claim cannot be credited as amounting to evidence of bad faith. As to a number of the proposals, Topaz and Moehrke testified that the exchanges were "minimal" or "little" (which is not to say there was no discussion), and as to others they simply could not recall if there was any discussion or what the discussion may have been. SCPPOA

relied on the fact that if there had been meaningful discussion, it would have been recorded in their bargaining notes and there were no such notations. Moehrke's notes were in the main the only ones presented, and they were consistently cryptic in content, typically only one page in length. On the other hand, the record demonstrates that Seher provided explanations for the County's objections or raised concerns with nearly all of the union's proposals. The parties engaged in 12 bargaining sessions and one mediation session, which is a reasonable number of sessions given the scope of the negotiations. It is true that the County offered truncated rationales when rejecting a number of the union's proposals. But the parties also devoted many hours to these negotiations, casting doubt on the union's general characterization that it consistently refused to engage in substantive discussions of the proposals. SCPPOA has failed to carry its burden of proof that the County failed to engage the union in discussions about its proposals.

The record also confirms that despite SCPPOA's unwillingness to agree to any of the major economic concessions sought by the County, the County continued to work through non-economic issues, resolving the carryover language of a new agreement, while also executing eight tentative agreements on its proposals and three on SCPPOA proposals. The County was the first to present a last offer, and worked thereafter to develop alternative options within its last, best, and final offer that would have led to a completed successor agreement upon ratification by the SCPPOA membership.

Attempt to Force Coalition Bargaining

SCPPOA contends that by offering similar proposals to all bargaining units which it described as "must haves" the County impermissibly conditioned and limited its offers to SCPPOA based on offers being made to other units. In other words, despite not requiring SCPPOA to physically bargain with other bargaining units at the same meetings, the County

effectively conditioned settlement on SCPPOA accepting the same terms proposed to the other bargaining units. (See *Compton Community College District* (1989) PERB Decision No. 728, pp. 3-6.)

PERB has had few instances in which coalition bargaining was alleged and none in which it has been found to have occurred. In *Gilroy Unified School District* (1984) PERB Decision No. 471, the employer was simultaneously negotiating with two bargaining units (certificated and classified) represented by the same union's "mixed" bargaining team. The employer refused to grant released time to representatives from one unit when they were negotiating on behalf of the other unit. PERB noted the distinction in the private sector between coordinated bargaining and coalition bargaining. The former type, in which members representing other units participate in the negotiations of another unit, is permissible. The latter type, in which multiple unions attempt to achieve a single contract or one with similar terms, is not. PERB explained: "In coalition bargaining, however, negotiations are directed toward similar contracts, containing the same or similar provisions. Further, the settlement of each contract is usually dependent upon the settlement of the others." (*Id.* at p. 8.) The latter imposition violates the exclusivity of each unit by linking the outcome of the objecting union's negotiations to the results of other unit negotiations. Coalition bargaining had been described as the "de facto merger of bargaining units, or an effort to achieve that end." (*Compton Community College District, supra,* PERB Decision No. 728, p. 3, citing Morris, *The Developing Labor Law*, second edition, p. 666.) *Compton Community College District*, following *Gilroy Unified School District*, held that a violation will be found if one party either refuses to meet unless the units meet jointly or one party conditions the settlement of its contract on the settlement of the other(s). (*Id.* at p. 4.)

The County did not demand that the units meet jointly or condition settlement of the SCPPOA contract on the settlement of the other units' negotiations on the same terms. The County informed SCPPOA that it was intent on achieving the same concessions with the other units either through agreement or unilateral imposition. SCPPOA cites no legal authority that the mere attempt to achieve identical contracts rises to the level of coalition bargaining. (See *Banning Unified School District* (1985) PERB Decision No. 536, p. 6 [employer may seek parity in contract terms for valid business reasons].) There is nothing coercive about such a strategy because each union is free to reject the proposal and proceed to the post-impasse arena where it may seek to achieve its objectives through impasse resolution procedures and other strategies if necessary. Thus SCPPOA's contention that the County unlawfully imposed conditions on its economic proposals is without merit.[4] Because each unit was permitted to accept or reject the County's proposals independently the principle of exclusivity was not violated.

Inaccurate or False Information

SCCPOA contends that the County's misrepresentation regarding panic buttons in the custodial facilities brought into question the integrity of the negotiations. SCPPOA's contends that this misstatement was intended to distract the union from substantively discussing the safety issue because Moehrke was required to spend a substantial portion of her time addressing the County's inaccuracies. The evidence does not support this claim. Moehrke conceded that the matter was disputed during the course of five minutes of discussion and that

[4] It has become more increasingly common for employers in need of large concessions due to severe economic conditions to seek across-the-board concessions from each of its bargaining units. The strategy reduces the complexity of proposing economic concessions individually tailored to each bargaining unit because a unit-by-unit approach involves a more complex, time-consuming analysis of the budgets of individual departments and interjects political issues in reaching consensus within the management team. The across-the-board approach enhances the employer's ability to reach agreement because individual units can be expected to be resistant to concessions but less skeptical if they are not disproportionately affected.

the County reported to her the same day that she was correct. As a result of the retraction, there was no need for her to make a trip to the facility. Nothing in the record supports a finding that the County, through this incident or others, provided misinformation for the purpose of disrupting the negotiations.

Regressive Bargaining

A. Withdrawal of the COLA

SCPPOA maintains that the County's withdrawal of its COLA proposal constitutes regressive bargaining. SCPPOA further contends that after the County had rejected the majority of its proposals and the union had withdrawn a number of others in an attempt to reach agreement, the County's withdrawal of the COLA effectively eliminated any chance of agreement. In addition, the County had an unrealistic, predetermined goal of obtaining its proposed concessions by the beginning of the fiscal year, only one month after the negotiations commenced.

There is no dispute as to the circumstances prompting the County to withdraw the proposal. The County hoped it would achieve an early agreement, but lacking success warned SCPPOA at the August 23 meeting that the County might reduce or withdraw its proposal if there continued to be no agreement to the economic concessions. Seher would cite the governing board's thinning patience. Thereafter the County moved out the start date of the COLA increase by several months and ultimately withdrew the proposal in its last offer.

The record does not support the claim that the County had a predetermined goal of achieving agreement within one month. SCPPOA simply infers this based on the fact that the County calculated its cost savings calculations for the out-year based on an early agreement. Seher testified without contradiction that when she introduced the COLA proposal she stated it was predicated on the union also accepting the EPMC pick-up. After numerous bargaining

sessions exploring 19 County proposals and 22 SCPPOA proposals, SCPPOA gave no indication of any willingness to concede to the EPMC proposal. At the same time, SCPPOA was slower to introduce its proposals, and given the bleak financial situation and the demand for concessions, it had little incentive to negotiate swiftly and few prospects for achieving gains in these negotiations. The County began the negotiations with a clearly articulated strategy of obtaining very significant concessions distributed in a manner it viewed as equitable amongst the bargaining units. Since it was ending the year with an operational deficit (further reducing its fund balance) and was projecting continued erosion of its financial position, the County's desire for early agreements with all of the unions was understandable. Seeking an early agreement is not the same as not seeking any agreement at all. Thus, the County's conduct cannot be construed as intent to frustrate the negotiations. A COLA logically served as an inducement for early agreement on the economic concessions, none of the unions could be expected to embrace without some incentive.

As the County correctly points out, conditioning a proposal on its acceptance before a deadline, and its withdrawal if acceptance is not timely communicated, is not regressive under the principle that unlawful conditioning only occurs when the condition is outside the control of the negotiators. (*Trustees of the California State University* (2006) PERB Decision No. 1871-H; *Fremont Unified School District* (1980) PERB Decision No. 136.) A time-limited proposal under these circumstances is merely protection against an offer that may escalate in cost the longer it takes for the other side to accept.[5] *Trustees of the California State University*, *supra*, PERB Decision No. 1871-H finds nothing unlawful about conveying a time-limited proposal as an inducement to settlement. Although the County may have been more

[5] Such a proposal is analogous to the issue of retroactivity of a salary increase, a matter which typically remains in play after the general parameters of the future salary promises have been settled.

forthright by stating the condition explicitly at the outset, its imposition of the condition at a later time cannot under the circumstances of this case be construed as motivated by bad faith.

B. Conditioning Agreement to Binding Arbitration on a Total Agreement

After citing evidence that the County was dismissive in rejecting SCPPOA's proposal for binding arbitration and unwilling to concede a benefit possessed by all of the other units, SCPPOA asserts that the County's refusal to agree to the proposal reflected its intent to use the subject to force SCPPOA's acquiescence in the economic concessions. Again, placing a condition on a proposal is not unlawful unless the condition is outside the control of the parties. (*Trustees of the California State University, supra*, PERB Decision No. 1871-H.) The County knew arbitration was important to SCPPOA and eventually conceded to the proposal subject to the condition. Placing conditions on proposals in this fashion amounts to the addition of an inducement designed to encourage agreement and thus does not indicate intent to delay or obstruct agreement.

C. Failing To Provide a Target Savings Figure

SCPPOA contends that without the target savings calculation it could not meaningfully bargain over the County's cost reduction proposals because it had no way of determining if the County's goal was reasonable, supported by the budget, or if the County's proposals were above or below the goal. The County's "general information" about its financial status as a whole (i.e., its "editorials" regarding the housing market collapse, property tax values and an "alleged" structural deficit) failed to inform SCPPOA as to the amount of resources the County had available for negotiations. (See *Compton Community College District, supra,* PERB Decision No. 728.) SCPPOA also complains that the County's cost savings calculations in regard to the furlough days and health insurance costs were imprecise, leaving it unable to

assess what changes were needed for the parties to reach agreement. The argument is unpersuasive.

SCPPOA cites no persuasive authority for the proposition that the refusal to provide a target savings calculation constitutes a refusal to provide necessary and relevant information. *Compton Community College District, supra,* PERB Decision No. 728 is distinguishable. There the employer's refusal to present a picture of resources available to commit to the bargaining process was coupled with other conduct, such as failing to present clear and consistent proposals, labeling offers as firm and then withdrawing them, altering final offers, and violating ground rules. These other acts of deception are not present here. In *City of Pinole* (2012) PERB Decision No. 2288-M, PERB found that the employer did not unlawfully refuse to provide information in response to a request for "the value of concessions" sought to close a budget deficit because the employer did not ignore the request or provide misleading information. Here the County responded with an estimate of the value of each of its proposals.

In addition, the County denied a target savings figure was ever calculated and SCPPOA provided no evidence to the contrary. An employer is not required to produce information that does not exist. (*Los Angeles Superior Court* (2010) PERB Decision No. 2112-I; *State of California (Departments of Personnel Administration and Transportation)* (1997) PERB Decision No. 1227-S.) Although a target savings figure could conceivably have been calculated, to the extent the request sought the County's "bottom-line," the request intrudes into the mental processes and strategies of the employer. (*City of Fresno v. Fresno Firefighters* (1999) 71 Cal.App.4th 82, 94-96 [establishment of initial bargaining position not within the scope of representation]; *City of Pinole, supra*, PERB Decision No. 2288-M, p. 3 [no obligation to divulge thought processes].) With regard to furlough days, the union contends the potential savings from implementing the authority did not identify how many

days the County actually intended to impose. The reasonable inference from the proposal is that the County sought to obtain discretion to reduce the deficit by an amount up to the equivalent of 12 days per year. The relevant information was the potential cost of the 12 days, not the unknown cost of the imposition of less than 12 days based on circumstances that could not be anticipated.

SCPPOA's assertion that the lack of a target savings prevented the union from determining the reasonableness of the proposals is also unconvincing. SCPPOA does not dispute the extent of the County's operational deficits. Nor does it dispute that it received an estimated amount of the savings achieved by each of the County's economic proposals. It is difficult to ascertain how a target savings figure, if different from the sum total of the projected savings, would have enabled SCPPOA to argue more successfully that the demands were unreasonable in relation to the deficits. If it intended to make the argument that its units were disproportionately impacted it could have requested the dollar-cost savings for the other units. SCPPOA fails to provide a convincing argument that the target savings figure would have materially advanced its ability to craft counterproposals that would mitigate the impact of the proposed concessions.

Further, SCPPOA's claim that the information provided was imprecise fails because there is no evidence it objected to the County's responses on those grounds. (*Trustees of the California State University* (2004) PERB Decision No. 1732-H, p. 6.)

The refusal to provide a calculation of target savings is neither an indicia of bad faith nor a per se violation based on the refusal to provide necessary and relevant information.

Arbitrary Timeline

The issue of imposing a deadline for the completion of negotiations has arisen in a number of different circumstances. In *Mt. Diablo Unified School District* (1983) PERB

Decision No. 373, PERB held that statutory deadlines for layoffs do not excuse the employer from negotiating effects related to the layoffs, rejecting the employer's refusal to fully engage the union based on these compressed timelines because four months actually transpired before its decisions were implemented. In *County of Santa Clara* (2010) PERB Decision No. 2120-M, the employer's was found to have arbitrarily imposed a deadline for completion of its *Seal Beach*[6] obligation because meeting on seven occasions prior to placing a measure on the ballot failed to result in a completion of negotiations. In *State of California (Department of Personnel Administration)* (1986) PERB Decision No. 569-S, the employer was charged with delaying negotiations until after a proposed budget had been developed and presented, thus compressing the time period for negotiations. (*Id.* at pp. 3-4.) The employer's desire to delay the negotiations, leaving time only for a feverish pitch of activity late in the process, was not found to constitute a per se refusal to bargain, in part because the lack of a proposed budget created significant uncertainty as to the economic parameters of the negotiations. (*Id.* at pp. 6-8.) In *Kings In-Home Supportive Services Public Authority* (2009) PERB Decision No. 2009-M, pp. 8-10, PERB found that the employer's statement that it would present its last, best and final offer at the next bargaining session indicated bad faith. These cases establish that an employer's attempt to dictate the pace of negotiations in reference to external events is not necessarily unlawful, but depends on the employer's willingness to fully engage the union in the time that is available, the quality of negotiations that actually occurred, and the legitimacy of the justification advanced for the deadline.

SCPPOA asserts that the County demanded that the union reach total agreement prior to the end of 2010-2011 fiscal year, noting Seher's testimony that its calculated savings for 2012-2013 were based on reaching an agreement with the union prior to the close of the fiscal

[6] *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591.

year. This is not evidence of the imposition of a deadline for negotiations. Seher's testimony merely explained a premise for the figures presented on cost savings. The County was open in expressing disappointment with the union for not agreeing to its demands for concessions, but there is nothing unlawful about pointing out how delays that result in added costs to one party may potentially impact that party's willingness and ability to compromise concerning the subjects in dispute.

SCPPOA's claim that the County attempted to impose a deadline also rests on the fact that the County withdrew its COLA after ten negotiating sessions, spanning a period of four months. SCPPOA contends that the County withdrew the COLA offer as punishment for failing to reach agreement in "record time." Again, this does not point to imposition of an arbitrary deadline, but at best the presentation of a regressive bargaining proposal. But for the reasons stated above, this claim has been rejected. The County fully engaged SCPPOA during the course of the negotiations and only declared impasse after it was revealed that the union was unwilling to accept any of the major economic concessions while attempting instead to demonstrate movement by adding and withdrawing its own proposals.

Because no indicia of bad faith have been found, the County did not engage in bad faith bargaining under the totality-of-circumstances test.

PROPOSED ORDER

Upon the foregoing findings of fact and conclusions of law, and the entire record in this case, the complaint and underlying unfair practice charge in Case No. SF-CE-926-M, *Solano County Probation Peace Officers' Association v. County of Solano*, are hereby DISMISSED.

Pursuant to California Code of Regulations, title 8, section 32305, this Proposed Decision and Order shall become final unless a party files a statement of exceptions with the Board itself within 20 days of service of this Decision. The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95811-4124
FAX: (916) 327-7960

In accordance with PERB regulations, the statement of exceptions should identify by page citation or exhibit number the portions of the record, if any, relied upon for such exceptions. (Cal. Code Regs., tit. 8, § 32300.)

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing. (Cal. Code Regs., tit. 8, §§ 32135, subd. (a) and 32130.) A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of California Code of Regulations, title 8, section 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Cal. Code Regs., tit. 8, § 32135, subd. (b), (c) and (d); see also Cal. Code Regs., tit. 8, §§ 32090 and 32130.)

Any statement of exceptions and supporting brief must be served concurrently with its filing upon each party to this proceeding. Proof of service shall accompany each copy served on a party or filed with the Board itself. (See Cal. Code Regs., tit. 8, §§ 32300, 32305, 32140, and 32135, subd. (c).)