

**STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD**



RIVERSIDE SHERIFFS' ASSOCIATION,

Charging Party,

v.

COUNTY OF RIVERSIDE,

Respondent.

Case No. LA-CE-1060-M

PERB Decision No. 2596-M

November 16, 2018

Appearances: Law Office of Olins & Chaikin, by Adam Chaikin, Attorney, for Riverside Sheriffs' Association; The Zappia Law Firm, by Edward P. Zappia, John Calvagna, and Brett Ehman, Attorneys, for County of Riverside.

Before Banks, Shiners, and Krantz, Members.

DECISION

BANKS, Member: This case is before the Public Employment Relations Board (PERB or Board) on exceptions filed by the County of Riverside (County) to the proposed decision of an administrative law judge (ALJ). The complaint, as amended, alleged that on or about August 1, 2015, and without providing the Riverside Sheriffs' Association (Association) notice and opportunity to request bargaining, the County implemented a new policy requiring Association-represented employees at the County's Indio Jail and the nearby Larson Justice Center to pay \$35 per month to park in a County-operated parking structure located near the jail and court facilities. This conduct was alleged to have violated the County's duty to meet and confer under the Meyers-Milias-Brown Act (MMBA)¹ and PERB Regulations,² and to have interfered with

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

the representational rights of employees and the Association. The County answered the complaint by admitting all factual allegations, except it denied that it had failed to provide notice and opportunity to request bargaining,³ and by asserting that PERB lacks subject-matter jurisdiction over this dispute because the affected employees are peace officers within the meaning of MMBA section 3511 and Penal Code section 830.1.⁴

On February 28, 2017, the ALJ issued his proposed decision which considered two issues: whether PERB has jurisdiction to decide unfair practice allegations brought by the Association on behalf of bargaining unit members who are peace officers; and whether the County's decision to charge a \$35 monthly parking fee to Association-represented employees constituted an unlawful unilateral change to working conditions. The ALJ concluded that under *County of Santa Clara, supra*, PERB Decision No. 2431-M, PERB has jurisdiction over the present dispute; that the \$35 parking fee was negotiable; and that, by unilaterally implementing the \$35 parking fee, the County had violated its meet-and-confer obligations as alleged in the Complaint. Applying PERB's normal remedy in unilateral change cases, the

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

³ Notwithstanding this assertion in the County's Answer, at the hearing, the parties stipulated that the County had not provided the Association with notice or opportunity to request bargaining before charging employees the \$35 parking fee.

⁴ MMBA section 3511 provides that those changes made to the MMBA during the 1999-2000 Regular Session of the Legislature, whose effect was to transfer jurisdiction over most MMBA disputes from the superior courts to PERB, "shall not apply to persons who are peace officers as defined in Section 830.1 of the Penal Code." In *County of Santa Clara* (2015) PERB Decision No. 2431-M, PERB clarified that only unfair practice charges brought by "persons" who are peace officers are excluded from PERB jurisdiction by section 3511, and consequently that disputes, such as the present one, that are brought by an employee organization are within PERB's unfair practice jurisdiction under section 3509, subdivisions (a) and (b). (*Id.* at pp. 15-17.)

ALJ ordered the County to cease and desist its unlawful conduct and to take certain affirmative actions designed to effectuate the policies of the MMBA, including restoring the prior status quo and making affected employees whole. Specifically, the ALJ ordered the County to reimburse employees in the amounts they had paid for the unilaterally-implemented parking fees and to augment these payments with interest at the rate of 7 percent per annum.

On April 24, 2017, the County filed several exceptions to the proposed decision, asserting, among other things, that PERB lacks jurisdiction over alleged violations of the MMBA “when those allegations involve peace officers, even when the matter is brought by an employee organization representing those peace officers and not [by] the peace officers themselves,” and that *County of Santa Clara, supra*, PERB Decision 2431-M was wrongly decided.

The County also filed a counter charge, designated Unfair Practice Case No. LA-CO-204-M, in which it alleged that, to the extent the present dispute involved negotiable matters, the Association had unlawfully failed and refused to meet and confer with the County over the new parking fees. On September 22, 2017, while the County’s exceptions were pending before the Board, PERB’s Office of the General Counsel issued a complaint in the related matter alleging that the Association had failed and refused to meet and confer over the parking fees that are the subject of the present dispute.

On August 22, 2018, the parties notified PERB that they had agreed to settle the dispute and requested that both unfair practice charges and complaints, along with the County’s exceptions in Case No. LA-CE-1060-M, be withdrawn with prejudice.

The MMBA vests PERB with broad powers to “investigate unfair practice charges or alleged violations of [the MMBA],” and to “take any action and make any determinations in

respect of these charges or alleged violations as the board deems necessary to effectuate the policies of [the MMBA].” (Gov. Code, § 3541.3, subs. (i) and (n); MMBA, § 3509, subd. (a).) In exercising these powers, PERB has discretion to grant or deny requests to withdraw and dismiss unfair practice cases pending before the Board itself. (*State of California (Department of Personnel Administration)* (2010) PERB Decision No. 2152-S, p. 5.) Although the fundamental purposes of the MMBA include promoting full communication between public employers and their employees and improving employer-employee relations by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment, the Board may deny a request to withdraw an unfair practice case when the issues raised by an appeal or by exceptions pending before the Board involve a matter of continuing public interest and a precedential ruling on the issue would be instructive to similarly-situated parties. (*Grossmont-Cuyamaca Community College District* (2009) PERB Order No. Ad-380; *Oakland Unified School District* (1988) PERB Order No. Ad-171a; *ABC Unified School District* (1991) PERB Decision No. 831b.) Based on the Board’s review of the parties’ settlement agreement, the County’s request for withdrawal, and the entire record in this matter, the Board finds withdrawal and settlement of this dispute to be in the best interest of the parties and consistent with the purposes of the MMBA.⁵

⁵ In *County of Santa Clara, supra*, PERB Decision No. 2431-M, the Board observed that MMBA section 3511 precludes PERB’s jurisdiction over “persons” who are peace officers, but not over employee organizations who represent or seek to represent peace officers. (*Id.* at p. 15.) This distinction is implicit in the Legislature’s decision to incorporate by reference the Penal Code’s definition of “peace officer,” which has never been interpreted to include employee organizations. The *Santa Clara* Board also noted that other provisions of the MMBA, including section 3509.5, subdivision (c), similarly distinguish between *natural* and *legal* personhood by using the different terms “persons” when referring to natural persons such as *employees*, and “entities” when referring to *employee organizations* or other legal persons. (*County of Santa Clara*, p. 16.) Based on these provisions of the MMBA, the Board concluded

Ordinarily, when a party requests to withdraw its exceptions, by operation of PERB Regulation 32305, subdivision (a), the proposed decision becomes final and binding as to the parties, but without precedential effect for future decisions. (PERB Regs. 32305, subd. (a); 32215.) As the Board explained in *County of Fresno* (2014) PERB Decision No. 2352-M, in light of the considerable time and resources expended to conduct a hearing and issue a proposed decision, a non-prevailing party “has the right to appeal an unfavorable decision but does not have the right to act as if the case was never litigated and did not result in a decision on the merits.” (*Id.* at p. 4.)

However, the present case was disposed of via a global settlement of all outstanding issues between the parties, including the collateral unfair practice charge, and involves substantial back pay to the affected employees as part of the settlement agreement. In the

that PERB has authority to adjudicate and remedy unfair practice charges brought by employee organizations, even when they represent or seek to represent persons who are peace officers. Although the County contends that the Board’s discussion of jurisdiction in *County of Santa Clara* was wrongly decided, by filing and pursuing a separate unfair practice charge against the Association, the County effectively concedes that PERB has jurisdiction over charges brought by and against employee organizations representing peace officers. Under the circumstances, issuing another precedential decision which effectively reiterates the Board’s reasoning in *County of Santa Clara* would do little to resolve a matter of continuing public interest or provide guidance to similarly-situated parties.

Aside from the jurisdictional issue, the sole issue in dispute before the ALJ was the negotiability of the parking fee implemented by the County. As discussed in the proposed decision, the negotiability of parking fees under the PERB-administered statutes has largely turned upon the circumstances of each case, including whether such fees affect employee compensation. If the Board were to reject the parties’ request for withdrawal and settlement, and decide the merits of the County’s exceptions, the resulting decision would be limited to the facts and circumstances peculiar to this case, and thus would provide relatively little guidance to other, similarly-situated parties, and, by ignoring the parties’ efforts to resolve their dispute amicably, would defeat the separate statutory purposes of promoting full communication between public employers and their employees and improving employer-employee relations through peaceful resolution of disputes over wages, hours, and other terms and conditions of employment.

interest of promoting full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment, the Board exercises its discretion, pursuant to PERB Regulation 32320, subdivision (a)(2), to grant the County's request to withdraw its exceptions with prejudice and correspondingly vacate the proposed decision.

ORDER

The request by the County of Riverside to withdraw with prejudice its exceptions to the proposed decision in unfair practice Case No. LA-CE-1060-M is hereby GRANTED and the proposed decision and order are VACATED.

Members Shiners and Krantz joined in this Decision.